

COMPENDIUM OF AFRICAN HUMAN AND PEOPLES' RIGHTS LAW

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**Commemorative edition of
African human rights instruments
of the 35th anniversary of the
African Commission on Human and Peoples' Rights
21 October 1987-2022**

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edited by
Honorable Rémy Ngoy Lumbu
Chairperson African Commission on Human and Peoples' Rights



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Preface

Historically, records show that Africa experienced two years in which the African Commission on Human and Peoples' Rights' (African Commission) activities had been on hold because of the Covid-19 pandemic. The year 2022 thus marks a turning point in the long march of human and peoples' rights development in Africa. As this year also marks the 35th anniversary of the Commission, it seemed important to mark this event with a symbol. There is nothing better than to make this *Compendium of African Human and Peoples' Rights Law*.

The idea is to bring together, in a single volume and in a commemorative edition, all the treaties in force and not yet in force, while at the Commission level, the entry into force of the 2010 and 2020 Rules of Procedure. It will not, however, include the Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty, which has already been adopted by the Commission but is currently being analysed by the Permanent Representatives Committee of the African Union before being forwarded to the Executive Council and the Assembly of Heads of State and Government for final approval.

Thus, the Code is divided into two main parts.

In the first part, we present the texts that are part of the primary (generating or fundamental) law at the level of the Commission. They consist chronologically of the following Conventions: the African Charter on Human and Peoples' Rights; the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa; and the Protocol

to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security.

In the second part, we present the texts that are part of the secondary law (generated or subsidiary law) within the Commission. The reader will find the Rules of Procedure of the African Commission on Human and Peoples' Rights of 2010 and the Rules of Procedure of the African Commission on Human and Peoples' Rights of 2020.

These texts thus form the standard-setting architecture around which another category of *soft law* has been adopted, consisting of principles and guidelines, general comments and resolutions, which would also be prioritized and made available to the general public at a later date. In this connection, work has already been carried out, but from our point of view, it remains an unfinished business and needs to be completed.

I thank the Centre for Human Rights, Faculty of Law, University of Pretoria, especially Professor Frans Viljoen (Director), Dr. Trésor Makunya (Publications Coordinator) and Lizette Hermann (Manager of the Pretoria University Law Press) for their significant and invaluable contributions to the work. I am also grateful to Lindiwe Nesila-Khumalo, Executive Secretary to the Commission, and Anita Bagona, Senior Legal Officer at the Secretariat, for their respective involvement.

The reader will notice that each text is preceded by an explanatory note by one or two Commissioners to introduce the corresponding treaty or regulation.

We trust that Governments, international organisations and institutions, National Human Rights Institutions, Civil Society Organizations, academics, individuals and communities will appreciate having the bulk of the Commission's working documents captured in a single volume.

Rémy Ngoy Lumbu

Honorable Commissioner

Chairperson, African Human and Peoples' Rights

Special Rapporteur on Human Rights Defenders and

Focal Point on Reprisals in Africa

PART ONE:
TREATY LAW

African Charter on Human and Peoples' Rights (Banjul Charter)

(adopted 27 June 1981, entered into force 1987)

The African Charter on Human and Peoples' Rights (African Charter), as the founding treaty of the African human rights system, is more than a regional articulation of internationally recognized human rights. It is a landmark human rights treaty of historical importance both at continental and global levels. It is the first legal instrument to pierce the veil of sovereignty that excluded any scrutiny of how independent African states treated the people within their jurisdiction. In so doing, it freed human and Peoples' rights from the exclusive domestic jurisdiction of states and made them matters of continental concern.

Inspiring the plethora of human rights norms that have since then been elaborated at the continental and sub-regional levels and achieving universal ratification, the Charter, as the most cited human rights norm enjoys not only a status of customary international law but also that of being the grand human and peoples' rights instrument of special historical importance.

The African Charter in being inspired by and grounded in Africa's historical, socio-economic and political, it made human rights resonate with the historical and extant experiences of the peoples of the continent. It is this imaginative contextualization of the universalized rights language that has given it its unparalleled value in the quest to address the legacies of the historical past and the existing and emerging human and peoples' rights issues arising in Africa.

At the global level, it contributed to the international corpus of human rights. It did so not only by giving equal legal status to civil and political rights on the one hand and economic and social rights on the other hand (long before the recognition internationally of the indivisibility of civil and political rights and socio-economic rights in the 1993 Vienna). But it also contributed to the corpus of international human rights law by enshrining the collective rights of peoples and the duties of individuals.

Through the African Charter, Africa has bequeathed its current and future generations and the world the most potent legal instrument for the fight against injustice and for achieving freedom, equality and dignity. We should all cherish it. Most of all, we should strive for creating conditions for honoring it.

Dr. Solomon Ayele Dersso

Honorable Commissioner

Former Chairperson, African Commission on

Human and Peoples' Rights

Chairperson of the Working Group on Extractive Industries,

Environment and Human Rights Violations in Africa

Preamble

The African states member 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 co-ordinate and intensify their co-operation and efforts to achieve a better life for the peoples of Africa and to promote international co-operation, 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 civilisation which should inspire and characterise their reflection on the concept of human and peoples' rights;

Recognising on the one hand, that fundamental human rights stem from the attributes of human beings, which justifies their international protection and on the other hand, that the reality and respect of peoples' rights

should necessarily guarantee human rights;

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

Convinced that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

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

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

Firmly convinced of their duty to promote and protect human and peoples' rights and freedoms 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 recognise 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 recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or 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 recognised and guaranteed by conventions, laws, regulation and customs in force;
 - (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
 - (c) the right to defence, including the right to be defended by counsel of his choice;
 - (d) the right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

Article 8

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

Article 9

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

Article 10

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

Article 11

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

Article 12

1. Every individual shall have the right to freedom of movement and residence within the borders of a state provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the 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. State parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Article 17

1. Every individual shall have the right to education.
2. Every individual may freely take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognised 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 recognised 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 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. Colonised or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognised 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 co-operation based on mutual respect, equitable exchange and the principles of international law.
4. State parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.
5. State parties to the present Charter shall undertake to eliminate all forms of foreign 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, state parties to the present Charter shall ensure that:
 - (a) any individual enjoying the right of asylum under article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other state party to the present Charter;
 - (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other state party to the present Charter.

Article 24

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

Article 25

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

Article 26

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

CHAPTER II: DUTIES

Article 27

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

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

Article 28

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

Article 29

The individual shall also have the duty:

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

PART II: MEASURES OF SAFEGUARD

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

Article 30

An African Commission on Human and Peoples' Rights, hereinafter called

'the Commission', shall be established within the 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 state parties to the present Charter.

Article 34

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

Article 35

1. The Secretary-General of the Organization of African Unity shall invite state parties to the present Charter at least four months before the elections to nominate candidates.
2. The Secretary-General of the 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 the 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 a quorum.

4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The Secretary-General may attend the meetings of the Commission. He shall neither participate in deliberations nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.

Article 43

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

Article 44

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

CHAPTER II: MANDATE OF THE COMMISSION

Article 45

The functions of the Commission shall be:

1. To promote human and peoples' rights and in particular:
 - (a) To collect documents, undertake studies and research on African problems in the field of human and peoples' rights, organise seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and, should the case arise, give its views or make recommendations to governments;
 - (b) To formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their 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 Organization of African Unity or an African organisation recognised by the Organization of African Unity.
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 reason 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 Organization of African Unity 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 state involved.

Article 49

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

Article 50

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious

to the Commission that the procedure of achieving these remedies would be unduly prolonged.

Article 51

1. The Commission may ask the 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 article 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 state parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications should be considered by the Commission.
2. A communication shall be considered by the Commission if a simple majority of its members so decide.

Article 56

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

1. Indicate their authors even if the latter 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 disseminated through the mass media;
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter; and
7. Do not deal with cases which have been settled by the 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 Chapter 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 provision 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 specialised agencies of the United Nations of which the parties to the present Charter are members.

Article 61

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

Article 62

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

Article 63

1. The present Charter shall be open to signature, ratification or adherence of the member states of the 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 state parties have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring state. The amendment shall be approved by a simple majority of the state parties. It shall come into force for each state which has accepted it in accordance

with its constitutional procedure three months after the Secretary-General has received notice of the acceptance.

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

(adopted 9 June 1998, entered into force 25 January 2004)

The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights was adopted on 9 June, 1998 in Ouagadougou, Burkina Faso, and entered into force on 25 January, 2004.

Through the establishment of this jurisdictional body in the institutional architecture of the African Union, the Member States intended to give concrete expression to their regard for the principles of human and peoples' rights as well as their commitment to strengthen the dynamics of the progress achieved in this area by the Commission since its creation in 1987. This is what justifies the option of giving the Court the main task to complement the protection functions that the African Charter has assigned to the African Commission.

This basic idea constitutes the theoretical basis for the practical complementarity introduced by the Ouagadougou Protocol between the two jurisdictional and quasi-jurisdictional bodies, namely the Court and the Commission.

The Court, established within the African Union, has both contentious and advisory powers. On the one hand, it hears disputes arising from the interpretation or application of the Charter and, on the other hand, it rules, free of charge, at the request of a Member State or an Organ of the Union, on any legal issue relating to the said Charter or to any relevant human rights instrument.

The Court, established by the African Court Protocol, is composed of eleven (11) judges, elected for a period of six years, renewable once. They shall be chosen from among jurists who are nationals of Member States on the basis of their recognised legal, judicial or academic competence and experience in the area of human rights.

Under Article 5 of the Protocol, the Court may be seized directly by the Commission, Member States and intergovernmental

organisations. Similarly, direct referral is open to individuals and African non-governmental organisations where the application is directed against a State which has deposited a declaration accepting the jurisdiction of the Court in accordance with the requirements of Article 34 of the Protocol. This declaration, which is revocable, may be made at any time by the State concerned, as from the entry into force of the Protocol.

In the exercise of its jurisdictional functions, the Court has the particular prerogative to apply the provisions enshrined in the Charter but also those drawn from all other relevant legal instruments relating to human rights, ratified by the State party to the proceedings. The Protocol also specifies that the Court shall receive any evidence, written or oral, which it considers appropriate and on which it shall base its decisions.

Under Article 27 of the Protocol, where the Court finds in a particular case that there is a violation of a human or peoples' right, it shall order such measures as it considers appropriate to remedy the situation, including the payment of a just compensation or the making of reparation.

The Court's decisions are binding on the Member States, which are required by the Protocol to comply with them and to provide all facilities necessary for the efficient conduct of cases before the Court.

Where they do not express in whole or in part the unanimous opinions of the judges, the judgments of the Court may be accompanied by a dissenting opinion developed either individually or in concert by one or more members of the bench.

Moreover, the Court's decisions are not subject to appeal. They may, however, be reviewed if evidence comes to light of which the Court was unaware at the time of its decision.

The entry into force of the Protocol to the Charter establishing the African Court of Human Rights has certainly marked a major step forward in the process of strengthening the African human rights protection system. However, the text should be assessed in the light of practice and any challenges or aporia that might be revealed by its application should be corrected, particularly in the context of the

implementation of the complementarity scheme between the Court and the Commission.

Dr. Idrissa Sow

Honorable Commissioner

Chairperson of the Working Group on Death Penalty, Extra-Judicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa

The member states of the Organization of African Unity hereinafter referred to as the OAU, state parties to the African Charter on Human and Peoples' Rights:

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

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

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

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

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

Noting the first and second Government Legal Experts' Meetings held respectively in Cape Town, South Africa (September 1995) and Nouakchott, Mauritania (April 1997) and the Third Government Legal Experts Meeting held in Addis Ababa, Ethiopia (December 1997), which was enlarged to include diplomats;

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

HAVE AGREED as follows:

Article 1: Establishment of the Court

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

Article 2: Relationship between the Court and the Commission

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

Article 3: Jurisdiction

1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instrument ratified by the states concerned.
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 4: Advisory opinions

1. At the request of a member state of the OAU, the OAU, any of its organs, or any African organisation recognised by the OAU, the Court may provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission.
2. The Court shall give reasons for its advisory opinions provided that every judge shall be entitled to deliver a separate or dissenting opinion.

Article 5: Access to the Court

1. The following are entitled to submit cases to the Court:
 - (a) The Commission;
 - (b) The state party which has lodged a complaint to the Commission;
 - (c) The state party against which the complaint has been lodged at the Commission;

- (d) The state party whose citizen is a victim of a human rights violation;
 - (e) African Intergovernmental Organisations.
2. When a state party has an interest in a case, it may submit a request to the Court to be permitted to join.
 3. The Court may entitle relevant non-governmental organisations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34(6) of this Protocol.

Article 6: Admissibility of cases

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

Article 7: Sources of law

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

Article 8: Consideration of cases

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

Article 9: Amicable settlement

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

Article 10: Hearings and representation

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

Article 11: Composition

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

Article 12: Nominations

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

Article 13: List of candidates

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

Article 14: Elections

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

Article 15: Term of office

1. The judges of the Court shall be elected for a period of six years and may be re-elected only once. The terms of four judges elected at the first election shall expire at the end of two years, and the terms of four more judges shall expire at the end of four years.
2. The judges whose terms are to expire at the end of the initial periods of two and four years shall be chosen by lot to be drawn by the Secretary-

General of the OAU immediately after the first election has been completed.

3. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of the predecessor's term.
4. All judges except the President shall perform their functions on a part-time basis. However, the Assembly may change this arrangement as it deems appropriate.

Article 16: Oath of office

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

Article 17: Independence

1. The independence of the judges shall be fully ensured in accordance with international law.
2. No judge may hear any case in which the same judge has previously taken part as agent, counsel or advocate for one of the parties or as a member of a national or international court or a commission of enquiry or in any other capacity. Any doubt on this point shall be settled by decision of the Court.
3. The judges of the Court shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law.
4. At no time shall the judges of the Court be held liable for any decision or opinion issued in the exercise of their functions.

Article 18: Incompatibility

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

Article 19: Cessation of office

1. A judge shall not be suspended or removed from office unless, by the unanimous decision of the other judges of the Court, the judge concerned has been found to be no longer fulfilling the required conditions to be a judge of the Court.
2. Such a decision of the Court shall become final unless it is set aside by the Assembly at its next session.

Article 20: Vacancies

1. In case of death or resignation of a judge of the Court, the President of the Court shall immediately inform the Secretary-General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.
2. The Assembly shall replace the judge whose office became vacant unless the remaining period of the term is less than one hundred and eighty (180) days.
3. The same procedure and considerations as set out in articles 12, 13 and 14 shall be followed for the filling of vacancies.

Article 21: Presidency of the Court

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

Article 22: Exclusion

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

Article 23: Quorum

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

Article 24: Registry of the Court

1. The Court shall appoint its own Registrar and other staff of the registry from among nationals of member states of the OAU according to the Rules of Procedure.
2. The office and residence of the Registrar shall be at the place where the Court has its seat.

Article 25: Seat of the Court

1. The Court shall have its seat at the place determined by the Assembly from among state parties to this Protocol. However, it may convene in the territory of any member state of the OAU when the majority of the Court considers it desirable, and with the prior consent of the state concerned.

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

Article 26: Evidence

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

Article 27: Findings

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

Article 28: Judgment

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

Article 29: Notification of judgment

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

Article 30: Execution of judgment

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

Article 31: Report

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

Article 32: Budget

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

Article 33: Rules of Procedure

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

Article 34: Ratification

1. This Protocol shall be open for signature and ratification or accession by any state party to the Charter.
2. The instrument of ratification or accession to the present Protocol shall be deposited with the Secretary-General of the OAU.
3. The Protocol shall come into force thirty days after fifteen instruments of ratification or accession have been deposited.
4. For any state party ratifying or acceding subsequently, the present Protocol shall come into force in respect of that state on the date of the deposit of its instrument of ratification or accession.
5. The Secretary-General of the OAU shall inform all member states of the entry into force of the present Protocol.
6. At the time of the ratification of this Protocol or any time thereafter, the state shall make a declaration accepting the competence of the court to receive petitions under article 5(3) of this Protocol. The Court shall not receive any petition under article 5(3) involving a state party which has not made such a declaration.
7. Declarations made under sub-article 6 above shall be deposited with the Secretary-General, who shall transmit copies thereof to the state parties.

Article 35: Amendments

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

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

(adopted 11 July 2003, entered into force 25 November 2005)

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol or Protocol) was adopted on 11 July 2003 in Maputo, Mozambique, by the African Union (AU).¹ The Protocol was drafted with the intention, amongst others, of having an instrument that speaks to the specific circumstances in Africa, to combat discrimination and violence against women. The document was adopted thanks to the relentless and concerted efforts of the first Special Rapporteur on the Rights of Women in Africa of the African Commission on Human and Peoples' Rights (the Commission); African Civil Society Organisations, government representatives and technical and financial partners involved in the promotion of women's rights. It came into effect on 25 November 2005 after 15 AU Member States ratified the same. The entry into force of the Maputo Protocol marked the culmination of years of lobbying for a document that promotes and protects the human rights of the continent's women, by human right advocates.

The Maputo Protocol is said to be the fastest African Human Rights instrument to come into force. So far, 43 out of the 55 Member States have ratified the Maputo Protocol, while 12 are yet to ratify. The Protocol is vital in ensuring that the rights of women in Africa are promoted and protected. It has very extensive and innovative provisions that guarantee extensive rights to women and girls, in the sphere of, civil and political rights; economic, social and cultural rights; and group rights. It highlights key provisions including: harmful traditional practices with express prohibition of Female Genital Mutilation and Excisions; violence against women; reproductive health rights; and women's socio-economic development. It is

¹ Mukumu W. Irene, the Maputo Protocol, Evaluating Women's Rights, 11 June, 2015 available at www.pambazuka.org/en/category/features
Accessed 13 Jan, 2016

indeed the first international treaty to contain provisions on health and reproductive rights.

The Protocol recognises that women experience discrimination not only as a result of law, but also through social practice. Therefore, the Protocol has express provisions on the role of culture in limiting women's enjoyment of rights. Whereas the African Charter on Human and Peoples' Rights (the African Charter), provides for the promotion of positive African values, without specifying the nature of the said values, the Protocol makes clear in its preamble that African values are to be "based on the principles of equality, peace, freedom, dignity, justice, solidarity and democracy."

The protocol is also the first international human rights treaty to explicitly refer to HIV/AIDS; including, responses to and protection against HIV through addressing some of the root causes of HIV such as inequality, violence against women, harmful traditional practices, economic empowerment, and education.

The Protocol presents advocates with a powerful tool to effect positive change for women on the continent through lobbying governments, and monitoring and evaluating their progress, in terms of implementation. Although the AU's aspiration to have all 55 Member States ratify the Protocol is yet to be fully realised, the Commission remains committed to protecting and promoting the rights of women on the Continent through consistent advocacy.

Ramatoulie Sala Njie

Honorable Commissioner

Special Rapporteur on the Rights of Women in Africa

*Chairperson of the Committee on the Protection of the Rights of
People Living With HIV (PLHIV) and Those at Risk, Vulnerable to and
Affected by HIV*

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 paramedicalisation 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;

- (f) the right to have family planning education.
- 2. States parties shall take all appropriate measures to:
 - (a) provide adequate, affordable and accessible health services, including information, education and communication 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;
- (d) regulate the management, processing, storage and disposal of domestic waste;
- (e) ensure that proper standards are followed for the storage, transportation and disposal of toxic waste.

Article 19: Right to sustainable development

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

- (a) introduce the gender perspective in the national development planning procedures;
- (b) ensure participation of women at all levels in the 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 marginalised 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 (15th) 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.

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa

(adopted October 2009, entered into force 2012)

The Kampala Convention consolidates the African Conventions' standard-setting architecture relating to human rights in addition to the various Additional Protocols to the African Charter on Human and Peoples' Rights (the African Charter).

Although it is an autonomous instrument from the African Charter, it is the one and only binding regional legal instrument on forced internal displacements.

The adoption by the African Union in October 2009 of the Kampala Convention was a historic event.

It entered into force on 6 December, 2012 and has 33 ratifying States Parties, 11 signatory States and 11 States that have neither signed nor ratified it.

Ten years after its entry into force, it has not yet achieved its full potential. It imposes legal obligations on States Parties in respect of the protection and assistance of internally displaced persons.

It reveals in its content the multiple causes of displacement in Africa, ranging from serious and widespread human rights violations, recurrent armed conflicts, situations of violence, natural disasters, climate change, development projects. It refers to the disastrous consequences of forced or arbitrary displacement that will impact the situation of thousands of people.

The fundamental aspects of the Kampala Convention are embedded in the fabric of obligations incumbent on the State to prevent internal displacement, to protect people from displacement and to assist them during displacement.

An important element is the requirement for States to support the right to full protection of the rights of displaced persons without discrimination.

In view of the above, States shall bear full responsibility for the forced or arbitrary displacement of populations and may be liable for reparations to the victims of displacement.

The Kampala Convention refers to the principle of solidarity that underpins African values, seeking support and assistance from other States as well as humanitarian support from regional and international bodies.

The key challenges of the Kampala Convention lie in the search for lasting solutions to the internal displacement of people, whatever the causes, and in the need to consult the population in order to express their free choice between voluntary return to their place of habitual residence, local integration in the territory of displacement or resettlement in another part of the country.

In conclusion, the Kampala Convention is a positive achievement for the African continent, which has more than 13 million internally displaced persons.

As we celebrate the tenth anniversary of the entry into force of the Convention this year, it is important to emphasize that the record of its implementation depends on the willingness of States Parties to incorporate the provisions into their domestic legal systems, with reference to the African Union model law.

On the eve of this celebration, we urge those States that have neither signed nor ratified the Convention to complete the procedures for final commitment.

Sahli Fadel Maya

Honorable Commissioner

Vice-Chairperson, African Commission on

Human and Peoples' Rights

Special Rapporteur on Asylum Seekers, Refugees,

Migrants and Internally Displaced Persons in Africa

Preamble

We, the Heads of State and Government of the member states of the African Union;

Conscious of the gravity of the situation of internally displaced persons as a source of continuing instability and tension for African states;

Also conscious of the suffering and specific vulnerability of internally displaced persons;

Reiterating the inherent African custom and tradition of hospitality by local host communities for persons in distress and support for such communities;

Committed to sharing our common vision of providing durable solutions to situations of internally displaced persons by establishing an appropriate legal framework for their protection and assistance;

Determined to adopt measures aimed at preventing and putting an end to the phenomenon of internal displacement by eradicating the root causes, especially persistent and recurrent conflicts as well as addressing displacement caused by natural disasters, which have a devastating impact on human life, peace, stability, security, and development;

Considering the 2000 Constitutive Act of the African Union and the 1945 Charter of the United Nations;

Reaffirming the principle of the respect of the sovereign equality of states parties, their territorial integrity and political independence as stipulated in the Constitutive Act of the African Union and the United Nations Charter;

Recalling the 1948 Universal Declaration of Human Rights, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Geneva Conventions and the 1977 Additional Protocols to the Geneva Conventions, the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1981 African Charter on Human and Peoples' Rights and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the 1990 African Charter on the Rights and Welfare of the Child, the 1994 Addis Ababa Document on Refugees and Forced Population Displacement in Africa, and other relevant United Nations and African Union human rights instruments, and relevant Security Council resolutions;

Mindful that member states of the African Union have adopted democratic practices and adhere to the principles of non-discrimination, equality and equal protection of the law under the 1981 African Charter on Human and Peoples' Rights, as well as under other regional and international human rights law instruments;

Recognising the inherent rights of internally displaced persons as provided for and protected in international human rights and humanitarian law and as set out in the 1998 United Nations Guiding Principles on Internal

Displacement, which are recognised as an important international framework for the protection of internally displaced persons;

Affirming our primary responsibility and commitment to respect, protect and fulfil the rights to which internally displaced persons are entitled, without discrimination of any kind;

Noting the specific roles of international organisations and agencies within the framework of the United Nations inter-agency collaborative approach to internally displaced persons, especially the protection expertise of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the invitation extended to it by the Executive Council of the African Union in Decision EX/CL.413 (XIII) of July 2008 at Sharm El Sheikh, Egypt, to continue and reinforce its role in the protection of and assistance to internally displaced persons, within the United Nations coordination mechanism; and noting also the mandate of the International Committee of the Red Cross to protect and assist persons affected by armed conflict and other situations of violence, as well as the work of civil society organisations, in conformity with the laws of the country in which they exercise such roles and mandates;

Recalling the lack of a binding African and international legal and institutional framework specifically, for the prevention of internal displacement and the protection of and assistance to internally displaced persons;

Reaffirming the historical commitment of the AU member states to the protection of and assistance to refugees and displaced persons and, in particular, the implementation of Executive Council decisions EX.CL/Dec.129 (V) and EX.CL/127 (V) of July 2004 in Addis Ababa, to the effect that the specific needs of internally displaced persons (IDPs) such as protection and assistance should be addressed through a separate legal instrument, and to collaborate with relevant cooperating partners and other stakeholders to ensure that internally displaced persons are provided with an appropriate legal framework to ensure their adequate protection and assistance as well as with durable solutions, respectively;

Convinced that the present Convention for the Protection and Assistance of

Internally Displaced Persons presents such a legal framework;

HAVE AGREED AS FOLLOWS:

Article 1: Definitions

For the purpose of the present Convention:

- (a) 'African Charter' means the African Charter on Human and Peoples' Rights;

- (b) 'African Commission' means the African Commission on Human and Peoples' Rights;
- (c) 'African Court of Justice and Human Rights' means the African Court of Justice and Human Rights;
- (d) 'Arbitrary displacement' means arbitrary displacement as referred to in article 4(4)(a) to (h);
- (e) 'Armed groups' means dissident armed forces or other organised armed groups that are distinct from the armed forces of the state;
- (f) 'AU' means the African Union;
- (g) 'AU Commission' means the Secretariat of the African Union, which is the depository of the regional instruments;
- (h) 'Child' means every human being below the age of 18 years;
- (i) 'Constitutive Act' means the Constitutive Act of the African Union;
- (j) 'Harmful practices' means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of persons, such as but not limited to their right to life, health, dignity, education, mental and physical integrity and education;
- (k) 'Internally displaced persons' means persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border;
- (l) 'Internal displacement' means the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognised state borders;
- (m) 'Member state' means a member state of the African Union;
- (n) 'Non-state actors' means private actors who are not public officials of the state, including other armed groups not referred to in article 1(e) above, and whose acts cannot be officially attributed to the state;
- (o) 'OAU' means the Organization of African Unity;
- (p) 'Women' mean persons of the female gender, including girls;
- (q) 'Sphere standards' mean standards for monitoring and evaluating the effectiveness and impact of humanitarian assistance; and
- (r) 'States parties' means African states which have ratified or acceded to this Convention.

Article 2: Objectives

The objectives of this Convention are to:

- (a) Promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions;
- (b) Establish a legal framework for preventing internal displacement, and protecting and assisting internally displaced persons in Africa;
- (c) Establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the states parties in order to combat displacement and address its consequences;
- (d) Provide for the obligations and responsibilities of states parties, with respect to the prevention of internal displacement and protection of, and assistance, to internally displaced persons;
- (e) Provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organisations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons.

Article 3: General obligations relating to states parties

1. States parties undertake to respect and ensure respect for the present Convention. In particular, states parties shall:
 - (a) Refrain from, prohibit and prevent arbitrary displacement of populations;
 - (b) Prevent political, social, cultural and economic exclusion and marginalisation, that are likely to cause displacement of populations or persons by virtue of their social identity, religion or political opinion;
 - (c) Respect and ensure respect for the principles of humanity and human dignity of internally displaced persons;
 - (d) Respect and ensure respect and protection of the human rights of internally displaced persons, including humane treatment, non-discrimination, equality and equal protection of law;
 - (e) Respect and ensure respect for international humanitarian law regarding the protection of internally displaced persons;
 - (f) Respect and ensure respect for the humanitarian and civilian character of the protection of and assistance to internally displaced persons, including ensuring that such persons do not engage in subversive activities;
 - (g) Ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law;
 - (h) Ensure the accountability of non-state actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts;

- (i) Ensure the accountability of non-state actors involved in the exploration and exploitation of economic and natural resources leading to displacement;
 - (j) Ensure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organisations and personnel;
 - (k) Promote self-reliance and sustainable livelihoods amongst internally displaced persons, provided that such measures shall not be used as a basis for neglecting the protection of and assistance to internally displaced persons, without prejudice to other means of assistance;
2. States parties shall:
- (a) Incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law;
 - (b) Designate an authority or body, where needed, responsible for coordinating activities aimed at protecting and assisting internally displaced persons and assign responsibilities to appropriate organs for protection and assistance, and for cooperating with relevant international organisations or agencies, and civil society organisations, where no such authority or body exists;
 - (c) Adopt other measures as appropriate, including strategies and policies on internal displacement at national and local levels, taking into account the needs of host communities;
 - (d) Provide, to the extent possible, the necessary funds for protection and assistance without prejudice to receiving international support;
 - (e) Endeavour to incorporate the relevant principles contained in this Convention into peace negotiations and agreements for the purpose of finding sustainable solutions to the problem of internal displacement.

Article 4: Obligations of states parties relating to protection from internal displacement

- 1. States parties shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, so as to prevent and avoid conditions that might lead to the arbitrary displacement of persons;
- 2. States parties shall devise early warning systems, in the context of the continental early warning system, in areas of potential displacement, establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures and, where necessary, provide immediate protection and assistance to internally displaced

- persons;
3. States parties may seek the cooperation of international organisations or humanitarian agencies, civil society organisations and other relevant actors;
 4. All persons have a right to be protected against arbitrary displacement. The prohibited categories of arbitrary displacement include but are not limited to:
 - (a) Displacement based on policies of racial discrimination or other similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the population;
 - (b) Individual or mass displacement of civilians in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian law;
 - (c) Displacement intentionally used as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict;
 - (d) Displacement caused by generalised violence or violations of human rights;
 - (e) Displacement as a result of harmful practices;
 - (f) Forced evacuations in cases of natural or human made disasters or other causes if the evacuations are not required by the safety and health of those affected;
 - (g) Displacement used as a collective punishment;
 - (h) Displacement caused by any act, event, factor, or phenomenon of comparable gravity to all of the above and which is not justified under international law, including human rights and international humanitarian law.
 5. States parties shall endeavour to protect communities with special attachment to, and dependency, on land due to their particular culture and spiritual values from being displaced from such lands, except for compelling and overriding public interests;
 6. States parties shall declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity.

Article 5: Obligations of states parties relating to protection and assistance

1. States parties shall bear the primary duty and responsibility for providing protection of and humanitarian assistance to internally displaced persons within their territory or jurisdiction without discrimination of any kind.
2. States parties shall cooperate with each other upon the request of the concerned state party or the conference of state parties in protecting and assisting internally displaced persons.

3. States parties shall respect the mandates of the African Union and the United Nations, as well as the roles of international humanitarian organisations in providing protection and assistance to internally displaced persons, in accordance with international law.
4. States parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change.
5. States parties shall assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and of host communities, in cooperation with international organisations or agencies.
6. States parties shall provide sufficient protection and assistance to internally displaced persons, and where available resources are inadequate to enable them to do so, they shall cooperate in seeking the assistance of international organisations and humanitarian agencies, civil society organisations and other relevant actors. Such organisations may offer their services to all those in need.
7. States parties shall take necessary steps to effectively organise relief action that is humanitarian and impartial in character, and guarantee security. States parties shall allow rapid and unimpeded passage of all relief consignments, equipment and personnel to internally displaced persons. States parties shall also enable and facilitate the role of local and international organisations and humanitarian agencies, civil society organisations and other relevant actors, to provide protection and assistance to internally displaced persons. States parties shall have the right to prescribe the technical arrangements under which such passage is permitted.
8. States parties shall uphold and ensure respect for the humanitarian principles of humanity, neutrality, impartiality and independence of humanitarian actors.
9. States parties shall respect the right of internally displaced persons to peacefully request or seek protection and assistance, in accordance with relevant national and international laws, a right for which they shall not be persecuted, prosecuted or punished.
10. States parties shall respect, protect and not attack or otherwise harm humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons.
11. States parties shall take measures aimed at ensuring that armed groups act in conformity with their obligations under article 7.
12. Nothing in this article shall prejudice the principles of sovereignty and territorial integrity of states.

Article 6: Obligations relating to international organisations and humanitarian agencies

1. International organisations and humanitarian agencies shall discharge their obligations under this Convention in conformity with international law and the laws of the country in which they operate.
2. In providing protection and assistance to internally displaced persons, international organisations and humanitarian agencies shall respect the rights of such persons in accordance with international law.
3. International organisations and humanitarian agencies shall be bound by the principles of humanity, neutrality, impartiality and independence of humanitarian actors, and ensure respect for relevant international standards and codes of conduct.

Article 7: Protection and assistance to internally displaced persons in situations of armed conflict

1. The provisions of this article shall not, in any way whatsoever, be construed as affording legal status or legitimising or recognising armed groups and are without prejudice to the individual criminal responsibility of the members of such groups under domestic or international criminal law.
2. Nothing in this Convention shall be invoked for the purpose of affecting the sovereignty of a state or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the state or to defend the national unity and territorial integrity of the state.
3. The protection and assistance to internally displaced persons under this article shall be governed by international law and in particular international humanitarian law.
4. Members of armed groups shall be held criminally responsible for their acts which violate the rights of internally displaced persons under international law and national law.
5. Members of armed groups shall be prohibited from:
 - (a) Carrying out arbitrary displacement;
 - (b) Hampering the provision of protection and assistance to internally displaced persons under any circumstances;
 - (c) Denying internally displaced persons the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter; and separating members of the same family;
 - (d) Restricting the freedom of movement of internally displaced persons within and outside their areas of residence;

- (e) Recruiting children or requiring or permitting them to take part in hostilities under any circumstances;
- (f) Forcibly recruiting persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons especially women and children;
- (g) Impeding humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons;
- (h) Attacking or otherwise harming humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons and shall not destroy, confiscate or divert such materials; and
- (i) Violating the civilian and humanitarian character of the places where internally displaced persons are sheltered and shall not infiltrate such places.

Article 8: Obligations relating to the African Union

1. The African Union shall have the right to intervene in a member state pursuant to a decision of the Assembly in accordance with article 4(h) of the Constitutive Act in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity;
2. The African Union shall respect the right of states parties to request intervention from the Union in order to restore peace and security in accordance with article 4(j) of the Constitutive Act and thus contribute to the creation of favourable conditions for finding durable solutions to the problem of internal displacement;
3. The African Union shall support the efforts of the states parties to protect and assist internally displaced persons under this Convention. In particular, the Union shall:
 - (a) Strengthen the institutional framework and capacity of the African Union with respect to protection and assistance to internally displaced persons;
 - (b) Coordinate the mobilisation of resources for protection and assistance to internally displaced persons;
 - (c) Collaborate with international organisations and humanitarian agencies, civil society organisations and other relevant actors in accordance with their mandates, to support measures taken by states parties to protect and assist internally displaced persons;
 - (d) Cooperate directly with African states and international organisations and humanitarian agencies, civil society organisations and other relevant actors, with respect to appropriate measures to be taken in relation to the protection of and assistance to internally displaced persons;

- (e) Share information with the African Commission on Human and Peoples' Rights on the situation of displacement, and the protection and assistance accorded to internally displaced persons in Africa; and
- (f) Cooperate with the Special Rapporteur of the African Commission on Human and Peoples' Rights for Refugees, Returnees, IDPs and Asylum Seekers in addressing issues of internally displaced persons.

Article 9: Obligations of states parties relating to protection and assistance during internal displacement

1. States parties shall protect the rights of internally displaced persons regardless of the cause of displacement by refraining from, and preventing, the following acts, amongst others:
 - (a) Discrimination against such persons in the enjoyment of any rights or freedoms on the grounds that they are internally displaced persons;
 - (b) Genocide, crimes against humanity, war crimes and other violations of international humanitarian law against internally displaced persons;
 - (c) Arbitrary killing, summary execution, arbitrary detention, abduction, enforced disappearance or torture and other forms of cruel, inhuman or degrading treatment or punishment;
 - (d) Sexual and gender based violence in all its forms, notably rape, enforced prostitution, sexual exploitation and harmful practices, slavery, recruitment of children and their use in hostilities, forced labour and human trafficking and smuggling; and
 - (e) Starvation.
2. States parties shall:
 - (a) Take necessary measures to ensure that internally displaced persons are received, without discrimination of any kind and live in satisfactory conditions of safety, dignity and security;
 - (b) Provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities;
 - (c) Provide special protection for and assistance to internally displaced persons with special needs, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities or with communicable diseases;

- (d) Take special measures to protect and provide for the reproductive and sexual health of internally displaced women as well as appropriate psycho-social support for victims of sexual and other related abuses;
 - (e) Respect and ensure the right to seek safety in another part of the state and to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk;
 - (f) Guarantee the freedom of movement and choice of residence of internally displaced persons, except where restrictions on such movement and residence are necessary, justified and proportionate to the requirements of ensuring security for internally displaced persons or maintaining public security, public order and public health;
 - (g) Respect and maintain the civilian and humanitarian character of the places where internally displaced persons are sheltered and safeguard such locations against infiltration by armed groups or elements and disarm and separate such groups or elements from internally displaced persons;
 - (h) Take necessary measures, including the establishment of specialised mechanisms, to trace and reunify families separated during displacement and otherwise facilitate the re-establishment of family ties;
 - (i) Take necessary measures to protect individual, collective and cultural property left behind by displaced persons as well as in areas where internally displaced persons are located, either within the jurisdiction of the state parties, or in areas under their effective control;
 - (j) Take necessary measures to safeguard against environmental degradation in areas where internally displaced persons are located, either within the jurisdiction of the state parties, or in areas under their effective control;
 - (k) States parties shall consult internally displaced persons and allow them to participate in decisions relating to their protection and assistance;
 - (l) Take necessary measures to ensure that internally displaced persons who are citizens in their country of nationality can enjoy their civic and political rights, particularly public participation, the right to vote and to be elected to public office; and
 - (m) Put in place measures for monitoring and evaluating the effectiveness and impact of the humanitarian assistance delivered to internally displaced persons in accordance with relevant practice, including the Sphere Standards.
3. States parties shall discharge these obligations, where appropriate, with assistance from international organisations and humanitarian agencies, civil society organisations, and other relevant actors.

Article 10: Displacement induced by projects

1. States parties, as much as possible, shall prevent displacement caused by projects carried out by public or private actors;
2. States parties shall ensure that the stakeholders concerned will explore feasible alternatives, with full information and consultation of persons likely to be displaced by projects;
3. States parties shall carry out a socio-economic and environmental impact assessment of a proposed development project prior to undertaking such a project.

Article 11: Obligations of states parties relating to sustainable return, local integration or relocation

1. States parties shall seek lasting solutions to the problem of displacement by promoting and creating satisfactions, whenever possible, to restore the lands of communities with special dependency and attachment to such lands upon the communities' return, reintegration, and reinsertion.

Article 12: Compensation

1. States parties shall provide persons affected by displacement with effective remedies.
2. States parties shall establish an effective legal framework to provide just and fair compensation and other forms of reparations, where appropriate, to internally displaced persons for damage incurred as a result of displacement, in accordance with international standards.
3. A state party shall be liable to make reparation to internally displaced persons for damage when such a state party refrains from protecting and assisting internally displaced persons in the event of natural disasters.

Article 13: Registration and personal documentation

1. States parties shall create and maintain an up-dated register of all internally displaced persons within their jurisdiction or effective control. In doing so, states parties may collaborate with international organisations or humanitarian agencies or civil society organisations.
2. States parties shall ensure that internally displaced persons shall be issued with relevant documents necessary for the enjoyment and exercise of their rights, such as passports, personal identification documents, civil certificates, birth certificates and marriage certificates.
3. States parties shall facilitate the issuance of new documents or the replacement of documents lost or destroyed in the course of displacement,

without imposing unreasonable conditions, such as requiring return to one's area of habitual residence in order to obtain these or other required documents. The failure to issue internally displaced persons with such documents shall not in any way impair the exercise or enjoyment of their human rights.

4. Women and men as well as separated and unaccompanied children shall have equal rights to obtain such necessary identity documents and shall have the right to have such documentation issued in their own names.

Article 14: Monitoring compliance

1. States parties agree to establish a Conference of states parties to this Convention to monitor and review the implementation of the objectives of this Convention.
2. States parties shall enhance their capacity for cooperation and mutual support under the auspices of the Conference of the states parties.
3. States parties agree that the Conference of the states parties shall be convened regularly and facilitated by the African Union.
4. States parties shall, when presenting their reports under article 62 of the African Charter on Human and Peoples' Rights as well as, where applicable, under the African Peer Review Mechanism indicate the legislative and other measures that have been taken to give effect to this Convention.

FINAL PROVISIONS

Article 15: Application

1. States parties agree that except where expressly stated in this Convention, its provisions apply to all situations of internal displacement regardless of its causes.
2. States parties agree that nothing in this Convention shall be construed as affording legal status or legitimising or recognising armed groups and that its provisions are without prejudice to the individual criminal responsibility of their members under domestic or international criminal law.

Article 16: Signature, ratification and membership

1. This Convention shall be open to signature, ratification or accession by member states of the AU in accordance with their respective constitutional procedures.

2. The instruments of ratification or accession shall be deposited with the Chairperson of the African Union Commission.

Article 17: Entry into force

1. This Convention shall enter into force thirty (30) days after the deposit of the instruments of ratification or accession by fifteen (15) member states.
2. The Chairperson of the AU Commission shall notify member states of the coming into force of this Convention.

Article 18: Amendment and revision

1. States parties may submit proposals for the amendment or revision of this Convention.
2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission of the AU who shall transmit the same to the states parties within thirty (30) days of receipt thereof.
3. The Conference of states parties, upon advice of the Executive Council, shall examine these proposals within a period of one (1) year following notification of states parties, in accordance with the provisions of paragraph 2 of this article.
4. Amendments or revision shall be adopted by the Conference of states parties by a simple majority of the states parties present and voting.
5. Amendments shall come into force thirty (30) days following the depositing of the fifteenth (15) instrument of ratification by the states parties with the Chairperson of the AU Commission.

Article 19: Denunciation

1. A state party may denounce this Convention by sending a written notification addressed to the Chairperson of the AU Commission, while indicating the reasons for such a denunciation.
2. The denunciation shall take effect one (1) year from the date when the notification was received by the Chairperson of the AU Commission, unless a subsequent date has been specified.

Article 20: Saving clause

1. No provision in this Convention shall be interpreted as affecting or undermining the right of internally displaced persons to seek and be granted asylum within the framework of the African Charter on Human and Peoples' Rights, and to seek protection, as a refugee, within the purview of the 1969 OAU Convention Governing the Specific Aspects of

Refugee Problems in Africa or the 1951 UN Convention Relating to the Status of Refugees as well as the 1967 Protocol Relating to the Status of Refugees.

2. This Convention shall be without prejudice to the human rights of internally displaced persons under the African Charter on Human and Peoples' Rights and other applicable instruments of international human rights law or international humanitarian law. Similarly, it shall in no way be understood, construed or interpreted as restricting, modifying or impeding existing protection under any of the instruments mentioned herein.
3. The right of internally displaced persons to lodge a complaint with the African Commission on Human and Peoples' Rights or the African Court of Justice and Human Rights, or any other competent international body shall in no way be affected by this Convention.
4. The provisions of this Convention shall be without prejudice to the individual criminal responsibility of internally displaced persons, within the framework of national or international criminal law and their duties by virtue of the African Charter on Human and Peoples' Rights.

Article 21: Reservations

States parties shall not make or enter reservations to this Convention that are incompatible with the object and purpose of this Convention.

Article 22: Settlement of disputes

1. Any dispute or differences arising between the states parties with regard to the interpretation or application of this Convention shall be settled amicably through direct consultations between the states parties concerned. In the event of failure to settle the dispute or differences, either state may refer the dispute to the African Court of Justice and Human Rights.
2. Until such time as and when the latter shall have been established, the dispute or differences shall be submitted to the Conference of the states parties, which will decide by consensus or, failing which, by a two-third (2/3) majority of the states parties present and voting.

Article 23: Depository

1. This Convention shall be deposited with the Chairperson of the AU Commission, who shall transmit a certified true copy of the Convention to the government of each signatory state.

2. The Chairperson of the AU Commission shall register this Convention with the United-Nations Secretary-General as soon as it comes into force.
3. This Convention is drawn up in four (4) original texts; in the Arabic, English, French and Portuguese languages, all four (4) being equally authentic.

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

(adopted 31 January 2016 – not yet in force)

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of the Older Persons in Africa¹ was adopted by the African Union at its 26th Assembly, held from 21 to 31 January 2016 in Addis Ababa, Ethiopia. This Protocol has not yet entered into force as it has not gathered the 15 ratifications required for this purpose. As of 20 October 2022, it has only been ratified by the Kingdom of Lesotho, Benin, Kenya, Malawi, Rwanda, Ethiopia, Angola and Burundi, while eighteen States² have signed it.

In addition to the Preamble, which is the basis of the instrument, it contains a set of 32 Articles, ranging from the substantive rights guaranteed to Older Persons to technical provisions aimed at operationalizing the international instrument.

It is unique in that it is adapted to the African context with its customs and practices. It promotes the positive aspects for this category of vulnerable people, and takes a stand against the negative aspects, such as the accusations of occult practices to which Older Persons are subjected in many African communities (Art.8).

It does not recommend the institutionalisation of older persons (Arts. 10, 11, 13) and in this it follows the traditional system of management of older persons by African communities, where the older person, the Senior, is an unquestionable value by virtue of their experience and presumed wisdom, if not accepted as established, and which must be passed on to the younger generation, as the Protocol also indicates.

1 The Draft Protocol on the Rights of Older Persons in Africa was adopted by the African Commission on Human and Peoples' Rights at its 52nd Ordinary Session and was transmitted to the African Union Commission by letter dated 9 November 2012.

2 Angola, Benin, Burundi, Ethiopia, Chad, Comoros, Cameroon, Gabon, Ghana, Guinea, Kingdom of Lesotho, Rwanda, Mali, Mozambique, Nigeria, Sierra Leone, Togo, and Zambia.

Indeed, on the basis of “the strengths of African traditions, values and practices that should inspire and characterise the provision of social and community services and mutual assistance, respect for older members of society and the transmission of knowledge to younger population groups” (Preamble), the Protocol recognises the right of older persons to non-discrimination in all its forms, to equality, to decision-making concerning them, to social protection and to protection against all kinds of abuses (Art. 3-18) and specifically that of older women (Art.9), care, among other things, but also recognizes their duties (Art. 20), especially as the ones who nurture future generations, wise men and women, mediators and promoters of intergenerational dialogue.

Marie-Louise Abomo

Honorable Commissioner

*Chairperson of the Working Group on Rights of Older Persons
and People with Disabilities*

We, member states of the African Union,

Considering that article 66 of the African Charter provides for special protocols or agreements, if necessary, to supplement the provisions of that Charter;

Considering that the African Charter makes specific provisions for the protection of the rights of older persons, under article 18(4) which stipulates that, ‘older persons and people with disabilities shall also have the right to special measures of protection in keeping with their physical or moral needs’;

Noting article 2 of the African Charter which states that, ‘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, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status’;

Recalling article 22 of the Protocol to the African Charter on the Rights of Women in Africa which provides for the special protection of elderly women;

Considering recommendation (1) contained in paragraph 4.1 of the African Union Policy Framework and Plan of Action on Ageing (2002) which states that ‘member states recognise the fundamental rights of older persons and commit themselves to abolish all forms of discrimination based on age;

that they undertake to ensure that the rights of older persons are protected by appropriate legislation; including the right to organise themselves in groups and to representation in order to advance their interests';

Considering recommendation (1)(a) contained in paragraph 4.1 of the same Policy Framework and Plan of Action which calls for the elaboration and adoption of 'an additional Protocol to the African Charter on Human and Peoples' Rights relating to the rights of Older Persons';

Considering further paragraph 20 of the Kigali Declaration on Human Rights (2003), which '*calls upon states parties to develop a Protocol on the protection of the rights of the elderly and persons with disabilities*';

Recalling section 2.2.11 of the African Union Social Policy Framework (2009) which calls for the implementation of all the tenets of the African Union Policy Framework and Plan of Action on Ageing (2002), other international instruments that deal with the issues of ageing and older persons, the 1991 United Nations Principles for Older Persons, the 1992 United Nations Proclamation on Ageing, and the 2002 Madrid International Plan of Action on Ageing and which promotes the rights of older persons;

Considering also the World Population Plan of Action (1974), the Declaration of Principles of the United Nations Conference on Human Settlements (HABITAT) of 1996 and 1999, the International Labour Organization (ILO) Convention No. 102 of 1952 concerning Minimum Standards of Social Security, Convention No. 128 and Recommendations 131 of 1967 on Invalidity, Old Age and Survivors' Benefits, Recommendation No. 162 of 1980 Concerning Older Workers, and Convention No. 157 Concerning Maintenance of Social Security Rights of 1982;

Considering the various international declarations, conventions and instruments including but not limited to: Convention on the Elimination of Racial Discrimination (CERD) of 1965; International Covenant on Civil and Political Rights (ICCPR) of 1966; International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966; The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) of 1979; United Nations Plan of Action on Ageing of 1982; The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984; United Nations Declaration on the Right to Development of 1986; United Nations Principles for Older Persons of 1991; United Nations Proclamation on Ageing of 1992; Madrid Plan of Action on Ageing (MIPAA) of 2002;

Taking into consideration the virtues of African traditions, values and practices

which should inspire and characterize the provision of mutual social and communal care and support; respect for older members of society and the passing of knowledge to younger population groups;

Noting that the increase in the number and needs of older persons in Africa calls for African Governments to institute urgent measures aimed at addressing these needs such as access to regular incomes, equitable distribution of resources, employment opportunities; access to appropriate health services; access to basic social services such as food, water, clothing and shelter; access to good care and support from the family, the state, civil society and private organizations; recognition of their contribution towards the care of persons with AIDS and orphans; respect and recognition of the role and contribution that older persons make to society; and a recognition of their special needs in emergency situations.

HAVE AGREED AS FOLLOWS:

Article 1: Definitions

For purposes of this Protocol:

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

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

Ageing means the process of getting old from birth to death and in this Protocol, it shall also refer to issues concerned with older persons;

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

AU means the African Union;

Commission means the African Union Commission;

Constitutive Act means the Constitutive Act of the African Union;

Harmful traditional practices means traditional beliefs, attitudes and practices which violate the fundamental rights of older persons such as their right to life, dignity and physical integrity;

ICT means Information Communication and Technology;

Member states means the member states of the African Union;

Older persons means those persons aged sixty (60) years and above, as defined by the United Nations (1982) and the AU Policy Framework and Plan of Action on Ageing (2002);

Residential care residential care means long-term care, including geriatric care, given to Older Persons in a residential setting rather than their home.

States parties means member states of the African Union that have ratified or

accessed to this Protocol and deposited the instruments of ratification or accession with the Chairperson of the African Union Commission;

The Advisory Council on Ageing means a Council established in accordance with the African Union Policy Framework and Plan of Action on Ageing (2002);

The words 'the aged', 'older persons', 'seniors', 'senior citizens' and 'the elderly' shall be construed to have the same meaning as 'older persons'.

Article 2: Obligations of states parties

1. States parties shall recognize the rights and freedoms enshrined in this Protocol and shall undertake to adopt legislative or other measures to give effect to them.
2. States parties shall ensure that the 1991 United Nations Principles of independence, dignity, self-fulfilment, participation and care of older persons are included in their national laws and are legally binding as the basis for ensuring their rights.

Article 3: Elimination of discrimination against older persons

States parties shall:

1. Prohibit all forms of discrimination against older persons and encourage the elimination of social and cultural stereotypes which marginalise older persons;
2. Take corrective measures in those areas where discrimination and all forms of stigmatisation against older persons continue to exist in law and in fact; and
3. Support and enforce local, national, regional, continental and international customs, traditions and initiatives directed at eradicating all forms of discrimination against older persons.

Article 4: Access to justice and equal protection before the law

States parties shall:

1. Develop and review existing legislation to ensure that older persons receive equal treatment and protection;
2. Ensure the provision of legal assistance to older persons in order to protect their rights; and
3. Ensure that law enforcement organs at all levels are trained to effectively interpret and enforce policies and legislation to protect the rights of older persons.

Article 5: Right to make decisions

States parties shall:

1. Ensure that appropriate legislation exists that recognises the rights of older persons to make decisions regarding their own well-being without undue interference from any person or entity, and that older persons have the right to appoint a party of their choice to carry out their wishes and instructions;
2. Ensure that, in the event of incapacity, older persons shall be provided with legal and social assistance in order to make decisions that are in their best interests and wellbeing; and
3. Enact legislation and take other measures that protect the right of older persons to express opinions and participate in social and political life.

Article 6: Protection against discrimination in employment

States parties shall:

1. Take measures to eliminate work place discrimination against older persons with regard to access to employment taking into consideration occupational requirements; and
2. Ensure appropriate work opportunities for older persons taking into account to their medical and physical abilities, skills and experience.

Article 7: Social protection

States parties shall:

1. Develop policies and legislation that ensure that older persons who retire from their employment are provided with adequate pensions and other forms of social security;
2. Ensure that universal social protection mechanisms exist to provide income security for those older persons who did not have the opportunity to contribute to any social security provisions;
3. Ensure that the processes and procedures of accessing pensions are decentralised, simple and dignified;
4. Take legislative and other measures to enable individuals to prepare for income security in old age; and
5. Take legislative and other measures that facilitate the rights of older persons to access services from state service providers.

Article 8: Protection from abuse and harmful traditional practices

States parties shall:

1. Prohibit and criminalise harmful traditional practices targeted at older persons; and
2. Take all necessary measures to eliminate harmful traditional practices including witchcraft accusations, which affect the welfare, health, life and dignity of older persons, particularly older women.

Article 9: Protection of older women

States parties shall:

1. Ensure the protection of the rights of older women from violence, sexual abuse and discrimination based on gender;
2. Put in place legislation and other measures that guarantee protection of older women against abuses related to property and land rights; and
3. Adopt appropriate legislation to protect the right of inheritance of older women.

Article 10: Care and support

States parties shall:

1. Adopt policies and legislation that provide incentives to family members who provide home care for older persons;
2. Identify, promote and strengthen traditional support systems to enhance the ability of families and communities to care for older family members; and
3. Ensure the provision of preferential treatment in service delivery for older persons.

Article 11: Residential care

States parties shall:

1. Enact or review existing legislation to ensure that residential care is optional and affordable for older persons;
2. Ensure that older persons in residential care facilities are provided with care that meets the national minimum standards provided that such standards comply with regional and international standards; and
3. Ensure that older persons in palliative care receive adequate care and pain management medication.

Article 12: Support for older persons taking care of vulnerable children

States parties shall:

1. Adopt measures to ensure that indigent older persons who take care of

orphans and vulnerable children are provided with financial, material and other support; and

2. Ensure that when children are left in the care of older persons, any social or other benefits designed for the children, are remitted to the older persons.

Article 13: Protection of older persons with disabilities

States parties shall:

1. Adopt legislation and other measures to protect the rights of older persons with disabilities;
2. Ensure that such legislation and measures comply with regional and international standards; and
3. Ensure that older persons with disabilities have access to assistive devices and specialised care, which respond to their needs within their communities.

Article 14: Protection of older persons in conflict and disaster situations

States parties shall:

1. Ensure that, in situations of risk, including natural calamities, conflict situations, during civil strife or wars, older persons shall be among those to enjoy access, on a priority basis, to assistance during rescue efforts, settlement, repatriation and other interventions; and
2. Ensure that older persons receive humane treatment, protection and respect at all times and are not left without needed medical assistance and care.

Article 15: Access to health services

States parties shall:

1. Guarantee the rights of older persons to access health services that meet their specific needs;
2. Take reasonable measures to facilitate access to health services and medical insurance cover for older persons within available resources; and
3. Ensure the inclusion of geriatrics and gerontology in the training of health care personnel.

Article 16: Access to education

States parties shall provide opportunities for older persons to have access to education and to acquire ICT skills.

Article 17: Participation in programmes and recreational activities

States parties shall develop policies that ensure the rights of older persons to enjoy all aspects of life, including active participation in socio-economic development, cultural programmes, leisure and sports.

Article 18: Accessibility

States parties shall take measures to ensure that older persons have access to infrastructure, including buildings, public transport and are accorded seating priority.

Article 19: Awareness on ageing and preparation for old age

States parties shall:

1. Adopt measures to encourage the development of awareness raising programmes to educate the younger population groups on ageing and older persons to combat negative attitudes against older persons; and
2. Adopt measures to develop training programmes that prepare older persons for the challenges faced in old age, including retirement.

Article 20: Duties of older persons

Older persons have responsibilities towards their families, communities, the wider society, the state and the international community. In this regard they shall:

1. Mentor and pass on knowledge and experience to the younger generations;
2. Foster and facilitate inter-generational dialogue and solidarity within their families and communities; and
3. Play a role in mediation and conflict resolution.

Article 21: Coordination and data collection

States parties shall:

Ensure the systematic collection and analysis of national data on older persons;

Develop a national mechanism on ageing with responsibility to assess, monitor, evaluate and coordinate the integration and implementation of older persons' rights in national policies, strategies and legislation; and

Support the Advisory Council on Ageing, as a continental mechanism of the African Union to facilitate the implementation and follow up of the continental policies and plans on ageing.

Article 22: Implementation

1. States parties shall ensure the implementation of this Protocol, and shall indicate in their periodic reports submitted to the African Commission in accordance with article 62 of the African Charter, the legislative and other measures undertaken for the full realisation of the rights recognized in this Protocol.
2. In the implementation of this Protocol, the African Commission shall have the mandate to interpret the provisions of the Protocol in accordance with the African Charter.
3. The African Commission may refer matters of interpretation and enforcement or any dispute arising from the application or implementation of this Protocol to the African Court on Human and Peoples' Rights.
4. Where applicable, the African Court on Human and Peoples' Rights shall have the mandate to hear disputes arising from the application or implementation of this Protocol.

Article 23: Popularization of the Protocol

States parties shall take all appropriate measures to ensure the widest possible dissemination of this Protocol in accordance with the relevant provisions and procedures of their respective constitutions.

Article 24: Safeguard clause

1. No provision in this Protocol shall be interpreted as derogating from the principles and values contained in other relevant instruments for the realisation of the rights of older persons in Africa.
2. In the event of a contradiction between two or more provisions of this Protocol, the interpretation which favours the rights of older persons and protects their legitimate interests shall prevail.

Article 25: Signature, ratification and accession

1. This Protocol shall be open to member states of the Union for signature, ratification or accession.
2. The instrument of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission who shall notify all member states of the dates of the deposit of the instruments of ratification or accession.

Article 26: Entry into force

1. This Protocol shall enter into force thirty (30) days after the deposit of the

fifteenth (15th) instrument of ratification by a member state.

2. The Chairperson of the Commission shall notify all members states of the African Union of the entry into force of the present Protocol.
3. For any member state of the African Union acceding to the present Protocol, the Protocol shall come into force in respect of that state on the date of the deposit of its instrument of accession.

Article 27: Reservations

1. A state party may, when, ratifying or acceding to this Protocol, submit in writing a reservation with respect to any of the provisions of this Protocol. reservation shall not be incompatible with the object and purpose of this Protocol.
2. Unless otherwise provided, a reservation may be withdrawn at any time.
3. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States parties of the withdrawal accordingly.

Article 28: Depository

This Protocol shall be deposited with the Chairperson of the African Union Commission, who shall transmit a certified true copy of the Protocol to the Government of each signatory state.

Article 29: Registration

The Chairperson of the Commission upon the entry into force of this Protocol shall register this Protocol with the United Nations Secretary General in conformity with article 102 of the Protocol of the United Nations.

Article 30: Withdrawal

1. At any time after three years from the date of entry into force of this Protocol, a state party may withdraw by giving written notification to the depository.
2. Withdrawal shall be effective one year after receipt of notification by the depository, or on such later date as may be specified in the notification.
3. Withdrawal shall not affect any obligation of the withdrawing state party prior to the withdrawal.

Article 31: Amendment and revision

1. Any state party may submit proposal(s) for the amendment or revision of this Protocol. Such proposal(s) shall be adopted by the Assembly.

2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit such proposals to the Assembly at least six months before the meeting at which it shall be considered for adoption.
3. Amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority.
4. The amendment or revision shall enter into force in accordance the procedures outlined in article 26 of this Protocol.

Article 32: Authentic texts

This Protocol is drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa

(adopted 29 January 2018 – not yet in force)

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (Protocol) was adopted in Addis Ababa on 29 January 2018. Article 2 of the said protocol sets the scene and states that the purpose of the protocol is to promote, protect and ensure the full and equal enjoyment of all human and peoples rights by all persons with disabilities, and to ensure respect of their inherent dignity.

Eighty per cent (80) % of persons living with disabilities live in developing countries so it was very appropriate for this protocol to have been adopted to cater for the needs of African people, especially women with disabilities. Women with disabilities are 3 times more likely to be illiterate, three times more likely to not have adequate access to healthcare, twice less likely to be unemployed and twice less likely to have access to the internet.

Although the African Disability Protocol provides extensive protection to all people with disabilities, in this presentation we will focus on addressing the rights of women with disabilities due to their vulnerability.

The African Disability Protocol provides for an extensive elaboration of women with disabilities. Article 27 puts an obligation on state parties to ensure that barriers that impede participation of women with disabilities in society are eliminated. Article 27(h) stipulates that women with disabilities have access to income-generating opportunities and credit facilities. This is especially important in the African context where poverty and exclusion is higher amongst people with disabilities. Article 27(k) also obligates state parties to ensure that the sexual and reproductive health rights of women with disabilities are guaranteed, so that they have control on their fertility and are not forcefully sterilized. The said protocol also obligates state parties to ensure that women with disabilities have access

to information, communication and technology. This is especially crucial in this technological era where access to information, communication and technology is essential for all components of the society, especially women and people with disabilities. Article 24 requires state parties to put in place policy, legislative, administrative and other measures to ensure that people with disabilities enjoy the right to access information. These are but a few provisions of the protocol which have been commented upon but all the provisions are equally important.

African Union (AU) member states need to ratify this instrument expeditiously so that it can come in force. It will only come into force after 15 AU member states have ratified it. Up to now it has only been ratified by five countries namely Angola, Burundi, Kenya, Mali and Rwanda and signed by nine state parties namely Angola, Burundi, Cameroon, Central African Republic, Mali, Malawi, Mozambique and South Africa. The appeal is to have all AU member states ratify same and the 12 remaining ratifications so that the Protocol comes in force. We still need 10 more ratifications for the treaty to enter into force.

Ourveena Geereesha Topsy-Sonoo

Honorable Commissioner

Special Rapporteur on Freedom of Expression and Access to Information

Preamble

We, the Heads of State and Government of the Member States of the African Union:

Considering that article 66 of the African Charter on Human and Peoples' Rights of 27 June 1981 provides that special protocols or agreements, if necessary, may supplement the provisions of the African Charter;

Further considering that article 18 (4) of the African Charter on Human and Peoples' Rights of 27 June 1981 provides that persons with disabilities shall have the right to special measures of protection in keeping with their physical or moral needs;

Noting that the Constitutive Act of the African Union of 11 July 2000 identifies respect for democratic principles, human rights, the rule of law and good governance as essential principles for the proper functioning of the African Union;

Recognising that the African Union and its agencies as well as states parties to the African Charter have made various efforts towards ensuring the rights of persons with disabilities;

Noting that articles 6 and 61 of the African Charter on Human and Peoples' Rights of 27 June 1981 recognise regional and international human rights instruments and African practices consistent with international norms on human and peoples' rights as important reference points for the application and interpretation of the African Charter;

Further noting that human rights and fundamental freedom are universal, indivisible, interdependent and interrelated, and that the rights of every individual are recognised in international human rights instruments including the Universal Declaration of Human Rights of 10 December 1948, the International Covenant on Economic, Social and Cultural Rights 16 December 1966 and the International Covenant on Civil and Political Rights 16 December 1966;

Recalling that the rights of persons with disabilities are affirmed in the Convention on the Rights of Persons with Disabilities 13 December 2006;

Further recalling that various African Union human rights instruments, including the African Charter on the Rights and Welfare of the Child of 11 July 1990, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 11 July 2003, the African Youth Charter of 2 July 2006, the African Charter on Democracy, Elections and Governance of 30 January 2007, and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa 23 October 2009 make provisions for the rights of persons with disabilities;

Considering further paragraph 20 of the Kigali Declaration on Human Rights of 8 May 2003, which 'calls upon states parties to develop a Protocol on the protection of the rights of the elderly and persons with disabilities';

Recalling that the Decision 750 (XXII) of the Executive Council at its twenty-second

ordinary session held in Addis Ababa, Ethiopia, from 21 to 25 January 2013, endorsed the African Union Disability Architecture (AUDA), of which a Protocol on the Rights of Persons with Disabilities to the African Charter is a central legal pillar;

Acknowledging that persons with disabilities have inherent dignity and individual autonomy including the freedom to make one's own choices;

Cognizant of the importance of full and effective participation and inclusion of persons with disabilities in society;

Recognising the diversity of persons with disabilities;
Appreciating the value of persons with disabilities, including those with high support needs, as full members of society;
Noting that persons with disabilities experience extreme levels of poverty;
Concerned that persons with disabilities continue to experience human rights violations, systemic discrimination, social exclusion, prejudice within political, social and economic spheres;
Gravely concerned by the harmful practices that persons with disabilities often experience;
Alarmed in particular by the maiming and killing of persons with albinism in many parts of the continent;
Concerned at the multiple forms of discrimination, high levels of poverty and the great risk violence, exploitation, neglect and abuse that women and girls with disabilities face;
Recognising that families, guardians, caregivers and community play essential roles in the lives of persons with disabilities;
Concerned that adequate effective measures have not been taken to ensure that persons with disabilities may exercise their full rights on an equal basis with others;
Recalling the lack of a substantive binding African normative and institutional framework for ensuring, protecting and promoting the rights of persons with disabilities;
Conscious of the need to establish a firm legal African Union framework as a basis for laws, policies, administrative actions and resources to ensure the rights of persons with disabilities;
Determined that the rights and dignity of persons with disabilities should be promoted, protected to enable them enjoy fully and equally all their human rights and fundamental freedoms;
HAVE AGREED AS FOLLOWS:

Article 1: Definitions

For the purpose of the present Protocol:

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

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

African Court means the African Court on Human and Peoples' Rights or any successor court including the African Court and Human Rights established by the Protocol to the African Charter on Human and

Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;

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

AU or Union means the African Union;

Commission means the Commission of the African Union;

Deaf culture means the way deaf people interact, it includes a set of social beliefs, behaviours, art, literary traditions, history, values, and shared institutions of communities that are influenced by deafness and which use sign languages as the main means of communication;

Discrimination on the basis of disability means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human and people's rights in the political, economic, social, cultural, civil or any other field. Discrimination on the basis of disability shall include denial of reasonable accommodation;

Habilitation means inpatient or outpatient health care services such as physical therapy, occupational therapy, speech-language pathology, audiology that address the competencies and abilities needed for optimal functioning to in interaction with their environments: enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social, and vocational ability, full inclusion and participation in all aspects of life;

Harmful practices include behaviour, attitudes and practices based on tradition, culture, religion, superstition or other reasons, which negatively affect the human rights and fundamental freedoms of persons with disabilities or perpetuate discrimination;

Legal capacity means the ability to hold rights and duties and to exercise those rights and duties;

Persons with disabilities include those who have physical, mental, psycho-social, intellectual, neurological, developmental or other sensory impairments which in interaction with environmental, attitudinal or other barriers hinder their full and effective participation in society on an equal basis with others;

Protocol means the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa;

Reasonable accommodation means necessary and appropriate modifications and adjustments where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all

human and people's rights;

Rehabilitation means inpatient or outpatient health care services such as physical therapy, occupational therapy, speech-language pathology and psychiatric rehabilitation services that help a person keep, restore or improve skills and functioning for daily living and skills related to communication that have been lost or impaired because a person was sick, injured or disabled;

Ritual killings means the killing of persons motivated by cultural, religious or superstitious beliefs that the use of a body or a body part has medicinal value, possesses supernatural powers and brings good luck, prosperity and protection to the killer;

Situations of risks means any situation that poses grave risk to the general population, including disasters and all forms of armed conflict;

States parties mean any member states of the African Union which have ratified or acceded to this Protocol and deposited the instruments of ratification or accession with the Chairperson of the African Union Commission;

Universal design means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design, and shall not exclude assistive devices for particular groups of persons with disabilities where this is needed;

Youth means every person between the ages of 15 and 35 years.

Article 2: Purpose

The purpose of this Protocol is to promote, protect and ensure the full and equal enjoyment of all human and people's rights by all persons with disabilities, and to ensure respect for their inherent dignity.

Article 3: General principles

This Protocol shall be interpreted and applied in accordance with the following general principles:

- (a) Ensuring respect for and protection of the inherent dignity, privacy, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;

- (f) Accessibility;
- (g) Reasonable accommodation;
- (h) Equality between men and women;
- (i) The best interests of the child;
- (j) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 4: General obligations

States parties shall take appropriate and effective measures, including policy, legislative, administrative, institutional and budgetary steps, to ensure, respect, promote, protect and fulfil the rights and dignity of persons with disabilities, without discrimination on the basis of disability, including by:

- (a) Adopting appropriate measures for the full and effective implementation of the rights recognised in the present Protocol;
- (b) Mainstreaming disability in policies, legislation, development plans, programmes and activities and in all other spheres of life;
- (c) Providing in their constitutions and other legislative instruments and taking other measures to modify or abolish existing policies, laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- (d) Modifying, outlawing, criminalising or campaigning against, as appropriate, any harmful practice applied to persons with disabilities;
- (e) Promoting positive representations and empowerment of persons with disabilities through training and advocacy;
- (f) Taking measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise;
- (g) Refraining from engaging in any act or practice that is inconsistent with the present Protocol and ensuring that public authorities, institutions and private entities act in conformity with the Protocol;
- (h) Providing assistance and support as necessary and appropriate to enable the realisation of the rights set out in the present Protocol;
- (i) Putting in place adequate resources, including through budget allocations, to ensure the full implementation of this Protocol;
- (j) Ensuring effective participation of persons with disabilities or their representative organisations including women and children with disabilities, in all decision-making processes including in the development and implementation of legislation, policies and administrative processes to this Protocol;

- (k) Ensuring, where persons with disabilities are lawfully deprived of any rights or freedoms contained in this protocol that they are on an equal basis with others, entitled to guarantees in accordance with international human rights law and the objects and principles of the present Protocol.

Article 5: Non-discrimination

1. Every person with a disability shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in this Protocol without distinction of any kind on any ground including, race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.
2. States parties shall:
 - (a) Prohibit discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds;
 - (b) Take steps to ensure that specific measures, as appropriate, are provided to persons with disabilities in order to eliminate discrimination and such measures shall not be considered discrimination;
 - (c) Take effective and appropriate measures to protect the parents, children, spouses, other family members closely related to the persons with disabilities, caregivers or intermediaries from discrimination on the basis of their association with persons with disabilities.

Article 6: Right to equality

1. Every person with a disability is equal before the law and has the right to equal protection and benefit of the law.
2. Equality includes the full and equal enjoyment of all human and people's rights.
3. State parties shall take all appropriate legislative, administrative, budgetary and other measures in order to promote equality for persons with disabilities.

Article 7: Equal recognition before the law

1. States parties shall recognise that persons with disabilities are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States parties shall take all appropriate and effective measures to ensure that:

- (a) Persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life;
- (b) Non-state actors and other individuals do not violate the right to exercise legal capacity by persons with disabilities;
- (c) Persons with disabilities are provided with effective legal protection and support they may require in enjoying their legal capacity consistent with their rights, will and specific needs;
- (d) Appropriate and effective safeguards are put in place to protect persons with disabilities from abuses that may result from measures that relate to the enjoyment of their legal capacity;
- (e) Policies and laws which have the purpose or effect of limiting or restricting the enjoyment of legal capacity by persons with disabilities are reviewed or repealed;
- (f) Persons with disabilities have the equal right to hold documents of identity and other documents that may enable them to exercise their right to legal capacity;
- (g) Persons with disabilities have the equal right to own or inherit property and are not arbitrarily dispossessed of their property;
- (h) Persons with disabilities have equal rights to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit.

Article 8: Right to life

- 1. Every person with a disability has the inherent right to life and integrity.
- 2. States parties shall take effective and appropriate measures to ensure:
 - (a) Protection, respect for life and the dignity of persons with disabilities, on an equal basis with others;
 - (b) That persons with disabilities have access to services, facilities and devices to enable them to live with dignity and to realise fully their right to life.

Article 9: Right to liberty and security of person

- 1. Every person with a disability has the right to liberty and security of person.
- 2. States parties shall take appropriate and effective measures to ensure that persons with disabilities, on an equal basis with others:
 - (a) Enjoy the right to liberty and security of person and are not deprived of their liberty unlawfully or arbitrarily;
 - (b) Are not forcibly confined or otherwise concealed by any person or institution;

- (c) Are protected, both within and outside the home, from all forms of exploitation, violence and abuse.
- 3. 3. States parties shall take appropriate measures to prevent deprivation of liberty to persons with disabilities, to prosecute perpetrators of such abuse and to provide effective remedies for the victims.
- 4. Where persons with disabilities are lawfully deprived of their liberty, States parties shall ensure that they are on an equal basis with others entitled to guarantees in accordance with international human rights law and the objects and principles of the present Protocol.
- 5. The existence of a disability or perceived disability shall in no case justify deprivation of liberty.

Article 10: Freedom from torture or cruel, inhuman or degrading treatment or punishment

- 1. Every person with a disability shall have the right to the respect of his/her inherent dignity and to be free from torture or cruel, Inhuman or degrading treatment, slavery, forced labour or unlawful punishment.
- 2. States parties shall take appropriate and effective measures to ensure that persons with disabilities, on an equal basis with others:
 - (a) Are not subjected to torture or cruel, inhuman or degrading treatment or punishment;
 - (b) Are not subjected without their free, prior and informed consent to medical or scientific experimentation or intervention;
 - (c) Are not subjected to sterilisation or any other invasive procedure without their free, prior and informed consent;
 - (d) Are protected, both within and outside the home, from all forms of exploitation, violence and abuse.
- 3. 3. States parties shall take appropriate measures t to prosecute perpetrators of such abuse and to provide remedies for the victims.

Article 11: Harmful practices

- 1. States parties shall take all appropriate measures and offer appropriate support and assistance to victims of harmful practices, including legal sanctions, educational and advocacy campaigns, to eliminate harmful practices perpetrated on persons with disabilities, including witchcraft, abandonment, concealment, ritual killings or the association of disability with omens.
- 2. States parties shall take measures to discourage stereotyped views on the capabilities, appearance or behaviour of persons with disabilities, and

they shall prohibit the use of derogatory language against persons with disabilities.

Article 12: Situations of risk

States parties shall:

- (a) Take specific measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, forced-displacements, humanitarian emergencies and natural disasters;
- (b) Ensure that persons with disabilities are consulted and participate in all aspects of planning, implementation and monitoring of pre and post-conflict reconstruction and rehabilitation.

Article 13: Right to access justice

1. States parties shall take measures to ensure that persons with disabilities have access to justice on an equal basis with others, including through the provision of procedural, age and gender-appropriate accommodations, in order to facilitate their effective roles as participants in all legal proceedings.
2. States parties shall take reasonable steps to ensure that customary law processes are inclusive and should not be used to deny persons with disabilities their right to access appropriate and effective justice.
3. All law enforcement and justice personnel shall be trained at all levels to effectively engage with and ensure the rights of persons with disabilities are recognised and implemented without discrimination.
4. States parties shall ensure legal assistance including legal aid to persons with disabilities.

Article 14: Right to live in the community

1. Every person with a disability has the right to live in the community with choices on an equal basis with others.
2. States parties shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of the right to live in the community, on an equal basis with others, including by ensuring that:
 - (a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live;
 - (b) Persons with disabilities who require intensive support and their families have adequate and appropriate facilities and services, including caregivers and respite services;

- (c) Persons with disabilities have access to a range of in-home, residential and other community support services necessary to support living and inclusion in the community;
- (d) Persons with disabilities have personal mobility with the greatest possible independence;
- (e) Community-based rehabilitation services are provided in ways that enhance the participation and inclusion of persons with disabilities in the community;
- (f) Community living centres organised or established by persons with disabilities are supported to provide training, peer support, personal assistance services and other services to persons with disabilities; and
- (g) Community services and facilities for the general population, including health, transportation, housing, water, social and educational services, are available on an equal basis to persons with disabilities and are responsive to their needs.

Article 15: Accessibility

1. Every person with a disability has the right to barrier free access to the physical environment, transportation, information, including communications technologies and systems, and other facilities and services open or provided to the public.
2. States parties shall take reasonable and progressive step measures to facilitate full enjoyment by persons with disabilities of this right, and such measures shall, among others, apply to:
 - (a) Rural and urban settings and shall take account of population diversities;
 - (b) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
 - (c) Information, communications, sign languages and tactile interpretation services, braille, audio and other services, including electronic services and emergency services;
 - (d) Quality and affordable mobility aids, assistive devices or technologies and forms of live assistance and intermediaries; and
 - (e) The modification of all inaccessible infrastructure and the universal design of all new infrastructure.

Article 16: Right to education

1. Every person with a disability has the right to education.
2. States parties shall ensure to persons with disabilities the right to education on an equal basis with others.
3. States parties shall take, reasonable, appropriate and effective measures to

ensure that inclusive quality education and skills training for persons with disabilities is realised fully, including by:

- (a) Ensuring that persons with disabilities can access free, quality and compulsory basic and secondary education;
 - (b) Ensuring that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others, including by ensuring the literacy of persons with disabilities above compulsory school age;
 - (c) Ensuring reasonable accommodation of the individual's requirements is provided, and that persons with disabilities receive the support required to facilitate their effective education;
 - (d) Providing reasonable, progressive and effective individualised support measures in environments that maximise academic and social development, consistent with the goal of full inclusion;
 - (e) Ensuring appropriate schooling choices are available to persons with disabilities who may prefer to learn in particular environments;
 - (f) Ensuring that persons with disabilities learn life and social development skills to facilitate their full and equal participation in education and as members of the community;
 - (g) Ensuring that multi-disciplinary assessments are undertaken to determine appropriate reasonable accommodation and support measures for learners with disabilities, early intervention, regular assessments and certification for learners are undertaken regardless of their disabilities;
 - (h) Ensuring educational institutions are equipped with the teaching aids, materials and equipment to support the education of students with disabilities and their specific needs;
 - (i) Training education professionals, including persons with disabilities, on how to educate and interact with children with specific learning needs; and
 - (j) Facilitating respect, recognition, promotion, preservation and development of sign languages.
4. The education of persons with disabilities shall be directed to:
- (a) The full development of human potential, sense of dignity and self-worth;
 - (b) The development by persons with disabilities of their personality, talents, skills, professionalism and creativity, as well as their mental and physical abilities, to their fullest potential;
 - (c) Educating persons with disabilities in a manner that promotes their participation and inclusion in society; and
 - (d) The preservation and strengthening of positive African values.

Article 17: Right to health

1. Every person with a disability has the right to the highest attainable standard of health.
2. States parties shall take appropriate and effective measures to ensure persons with disabilities have, on an equal basis with others, access to health services, including sexual and reproductive health, such as by:
 - (a) Providing persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons;
 - (b) Providing those health services needed by persons with disabilities specifically because of their disabilities or health services designed to minimise or prevent further disability, the provision of medicines including pain relieving drugs;
 - (c) Prohibiting discrimination against persons with disabilities by providers of health services or providers of insurance;
 - (d) Ensuring that all health services are provided on the basis of free, prior and informed consent;
 - (e) Providing persons with disabilities with health-care in the community;
 - (f) Ensuring that health-care services are provided using accessible formats and that communication between service providers and persons with disabilities is effective;
 - (g) Ensuring that persons with disabilities are provided with support in making health decisions, when needed;
 - (h) Ensuring that health campaigns include disability specific needs, but in a manner which does not stigmatise persons with disabilities, and designing services to minimise and prevent further disability; and
 - (i) Ensuring that the training of health-care providers takes account of the disability specific needs and rights of persons with disabilities, and ensuring that formal and informal health services do not violate the rights of persons with disabilities.

Article 18: Habilitation and rehabilitation

States parties shall take effective and appropriate measures, including peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life, including by:

- (a) Organising, strengthening and extending comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services;
- (b) Promoting the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services;

- (c) Promoting the availability, knowledge and use of appropriate, suitable and affordable assistive devices and technologies;
- (d) Supporting the design, development, production, distribution and servicing of assistive devices and equipment for persons with disabilities, adapted to local conditions;
- (e) Developing, adopting and implementing standards, including regulations on accessibility and universal design, suitable to local conditions.

Article 19: Right to work

1. Every person with a disability has the right to decent work, to just and favourable conditions of work, to protection against unemployment, to protection against exploitation and to protection from forced or compulsory labour.
2. States parties shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right on an equal basis with others, including by:
 - (a) Prohibiting discrimination on the basis of disability with regard to all matters concerning all forms of employment, including employment opportunities, vocational training, conditions of recruitment, hiring and employment, continuance of employment, promotion, career advancement, and safe and healthy working conditions;
 - (b) Protecting the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work and the right by persons with disabilities to exercise their labour and trade union rights;
 - (c) Promoting opportunities for persons with disabilities to initiate self employment, entrepreneurship and to access financial services;
 - (d) Employing persons with disabilities in the public sector, including by reserving and enforcing minimum job-quotas for employees with disabilities;
 - (e) Promoting the employment of persons with disabilities in the private sector through appropriate policies and measures, including through the use of specific measures such as tax incentives;
 - (f) Ensuring that reasonable accommodation is provided to persons with disabilities in the workplace;
 - (g) Ensuring that employees with disabilities or those who become disabled are not unfairly dismissed from employment on the basis of their disability.
3. States parties shall take legislative, administrative and budgetary measures to ensure that the principle of equal pay for equal work is not used to undermine the right to work for persons with disabilities.
4. States parties shall take appropriate measures to recognise the social and cultural value of the work of persons with disabilities.

Article 20: Right to adequate standard of living

1. Persons with disabilities have the right to an adequate standard of living for themselves and their families, including adequate food, access to safe drinking water, housing, sanitation and clothing, to the continuous improvement of living conditions and to social protection.
2. States parties shall take appropriate and effective measures to facilitate full enjoyment by persons with disabilities of this right, on the basis of equality, including by:
 - (a) Ensuring that persons with disabilities shall access appropriate and affordable services, devices and other assistance for disability-related needs, including accessible housing and other social amenities, mobility aids and caregivers;
 - (b) Ensuring access by persons with disabilities to social protection programmes;
 - (c) Putting financial measures in place to cover disability-related expenses, including through the use of tax exemptions or concessions, cash-transfers, duty waivers and other subsidies; and
 - (d) Facilitating provision of assistance, including interpreters, guides, auxiliary and augmentative supporters and caregivers, while respecting the rights, will and preferences of persons with disabilities.

Article 21: Right to participate in political and public life

1. Every person with a disability has the right to participate in political and public life.
2. States parties shall take all appropriate policy, legislative and other measures to ensure this right, on the basis of equality, including through:
 - (a) Undertaking or facilitating systematic and comprehensive civic education to encourage full participation of persons with disabilities in democracy and development processes, including by ensuring civic and voter education materials are availed in accessible formats;
 - (b) Encouraging the effective participation of persons with disabilities in political and public life including as members of political parties, electors and holders of political and public offices in accordance with national laws;
 - (c) Putting in place reasonable accommodation and other support measures consistent with the secrecy of the ballot, including as appropriate, by ensuring accessibility to polling stations and facilitating assisted voting, for persons with disabilities to enable their effective participation in political and public life in accordance with national laws;
 - (d) Realising increased and effective representation and participation of persons with disabilities on an equitable basis as members of regional, subregional, national and local legislative bodies;

- (e) Repealing or amending laws that on the basis of disability restrict the right of persons with disabilities to vote, stand for or remain in public office.

Article 22: Self-representation

States parties shall recognise and facilitate the right of persons with disabilities to represent themselves in all spheres of life, including by promoting an environment that enables persons with disabilities to:

- (a) Form and participate in the activities of organisations of and for persons with disabilities at national, regional and international levels;
- (b) To build relationships and networks at national, regional and international levels;
- (c) Form and participate in the activities of nongovernmental organisations and other associations;
- (d) Effectively advocate for their rights and inclusion in their societies;
- (e) Gain and enhance capacities, knowledge and skills for effectively articulating and engaging in issues of disability, including through direct collaboration with organisations for persons with disabilities and academic institutions and other organisations;
- (f) Be actively consulted and involved in the development and implementation of all legislation, policies, programmes and budgets that impact persons with disabilities.

Article 23: Right to freedom of expression and opinion

1. Every person with a disability has the right to freedom of expression and opinion including the freedom to seek, receive and impart information and ideas through all forms of communication of their choice.
2. States parties shall take policy, legislative, administrative and other measures to ensure that persons with disabilities can exercise these rights, on an equal basis with others.

Article 24: Access to information

1. Every person with a disability has the right to access information.
2. States parties shall take policy, legislative, administrative and other measures to ensure that persons with disabilities can exercise these rights, on the basis of equality, including by:
 - (a) Providing information intended for the general public as well as information required for official interactions to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner, and without additional cost to persons with disabilities;

- (b) Requiring private entities that provide services to the general public, including through print and electronic media, to provide information and services in accessible and usable formats for persons with disabilities;
- (c) Recognising and promoting the use of sign languages and deaf culture; and
- (d) Ensuring that persons with visual impairments or with other print disabilities have effective access to published works including by using information and communication technologies.

Article 25: Right to participate in sports, recreation and culture

1. Every person with a disability has the right to participate in sports, recreation and cultural activities.
2. States parties shall take effective and appropriate policy, legislative, budgetary, administrative and other measures to ensure this right, on the basis of equality, including through:
 - (a) Ensuring that persons with disabilities have access to sports, recreational and cultural services and facilities, including access to stadia and other sporting facilities, theatres, monuments, entertainment establishments, museums, libraries and other historical sites;
 - (b) Encouraging and promoting the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
 - (c) Promoting disability-specific sporting and recreational activities and ensuring provision of appropriate infrastructure;
 - (d) Facilitating funding, research and other measures aimed at promoting the participation of persons with disabilities both in disability-specific and mainstream sporting and recreational activities;
 - (e) Enabling children with disabilities to participate in play within the learning environment;
 - (f) Facilitating access to audio, video, print and media technologies and services including theatre, television, film and other cultural performances and activities;
 - (g) Discouraging negative representations and stereotyping of persons with disabilities in both traditional and modern cultural activities and through the media;
 - (h) Encouraging and supporting creativity and talent among persons with disabilities for their own and the society's benefit;
 - (i) Putting in place measures to mitigate barriers that hinder access to cultural materials in accessible formats; and
 - (j) Recognising and supporting the cultural and linguistic identities of persons with disabilities, including deaf-blind and deaf culture, and sign languages.

Article 26: Right to family

1. Everyone with a disability has a right to marry and form a family with their full, prior and informed consent.
2. States parties shall take all necessary and appropriate measures to eliminate discrimination against persons with disabilities including negative stereotypes in all matters with regard to family, marriage, parenthood, guardianship, adoption and relationships, on an equal basis with others, in order to ensure that:
 - (a) Persons with disabilities may decide on the number and spacing of their children, and have access to family planning, and sexual and reproductive health education and services;
 - (b) Persons with disabilities have the right to keep their children and not be deprived of their children on account of their disability.

Article 27: Women and girls with disabilities

States parties shall ensure that women and girls with disabilities have full enjoyment of human and people's rights on an equal basis with other persons, including by ensuring that:

- (a) Women and girls with disabilities participate in social, economic and political decision-making and activities;
- (b) Barriers that hinder the participation of women with disabilities in society are eliminated;
- (c) Women with disabilities are included in mainstream women's organisations and programmes;
- (d) Women and girls with disabilities are protected from discrimination based on disability and enjoy the right to be treated with dignity;
- (e) Women with disabilities access information, communication and technology;
- (f) Women with disabilities have access to employment and to professional and vocational training;
- (g) Programmes to overcome social and economic isolation and removing systemic barriers in the labour market for women with disabilities are developed;
- (h) Women with disabilities have access to income generating opportunities and credit facilities;
- (i) Specific measures are developed and implemented to facilitate full and equal participation for women and girls with disabilities in sports, culture and technology;

- (j) Women with disabilities are protected from sexual and gender based violence and are provided with rehabilitation and psychosocial support against sexual and gender based violence;
- (k) The sexual and reproductive health rights of women with disabilities are guaranteed, and women with disabilities have the right to retain and control their fertility; and are not sterilised without their consent;
- (l) Disability inclusive Gender perspectives are integrated in policies, legislation, plans, programmes, budgets and activities in all spheres that affect women with disabilities.

Article 28: Children with disabilities

1. States parties shall ensure that Children with disabilities have full enjoyment of human and people's rights on an equal basis with other children.
2. States parties shall respect and promote the right of children with disabilities, in particular, their right to preserve their identities and to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
3. States parties shall ensure that the best interests of the child are the primary consideration in all actions undertaken by any person or authority concerning children with disabilities.
4. States parties shall ensure the rights and welfare of children with disabilities by taking policy, legislative and other measures aimed at:
 - (a) Ensuring children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children;
 - (b) Providing children with disabilities, disability, age and gender-appropriate assistance to realise their rights;
 - (c) Ensuring the life, survival, protection and development of children with disabilities;
 - (d) Ensuring children with disabilities have a name, a nationality and that they are registered immediately after birth;
 - (e) Ensuring children with disabilities are not abducted, sold or trafficked for any purpose or in any form for, sexual exploitation, child labour harvesting organs;
 - (f) Ensuring that children with disabilities are protected from all forms of sexual exploitation, abuse and forced labour;

- (g) Protecting children from being separated from their parents, caregivers and guardians merely on the basis that either the children or their parents have a disability;
- (h) Taking specific measures to protect children with disabilities who require more intensive support;
- (i) Ensuring children with disabilities have effective access to education, training and recreational opportunities in settings most conducive for them to achieve the fullest possible social inclusion, individual development and cultural and moral development;
- (j) Fostering in all children from an early age an attitude of respect for the rights of persons with disabilities;
- (k) Protecting children with disabilities from exploitation, violence and abuse within family, institutional and other settings;
- (l) Ensuring that under no circumstances may children on account of their disabilities be sterilised.

Article 29: Youth with disabilities

1. States parties shall ensure that Youth with disabilities have full enjoyment of human and peoples' rights on an equal basis with other youth.
2. States parties shall take policy, legislative, administrative and other measures to ensure that all the rights of youth with disabilities are fully respected, including by:
 - (a) Promoting full, inclusive and accessible education for youth with disabilities;
 - (b) Promoting the inclusion of youth with disabilities in mainstream youth organisations, programmes, including training for leadership and governance skills for their participation at national, regional and international levels;
 - (c) Removing barriers that hinder or discriminate against the participation of youth with disabilities in society;
 - (d) Promoting training and access to information, communication and technology for youth with disabilities;
 - (e) Developing programmes to overcome social and economic isolation, and removing systemic barriers in the labour market for youth with disabilities;
 - (f) Ensuring access to credit facilities for youth with disabilities;
 - (g) Developing and implementing specific measures to facilitate full and equal participation of youth with disabilities in sports, culture, science and technology;
 - (h) Promoting sexual and reproductive health education for youth with disabilities;

- (i) Promoting the participation of youth with disabilities in political decision making and activities.

Article 30: Older persons with disabilities

1. State parties shall ensure that older persons with disabilities have full enjoyment of human and peoples' rights on an equal basis with other older persons.
2. States parties shall ensure that all the rights of older persons with disabilities are fully protected by taking policy, legislative and other measures, including for:
 - (a) Ensuring that older persons with disabilities, on an equal basis with others, access social protection programmes;
 - (b) Taking account of age and gender-related aspects of disability in programming and resourcing in accordance with the present Protocol;
 - (c) Ensuring that older persons with disabilities exercise their legal capacity on an equal basis with others, and that appropriate measures and safeguards are put in place to provide older persons with all the support they may require to exercise their legal capacity;
 - (d) Ensuring that older persons with disabilities have access to appropriate services that respond to their needs within the community;
 - (e) Ensuring that older persons with disabilities are protected from neglect, violence, including violence on the basis of accusations or perceptions of witchcraft;
 - (f) Ensuring that older persons with disabilities have access to appropriate sexual and reproductive health information and services.

Article 31: Duties of persons with disabilities

1. States parties shall recognise that persons with disabilities have duties on an equal basis with other person as elaborated in the African Charter.
2. States parties shall ensure that persons with disabilities are rendered the forms of assistance and support, including reasonable accommodations, which they may require in performance of such duties.

Article 32: Statistics, data and other surveys

States parties shall ensure the systematic collection, analysis, storage and dissemination of national statistics and data covering disability to facilitate the protection and promotion of the rights of persons with disabilities. Towards this end, States parties shall:

- (a) Disaggregate statistics and data, as appropriate, on the basis of disability, gender, age and other relevant variables, including by ensuring that national population census and other survey captures data on disability;
- (b) Disseminate statistics and data in forms accessible to all persons including persons with disabilities;
- (c) Ensure that the collection, analysis, storage and dissemination of statistics and data on persons with disabilities comply with acceptable ethical, confidentiality and privacy standards.
- (d) Ensure effective involvement and participation of persons with disabilities in the design, collection and dissemination of data.

Article 33: Cooperation

States parties shall:

- (a) Cooperate at the international, continental, sub-regional and bilateral levels on capacity-building on issues of persons with disabilities, including by sharing research, technical, human and financial resources, information and good practices to support implementation of this Protocol;
- (b) Ensure that regional and sub-regional cooperation programmes and institutions support the implementation of this Protocol and are accessible to persons with disabilities;
- (c) Ensure full and effective participation of persons with disabilities in the implementation and monitoring of this Protocol.
- (d) Support the African Union Commission to set up an Advisory Council on Disability [as an *ad hoc*] mechanism to facilitate the implementation and follow up of the continental policies and plans on disability.

Article 34: Implementation

- 1. States parties shall ensure the implementation of this Protocol, and shall indicate in their periodic reports submitted to the African Commission in accordance with article 62 of the African Charter, the legislative and other measures undertaken for the full realisation of the rights recognized in this Protocol.
- 2. States parties shall establish or designate national mechanisms, including independent national institutions, to monitor the implementation of the rights of persons with disabilities.
- 3. In the implementation of this Protocol, the African Commission shall have the mandate to interpret the provisions of the Protocol in accordance with the African Charter.
- 4. The African Commission may refer matters of interpretation and

enforcement or any dispute arising from the application or implementation of this Protocol to the African Court on Human and Peoples' Rights.

5. In accordance with articles 5 and 34(6) of the Protocol Establishing the Africa Court, the African Court on Human and Peoples' Rights shall have the mandate to hear disputes arising from the application or implementation of this Protocol.

Article 35: Popularization of the Protocol

States parties shall take all appropriate measures to ensure the widest possible dissemination of this Protocol in accordance with the relevant provisions and procedures of their respective constitutions.

Article 36: Safeguard clause

1. No provision in this Protocol shall be interpreted as derogating from the principles and values contained in other relevant instruments for the realisation of the rights of persons with disabilities in Africa.
2. In the event of a contradiction between two or more provisions of this Protocol, the interpretation which favours the rights of persons with disabilities and protects their legitimate interests shall prevail.

Article 37: Signature, ratification and accession

1. This Protocol shall be open to member states of the Union for signature, ratification or accession.
2. The instrument of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission who shall notify all member states of the dates of the deposit of the instruments of ratification or accession.

Article 38: Entry into force

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15th) instrument of ratification by a member state.
2. The Chairperson of the Commission shall notify all members states of the African Union of the entry into force of the present Protocol.
3. For any member state of the African Union acceding to the present Protocol, the Protocol shall come into force in respect of that state on the date of the deposit of its instrument of accession.

Article 39: Reservations

1. A state party may, when, ratifying or acceding to this Protocol, submit

in writing a reservation with respect to any of the provisions of this Protocol. Reservation shall not be incompatible with the object and purpose of this Protocol.

2. Unless otherwise provided, a reservation may be withdrawn at any time.
3. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other states parties of the withdrawal accordingly.

Article 40: Depository

This Protocol shall be deposited with the Chairperson of the African Union Commission, who shall transmit a certified true copy of the Protocol to the Government of each signatory state.

Article 41: Registration

The Chairperson of the Commission upon the entry into force of this Protocol shall register this Protocol with the United Nations Secretary General in conformity with article 102 of the Protocol of the United Nations.

Article 42: Withdrawal

1. At any time after three years from the date of entry into force of this Protocol, a state party may withdraw by giving written notification to the depository.
2. Withdrawal shall be effective one year after receipt of notification by the depository, or on such later date as may be specified in the notification.
3. Withdrawal shall not affect any obligation of the withdrawing state party prior to the withdrawal.

Article 43: Amendment and revision -

1. Any state party may submit proposal(s) for the amendment or revision of this Protocol. Such proposal(s) shall be adopted by the Assembly.
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit such proposals to the Assembly at least six months before the meeting at which it shall be considered for adoption.
3. Amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority.
4. The amendment or revision shall enter into force in accordance with the procedures outlined in article 26 of this Protocol.

Article 44: Authentic texts

This Protocol is drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security

(adopted 6 February 2022 – not yet in force)

The Protocol to the African Charter on Human and Peoples' Rights on the rights of citizens to social protection and social protection (the Protocol) was adopted on 6 February 2022 in Addis Ababa by the Assembly of Heads of State and Government of the African Union (AU). The Protocol (which, under Article 33(1), requires 15 ratifications of Member States for it to come in force) was adopted with the view of providing the AU with a single binding instrument that addresses a broad spectrum of social protection and social security issues for the majority of the people in Africa. This was and is against the backdrop that the right to social protection and social security is a human right and hence need to develop the Protocol at the behest of the AU Executive Council that requested the AU Commission to collaborate should develop the Protocol. The Protocol is supplemental to the African Commission on Human and People's Rights (the African Charter). In this regard, it is worth noting that it is expected that Members States will give effect to the Protocol what with the fact that the Member States have inter alia pledged to recognise the human and peoples' rights enshrined in the African Charter and to adopt legislative measures to give them effect.

The Protocol inter alia takes in into consideration and/or expands on certain matters that may be provided for in the provisions of the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on the Rights of Women in Africa; Protocol to the African Charter on the Rights of Persons with Disabilities in Africa; Protocol to the African Charter on the Rights of Older Persons in Africa, in relation to social protection, and of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa; and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

The Protocol is inter alia anchored on to the various African Union declarations, conventions and policies, including the Tunis Declaration of the Assembly of Heads of State and Government on Social Development (1994); the African Common Position on Human and Social Development in Africa (1994); the Livingstone Call for Action (2006); the AU Social Policy Framework for Africa (2009); the Yaoundé Tripartite Declaration on the Implementation of the Social Protection Floors (2010); the Principles and Guidelines on the Interpretation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (2010); and the revised Ouagadougou Plan of Action on Employment Promotion and Poverty Alleviation (2014) as well as Articles 9, 11 and 12 of Universal Declaration of Human Rights, Articles 9, 11 and 12 of the International Covenant on Economic, Social and Cultural Rights and the International Labour Organisation social security standards, in particular the Social Security (Minimum Standards) Convention, 1952 (No. 102) and the Recommendation concerning National Floors of Social Protection Recommendation, 2012 (No. 202).

The bottom-line is that Protocol is the instrument that is intended and meant to underscore the fact that right to social protection and social security should be available, accessible, adequate affordable and transparent in Africa. This right should be available to everybody in Africa and it concerns or touches on the unemployed or underemployed; migrants, refugees, displaced persons and stateless persons; women and children; the family; older persons; children, adolescents and youth; persons with disabilities; maternity and paternity issues; health care and sickness benefits; occupational health, safety and employment injury; death and survivors benefits; care and support in other contexts; education; food and nutrition; water ,sanitation and hygiene; housing shelter and property; environment and climate change; governance and administration of national social protection systems; financing; data management; complaints and appeal mechanisms; duties of individual; and implementation and monitoring. Clearly therefore the Protocol provides Member States with a comprehensive instrument or

document upon which they can anchor their social protection and social security policies and/or legislation.

Mudford Zachariah Mwandenga

Honorable Commissioner

*Chairperson of the Working Group on Economic, Social and
Cultural Rights*

Preamble

We, the Heads of States and Government of the African Union:

Reaffirming that the right to social protection is a human right;

Considering that article 66 of the African Charter on Human and Peoples' Rights (African Charter) provides that special protocols or agreements, if necessary, may supplement the provisions of the African Charter;

Recalling Executive Council Decision EX.CL/Dec.876 (XXVII) adopted in Johannesburg, South Africa, whereby the Executive Council requested the African Union Commission in collaboration with the African Commission on Human and Peoples' Rights, to develop an Additional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security;

Taking into account the provisions of articles 5, 16, 17 and 18 of the African Charter on Human and Peoples' Rights, spelling out the rights of every individual and the commitment made by Member States of the African Union in article 1 of the African Charter on Human and Peoples' Rights to recognise the human and peoples' rights enshrined in the Charter and to adopt legislative or other measures to give effect to them;

Recalling that the provisions of 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 its application and interpretation;

Mindful of articles 5, 13, 16, 18 and 19 of the African Charter on the Rights and Welfare of the Child, articles III, IV, X, XIII, XXII, XXIII, and XXIV of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; articles 8,15,16, 17, 18,19 and 20 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa; articles 6, 7, 10, 11, 12, 13, 15,16 and 17 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, in relation

to social protection; articles 3, 4 and 5 of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa; article 5 of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa; and article 2 of the African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter), ratified by Member States;

Acknowledging the provisions of the Treaty Establishing the African Economic Community, the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment, and Aspiration 2 of the AU Agenda 2063 which calls for ‘An integrated continent, politically united, based on the ideals of Pan Africanism and the vision of Africa’s Renaissance’, and the embedded principle of an African citizenship;

Taking into account Aspiration 1 of the AU Agenda 2063 which projects “A prosperous Africa, based on inclusive growth and social development”, and calls for “A high standard of living, quality of life and well-being for all citizens” and envisages social security and social protection as a priority area;

Bearing in mind the Tunis Declaration of the Assembly of Heads of State and Government on Social Development (1994); the African Common Position on Human and Social Development in Africa (1994); the Livingstone Call for Action (2006); the AU Social Policy Framework for Africa (2009); the Yaoundé Tripartite Declaration on the Implementation of the Social Protection Floors (2010); the Principles and Guidelines on the Interpretation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights (2010); and the revised Ouagadougou Plan of Action on Employment Promotion and Poverty Alleviation (2014);

Having regard to the Universal Declaration of Human Rights, in particular articles 22 and 25 and the International Covenant on Economic, Social and Cultural Rights, in particular articles 9, 11 and 12; and the Convention on the Rights of the Child (CRC) and its Optional Protocols, in particular CRC articles 26, 27 and 32;

In view of the ILO social security standards, in particular the Social Security (Minimum Standards) Convention, 1952 (Number 102); the Recommendation concerning National Floors of Social Protection Recommendation, 2012 (Number 202); and the Recommendation concerning The Transition from the Informal to the Formal Economy, 2015 (Number 204);

Realising the pillars of the Decent Work Agenda which are: employment creation, social protection, rights at work and social dialogue;

Recognising the virtues of African traditions, values and practices of social and national solidarity which should inspire and characterise the provision of mutual social and communal care and support;

Concerned that the vast majority of people in Africa are not appropriately covered by formal social protection provisions;

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) 'African Court' means the African Court on Human and Peoples' Rights;
- (d) 'Assembly' means the Assembly of Heads of State and Government of the African Union;
- (e) 'AU' means the African Union;
- (f) 'Blue economy' means sustainable economic development of oceans that use such technique as regional development to integrate the use of seas and oceans, coasts, lakes, rivers, and underground water for economic purposes, including, but without being limited to fisheries, mining, energy, aquaculture and maritime transport, while protecting the sea to improve social well-being;
- (g) 'Citizen' means any natural person who, in accordance with the laws of an African Union Member State, is a national of that Member State;
- (h) 'Commission' means the Secretariat of the African Union as provided by the Constitutive Act;
- (i) 'Family' means a unit that consists of a man, a woman or women and, other persons who can be defined as such by national laws of States parties;
- (j) 'Individual' means all natural persons in States parties, including non-nationals;
- (k) 'Informal economy' means all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by laws and policies;
- (l) 'Kafala system' means a voluntary commitment made by a person (kafeel), according to the national law of the State Party, to undertake responsibility for the protection, upbringing and care of a child, in the same way as a parent would do for his or her own child;

- (m) 'Member States' means the Member States of the African Union;
- (n) 'Minimum package' refers to social protection provisions that cover essential basic benefits and services and which provide the platform for broadening, extending social protection and creation of more fiscal space;
- (o) 'Social Assistance' is a form of social security, funded from government revenue, which provides assistance in cash or in kind to persons who lack the means to support themselves and their dependants. It also includes payments financed from government revenue which are granted to designated categories deemed to have exceptional needs;
- (p) 'Social Allowances' means universal payments financed from government revenue which are granted to designated categories deemed to have exceptional needs (such as children, older persons and persons with disabilities). These benefits are not means tested;
- (q) 'Social Insurance' refers to a contributory form of social security designed to protect income earners and their dependants against a reduction or loss of income as a result of exposure to risks;
- (r) 'Social Protection' refers to public and private, or to mixed public and private measures designed to protect individuals against life-cycle crises that curtail their capacity to meet their needs, and includes all forms of social security, and strategies and programmes aimed at supporting and ensuring a minimum standard of livelihood and access to essential social services and care for all people;
- (s) 'Social Security' includes the social protection concept, social assistance, social insurance and social allowances, public and private measures, or mixed public and private measures, designed to protect individuals and families against income insecurity caused by contingencies such as unemployment, employment injury, maternity, sickness, poor health, disability, old age, maintenance of children and death of a family member;
- (t) 'States parties' means Member States of the African Union that have ratified or acceded to this Protocol and deposited the instruments of ratification or accession with the Chairperson of the African Union Commission.

Article 2: Guiding Principles for social protection and state obligations to guarantee right to social protection and social security

In accordance with the principles enshrined in this Protocol States parties shall:

1. Ensure good governance and coordination among institutions responsible for the delivery of social protection;

2. Protect the rights of individuals to human dignity and the special rights of children to survival, development and protection, and subject to the provisions of this Protocol, to equal treatment in relation to social protection;
3. Provide social protection benefits;
4. Develop policies, legislation and programmes that improve the standard of life of individuals and address the needs of vulnerable groups, including but not limited to children, persons with disabilities, women and older persons;
5. Ensure that social protection is human rights-based, follows a lifecycle approach, addresses vulnerability and inequality, and is inclusive, leaving no one behind;
6. Ensure continual progress in relation to the realisation of the rights, obligations and commitments contained in this Protocol, and take immediate steps, within its means;
7. Adhere to the principle of non-discrimination, namely that every individual shall be entitled to the enjoyment of the rights recognised and guaranteed in this Protocol without distinction of any kind such as age, disability, race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status;
8. Ensure that the provisions of this Protocol shall apply to all citizens and comply with their international obligations in relation to social protection;
9. Develop an integrated and comprehensive social protection system, which:
 - (a) Ensures meaningful coverage in terms of, among others, social insurance schemes, social assistance measures and social services;
 - (b) Protects against special and collective risks, including political conflict, climate change and natural disasters;
 - (c) Prevents poverty, deprivation and livelihood loss;
 - (d) Integrates and, when necessary, reintegrates persons, including workers in the labour force and into society;
 - (e) Provides for social protection in national legislation in order to ensure an appropriate mandate for government to act, and for clarity and certainty of the rights, obligations and functions of all social protection stakeholders.

Article 3: Right to social protection and state obligations

1. Every citizen has the right to social protection;

2. States parties have the obligation to ensure that social protection is available, accessible, adequate, affordable and transparent;
3. To comply with the obligation provided under sub-article 2, States parties shall progressively:
 - (a) Develop, maintain and expand an appropriate regulatory, institutional and operational framework for the provision of social protection and ensure good and democratic governance of social protection schemes and arrangements;
 - (b) Establish and maintain a system of social protection in accordance with the provisions of this Protocol;
 - (c) Provide a minimum package of essential social protection, which should at least cover the basic needs of all;
 - (d) Ensure that every citizen who has insufficient means of subsistence to support themselves and their dependants is entitled to adequate social assistance and other services provided by the state;
 - (e) Increase coverage of social protection and raise systems of social protection to a higher level, in accordance with the provisions of this Protocol and in accordance with the ratio of economic growth and the relevant national laws;
 - (f) Encourage and regulate private and public sector participation, with regard to the provision and management of social protection.

Article 4: Social insurance

States parties shall:

1. Review and adopt legislation that compels all employers to enrol all employees into social insurance schemes;
2. Establish health insurance schemes that cover all sections of the population;
3. Put in place measures that enable everyone, especially the youth, to prepare for retirement, and that give expression to the need to contribute to social insurance schemes;
4. Carry out periodic reviews of social insurance benefits to ensure that they are in line with inflation and prevailing economic conditions;
5. Adopt legislative and other measures to ensure that persons can benefit from their contributions even when they move between similar schemes or to other countries (portability of benefits);
6. Ensure the protection of social insurance benefits for those covered by bilateral or multilateral agreements;
7. Adopt legislative and other measures to ensure the sound management and administration of social insurance arrangements, the protection of social insurance funds against mismanagement, diversion for other purposes, cyclical fluctuations and market failure.

Article 5: Informal and rural economies

In order to regulate and provide sufficient social protection to the informal and rural sectors, States parties shall:

1. Ensure the participation of representatives of the informal and rural economy in the design, development and implementation of social protection policies and programmes;
2. Adopt a regulatory framework promoting appropriate and adequate social security of informal and rural workers, through the inclusion of these workers in general social security schemes adapted to suit the context of these workers, the provision or recognition of appropriate formal and informal social insurance and micro-insurance mechanisms, social assistance measures, and dedicated savings instruments;
3. Develop and implement social security contribution modalities, qualifying conditions and benefits that are suited to the context of informal and rural workers;
4. Ensure access to a minimum package of social protection to informal and rural workers and their families;
5. Ensure that the special context of women is appropriately accommodated in social protection systems and in particular that maternity and health protection is extended to working mothers in the informal and rural economies to enable a better conciliation of work, family and care responsibilities;
6. Facilitate access to markets and credit for informal and rural workers to sustain their livelihood support and income-generating potential;
7. Ensure progressive formalisation of the informal economy through enabling a legal and regulatory environment for sustainable enterprises, skills development, and progressive extension of labour and social protection;
8. Put in place measures to protect income earned from informal and rural activities and encourage workers in those sectors to enrol in social protection programmes.

Article 6: Unemployment and underemployment

States parties shall:

1. Adopt proactive policies and legislative measures to promote inclusive economic and social development so as to eradicate poverty and absorb the majority of the labour force into productive employment and income-generating activities;
2. Progressively provide unemployment benefits for all citizens, in

particular by taking steps to establish unemployment insurance schemes, in accordance with national laws;

3. Adopt measures to increase investment in education and training, especially technical and vocational training, and stimulate and support job creation initiatives;
4. Introduce measures to engage those who can work but are not employed, and shall consider for this purpose among others public employment schemes and employment guarantee schemes;
5. Promote a culture of entrepreneurship to provide support structures, innovative, sex-sensitive training and skills development programmes, such as apprenticeship programmes, mentorship and business incubators;
6. Provide support structures to be set up to assist entrepreneurs in the establishment and development of small- and medium-sized enterprises and provide effective social protection coverage to workers in those enterprises;
7. Afford preferential employment opportunities to vulnerable groups, especially the youth, women, older persons and persons with disabilities, in accordance with national laws;
8. Significantly and progressively reduce the unemployment rate among, and increase participation in gainful employment of, women, persons with disabilities and young people, in accordance with national laws;
9. Take concrete steps to address the underemployment of workers, to align skills demand with skills supply and to strengthen the links between education, skills training and the labour market;
10. Formulate strategies to enhance productivity as key to the efforts to reduce underemployment and poverty;
11. Ensure adequate protection against loss of employment, including protection against arbitrary and/or unfair dismissal.

Article 7: Cross-border migrants and internally displaced persons

States parties shall:

1. Adopt legislative, administrative and other measures to ensure that their citizens who are migrants including migrant workers are provided with social protection benefits;
2. In according with their capacities and national laws, introduce measures to facilitate the co-ordination and portability of social security entitlements and benefits, especially through the adoption of appropriate bilateral and multilateral agreements providing for equality of treatment

between individuals from countries of origin and countries of destination, aggregation of insurance periods, maintenance of acquired rights and benefits, portability of benefits, pro-rata sharing of financial liability, institutional cooperation, and the avoidance of double taxation;

3. Develop mechanisms, services and effective financial products to facilitate the affordable transfer of remittances by migrants;

Ensure that displaced persons are included in social protection schemes or measures that are responsive to their needs and contexts.

Article 8: Women and girls

States parties shall:

1. Abolish all discriminatory laws, policies, customs and harmful traditional practices based on sex in their respective social protection systems and ensure that women and girls are also included in their own right in social protection schemes targeting the formal, informal and rural sectors;
2. Provide social protection to vulnerable women and girls, including those that are heads of families, from marginalised population groups and in the blue economy, and provide an environment suitable to their condition and their special physical, economic and social needs;
3. Adopt and promote policies that ensure that workers, particularly female workers, are able to balance occupational and family obligations;
4. Promote equal access to employment, equal pay for work of equal value and social protection;
5. Provide social assistance to girls and protect them against early marriages and other harmful practices;
6. Promote the provision of social protection schemes that support the enrolment and retention of girls in schools and other training institutions and the organisation of programmes for women and girls who leave school prematurely;
7. Provide technical and financial assistance to women, as applicable, who embark on agriculture and improve their access to land, credit, including microfinance, training and invest in their financial empowerment;
8. Make available social protection to women and girls exposed to gender-based violence.

Article 9: Family

States parties shall:

1. Ensure that the family, as a fundamental unit of society and the natural

environment for the growth and well-being of all its members and particularly children, is appropriately assisted and protected. Member States should promote the legal, economic and social protection of family life;

2. Empower the family and enhance its capacity to enable it to meet its socio-economic needs through appropriate social protection in interventions;
3. Ensure that social protection systems and programmes reflect the reality and importance of the extended family, as understood in the national context;
4. Develop, integrate and implement effective social policies, programmes and strategies to address the social protection needs of families in vulnerable and crisis situations;
5. Adopt measures to promote and support community associations or networks which support families in times of need;
6. Provide a framework for the extension of appropriate family benefits;
7. Promote family reunification.

Article 10: Older persons

States parties shall:

1. Develop policies and legislation that ensure that older persons are provided with adequate pensions and other forms of social security, including post-retirement health cover and disability benefits;
2. Adopt mechanisms for the transfer of social assistance or social security mechanisms in order to ensure security of income for older persons who did not have the possibility of subscribing to a pension scheme;
3. Promote independent living and support institutional, residential, family, community and home-based care for older persons;
4. Establish, operationalise and implement national long-term care policies or strategies, including through appropriate complaint mechanisms and redress for care recipients;
5. Promote policies to encourage productive and dignified ageing and ensure that employment undertaken after retirement does not entail discrimination against older workers in relation to labour standards, conditions of employment and rates of remuneration;
6. Recognise and encourage the participation of organisations representing older persons, and national consultative councils of older persons according to relevant national laws.

Article 11: Children, adolescents and youth

States parties shall:

1. Ensure that social protection programmes are sensitive to the needs of children and contribute to the fulfilment of their right to registration at birth, nationality and a standard of living adequate for the child's physical, mental, spiritual, moral and social development in accordance with relevant national laws;
2. Provide social protection services and transfers in cash and in kind to ensure that the basic needs of children are met;
3. Recognise the right for every child to benefit from social security, including social insurance, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child as appropriate;
4. Adopt measures to provide social protection schemes aimed at protecting children in conflict situations, orphans, children of mothers in prison and other vulnerable children;
5. Adopt specific protection measures in relation to the employment of children, including minimum age for admission to employment, and appropriate regulation of the hours and conditions of employment;
6. Support measures to protect, reintegrate and rehabilitate children in conflict with the law;
7. Invest in social protection schemes that contribute to early childhood development, including attention to adequate nutrition, good health, safety and protection, opportunities for early learning and responsive caregiving;
8. Put in place effective measures and provision for adequate care of children, among others through kinship care, care under the kafala system, foster-care and adoption arrangements in accordance with relevant national laws;
9. Facilitate mentoring and support of child-headed households;
10. Ensure free primary and secondary education and institute clear steps to progressively extend access to free education beyond primary and secondary schooling, including pre-primary education;
11. Adopt social protection measures that contribute to ending child labour, exploitation, neglect and violence, child marriages, trafficking in persons, child trafficking, and child soldiering;
12. Ensure that children and the youth participate in developing social protection programmes.

Article 12: Persons with disabilities

States parties shall:

1. Adopt legislative policy and other measures and implement measures that will ensure the extension of social protection to all persons with disabilities so that they enjoy an adequate standard of living for themselves and their families, as well as care and support;
2. Ensure that social protection schemes provided to persons with disabilities improve their social and professional inclusion, including through measures such as habilitation, rehabilitation, vocational training, accessibility and mobility, provision of assistive devices and technologies, means of transport and housing and the appropriate organisation of work and the working environment;
3. Ensure that social protection schemes guarantee equality of access and coverage to and reasonable accommodation of persons with disabilities;
4. Mainstream access to social services for persons with disabilities;
5. Facilitate personal assistance to persons with disabilities to live independently and participate in the community;
6. Involve persons with disabilities, their families and their representative organisations in the revision, planning and design of national social protection strategies;
7. Initiate legal and policy reforms to promote adequate and flexible combination of income and disability related support for economic empowerment;
8. Raise awareness to persons with disabilities and their families on the existence of social protection programmes to ensure their participation.

Article 13: Maternity and paternity

States parties shall:

1. Ensure that reproductive, maternity and paternity rights are protected in all social protection programmes in accordance with national laws;
2. Provide social protection measures that protect women against discrimination and dismissal in relation to maternity, and guarantee adequate and paid pre- and post-natal maternity leave, of at least fourteen weeks' duration, in both the private and public sectors;
3. Ensure that fathers are enabled to share responsibilities in pre- and post-natal care, including the granting of appropriate paternity leave;
4. Establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services, including hospitalisation for women;
5. Ensure that, unless universal coverage and financing are provided for,

maternity and paternity benefits shall be financed through compulsory social insurance paid by both the employer and the employees, without distinction of gender, through social assistance or social allowances. Appropriate provision shall be made for maternity benefits in the case of those involved in the informal economy.

Article 14: Health care, protection and sickness benefits

States parties shall:

1. Develop social protection programmes that ensure that every citizen has equal access to adequate, affordable and quality health care, including comprehensive sexual and reproductive health services and facilities for current, previous and future users of psychiatric services;
2. Put in place legislative policy and other measures to achieve universal health coverage and financing, and shall ensure that every citizen is covered by health insurance schemes;
3. Ensure that health care shall be preventive, curative, rehabilitative and promotive, and shall include primary, secondary and tertiary health care and provision of essential pharmaceutical supplies;
4. Put in place palliative care and support to the terminally ill;
5. Adopt measures to regulate sickness and invalidity cash benefits;
6. Ensure relevant social protection, to support the poorest families in their efforts to mitigate the economic and social impacts of epidemics and crises;
7. Put in place special measures to address the impact of the HIV/AIDS pandemic, malaria, tuberculosis, and other diseases;
8. Adopt and develop social protection measures to support survivors of rape and sexual abuse and harassment;
9. Reduce morbidity and end preventable mortality from communicable and non-communicable diseases and other health conditions in Africa;
10. Facilitate access to free medical and rehabilitative services for persons with disabilities;
11. Facilitate access to free detoxification services, including rehabilitation services, for persons in need of treatment for drug and alcohol dependence;
12. Put in place a legislative policy and institutional framework for the development and provision of safe traditional and other medicines.

Article 15: Occupational health, safety and employment injury

States parties shall:

1. Take measures towards achieving progressively a safe, secure and healthy working environment;
2. Ensure that the organisation of occupational safety and health shall be on the basis of cooperation involving all stakeholders at the national level;
3. Ensure that all workers are covered by employment injury benefit schemes and arrangements;
4. Adopt measures in accordance with international labour standards to ensure that workers shall be entitled to work-related illness and injury prevention, detection and rehabilitation services, adequate health care, as well as reasonable job security after illness and injury, and shall be entitled to reasonable compensation.

Article 16: Death and survivor's benefits

States parties shall, in accordance with their capacities and national laws, ensure that social protection schemes provide protection in the event of death of a breadwinner so that non-discriminatory benefits become payable to beneficiaries and survivors, including a death grant, funeral costs and – subject to qualifying conditions — survivors' benefits, which should be in the form of periodical payments, aimed at the upkeep of survivors.

Article 17: Care and support in other contexts

States parties shall, in accordance with their capacities and national laws:

1. Adopt social protection measures including special care services for children and women exposed to violence and exploitation, in all its forms and aftercare services to ex-prisoners as well as drug users and substance abusers for their social reintegration;
2. Collectively and individually ensure that their social protection systems adequately provide appropriate individual and collective preventive measures within and across the borders of States parties, and shall also provide for effective measures of relief, rehabilitation, reconstruction, reintegration and revival for communities so affected;
3. Adopt measures, at regional and national levels, to provide prevention, relief, reconstruction and rehabilitation in crisis and natural disaster contexts;
4. Develop a framework for training and support of caregivers;
5. Develop and implement a framework to plan, develop and support the workforce in the social service system.

Article 18: Education

States parties shall, in accordance with their capacities and national laws:

1. Adopt measures to progressively provide free and equitable access to quality inclusive education;
2. Support access to free adult education for marginalised groups, including indigenous persons, women, older persons and persons with disabilities;
3. Ensure an education, training, life-long learning and skills development system, supported by technology, that is sensitive to the objective of rationalising admission requirements to education and training institutions and accreditation of qualifications, and which simultaneously addresses the needs for employability and sustainable human development;
4. Where appropriate, provide age appropriate and culturally sensitive comprehensive education on rights to sexual and reproductive health for adolescents and youth while involving parents and communities;
5. Encourage the introduction of special training programmes for teachers and instructors of persons with disabilities;
6. Develop and implement programmes that extend and expand:
 - (i) Early childhood education;
 - (ii) Primary health care to all school children; and
 - (iii) School feeding programmes to all primary school children.
7. Ensure the provision of education on the History of Africa focusing on its past greatness and prosperity as an inspiration for social protection.

Article 19: Food and nutrition

States parties shall, in accordance with their capacities and national laws:

1. Provide social protection programmes that contribute to improved nutrition;
2. Establish mechanisms for developing and retaining adequate technical capacity in nutrition to implement effective nutrition programmes;
3. Support social protection programmes that boost agricultural productivity such as input subsidy schemes and crop insurance schemes;
4. Enact and implement legislation to preserve land for food crops and promote production of drought resistant crops, protection of intellectual property in traditional food crops; commercial farming; crop diversification for long-term food security; and marketing services;
5. Enhance the production, storage, transportation, availability, accessibility, utilisation, safety and quality of food;
6. Improve the productivity of smallholder agriculture and livestock through

extension of technological support, small-scale irrigation schemes, agribusiness development, rural infrastructure, credit, subsidies and tax exemptions;

7. Provide support to female farmers and improve women's access to credit, including microfinance, and invest in training to ensure their empowerment, including in their financial literacy;
8. Enhance food and nutrition information dissemination including information on genetically modified foods through education and communication activities with the participation of the public.

Article 20: Water, sanitation and hygiene

States parties shall, in accordance with their capacities and national laws:

1. Ensure universal, affordable and reliable access to clean and safe drinking water in a sustainable manner;
2. Establish efficient and effective water management systems;
3. Put in place measures to ensure adequate and inclusive sanitation and hygiene in all human dwellings.

Article 21: Housing, shelter and property

States parties shall, in accordance with their capacities and national laws:

1. Facilitate social protection measures that contribute to the affordability of and access to adequate and inclusive housing and shelter;
2. Take all necessary legislative, administrative and other measures to prohibit the evictions that are not in conformity with regional and international human rights treaties ratified by States parties;
3. Ensure that the rights of any person to property are protected;
4. Ensure that adequate and effective legal or other appropriate remedies are available to any person whose property rights have been violated.

Article 22: Environment and climate change

States parties shall, in accordance with their capacities and national laws:

1. Support measures to mitigate the effects of climate change and environmental degradation through social protection schemes;
2. Enhance investments for resilience building initiatives, including social protection for rural workers and other vulnerable social groups, as well as vulnerable ecosystems, including the blue economy;
3. Support initiatives to grow crops that adapt to climate change in order to enhance food security.

Article 23: Governance and administration of national social protection systems

States parties shall, in accordance with their capacities and national laws:

1. Take steps to include provisions in their constitutions and other national laws, in accordance with this Protocol, to ensure that an adequate framework for social protection is provided for;
2. Ensure inclusive and democratic governance of social protection institutions;
3. Improve management and coordination of social protection at all levels through a variety of methods, including the establishment of social registries and other social protection management information systems and frameworks;
4. Enhance the technical, infrastructural and institutional capacities of Ministries responsible for social protection;
5. Create sound governance structures for all social protection programmes, at local and national levels, as appropriate, to guarantee the protection of beneficiaries;
6. Create appropriate legal and institutional frameworks for sound investment, auditing and risk management;
7. Put in place mechanisms to ensure that delivery and payment systems are efficient and effective;
8. Ensure the active participation of all stakeholders in the formulation of social protection policies, programme design, implementation, and monitoring and impact evaluation.

Article 24: Financing

States parties shall, in accordance with their capacities and national laws:

1. Conduct periodic actuarial assessments to ensure the adequate funding of social protection systems through domestic financing by allocating specific and transparent budget lines and taking into account contributory capacities of different population groups;
2. Develop and operationalise costed national plans for social protection to guarantee the provision of services and benefits;
3. Develop flexible feasibility, costing and sustainable funding strategies, combining contributory and non-contributory funding modalities for nationally defined programmes, to ensure sufficient funding for social protection programmes;
4. Commit themselves to progressively allocate a minimum percentage of public resources to social protection expenditure, in particular expenditure that will ensure universal access;

5. Ensure coordination and strengthening of development partner support for sustainable financing of social protection;
6. Take measures to avoid excessive administrative costs, and prevent fraud, illicit financial flows, tax evasion, non-payment of contributions and misuse of social protection funds.

Article 25: Data management

States parties shall:

1. Adopt and implement mechanisms to collect, analyse, compile and publish social protection disaggregated data, statistics and indicators, with due regard to the need for data protection and individuals' right to privacy;
2. Ensure that social protection information/data is appropriately disaggregated (also with reference to sex, age, disability and migration status), collected and reported to facilitate planning and implementation.

Article 26: Complaint and appeal mechanisms

States parties shall:

1. Ensure that every claimant has the right to complain to the institution that took a decision affecting the claimant and, should the claimant be dissatisfied with the outcome of the complaint, the right to appeal to an independent institution, with regard to any violations of the rights established in this Protocol;
2. Develop and implement complaints and appeal mechanisms which accommodate both individual and collective complaints, in all social protection programmes;
3. Ensure that complaint and appeal mechanisms provide procedural guarantees for a fair hearing, are impartial, transparent, effective, simple, rapid, accessible and inexpensive, are completed within reasonable time limits, and ensure timely feedback to affected parties;
4. Ensure access to internal review, and independent adjudication institutions that have the power to finally determine social protection disputes;
5. Ensure that domestic remedies are exhausted;
6. Ensure that final resolutions of disputes are binding and shall be complied with;
7. Ensure that legal aid is available to any person whose rights have been violated.

Article 27: Duties

Individuals have responsibilities towards their families, their communities, the wider society and the state. In this regard they shall:

1. Participate in social protection schemes that are designed to protect them and their families against risks;
2. Use the benefits derived as a result of this Protocol in a responsible manner;
3. Provide support and protection to family members as required by the State Party's legal system.

Article 28: Implementation and monitoring

States parties shall:

1. Ensure the implementation of this Protocol, and shall indicate in their periodic reports submitted to the African Commission in accordance with article 62 of the African Charter, the legislative and other measures undertaken for the full realisation of the rights recognised in this Protocol;
2. Establish or designate national mechanisms, including independent national institutions, to monitor the implementation of the rights enshrined in this Protocol;
3. Monitor and review the uptake, design and impact of social protection programmes for all vulnerable persons.

Article 29: Interpretation

1. The African Commission, shall be seized with matters of interpretation arising from the implementation of this Protocol;
2. The African Court, shall be seized with matters of interpretation and application of this Protocol only for the States parties to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

Article 30: Popularisation of the Protocol

States parties shall take all appropriate measures to ensure the widest possible popularization of this Protocol in accordance with the relevant national laws.

Article 31: Safeguard clause

1. No provision in this Protocol shall be interpreted as derogating from the principles and values contained in other relevant instruments for the realisation of the rights of persons covered under this Protocol;
2. In the event of seemingly contradictory provisions of this Protocol, the

interpretation which favours the rights of citizens and protects their legitimate interests shall prevail.

Article 32: Signature, ratification and accession

1. This Protocol shall be open to Member States for signature, ratification and accession;
2. The instruments of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission who shall notify all Member States of the dates of the deposit of the instruments of ratification or accession.

Article 33: Entry into force

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15th) instrument of ratification or accession by a Member State;
2. The Chairperson of the African Union Commission shall notify all Member States of the entry into force of the present Protocol;
3. For any Member State ratifying or acceding to the present Protocol after its entry into force the Protocol shall come into force in respect of that State on the date of the deposit of its instrument of ratification or accession.

Article 34: Reservations

1. A State Party may, when, ratifying or acceding to this Protocol, submit in writing a reservation with respect to any of the provisions of this Protocol;
2. Reservations should not be incompatible with the object of the present Protocol;
3. Unless otherwise provided, a reservation may be withdrawn at any time;
4. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States parties of the withdrawal accordingly.

Article 35: Depositary

This Protocol shall be deposited with the Chairperson of the Commission, who shall transmit a certified true copy of the Protocol to the Government of each Member State.

Article 36: Registration

The Chairperson of the Commission upon the entry into force of this Protocol shall register this Protocol with the United Nations Secretary General in conformity with article 102 of the Charter of the United Nations.

Article 37: Withdrawal

1. At any time after three (3) years from the date of entry into force of this Protocol, a State Party may withdraw at any time by giving written notification to the Custodian;
2. Withdrawal shall be effective one (1) year after receipt of notification by the Depositary, or on such later date as may be specified in the notification;
3. Withdrawal shall not affect any obligation of the withdrawing State Party prior to the withdrawal.

Article 38: Amendment or revision

1. Any State Party may submit proposal(s) for the amendment or revision of this Protocol. Such proposal(s) shall be adopted by the Assembly;
2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission who shall transmit such proposals to the Assembly at least six (6) months before the meeting at which they shall be considered for adoption;
3. Amendments or revisions shall be adopted by consensus or, failing which, by a two-thirds majority;
4. The amendment or revision shall enter into force in accordance with the procedures outlined in article 33 and 34 of this Protocol.

Article 39: Authentic texts

This Protocol is drawn up in five (5) original texts, in Arabic, English, French, Portuguese, and Spanish languages, and all five (5) texts being equally authentic.

PART TWO:

SUBSIDIARY INSTRUMENTS

Rules of Procedure of the African Commission on Human and Peoples' Rights (2010)

(entered into force 18 August 2010)

The African Charter on Human and Peoples' Rights (African Charter) created the African Commission on Human and Peoples' Rights (Commission) and, in its Article 42(2), conferred on it the power to establish its own Rules of Procedure.

As the term indicates, this important instrument serves to regulate the organisation and functioning of the Commission, creating rules of an organisational nature and others of a procedural nature in order to optimise the competences conferred on it by Article 45 of the Charter.

It has already established several Regulations throughout its existence, however in for the purpose of this meeting, I am pleased to present the 2010 Rules of Procedure.

The 2010 Rules of Procedure were adopted during the 47th Ordinary Session held in May 2010, in Banjul, The Gambia, and was structured into six major parts with 20 chapters and 132 articles.

After the Preliminary Provisions which incorporates the general objective and definitions, it is followed by Part 1 which comprise of 14 chapters deals with the organizational rules, both of the Commission and its Secretariat, including the General Provisions and the organisation of the Commission. It comprises 14 Chapters and 68 articles.

Among these, Chapter VI is of particularly important to note as it introduces the rules of procedure, both in public and private working sessions and deals with questions relating to the necessary quorum for the Commission to take valid decisions.

Chapters VII to XII highlights issues related to the conduct of the sessions of the Commission, including the working languages, conduct of the session and interaction with the participants.

Of particular note here is the issue related to voting rights and its methods, which provide for the possibility of Commissioners explaining the meaning of their vote.

The 2010 Rules of Procedure were also foreseen for the presentation of reports, both under Article 62 of the African Charter and on promotion missions carried out by the Commission, as a way to monitor the implementation of the African Charter by State Parties.

The issue of relations with State Parties, other AU institutions and regional and international institutions has not been left out.

In this respect, it should be noted that the rules provides for information with regards to State parties that do not comply with this binding obligation (Article 62) by virtue of their ratification of the African Charter.

As an area of continuity, Part 2 highlights promotion activities, with two chapters and 10 articles. The focus is on the follow-up to the Commission's concluding observations to States Parties as part of the promotional activity.

Part 3 focuses on protection activities and consists of 3 Chapters and 35 articles. The manner in which Communications reaching the Commission are received, analyzed and processed, as well as decision making, is highlighted in this part. This is one of the most interesting aspects of the Commission's work.

Part 4 of the Rules devotes full attention to the relationship between the Commission and the African Court on Human and Peoples' Rights, focusing on the issue of complementarity. With 10 Articles - 114 to 123, it provides guidance on due process of communications upon reception and further processing.

Part 5 condenses the core principles and norms to regulate relations with other organs, institutions and programs of the AU.

Part 6 deals with transitional issues, which are necessary in any document of this kind and allow for a safe transition from old to new procedures. There are 6 articles that make such considerations.

It is worth noting that the 2010 Rules of Procedure replaced the 1995 Rules of Procedure, which was somewhat precarious, and at the time already incompatible with the organisation of the Commission. Therefore despite the (almost) same format, it was a little more developed.

To the States Parties to the African Charter, the NHRIs' partners, the international community and the NGOs, thank you very much for having assisted in the implementation of the Rules and helped to

understand the need for their replacement, because the dynamics of the Commission require monitoring and updating.

Maria Teresa Manuela

Honorable Commissioner

*Special Rapporteur on Prisons, Conditions of Detention and
Policing in Africa*

PRELIMINARY PROVISIONS

Rule 1: Objective

1. These Rules regulate the organisation and establish the procedure of the African Commission on Human and Peoples' Rights in accordance with article 42(2) of the African Charter on Human and Peoples' Rights.
2. In the absence of a provision in these Rules or in case of doubt as to their interpretation, the Commission shall decide.

Rule 2: Definitions

For the purpose of these Rules:

'African Charter' refers to the African Charter on Human and Peoples' Rights.

'African Children's Charter' refers to the African Charter on the Rights and Welfare of the Child.

'African Commission' or 'Commission' refers to the African Commission on Human and Peoples' Rights.

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

'African Court' refers to the African Court on Human and Peoples' Rights.

'Amendment to a proposed motion' is an addition to, deletion from or revision of part of that motion.

'Assembly' refers to the Assembly of Heads of State and Government of the African Union.

'Bureau' refers to the Chairperson and Vice Chairperson.

'Chairperson' refers to the Chairperson of the African Commission on Human and Peoples' Rights.

'Child Rights Committee' refers to the African Committee of Experts on the Rights and Welfare of the Child.

'Commissioner' refers to a member of the African Commission on Human and Peoples' Rights.

'Day' shall be understood to be a natural day.

'Executive Council' refers to the Executive Council of the African Union.

'Member State' refers to a Member State of the African Union.

'Secretary' refers to the Secretary to the African Commission on Human and Peoples' Rights.

'Serious or massive violations' refers to grave human rights violations as distinguished by their scale and importance.

'Session' refers to the statutory meetings of the Commission. This includes Ordinary and Extraordinary sessions.

'Specialized Organs' refers to specialized organs put in place by the United Nations and African Union.

'State Party' refers to African States that have ratified the African Charter on Human and Peoples' Rights.

'Subsidiary Mechanism' refers to any mechanism established in accordance with Rule 23 of these Rules.

'Third party' refers to any other party than the complaining or defending parties.

'Union' refers to the African Union.

'Vice-Chairperson' refers to the Vice-Chairperson of the African Commission on Human and Peoples' Rights.

'Working Language' refers to the working languages of the African Union.

PART 1: GENERAL RULES

CHAPTER I: STATUS AND COMPOSITION

Rule 3: Status

The African Commission is an autonomous treaty body working within the framework of the African Union to promote human and peoples' rights and ensure their protection in Africa.

Rule 4: Composition

1. In conformity with article 31 of the African Charter, the Commission shall consist of eleven (11) members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights, particular consideration being given to persons having legal experience.
2. The members of the Commission shall serve in their personal capacity.

CHAPTER II: MEMBERSHIP

Rule 5: Term of office

1. Members of the Commission are elected for six years and shall be eligible for re-election.
2. If a member of the Commission is re-elected at the expiry of his or her term of office, or elected to replace a member whose term of office has expired or will expire, the term of office shall begin from that expiry date.
3. In conformity with article 39(3) of the African Charter, the member of the Commission elected to replace a member whose term has not expired, shall complete the term of his or her predecessor. However, if the remaining term of office is less than six months, there shall be no replacement.

Rule 6: Order of precedence

1. In the discharge of their duties, members of the Commission shall follow the Chairperson and the Vice-Chairperson according to their seniority in office. When there are two or more members of the Commission with equal seniority, precedence shall be given to the oldest.
2. A member of the Commission who is re-elected to a new term of office which is continuous with his/her previous term shall retain his/her precedence.

Rule 7: Incompatibility

1. The position of member of the Commission is incompatible with any activity that might interfere with the independence or impartiality of such a member or demands of the office such as a member of government, a Minister or under-secretary of State, a diplomatic representative, a director of a ministry, or one of his subordinates, or the legal adviser to a foreign office or any other political binding function or participate in any activity of the nature that will compromise the independence and impartiality.
2. The Bureau of the Commission shall ensure that the requirements in Rule 7(1) above are enforced in accordance with articles 31(1 & 2) and 39(2) of the African Charter.
3. In the case of incompatibility, the Chairperson of the Commission shall inform the Chairperson of the African Union Commission, who shall declare the seat vacant.

Rule 8: Cessation of function

1. If in the unanimous opinion of the other members of the Commission, a member has stopped discharging his or her duty for any reason other than temporary absence, the Chairperson of the Commission shall inform the Chairperson of the African Union Commission, who shall declare the seat vacant.
2. A member of the Commission may resign from his or her position at any time. He or she shall do so through a written notification addressed to the Chairperson of the Commission who shall transmit it to the Chairperson of the African Union Commission.
3. The resignation shall take effect three months from the date of submission of the letter of resignation.
4. The Chairperson of the African Union Commission shall upon receipt of the notification, declare the seat vacant. The vacancy shall be effective from the date the resignation takes effect.
5. In the case of death of a member of the Commission, the Chairperson shall immediately inform the Chairperson of the African Union Commission who shall declare the seat vacant from the date of the death.
6. Every seat declared vacant in conformity with the present Rule shall be filled in accordance with paragraph 3 of article 39 of the African Charter.

Rule 9: Solemn declaration

In conformity with article 38 of the African Charter, before assuming office, every member of the Commission shall make the following solemn declaration at a public sitting of the Commission: *'I solemnly undertake to carry out my duties well and faithfully in all impartiality.'*

CHAPTER III: BUREAU OF THE COMMISSION

Rule 10: Composition of the Bureau

The Bureau of the Commission shall be composed of a Chairperson and a Vice-Chairperson who shall perform the functions set forth in the African Charter and in these Rules of Procedure.

Rule 11: Election of the Bureau

1. The Commission shall elect from among its members a Chairperson and a Vice-Chairperson.
2. Election shall be held by secret ballot. Only members present shall vote. A member who obtains a simple majority of the votes of the members of the Commission present and voting shall be elected.

Rule 12: Duration of the term of the members of the Bureau

The members of the Bureau of the Commission shall be elected for a period of two years. They shall be eligible for re-election only once. None of them may, however, exercise his or her functions if he or she ceases to be a member of the Commission.

Rule 13: Powers and functions of the Bureau

1. The Bureau shall coordinate the promotion and protection activities of the members of the Commission.
2. The Bureau shall supervise the work of the Secretary, including the preparation and approval of the work-plan of the Commission.
3. The Bureau shall annually assess the performance of the Secretary. It shall submit its assessment to the Commission for its consideration and decision.

Rule 14: Powers and functions of the Chairperson

1. The Chairperson shall carry out the functions assigned to him or her by the Charter, the Rules of Procedure and the decisions of the Commission and the Assembly. In the exercise of his or her functions the Chairperson shall be under the authority of the Commission.
2. The Chairperson shall:
 - (a) Represent and direct the work of the Commission;
 - (b) Preside over the meetings of the Commission;
 - (c) Submit the assessment report referred to in Rule 13(3) to the competent organs of the African Union Commission;
 - (d) Supervise the preparation of the budget by the Secretariat and its adoption by the Commission;
 - (e) Present and defend the budget before the relevant African Union bodies;
 - (f) Present a report to the Assembly and to the Commission on the activities carried out during the intersession;
 - (g) Perform any other functions that may be conferred upon him or her in the Rules of Procedure or other tasks entrusted to him or her by the Commission or the Assembly; and
 - (h) Delegate, when necessary, to the Vice-Chairperson or, if the Vice-Chairperson is not available, to another Commissioner, the abovementioned powers.

Rule 15: Powers and functions of the Vice-Chairperson

1. If the Chairperson is temporarily unable to perform his or her duties, the Vice-Chairperson, shall perform the duties of the Chairperson.

2. The Vice-Chairperson, acting in the capacity of the Chairperson, has the same powers and functions as the Chairperson.
3. The Vice-Chairperson shall perform any other function delegated to him or her by the Commission or the Chairperson of the Commission.
4. If both the Chairperson and the Vice-Chairperson are unable to carry out their duties at the same time, the duties of Chairperson shall be carried out by another Commissioner according to the order of precedence laid down in Rule 6.

Rule 16: Resignation, vacancy and replacement

If a member of the Bureau of the Commission resigns from his or her position or ceases to be a member of the Commission, the remaining member shall represent the Bureau until the next session, when the Commission shall fill the position for the remainder of the term of office.

CHAPTER IV: SECRETARIAT TO THE COMMISSION

Rule 17: Composition, structure and status of the Secretariat

1. Without prejudice to article 41 of the African Charter, the Commission shall propose the organizational structure of the Secretariat and shall place it before the African Union for approval.
2. The Secretariat of the Commission is composed of the Secretary and the Commission's professional, technical and administrative staff.
3. The Secretary shall be appointed by the Chairperson of the African Union Commission pursuant to article 41 of the African Charter after consultation with the Chairperson of the African Commission.
4. The Status of the Secretary and the staff is governed by the African Union Staff Rules and Regulations.

Rule 18: Functions of the Secretary to the Commission

The Secretary to the Commission is responsible for the activities of the Secretariat under the supervision of the Chairperson. The Secretary shall specifically:

- (a) Assist the Chairperson, the Bureau of the Commission and other members of the Commission in the exercise of their functions;
- (b) Supervise and co-ordinate the work of the staff of the Secretariat;
- (c) Keep proper records of the Commission, which must be properly organized for easy reference;
- (d) Ensure confidentiality of the Commission's records where appropriate;

- (e) Submit to the Chairperson and the members of the Commission all items that will be considered by the Commission;
- (f) In consultation with the Chairperson, prepare:
 - (i) A draft agenda for each session;
 - (ii) The Commission's strategic plan, annual work plan and annual budget;
 - (iii) Guidelines on missions for adoption by the Commission;
- (g) Present a written report to the Commission at the beginning of each session on the activities of the Secretariat since the preceding session;
- (h) Implement the decisions entrusted to him or her by the Commission or the Bureau;
- (i) Make available to the general public documents which are not confidential, including States Reports, by ensuring that they are posted on the website of the Commission;
- (j) Ensure the maintenance and regular updating of the website of the Commission;
- (k) Assess the performance of the staff of the Commission.

Rule 19: Financial responsibility

The expenses of the Commission, emoluments and allowances for Commissioners and the budget of the Secretariat, shall be borne by the African Union, in accordance with criteria laid down by the African Union in consultation with the Commission.

Rule 20: Financial rules

The implementation of provisions of articles 41 and 44 of the Charter shall be governed by the African Union's financial rules.

Rule 21: Estimate

When the Commission considers a proposal entailing expenses, the Secretary shall prepare and present to the members of the Commission, as soon as possible, a report outlining the financial implications of the proposal.

Rule 22: Confidentiality of the work of the Commission

The staff of the Secretariat must observe the principle of confidentiality in all matters that the Commission considers confidential as stipulated under the Charter and these Rules.

CHAPTER V: SUBSIDIARY MECHANISMS

Rule 23: Special Rapporteurs, Committees and Working Groups

1. The Commission may create subsidiary mechanisms such as special rapporteurs, committees, and working groups.
2. The creation and membership of such subsidiary mechanisms may be determined by consensus, failing which, the decision shall be taken by voting.
3. The Commission shall determine the mandate and the terms of reference of each subsidiary mechanism. Each subsidiary mechanism shall present a report on its work to the Commission at each ordinary session of the Commission.

Rule 24: Applicable rules for subsidiary mechanisms

The Rules of Procedure of the Commission shall apply *mutatis mutandis* to the proceedings of its subsidiary mechanisms.

CHAPTER VI: SESSIONS

Rule 25: General principles

1. The Commission shall hold Ordinary and Extraordinary Sessions, to enable it to satisfactorily carry out its functions in conformity with the African Charter.
2. Sessions of the Commission shall be held in public unless the Commission decides otherwise or if it appears from the relevant provisions of the Charter that the meeting shall be held in private.

Rule 26: Ordinary sessions

1. The Commission shall hold at least two Ordinary Sessions per year each lasting for about two weeks, unless the Commission decides otherwise.
2. The Ordinary Sessions of the Commission shall be convened on a date fixed by the Commission upon the proposal of its Chairperson and in consultation with the Chairperson of the African Union Commission.
3. In exceptional circumstances, the Chairperson of the African Union Commission may change the opening date of a session, in consultation with the Chairperson of the Commission.

Rule 27: Extraordinary sessions

1. The Commission shall also hold Extraordinary Sessions.
2. The Chairperson of the Commission shall convene Extraordinary Sessions:
 - (a) At the request of the majority of the members of the Commission; or
 - (b) At the request of the Chairperson of the African Union Commission.
3. Extraordinary Sessions shall be convened on a date fixed by the Chairperson of the Commission, in consultation with the Chairperson of the African Union Commission and the other members of the Commission.

Rule 28: Place of meetings

1. The sessions of the Commission shall be held at its headquarters, or in the territory of any other State Party which invites the Commission.
2. In the event that a State Party invites the Commission to hold a session in its country, that State Party shall sign an agreement with the Commission to host the session of the Commission, which agreement shall vest the State Party with the responsibility for all additional expenses incurred by the Commission as a result of the session being held outside its headquarters, in conformity with the relevant rules of the African Union.
3. A State Party offering to host a session of the Commission shall not be under any suspension of the African Union. Any country wishing to host a session of the Commission should commit itself to respecting the provisions of article 62, and should comply with all the recommendations of the African Commission, where necessary.
4. The Commission may, in consultation with the Chairperson of the African Union Commission, hold a session at the headquarters of the African Union. The sharing of costs for such session shall be as agreed with the African Union Commission.
5. The Commission may hold joint sessions in consultation with the African Court on Human and Peoples' Rights, the Committee of Experts on the Rights and Welfare of the Child, or any other African regional human rights organ.

Rule 29: Notification of the opening date of the sessions

1. The Secretary shall inform members of the Commission of the date and venue of each session. This notice shall be sent, in the case of an Ordinary Session, at least sixty (60) days before the Session unless exceptional circumstances require otherwise.
2. In the case of an Extraordinary Session, the notice shall be sent as soon as possible before the beginning of the session.

Rule 30: Quorum

Seven members of the Commission shall constitute the quorum, as specified in article 42(3) of the Charter.

Rule 31: Private sessions

1. Private Sessions of the Commission shall be held in private and deliberations shall remain confidential.
2. During a Private Session, the Secretary to the Commission, members of the Secretariat and persons providing technical or secretarial assistance to the Commission shall be present unless the Commission decides otherwise.
3. The Commission shall ensure the confidentiality of all case files, including pleadings. This provision shall not be interpreted to prohibit the prompt sharing of pleadings with the parties to a Communication.
4. The Chairperson of the Commission may communicate to the public general information on deliberations in Private Sessions, subject to the exigencies of article 59 of the Charter and any special directions by the Commission.

CHAPTER VII: AGENDA

Rule 32: Provisional agenda

1. The Provisional Agenda for each Ordinary Session shall be drawn up by the Secretary in consultation with the Bureau of the Commission and in accordance with the provisions of the Charter and the present Rules of Procedure.
2. The Provisional Agenda shall include but not be limited to, items on 'Communications from States' and 'Other Communications' in conformity with the provisions of articles 48, 49, and 55 of the Charter.
3. Pursuant to paragraph 1 of this Rule, the Provisional Agenda may also include items proposed by:
 - (a) The Commission at a previous Session;
 - (b) The Chairperson of the Commission or a member of the Commission;
 - (c) A State Party to the African Charter;
 - (d) Any African Union organ;
 - (e) An organisation recognized by the African Union, a national human rights institution with affiliate status or a non-governmental organisation with observer status;

- (f) A specialized institution of the United Nations of which the State Parties to the African Charter are members.
- 4. The items to be included in the provisional agenda under sub-paragraphs d, e and f of paragraph 3 above shall be communicated to the Secretary, accompanied by supporting documents, not later than sixty (60) days before the opening of the Session at which these items are to be discussed.
- 5. The decision to include an item on the provisional agenda is taken by the Bureau of the Commission. If the request is accepted, the Secretary shall include the item on the Provisional Agenda of the session and inform the requesting party of this decision within one month.
- 6. The Provisional Agenda of an Extraordinary Session of the Commission shall include only the items in the notification issued by the Chairperson.

Rule 33: Transmission and distribution of the provisional agenda

- 1. The Secretary shall distribute the Provisional Agenda and the relevant working documents to the members of the Commission at least sixty (60) days before the opening of an Ordinary Session.
- 2. The Secretary shall transmit the provisional agenda and the essential documents of the session to State Parties, the Chairperson of the African Union Commission, affiliate institutions and observers at least forty-five (45) days before the opening of an Ordinary Session of the Commission.
- 3. The Secretary, in consultation with the members of the Commission in exceptional cases, may distribute the Provisional Agenda and essential documents relating to certain items on the Agenda thirty (30) days prior to the opening of an Ordinary Session.
- 4. The Secretary shall transmit by all appropriate means, including posting on the website of the Commission, the Provisional Agenda of the Session to State Parties, the Chairperson of the African Union Commission, affiliate institutions and observers at least fifteen (15) days before the opening of an Ordinary Session of the Commission.

Rule 34: Adoption of the agenda

- 1. At the beginning of each Session, the Commission shall adopt the agenda of the Session.
- 2. Proposals made under Rule 32(3) of the present Rules shall be included in the Agenda of the Session if a majority of the members present so decide.

Rule 35: Revision of the agenda

The Commission may, during the Session, revise its Agenda.

CHAPTER VIII: LANGUAGE

Rule 36: Working languages

1. The Working Languages of the Commission and all its subsidiary mechanisms are those of the African Union.
2. The proceedings of the Commission shall be conducted in any of the Working Languages of the African Union.
3. Any person addressing the Commission in a language other than one of the Working Languages shall ensure the interpretation into one of the Working Languages of the Commission. The interpreters of the Commission shall take this interpretation as the source language for their interpretation in the other Working Languages of the Commission.

CHAPTER IX: RECORDS AND REPORTS

Rule 37: Records and reports of sessions

1. The Secretary shall keep recordings of the proceedings of the sessions of the Commission and of the meetings of its subsidiary mechanisms.
2. The Secretary shall prepare a Report of the proceedings of each session of the Commission.
3. The Report referred to in paragraph 2 of the present rule shall be adopted by the Commission before publication, including posting on the website.

Rule 38: Publication and distribution of session reports

1. The Final Report of the Public Session shall be posted on the website unless the Commission decides otherwise.
2. The Final Report of the private sessions of the Commission shall be distributed to all members of the Commission.

CHAPTER X: CONDUCT OF BUSINESS

Rule 39: Additional powers of the Chairperson

The Chairperson shall open and close each session, direct the discussions, ensure observance of the present Rules of Procedure, accord the right to speak, put questions to the vote and announce decisions.

Rule 40: Points of order

1. During a debate on any matter a member of the Commission may, at any time, raise a point of order and the Chairperson of the Commission, in accordance with the Rules of Procedure, shall immediately rule on the point of order. If a member of the Commission contests the ruling, it shall immediately be put to a vote. If the majority of the members of the Commission present uphold the Chairperson's ruling, it shall be maintained.
2. A member of the Commission raising a point of order cannot, in his or her comments, deal with the substance of the matter under discussion.

Rule 41: Adjournment of debates

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

Rule 42: Time limit accorded to speakers

The Chairperson of the Commission may limit the time accorded to each speaker on any matter. When a speaker exceeds his or her allotted time, the Chairperson of the Commission shall call him or her to order.

Rule 43: Closing the list of speakers

1. The Chairperson of the Commission may, before the beginning of a debate, read out the list of speakers and with the consent of the Commission, declare the list closed.
2. The Chairperson of the Commission may, however, accord the right of reply to any speaker if a speech delivered after the list has been closed makes this desirable.

Rule 44: Closure of debate

1. A member of the Commission may, at any time during a debate, move for the closure of the debate on the item under discussion, even if the other members of the Commission or representatives have expressed the desire to take the floor. The authorization to take the floor on the closure of the debate shall be given only to two speakers for and against the closure, after which the motion shall immediately be put to a vote.
2. When the debate on an item is concluded, the Chairperson of the Commission shall declare the debate closed.

Rule 45: Adjourment or closure of session

During the discussion on any matter, a member of the Commission may move for the adjourment or closure of the sessions. No discussion on any such motion shall be permitted and it shall be immediately put to a vote.

Rule 46: Order of the motions

The following motions shall have precedence in the following order over all the other proposals or motions before the Commission:

- (a) Competence of the Commission;
- (b) Point of order;
- (c) Recusal of a Member of the Commission;
- (d) Adjournment of the session;
- (e) Adjournment of debate on the item under discussion;
- (f) Closure of debate on the item under discussion.

Rule 47: Submission of motion and amendment of substance

Unless the Commission decides otherwise, the motions or amendments to motions on substantive matters made by members of the Commission shall be submitted in writing to the Secretary with supporting documents.

Rule 48: Withdrawal and re-submission of a motion

The sponsor of a motion may withdraw it before it is put to vote, provided that it has not been amended. Another member of the Commission may re-submit a motion thus withdrawn. When a member of the Commission moves for the re-submission of a motion, only one member of the Commission may speak in favour of and one against the motion, after which it shall immediately be put to a vote.

Rule 49: Oral interventions

1. No one may take the floor at a meeting of the Commission without the authorization of the Chairperson of the Commission. The Chairperson of the Commission shall grant the floor to speakers in the order in which it has been requested.
2. Oral intervention shall deal solely with the matter under discussion by the Commission and the Chairperson of the Commission shall call to order any speaker whose remarks are irrelevant.
3. The Chairperson of the Commission may limit the time accorded to speakers as well as the number of interventions in accordance with the present Rules of Procedure. The time limit for each speaker shall be determined by the Chairperson.

Rule 50: Right of reply

1. A right of reply may be granted by the Chairperson of the Commission to any member of the Commission or representative of a State Party who requests it.
2. A member of the Commission or representative of a State Party must, while exercising this right, respect the time limit fixed by the Chairperson for reply and take the floor preferably at the end of the sitting at which this right has been requested.
3. The right of reply shall be limited to one reply per party and all parties shall have the same length of time to reply.

CHAPTER XI: VOTING

Rule 51: Right to vote

1. Decisions of the Commission may be taken by consensus, failing which the decision shall be taken by voting.
2. However, at the request of a member, any proposal or motion shall be put to a vote.
3. Each member of the Commission shall have one vote. In the case of a tie in votes, the Chairperson of the Commission shall have a casting vote.

Rule 52: Required majority

1. Except as otherwise provided by the African Charter or the present Rules of Procedure, decisions of the Commission shall be taken by a simple majority of the members present and voting.
2. For the purpose of the Rules of Procedure, the expression 'members present and voting' shall mean members voting for or against. The members who shall abstain from voting shall be considered as non-voting members.

Rule 53: Method of voting

1. Subject to the provisions of Rule 56 of the present Rules, the Commission, unless it otherwise decides, shall vote by show of hands, but any member may request a roll-call vote, which shall be taken in alphabetical order.
2. In all the votes by roll-call each member shall reply 'yes' or 'no' or 'abstention'. The vote of each member participating in the ballot shall be recorded in the minutes.
3. The Commission may decide to hold a secret ballot.

Rule 54: Explanation of vote

Members may make brief statements only for the purpose of explaining their vote, before the beginning of the vote or once the vote has been taken.

Rule 55: Rules to be observed while voting

A vote shall not be interrupted except if a member raises a point of order related to the manner in which the voting is being done.

Rule 56: Elections

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

CHAPTER XII: MOTIONS AND PROPOSALS

Rule 57: Division of proposals

Proposals in a motion may be separated if a member so requests. The parts of proposals or amendments that have been adopted shall later be put to a vote as a whole. If all the operative parts of a motion have been rejected, the motion shall be considered to have been rejected as a whole.

Rule 58: Order of voting on proposals

1. If two or more proposals are made on the same matter, the Commission, unless it decides otherwise, shall vote on these proposals in the order in which they were submitted.
2. After each vote, the Commission may decide whether it shall put the next proposal to a vote.
3. However, motions which are not on the substance of a proposal shall be voted upon before the said proposals.

CHAPTER XIII: REPORTS OF THE COMMISSION

Rule 59: Activity reports

1. The Commission shall submit an Activity Report of its promotion, protection and other activities to each Ordinary Session of the Assembly.
2. The content of the Activity Report of the Commission to be presented to the Assembly by its Chairperson or his/her representative shall be determined by the Commission.
3. Once the Activity Report is considered by the Assembly, the Secretary

shall publish it, including posting on the website, and shall transmit it to State Parties, African Union organs, National Human Rights Institutions and Civil Society Organizations.

Rule 60: Mission reports

1. Upon completion of a Mission, the Secretary shall, within thirty (30) days, draft the mission report in conformity with the Commission's Guidelines on Mission Reports.
2. The Secretary shall send the draft Mission Report to all the members of the Commission's delegation who shall submit their comments within thirty (30) days.
3. In the case of a mission for promotion activities, the Secretary shall, after the mission report has been commented upon by the members of the delegation referred to in paragraph 2 of the present Rules, submit the Report incorporating the observations of the members to the Commission for consideration and adoption at its next session.
4. The adopted mission report shall be sent to the State Party concerned for its comments, to be given within sixty (60) days from the day of receipt of the Report. After sixty days, the Report shall be published with the comments of the State Party, if any.
5. In the case of a mission for protection activities, the Mission Report shall be sent to the members of the delegation referred to in paragraph 2 of this Rules, as well as to other concerned parties, including any party to a Communication that was a subject of the Mission. The Commission shall consider the comments of these parties when finalizing the Report, especially with regard to any proposal for amicable settlement.
6. The Report of any protection mission as well as the comments from the State Party concerned and other concerned parties, where applicable, shall be annexed to the Activity Report of the Commission.

Rule 61: Distribution of reports and other official documents

1. Reports, decisions, session documents and all other official documents of the Commission and its subsidiary mechanisms shall be documents for general distribution unless the Commission decides otherwise. Upon their adoption by the Commission, reports shall be published in accordance with article 59(2) of the Charter.
2. Reports and additional information submitted by States Parties under article 62 of the African Charter shall be documents for general distribution in the Working Languages of the African Union and shall be

posted on the Commission's website as soon as they are received at the Secretariat of the Commission;

3. The Secretary shall ensure the publication of the Commission's Activity Report and post it on the website of the Commission after consideration by the Assembly.

CHAPTER XIV: RELATIONSHIPS WITH STATE PARTIES, INTERGOVERNMENTAL INSTITUTIONS, NATIONAL HUMAN RIGHTS INSTITUTIONS, NON-GOVERNMENTAL ORGANISATIONS, AND OTHER PARTNERS

Rule 62: General principle

The Commission may invite any State Party, institution, organisation or person capable of enlightening it to participate in its sessions without voting rights.

Rules 63: Discussions on human rights situations

1. In conformity with Rule 32(3) of the present Rules of Procedure, any State Party, African Union organ, specialized agency or body of the United Nations or other organisation recognized by the African Union, national human rights institution with affiliate status, or non-governmental organisation with observer status, may request that the African Commission include in its agenda for an Ordinary Session a discussion on any human rights issue. Such a request shall be made sixty (60) days in advance of the session at which the discussion is to take place.
2. Where the discussion requires the presence of other partners and parties, the requesting party shall so indicate in the documents that it presents to the Commission pursuant to Rule 34(2) of the present Rules. If the Bureau of the Commission decides that the participation of additional partners and parties is necessary, it shall invite them to attend and transmit to them all relevant documentation and information on the proposed discussion from the requesting party.

Rule 64: Participation of states parties

1. The Commission or its subsidiary mechanisms may invite any State Party to participate in the discussion of any issue that shall be of particular interest to that State.
2. A State thus invited shall have no voting right, but may submit proposals

which may be put to a vote at the request of any member of the Commission or of the subsidiary mechanism concerned.

Rule 65: Participation of specialized agencies, intergovernmental organisations and United Nations bodies

1. Specialized agencies, intergovernmental organisations and United Nations bodies may take part in the Public Sessions of the Commission.
2. The Commission may permit representatives of these bodies to make oral or submit written statements during its session.
3. Pursuant to articles 45(1) and 46 of the African Charter, the Commission may invite these bodies to submit reports on the implementation of the African Charter in areas of common concern.
4. The Commission may take part in the activities of specialized agencies, intergovernmental organisations and United Nations bodies and agree through a Memorandum of Understanding on areas of common concern.

Rule 66: Donors

1. Subject to article 41 of the Charter, the Commission may negotiate financial agreements with donors. These financial agreements shall be signed by the Secretary after approval by the Bureau. Original copies of such agreements shall be kept at the Secretariat of the Commission.
2. The Commission shall inform the African Union Commission of any proposal to accept funds from any donor including details of the amount of money to be provided, the project or projects for which the funds are sought and any condition of receipt of such funding.
3. Such agreements shall specify expected outcomes, monitoring and evaluation of the project funded by the donor.
4. The Secretary shall prepare and submit reports on the implementation of the agreement to the Commission at each Ordinary Session.
5. Donors may be invited to attend sessions of the Commission.

Rule 67: National Human Rights Institutions

1. National Human Rights Institutions established by States Parties and functioning according to internationally and regionally recognized norms and standards may be granted affiliate status with the Commission.
2. National Human Rights Institutions having affiliate status with the Commission shall enjoy the rights and perform the duties stipulated in the Resolution on the Granting of Affiliate Status to National Human Rights Institutions in Africa.

3. The African Commission shall grant affiliate status to only one National Human Rights Institution in each State Party.
4. The African Commission may invite other National Human Rights Institutions that do not meet the criteria provided in paragraphs 1 and 2 of the present Rules to attend its sessions as observers.

Rule 68: Non-governmental organisations

1. Non-governmental organisations working in the field of human rights in Africa may be granted observer status with the Commission.
2. Non-governmental organisations having observer status with the Commission shall enjoy the rights and perform the duties stipulated in the Resolution on the Granting of Observer Status.
3. Non-Governmental organisations with observer status with the Commission shall fulfil their obligations stipulated under the Resolution referred to in paragraph 2 of the present Rules.

PART 2: PROMOTION ACTIVITIES

CHAPTER I: GENERAL PROVISIONS

Rule 69: Program of promotion activities

The Commission shall adopt and carry out a program of promotion activities to give effect to its mandate under the African Charter, in accordance with article 45(1).

Rule 70: Promotion missions

1. The Commission shall carry out promotion missions, to States Parties.
2. Promotion missions shall be governed by the Commission's Guidelines for Missions as well as the Format for Pre-mission Reports.
3. For each promotion mission, the Commission shall develop terms of reference bearing in mind the human rights situation in the country.

Rule 71: Other promotion activities

1. The Commission shall undertake promotion activities other than promotion missions, including seminars, conferences, symposia etc.
2. These activities shall be undertaken either on its own or in collaboration with partners.
3. Where the Commission receives an invitation to participate in any promotion activity, the Secretary shall inform the Bureau immediately, and the latter shall decide on the course of action.

Rule 72: Activity reports of Commissioners

At each Ordinary Session, each member of the Commission shall submit a written report of his or her promotion activities undertaken during the inter-session.

**CHAPTER II: THE STATE REPORTING PROCEDURE
UNDER ARTICLE 62 OF THE CHARTER**

Rule 73: Contents of state reports

1. Pursuant to article 62 of the African Charter and other relevant legal instruments which supplement them, including the Protocol to the African Charter on the Rights of Women in Africa in its article 26, States Parties shall submit reports in accordance with the guidelines of the Commission, on the measures they have taken to give effect to the provisions of the African Charter and on the progress they have made. Reports shall indicate the challenges, if any, affecting the implementation of the African Charter and its relevant protocols.
2. The Secretary to the Commission shall send to States Parties the Guidelines on State Reports.

Rule 74: Transmission of state reports

1. Upon receipt of a State Report, the Secretary shall upload the Report on the Commission's website and indicate when the Report will be examined by the Commission.
2. Institutions, organizations or any interested party wishing to contribute to the examination of the Report and the human rights situation in the country concerned, shall send their contributions, including shadow reports, to the Secretary at least 60 days prior to the examination of the Report.
3. The Secretary may also invite specific institutions to submit information relating to the state report within a time limit that he/she may specify.

Rule 75: Consideration of reports

1. The Chairperson of the Commission shall, through the Secretary inform States Parties of the opening date and venue of the Session at which their respective reports shall be considered.
2. States Parties shall be represented in the sessions of the Commission at which their reports are to be considered.
3. Representatives of States Parties shall respond to the questions prepared

by the Commission, and questions of the members of the Commission and provide when necessary, any other information requested during or after the session.

4. If a State Party fails to send a representative to the session of the Commission at which its report is to be examined, consideration of the report shall be rescheduled for the next session. If, at the said session, the concerned State Party, after due notification, fails to send a representative, the Commission shall consider the State Report.
5. During the consideration of the state report submitted by a State Party in accordance with article 62 of the Charter, the Commission shall explore all the pertinent information relating to the human rights situation in the State concerned, including statements and shadow reports from National Human Rights Institutions and NGOs.

Rule 76: Non-submission of reports

1. The Commission shall, at the beginning of each year, inform the States Parties which are not up to date with their obligations under article 62 of the deadlines of their submission of their reports and the date at which they are expected to comply.
2. At the beginning of each Ordinary Session, the Secretary shall inform the Commission of all cases of non-submission of reports or of additional information requested by the Commission. In such cases, the Chairperson of the Commission may send a reminder, through the Secretary, to the State Party concerned;
3. The Activity Report of the Commission shall point out the status of initial and Periodic Report of States Parties.

Rule 77: Concluding Observations

1. The Commission shall, after consideration of the report of a State Party, formulate Concluding Observations.
2. The Concluding Observations of the Commission shall comply with the Guidelines of the Commission on Concluding Observations.
3. The Concluding Observations shall be transmitted to the State Party concerned within thirty (30) days after the session at which the Observations were adopted. They shall form part of the Commission's activity report and be posted on the website of the Commission after the adoption of the Activity Report.

Rule 78: Follow-up of implementation of Concluding Observations of state reports

1. In the Concluding Observations, the Commission shall specify, if necessary, the issues that require urgent attention on the part of the State Party. The date of the presentation of the next Periodic Report by the State Party shall be included in the Concluding Observations.
2. The Members of the Commission shall ensure the follow-up on the implementation of the recommendations from the Concluding Observations within the framework of their promotion activities to the States Parties concerned.
3. The Commission shall also transmit to the Assembly the observations mentioned in Rule 77(1), with copies of the reports it has received from the States Parties as well as the comments supplied by the latter, if any.

PART 3: PROTECTION ACTIVITIES

CHAPTER I: MATTERS OF EMERGENCY

Rule 79: Decision on matters of emergency

1. The Commission shall treat a situation as a matter of emergency under article 58(3) of the African Charter, when:
 - (a) It is one of serious or massive human rights violations;
 - (b) It presents the danger of irreparable harm or requires urgent action to avoid irreparable damage;
2. When a situation of emergency arises during a session of the Commission, the decision to treat it as such shall be taken by the Commission.
3. When a situation arises during the Commission's inter-session period, the decision to treat it as a matter of emergency shall be taken by the Bureau of the Commission, which shall keep other members of the Commission informed and present a report on the situation at the next session of the Commission.

Rule 80: Action on matters of emergency

1. When the Commission has decided to treat a situation as one of emergency, it shall:
 - (a) Draw the attention of the Chairperson of the Assembly of Heads of State and Government of the African Union to the matter in accordance with article 58(3) of the Charter;

- (b) Draw the attention of the Peace and Security Council to the matter in accordance with article 19 of the Protocol on Peace and Security Council;
 - (c) Inform the Executive Council;
 - (d) Inform the Chairperson of the African Union Commission of the matter.
2. The Commission as well as its subsidiary mechanisms under the Charter and present Rules, shall also take any appropriate action, including Urgent Appeals.

CHAPTER II: PROTECTION MISSIONS

Rule 81: General provisions

1. If it deems it necessary and advisable, the Commission may carry out a protection mission to a State Party.
2. States Parties shall provide the Commission with an open invitation for protection missions and respond promptly to any request by the Commission for authorisation to undertake a protection mission.
3. Any protection mission agreed upon between the Commission and a State Party shall be conducted in accordance with the Commission's Guidelines for Missions.
4. The expenses incurred by a mission undertaken at the request of any AU organ shall be borne by such organ.

Rule 82: State Party's obligations

During a protection mission of the Commission the State Party concerned shall:

- (a) Commit itself not to take any kind of reprisal against any persons or entities who provide the mission with information, testimony or evidence;
- (b) Guarantee the free movement of the members of the mission throughout the territory of the country, in this regard, provide corresponding facilities, including any necessary internal authorisation;
- (c) Provide the mission of the Commission with any document that the latter may consider necessary for the preparation of its reports;
- (d) Take necessary security measures to protect members of the delegation and also to guarantee the smooth running of the mission.

CHAPTER III: CONSIDERATION OF COMMUNICATIONS

SECTION 1: GENERAL PROVISIONS

Rule 83: Records of communications under articles 47, 48, 49 and 55 of the Charter

1. The Commission shall receive or note as the case may be, Communications or notifications under articles 47, 48, 49 and 55 of the Charter.
2. The Secretary shall maintain a record of each Communication, with a reference number, the names of the parties, the date of registration or notification, and the date of decision or closure of each Communication.

Rule 84: Situation of serious or massive violation of human rights

1. When the Commission considers that one or more Communications relate to a series of serious or massive human rights violations, it shall bring the matter to the attention of the Assembly of Heads of State and Government of the African Union and the Peace and Security Council of the African Union.
2. The Commission may also, in conformity with article 5 of the African Court Protocol and Rule 118(3) of the present Rules of Procedure, refer the matter to the African Court.

Rule 85: Other interventions

The Commission may decide to solicit or accept interventions by parties other than the Complainant and the Respondent State that it considers could provide it with information relevant to making a decision on a Communication.

SECTION 2: CONSIDERATION OF COMMUNICATIONS RECEIVED IN CONFORMITY WITH ARTICLE 47 OF THE CHARTER: COMMUNICATIONS – NEGOTIATIONS OF STATES PARTIES

Rule 86: Submission of a communication

1. A Communication under article 47 of the Charter shall be submitted to the Chairperson, through the Secretary of the Commission.
2. The Communication referred to above shall be in writing and shall contain a comprehensive statement of the facts as well as the provisions of the African Charter alleged to have been violated.

3. Notification of the Communication to the State Party concerned, the Chairperson of the African Union Commission and the Chairperson of the Commission shall be done through the most practical and reliable means.
4. The Secretary to the Commission shall, on behalf of the Chairperson, acknowledge receipt, by Note Verbale, receipt of the Communication and request the parties to keep the Commission informed of developments which could arise within the framework of ongoing negotiations.

SECTION 3: CONSIDERATION OF COMMUNICATIONS RECEIVED UNDER ARTICLES 48 & 49 OF THE CHARTER: COMMUNICATIONS – COMPLAINTS OF STATES PARTIES

Rule 87: Seizure of the Commission

1. Any Communication under articles 48 and 49 of the Charter may be submitted to the Chairperson of the Commission through the Secretary by an interested State Party.
2. The Communication shall contain information on the following or be accompanied particularly by:
 - (a) Measures taken to resolve the issue pursuant to article 47 of the African Charter including the text of the initial communication and any subsequent written explanation from the interested States Parties relating to the issue;
 - (b) Measures taken to exhaust regional or international procedures of settlement or good offices;
 - (c) Any other procedure of international investigation or international settlement to which the interested States Parties have resorted.

Rule 88: Consideration of the communication

1. Where, pursuant to articles 48 and 49 of the African Charter, a Communication is brought before the Commission by a State Party, the Chairperson of the Commission, through the Secretary, shall give notice of such Communication to the State Party against which the complaint is made and shall invite it to submit to the Commission its observations in writing on the admissibility of the Communication within ninety (90) days. The observations so obtained in writing shall be immediately communicated to the complaining State Party, which shall respond within ninety (90) days of receipt of the observations.
2. The Commission shall designate one or more of its members as Rapporteur for the Communication.

3. Rapporteurs, through the Secretary, may:
 - (a) Request relevant information on matters connected with the Communication from the States Parties concerned. Such information shall be provided by both parties within ninety (90) days of receipt of such request;
 - (b) Transmit any information obtained from one party to the other for comments. The parties shall be given ninety (90) days to respond to the observations made by the other party.
4. Prior to the session at which the Communication is to be considered, the Rapporteurs shall prepare a report on the admissibility of the Communication. Such report shall contain:
 - (a) The relevant facts, including any information or comments obtained under paragraph 3 of this Rule;
 - (b) The provision(s) of the African Charter alleged to have been violated in the Communication;
 - (c) A recommendation on admissibility and on any other action to be taken, as the case may require.
5. Before deciding upon the admissibility of the Communication, the Commission may invite the parties to submit further observations in writing and shall fix a time limit of ninety (90) days for the submission of these observations. The written observations or information shall be transmitted to the opposing party.
6. The Commission may also allow the parties to make additional observations orally.

Rule 89: Decision on admissibility

1. The Commission shall consider the report of the Rapporteurs, decide on the admissibility of the Communication, and shall inform the parties accordingly.
2. The Commission shall give reasons for its decision on admissibility.

Rule 90: Amicable settlement

1. When the Commission declares that a Communication is admissible, it shall place its good offices at the disposal of the interested States Parties with the objective of reaching an amicable settlement under the terms of the African Charter.
2. For the purpose of the Commission's good offices, the Bureau of the Commission shall establish contact with the relevant authorities of the States Parties.
3. The Bureau shall report its findings and recommendations to the Commission at the Commission's next session.

4. The Commission shall thereafter decide on the appropriate action to take, which may include the following:
 - (a) Appointing a Rapporteur;
 - (b) Convening, in consultation with the States Parties concerned, meetings with the aim of achieving an amicable settlement of the dispute;
 - (c) Facilitating the drafting of a Memorandum of Understanding, when the parties accept the principle of an amicable settlement, containing the terms of settlement being proposed having regard to the progress made.
5. In the case of acceptance of the draft Memorandum of Understanding, the States Parties concerned shall sign the agreement under the auspices of the Commission.
6. The Rapporteur shall then prepare a draft report, which shall be submitted to the Commission for adoption at its next session.
7. When adopted, the report shall be sent to the States Parties concerned and communicated to the Assembly.
8. The Commission, through the Rapporteur shall then follow-up on monitoring the implementation of the terms of the agreement and report on the said implementation to each subsequent Ordinary Session of the Commission until the settlement is concluded. Such a report shall form part of the Activity Report of the Commission to the Assembly

Rule 91: Failure to settle the dispute amicably

1. If the amicable settlement of the dispute fails, the Commission shall request the States Parties concerned to provide, within a period of thirty (30) days, their written submissions.
2. The Commission shall communicate any information obtained from one party to the other for comments. The States Parties concerned shall be given thirty (30) days to respond.
3. The Rapporteur shall prepare a report containing the facts, findings and recommendations for consideration by the Commission.
4. Before adopting the report of the Rapporteur, the Commission may convene a hearing at which it may allow the parties to make additional oral observations.

Rule 92: Decision of the Commission

1. Within twelve months of receipt of a Communication, the Commission shall adopt a decision, prepare a report and make recommendations, pursuant to article 53 of the African Charter following the notification referred to in article 48 of the African Charter and the present Rules of Procedure.

2. The report of the Commission on the Communication shall be communicated to the States Parties concerned through the Secretary.
3. The report of the Commission on the communication shall be submitted as part of the Commission's Activity Report to the Assembly.

SECTION 4: CONSIDERATION OF COMMUNICATIONS RECEIVED IN CONFORMITY WITH ARTICLE 55 OF THE AFRICAN CHARTER: OTHER COMMUNICATIONS

SUB-SECTION 1: GENERAL PROVISIONS

Rule 93: Seizure of the Commission

1. A Communication submitted under article 55 of the African Charter may be addressed to the Chairperson of the Commission through the Secretary by any natural or legal person.
2. The Secretary shall ensure that Communications addressed to the Commission contain the following information:
 - (a) The name, nationality and signature of the person or persons filing it; or in cases where the Complainant is a non-governmental entity, the name and signature of its legal representative(s);
 - (b) Whether the Complainant wishes that his or her identity be withheld from the State;
 - (c) The address for receiving correspondence from the Commission and, if available, a telephone number, facsimile number, and email address;
 - (d) An account of the act or situation complained of, specifying the place, date and nature of the alleged violations;
 - (e) The name of the victim, in a case where he or she is not the Complainant;
 - (f) Any public authority that has taken cognisance of the fact or situation alleged;
 - (g) The name of the State(s) alleged to be responsible for the violation of the African Charter, even if no specific reference is made to the article(s) alleged to have been violated;
 - (h) Compliance with the period prescribed in the African Charter for submission of the Communication;
 - (i) Any steps taken to exhaust domestic remedies, or if the applicant alleges the impossibility or unavailability of domestic remedies, the grounds in support of such allegation; and

- (j) An indication that the complaint has not been submitted to another international settlement proceeding as provided in article 56(7) of the African Charter.
- 3. In cases where the victim has not asked for anonymity and is represented by an NGO or other agent, the victim shall be the Complainant of record and the fact of representation or agency shall be recognized.
- 4. Where a Communication does not contain some of the documents and information listed in paragraph 2 of the present Rule, the Secretary shall request the Complainant to furnish the same.
- 5. When the Secretary is satisfied that all necessary information has been furnished, it shall transmit the file to the Commission which shall make a decision on seizure on the Communication.

Rule 94: Representation

- 1. States Parties shall be represented before the Commission by their representatives.
- 2. Natural or legal persons may either appear in person or be represented by their appointed representative before the Commission.

Rule 95: Order of consideration of communications

Unless otherwise decided, the Commission shall consider Communications in the order in which they have been received by the Secretary.

Rule 96: Joinder and disjoinder of communications

- 1. If two or more Communications against the same State Party address similar facts, or reveal the same pattern of violation of rights, the Commission may join them and consider them together as a single Communication.
- 2. Notwithstanding paragraph 1 of the present Rule, the Commission may decide not to join the Communications if it is of the opinion that the joinder will not serve the interest of justice.
- 3. Where in accordance with paragraph 1 of the present Rule, the Commission decides to join two or more Communications, it may subsequently, where it deems appropriate, decide to disjoin the Communications.

Rule 97: Working groups and rapporteurs on communications

- 1. The Commission shall appoint a Rapporteur for each Communication from among its members.
- 2. The Commission may also establish one or more working groups

to consider questions of seizure, admissibility and the merits of any Communication(s) and to make recommendations to the Commission.

3. The Commission shall consider the recommendations of the Rapporteur(s) and/or the Working Group(s) and make a decision.

Rule 98: Provisional measures

1. At any time after the receipt of a Communication and before a determination on the merits, the Commission may, on its initiative or at the request of a party to the Communication, request that the State concerned adopt Provisional Measures to prevent irreparable harm to the victim or victims of the alleged violation as urgently as the situation demands.
2. If the Commission is not in session at the time that a request for Provisional Measures is received, the Chairperson, or in his or her absence, the Vice-Chairperson, shall take the decision on the Commission's behalf and shall so inform members of the Commission;
3. After the request for Provisional Measures has been transmitted to the State Party, the Commission shall send a copy of the letter requesting Provisional Measures to the victim, the Assembly, the Peace and Security Council, and the African Union Commission.
4. The Commission shall request the State Party concerned to report back on the implementation of the Provisional Measures requested. Such information shall be submitted within fifteen (15) days of the receipt of the request for Provisional Measures;
5. The granting of such measures and their adoption by the State Party concerned shall not constitute a prejudgment on the merits of a Communication.

Rule 99: Procedure for hearings on communications

1. At the initiative of the Commission or at the request of one of the parties, a hearing may be held on a Communication.
2. During hearings, the Commission shall permit oral presentations by the parties on new or additional facts or arguments or in answer to any questions that it may have concerning all issues relating to the Communication.
3. During a hearing on a Communication or at any stage prior to the conclusion of the matter, the following may be considered:
 - (a) The verification of the facts;
 - (b) Initiation of a friendly settlement;

- (c) Consideration on the merits; or
- (d) Any other matter pertinent to the Communication.
- 4. A party requesting a hearing, shall do so at least ninety (90) days before the beginning of the session in which the Communication is going to be considered.
- 5. The Rapporteur of the Communication, in consultation with the Bureau of the Commission, shall decide upon the request.
- 6. The Secretary shall inform both parties of the decision on the granting of a hearing within 15 days of the decision referred to under paragraph 5 of the present Rule.
- 7. If the request for a hearing is accepted, the notification of the hearing shall include the dates and venue of the session, and period of the session during which the hearing is likely to take place.
- 8. Hearings on Communications before the Commission shall be held in camera. Unless the Commission decides otherwise, no person shall be admitted, other than:
 - (a) The parties to the Communication or the representatives duly mandated;
 - (b) Any person being heard by the Commission as a witness or as an expert;
 - (c) The persons referred to in Rule 33(2) or any person whom the Commission may decide to invite under article 46 of the African Charter.
- 9. When it considers it in the interest of the proper conduct of a hearing, the Commission may limit the number of parties' representatives or advisers who may appear.
- 10. The parties shall inform the Commission at least ten days before the date of the opening of the hearing of the names and functions of the persons who will appear on their behalf at the hearing.
- 11. The Chairperson or his or her representative shall preside over the hearing, and shall verify the identity of any persons before he/she is heard.
- 12. Any member of the Commission may put questions to the parties or to the persons heard with the permission of the Chairperson.
- 13. Parties to the communication or their representatives may, with the permission of the Chairperson, put questions to any person heard.
- 14. The Secretary is responsible for the production of verbatim records of hearings before the Commission. Such records are internal working documents of the Commission. If a party to the communication so requests, the Commission shall provide a copy of such records unless, in the view of the Commission, doing so could create a danger to persons heard.
- 15. The State Party to the Communication shall make an undertaking not

to victimise or to take any reprisals against the Complainant and/or any person representing them or their family members, or witnesses because of their statements before the Commission.

16. The Commission may receive *amicus curiae* brief on communication. During the hearing of a Communication in which *amicus curiae* brief has been filed, the Commission, where necessary shall permit the author of the brief or the representative to address the Commission.

Rule 100: Witnesses and experts

1. The Commission shall determine, at its own initiative, or at the request of one of the parties, when to call independent experts and witnesses of the parties to the Communication whom it considers necessary to hear in a given case. A request to call a witness by one of the parties shall not be rejected unless the Commission has good reasons to believe that such a request constitutes an abuse of process. The invitation to the hearing shall indicate:
 - (a) The parties to the Communication;
 - (b) A summary of the facts or issues in relation to which the Commission desires to hear the witness or expert.
2. Any such person may, if they do not have sufficient knowledge of the working languages of the Commission, be authorised by the Chairperson to speak in any other language to be interpreted in one of the Working Languages of the Commission.
3. After establishing the identity of the witnesses or experts the Chairperson of the Commission shall request them to take the following oath:
 - (a) For witnesses '*I swear/affirm that I will speak the truth, the whole truth and nothing but the truth.*'
 - (b) For the experts '*I swear/affirm that my statement will be in accordance with my knowledge, findings and sincere belief.*'
4. The State Party to the communication shall give an undertaking not to victimise or persecute the witnesses or experts, or carry out reprisals against them or their family members because of their statements or expert opinions given before the Commission.

Rule 101: Inability of a member of the Commission to take part in the examination of a communication

1. A member of the Commission shall not be present and take part in the consideration of a Communication if he or she:
 - (a) Is a national of the State Party concerned;

- (b) Has any personal interest in the case;
 - (c) Is engaged in any political or administrative activity or any professional activity that is incompatible with his or her independence or impartiality;
 - (d) Has participated in any capacity in any decision at the national level in relation to the Communication; or
 - (e) Has expressed publicly opinions that might be interpreted as reflecting lack of impartiality with respect to the Communication.
2. Any question that may arise under paragraph 1 above shall be decided by the Commission without the participation of the member concerned.

Rule 102: Withdrawal of a member

If, for any reason, a Member of the Commission considers that he or she should not take part or continue to take part in the consideration of a Communication, he or she shall inform the Chairperson of his or her decision to withdraw.

Rule 103: Preliminary objection

1. A party who intends to raise a preliminary objection at the stage of admissibility or before the Commission takes a decision on the merits of the Communication, shall do so not later than thirty (30) days after receiving notification to submit on admissibility or on the merits. The Commission shall communicate the objection to the other party within fifteen (15) days.
2. A party who intends to respond to a preliminary objection raised by the other party shall submit a written response not later than thirty (30) days after the Secretary to the Commission has transmitted the objection to that party.
3. If no response to a preliminary objection is received within the stipulated period, the Commission shall proceed with the consideration of the preliminary objection on the basis of the available information.
4. When the Commission receives a preliminary objection, it shall first of all determine this objection before any other question relating to the Communication.

Rule 104: Legal aid

1. The Commission may, either at the request of the author of the communication or at its own initiative, facilitate access to free legal aid to the author in connection with the representation of the case;
2. Free legal aid shall only be facilitated where the Commission is convinced:

- (a) That it is essential for the proper discharge of the Commission's duties, and to ensure equality of the parties before it; and
 - (b) The author of the Communication has no sufficient means to meet all or part of the costs involved;
3. In case of urgency or when the Commission is not in session, its Chairperson may exercise the powers conferred on the Commission by this Rule. As soon as the Commission is in session, any action that has been taken under this paragraph shall be brought to its attention for confirmation.

SUB-SECTION 2: PROCEDURE ON ADMISSIBILITY

Rule 105: Submissions of observations

1. When the Commission has decided to be seized of a Communication pursuant to the present Rules, it shall promptly transmit a copy of the complaint to the Respondent State. It shall simultaneously inform the Complainant of the decision on seizure, and request the Complainant to present evidence and arguments on admissibility within two months.
2. Upon receipt of the Complainant's observations on admissibility, the Secretary shall transmit a copy to the respondent state and request the latter to make a written submission, containing its arguments and evidence on admissibility, within two months of its receipt of the Commission's request. The Secretariat shall, within a week of receipt of the state's submission, provide the Complainant with a copy.
3. Upon receiving the observations of the Respondent State on Admissibility, the Complainant may comment on the observations within one month of receipt.
4. In conformity with Rule 88(6), the Commission, while determining Admissibility may ask the parties to present supplementary observations in an oral hearing.

Rule 106: Admissibility of communications

The Communication shall comply with the requirements of Admissibility under article 56 of the Charter which are cumulative.

Rule 107: Decision on admissibility

1. Once it has considered the positions of the parties, the Commission shall make a decision on the admissibility of the Communication and the Secretary shall inform the parties accordingly.

2. Once a Communication has been declared admissible, the Commission shall inform the parties and defer the Communication to the next session for consideration on the merits.
3. The Commission's decisions on the inadmissibility of Communications shall be notified to the parties and attached to its Activity Report.
4. If the Commission has declared a Communication inadmissible this decision may be reviewed at a later date, upon the submission of new evidence, contained in a written request to the Commission by the author.

SUB-SECTION 3: PROCEDURE FOR THE CONSIDERATION OF COMMUNICATIONS ON THE MERITS

Rule 108: Proceedings

1. Once a Communication has been declared admissible, the Commission shall set a period of sixty (60) days for the Complainant to submit observations on the merits. These observations shall be transmitted to the State Party concerned for the submission of its observations within sixty (60) days;
2. Any written statements submitted by the State Party concerned shall be communicated, through the Secretary, to the Complainant, who may submit any additional written information or observations within thirty (30) days. This time limit cannot be extended.

Rule 109: Amicable settlement

1. At any stage of the examination of a Communication, the Commission, on its own initiative or at the request of any of the parties concerned, may offer its good offices for an amicable settlement between the parties.
2. The amicable settlement procedure shall be initiated, and may only continue, with the consent of the parties.
3. If it deems it necessary, the Commission may entrust to one or more of its members the task of facilitating negotiations between the parties.
4. The Commission may terminate its intervention in the amicable settlement procedure at the request of one or both parties, within a period of six months, renewable once, when an amicable settlement is not reached.
5. When the Commission receives information from parties that an amicable settlement has been reached, the Commission shall ensure that such amicable settlement:

- (a) Complies with or respects the human rights and fundamental freedoms enshrined in the African Charter and other applicable instruments;
 - (b) Indicates that the victim of the alleged human rights violation or, his/her successors, as the case may be, have consented to the terms of the settlement and are satisfied with the conditions;
 - (c) Includes an undertaking by the parties to implement the terms of the settlement.
- 6. When the Commission is satisfied that the requirements of paragraph 5 have been complied with, it shall prepare a report which shall contain:
 - (a) A brief statement of the facts;
 - (b) An explanation of the settlement reached;
 - (c) Recommendations by the Commission for steps to be taken by the parties to ensure the maintenance of the settlement;
 - (d) Steps to be taken by the Commission to monitor the parties' compliance with the terms of the settlement.
- 7. If the terms of the amicable settlement are not implemented within six months, or when the terms do not comply with the requirements under paragraph 5 of the present Rule the Commission shall at the request of the Complainant continue to process the Communication in accordance with the relevant provisions of the Charter and the relevant Rules in the present Rules.

Rule 110: Decision on the merits

- 1. The Commission, after deliberation on the submissions of both parties, shall adopt a decision on the merits of the Communication.
- 2. The Commission shall deliberate on Communications in private, and all aspects of the discussions shall be confidential.
- 3. The decision of the Commission shall be signed by the Chairperson and the Secretary, shall remain confidential and shall not be transmitted to the parties until its publication is authorized by the Assembly.
- 4. The decision of the Commission shall be posted on the Commission's website after its publication is authorized by the Assembly.

Rule 111: Review of the decision of the Commission on the merits

- 1. Once the Commission has taken a decision on the merits, it may, on its own initiative or upon the written request of one of the parties, review the decision.
- 2. In determining whether to review its decision on the merits, the

Commission shall satisfy itself of the following:

- (a) That the request is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was not known to the Commission and the party requesting the review, provided that such ignorance was not due to negligence;
 - (b) That the application for review is made within six months of the discovery of the new fact;
 - (c) Any other compelling reason or situation that the Commission may deem appropriate or relevant to justify review of a Communication, with a view to ensure fairness, justice and respect for human and peoples' rights.
3. No application for review may be made after three years from the date of the decision.

Rule 112: Follow-up on the recommendations of the Commission

1. After the consideration of the Commission's Activity Report by the Assembly, the Secretary shall notify the parties within thirty (30) days that they may disseminate the decision.
2. In the event of a decision against a State Party, the parties shall inform the Commission in writing, within one hundred and eighty (180) days of being informed of the decision in accordance with paragraph one, of all measures, if any, taken or being taken by the State Party to implement the decision of the Commission.
3. Within ninety (90) days of receipt of the State's written response, the Commission may invite the State concerned to submit further information on the measures it has taken in response to its decision.
4. If no response is received from the State, the Commission may send a reminder to the State Party concerned to submit its information within ninety (90) days from the date of the reminder.
5. The Rapporteur for the Communication, or any other member of the Commission designated for this purpose, shall monitor the measures taken by the State Party to give effect to the Commission's recommendations on each Communication.
6. The Rapporteur may make such contacts and take such action as may be appropriate to fulfill his/her assignment including recommendations for further action by the Commission as may be necessary.
7. At each Ordinary Session, the Rapporteur shall present the report during the Public Session on the implementation of the Commission's recommendations.
8. The Commission shall draw the attention of the Sub-Committee of the

Permanent Representatives Committee and the Executive Council on the Implementation of the Decisions of the African Union, to any situations of non-compliance with the Commission's decisions.

9. The Commission shall include information on any follow-up activities in its Activity Report.

Rule 113: Extension of time

1. Subject to the provisions of Rule 111, when a deadline is fixed for a particular submission, either party may apply to the Commission for extension of the period stipulated.
2. The Commission may grant an extension which shall not exceed one (1) month, and shall not grant more than one extension per party for any given submission.

PART 4: RELATIONSHIP WITH THE AFRICAN COURT

CHAPTER I: GENERAL PROVISIONS

Rule 114: Complementarity with the African Court

1. Pursuant to article 2 of the Protocol, the Court shall complement the protective mandate of the Commission as provided for in articles 30 and 45 (2) of the African Charter.
2. The complementarity relationship between the Commission and the Court is set out and organized by articles 5, 6(1), 6(3), 8 and 33 of the Protocol.

Rule 115: Consultations with the Court

1. In pursuance of article 2 of the Protocol, the Commission shall meet with the Court at least once a year and whenever necessary to ensure good working relationship between the two institutions.
2. The Bureau of the Commission may meet the Bureau of the Court as often as necessary to undertake any functions assigned to them by the two institutions.
3. The conclusions of the meetings of the Bureaus shall be considered and if adopted by the Commission, shall be included in the Activity Report.
4. The Commission shall consult with the Court before the modification of any of its Rules relating to their relationship.

Rule 116: Interpretation of the Charter by the Commission

1. If the Commission is requested to interpret the Charter under article 45(3), it shall immediately inform the President of the Court.
2. A copy of the interpretation of the Charter by the Commission shall be sent to the President of the Court as soon as it is adopted.

Rule 117: Advisory Opinion

The Commission may request to be heard by the Court upon being notified by the Court of a request for an Advisory Opinion pursuant to article 4(1) of the Protocol.

Rule 118: Seizure of the Court

1. If the Commission has taken a decision with respect to a Communication submitted under articles 48, 49 or 55 of the Charter and the Commission considers that the State has not complied or is unwilling to comply with its recommendations in respect of the Communication within the period stated in Rule 112(2), the Commission may submit the Case to the Court pursuant to article 5(1)(a) of the Protocol and inform the parties accordingly.
2. If the Commission has made a request for Provisional Measures against a State Party in accordance with Rule 98, and considers that the State has not complied with the Provisional Measures requested, the Commission may pursuant to article 5(1)(a) of the Protocol, refer the Case to the Court and inform the Complainant and the State concerned.
3. The Commission may, pursuant to Rule 84(2) submit a case before the Court against a State Party if a situation that, in its view, constitutes one of serious or massive violations of human rights as provided for under article 58 of the African Charter, has come to its attention.
4. The Commission may seize the Court at any stage of the examination of a Communication if it deems necessary.

Rule 119: Admissibility under article 6 of the Protocol

1. Where, pursuant to article 6 of the Protocol, the Commission is requested to give its opinion, on the admissibility of a case pending before the Court or where the Court has transferred a case to the Commission, it shall consider the admissibility of this matter in accordance with article 56 of the Charter and Rules 105, 106 and 107 of the present Rules.
2. Upon conclusion of the examination of the admissibility of the case referred to it under article 6 of the Protocol, the Commission shall

immediately transmit its opinion or its decision on the admissibility to the Court.

Rule 120: Representation of the Commission before the Court

When the Commission decides to submit a case to the Court, pursuant to article 5(1)(a) of the Protocol and Rule 118, it may appoint one or more Commissioners to represent it before the Court. The Commissioner(s) so designated shall be assisted by one or more Legal Officer(s) of the Commission's Secretariat

Rule 121: Content of the application and file to the Court

1. When, in pursuance of article 5(1)(a) of the Protocol and Rule 120 of the present Rules, the Commission decides to bring a case before the Court, it shall submit an application seizing the Court in accordance with the Court Rules, accompanied by a summary of the case and the case file.
2. The summary shall include the names of the representatives of the Commission, the facts of the case and all the relevant provisions of the African Charter which have been violated.
3. Where necessary, the summary shall include
 - (a) The date on which the Commission adopted its decision, or adopted and sent the request for Provisional Measures;
 - (b) The facts which reveal serious or massive violations;
 - (c) The date on which the decision of the Commission was transmitted to the State Party concerned;
 - (d) Information relating to the deadline stipulated under Rule 113 of the present rules ; and
 - (e) The parties to the proceedings before the Commission, if applicable.
4. The case file along with the summary to be transmitted to the Court shall contain all the evidence, documents or information concerning the Communication including documents relating to any attempts to secure a friendly settlement, and the Commission's decision.

Rule 122: Transmission of cases to the Court and notification of the parties

1. The Secretary of the Commission shall transmit to the Court the application signed by the Chairperson, the certified copy of the case file and the summary referred to in Rule 121 of the present rules in conformity with the Rules of Procedure of the Court. At the request of the Court, the Commission shall transmit the original of the case file.

2. The Secretary shall also immediately notify the Parties who were before the Commission about the referral of the case to the Court and shall transmit copies of the case file and the summary thereof.

Rule 123: Lis pendens

The Commission shall not consider any Communication relating to a case still pending before the Court, unless the case has been formally withdrawn.

**PART 5: RELATIONSHIP WITH OTHER AFRICAN UNION
ORGANS, INSTITUTIONS, AND PROGRAMMES**

Rule 124: General rule

1. The Commission, in fulfilling its mandate, shall establish formal relations of cooperation, including meetings as necessary, with all African Union organs, and institutions and programmes that have a human rights element in their mandate.
2. The Bureau of the Commission may, in addition, meet with the bureaux of these organs, institutions and programmes as often as may be required to ensure their good working relationship.

Rule 125: Relationship with the policy organs of the African Union

1. When submitting its Activity Report in accordance with article 54 of the African Charter, the Commission may request the Assembly to take necessary measures to implement its decisions.
2. The Commission shall bring all its recommendations to the attention of the Sub-Committee on the Implementation of the Decisions of the African Union of the Permanent Representatives Committee.

Rule 126: Cooperation with the African Union Commission

1. Prior to the appointment of the Secretary or any staff member of the Commission's Secretariat, the African Union Commission shall consult with the Bureau of the Commission.
2. After transmitting the report on the evaluation of the performance of the Secretary in accordance with Rule 13(3) and 14(2)(c) of the present Rule of Procedure, the Chairperson of the African Union Commission may invite the Bureau of the African Commission for discussion.

PART 6: FINAL PROVISIONS

Rule 127: Interpretation

In conformity with article 45(3) of the Charter, the Commission shall interpret the Charter.

Rule 128: Amendment of the Rules of Procedure

The present Rules of Procedure may be amended by the Commission.

Rule 129: Transitional provisions

Upon the entry into force of the Protocol on the Statute of the African Court of Justice and Human Rights, all references in the present Rules to provisions of the African Court Protocol or the African Court shall be deemed, where applicable, to refer to the relevant provisions of the Protocol on the Statute of the African Court of Justice and Human Rights or to the African Court of Justice and Human Rights, respectively.

Rule 130: Non-retroactivity

The present Rules of Procedure shall not have any retrospective effect.

Rule 131: Suspension

The Commission may suspend temporarily, the application of any Rule of the present Rules of Procedure, on condition that such a suspension shall not be incompatible with any applicable decision of the Commission or the Assembly or with any relevant provision of the Charter and that the proposal shall have been submitted 24 hours in advance.

Rule 132: Entry into force of the Rules of Procedure

The present Rules of Procedure shall enter into force three months after their adoption by a simple majority of members of the Commission present and voting at a session where the Rules are scheduled to be adopted.

Rules of Procedure of the African Commission on Human and Peoples' Rights (2020)

(entered into force 2 June 2020)

The Rules were adopted at the 27th Extraordinary Session of the Commission held from 19 February to 4 March, 2020, pursuant to Article 42(2) of the African Charter on Human and Peoples' Rights (African Charter). They came into force on 2 June, 2020, in accordance with the provisions of Article 145 of the Charter.

The adoption of the Rules of Procedure 2020 follows the review by the Commission of its previous Rules of Procedure, which were adopted at the 47th Ordinary Session, in May 2010 (Rules 2010). Following the development of the Draft Rules of Procedure under Resolution 328, the Commission had urged all stakeholders, including States Parties to the African Charter, relevant Organs of the African Union, National Human Rights Institutions and Civil Society Organisations, to make further contributions to the revised draft Rules of Procedure, as approved by its 25th Extraordinary Session held in Banjul, The Gambia, from 19 February to 5 March 2019. The proposals received have enriched the Rules. Furthermore, the input of several actors was taken into account during various forums that the Commission organized on the African continent, including the public sessions of the Commission as well as the regional seminars in Dakar and Zan-zibar that brought together representatives of States Parties to the African Charter, NHRIs and CSOs.

The changes introduced:

1. The Rules of Procedure 2020 provide, in Rule 3, clarifications on the status and mandate of the Commission to give full effect to Article 45 of the African Charter. This provision underscores the autonomy of the Commission as well as its various powers to interpret the African Charter and its own decisions.
2. Rule 28 provides that the Commission shall hold four (4) Ordinary Sessions per year, which brings the Rules of Procedure in line with current practice. However, this amendment does not prevent the Commission from convening Extraordinary Sessions as well. Secondly, in view of technological developments, the new Rule 27 provides

for the sessions to be made accessible to the public through a live transmission.

3. Rule 63 on the submission of the Activity Report to the Assembly of Heads of State and Government of the African Union provides that the content of the Activity Report shall be determined by the Commission, but that any written concerns raised by States Parties shall be annexed to the Activity Report at the time of its publication.

4. Rule 69 stipulates that the Commission would interact with States Parties through their designated Focal Points.

5. Rule 79 provides that, in addition to Governments, the Concluding Observations on State reports shall be transmitted to NHRIs.

6. Rule 101 provides for investigative measures that may be adopted when examining Communications in order to clarify the facts. In addition to detailed rules on the hearing of experts or witnesses and a provision on site visits, this Article now states that the Commission may request that relevant documentation be made available to it by the person or institution in possession of it. These investigative powers may also be delegated.

7. In Rules 104 and 105, the Rules of Procedure 2020 include new provisions for interventions as *amicus curiae* (volunteer advisor) in the Communications procedure. With regard to individual Communications, Rule 115 establishes a reduced list of elements required to file a Complaint for the purpose of referral, thus eliminating the criteria that were previously duplicated in the Observations on Admissibility. Another amendment to the referral procedure is that the decision on referral is now determined at the Secretariat level, and only cases of doubt will be referred to the Commission. Another significant change in the Communications procedure is that, in accordance with Rule 116, Complainants will be required to submit their observations on the admissibility and merits together within sixty (60) days of receipt of the referral decision. Similarly, the State would have sixty (60) days to reply to the Complainant's submissions on admissibility and merits, after which the Complainant would have the opportunity to submit a rejoinder.

8. Rule 121 provides for the possibility for the Commission to consider separately the issue of remedies and costs after deciding on the merits. The 2020 Rules also introduce in Rule 124 a provision on the

withdrawal, expungement and re-enrolment of Communications, which is consistent with the Commission's current practice.

9. As regards the follow-up of specific measures prescribed in decisions on the merits of Communications, Article 125 now gives NHRIs a role in monitoring their implementation. A new Rule 126 also provides for the possibility of free legal representation for the Complainant or victim.

10. With regard to relations between the Commission and the Court, certain provisions of the Regulation have been amended, in particular in cases where the Commission refers a matter to the Court. Rule 130 simplifies the procedure for referral of cases to the Court by the Commission. Rule 132 provides for the Commission to be represented before the Court and for experts to assist the Commissioner-Rapporteur in the proceedings. The new Rule 137 defines the relationship between the Commission and the African Committee of Experts on the Rights and Welfare of the Child.

Hatem Essaïem

Honorable Commissioner

Chairperson of the Committee for Prevention of Torture in Africa

PART ONE: GENERAL RULES

Chapter I: Preliminary provisions

Rule 1: Objective

1. These rules regulate the organisation and establish the procedure of the African Commission on Human and Peoples' Rights in accordance with article 42(2) of the African Charter on Human and Peoples' Rights.
2. In the absence of a provision in these rules or in case of doubt as to their interpretation, the Commission shall decide.

Rule 2: Definitions

For the purpose of these rules:

'African Charter' or 'Charter' refers to the African Charter on Human and Peoples' Rights.

'African Commission' or 'Commission' refers to the African Commission on Human and Peoples' Rights.

‘African Court Protocol’ refers to the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights.

‘African Court’ refers to the African Court on Human and Peoples’ Rights.

‘Amendment to a proposed motion’ is an addition to, deletion from or revision of part of that motion.

‘Amicus curiae’ refers to a third party having no interest in the outcome of a Communication, and potentially able to assist the Commission in determining a factual or legal issue arising in a Communication.

‘Assembly’ refers to the Assembly of Heads of State and Government of the African Union.

‘Bureau’ refers to the Chairperson and Vice-Chairperson.

‘Chairperson’ refers to the Chairperson of the African Commission on Human and Peoples’ Rights.

‘Commissioner’ refers to a member of the African Commission on Human and Peoples’ Rights.

‘Day’ shall be understood to be a 24-hour day as denoted on the calendar.

‘Executive Council’ refers to the Executive Council of the African Union.

‘Peace and Security Council’ refers to the Peace and Security Council of the African Union as established by the Protocol Relating to the Establishment of the Peace and Security Council of the African Union.

‘Secretary’ refers to the Secretary to the African Commission on Human and Peoples’ Rights.

‘Serious or massive violations’ refers to grave human rights violations as distinguished by their scale and importance.

‘Session’ refers to a statutory meeting of the Commission. This includes ordinary or extraordinary sessions.

‘Specialized Agencies’ refers to specialized agencies put in place by the African Union, the United Nations or any other organisation recognized by the African Union.

‘State party’ refers to an African state that has ratified the African Charter on Human and Peoples’ Rights.

‘Subsidiary mechanism’ refers to any mechanism established in accordance with Rule 25 of these rules.

‘Third party’ refers to any party other than the complainant or respondent.

‘Third party with a direct interest’ refers to any party other than the complainant or respondent who may benefit directly or suffer loss from the outcome of a communication.

'Vice-Chairperson' refers to the Vice-Chairperson of the African Commission.

'Working languages' refers to the working languages of the African Union.

Chapter II: Status and composition

Rule 3: Mandate and status

1. In accordance with articles 30 and 45 of the African Charter, the African Commission is an autonomous treaty organ with the mandate of promoting human and peoples' rights and ensuring the protection of human and peoples' rights in Africa.
2. In accordance with AU Assembly/AU/Dec.200 (XI), the African Commission is an organ of the African Union.
3. In pursuing its mission, the Commission shall be competent to interpret the African Charter, including in response to a request for an advisory opinion pursuant to article 45(3) of the Charter.
4. The Commission shall be competent to interpret its own decisions.
5. The Commission shall lay down its Rules of Procedure pursuant to article 42(2) of the Charter.
6. The Commission shall have the competence to ensure the efficient and technical organisation and operation of the Secretariat.
7. The Commission shall perform any other tasks which the Assembly may entrust to it pursuant to article 45(4) of the Charter.

Rule 4: Composition

1. In conformity with article 31 of the African Charter, the Commission shall consist of eleven (11) members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights, particular consideration being given to persons having legal experience.
2. The members of the Commission shall serve in their personal capacity.

Chapter III: Membership

Rule 5: Term of office

1. Members of the Commission are elected for six years and shall be eligible for re-election in accordance with article 36 of the African Charter.
2. If a member of the Commission is re-elected at the expiry of his or her term of office, or elected to replace a member whose term of office has

expired or will expire, the term of office shall begin from that expiry date.

3. In conformity with article 39(3) of the African Charter, the member of the Commission elected to replace a member whose term has not expired, shall complete the term of his or her predecessor. However, if the remaining term of office is less than six months, there shall be no replacement.

Rule 6: Order of precedence

1. In the discharge of their duties, members of the Commission shall follow the Chairperson and the Vice-Chairperson according to their seniority in office. When there are two or more members of the Commission with equal seniority, precedence shall be given to the oldest.
2. A member of the Commission who is re-elected to a new term of office which is continuous with his or her previous term shall retain his or her precedence.

Rule 7: Functions of members of the Commission

In the implementation of the Commission's mandate as provided for in article 45 of the Charter, the functions of members of the Commission shall include to:

- (a) Attend and participate in sessions and meetings of the Commission;
- (b) Carry out activities for the promotion and protection of human and peoples' rights, including promotion missions, fact-finding missions, information missions and advocacy visits in states parties;
- (c) Participate in the consideration and adoption of Communications and to act as rapporteurs for this purpose as may be decided by the Commission;
- (d) Propose to the Commission studies, research and resolutions on human rights issues on the continent or in a state party;
- (e) Propose General Comments for the clarification, understanding or facilitation of the implementation of a provision of the Charter or its Protocols; and
- (f) Carry out any other tasks assigned to them by the Commission.

Rule 8: Incompatibility

1. The position of member of the Commission is incompatible with any activity that might interfere with the independence or impartiality of such a member or with the demands of his or her office such as being a member of government, a Minister or under-secretary of State, a diplomatic representative, a director of a ministry or one of his or her subordinates, or the legal adviser to a foreign office, holding any other

political function or participating in any activity of such nature as to compromise his or her independence and impartiality.

2. The Commission shall decide by simple majority whether a situation of incompatibility exists pursuant to paragraph 1 and in accordance with articles 31(1), (2) and 39(2) of the African Charter.
3. The Commission, prior to taking a decision, shall hear the member whose activities are claimed to be incompatible.
4. In the case of incompatibility, the Chairperson of the Commission shall inform the Chairperson of the African Union Commission.

Rule 9: Cessation of function

1. If in the unanimous opinion of the other members of the Commission, a member has stopped discharging his or her duties for any reason other than temporary absence, the Chairperson of the Commission shall inform the Chairperson of the African Union Commission, who shall declare the seat vacant.
2. A member of the Commission may resign from his or her position at any time. He or she shall do so through a written notification addressed to the Chairperson of the Commission who shall transmit it to the Chairperson of the African Union Commission.
3. The resignation shall take effect ninety (90) days from the date of submission of the letter of resignation.
4. The Chairperson of the African Union Commission shall upon receipt of the notification, declare the seat vacant. The vacancy shall be effective from the date the resignation takes effect.
5. In the case of death of a member of the Commission, the Chairperson shall immediately inform the Chairperson of the African Union Commission who shall declare the seat vacant from the date of the death.
6. Every seat declared vacant in conformity with the present rule shall be filled in accordance with article 39(3) of the African Charter.

Rule 10: Solemn declaration

In conformity with article 38 of the African Charter, before assuming office, every member of the Commission shall make the following solemn declaration at a public sitting of the Commission: 'I solemnly undertake to carry out my duties well and faithfully in all impartiality.'

Rule 11: Code of conduct

1. Without prejudice to the independence of the Commission, members

of the Commission shall observe the principles and codes of conduct stipulated in these rules as governing the terms and conditions of their service including the principles relating to recusal and confidentiality, as well as relevant provisions of the African Union Staff Rules and Regulations, the African Union Code of Ethics and Conduct and the African Union Harassment Policy.

2. In case of a conflict, the specific rules as applicable under these rules shall take precedence.

Rule 12: Diplomatic immunities

Members of the Commission shall in the discharge of their duties, enjoy diplomatic privileges and immunities in accordance with article 43 of the African Charter.

Chapter IV: Bureau of the Commission

Rule 13: Composition of the Bureau

The Bureau of the Commission shall be composed of a Chairperson and a Vice-Chairperson who shall perform the functions set forth in the African Charter and in these Rules of Procedure.

Rule 14: Election of the Bureau

1. The Commission shall elect from among its members a Chairperson and a Vice-Chairperson.
2. Election shall be held by secret ballot. Only members present shall vote. A member who obtains a simple majority of the votes of the members of the Commission present and voting shall be elected.

Rule 15: Duration of the term of the members of the Bureau

The Bureau of the Commission shall be elected for a period of two years. Members shall be eligible for re-election only once.

Rule 16: Powers and functions of the Bureau

1. The Bureau shall coordinate the promotion and protection activities of the members of the Commission.
2. The Bureau shall supervise the work of the Secretary.
3. The Bureau shall annually evaluate the performance of the Secretary in consultation with the other members of the Commission.

Rule 17: Functions of the Chairperson

1. The Chairperson shall carry out the functions assigned to him or her by the Charter, the Rules of Procedure and the decisions of the Commission and the Assembly. In the exercise of his or her functions the Chairperson shall be under the authority of the Commission.
2. The Chairperson shall:
 - (a) Represent and direct the work of the Commission;
 - (b) Preside over the meetings of the Commission;
 - (c) Submit the evaluation report referred to in rule 16(2) to the Chairperson of the African Union Commission;
 - (d) Supervise the preparation of the budget by the Secretary and its adoption by the Commission;
 - (e) Present and defend the budget before the relevant African Union bodies;
 - (f) Present a report to the Assembly and to the Commission on the activities carried out during the intersession;
 - (g) Perform any other functions that may be conferred upon him or her in the Rules of Procedure or other tasks entrusted to him or her by the Commission or the Assembly; and
 - (h) Delegate, when necessary, to the Vice-Chairperson or, if the Vice-Chairperson is not available, to another Commissioner, the abovementioned functions.
3. After transmitting the report on the evaluation of the performance of the Secretary in accordance with rule 16(2) and 17(2) (c)) the Chairperson may request the Chairperson of the African Union Commission to invite the Bureau of the African Commission for consultations.

Rule 18: Functions of the Vice-Chairperson

1. If the Chairperson is temporarily unable to perform his or her functions, the Vice-Chairperson, shall perform the duties of the Chairperson.
2. The Vice-Chairperson, acting in the capacity of the Chairperson, has the same functions as the Chairperson.
3. The Vice-Chairperson shall perform any other function delegated to him or her by the Commission or the Chairperson of the Commission.
4. If both the Chairperson and the Vice-Chairperson are unable to carry out their functions at the same time, the duties of the Chairperson shall be carried out by another Commissioner according to the order of precedence laid down in rule 6.

Rule 19: Resignation, vacancy and replacement

If a member of the Bureau of the Commission resigns from his or her position

or ceases to be a member of the Commission, the remaining member shall represent the Bureau until the next session, when the Commission shall fill the position for the remainder of the term of office.

Chapter V: Secretariat of the Commission

Rule 20: Composition, structure and status of the Secretariat

1. Without prejudice to article 41 of the African Charter, the Commission shall seek the African Union's approval of the organisational structure of its Secretariat, specifying the staff and services necessary for the effective discharge of the Commission's duties.
2. The Secretariat of the Commission is composed of the Secretary and the Commission's professional, technical and administrative staff.
3. The Secretary shall be appointed by the Chairperson of the African Union Commission pursuant to article 41 of the African Charter and in consultation with the Chairperson of the African Commission.
4. The Bureau of the Commission shall consult the African Union Commission prior to the appointment of any other staff of the Commission's Secretariat.
5. The status of the Secretary and the staff is governed by the African Union Staff Rules and Regulations as well as by the present Rules of Procedure in so far as applicable.

Rule 21: Functions of the Secretary to the Commission

The Secretary of the Commission shall be responsible for the activities of the Secretariat under the supervision of the Chairperson. The Secretary shall specifically:

- (a) Assist the Chairperson, the Bureau of the Commission and other members of the Commission in the exercise of their functions;
- (b) Supervise and co-ordinate the work of the staff of the Secretariat;
- (c) Maintain the archives of the Commission, which must be properly organized for easy reference;
- (d) Ensure confidentiality of the Commission's records where appropriate;
- (e) Submit to the Chairperson and the members of the Commission all items that will be considered by the Commission;
- (f) Prepare:
 - (i) A draft agenda for each session;
 - (ii) The Commission's strategic plan, annual work plan and annual budget;

- (iii) Guidelines and any other documents proposed for adoption by the Commission;
- (h) Present a written report to the Commission at the beginning of each session on the activities of the Secretariat since the preceding session;
- (i) Implement the decisions entrusted to him or her by the Commission or the Bureau;
- (j) Make available to the general public documents which are not confidential, including State Reports, by ensuring that they are posted on the website of the Commission;
- (k) Ensure the maintenance and regular updating of the website of the Commission;
- (l) Evaluate the performance of the staff of the Commission; and
- (m) Carry out any other functions assigned to the Secretary.

Rule 22: Financial responsibility and rules

In accordance with articles 41 and 44 of the Charter, and without prejudice to the mandate of the African Commission, the expenses of the Commission, the emoluments and allowances for Commissioners as well as the budget of the Secretariat shall be borne by the African Union in consultation with the Commission and in application of the African Union's financial rules.

Rule 23: Estimate of expenses

When the Commission considers a proposal entailing expenses, the Secretary shall prepare and present to the members of the Commission, as soon as possible, a report outlining the financial implications of the proposal without prejudice to the mandate of the African Commission.

Rule 24: Confidentiality of the work of the Commission

1. The Commission shall ensure the confidentiality of all case files, including pleadings. Notwithstanding this provision, pleadings may be exchanged between the parties to a Communication and the Secretariat may provide such parties with updates on the status of a pending Communication.
2. The staff of the Secretariat shall observe the principle of confidentiality in all matters that the Commission considers confidential as stipulated under the Charter and these rules.

Chapter VI: Subsidiary mechanisms

Rule 25: Special Rapporteurs, Committees and Working Groups

1. The Commission may create subsidiary mechanisms such as special rapporteurs, Committees and working groups.
2. The creation and membership of such subsidiary mechanisms may be determined by consensus, failing which, the decision shall be taken by voting.
3. The Commission shall determine the mandate and the terms of reference of each subsidiary mechanism. Each subsidiary mechanism shall present a report on its work to the Commission at each ordinary session of the Commission.

Rule 26: Applicable rules

The Rules of Procedure of the Commission shall apply *mutatis mutandis* to the proceedings of its subsidiary mechanisms.

Chapter VII: Sessions

Rule 27: General principles

1. The Commission shall hold ordinary and extraordinary sessions, to enable it to satisfactorily carry out its functions in conformity with the African Charter.
2. Sessions of the Commission shall be held in public unless the Commission decides otherwise or if it appears from these rules or the relevant provisions of the Charter that the session should be held in private.
3. Whenever possible, session proceedings may be made available to the public through live transmission.
4. The Commission shall adopt a communiqué for the public at the end of a session.

Rule 28: Ordinary sessions

1. The Commission shall hold four (4) ordinary sessions per year, the venue and duration of which shall be determined by the Commission.
2. Two (2) of the sessions shall include both public and private proceedings.
3. The ordinary sessions shall be convened on a date fixed by the Chairperson in consultation with the other members of the Commission.
4. In exceptional circumstances, the Chairperson of the African Union

Commission may change the opening date of a session, in consultation with the Chairperson of the Commission.

Rule 29: Extraordinary sessions

1. The Commission may also hold extraordinary sessions.
2. The Chairperson of the Commission shall convene extraordinary sessions:
 - (a) At the request of the majority of the members of the Commission; or
 - (b) At the request of the Chairperson of the African Union Commission.
3. extraordinary sessions shall be convened on a date fixed by the Chairperson, in consultation with the other members of the Commission.

Rule 30: Venue of sessions

1. The sessions of the Commission shall be held at its headquarters, or in the territory of any other state party which invites the Commission.
2. In the event that a state party invites the Commission to hold a session in its country, that State Party shall sign an agreement with the Commission to host the session of the Commission, which agreement shall vest the state party with the responsibility for all additional expenses incurred by the Commission as a result of the session being held outside its headquarters, in conformity with the relevant rules of the African Union.
3. A state party agreeing to host a session shall conform to the host agreement with the Commission and guarantee the unfettered participation of all individuals attending the session.
4. Any state party wishing to host a session shall commit itself to meet its obligations under article 62 of the Charter and any supplementary legal instruments by which it is bound.
5. A state party offering to host a session of the Commission shall not be under any suspension of the African Union.
6. The Commission may, in consultation with the Chairperson of the African Union Commission, hold a session at the headquarters of the African Union. The sharing of costs for such a session shall be as agreed with the African Union Commission.
7. The Commission may hold joint sessions in consultation with the African Court on Human and Peoples' Rights, the Committee of Experts on the Rights and Welfare of the Child, or any other African regional human rights organ.

Rule 31: Notification of the opening date of a session

1. The Secretary shall notify members of the Commission of the date and venue of each session. This notice shall be sent, in the case of an ordinary session, at least forty-five (45) days before the session unless exceptional circumstances require otherwise.
2. In the case of an extraordinary session, the notice shall be sent as soon as practicable.

Rule 32: Private sessions

1. Private sessions of the Commission shall be held in private and deliberations shall remain confidential.
2. During a private session, the Secretary to the Commission, members of the Secretariat and persons providing technical assistance to the Commission shall be present unless the Commission decides otherwise.
3. The Chairperson of the Commission may communicate to the public general information on deliberations in private sessions, subject to the exigencies of article 59 of the Charter and any special directions by the Commission.

Chapter VIII: Session agenda

Rule 33: Provisional agenda for an ordinary session

1. The provisional agenda for each ordinary session shall be drawn up by the Secretary in consultation with the Bureau of the Commission and in accordance with the provisions of the Charter and the present Rules of Procedure.
2. The provisional agenda shall include, items on ‘communications from states’ and ‘other communications’ in conformity with the provisions of articles 48, 49, and 55 of the Charter.
3. Pursuant to paragraph 1 of this rule, the provisional agenda may also include items proposed by:
 - (a) The Commission at a previous session;
 - (b) The Chairperson of the Commission or a member of the Commission;
 - (c) A state party to the African Charter;
 - (d) Any African Union organ;
 - (e) An organisation recognized by the African Union, a national or specialised human rights institution with affiliate status or a non-governmental organisation with observer status; and

- (f) A specialized institution of the United Nations of which the states parties to the African Charter are members.
- 4. The items to be included in the provisional agenda under subparagraphs d, e and f of paragraph 3 above shall be communicated to the Secretary, accompanied by supporting documents, not later than forty-five (45) days before the opening of the Session at which these items are to be discussed.
- 5. The decision to include an item on the provisional agenda shall be taken by the Bureau of the Commission. If the request is accepted, the Secretary shall include the item on the provisional agenda of the session and inform the requesting party of this decision within fourteen (14) days before the opening of an ordinary session.

Rule 34: Transmission and distribution of the provisional agenda

- 1. The Secretary shall distribute the provisional agenda and the relevant working documents to the members of the Commission at least fourteen (14) days before the opening of an ordinary session.
- 2. The Secretary shall transmit the provisional agenda and essential documents of the session as may be applicable to states parties, the Chairperson of the African Union Commission, affiliate institutions and observers at least seven (7) days before the opening of an ordinary session of the Commission.
- 3. The Secretary, in consultation with the members of the Commission, may distribute the provisional agenda and essential documents relating to certain items on the agenda seven (7) days prior to the opening of an ordinary session.
- 4. The Secretary shall transmit, by all appropriate means, including posting on the website of the Commission, the provisional agenda of the session to states parties, the Chairperson of the African Union Commission, affiliate institutions and observers at least seven (7) days before the opening of an ordinary session of the Commission.

Rule 35: Provisional agenda for an extraordinary session

The provisional agenda for an extraordinary session shall comprise only the item(s) stated in the notification issued by the Chairperson in accordance with rule 29(2) of the present rules.

Rule 36: Adoption of the agenda

- 1. At the beginning of each session, the Commission shall adopt the agenda of the session.

2. Proposals shall be included in the agenda of the session if a majority of the members present so decide.

Rule 37: Revision of the agenda

The Commission may, during the Session, revise its agenda.

Chapter IX: Languages

Rule 38: Working languages

1. The working languages of the Commission and all its subsidiary mechanisms are those of the African Union.
2. The proceedings of the Commission shall be conducted in any of the working languages of the African Union.
3. Subject to rules 101(5) and 103(2), anyone intending to address the Commission in a language other than one of its working languages shall ensure translation and/or interpretation into one of the working languages. The latter shall be considered the source language for any translation or interpretation into the other working languages of the Commission.

Chapter X: Records and reports

Rule 39: Records and reports of sessions and other proceedings

1. The Secretary shall keep records and minutes of the proceedings of the sessions of the Commission.
2. The Secretary shall prepare a report of the proceedings of each session as well as of any meeting of a subsidiary mechanism.
3. The Secretary shall submit to the Commission a summary of the decisions taken during the session which shall be considered by the Commission for adoption.

Rule 40: Publication of session and other proceedings

1. The Secretary shall publish on the Commission's website, the communiqué of the proceedings of each session as well as any related information to which the public should have access.
2. The Secretary shall also make public, as appropriate, information relating to meetings of subsidiary mechanisms or any other Commission activity.

Chapter XI: Conduct of business

Rule 41: Quorum

Seven members of the Commission shall constitute the quorum, as specified in article 42(3) of the Charter.

Rule 42: Additional powers of the Chairperson

The Chairperson shall open and close each session, direct the discussions, ensure observance of the present Rules of Procedure, accord the right to speak, put questions to the vote and announce decisions.

Rule 43: Points of order

1. During a debate on any matter a member of the Commission may, at any time, raise a point of order and the Chairperson of the Commission, in accordance with the Rules of Procedure, shall immediately rule on the point of order. If a member of the Commission contests the ruling, it shall immediately be put to a vote. If the majority of the members of the Commission present uphold the Chairperson's ruling, it shall be maintained.
2. A member of the Commission raising a point of order cannot, in his or her comments, deal with the substance of the matter under discussion.

Rule 44: Adjournment of debates

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

Rule 45: Time limit accorded to speakers

The Chairperson of the Commission may limit the time accorded to each speaker on any matter. When a speaker exceeds his or her allotted time, the Chairperson of the Commission shall call him or her to order.

Rule 46: Closing the list of speakers

1. The Chairperson of the Commission may, before the beginning of a debate, read out the list of speakers and with the consent of the Commission, declare the list closed.
2. The Chairperson of the Commission may, however, accord the right of reply to any speaker if a statement delivered after the list has been closed makes this desirable.

Rule 47: Closure of debate

1. A member of the Commission may, at any time during a debate, move for the closure of the debate on the item under discussion, even if the other members of the Commission or representatives have expressed the desire to take the floor. The authorization to take the floor on the closure of the debate shall be given only to two speakers for and against the closure, after which the motion shall immediately be put to a vote.
2. When the debate on an item is concluded, the Chairperson of the Commission shall declare the debate closed.

Rule 48: Adjournment or closure of sitting

During the discussion on any matter, a member of the Commission may move for the adjournment or closure of the sitting. No discussion on any such motion shall be permitted and it shall be immediately put to a vote.

Rule 49: Order of the motions

The following motions shall have precedence in the following order over all the other proposals or motions before the Commission:

- (a) Competence of the Commission;
- (b) Point of order;
- (c) Recusal of a member of the Commission;
- (d) Adjournment of the sitting;
- (e) Adjournment of debate on the item under discussion; and
- (f) Closure of debate on the item under discussion.

Rule 50: Submission of motion and amendment of substance

Unless the Commission decides otherwise, the motions or amendments to motions on substantive matters made by members of the Commission shall be submitted in writing to the Secretary with supporting documents.

Rule 51: Withdrawal and re-submission of a motion

The sponsor of a motion may withdraw it before it is put to vote, provided that it has not been amended. Another member of the Commission may re-submit a motion thus withdrawn. When a member of the Commission moves for the re-submission of a motion, only one member of the Commission may speak in favour of and one against the motion, after which it shall immediately be put to a vote.

Rule 52: Oral interventions

1. No one shall take the floor at a meeting of the Commission without the authorization of the Chairperson of the Commission. The Chairperson of the Commission shall grant the floor to speakers in the order requested, unless he or she prefers to consolidate interventions on a particular aspect of a matter under discussion.
2. Oral intervention shall deal solely with the matter under discussion by the Commission and the Chairperson of the Commission shall call to order any speaker whose remarks are irrelevant.
3. The Chairperson of the Commission may limit the time accorded to speakers as well as the number of interventions in accordance with the present Rules of Procedure. The time limit for each speaker shall be determined by the Chairperson.

Rule 53: Right of reply

1. A right of reply shall be granted by the Chairperson of the Commission to any member of the Commission or representative of a state party who requests it.
2. A member of the Commission or representative of a state party must, while exercising this right, respect the time limit fixed by the Chairperson for reply and take the floor preferably at the end of the sitting at which this right has been requested.
3. The right of reply shall be limited to one reply per party and all parties shall have the same length of time to reply.

Chapter XII: Voting

Rule 54: Right to vote

1. Decisions of the Commission may be taken by consensus, failing which the decision shall be taken by voting.
2. However, at the request of a member any proposal or point of order shall be put to a vote.
3. Each member of the Commission shall have one vote. In the case of a tie in votes, the Chairperson of the Commission shall have a casting vote.

Rule 55: Required majority

Except as otherwise provided by the African Charter or the present rules, decisions of the Commission shall be taken by a simple majority of the members present and voting.

Rule 56: Method of voting

1. Subject to the provisions of rule 58 of the present rules, the Commission, unless it otherwise decides, shall vote by show of hands, but any member may request a roll-call.
2. In all the votes by roll-call each member shall reply “yes” or “no” or “abstention”. The vote of each member participating in the ballot shall be recorded in the minutes.
3. The Commission may decide to hold a secret ballot.

Rule 57: Explanation of vote

Members may make brief statements only for the purpose of explaining their vote, before the beginning of the vote or once the vote has been taken.

Rule 58: Rules to be observed while voting

A vote shall not be interrupted except if a member raises a point of order related to the manner in which the voting is being done.

Rule 59: Elections

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

Chapter XIII: Proposals and motions

Rule 60: Division of proposals

Proposals in a motion may be separated if a member so requests. The parts of proposals or amendments that have been adopted shall later be put to a vote as a whole. If all the operative parts of a motion have been rejected, the motion shall be considered to have been rejected as a whole.

Rule 61: Order of voting on proposals

1. If two or more proposals are made on the same matter, the Commission, unless it decides otherwise, shall vote on these proposals in the order in which they were submitted.
2. After each vote, the Commission may decide whether it shall put the next proposal to a vote.
3. However, motions which are not on the substance of a proposal shall be voted upon before the said proposal.

Rule 62: Repeat votes on the same issue

The Commission may not vote more than once on the same issue during the same session, unless compelling reasons so require.

Chapter XIV: Reports of the Commission and its members

Rule 63: Activity reports of the Commission

1. The Commission shall submit an Activity Report of its promotion, protection and other activities to each ordinary session of the Assembly.
2. The content of the Activity Report of the Commission to be presented to the Assembly by its Chairperson or his or her representative shall be determined by the Commission, provided that the Commission shall annex to the report any written concerns raised by state parties on the Activity Report.
3. Once the Activity Report has been considered by the Assembly, the Secretary shall publish it on the website of the Commission and transmit it to states parties, African Union organs, national and specialized human rights institutions and civil society organisations.

Rule 64: Activity reports of individual Commissioners

Every member of the Commission shall submit a written report on the activities undertaken in the period between two such sessions at each ordinary session with public proceedings.

Rule 65: Mission reports of the Commission

1. Upon completion of a mission, the Secretary shall, within thirty (30) days, draft the mission report in conformity with the Commission's Guidelines on Mission Reports for the time being in force.
2. The Secretary shall send the draft mission report to all the members of the Commission's delegation who shall submit their comments within thirty (30) days.
3. In the case of a mission for promotion activities, the Secretary shall, after the mission report has been commented upon by the members of the delegation referred to in paragraph 2 of the present rule, submit the report incorporating the observations of the members to the Commission for consideration and adoption at its next session.
4. The adopted mission report shall be sent to the state party concerned for its comments, to be given within sixty (60) days from the day of receipt of the report. After sixty (60) days, the report shall be published with the comments of the state party, if any.

5. In the case of a mission for protection activities, the mission report shall be sent to the members of the delegation referred to in paragraph 2 of this rule, as well as to other concerned parties, including any party to a Communication that was a subject of the mission. The Commission shall consider the comments of these parties when finalising the report, especially with regard to any proposal for amicable settlement.
6. The report of any protection mission as well as the comments from the state party concerned and other concerned parties, where applicable, shall be annexed to the Activity Report of the Commission.

Rule 66: Distribution of reports and other official documents

1. Reports, decisions, session documents and all other official documents of the Commission and its subsidiary mechanisms shall be for general distribution unless the Commission decides otherwise.
2. Reports and additional information submitted by states parties under article 62 of the African Charter shall be for general distribution in the working languages of the African Union and shall be posted on the Commission's website as soon as they are received at the Secretariat of the Commission.

Chapter XV: Relationships with states parties, intergovernmental institutions, national and specialized human rights institutions, non- governmental organisations, and other partners

Rule 67: General principle

The Commission may invite any state party, institution, organisation or person capable of enlightening it to participate in its sessions without voting rights.

Rule 68: Discussions on human rights situations

1. In conformity with rule 33(3) of the present Rules of Procedure, any state party, African Union organ, specialized agency or body of the United Nations or other organisation recognized by the African Union, national or specialized human rights institution with affiliate status, or non-governmental organisation with observer status, may request that the Commission include in its agenda for an ordinary session a discussion on any human rights issue. Such a request shall be made forty-five (45) days in advance of the session at which the discussion is to take place.
2. Where the discussion requires the presence of other partners and parties,

the requesting party shall so indicate in the documents that it presents to the Commission pursuant to rule 33(4) of the present rules. If the Bureau of the Commission decides that the participation of additional partners and parties is necessary, it shall invite them to attend and transmit to them all relevant documentation and information on the proposed discussion from the requesting party.

Rule 69: Participation of states parties

1. The Commission or its subsidiary mechanisms may invite any state party to participate in the discussion of any issue that shall be of particular interest to that state.
2. A state thus invited shall have no voting right, but may submit proposals which may be put to a vote at the request of any member of the Commission or of the subsidiary mechanism concerned.
3. The Commission shall interact with states parties through their respective designated department and official(s) acting as the Government Focal Point and Agent(s) responsible for processing correspondence and other communications from the Commission as well as for responding on behalf of the state. In specific circumstances additional or alternative channels of interaction may be used as the most effective means of communication.

Rule 70: Participation of specialized agencies, intergovernmental organisations and United Nations bodies

1. Specialized agencies, intergovernmental organisations and United Nations bodies may take part in the public sessions of the Commission.
2. The Commission may permit representatives of these bodies to make oral or submit written statements during its session.
3. Pursuant to articles 45(1) and 46 of the African Charter, the Commission may invite these bodies to submit reports on the implementation of the African Charter in areas of common concern.
4. The Commission may take part in the activities of specialized agencies, intergovernmental organisations and United Nations bodies and agree through a Memorandum of Understanding on areas of common concern.

Rule 71: National and specialized human rights institutions

1. In accordance with the Commission's Resolution on the Granting of Affiliate Status to National Human Rights Institutions and specialized

human rights institutions in Africa, such institutions, established by states parties and functioning according to internationally and regionally recognized norms and standards, may be granted affiliate status with the Commission.

2. Institutions having affiliate status with the Commission shall enjoy the rights and perform the duties stipulated in its aforementioned Resolution.
3. The Commission may invite other national or specialized human rights institutions that do not meet the criteria provided in paragraphs 1 and 2 of the present rule to attend its sessions as observers.

Rule 72: Non-governmental organisations

1. In accordance with the Commission's Resolution on the Criteria for Granting and Maintaining Observer Status to non-governmental organisations working on Human and Peoples' Rights in Africa, such organisations may be granted observer status with the Commission.
2. Non-governmental organisations having observer status with the Commission shall enjoy the rights and perform the duties stipulated in its aforementioned Resolution.
3. The Commission may decide to take measures against an observer that no longer fulfils the criteria or defaults on its obligations, as set out in the aforementioned Resolution. The observer shall be notified and, whenever deemed necessary, invited to express its views before any such decision is taken.

Rule 73: Funding partners

1. Subject to article 41 of the Charter, the Commission may negotiate agreements with funding partners. Such agreements shall be signed by the Chairperson on behalf of the Commission after approval by the Commission. The Chairperson may authorise the Secretary to sign a specific agreement. Original copies of such agreements shall be kept at the Secretariat of the Commission.
2. The Commission shall inform the African Union Commission of any proposal to accept funds from any partner, including details of the amount of money to be provided, the project or projects for which the funds are sought and any condition of receipt of such funding.
3. Such agreements shall specify expected outcomes, and the monitoring and evaluation of the project funded by the partner.
4. The Secretary shall prepare and submit reports on the implementation of the agreement to the Commission at each Session.
5. Partners may be invited to attend sessions of the Commission.

Rule 74: Protection from reprisals

1. State parties shall ensure that no reprisal of any kind is taken against any person or entity that provides the Commission with information, testimony or evidence in order to assist it in fulfilling its mandate under article 45 of the Charter.
2. State parties shall ensure that no reprisal of any kind is taken against any member of the Commission or its staff by reason of, or in connection with, the performance of his or her duties.

PART TWO: PROMOTION ACTIVITIES

Chapter I: Promotion missions and related activities

Rule 75: Programme of promotion activities

The Commission shall adopt and carry out a programme of promotion activities to give effect to its mandate under the African Charter, in accordance with article 45(1).

Rule 76: Promotion missions

1. The Commission shall, from time to time, carry out promotion missions to states parties.
2. States parties shall facilitate the undertaking of promotion missions, including by responding promptly to any request for authorisation to undertake such a mission. States parties may issue the Commission with an open invitation for such missions. They shall also facilitate promotion missions by taking the measures set out in rule 87 in relation to protection missions.
3. Promotion missions shall be governed by the Commission's Guidelines for Missions as well as by the Format for Pre-mission Reports, for the time being in force.
4. For each promotion mission, the Commission shall develop terms of reference, bearing in mind the human rights situation in the country.
5. A member of the Commission who is a national of the State concerned may be present during the Commission's mission. He or she shall not however take part in the Commission's consideration of the mission report.

Rule 77: Other promotion activities

1. The Commission shall also undertake other promotion activities,

including seminars, conferences and symposia. These activities shall be organized either on the Commission's own initiative or in collaboration with partners.

2. -Where the Commission receives an invitation to participate in any promotion activity referred to in the present rule, the Secretary shall inform the Bureau immediately, and the latter shall decide on the course of action.

Chapter II: The state reporting procedure under article 62 of the Charter

Rule 78: Contents of state reports

1. Pursuant to article 62 of the African Charter and any supplementary legal instruments entrusting the Commission with a supervision mandate, states parties shall submit reports in accordance with relevant Guidelines of the Commission, on the measures they have taken to give effect to the provisions of the African Charter and those other instruments as well as on the progress they have made. Reports shall indicate the challenges, if any, affecting the implementation of the African Charter and those other instruments.
2. The Secretary to the Commission shall provide states parties with all relevant Guidelines for time being in force.

Rule 79: Transmission of state reports and related contributions

1. The Chairperson of the Commission shall, through the Secretary and no later than one hundred and eighty (180) days before the ordinary session at which a state party's report is due to be considered, request confirmation of the state's intention to submit such a report.
2. An unscanned electronic version of the report should be received by the Commission no later than one hundred and twenty (120) days before the session at which it is due to be considered. Upon receipt the Secretary shall promptly publish it on the Commission's website and indicate when the report will be examined by the Commission.
3. Institutions, organisations or any interested party wishing to contribute to the examination of the report on the human rights situation in the country concerned, shall send their contributions, including shadow reports, to the Secretary at least thirty (30) days prior to the examination of the report. Such contributions should follow the Commission's Guidelines on shadow reports, as applicable, and speak to the actual report.

4. The Secretary may also invite specific institutions to submit information relating to the state report within a time limit that he or she may specify.
5. The contributions from interested parties and invited institutions may be published on the Commission's website.

Rule 80: Consideration of reports

1. States parties shall be represented in the sessions of the Commission at which their reports are to be considered.
2. Representatives of states parties shall respond to the questions prepared by the Commission, as well as to questions from the members of the Commission and provide, when necessary, any other information requested before, during or after the session. Should such questions or requests be formulated before the session states parties may be requested to reply in writing within a period expiring before that session.
3. If a state party fails to send a representative to the session of the Commission at which its report is to be examined, consideration of the report shall be rescheduled for the next session. If, at the said session, the concerned state party, after due notification, fails to send a representative, the Commission may consider the state report.
4. During the consideration of the report submitted by a state party in accordance with article 62 of the Charter, the Commission shall explore all the pertinent information relating to the human rights situation in the state concerned, including reports by international, regional and national human rights organs as well as statements and shadow reports from National Human Rights Institutions and non-governmental organisations.
5. A member of the Commission who is a national of the state concerned may be present but shall not take part in the Commission's consideration of the state report.

Rule 81: Non-submission of reports

1. The Commission shall, at the beginning of each year, inform the states parties which are not up to date with their obligations under article 62 of the deadlines of their submission of their reports and the date at which they are expected to comply.
2. At the beginning of each ordinary session, the Secretary shall inform the Commission of all cases of non-submission of reports or of additional information requested by the Commission. In such cases, the Chairperson of the Commission may send a reminder, through the Secretary, to the

state party concerned, indicating the date by which it's report or the requested information should be received.

3. The Activity Report of the Commission shall point out the status of initial and periodic reports of states parties.

Rule 82: Concluding observations on state reports

1. The Commission shall formulate concluding observations after consideration of the report of a state party. Concluding observations should be adopted at the ordinary session following the consideration of the state report. However, the adoption of such report shall under no circumstances exceed two sessions from consideration of the state report.
2. The concluding observations of the Commission shall comply with the Guidelines of the Commission on Concluding Observations.
3. The concluding observations shall be transmitted to the state party concerned within thirty (30) days after the session at which the Observations were adopted. They shall be published on the Commission's website, once transmitted to the state party.
4. Where the National Human Rights Institution of the relevant state enjoys affiliate status with the Commission in accordance with rule 71, the Secretary shall transmit the concluding observations to that institution within thirty (30) days from the session at which they were adopted.

Rule 83: Follow-up of implementation of concluding observations

1. In the concluding observations, the Commission shall specify, if necessary, the issues that require particular attention on the part of the state party. The date of the presentation of the next periodic report by the state party shall be included in the concluding observations.
2. The members of the Commission shall ensure the follow-up on the implementation of the recommendations from the concluding observations within the framework of their promotion activities to the states parties concerned. Members may request or take into account contributions by interested parties or invited institutions, on the extent to which those recommendations have been implemented.
3. The Commission shall reference any concluding observations in its Activity Reports to the Assembly pursuant to rule 63(1) of the present rules.

PART THREE: PROTECTION ACTIVITIES

Chapter I: Matters of emergency

Rule 84: Decision on matters of emergency

1. The Commission shall treat a situation as a matter of emergency under article 58(3) of the African Charter, when:
 - (a) It is one of serious or massive human rights violations; and
 - (b) It presents a risk of irreparable damage or requires urgent action to avoid irreparable harm.
2. When a situation of emergency arises during a session of the Commission, the decision to treat it as such shall be taken by the Commission.
3. When a situation arises during the Commission's inter-session period, the decision to treat it as a matter of emergency shall be taken either by the Bureau, the competent subsidiary mechanism(s) or the member responsible for the State Party concerned, the latter two on having informed the Bureau.
4. Any decision pursuant to paragraph 3 and a report on the situation thereof shall be presented at the next session of the Commission.

Rule 85: Action on matters of emergency

1. When the Commission has decided to treat a situation as one of emergency, it shall:
 - (a) Draw the attention of the Chairperson of the Assembly of Heads of State and Government of the African Union to the matter in accordance with article 58(3) of the Charter;
 - (b) Draw the attention of the African Union Peace and Security Council to the matter in accordance with article 19 of the Protocol relating to the establishment of the Peace and Security Council of the African Union;
 - (c) Inform the Executive Council; and Inform the Chairperson of the African Union Commission of the matter.
2. The Commission, as well as its subsidiary mechanisms under the Charter and the present rules, shall also take any appropriate action, including urgent appeals.

Chapter II: Protection missions

Rule 86: General provisions

1. The Commission may, if necessary, carry out a protection mission to

a state party either of its motion or at the request of any other African Union organ.

2. Any protection mission agreed upon between the Commission and a state party shall be conducted in accordance with the Commission's Guidelines for Missions for the time being in force and rule 101 of the present rules in so far as applicable.
3. Any mission undertaken at the request of another African Union organ shall be facilitated by that organ.
4. The Commission may authorise one or more of its members to take part in a protection mission to be conducted by another African or international organ intending to conduct such a mission.

Rule 87: State party's obligations

During a protection mission of the Commission the state party concerned shall:

- (a) Guarantee the free movement of the members of the mission throughout the territory of the country, and in this regard, provide corresponding facilities, including any necessary internal authorisation;
- (b) Provide the mission with any document that the Commission may consider necessary for the preparation of its reports; and
- (c) Take the necessary security measures to protect the members of the delegation and also to guarantee the smooth running of the mission.

Chapter III: Consideration of communications

Section 1: General provisions

Rule 88: Register of communications under articles 47, 48, 49 and 55 of the Charter

1. The Commission shall receive and note, as the case may be, communications or notifications under articles 47, 48, 49 and 55 of the Charter.
2. The Secretary shall register each communication, with a reference number, the names of the parties, the date of registration or notification, and the date of decision or closure of each communication.

Rule 89: Language of submissions

All communications, notifications and related submissions shall be addressed to the Commission in at least one of its working languages.

Rule 90: Confidentiality of proceedings

The Commission shall deliberate on communications in private and all aspects of the discussions shall be confidential.

Rule 91: Representation

1. States parties shall be represented before the Commission by their representatives.
2. Natural or legal persons may either act and appear in person or mandate one or more representatives to do so on their behalf.

Rule 92: Duty to cooperate with the Commission

The parties to a communication have a duty to cooperate fully in the conduct of the proceedings before the Commission and, in particular, to take such action within their power as the Commission considers necessary for the proper administration of justice.

Rule 93: Working groups and rapporteurs on communications

1. The Commission shall appoint a rapporteur for each communication from among its members.
2. The Commission may also establish a working group to consider questions of seizure and admissibility of any communication(s) and to make recommendations to the Commission.
3. The Commission shall consider the recommendations of the rapporteur and/or the working Group and make a decision.

Rule 94: Recusal of a member of the Commission from taking part in the examination of a communication

1. A member of the Commission shall not be present and take part in the consideration of a communication if he or she:
 - (a) Is a national of the state party concerned;
 - (b) Has any personal interest in the case;
 - (c) Is engaged in any political or administrative activity or any professional activity that is incompatible with his or her independence or impartiality;
 - (d) Has participated in any capacity in any decision at the national level in relation to the communication;
 - (e) Has expressed publicly opinions that are objectively capable of adversely affecting his or her impartiality with respect to the communication; or
 - (f) Finds, for any other reason, that his or her impartiality is capable of being adversely affected.

2. Any party to a communication may request the recusal of a member of the Commission for the reasons specified in paragraph 1.
3. Any question that may arise under paragraphs 1 and 2 shall be decided by the Commission after hearing the member concerned and without his or her participation.

Rule 95 Withdrawal of a member

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

Rule 96: Order of consideration of communications

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

Rule 97: Joinder and disjoinder of communications

1. Where the Commission has been seized of two or more communications against the same state party, addressing similar facts or alleging similar rights violations, the Commission may join them and consider them together as a single communication.
2. Where in accordance with paragraph 1 of the present rule, the Commission decides to join two or more communications, it may subsequently, where it deems appropriate, decide to disjoin the communications.

Rule 98: Extension of time

1. Prior to the expiry of a time-limit fixed for a particular submission, either party may apply to the Commission for extension of the period stipulated.
2. The Commission may grant an extension which shall not exceed thirty (30) days, and shall not grant more than one extension per party for any given submission. Where the nature of the communication(s) so requires, the Commission may exceptionally extend the time-limit further.
3. The Commission may decide that any submissions filed or other action taken after the expiration of a time-limit fixed thereof shall be considered as valid, if the requesting party shows cogent reasons for having failed to act in time and provided exceptional circumstances and interests of justice require that the request be granted.

Rule 99: Situation of serious or massive violation of human rights

When the Commission considers 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, it shall bring the matter to the attention of the Assembly and the Peace and Security Council of the African Union, in accordance with article 58 of the Charter and article 19 of the Protocol on the Peace and Security Council.

Rule 100: Provisional measures

1. At any time after receiving a communication and before determining its merits, the Commission may, on its initiative or at the request of a party to the communication, issue provisional measures to be adopted by the state concerned in order to prevent irreparable harm to the victim or victims of the alleged violation as urgently as the situation demands.
2. If the communication has been submitted under article 55 of the Charter, provisional measures shall be considered only after the Commission has been seized of the communication in pursuance of rule 115 of the present rules.
3. If the Commission is not in session at the time of receiving a request for provisional measures, the Chairperson shall consult the working group on communications, decide on the Commission's behalf and inform the other members of his or her decision.
4. The parties to the communication shall be informed of any provisional measures issued.
5. The state party concerned shall report back on the implementation of the Provisional Measures within fifteen (15) days of receipt.
6. The Commission's grant of provisional measures and their adoption by the state party concerned shall not constitute a prejudgment on the merits of a communication.

Rule 101: Investigative measures

1. The Commission may, of its own initiative, or at the request of a party, adopt any investigative measures which it considers capable of clarifying the facts of the case. It may decide to hear as a witness or expert or in any other capacity any person whose written or oral evidence or opinion appears likely to assist it in its examination of a communication.
2. The Commission may also request any person, organisation or institution of its choice to make available any relevant documentation and other

materials in its possession.

3. The Commission may, at any time during its examination of a communication, assign one or more of its members to conduct an enquiry, carry out a visit to the scene or take evidence in any other manner.
4. The Commission may delegate the investigative powers specified in paragraphs 1, 2 or 3 to a person or body which shall be designated to conduct on-site investigations.
5. Any witness, expert or other person making written observations to the Commission or appearing at an oral hearing before it, or before a delegation of members of the Commission, may use his or her own language if he or she does not have sufficient knowledge of one of the Commission's working languages. In that event the Secretary shall make the necessary arrangements for translation or interpretation into one of the working languages.
6. The Secretary to the Commission shall issue an invitation to any witness, expert or other person whom the Commission decides to hear in writing or orally.
7. The Commission shall take the necessary measures to protect the identity of experts, witnesses or other persons if it believes that they require such protection and in instances where anonymity is specifically requested by such expert or witness.
8. The Commission shall decide on any objection to a witness or expert.
9. The Chairperson shall fix the procedure for the taking of written or oral evidence, including in respect of any item of evidence proposed by the parties.
10. Witnesses and experts to be heard in accordance with this rule shall submit a written undertaking or take an oath, as set out in rule 103(2) ab.

Rule 102: Procedure for oral hearings on communications

1. At the initiative of the Commission or at the request of one of the parties, an oral hearing may be held on the admissibility and/or merits of a communication of which the Commission has been seized.
2. A party requesting a hearing shall indicate the facts and/or legal issues which would be addressed orally. The request shall be made at least ninety (90) days before the beginning of the session in which the communication is going to be considered.
3. The Bureau of the Commission shall decide on the request after having informed the other party thereof and after consulting the working group on communications.

4. The Secretary shall inform both parties of the decision on the granting of a hearing within fifteen (15) days of the decision referred to under paragraph 3 of the present rule.
5. If the request for a hearing is accepted, the notification of the hearing shall include the dates and venue of the session, and indicate the period of the session during which the hearing is likely to take place.
6. Hearings on communications before the Commission shall be held in private. Unless the Commission decides otherwise, no person shall be admitted, other than:
 - (a) parties to the communication and/or their legal representatives duly mandated; and
 - (b) any person being heard by the Commission as a witness, expert, third party or in any other capacity.
7. Those admitted to attend part or all of a hearing shall undertake not to reveal publicly any information relating to or transpiring from the oral proceedings, in accordance with article 59 of the Charter and rule 90 of the present rules.
8. When it considers it in the interest of the proper conduct of a hearing, the Commission may limit the number of parties' representatives or advisers who may appear.
9. The parties shall inform the Commission at least ten (10) days before the date of the opening of the hearing of the names and functions of the persons who will appear on their behalf at the hearing.
10. The Chairperson or his or her representative shall preside over the hearing, and shall verify the identity of any persons before he or she is heard.
11. During hearings, the Commission shall permit oral presentations by the parties on new or additional facts or arguments or in answer to any questions that it may have concerning all issues relating to the admissibility and/or merits of the communication.
12. During a hearing on a communication or at any stage prior to the conclusion of the matter, the following may be considered:
 - (a) The verification of the facts; Initiation of a friendly settlement;
 - (b) Consideration of the admissibility and/or merits; or
 - (c) Any other matter pertinent to the communication.
13. Any member of the Commission may put questions to the parties or to the persons heard with the permission of the Chairperson.
14. Parties to the communication or their representatives may, with the permission of the Chairperson, put questions to any person heard.

15. The Secretary is responsible for the production of verbatim records of hearings before the Commission. Such records are internal working documents of the Commission. If a party to the communication so requests, the Commission may provide a copy of such records

Rule 103: Procedure for hearing witnesses and experts orally

1. The Commission shall determine, at its own initiative, or at the request of one of the parties, when to call witnesses or experts whom it considers necessary to hear orally in a given case. The invitation to the hearing shall indicate:
 - (a) The parties to the communication; and
 - (b) A summary of the facts or issues in relation to which the Commission desires to hear the witness or expert.
2. After establishing the identity of the witnesses or experts, the Chairperson of the Commission shall request them to take the following oath:
 - (a) For witnesses, 'I swear/affirm that I will speak the truth, the whole truth and nothing but the truth. I also undertake not to reveal any information relating to or transpiring from this hearing.'
 - (b) For experts, 'I swear/affirm that my statement will be in accordance with my knowledge, findings and sincere belief. I also undertake not to reveal any information relating to or transpiring from this hearing.'
3. The Commission shall ensure that state parties grant the necessary guarantees to all persons who attend a hearing or who in the course of a hearing provide information, testimony or evidence of any type to the Commission.

Rule 104: Intervention by amicus curiae

1. At any moment after the respondent state has been requested to make its submissions on a communication the Commission may decide to invite or grant leave to an amicus curiae to intervene in the case by making written or oral submissions in order to assist the Commission in determining a factual or legal issue.
2. Any third party may submit a request to intervene as amicus curiae in any communication before the African Commission.
3. Requests to intervene as amicus curiae addressed to the Commission shall:
 - (a) Be submitted in writing to the Secretariat of the African Commission;

- (b) Indicate the authors of the request, contact details, the communication(s) to which the amicus relates, and the contribution the proposed amicus submission can make in assisting the African Commission; and
- (c) Be no longer than 10 pages.

Rule 105: Procedure for intervention of an amicus curiae

1. The procedure governing the intervention of an amicus curiae shall be as set out in this rule.
2. The African Commission, bearing in mind the views of the parties to a communication, shall consider if the application for an amicus intervention should be granted.
3. The Commission shall communicate its decision to the parties to a communication and the applicant seeking to intervene as amicus curiae.
4. If the application to become amicus curiae is granted, the African Commission shall:
 - (a) Share the parties' pleadings with the amicus curiae;
 - (b) Require the amicus curiae to file an amicus brief within thirty (30) days; and
 - (c) Share the amicus brief with the parties and require them to file their responses within thirty (30) days.
5. The amicus curiae shall respect the confidentiality of the parties' pleadings in accordance with article 59 of the African Charter.
6. During the hearing of a communication in which an amicus curiae brief has been filed, the Commission, may permit the author of the brief to address the Commission.
7. Amicus briefs admitted by the African Commission may be published on its website.

Rule 106: Intervention by a third party with a direct interest in the case

1. The Commission may, at any moment after a communication has been introduced, decide to allow submissions from a third party with a direct interest in the case. In so deciding the Commission shall consider, among other matters, whether the procedure would be unduly disrupted or prolonged by admitting such submissions and transmitting them to the parties for submissions in reply.
2. In accordance with paragraph 1:
 - (a) The third party shall demonstrate that he or she will benefit directly or suffer a loss from the outcome of a communication;

- (b) The third party may only submit an application to intervene prior to the merits stage of the communication under consideration;
- (c) Where the request is dismissed, the Commission shall notify the third party in writing and outline the reasons thereof; and
- (d) The dismissal decision may be reviewed by the Commission at the request of the third party.

Rule 107: Protection from reprisals

In accordance with rule 74 state parties shall ensure that no reprisal of any kind is taken against a victim or complainant having lodged a communication under article 55, against his or her family or representative or against any witness, expert, other person or entity because of their statements or intervention before the Commission or for having provided it with information relating to a communication under articles 48, 49 and 55 of the Charter.

Section 2: Consideration of communications received in conformity with article 47 of the Charter: Communications-negotiations of states parties

Rule 108: Submission of a communication

1. A communication under article 47 of the Charter shall be submitted to the Chairperson, through the Secretary of the Commission.
2. The communication shall be in writing and shall contain a comprehensive statement of the facts as well as the provisions of the African Charter alleged to have been violated.
3. The communication shall be notified to the State Party concerned, the Chairperson of the African Union Commission and the Chairperson of the Commission through the most practical and reliable means.
4. The Secretary to the Commission shall, on behalf of the Chairperson, acknowledge receipt, by note verbale, of the communication and request the parties to keep the Commission informed of developments which could arise within the framework of ongoing negotiations.

Section 3: Consideration of communications received under articles 48 & 49 of the Charter: Communications – complaints of states parties

Rule 109: Seizure of the Commission

1. Any communication under articles 48 and 49 of the Charter may be

submitted to the Chairperson of the Commission through the Secretary by an interested state party.

2. The communication shall contain information on the following or be accompanied particularly by:
 - (a) Measures taken to resolve the issue pursuant to article 47 of the African Charter, including the text of the initial communication and any subsequent written explanation from the interested states parties relating to the issue;
 - (b) Measures taken to exhaust regional or international procedures of settlement or good offices; and
 - (c) Any other procedure of international investigation or international settlement to which the interested states parties have resorted.

Rule 110: Consideration of the communication

1. Where, pursuant to articles 48 and 49 of the African Charter, a communication is brought before the Commission by a state party, the Chairperson of the Commission, through the Secretary, shall give notice of such communication to the state party against which the complaint is made and shall invite it to make its written submissions on the admissibility of the communication within ninety (90) days. The submissions so received shall be immediately communicated to the complaining state party, which shall respond within ninety (90) days of receipt of the submissions.
2. The Commission shall designate one or more of its members as rapporteur(s) for the communication.
3. The Commission may:
 - (a) Request relevant information on matters connected with the communication from the states parties concerned. Such information shall be provided by both parties within ninety (90) days of receipt of such request; and
 - (b) Transmit any information obtained from one party to the other for comments. The parties shall be given ninety (90) days to respond to the submissions by the other party.
4. Before deciding on the admissibility of the communication, the Commission may invite the parties to make further written submissions within ninety (90) days. Such submissions shall be transmitted to the opposing party. The Commission may also allow the parties to make additional submissions orally.

Rule 111: Decision on admissibility

1. Once it has considered the submissions of the parties the Commission

- shall adopt a decision on the admissibility of the communication, having regard to the requirement of admissibility under article 50 of the Charter.
2. Where no submissions on the admissibility have been received from the respondent state within the time-limit fixed, the Commission shall proceed to adopt a decision by default based on the information before it.
 3. The Commission shall give reasons for its decision on admissibility and notify the parties thereof.
 4. The decision shall be signed by the Chairperson and the Secretary.

Rule 112: Amicable settlement

1. When the Commission decides that a communication is admissible, it shall place its good offices at the disposal of the interested states parties with the objective of reaching an amicable settlement under the terms of the African Charter.
2. For the purpose of the Commission's good offices, the Bureau of the Commission shall establish contact with the relevant authorities of the states parties.
3. The Commission shall thereafter decide on the appropriate action to take, which may include the following:
 - (a) Appointing a rapporteur;
 - (b) Convening, in consultation with the states parties concerned, meetings with the aim of achieving an amicable settlement of the dispute;
 - (c) Facilitating the drafting of a Memorandum of Understanding, when the parties accept the principle of an amicable settlement, containing the terms of settlement being proposed having regard to the progress made.
4. In the case of acceptance of the draft Memorandum of Understanding, the states parties concerned shall sign the agreement under the auspices of the Commission.
5. Where the Commission is satisfied that the requirements of an amicable settlement have been complied with, it shall prepare a decision which shall contain a brief statement of the facts and a description of the settlement reached.
6. The decision shall be sent to the parties and communicated to the Assembly.
7. The Commission's confirmation of a settlement shall be regarded as a decision requiring implementation and related follow-up for the purposes of these rules.
8. The settlement negotiations shall be confidential and without prejudice to the parties' arguments on the admissibility of the communication.

Rule 113: Proceedings regarding the merits

1. If the amicable settlement of the dispute fails, the Commission shall request the states parties concerned to provide, within a period of thirty (30) days, their written submissions on the merits of the communication.
2. The Commission shall communicate any submissions and information obtained from one party to the other for comments. The states parties concerned shall be given thirty (30) days to respond.
3. Before adopting its decision on the merits, the Commission may request the parties to make supplementary written submissions or convene a hearing at which it may allow the parties to make additional oral submissions.

Rule 114: Decision on the merits

1. The Commission shall, after deliberation on the submissions of the parties, adopt a decision on the merits of the communication.
2. Where no submissions on the merits have been received from the respondent state within the time-limit fixed, the Commission shall proceed to adopting a decision by default based on the information before it.
3. The Commission shall give reasons for its decision on the merits and may make any recommendations it deems useful, pursuant to article 53 of the African Charter.
4. The decision shall be signed by the Chairperson and the Secretary.
5. The decision shall be communicated to the states parties and the Assembly.
6. The rapporteur for the communication, or any other member of the Commission designated for this purpose, shall monitor the measures taken by the relevant state party to give effect to the Commission's decision. For the purposes of monitoring such implementation, the measures in rule 125(5) to (10) shall be applicable.

Section 4: Consideration of communications received in conformity with article 55 of the African Charter: Other communications

Rule 115: Seizure of the Commission

1. A communication submitted under article 55 of the African Charter may be addressed to the Chairperson of the Commission through the Secretary by any natural or legal person.

2. The Secretary shall ensure that communications addressed to the Commission contain the following information:
 - (a) The name, nationality and signature of the person or persons filing it; or in cases where the complainant is a non-governmental entity, the name and signature of its legal representative(s);
 - (b) Whether the complainant wishes that his or her identity be withheld;
 - (c) The address for receiving correspondence from the Commission and, if available, a telephone number, facsimile number, and email address;
 - (d) An account of the act or situation complained of, specifying the place, date and nature of the alleged violations;
 - (e) The name of the victim, in a case where he or she is not the complainant, together with sufficient proof that the victim consents to being represented by the complainant or justification why proof of representation cannot be obtained; Any public authority that has taken cognisance of the fact or situation alleged; and
 - (f) The name of the state(s) alleged to be responsible for the violation of the African Charter, even if no specific reference is made to the article(s) alleged to have been violated.
3. In cases where the victim has not asked for anonymity and is represented, the victim shall be the complainant of record and the representation shall be recognized.
4. Where a communication does not contain some of the information listed in paragraphs 2 (a) to (g) of the present rule, the Secretary shall request the complainant to furnish this in order to obtain a determination of whether the Commission shall be seized of the case.
5. When the Secretary is satisfied that all necessary information has been furnished, he or she shall, on behalf of the Commission, consider it seized of the communication.
6. Where the information is manifestly lacking, the Secretary shall invite the complainant to comply with the requirements in paragraph 2, in which case the prescribed period under paragraph 8 shall begin to run from the time of completion of the complaint file.
7. In case of doubt as to whether the requirements for seizure have been met the Commission shall decide.
8. The Secretary shall within sixty (60) days from receipt of the complaint communicate in writing the decision on seizure to the parties.
9. At each session the Secretary shall inform the Commission of all new communications of which it was seized during the inter-session period.
10. Pursuant to article 55 of the African Charter the Commission shall decide,

by absolute majority, whether to be seized of any Communication where seizure was declined during the inter-session period as well as of any other communication referred by the Secretary.

11. The Commission shall designate one or more of its members as Rapporteur(s) for any communication of which it has been seized.

Rule 116: Written submissions on the admissibility and merits

1. Where the Commission has been seized of a communication pursuant to article 55 of the Charter and the present rules, the Secretary shall request the complainant to submit arguments and evidence on the admissibility and merits of the case within sixty (60) days of receipt.
2. Upon receipt of the complainant's submissions the Secretary shall transmit, within 14 days, a copy of the communication and those submissions to the respondent state for a reply within sixty (60) days of receipt. The state's submissions shall be forwarded to the complainant within 14 days for a possible rejoinder within thirty (30) days from receipt. No new issues shall be introduced in the rejoinder which the Commission shall forward to the respondent State for information only.
3. The Commission may ask the parties to provide supplementary written submissions within a fixed time-limit.
4. At any stage of the proceedings the Secretary may request a party to submit, within a fixed time-limit, any information, documents or material relevant to the examination of the communication. The Secretary shall transmit a copy of any such information, documents or material to the other party for information.

Rule 117: Preliminary objection

1. A party who intends to raise a preliminary objection at the stage of admissibility or before the Commission takes a decision on the merits of the communication, shall do so not later than thirty (30) days after being requested to make its submissions on the admissibility and merits. The Commission shall communicate the objection to the other party within fifteen (15) days.
2. A party who intends to respond to a preliminary objection raised by the other party shall submit a written response not later than thirty (30) days after the Secretary to the Commission has transmitted the objection to that party.
3. If no response to a preliminary objection is received within the stipulated period, the Commission shall proceed with the consideration of the

preliminary objection on the basis of the available information.

4. When the Commission receives a preliminary objection, it shall first of all determine this objection before any other question relating to the communication.

Rule 118: Decision on admissibility

1. Once it has considered the submissions of the parties the Commission shall adopt a decision on the admissibility or inadmissibility of the communication, having regard to the requirements of admissibility under article 56 of the Charter.
2. Where no submissions on the admissibility have been received from the respondent State within the time-limit fixed, the Commission shall proceed to adopt a decision by default based on the information before it.
3. If a communication has been declared admissible the Commission shall defer its consideration of the merits. It may request the parties to make supplementary submissions prior to such consideration.
4. The Commission's decision on the admissibility of a communication shall be notified to the parties who shall be under an obligation, pursuant to article 59 of the Charter, to respect confidentiality until the Commission's activity report referencing the decision has been considered by the Assembly. The decision shall be signed by the Chairperson and the Secretary.

Rule 119: Review of a decision on admissibility

1. A decision declaring a communication inadmissible may be reviewed upon the complainant's submission of a new fact. Review shall be requested within one hundred and eighty (180) days of the discovery of the new fact and no later than three years from the date when the decision was transmitted to the complainant.
2. A decision declaring a communication admissible may be reviewed upon the respondent state's submission of a new fact. Review shall be requested within sixty (60) days from the date when the decision was transmitted to the parties.
3. In determining whether to review a decision on admissibility the Commission shall satisfy itself that the request is based upon the discovery of a decisive fact which was not known to the party seeking the review, provided that such lack of knowledge was not due to negligence.
4. A respondent state which has failed to make submissions on the admissibility of a Communication within the time-limit fixed shall be

considered to have forfeited its right to seek review of a decision declaring the case admissible. The Commission may nevertheless consider a request for review if the state shows cogent reasons for having failed to make submissions in time and provided exceptional circumstances and interests of justice require that the request be considered.

Rule 120: Decision on the merits

1. The Commission shall, after deliberation on the submissions of both parties, adopt a decision on the merits of the communication.
2. Where no submissions on the merits have been received from the respondent state within the time-limit fixed, the Commission shall proceed to adopt a decision by default based on the information before it.
3. The Commission shall decide on a communication within one (1) year from the time the communication becomes ripe for a decision on the merits.
4. The Commission's decision shall remain confidential and not be transmitted to the parties until the Commission's Activity Report referencing the decision has been considered by the Assembly in accordance with article 59 of the African Charter and subject to rule 63(2).
5. The Secretary shall ensure that the decision of the Commission is transmitted to the parties within thirty (30) days from the date when its activity report referencing the decision was considered by the Assembly.
6. The decision shall be published within thirty (30) days from the date when the decision was transmitted to the parties.
7. The decision shall be signed by the Chairperson and the Secretary.

Rule 121: Decision on reparations and costs

In deciding on the merits of a communication the Commission may decide to defer examining a question of reparations and costs. To that end it may invite the parties to make additional written submissions or to hold a separate oral hearing.

Rule 122: Review of a decision on the merits

1. A decision on the merits of a communication may be reviewed upon the submission of a decisive new fact by either party.
2. In determining whether to review a decision on the merits the Commission shall satisfy itself of the criterion set out in rule 119(3) concerning review of a decision on admissibility.

3. A party relying on a new fact shall seek a review within one hundred and eighty (180) days of the discovery of the new fact and no later than three years from the date when the decision was transmitted to the parties.
4. A respondent state which has failed to make submissions on the merits of a communication within the time-limit fixed shall be considered to have forfeited its right to seek review of the decision on the merits. The Commission may nevertheless consider a request for review if the state shows cogent reasons for having failed to make submissions in time and provided exceptional circumstances and interests of justice require that the request be considered.

Rule 123: Amicable settlement

1. At any stage of the examination of a communication, the Commission, on its own initiative or at the request of any of the parties concerned, may offer its good offices for facilitating an amicable settlement between the parties.
2. The amicable settlement procedure shall be initiated, and may only continue, with the consent of the parties.
3. If it deems it necessary, the Commission may entrust to one or more of its members the task of facilitating an amicable settlement between the parties.
4. The Commission may terminate its intervention in the amicable settlement procedure if it finds that the matter is not susceptible to such a resolution or that one of the parties no longer consents to its continuation or does not display the willingness to reach a settlement in compliance with the terms of paragraph 5.
5. When the Commission receives information from parties that an amicable settlement has been reached, the Commission shall ensure that such settlement:
 - (a) Has been signed by the parties or their representative(s) and filed with the Commission;
 - (b) Complies with or respects the human rights and fundamental freedoms enshrined in the African Charter and other applicable instruments;
 - (c) Indicates that the victim of the alleged human rights violation or, his or her successors, as the case may be, have consented to the terms of the settlement and are satisfied with the conditions; and
 - (d) Includes an undertaking by the parties to implement the terms of the settlement.
6. Where the Commission is satisfied that the requirements of paragraph 5

have been complied with, it shall prepare a decision which shall contain a brief statement of the facts and a description of the settlement reached.

7. The Commission's confirmation of a settlement shall be regarded as a decision requiring implementation and related follow-up for the purposes of rule 125.
8. Where the Commission concludes that no amicable settlement has been reached or that its terms do not comply with the requirements under paragraph 5, the Commission shall continue to process the communication in accordance with the relevant provisions of the Charter and these rules.
9. The settlement negotiations shall be confidential and without prejudice to the parties' arguments on the admissibility and merits of the communication.

Rule 124: Withdrawal, strike-out and relisting

1. Where a complainant or victim withdraws the communication, the Commission shall take note thereof, inform the parties and close the file. In the event where only some of the victims or complainants request withdrawal, the Commission will take note of their withdrawal and proceed with consideration of the remaining complaints.
2. Where a complainant fails to pursue the communication or otherwise to show proper diligence or where the Commission, for any other reason, concludes that it is no longer justified to continue the examination of the communication, it may at any stage of the proceedings decide to strike out the communication.
3. The Commission may continue examination of the communication or relist it at the complainant's or the victim's request if cogent reasons are provided and exceptional circumstances and interests of justice so require.

Rule 125: Follow-up on decisions on the merits requesting the respondent state to take specific measures

1. In the event of a decision on the merits requesting the respondent state to take specific measures, the parties shall inform the Commission in writing, within one hundred and eighty (180) days from the date when the decision was transmitted to them, of all action taken or being taken by the state party to implement the decision of the Commission. The Secretary shall forward such information to the other party for comments within sixty (60) days from the date of their transmission.

2. The Commission may request a national or specialized human rights institution with affiliate status to inform it of any action it has taken to monitor or facilitate the implementation of the Commission's decision.
3. Within ninety (90) days of receipt of the state's written response, the Commission may invite the state concerned to submit further information on the measures it has taken in response to its decision.
4. If no response is received from the state, the Commission may send a reminder to the state party concerned to submit its information within ninety (90) days from the date of the reminder.
5. The rapporteur for the Communication, or any other member of the Commission designated for this purpose, shall monitor the measures taken by the state party to give effect to the Commission's decision.
6. The rapporteur may make such contacts and take such action as may be appropriate to fulfil his or her assignment, including recommendations for further action by the Commission as may be necessary. He or she may at any stage of the follow-up proceedings request or take into account information from interested parties regarding the extent to which the state has complied with the Commission's decision.
7. At each ordinary session the Commission shall report in a public sitting on the implementation of its decisions.
8. Where the Commission finds that the state party's conduct may raise issues of non-compliance with its decision, it may refer the matter to the attention of the competent policy organs of the African Union as provided in rule 137. The Commission shall indicate in its Activity Report the status of implementation of its decisions, including by highlighting any issues of possible non-compliance by a state party.
9. All information received by the Commission in relation to the state's compliance with a decision of this nature shall be consolidated in the Commission's bi-annual Activity Report and published on the Commission's website.

Rule 126: Legal aid

1. The Commission may facilitate access to free legal representation for the complainant or victim, including from the Legal Aid Fund of the Human Rights organs of the African Union.
2. Free legal aid shall only be facilitated where the Commission is convinced:
 - (a) That it is essential for the proper discharge of the Commission's duties and to ensure equality of the parties before it, having regard to interests of justice; and

- (b) That the author of the communication has no sufficient means to meet all or part of the costs involved.

PART FOUR: INTERPRETATION AND ADVISORY OPINIONS

Rule 127: Interpretation of the Charter

1. Where the Commission receives an interpretation request pursuant to article 45(3) of the Charter it shall transmit a copy thereof to states parties, the Court and any other interested entity.
2. The Commission shall notify states parties, the Court and any other interested entity of its decision or advisory opinion in response to the aforementioned request.

PART FIVE: RELATIONSHIP WITH THE AFRICAN COURT

Rule 128: Complementarity with the African Court

1. Pursuant to article 2 of the African Court Protocol, the protective mandate of the Commission, as provided for in articles 30 and 45(2) of the African Charter, shall be complemented by the Court.
2. The complementarity relationship between the Commission and the Court is set out in articles 2, 5(1) (a), 6, 29(1) and 33 of the African Court Protocol.

Rule 129: Consultations with the Court

1. In pursuance of article 2 of the African Court Protocol, the Commission shall meet with the Court, at least once a year and whenever necessary, to consider issues of mutual interest.
2. The Bureau of the Commission may meet the Bureau of the Court as often as necessary to undertake any functions assigned to them by the two institutions.
3. Any meetings and other activities undertaken with the Court shall be recorded in the Commission's Activity Report.
4. The Commission shall consult the Court, as appropriate, on any amendment of the present rules.

Rule 130: Seizure of the Court

1. The Commission may, before deciding on the admissibility of a communication submitted under articles 48, 49 or 55 of the Charter,

decide that the communication should be referred to the Court, provided that the respondent state has ratified the African Court Protocol.

2. The Commission shall obtain the complainant's consent to any referral to the Court.
3. Pursuant to article 5(1)(a) of the African Court Protocol the Commission, in referring the communication, shall become the applicant to the proceedings before the Court.
4. The Commission shall not consider any communication which is essentially identical to one already decided by the Court.

Rule 131: Admissibility under article 6 of the African Court Protocol

1. Where, pursuant to article 6(1) of the African Court Protocol, the Commission is requested to give its opinion on the admissibility of a case pending before the Court it shall consider the matter expeditiously.
2. Where the Court has transferred a case to the Commission pursuant to article 6(3) of the African Court Protocol, it shall examine the communication in conformity with the Charter and the present Rules.

Rule 132: Representation of the Commission before the Court

1. When the Commission decides to submit a communication to the Court, pursuant to article 5(1)(a) of the African Court Protocol and rule 130 of the present rules, it may appoint one or more Commissioners to represent it before the Court. The Commissioner(s) so designated shall be assisted by one or more legal officer(s) of the Commission's Secretariat and/or experts who shall be designated or appointed by the Commission.
2. Once a communication has been referred to the Court all Commission correspondence and submissions relating to the case shall be signed by the Commissioner rapporteur(s) and the Secretary.
3. Unless the Commission decides otherwise, the Commissioner rapporteur(s) shall take all necessary decisions in prosecuting a case referred to the Court.
4. Once a communication has been referred to the Court in accordance with paragraph 1, the Commission shall no longer be seized of the complaint.

Rule 133: Content of the application and file to the Court

1. When, in pursuance of article 5(1)(a) of the African Court Protocol and rule 130 of the present rules, the Commission decides to bring a communication before the Court, it shall submit an application seizing

the Court in accordance with the Court rules, accompanied by a summary of the communication and the communication file.

2. The summary shall include the names of the representatives of the Commission, the date when the Commission was seized of the communication, the parties to the proceedings, the facts of the communication as well as the provisions of the African Charter alleged to have been violated.
3. The case file along with the summary to be transmitted to the Court shall contain the communication, the Commission's and the parties' submissions on the admissibility and merits thereof, together with all other evidence, documents or information concerning the communication.

Rule 134: Transmission of cases to the Court and notification of the parties

1. The Secretary of the Commission shall transmit to the Court the application signed by the Chairperson, the case file and the summary referred to in rule 133 of the present rules, in conformity with the Rules of Procedure of the Court. At the request of the Court, the Commission shall transmit the original of the case file.
2. The Secretary shall also notify the parties to the proceedings before the Commission about the referral of the case to the Court and shall provide them with a copy of the case file and the summary thereof.

Rule 135: Pending cases

The Commission shall not consider any communication already pending before the Court, unless that case is formally withdrawn.

PART SIX: RELATIONSHIP WITH OTHER AFRICAN UNION ORGANS AND INSTITUTIONS

Rule 136: General rule

1. The Commission, in fulfilling its mandate, shall establish formal relations of cooperation as necessary with all African Union organs and institutions that have a human rights mandate.
2. The Bureau of the Commission may, in addition, meet with the bureaux of these organs and institutions as often as required

Rule 137: Relationship with the African Committee of Experts on the Rights and Welfare of the Child

In accordance with article 45(1)(c) of the African Charter, the African Commission shall cooperate with the African Committee of Experts in the execution of their mandate of promoting and ensuring the protection of human and peoples' rights in Africa.

Rule 138: Relationship with the policy organs of the African Union

In accordance with article 54 of the Charter the Commission shall submit an Activity Report to the competent policy organs of the African Union for each Conference. It may request those organs to take the necessary measures for the implementation of its decisions.

PART SEVEN: FINAL PROVISIONS

Rule 139: Amendment of the Rules of Procedure

The present Rules of Procedure may be amended by the Commission.

Rule 140: Practice directions

The Commission may issue practice directions on specific matters.

Rule 141: Transitional provisions

1. The present Rules of Procedure shall become applicable upon their entry into force pursuant to the provisions of rule 145.
2. Notwithstanding the provisions of paragraph 1, any recourse exercised against a decision or other measure taken pursuant to the previous rules shall be determined in accordance with the applicable provisions of those rules.
3. Upon the entry into force of the Protocol on the Statute of the African Court of Justice and Human Rights, all references in the present rules to provisions of the African Court Protocol or the African Court shall be deemed, where applicable, to refer to the relevant provisions of the Protocol on the Statute of the African Court of Justice and Human Rights or to the African Court of Justice and Human Rights, respectively.

Rule 142: Non-retroactivity

The present Rules of Procedure shall have no retroactive effect.

Rule 143: Suspension

The Commission may suspend temporarily, the application of any rule of the present Rules of Procedure, on condition that such a suspension shall not be incompatible with any applicable decision of the Commission or the Assembly or with any relevant provision of the Charter.

Rule 144: Adoption

The present Rules of Procedure shall be adopted by a simple majority of members of the Commission present and voting at a session where the rules are scheduled to be considered.

Rule 145: Entry into force

The present Rules of Procedure shall enter into force ninety (90) days after their adoption.



With technical assistance from

