



**A COMPENDIUM OF REGIONAL AND
INTERNATIONAL HUMAN RIGHTS
MECHANISMS FOR HUMAN RIGHTS
DEFENDERS IN TANZANIA**



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Abbreviations & Acronyms

ACHPR	African Commission on Human and Peoples' Rights
ACHPR	African Court on Human and Peoples' Rights
AIDS	Acquired Immunodeficiency Syndrome
APT	Association for the Prevention of Torture
AU	African Union
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishments
CBOs	Community Based Organizations
CED	Committee on Enforced Disappearances
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CMW	Committee on Migrant Workers
CRC	Committee on the Rights of the Child
CRC	Convention on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organizations
EAC	East African Community
EACJ	East African Court of Justice
ECOSOC	Economic and Social Council
EU	European Union
FAO	Food and Agriculture Organization
FOCAC	China –Africa Cooperation Forum
HIV	Human Immunodeficiency Virus
HRC	Human Rights Committee
HRDs	Human Rights Defenders
HRNGOs	Human Rights Non-Governmental Organizations
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights

ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ILO	International Labor Organization
NGO	Non-Governmental Organization
NHRIs	National Human Rights Institutions
NPM	National Preventive Mechanism
OATUU	Organization of African Trade Union Unity
OAU	Organization of African Union
OHCHR	Office of the High Commissioner of Human Rights
OP3 CRC	Third Optional Protocol to the Convention on the Rights of the Child
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
RIG	Robben Island Guidelines
SADC	Southern Africa Development Community
SPT	Subcommittee on the Prevention of Torture
THRDC	Tanzania Human Rights Defenders Coalition
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous People
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UPR	Universal Period Review
USA	United States of America
WHO	World Health Organization
WMO	World Meteorological Day

List of International Human Rights Instruments

Convention on the Prevention and Punishment of the Crime of Genocide 1948
International Convention on the Elimination of All Forms of Racial Discrimination 1966
International Covenant on Economic, Social and Cultural Rights 1966
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2008
International Covenant on Civil and Political Rights 1966
Optional Protocol to the International Covenant on Civil and Political Rights 1966
Convention on the Elimination of All Forms of Discrimination against Women 1979
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women 1999
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2002
Convention on the Rights of the Child 1989
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2000
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2000

Optional Protocol to the Convention on the Rights of the Child on a communications procedure 2011
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty 1989
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990
Convention on the Rights of Persons with Disabilities 2006
Optional Protocol to the Convention on the Rights of Persons with Disabilities 2006
International Convention for the Protection of All Persons from Enforced Disappearance 2000
The Universal Declaration of Human Rights 1948
Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms 1998.
Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981.
United Nations Declaration on the Rights of Indigenous Peoples 2006.
The Convention Relating to the Status of Refugees, 1951
The Protocol Relating to the Status of Refugees, 1967
Convention related to the status of Stateless Persons, 1954
Convention of Reduction of Statelessness, 1961

List of African Human Rights Instruments and Guidelines

African Charter on Democracy, Elections and Governance 2011

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

Constitutive Act of the African Union 2000

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights 1998

African Charter on the Rights and Welfare of the Child 1990

African Charter on Human and Peoples' Rights 1981

AU Convention Governing Specific Aspects of Refugee Problems in Africa 1969

Guidelines for African Union Electoral Observation and Monitoring Missions 2011

Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa

Pretoria Declaration on Economic, Social and Cultural Rights in Africa 2004

Declaration on Gender Equality in Africa 2004

Kigali Declaration, 2003

Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or

Degrading Treatment or Punishment in Africa (Robben Island Guidelines), 2008

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) 2009

Sub Regional Instruments

EAC Treaty for the Establishment of the East African Community 1999

EAC Common Market Protocol on the establishment of the East African Community Common Market 2009

Consolidated Text of the Treaty of the Southern African Development Community 2015

SADC Declaration on Gender & Development 1997

Declaration on Refugee Protection within Southern Africa 1998

Chapter 1

General Introduction

1.0 Introduction

The Tanzania Human Rights Defenders Coalition (THRDC) has been working in the past five years for the improvement of the legal, policy and human rights framework addressing the rights of human rights defenders (HRDs) and protection. In all those years, the Coalition has been working under a 5 years Strategic Plan which aimed at inter alia to advocate for a better working environment for HRDs from across the country.

The Coalition advocates for the ratification and domestication of International and Regional Human Rights Instruments related to the HRDs and human rights in general. Tanzania is not a party to several regional and international instruments which are related to HRDs. These are such as the 1998 UN Declaration on HRDs, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishments (CAT) of 1984 and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED))

Engagement with United Nations, Regional and Sub-regional human rights mechanisms and treaty bodies is a powerful tool for promoting human rights both at national and international levels. However, it is important to carefully consider if and how to engage in such bodies so as to ensure that human rights defenders regardless of their meager resources, are still capable of accessing, importing and domesticating international human rights standards and principles. Therefore, CSOs must learn how to strategically engage a particular treaty body on a right issue, at the right time and in the right way.

According to THRDC observation the number of HRDs engaging with these international mechanisms in Tanzania is extremely low. Majority of HRNGOs are not conversant on how and when to access such extraterritorial mechanisms. For instance, in Tanzania we have only 8 Human Rights NGOs with membership at the African Commission on Human and Peoples' Rights which has about 700 CSOs with observer status. The same situation is for HRNGOs with ECOSOC accreditation status in Geneva.

For the past five years THRDC has been struggling to ensure HRDs in Tanzania are effectively participating in various regional and International human rights mechanisms. Empowering HRDs in modern human rights ideas, international human rights systems and mechanism as part of continuing education for HRDs is among THRDC's interventions aiming at enhancing HRDs protection capacities.

Essentially, many HRDNGOs in Tanzania are not conversant with modern human rights ideas and modern human rights system mechanism. Each of the international instruments has a different system for its implementation, ranging from general and specific reporting procedures. These reporting procedures include quasi-judicial and judicial mechanisms involving the adjudication of complaints brought by individuals or groups of individuals, Non-Governmental organization and, in some instances, even by other States.

For the past five years, THRDC conducted several workshops and trainings to more than 500 HRDs from across the country on how to access and engage with various Regional and Sub-regional Human Rights mechanisms. These capacity building trainings focused on UN Human Rights Mechanisms, the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights, the East African Community, the East African Court of Justice and the Universal Periodic Review process.

1.1 The Essence of the Compendium

THRDC is determined to equip HRDNGOs on how to access and engage not only with UN, Regional and Sub-regional mechanisms but also developing working relationship with the Office of the High Commissioner for Human Rights (OHCHR), The African Commission on Human and Peoples' Rights, The African Court on Human Rights, The East African Court of Justice, UN Treaty-bodies, Human Rights Council and its Special Procedures, Universal Periodic Review, and other bodies or mechanisms.

Therefore, this Compendium seeks to provide members of CSOs and HRDs in Tanzania some key information on available regional and international human rights mechanisms. The Compendium summarizes the different types of human rights mechanisms that are available at the UN and regional levels and how HRDs can access them. It is intended to be a reference point for civil society organizations and human rights defenders in their efforts to realize and promote such rights, commitments and watch against infringements.

1.2 Methodology

Methodology used in developing this compendium included thorough desk review of regional and international human rights mechanisms through reading from the websites of relevant bodies, literatures, formal and informal consultations with human rights experts in regional and international human rights mechanisms, state officials, visiting important libraries including the Attorney General Chambers library, East Africa Court of Justice Library, African Court Library, UN Human Rights Council, African Commission on Human and Peoples' Rights, in Banjul and soliciting of inputs, ideas and improvements through stakeholders meetings.

Chapter 2

Space for Civil Society under International and Regional Mechanisms

2.0 Introduction

This chapter seeks to provide members of HRNGOs and HRDs in Tanzania some key information on available regional and international mechanisms relevant to CSOs/HRNGOs. This section accordingly collates and consolidates various commitments made by national governments-both regionally and at the UN level as a way of safeguarding space of civil society organisations. It is intended to be a reference point for civil society organizations and human rights defenders in their efforts to realize such rights, commitments and watch against infringements. The international and regional legal frameworks governing CSOs operations both at the regional and international levels are protected by a wide range of international and regional agreements, conventions, charters and other instruments.

2.1 International Legal Framework

For the purposes of this compendium, international legal framework refers to all UN legal instruments relevant or governing CSOs operations worldwide. This framework includes international instruments that guarantee the rights of CSOs. The present section outlines both binding and non-binding UN legal instruments that are relevant to CSOs.

2.1.1 The United Nations Charter of 1945

The United Nations Charter of 1945 (known as “UN Charter”) is the UN founding documents that guides all the undertakings of the UN activities and affairs of UN member states. There is only one provision of the UN Charter which provides for CSOs participation in the UN activities and meetings. This is Article 71 which reads;

“The Economic and Social Council may make suitable arrangements for consulting with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organisations after consultation with the member of the United Nations concerned.”¹

¹ Article 71 of the United Nations Charter 1945.

It is due to this provision; today thousands of Civil Society Organizations (CSOs) participate in the major UN conferences and participate in many other UN activities - increasingly as active participants, not just observers. This UN legal instrument has laid a good foundation for the current space for the CSOs to have a meaningful participation in the UN systems and mechanisms. Therefore, the UN Charter was an entry point for more CSOs engagement with UN activities especially from 1960s up to date.

Until recently, the United Nations was the only inter-governmental organization that enshrines NGO and States relations in its founding charter. The UN Department of Public Information is charged with responsibility to deal with NGOs as amongst its clients since its creation in 1946 (General Assembly Resolution 13 (I) of 1946) and has an NGO Section for this purpose.²

The space and the roles of CSOs at the UN forum kept on expanding yearly. For instance, from 1960 up to 1980s, the number of NGOs increased significantly in various UN meetings and forums. This increment went together with expansions of the roles of CSOs in those forums from observer status only to important members with specific roles to play such as report presentations, panel discussions and regular briefings. This gradual role-expansion led the former Secretary General of the UN Boutros Boutros-Ghali to say in September 1994 that NGOs:³

“are a basic form of popular participation in the present-day world. Their participation in international organizations is, in a way, a guarantee of [their] political legitimacy”

He also observed that the UN is no longer a forum for sovereign states alone but that NGOs are now considered as full participants in the international life.

The table below indicates the development and participation of CSOs in various UN Conferences and forums from 1960s to 2000s.

Table 1: The Number of CSOs Participation in Major UN Conferences

Year	Hosted at	Conference Issue	New NGOs accredited	Parallel NGO Forum Participants
1968	Tehran	Human Rights	57	None
1972	Stockholm	Human Environment	>300	Not known
1975	Mexico City	International Women’s Year	114	6000
1985	Nairobi	End of Women’s Decade	163	13,500
1992	Rio de Janeiro	Environment & Development	1378	18,000

² CSOs Accreditation to “consultative status” with ECOSOC can be admitted into one of three categories: General Status (large international NGOs whose interests extend to most of ECOSOC’s agenda); Special Status (those with “special competence in a few fields of activity of the Council”) and Roster NGOs (those primarily concerned with one or more specific issues who can be consulted on an ad hoc basis).

³ On 25th July of 1996, ECOSOC adopted Resolution 1996/31 implementing Article 71.

1993	Vienna	Human Rights	841	c.a. 1000
1994	Cairo	Population & Development	934	-
1995	Copenhagen	Social Development	1138	c.a. 30,000
1995	Beijing	4 th World Conf. On Women	2600	300,000
2001	Durban	Racism	1290	c.a. 15,000
2002	Monterrey	Financing for Development	107	-
2002	Johannesburg	Sustainable Development	737	35,000

Sources: Clark et al 1998; UN Secretariat, 25 May 2001; Foster 2002

As the global authority on human rights, the Office of the United Nations High Commissioner for Human Rights (OHCHR) is responsible for leading the United Nations human rights programme and for promoting and protecting all human rights under the Charter of the United Nations and other international human rights instruments. It is an institution of the world community in which the human rights of all people are fully respected and enjoyed. OHCHR strives to achieve the protection of all human rights for all people, to empower people to realize their rights and to assist those responsible for upholding such rights in ensuring that they are implemented.⁴ OHCHR is head-quartered at Palais Wilson in Geneva, Switzerland, and has an office in the United Nations Headquarters in New York. It is comprised of more than 900 staff members, over half of whom work in the field where they observe implementation of human rights. Its presences include country teams and offices, regional offices, human rights advisers, and human rights components in the United Nations peace missions.

OHCHR is part of the Secretariat of the United Nations and is led by the High Commissioner for Human Rights, a position created in 1993. It collaborates with an ever-wider range of actors, including Governments, National Human Rights Institutions (NHRIs), Non-Governmental Organizations (NGOs) and other civil society actors.⁵ As the United Nations principal human rights official, the High Commissioner acts as a moral authority and a voice for victims. The High Commissioner guides the Office's mission and values, identifies its priorities and drives its activities. The High Commissioner makes public statements and appeals on human rights situations and crises; engages in dialogue with CSOs and others.

2.1.2 Universal Declaration on Human Rights (UDHR) 1948

The UDHR was adopted by the United Nations General Assembly in 1948 after the end of the Second World War as a common standard of achievement for all peoples and all nations.⁶ Apart from core civil society rights of freedom of expression, association and assembly, the UDHR assures fundamental human rights to all people – these include civil and political as well as economic,

4 See, UN (2008) Working with United Nations Human Rights Programme. A Handbook for Civil Society. At pg 1.

5 See General Assembly resolution 48/141 of 20 December 1993. The work of OHCHR is also guided by the Charter of the United Nations, the Universal Declaration of Human Rights and subsequent human rights instruments, including the 1993 Vienna Declaration and Programme of Action and the 2005 World Summit Outcome Document (General Assembly resolution 60/1 of 16 September 2005).

6 UN General Assembly Resolution 217 A (III) of 10 December 1948 Text: UN Document A/810, pg. 71 (1948).

social and cultural rights. The UDHR is the source of the development of various human rights treaties and instruments. Although conceived as a Declaration not intended to be binding as opposed to a treaty, today, the UDHR is widely regarded as part of international customary law.⁷ Thus, all states in the world are bound by it.

The adoption of the Universal Declaration of Human Rights represented the first major impact of NGOs on the newly created UN. The NGOs involved were primarily 'consultants' included in the US delegation and their involvement shaped the later 'consultative' arrangements that ECOSOC adopted for civil society engagement (Korey, 1998).⁸

The UN human rights declaration (UDHR) is basically a document that laid the foundations for human rights including those related to formation and operation of CSOs. The declaration outlines freedoms of association and assembly which UN member states must adhere and respect. Article 20 points out that: "Everyone has the right to freedom of peaceful assembly and association and no one may be compelled to belong to an association."

2.1.3 CSOs and UN Human Rights Mechanisms

The grounds as set in Article 71 of the UN Charter and the ECOSOC Resolution 1996/31 have endorsed numerous NGOs to successfully enter into the key platform for human rights protection and development of relevant legal standards. Today thousands of Non-Governmental Organizations (NGOs) and Civil Society Organizations (CSOs) participate vitally in major UN conferences and in the UN system, as active participants, and not just as observers. Civil society organisations have become both as source of knowledge and expertise and potential partners in the decision-making process of the UN.

One of the UN mechanisms mostly engaged by CSOs is human rights enforcement and monitoring mechanism. UN human rights mechanisms are broadly divided into two groups: Charter-based (political) and treaty-based (expert) bodies. In the political bodies, the main actors are the member States of the UN; while in the expert bodies, actors are private individuals who are expected to be independent of any government, and experts in the human rights issues addressed by the respective groups. For many years, thousands of CSOs have been engaging with these two interconnected groups in different capacities as will be illustrated below.⁹

It is undisputed that non-governmental organizations (NGOs) play a very important role in the international system by monitoring state activities, performing fieldwork, fiercely advocating their policies and presenting their findings. While helping to deliver reliable information and form standards and rules of human rights protection, NGOs are considered the prime engine of the human rights movement.¹⁰ Their influence is significant and desirable, as expressed by many governmental

⁷ See Office of the High Commissioner for Human Rights, United Nations Staff College Project, and Human Rights: A basic handbook for UN staff, United Nations (2000), p.11. Available at <http://www.unhchr.ch/html/menu6/handbook.pdf>.

⁸ See, UN System and Civil Society - An Inventory And Analysis Of Practices Background Paper For The Secretary-General's Panel Of Eminent Persons On United Nations Relations With Civil Society (May 2003)

⁹ See Engaging with UN Human Rights Mechanisms: An Introduction 2013 International Rehabilitation Council for Torture Victims.

¹⁰ See, S. Hobe, Human Rights, Role of Non-governmental organizations, Max Planck Encyclopedia of Public International Law (Max Planck Institute for Comparative Public Law and International Law, Heidelberg and Oxford

delegations as well as international organizations, especially the United Nations, and treaty bodies.

Human rights Non-Governmental Organizations are freely created entities for the sole purpose of helping the governments and governmental entities at the international and national level in the fight against human rights violations and assisting groups of people affected by those violations.¹¹ The former UN High Commissioner for Human Rights had this to say:

“Civil society actors’ contribution has also enriched the work of the independent experts that belong to other long-established human rights mechanisms, such as the human rights treaty bodies and special procedures. Crucially, their weight and knowledge have also been brought to bear in the operations of the Human Rights Council, the new intergovernmental body that, in June 2006, replaced the Commission on Human Rights. Human Rights Defenders, non-governmental organizations and all other civil society stakeholders carry out their human rights work in a variety of ways: they share information; advocate and scrutinize implementation of human rights; report violations, assist victims of abuses; and campaign for the development of new human rights standards. They do so by taking the pulse of their communities and constituencies. They give voice to the powerless in venues that may, otherwise, be out of the victims’ reach, including international human rights forums and mechanisms. Clearly, there is a need on the part of civil society actors to deeply understand and master the modus operandi of national, regional and international human rights institutions.” Navi Pillay - The United Nations High Commissioner for Human Rights from 2008 to 2014.

This sub-chapter will therefore guide CSOs on how they can access the main two levels of human rights mechanisms at UN level. CSOs at the end of the day, will be informed on how and when to use both mechanisms. CSOs have human rights obligations under both the UN treaty bodies and under UN Charter-based mechanisms.

a) CSOs Obligations under UN Treaty Mechanism

The CSOs family has several obligations created by various international treaties. This section therefore presents those key roles established by treaties as part of ensuring alternatives voices and reporting. The “human rights treaty bodies” are various committees of independent experts that monitor the implementation of the United Nations human rights treaties by States parties. They do this by reviewing reports submitted periodically by States parties and CSOs on steps taken to implement human rights treaties obligations. Most human rights treaty bodies are competent to receive and consider individual complaints, while several do conduct inquiries.

b) How CSOs can engage with UN Treaty Bodies?

The UN treaty body system plays a pivotal role in promoting and protecting human rights. Most committees, in carrying out their activities, interact with civil society on a regular basis for information, contacts, and thematic expertise. Civil society can engage with treaty bodies as follows;

University Press, 2012) pg. 1, accessible at: (University of Pennsylvania Press Philadelphia 2001) 151.

¹¹ Ibid. See also Reports of the Human Rights Council and Commission on the Status of Women, and documents referenced in Appendix I.

- Promote ratification of a treaty;
- Participate in the treaty body reporting process;
- Monitor a State Party's compliance with its treaty obligations;
- Submit shadow (or "parallel") reports as part of the State reporting process;
- Participate in treaty body sessions;
- Follow up on a treaty body's concluding observations for a State Party;
- Participate in General Discussion Days;
- Submit an individual complaint/communication; and
- Provide information to prompt a confidential inquiry into grave or systematic violations of human rights;
- Depending on the rules of each human rights treaty body, CSOs may also participate in human rights treaty body sessions as observers or through oral submissions;
- Providing information to generate confidential inquiries (e.g. in the Committee against Torture and Committee on the Elimination of Discrimination against Women);
- Providing information for early warning and urgent procedures (Committee on the Elimination of Racial Discrimination); and
- Making submissions to the annual inter-committee of the human rights treaty bodies.

The reporting process presents an important opportunity for a State Party to evaluate what has been achieved and what more needs to be done to advance human rights in a particular country. The reporting process consists of multiple stages, many of which provide opportunities for civil society engagement.

Figure 2: Opportunities for civil society to participate in the treaty body reporting cycle

Reporting Stage	What to do
Before the State Party Submits its Report	Participate in consultations with the State party as it prepares its report.
	Raise public awareness about the treaty and the reporting process.
	Lobby the State party to meet reporting deadlines.
Before the Treaty Body Meets to Adopt its List of Issues	Prepare a List of Issues in the report, identifying key human rights issues that warrant additional attention during the reporting process.
	Write to the Treaty Body to express interest in participating in the Pre-Session Working Group (if permitted).
During the Meeting of the Pre-Session Working Group	Make an oral intervention during the Pre-Session Working Group (if permitted).

Before the Treaty Body's Examination of the State Party	Research, write and submit a shadow report on a human rights issue in the State Party.
During the Treaty Body's Examination of the State Party	Attend the session in person (if the group has ECOSOC status) or via web-cast.
	Make an oral intervention during the examination.
	Participate in informal briefings with committee members.
	Circulate "one-pagers", in person or via email, highlighting key concerns identified in the shadow report.
After the Treaty Body Publishes its Concluding Observations	Conduct awareness-raising activities.
	Lobby for legislation and other reforms to implement the treaty body's recommendations and engage in consultation with the government to participate in the implementation of recommendations.
	Monitor and document the implementation of the treaty body's recommendations.
	Submit interim shadow report assessing implementation of priority recommendations.
	Inform treaty body immediately if the State Party engages in reprisals for participation in the review process.

c) How CSOs can engage with States in Reporting Process?

The State should also consult with civil society as these organizations often have valuable comments to make on the success of implementation measures taken at the ground level. However, in many countries, the participation of civil society in the drafting process is a challenge and their views may not be fully taken into account in the State Report. In this context, CSOs should be prepared to participate in the reporting process on their own. If the Committee is to carry out a complete and effective review, it therefore needs information which fills these gaps in the State Report. CSOs are often able to provide this information, as well as presenting a view from outside the government and administrative systems.¹²

CSOs have a major role to play throughout the reporting process of the various Human Rights Committees. In order to do this, it is crucial that they get organized and be ready to participate in all the stages of the process.¹³ The President of the relevant institution may invite CSOs to deliver

12 See, Centre for Civil and Political Rights (2010) UN Human Rights Committee. Participation in the Reporting Process, Guidelines for Non-Governmental Organisations (NGOs) .

13 See, for example, the CCPR website for deadlines: www.cccprcentre.org/en/next-sessions

brief statements and afterwards time is allocated for Committee members to ask questions and for CSOs to reply.¹⁴ Therefore, CSOs have obligations to participate in various UN treaty bodies' mechanisms and present shadow reports

d) CSOs Obligations under UN Charter Based Mechanisms

The UN human rights mechanisms that derive their power from the UN Charter (the treaty that created the United Nations) include the Human Rights Council (a body that replaced the defunct UN Commission on Human Rights) and Special Procedures. "Charter-based" human rights bodies have the authority to review human rights practices of all members of the United Nations, regardless of whether a particular state has ratified a particular human rights treaty or not. Charter based mechanisms are established to address human rights issues provided in general within the Universal Declaration of Human Rights 1948. In this section, our focus is only the Human Rights Council.

i) Human Rights Council

The UN Human Rights Council is the principal United Nations intergovernmental body responsible for human rights. Established by General Assembly resolution 60/251, it replaced and assumed most mandates, mechanisms, functions and responsibilities previously entrusted to the UN Commission on Human Rights. The Office of the United Nations High Commissioner for Human Rights (OHCHR) is the secretariat for the Human Rights Council, as it was for the Commission on Human Rights.

The Human Rights Council is an intergovernmental body of 47-member States based in Geneva. It meets for at least 10 weeks a year spread over for no fewer than three sessions, and can also hold special sessions. While the Commission for Human Rights was a subsidiary organ of the Economic and Social Council (ECOSOC), the Human Rights Council is a subsidiary organ of the General Assembly. Its role includes addressing violations of human rights, including gross and systematic violations, and the promotion of effective coordination and the main-streaming of human rights within the United Nations system. On 18th June, 2007, one year after its first meeting, the Human Rights Council agreed on a package that established the procedures.

ii) How to access and work with the Human Rights Council

In resolution 60/251 the General Assembly acknowledged the important role played by Non-Governmental Organizations (NGOs) and other civil society actors nationally, regionally and internationally in the promotion and protection of human rights. The participation of observers, including NGOs, in the sessions of the Council is based on arrangements and practices observed by the former Commission. These practices and arrangements continue to develop and evolve, with the Council required to ensure "the most effective contribution" of observers.

While consultative status with ECOSOC is required for NGOs to be accredited as observers to the Human Rights Council's sessions, NGOs without such status and other civil society actors can still contribute to the overall work of the Human Rights Council and its mechanisms in a number of

¹⁴ See for example, "A Guide for NGO Reporting to the Committee of the Rights of the Child (CRC)"

ways. Furthermore, its meetings are broadcast live on an OHCHR web-cast, and a broad range of documentation and information is available on the Council's homepage and Extra-net. Session-specific information is normally posted on the homepage two weeks before each regular session. Other Charter-based mechanisms shall be discussed in subsequent chapters.

2.2 Legal Framework at the African Union Level

This section highlights various commitments made by national governments at the African regional level to assure necessary space for civil society. It is intended to be a reference point for civil society organizations and human rights defenders in their efforts to realize such rights and commitments to development at the African Regional level. The focus will be on how CSOs can interact with the African Union, African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights.

2.2.1 CSOs Space and Obligation at the African Union

Unlike the UN Charter, the first African document establishing the Organizations of African Union (OAU) had no specific provisions on participation of CSOs in various OAU forums and meetings.¹⁵ However, later on under the African Union Constitutive Act¹⁶, the space for CSOs was recognized through the Economic Social and Cultural Council (ECOSOCC), established under the Constitutive Act to provide a permanent space for civil society to advise African governments collectively via the AU. This is an important window for CSOs to influence AU policy processes and inclusion in its membership. Nevertheless, a civil society can also engage with the AU via the Citizens Directorate or directly with the AU Commission's thematic directorates.

Another main window in which CSOs can effectively participate in AU affairs is through the African Commission on Human and Peoples' Rights established under the African Charter on Human and Peoples' Rights of 1981. NGOs and CSOs have been good partners of the Africa Union when it comes to promotion and protection of human rights in the African continent.

- a) Statutes of the Economic, Social and Cultural Council of the African Union (2004) -ECOSOCC The pre-Summit Forum, where CSOs gather to meet on the fringes of the biannual AU Summit, is considered by many to be an important space to influence continental policy.¹⁷ . Almost exactly a year later, shortly before the inaugural session of the AU, a second OAU Civil Society conference took place, in Addis Ababa; this time to flesh out the mechanisms and modalities for CSO engagement with the AU.¹⁸

A key outcome of the second conference was the establishment of a Working Group, to be made up of members of civil society and the OAU Secretariat, to develop the ECOSOCC statutes,¹⁹ which spelt out the composition, procedures for election and accreditation, and ECOSOCC structures.

15 See the Charter of the Organization of African Unity (1963).

16 AU Constitutive Act, OAU Doc. CAB/LEG/23.15 (2001).

17 See Civil society and the African Union: Towards a continental Strategy for World Vision. https://sarpn.org/documents/d0002580/CSO-AU_Africa_Report_Apr2007.pdf

18 https://sarpn.org/documents/d0002580/CSO-AU_Africa_Report_Apr2007.pdf

19 See Articles 5 and 22 of the Constitutive Act.

Another important objective for the Working Group was to come up with a plan for popularizing ECOSOCC as an idea throughout Africa.²⁰ The 20-member Group, which included 3 representatives from each sub-region of Africa, as well as sectorial experts and Diaspora representatives, was given two years from July 2002 to deliver on its mandate.²¹ Later on, a Civil Society Division was established for the purpose of coordinating CSOs issues at the African Union. That Division does the following:

- Work with member states and partners to create and strengthen social integration system by ensuring that the contributions of civil society are main-streamed through all aspects of the AU principles, policies and programs.
- The Division is responsible for mapping civil society organizations on the continent. It is assigned to develop a database of African civil society organizations that will serve as a repository of information on these organizations.
- The division also facilitates the identification and utilization of expertise that abounds within civil society organizations across the continent.
- The development of this database also supports the process of ECOSOCC elections by identifying key CSOs that qualify for membership and helps them to harness the expertise of the civil society to the demand of the African union.
- Ensure effective participation of civil society in the activities of the African Union by organizing relevant workshops on understanding the African Union. This helps to facilitate the understanding of the African Union, its organs, key structures and decision making process by key civil society across the continent.
- Encourage the support for inter-continental consultation partnership: AU-EU, FOCAC, etc. These consultations help to ensure that African society organizations make regular inputs into the various partnership processes in order to reinforce people to interact across the world and to support Africa's integration and development agenda.
- Having sectorial Dialogues- AU/OATUU Trade Union Partnership forums and African Union interfaith dialogues to promote serious and critical interactions with key sectorial groups in support of Africa's integration and development agenda.²²

i) Objectives of ECOSOCC

ECOSOCC shall amongst other things, and in conformity of objectives of the African Union as provided in the constitutive Act, perform the following functions:

- Promote continuous dialogues between all segments of the African people on issues concerning Africa and its future;

20 Adopted in Addis Ababa, Ethiopia in July 2004 by the AU Assembly, under article 22(2) of the AU Constitutive Act. ECOSOCC is intended to provide a voice for civil society in the AU. The Council held its first meeting in March 2005 in Addis Ababa, Ethiopia. Full text available at www.au.int. Statutes of the Economic, Social and Cultural Council.

21 World Vision (2007). Civil Society Organizations African Union towards a Continental advocacy strategy for World Vision.

22 <https://au.int/en/civil-society-division>. Accessed on 13th April 2018.

- Forge strong partnerships between governments and all segments of the civil society, in particular women, the youth, children, the diaspora, organized labour, the private sector and professional groups.
- Promote the participation of African civil society in the implementation of the policies and programmes of the Union.
- Support policies and programmes that will promote peace, security and stability in Africa, and foster development and integration of the continent;
- Promote and defend a culture of good governance, democratic principles and institutions, popular participation, human rights and freedoms as well as social justice;
- Promote, advocate and defend a culture of gender equality; and
- Promote and strengthen the institutional, human and operational capacities of the African civil society.

ii) Composition of ECOSOCC

Article 3 of the ECOSOCC Statutes provides the composition of the ECOSOCC as an advisory organ of the AU. The composition brings together members of CSOs. These CSOs include but are not limited to the following:

- Social groups such as those representing women, children, the youth, the elderly and people with disability and special needs;
- Professional groups such as associations of artists, engineers, health practitioners, social workers, media, teachers, sport associations, legal professionals, social scientists, academia, business organisations, national chambers of commerce, workers, employers, industry and agriculture as well as other private sector interest groups;
- Non-governmental organizations (NGOs), Community Based Organisations (CBOs) and voluntary organisations;
- Cultural organisations.
- ECOSOCC shall also include social and professional groups in the African Diaspora, and other organizations in accordance with the definition approved by the Executive Council.

iii) How to Join ECOSOCC

Article 6 provides eligibility requirements for CSOs to join or become members of ECOSOC as follows:

- Be national, regional, continental or African Diaspora CSO, without restriction to undertake regional or international activities;
- Have objectives and principles that are consistent with the principles and objectives of the Union as set out in Articles 3 and 4 of the constitutive Act;
- Be registered in a member State of the Union and/or;
- Meet the general conditions of eligibility for the granting of observer status to Non-Governmental Organizations;
- Show a minimum of three (3) years proof of registration as either an African or an African Diaspora CSO prior to the date of submission of application, including proof of operations for those years.

b) The African Charter on Human and Peoples Rights of 1981

The African Charter on Human and Peoples' Rights, also known as the 'Banjul Charter' protects and promotes human rights in the African Continent. It was brought into existence under the guidance of the Organization of African Unity (now replaced by the African Union). Initially, the responsibility for oversight and interpretation of the African Charter was only vested to the African Commission on Human and Peoples' Rights (ACHPR) head-quartered in Banjul, The Gambia.

i) CSOs and the African Commission on Human and Peoples' Rights

The ACHPR was created by Article 30 of the African Charter on Human and Peoples' Rights in 1986. The Commission is comprised of 11 commissioners nominated by States and approved by heads of states and government of the African Union for a mandate of 6 years that can be renewed. All commissioners serve in their personal capacity.²³

Since its creation in 1986 opportunities for civil society engagement with the African Commission have changed beyond all recognition. As the body mandated to promote and protect human and peoples' rights in Africa, as well as to interpret the provisions of the Charter, it is highly relevant for Human Rights Defenders working in Africa to participate in the African Commission. Civil Society Organizations (CSOs) with observer status at the African Commission have a wide range of ways to engage with the Commission.²⁴

The Commission's mandate includes the protection, promotion and interpretation of the rights enshrined in the Charter. Although the examination of State reports is an important element of the Commission's mandate, it is important to note that the ACHPR develops other activities including: country visits to follow the promotion of the Charter; participating in public fora in member States; consideration of communications submitted by African Union States, CSOs or individuals; and undertaking fact finding missions. In addition, the Commission has created a number of specialized mechanisms dealing with particular thematic areas, including working groups and special rapporteurs. The ACHPR also issues public statements, which can be useful in drawing attention to a particular issue.²⁵

ii) How CSOs can engage with the Commission

Under Rule 68 of the Commission's Rules of Procedure of 2010, NGOs working in the field of human rights may apply and be granted observer status with the Commission. Non-government organizations can engage with the Commission in accordance with Rules 75 and 76 of the Commission's Rules through;

- Participating in the public sessions of the Commission and its subsidiary bodies;
- Direct consultation with the Commission on various human rights issues;
- NGOs can also engage with the Commission by submitting communication/complaint with respect to violation of human rights under Rule 93 of the Commission's Rules of Procedure.

23 International Service for Human Rights (2011) Road Map for Civil Society Engagement State Reporting Procedure of the African Commission on Human and Peoples' Rights, September /2011

24 Shire Hassan (Undated) Good Practices for CSOs Participation at The African Commission on Human and Peoples' Rights. les' Rights

25 Ibid.

CSOs and State parties can also propose the adoption of items into the agenda through formal communication with the Commission at least ten weeks in advance of the session. This is easier for NGOs with observer status and can be a useful mechanism for promoting ACHPR's sessions, and those that often do not focus on the State reporting procedure. In addition, available advice on CSO engagement with the ACHPR focuses relatively little attention on this procedure.²⁶

One of the principal functions of the Commission is to protect the rights and freedoms guaranteed in the Charter under conditions laid down therein. To achieve this, the Commission is empowered, among other things, to receive and consider:

- Communications submitted by one State claiming that another State party to the Charter has violated one or more of the provisions in the Charter (Articles 48-49 of the African Charter on Human and Peoples' Rights); and
- Other Communications from individuals and organizations (CSOs) alleging that a State party to the Charter has violated one or more of the rights guaranteed therein (Article 55).
- Other communications submitted to the Commission pursuant to Article 55 of the Charter are considered within the framework of a written procedure (see Rules 102-120 of the Commission's Rules of Procedure). The author of a communication can withdraw his or her communication at any stage. The Commission in such a case will discontinue proceedings on it without taking any written decision. According to rule 111 of its Rules of Procedure, prior to forwarding its final decisions (recommendations) on a communication to the State party concerned, the Commission may inform that State whether it considers interim measures desirable to prevent irreparable damage to the victim.

iii) Registration of Communications

Communications or complaints meant for the African Commission are usually directed to the Secretariat of the Commission which is based in Banjul, The Gambia. Once a communication is received, it is registered under a file number in the Commission's Official Register of Communications kept at the Secretariat of the Commission. The Secretariat acknowledges receipt of the author's letter of complaint. If more information is required, the author will be informed accordingly.

Where the facts of the complaint reveal that the latter is not against a State party to the Charter, the complaint will not be registered and the author will be informed accordingly. The Secretariat will acknowledge receipt of the complaint by sending the author a standard letter enclosing any vital information about the functioning of the Commission including the text of the Charter.²⁷

iv) The Forum for Participation of NGOs (NGOs Forum)

One major factor in the opening of space for civil society at the African Commission has been the growth of the Forum on the Participation of NGOs (commonly known as the NGO Forum), first held in 1990. As one of the main avenues to facilitate civil society actors' access, the African Commission

²⁶ Ibid.

²⁷ OAU: African Commission on Human and Peoples Rights: Information Sheet No. 3

NGO Forum has been organized by the African Centre for Democracy and Human Rights Studies since 2000, with input from the Steering Committee of NGO representatives from the different sub-regions of Africa as well as from the African diaspora.

The bi-annual event, which precedes the Ordinary Session of the ACHPR, is an advocacy platform for discussing human rights issues in Africa with a view of identifying possible strategies for engagement or redress, which are forwarded to the African Commission as contribution to its work during a said Session. The NGOs Forum shares updates on the human rights situation in Africa by the African and international NGOs community with a view of identifying responses as well as adopting strategies towards improving the human rights situation on the continent.

The main objective of the NGOs Forum is to foster closer collaboration between and among NGOs and with the African Commission and other African human rights mechanisms, for the purpose of promoting and protecting human rights in Africa. A series of panel discussions on general human rights related issues are organized within the main agenda of the NGOs Forum as well as at side events, and even extending to the margins of the Ordinary Session.

During the forum, Presentation of alternative reports on the situation of human rights in countries whose states reports are to be examined during the African commission Session are made. The Forum also aims to facilitate networking, advocacy and lobbying opportunity at different levels

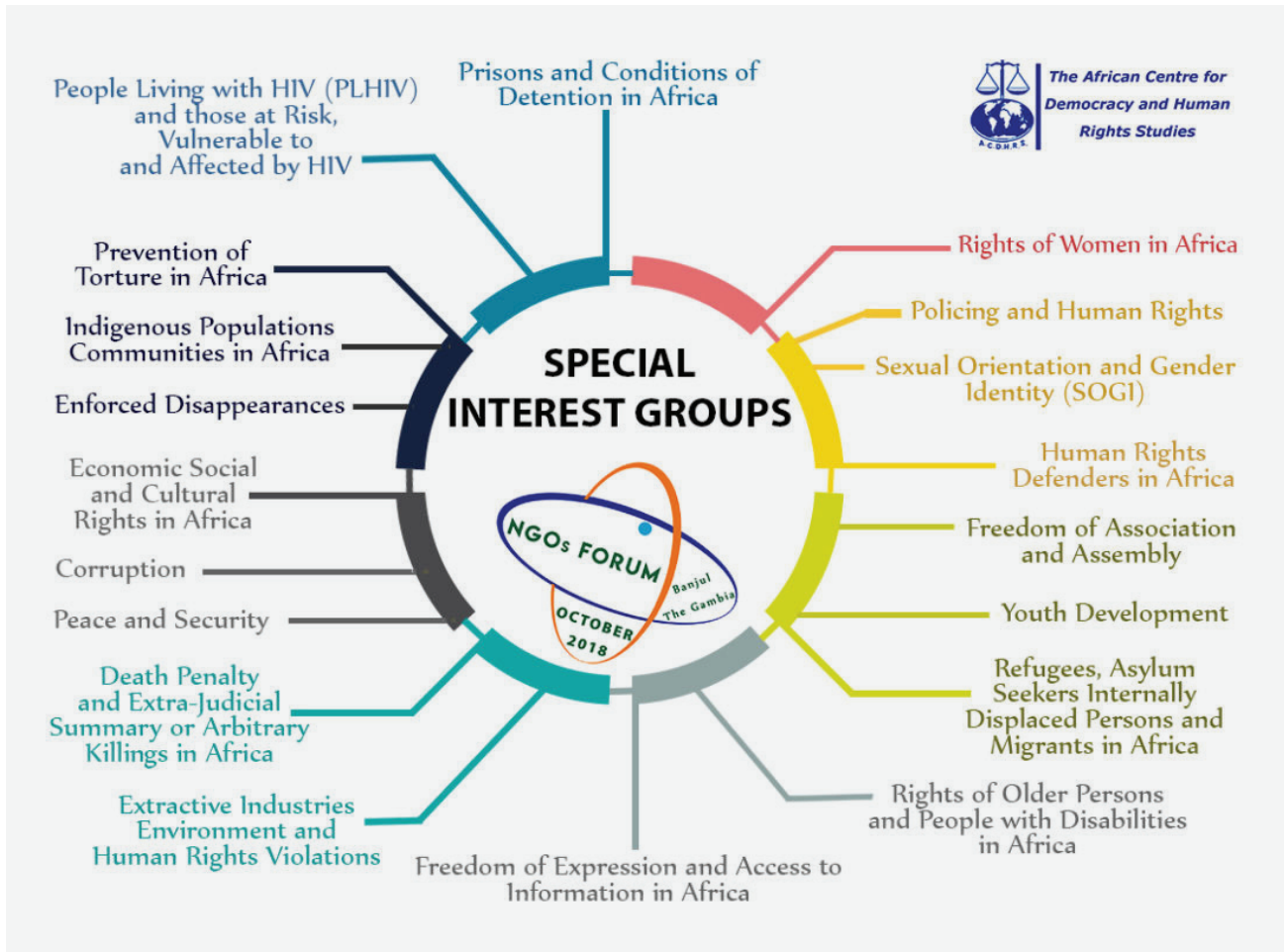
Representatives from African civil society/NGOs, international NGOs from Africa and beyond working on youth, democracy, human rights and the rule of law issues, academia, media, etc. Normally, English and French are the languages of the NGOs Forum with available simultaneous interpretation facilities.

Participants are encouraged to make the necessary visa arrangements, where required, before departing from their respective countries to The Gambia. Where participants do not have Gambia Diplomatic Representation in their countries of residence, the ACDHRS would endeavor to facilitate the issuance of visa on arrival to such participants, provided the ACDHRS is informed well in advance and provided with the requisite information to facilitate the process.

All participants are to pay the registration fee of \$150.00 (one hundred and fifty United States Dollars (subject to small variations each year) or its equivalent in Gambian Dalasis, Euros or CFA. The said amount contributes to expenses in relation to the conference package (conference room, tea and coffee breaks, lunch, water, projector, interpretation equipment, Interpreters salary, translation, documentation, stationery and other administrative logistics/support) provided during the Forum only and is paid by ALL participants in cash at the registration desk.

For more information on the NGOs forum, please visit <https://www.acdhars.org/ngo-forum/>

Special Interest Groups Discussions during the Forum



The diagram above represents one of the major contents comprising forum discussion. That is the Special Interest Groups Discussions which took place during the October 2018 NGOs forum. It should be noted that the list is not extensive, new interest groups are added each year. Please visit <https://www.acdhrs.org/ngo-forum/>

v) Conditions for submitting a communication

Article 56 of the African Charter outlines seven conditions that must be met before a communication/complaint can be considered by the Commission. These are as follows:²⁸

- The communication must include the author's name even if the author wants to remain anonymous;
- The communication must be compatible with the Charter of the AU and with the African Charter on Human and Peoples' Rights;

28 http://www.achpr.org/files/pages/communications/guidelines/achpr_infosheet_communications_eng.pdf

- The communication must not be written in insulting language directed against the state or the AU;
- The communication must not be based exclusively on news from the media;
- The complainant must have exhausted all available domestic legal remedies;
- The communication must be submitted within a reasonable time from the date of exhaustion of domestic remedies' and
- The communication must not deal with a matter which has already been settled by some other regional, sub-regional or international human rights body.

vi) Who can submit Communications?

Anybody, either on his or her own behalf or on behalf of someone else, can submit a communication to the Commission denouncing violation of human rights. Ordinary citizens, a group of individuals, NGOs and states Parties to the Charter can all put in claims. The complainant or author of the communication need not be related to the victim of the abuse in any way, but the victim must be mentioned. Complaining on behalf of someone else, for example, a prisoner who can't submit a communication himself or who does not want the authorities to know that he is petitioning is very helpful.

vii) How to Become a Member?

Any CSOs which wants to become a member to the African Commission must seek an observer status. The NGOs with observer status from the Commission can effectively participate in the ordinary sessions and other forums of the Commission. The organizations can engage with the Commission through the above procedures provided they have obtained the observer status with the Commission in accordance with Rule 68 of the Commission's Rules of Procedures.²⁹

In terms of a resolution 361 on the Criteria for Granting and Maintaining Observer Status to Non-Governmental Organizations working on Human and Peoples' Rights in Africa adopted by the Commission at its 59th Ordinary Session held from 21 October to 4th November, 2016 in Banjul, the Commission must be satisfied with a set of criteria before granting of observer status.³⁰

All Non-Governmental Organizations (NGOs) applying for observer status with the Commission shall be expected to submit a documented application to the Secretariat of the Commission, with the view to showing their willingness and capability to work for the realization of the objectives of the African Charter on Human and Peoples' Rights (the African Charter). All NGOs applying for observer status with the Commission shall consequently:

- Have objectives and activities in consonance with the fundamental principles and objectives enunciated in the African Union (AU) Constitutive Act, the Preamble to the African Charter on Human and Peoples' Rights, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol)
- Be NGOs working in the field of human rights in Africa; and
- Declare their financial resources
- NGOs applying for Observer Status with the Commission are required to provide, at least

²⁹ OAU: African Commission 'Resolution on the Criteria for the Granting and Maintaining of Observer Status to Non-Governmental Organizations working on Human and Peoples' Rights in Africa', adopted at 59th ordinary session held from 21 October-4 November 2017 in Banjul, The Gambia, preambles paras 8 & 9.

³⁰ AU (2016) Guidelines For The Submission Of Communications Organisation Of African Unity Fact Sheet No. 2. See Also THRDC Report on the Situation of Human Rights Defenders of 2017.

three months prior to the Ordinary Session, the following documents

- A letter of application addressed to the Secretariat requesting Observer Status with the Commission;
- A list of the Board of Members, and other members of the NGO
- The signed and authenticated Constitutive Statute of the NGO
- The Certificate of Legal Status of the NGO issued by the relevant Government authority, in the country in which the NGO is based
- The sources of funding of the NGO
- The latest independently audited financial statement of the NGO; and
- The latest Annual Activity Report of the NGO.

viii) Advantage of Obtaining an Observer Status

All NGOs with Observer Status (observers) shall be invited to be present at the opening and closing sessions of the Commission subject to the manner provided for in the Rules of Procedure governing the conduct of its sessions.

- All observers shall have access to the documents of the Commission subject to the conditions such documents provide
- The distribution of general information documents shall be free of charge
- The distribution of specialized documents shall be on a paid-for basis, except where reciprocal arrangements are in place
- Observers may be invited specially to be present at closed sessions dealing with issues of particular interest to them
- Observers may be authorised by the Chairperson of the Commission to make a statement on an issue that concerns them, subject to the text of the statement having been provided, with sufficient lead-time, to the Chairperson of the Commission through the Secretary of the Commission
- The Chairperson of the Commission may give the floor to observers to respond to questions directed at them by participants.
- Observers may request to have issues of a particular interest to them included in the provisional agenda of the Commission, in accordance with the provisions of the Rules of Procedure of the Commission.
- Observers shall undertake to establish close relations of co-operation with the Commission and to engage in regular consultations with it on matters of common interest.
- Observers shall present their activity reports to the Commission every two years.
- Administrative arrangements shall be made, whenever necessary, to determine the modalities of this co-operation.

Currently the Commission has about 700 CSOs with observer status. Surprisingly out those, only 8 are from Tanzania. Also, very few communications to the African commission have been channelled through HROGs from Tanzania. Therefore, there is a great chance of contributing to realization of human rights in the country through engaging with the regional human rights systems in particular the African Commission on Human and Peoples' Rights.

c) African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) 2009

The Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) it is the world's first continental instrument that legally binds governments to protect the rights and wellbeing of people forced to flee their homes by conflict, violence, disasters and human rights abuses. The Convention was adopted in October 2009. As of November 2018 it has been signed by 42 and ratified by 46 of the 55 member states of the African Union. The Convention entered into force on 6 December 2012, 30 days after its ratification by the 15th state. The convention is a shared framework, but the continent's diverse realities and challenges mean that individual countries have taken different approaches to it.

The objectives of this Convention

- i. 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;
- ii. Establish a legal framework for preventing internal displacement, and protecting and assisting internally displaced persons in Africa;
- iii. 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;
- iv. 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;
- v. Provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons;

d) Calendar for Major African Human Rights Events

- Africa Day / Africa Week 25 May (from 22 to 25 May)
- The African Human Rights Day; 21 October
- The Day of the African Child 16 June
- African Commission sessions: May and November
- The NGOs Forum: The Forum is held before each ACHPR session, i.e. twice a year, in the country hosting the ACHPR session.

Chapter 3

Major International Human Rights Instruments and Mechanisms

3.0 Introduction

Soon after the Second World War, new legal regimes that have the protection of individuals at their core and aim to limit the traditionally exclusive jurisdiction of states over their citizens emerged. These developments were witnessed at the International, Regional, and National levels. At the International level, the human rights regime developed under the auspices of the United Nations through the United Nations Charter declaring promotion and protection of human rights as one of goals of the United Nations.

At the regional level, human rights protections systems developed independent of the United Nations system, however recognized the basic instruments developed by the United Nations system specifically the Universal Declaration of Human Rights of 1948. The major regional Human Rights Systems are the European Human Rights System, the Inter-American System and the African Human Rights System.

This chapter provides some basic information about the extent of the substantive protection and the mechanisms for controlling the implementation of some of the major human rights treaties, declarations and guidelines that exist at the international level.

Given that the number of these treaties has grown steadily in recent decades, it will only be possible, within this limited framework, to deal with those conventions that are of general scope in that they recognize a long list of rights, as well as a few conventions that have been adopted with the specific object of focusing on particularly invidious practices such as genocide, torture, racial discrimination and discrimination against women. This choice has been made on the ground that these are the treaties that most of the civil society and Human Rights defenders are most likely to come across in the course of the daily exercise of their legal responsibilities defending universal human rights.

The chapter will first deal with the major treaties concluded within the framework of the United Nations. Second, it will deal briefly with some of the main Declarations and Guidelines, resolutions adopted by the United Nations General Assembly, since, although they are not legally binding per se, their contents have, as a very minimum, a significant politico-moral value which constitutes an important source of guidance and inspiration when enforcing human rights.

Next, brief reference will be made to some optional protocols related to treaties; the introduction to the Human Rights Council and its Mechanisms which includes the Council's mandates, the Universal Period Review (UPR), special procedures and the Working groups. Lastly the chapter will highlight the Annual Calendar and Events Relevant for HRDs and CSOs for them to follow and participate in the same.

3.1 Major Human Rights Instruments

3.1.1 The UN Charter

Despite the fact that the UN Charter has been explained briefly in the previous section above, it is important to repeat and elaborate some few issues. June 26, 1945, was historic moment in global history. This was the day when the United Nations Charter was signed. Out of the ashes of World War II, countries came together to form an organization to serve as a platform for cooperation, dialogue, and shared action for peace. The Charter was ratified on October 24, 1945. With this step, the UN formally came into existence. The Charter has 50 original signatories although to date, the UN has grown to include 193 Member States.

“The Charter of the United Nations which you have just signed is a solid structure upon which we can build a better world. History will honor you for it. Between the victory in Europe and the final victory, in this most destructive of all wars, you have won a victory against war itself. . . . With this Charter the world can begin to look forward to the time when all worthy human beings may be permitted to live decently as free people.”

Statement made by the then U.S. President Harry Truman during the closing of the final session of the conference in San Francisco in 1945.

The Charter, which consisted of a preamble and 19 chapters divided into 111 articles, is the UN founding document that guides all the undertakings of the UN activities and affairs of UN member states. The Charter sets out four main purposes: Maintaining worldwide peace and security, developing relations among nations, fostering cooperation between nations in order to solve economic, social, cultural, or humanitarian international problems.

“Peace, justice, human dignity, tolerance, and solidarity are enshrined in the Charter and bind us together.” Current UN Secretary-General António Guterres.

The Charter has outlined six convening bodies. These bodies include the General Assembly, Security Council, Economic and Social Council, Secretariat, and the International Court of Justice. The UN Trusteeship Council was formally the sixth organ, established to “provide international supervision for 11 Trust Territories that had been placed under the administration of seven Member States, and ensure that adequate steps were taken to prepare the Territories for self-government and independence.” By 1994, these territories had gained independence or self-government, and the Trusteeship Council suspended operations.

For the purpose of this Compendium, much emphasis is put on the provision of the Charter which provides for principles to be adhered to by member states and non-state parties to the Charter. That is Article 2 which provides as follows;

The Organization and its Members, in pursuit of the purposes stated in Article 1, shall act in accordance with the following principles;

- i. The Organization is based on the principle of the sovereign equality of all its Members.
- ii. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.
- iii. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
- iv. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.
- v. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
- vi. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.

3.1.2 The International Covenant on Civil and Political Rights, 1966

The International Covenant on Civil and Political Rights was adopted by the General Assembly in 1966 and entered into force on 23 March 1976. As of August 2018, the ICCPR had 117 States parties. The ICCPR attempts to ensure the protection of civil and political rights.

The ICCPR recognizes the inherent dignity of each individual and undertakes to promote conditions within states to allow the enjoyment of civil and political rights. Countries that have ratified the Covenant are obligated “to protect and preserve basic human rights... and to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.”

The unifying themes and values of the ICCPR are found in Articles 2 and 3 and are based on the notion of non-discrimination. Article 2 ensures that rights recognized in the ICCPR will be respected and be available to everyone within the territory of those states who have ratified the Covenant (State Party). Article 3 ensures the equal right of both men and women to the enjoyment of all civil and political rights set out in the ICCPR.

A. Rights Protected under the Covenant

The rights protected under the ICCPR include:

- Article 6 – Right to life.
- Article 7 – Freedom from torture.
- Article 8 – Right to not be enslaved.
- Article 9 – Right to liberty and security of the person.
- Article 10 – Rights of detainees.
- Article 11 – Right to not be imprisoned merely on the ground of inability to fulfil a contractual obligation.
- Article 12 – Freedom of movement and choice of residence for lawful residents.
- Article 13 – Rights of aliens.
- Article 14 – Equality before the courts and tribunals. Right to a fair trial.
- Article 15 – No one can be guilty of an act of a criminal offence which did not constitute a criminal offence.
- Article 16 – Right to recognition as a person before the law.
- Article 17 – Freedom from arbitrary or unlawful interference.
- Article 18 – Right to freedom of thought, conscience and religion.
- Article 19 – Right to hold opinions without interference.
- Article 20 – Propaganda for war shall be prohibited by law.
- Article 21 – Right of peaceful assembly.
- Article 22 – Right to freedom of association with others.
- Article 23 – Right to marry.
- Article 24 – Children's rights
- Article 25 – Right to political participation.
- Article 26 – Equality before the law.

Article 27 – Minority protection.

Article 4 of ICCPR allows States Parties to derogate (to do away) with the rights contained in the Covenant during times of public emergencies. However, State Parties may not derogate from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18. Similarly, many rights are couched in such a way that they are not absolute, but can be limited under certain circumstances for purpose of preserving public order, public health, public morality, national security and rights of others.

B. The obligations of the States parties

Under article 2 of the International Covenant on Civil and Political Rights, each State party “undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

As emphasized by the Human Rights Committee which monitors the ICCPR in its General Comment No. 3, the Covenant is not, “confined to the respect of human rights, but ... States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction”, an undertaking that in principle “relates to all rights set forth in the Covenant”.

The legal duty to ensure their enjoyment implies an obligation to take positive steps to see to it first, that domestic laws are modified when necessary in order to comply with the State's international legal obligations; and second, that these laws are indeed effectively implemented in practice by all public organs and officials, such as the courts (including administrative tribunals), prosecutors, police officers, prison officials, schools, the military, hospitals and the like.

Upon ratification of a treaty aimed at the protection of human rights and fundamental freedoms, States have a legal duty to modify their legislation so as to have it conform to their new international obligations. States have also to continue to ensure that their legal obligations are effectively implemented by all relevant organs, including all courts of law.

3.1.3 The International Covenant on Economic, Social and Cultural Rights, 1966

The International Covenant on Economic, Social and Cultural Rights was adopted by the United Nations General Assembly in 1966, and entered into force on 3 January 1976. As of August 2018, there were 168 States parties to the Covenant.

The ICESCR is composed of thirty-one articles contained in six sections: the preamble and parts I to V. Part I, which is identical to the parallel part of the ICCPR and comprises solely article 1, proclaims the right of all peoples to self-determination, including the right to freely pursue their economic, social and cultural development and to freely dispose of their natural wealth and resources.

While the Covenant benefits from an impressive scope, it does suffer from the fact that its terms are phrased in an excessively general manner. For example, whereas the European Social Charter has three articles dealing with the right to social security, the Covenant merely has the briefest statements. Similarly, the rights to food and housing, which are clearly complex and ill-defined concepts, are given little, if any, further substance in the text of the Covenant. The amount of detail to be included in the provisions of the Covenant was the subject of much debate in the drafting of the Covenant.

A. The rights recognized in the Covenant

The protection given to economic rights in the Covenant is broad but general. Article 7, for example, provides for a right to equal remuneration for work of equal value (rather than just the more restrictive equal pay for equal work), and gives recognition to a wide range of other rights such as the right to safe and healthy working conditions and the right to reasonable limitation of working hours. The following are core rights recognized and protected under the covenant;

Art 6- The right to work, including the right to gain one's living by work freely chosen or accepted.

Art. 7 - The right to enjoy just and favorable conditions of work, including fair remuneration for work of equal value without distinction of any kind.

Art. 8 - The right to form trade unions and join the trade union of one's choice.

Art. 9 - The right to social security, including social insurance.

Art. 10 - Protection and assistance to the family; marriage to be freely entered into; maternity protection; protection and assistance to children and young persons.

Art. 11- Right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions

Art. 12 - The right to the highest attainable standard of physical and mental health.

Art. 13 - The right to education.

B. State party obligations

Each State party to the International Covenant on Economic, Social and Cultural Rights “undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the ... Covenant by all appropriate means, including particularly the adoption of legislative measures” (art. 2(1)).

Although the Covenant thus “provides for progressive realization and acknowledges the constraints due to limits of available resources”, the Committee that monitors the Covenant emphasizes in General Comment No. 3 that “it also imposes various obligations which are of immediate effect”.

In the view of the Committee, two of these are of particular importance, namely: first, the undertaking in article 2(2) “to guarantee that the rights enunciated in the ... Covenant will be exercised without discrimination” on certain specific grounds; and second, the undertaking in article 2(1) “to take steps”, which in itself, is not qualified or limited by other considerations”.

In other words, “while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant”.

3.1.4 The Convention on the Rights of the Child 1989

Although children are human being and are protected by the general treaties for the protection of the human rights, it was considered important to have an elaborate Convention dealing specifically with children’s particular needs.

After ten years of existence of the UN Declaration on the Rights of the Child, the Convention on the Rights of the Child was adopted by the General Assembly in 1989 and entered into force on 2 September 1990. Within just a few years of its adoption the Convention had been almost universally ratified. As of August 2018, there were 196 States parties to the Convention. The guiding principle throughout this Convention is that “in all actions concerning children ..the best interests of the child shall be a primary consideration” (art. 3(1) (emphasis added).

A. Recognized rights under the Convention

The Convention recognizes a long and detailed list of rights that must be respected and ensured to the child at all times. The Convention defines a child to mean “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” (art. 1). The following are rights recognized in general terms;

Art. 6-The child’s right to life and maximum survival and development.

Art. 7-The child’s right to registration at birth, to a name, a nationality, and, to the extent possible, “to know and be cared for by his or her parents”.

Art.8; the child’s right to an identity, including nationality, name and family relations.

Art. 9(1)-The right of the child not to be separated from his or her parents against their will unless “such separation is necessary for the best interests of the child”.

Art. 10-The duty of States to facilitate family reunification by permitting travel into or out of their territories.

Art. 11-Duty to combat illicit transfer and non-return of children abroad.

Art. 12-Duty to respect the views of the child and the right of the child “to be heard in any judicial and administrative proceedings affecting” itself.

Art. 13-the child’s right to freedom of expression.

Art. 14- The child’s right to freedom of thought, conscience and religion.

Art. 15-The child’s right to freedom of association and to freedom of peaceful assembly.

Art. 16-The child’s right to legal protection against arbitrary and unlawful interference with his or her privacy, family, home or correspondence and the right not to be subjected to “unlawful attacks” on his or her honour or reputation.

Art. 17- The child’s right of “access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health”.

Art. 18(1)-Recognition of the principle that both parents have common and primary responsibility for the upbringing and development of the child and that the “best interests of the child will be their basic concern”.

Art. 19- The child’s right to protection against all forms of violence and abuse.

Art. 20-The child’s right to special protection and assistance when deprived of his or her family.

Art. 21-Whenever adoption is recognized or permitted, States parties “shall ensure that the best interests of the child shall be the paramount consideration”.

Art. 22-Rights of refugee children.

Art. 23-Rights of the mentally or physically disabled child.

Art. 24-Right of the child to the “highest attainable standard of health” and to health services.

Art. 25-The right of the child placed in care to “periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement”

Art. 26-The child’s right to benefit from social security, including social insurance

Art. 27-The child’s right to an adequate standard of living

Arts 28 and 29- the child’s right to education and the aims of that education

Art. 30-The right of children belonging to ethnic, religious or linguistic minorities, as well as the right of children of indigenous origin, to enjoy their own culture, religion and language

Art. 31-The child’s right to rest and leisure

Art. 32-The child’s right to protection against economic exploitation and hazardous work

Art. 33-The child’s right to protection against the illicit use of drugs and psychotropic substances

Art. 34-The child’s right to protection “from all forms of sexual exploitation and sexual abuse”

Art. 35-The prevention of the abduction and sale of, or traffic in, children

Art. 36-The child’s right to protection against all other forms of exploitation prejudicial to any aspects of its welfare

Art. 37(a)-The right to freedom from torture or other cruel, inhuman or degrading treatment or punishment, including capital punishment

37(b)-The child’s right not to be deprived of his or her liberty arbitrarily and unlawfully

37(c)-The child's right to humane treatment whilst deprived of his or her liberty

37(d)-The child's right to legal safeguards in connection with deprivation of liberty

Art. 38(1);-the child's right in armed conflicts to respect for the relevant rules of international humanitarian law

Art. 39- The child's right to appropriate measures to promote physical and psychological recovery and social integration in case of any form of neglect, exploitation or abuse, and

Art. 40-Principles of juvenile justice.

B. Obligation of the States parties

The States parties to the Convention on the Rights of the Child generally undertake to "respect and ensure the rights set forth in the ... Convention to each child within their jurisdiction without discrimination of any kind" (art. 2(1)), and to "take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of status, expressed opinions, or beliefs of the child's parents, legal guardians, or family members" (art. 2(2)).

As in all human rights treaties included in this Compendium, the principle of non-discrimination is also a fundamental principle with regard to the rights of the child and it conditions the interpretation and application of all the rights and freedoms contained in the Convention.

3.1.5 The Convention on the Prevention and Punishment of the Crime of Genocide, 1948

The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the General Assembly on 9 December 1948 and entered into force on 12 January 1951. As of August 2018 it had 149 States parties.

A. The scope of the Convention

The legal scope of the Convention is limited to the prevention and punishment of the crime of genocide which is defined in article II as meaning "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a. Killing members of the group;
- b. Causing serious bodily or mental harm to members of the group;
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. Imposing measures intended to prevent births within the group;
- e. Forcibly transferring children of the group to another group".

Genocide, conspiracy to commit it, direct or indirect incitement and attempt to commit genocide, as well as complicity in genocide (art. III) are acts punishable under the Convention. Moreover, persons committing any of these acts are punishable "whether they are constitutionally responsible rulers, public officials or private individuals" (art. IV).

The Genocide Convention was thus an important confirmation of the principle spelled out in the Nuremberg Charter that in some cases individual has international responsibility under international law which transcends partisan national interests and obligations of obedience. Since

the establishment of the International Criminal Court (ICC) it is advised to read the Genocide Convention together the Rome Statute (ICC statute) which creates the Court and defines offences triable under the ICC.

B. State parties' obligations

Article 1 of the Genocide Convention provides;

“The contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish” (emphasis added).

To this end, they also “undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the ... Convention and, in particular, to provide effective penalties for persons guilty of genocide” or of conspiracy to commit, incitement or attempt to commit, or complicity in, the crime of genocide (art. V read in conjunction with art. III).

The fact that the Contracting Parties “confirm” in article I of the Convention that genocide is “a crime under international law” is evidence that they considered the principles underlying the Convention to be already binding on them under international customary law.

3.1.6 The International Convention on the Elimination of All Forms of Racial Discrimination, 1965

The International Convention on the Elimination of All Forms of Racial Discrimination was adopted by the United Nations General Assembly on 21 December 1965 and entered into force on 4 January 1969. As of August 2018 it had 179 States parties.

A. Non-discrimination protected under the Convention

Under the Convention's Article 5, state parties are required not only to prohibit and eliminate racial discrimination, but also “to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably the enjoyment of the following rights; Article 5(a)-The right to equal treatment before the tribunals and all other organs administering justice.

Article 5(b)-The right to security of person political rights, such as the right to participate in elections, Article 5(c) to take part in the Government and in the conduct of public affairs and to have equal access to public service,

Article 5(d)-Civil rights, such as the right to freedom of movement and residence, the right to leave any country, including one's own, and to return to one's own country, the right to nationality, the right to marriage and choice of spouse, the right to own property alone as well as in association with others, the right to inherit, the right to freedom of thought, conscience and religion, the right to freedom of opinion and expression, the right to peaceful assembly and association .

Article 5(e)- economic, social and cultural rights, and in particular the rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration, the right to form and join trade unions, the right to housing, the right to public health, medical care, social security and social

services, the right to education and training, the right to equal participation in cultural activities, Article 5(f)-the “right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks”

B. States Obligation Under the Convention

For the purposes of the Convention, “the term ‘racial discrimination’ means any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

The States parties to the Convention are called to “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races” (art.2(1)).

To this end, they undertake, in particular;

- To engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation” – art. 2(1)(a)
- Not to sponsor, defend or support racial discrimination by any persons or organizations– art. 2(1)(b)
- To “take effective measures to review” public policies at all levels and to amend legislation which has “the effect of creating or perpetuating racial discrimination wherever it exists” – art. 2(1)(c);
- To prohibit and bring to an end, by all appropriate means ... racial discrimination by any persons, group or organization – art. 2(1)(d);
- To encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division – art. 2(1)(e).

State parties are also required to further “assure to everyone within their jurisdiction effective protection and remedies” against acts violating a person’s human rights contrary to the Convention, as well as the right to seek from domestic tribunals “just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination” (art. 6).

Lastly, there is a requirement for states “to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination...” (art.7).

3.1.7 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

Although outlawed by all the major human rights treaties, the widespread practice of torture was considered to require more detailed legal regulation and more efficient implementation machinery. It was therefore decided to draft a Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted by the United Nations General Assembly

on 10 December 1984. It entered into force on 26 June 1987, and, as of August 2018, there were 113 States parties to the Convention.

A. The legal scope of the Convention

According to the Convention, “the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. However, “it does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions” (art. 1).

The Convention makes it clear that “an order from a superior officer or a public authority may not be invoked as a justification of torture” (art. 2(3)). In other words, the principle of individual responsibility for acts of torture is clearly established.

B. The undertakings of the States parties

The following provisions of the Convention detail the responsibilities of the States parties to prevent, punish, and remedy acts of torture. However, only some of the legal obligations will be outlined here and in general terms:

Article 3(1)-No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

Articles 4(1) and (2)-Each State Party shall ensure that all acts of torture are offences under its criminal law” and the same shall apply to attempts to commit torture and acts that constitute “complicity or participation in torture”. It shall, moreover, “make these offences punishable by appropriate penalties which take into account their grave nature”

Article 9- The States parties shall take the measures necessary to exercise their jurisdiction over the preceding offences and to submit the person alleged to have committed acts contrary to article 4 of the Convention to the “competent authorities for the purpose of prosecution” (arts. 5-7) and they shall moreover “afford one another the greatest measure of assistance in connection with criminal proceedings brought” in respect of any of these offences.

Article 8- The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties”, which also “undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them”.

Article 10(1)-the States parties shall further “ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment”

Article 11- for purposes of prevention of torture, the States parties “shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form” of deprivation of liberty.

Article 12-Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed.

Article 13-Each State party shall further ensure that any alleged victim of torture “has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities”

Article 14-Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.

Article 15-Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16-Each State party also undertakes “to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1” of the Convention.

Lastly, the Convention requires that “each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction” (art. 2(1); emphasis added). It further specifies that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture” (art. 2(2); emphasis added).

3.1.8 The Convention on the Elimination of All Forms of Discrimination against Women, 1979,

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly on 18 December 1979 and entered into force on 3 September 1981. As of August 2018 it had 189 States parties.

A. The specific legal scope of the Convention

Whilst many articles in the Convention are framed as general legal obligations on the States parties to “take appropriate measures” to eliminate discrimination against women, some at the same time specify the particular rights which must be ensured on a basis of equality of men and women. Thus, for instance:

Article-10 with regard to education, women have the right, inter alia, to the same conditions for career and vocational training and the same opportunities for scholarships and other grants;

Article 11-the right to work, to the same employment opportunities, to free choice of profession and employment, to equal remuneration, to social security and to protection of health ;

Article 13- the right to family benefits, to bank loans, mortgages and other forms of financial credit and to participate in recreational facilities, sports and all aspects of cultural life;

Article 14-the right of rural women to participate in the elaboration and implementation of development plans, to have access to adequate health care facilities, to benefit directly from social security programs, to obtain all types of training and education, to organize self-help groups, to participate in all community activities, to have access to agricultural credit and loans, and to enjoy adequate living conditions;

Lastly, Article 16 of the Convention specifically imposes a duty on the States parties to “accord to women equality with men before the law” as well as identical legal capacity in civil matters (art. 15(1) and (2)); and also obliges States parties to ensure them, on a basis of equality of men and women, a number of rights relating to marriage and the family.

B. The undertakings of the States parties

For the purposes of the Convention the term “discrimination against women” means “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” (art. 1; emphasis added).

The prohibition on discrimination against women is thus not limited to the traditional categories of human rights, but goes beyond them to other fields where discrimination might occur. Furthermore, it is not limited to the public field but also extends to areas of private life.

Under Art 2, States parties “agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake”, in particular:

- To embody the principle of equality of men and women in their national laws and to ensure the practical realization of this principle;
- To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- To establish effective legal protection of the equal rights of women through national tribunals or other public institutions;
- To refrain from engaging in any act or practice of discrimination against women;
- To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise”; and
- To repeal all national penal provisions which constitute discrimination against women.

The subsequent articles provide further details as to the undertakings of the States parties to eliminate discrimination against women, which, inter alia, comprise the following obligations:

- To modify the social and cultural patterns of conduct of men and women ... which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” (art. 5(a));
- To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases” (art. 5(b));

- To take all appropriate measures to suppress all forms of traffic in women and exploitation of prostitution of women (art. 6), eliminate discrimination against women in political and public life (arts. 7 and 8), in the fields of education (art. 10), employment (art. 11) and health care (art. 12); in the areas of economic and social life (art. 13); as well as against women in rural areas (art. 14(2)).

3.1.9 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)

The International Convention on the Protection of the Rights of All Migrant Workers and their Families specifies human rights articles in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and expresses explicitly how different rights apply to different categories of working migrants. Beyond already existing limitations expressed by law, the Convention holds no provisions restricting the rights of states to decide on immigration procedures. As of August 2018, 52 states had signed and ratified the convention.

A “migrant worker” is a person who either migrates within their home country or outside it to pursue work such as seasonal work. Migrant workers usually do not have an intention to stay permanently in the country or region in which they work. Migrant workers who work outside their home country may also be called foreign workers or expatriates, especially when they are sent for or invited to work in the host country before leaving the home country.

A. Protected Rights under the convention

This UN Convention contains 93 clauses and is the longest human rights convention altogether. Fundamental human rights are extended to all migrant workers, both documented and undocumented, with additional rights being recognized for documented migrant workers and members of their families, notably equality of treatment with nationals in employment and in a number of legal, political, economic, social and cultural areas. It attempts to establish minimum standards of protection for migrant workers and members of their families.

Article 7 advises governments/states to respect and to ensure to all migrant workers and members of their families within their territory the rights provided for in the present Convention without distinction of any kind such as sex, race, color, language, religion or conviction, political or other opinion, national, Ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

Article 9 directs the states to protect the right of life of the workers and their families by law.

Article 10 protects the migrant workers and their families from torture and cruel and degrading treatment or punishment.

Article 11 proscribes against slavery and servitude of migrant workers and families. Also importantly it protects migrant workers and families from compulsory or forced labor.

Article 25 emphasizes that migrant workers should be treated on par with the nationals of the state/country for remuneration in employment. It also advocates that other conditions of work that include overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship to be on par with the domestic workers.

Article 26 has very important directives for the protection of the rights of migrant workers. It gives migrant workers the right to join trade unions and participate in meetings of trade unions.

B. Obligations of Contracting States

In accordance with other human rights conventions, contracting parties are obliged to warrant the human rights of working migrants listed in this convention without discrimination (Part II). In Part III these human rights specific to migrants are listed separately. Part IV concerns itself with further rights of migrant workers that regularly reside in their mother land. Part V entails regulations concerning specific categories of foreigner like cross-border commuters, seasonal labourers and travellers. Part VI lists regulations dealing with working migrants without a residence permit.

3.1.10 Convention on the Rights of Persons with Disabilities (CRPD) 2006

The convention is based on existing international human rights conventions and guarantees their application to persons with disabilities. The goal of the convention is the active participation of persons with disabilities in the political, economic, social and cultural life of society. The convention forbids the discrimination of persons with disabilities in all aspects of life and guarantees them civil, political, economic, social and cultural human rights. As of August 2018, 177 states had ratified the convention.

A. Legal Content of the Convention

The Convention has defined 'disability' broadly. Thus, no disabled person is categorically excluded from the protection of the convention. According to the convention Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

The Convention forbids all forms of discrimination against persons with disabilities. It guarantees the right to an independent and self-determined life, equal rights to a family, the right of employment and the right to an adequate living standard and social protection, equal access to education, equal participation rights in societal and cultural life as well as protection from violence, exploitation and abuse.

B. States obligations under the convention

Article 4 of the convention obligates contracting states to prevent any form of discrimination based on physical or mental disabilities. Among others, law and customs that adversely affect disabled persons must be eradicated and prejudice against disabled persons must be opposed.

3.1.11 The Convention Relating to the Status of Refugees, 1951

The 1951 Convention protects refugees. By 2018 November 145 states had ratified or acceded to the convention. The convention defines a refugee as a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him— or herself of the protection of that country, or to return there, for fear of persecution (see Article 1A(2)). People who fulfill this definition are entitled to the rights and bound by the duties contained in the 1951 Convention.

The protection provided under the 1951 Convention is not automatically permanent. A person may no longer be a refugee when the basis for his or her refugee status ceases to exist. This may occur when, for example, refugees voluntarily repatriate to their home countries once the situation there permits such return. It may also occur when refugees integrate or become naturalized in their host countries and stay permanently.

It should be noted that, The 1951 Convention only protects persons who meet the criteria for refugee status. Certain categories of people are considered not to deserve refugee protection and should be excluded from such protection. This includes persons for whom there are serious reasons to suspect that:

- i. they have committed a crime against peace, a war crime, a crime against humanity or a serious non-political crime outside their country of refuge; or
- ii. they are guilty of acts contrary to the purposes and principles of the United Nations.

A. Rights protected under the 1951 Convention

The 1951 Convention contains a number of rights and also highlights the obligations of refugees towards their host country. The cornerstone of the 1951 Convention is the principle of non-refoulement contained in Article 33. According to this principle, a refugee should not be returned to a country where he or she faces serious threats to his or her life or freedom.

This protection may not be claimed by refugees who are reasonably regarded as a danger to the security of the country, or having been convicted of a particularly serious crime, are considered a danger to the community.

Other rights contained in the 1951 Convention include:

- The right not to be expelled, except under certain, strictly defined conditions (Article 32);
- The right not to be punished for illegal entry into the territory of a contracting State (Article 31);
- The right to work (Articles 17 to 19);
- The right to housing (Article 21);
- The right to education (Article 22);
- The right to public relief and assistance (Article 23);
- The right to freedom of religion (Article 4);
- The right to access the courts (Article 16);
- The right to freedom of movement within the territory (Article 26); and
- The right to be issued identity and travel documents (Articles 27 and 28).

The Convention, apart from providing for rights, it also provides for obligations to refugees. Refugees are required to abide by/the laws and regulations of their country of asylum and respect measures taken for the maintenance of public order.

B. State party obligations to the 1951 Convention

The refugee phenomenon is one of truly global proportions. Once the state ratifies or accedes to the convention, it assumes obligation to;

- Being committed to treating refugees in accordance with internationally recognized legal and humanitarian standards;

- Give refugees a possibility to find safety;
- To avoid friction between States over refugee questions.
- Share its willingness to accept the responsibility for protecting refugees; and
- Helps UNHCR to mobilize international support for the protection of refugees

3.1.12 Convention Related to the Status of Stateless Persons, 1954

This Convention's most significant contribution to international law is its definition of a "stateless person" as someone "who is not considered as a national by any State under operation of its law." For those who qualify as stateless persons, the Convention provides important minimum standards of treatment. By November 2018, the convention had 91 state parties.

The Convention requires that stateless persons have the same rights as citizens with respect to freedom of religion and education of their children. For a number of other rights, such as the right of association, the right to employment and to housing, it provides that stateless persons are to enjoy, at a minimum, the same treatment as other non-nationals.

To overcome the profound vulnerability that affects people who are stateless and to help resolve the practical problems they face in their everyday lives, the Convention upholds the right to freedom of movement for stateless persons lawfully on the territory, and requires States to provide them with identity papers and travel documents. The Convention also prohibits the expulsion of stateless persons who are lawfully on the territory of a State Party. Because protection as a stateless person is not a substitute for possession of a nationality, the Convention requires that States facilitate the assimilation and naturalization of stateless persons.

Like the 1951 Convention relating to the Status of Refugees, the 1954 Convention explicitly excludes individuals when there are serious reasons for considering that they have committed a crime against peace, a war crime, a crime against humanity, or a serious nonpolitical crime abroad.

3.1.13 Convention of Reduction of Statelessness, 1961

The 1961 Convention sets out rules for the conferral or non-withdrawal of nationality only where the person in question would be left stateless. In other words, the provisions of the 1961 Convention offer carefully detailed safeguards against statelessness that should be implemented through a State's nationality law, without specifying any further parameters of that law. Beyond these few, simple safeguards, States are free to elaborate the content of their nationality legislation without violating other international standards relating to nationality. Up to November 2018, the convention had 73 state parties.

A. The Convention's Value to Reducing Statelessness

By applying the safeguards elaborated in the 1961 Convention wherever a person would be left stateless, States can prevent new cases of statelessness from arising. The 1961 Convention's provisions are, however, equally relevant to the task of reducing statelessness. It does this in two ways. First, prevention of statelessness leads to a reduction of statelessness over time. Second, when bringing their domestic legislation into line with the safeguards detailed in the 1961 Convention in order to prevent future statelessness, States are encouraged to also use this opportunity to reduce statelessness. For example, States may apply newly introduced safeguards retroactively and accordingly allow for acquisition of nationality by stateless people.

B. States' Obligation Under the Convention

There are four main areas in which the 1961 Convention on the Reduction of Statelessness provides concrete and detailed safeguards to be implemented by States in order to prevent and reduce statelessness. UNHCR can offer technical support to help States ensure that these safeguards are reflected in their nationality legislation and practice.

- **Measures to avoid statelessness among children**
Articles 1 to 4 principally concern the acquisition of nationality by children. States shall grant their nationality to children who would otherwise be stateless and have ties with them through either birth in the territory or descent. As a result, where children are born in the territory but acquire the nationality of a foreign parent, there is no obligation to grant nationality. Nationality shall either be granted at birth, by operation of law, or upon application.

The 1961 Convention permits States to make the conferral of nationality subject to certain conditions, such as habitual residence for a certain period of time. Under Article 2, States shall grant nationality to foundlings (children found on the territory).
- **Measures to avoid statelessness due to loss or renunciation of nationality**
Articles 5 to 7 prevent statelessness in later life by requiring prior possession or assurance of acquiring another nationality before a nationality can be lost or renounced. Two exceptions to this rule are provided for: States may withdraw nationality from naturalized persons who subsequently take up long-term residence abroad for more than seven consecutive years and from nationals who were born abroad and are not resident in the State when they attain majority, provided certain other conditions are met.
- **Measures to avoid statelessness due to deprivation of nationality**
Articles 8 and 9 of the 1961 Convention deal with the deprivation of nationality. States may not deprive any person of their nationality on racial, ethnic, religious or political grounds. Deprivation of nationality that results in statelessness is also prohibited, except where the individual obtained nationality by misrepresentation or fraud. States may retain the right to deprive a person of his or her nationality even if this leads to statelessness where he or she has committed acts inconsistent with the duty of loyalty to the State or has made an oath or formal declaration of allegiance to another State.
In deciding whether to deprive an individual of his or her nationality, the State should consider the proportionality of this measure, taking into account the full circumstances of the case. Due process guarantees need to be respected throughout the procedure regarding deprivation.
- **Measures to avoid statelessness in the context of State succession**
State succession, such as the cession of territory by one State to another and the creation of new States, can lead to statelessness unless proper safeguards are in place. Avoidance of statelessness in such cases is essential to promoting social inclusion and stability. Article 10 addresses the specific context of State succession and asks States to include provisions to ensure the prevention of statelessness in any treaty dealing with the transfer of territory. When no treaty is concluded, the State(s) involved shall confer its/their nationality on those who would otherwise be stateless as a result of the transfer of territory.

3.2 Optional Protocols

Often human rights treaties are followed by “Optional Protocols” which may either provide for procedures on how to access the relevant treaty body or address a substantive area related to the treaty. An optional protocol is a treaty that complements and adds to an existing human rights treaty. For this reason, only States that have already agreed to be bound by a parent treaty may choose to be parties to optional protocols. As treaties in their own right, they are open to signature, accession or ratification by countries who are party to the main treaty. This section provides for optional protocols of some selected core treaties.

3.2.1 Optional Protocols to the International Covenant on Civil and Political Rights 1966

The ICCPR has two optional protocols. This First Optional Protocol to the Covenant gives the Committee competence to examine individual complaints with regard to alleged violations of the Covenant by States parties to the Protocol. As of August 2018, 116 States had ratified the protocol.

In 1989, the General Assembly adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. This Protocol entered into force on 11 July 1991 and as of August 2018, the protocol had 85 States parties.

3.2.2 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESC)

An Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the United Nations in 2008. This optional protocol establishes complaint and inquiry mechanisms for the International Covenant on Economic, Social and Cultural Rights. As of August 2018, 23 states had ratified it.

Although adopted the same day, 16 December 1966, the two international human rights covenants that are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) had two very different monitoring systems. A protocol providing for a complaints mechanism was immediately put in place for civil and political rights, but there was no such procedure set up for economic, social and cultural rights until 2008

In 1993, during the World Conference on Human Rights in Vienna, the governments unanimously proclaimed, “All human rights are universal, indivisible and interdependent and interrelated,” and they committed themselves to drafting an optional protocol to the ICESCR. In spite of this solemn commitment, it took fifteen years more for it to become reality through the adoption of the Protocol, which – finally – formally established the equality of all human rights.

3.2.3 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2002

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is an international agreement aimed at preventing torture and cruel, inhuman or degrading treatment or punishment. OPCAT was adopted in 2002 and entered into force in 2006. As of August 2018 the OPCAT had 88 state parties.

Under OPCAT, State Parties agree to establish an independent National Preventive Mechanism (NPM) to conduct inspections of all places of detention and closed environments. In addition to the NPM, State Parties also agree to international inspections of places of detention by the United Nations Subcommittee on the Prevention of Torture (SPT). The SPT engages with states on a confidential basis and cannot publish reports and recommendations unless under agreement with the state party. Furthermore, people who provide information to the SPT may not be subject to sanctions or reprisals for having done so.

3.2.4 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2000

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict aims to protect children from recruitment and use in hostilities.

The Protocol was adopted by the General Assembly on 25 May 2000 and entered into force on 12 February 2002. As of August 2018, 167 countries have ratified the Optional Protocol on the involvement of children in armed conflict.

The Optional protocol is a commitment that:

- States will not recruit children under the age of 18 to send them to the battlefield.
- States will not conscript soldiers below the age of 18.
- States should take all possible measures to prevent such recruitment –including legislation to prohibit and criminalize the recruitment of children under 18 and involve them in hostilities.
- States will demobilize anyone under 18 conscripted or used in hostilities and will provide physical, psychological recovery services and help their social reintegration.
- Armed groups distinct from the armed forces of a country should not, under any circumstances, recruit or use in hostilities anyone under 18.

3.2.5 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2000

After receiving the first 10 ratifications needed for its entry into force, the Optional Protocol on the sale of children, child prostitution and child pornography became legally binding on 18 January 2002. As of August 2018 about 174 countries had signed and ratified this Protocol.

The Protocol provides definitions for the offences of ‘sale of children’, ‘child prostitution’ and ‘child pornography’. It also creates obligations on governments to criminalize and punish the activities

related to these offences. It requires punishment not only for those offering or delivering children for the purposes of sexual exploitation, transfer of organs or children for profit or forced labour, but also for anyone accepting the child for these activities.

The Protocol also protects the rights and interests of child victims. Governments must provide legal and other support services to child victims. This obligation includes considering the best interests of the child in any interactions with the criminal justice system.

Children must also be supported with necessary medical, psychological, logistical and financial support to aid their rehabilitation and reintegration. As a complement to the Convention on the Rights of the Child, interpretation of the Optional Protocol's text must always be guided by the principles of non-discrimination, best interests of the child and child participation.

The value of international cooperation and public education are also stressed in the Protocol. International cooperation is important as a means of combating these often transnational activities. Public awareness, information and education campaigns also help protect children from these serious violations of their rights.

3.2.6 The Third Optional Protocol to the CRC on a Communications Procedure (OP3 CRC)

The Third Optional Protocol to the CRC on a Communications Procedure (OP3 CRC) sets out an international complaints procedure for child rights violations. It entered into force in April 2014, allowing children from states that have ratified to bring complaints about violations of their rights directly to the UN Committee on the Rights of the Child if they have not found a solution at national level. As of August 2018, there were 39 state parties to the Optional Protocol.

OP3 CRC is the treaty which establishes an international complaints procedure for violations of child rights contained in the convention on the Rights of the Child (CRC). Before the adoption of OP3 CRC, the CRC was the only core international human rights treaty that did not have a communications procedure. OP3 CRC provides two new ways for children to challenge violations of their rights committed by States:

- A communication procedure, which enables children to bring complaints about violations of their rights to the UN Committee on the Rights of the Child, if they have not been fully resolved in national courts
- An inquiry procedure for grave and systematic violations of child rights.

3.2.7 The Protocol Relating to the Status of Refugees, 1967

The 1967 Protocol broadens the applicability of the 1951 Convention. In November 2018, the protocol had been acceded and ratified by 146 states. The 1967 Protocol removes the geographical and time limits that were part of the 1951 Convention. These limits initially restricted the Convention to persons who became refugees due to events occurring in Europe before 1 January 1951.

3.3 Declarations and Guidelines

The term 'Declaration' is used for various international instruments. International human rights declarations are not legally binding; the term is often deliberately chosen to indicate that the parties

do not intend to create binding obligations but merely want to declare certain aspirations. However, while the 1948 Universal Declaration of Human Rights for example was not originally intended to have binding force, its provisions have since gained binding character as customary law.

A Guideline is a statement by which to determine a course of action. A guideline aims to streamline particular processes according to a set routine or sound practice. By definition, following a guideline is never mandatory. Guidelines are not binding and are not enforced.

This sub chapter provides for some selected declarations and guidelines with respect to human rights.

3.3.1 Universal Declaration on Human Rights (UDHR) 1948

The UDHR was adopted by the United Nations General Assembly in 1948 after the end of the Second World War as a common standard of achievement for all peoples and all nations. Apart from core civil society rights of expression, association and assembly, the UDHR assures fundamental human rights to all people - civil and political as well as economic, social and cultural rights.

The UDHR is the source of the development of various human rights treaties and instruments. Although conceived as a Declaration as opposed to a treaty, today, the UDHR is widely regarded as part of international customary law.

The adoption of the Declaration represented the first major impact of NGOs on the newly created UN. The NGOs involved were primarily 'consultants' included in the US delegation and their involvement shaped the later 'consultative' arrangements that ECOSOC adopted for civil society engagement. The UDHR is basically a document that laid the foundations for human rights including those related to formation and operation of CSOs. The declaration outlines freedoms of association and assembly which UN member states must adhere and respect. Article 20 points out that; "Everyone has the right to freedom of peaceful assembly and association and no one may be compelled to belong to an association."

3.3.2 Vienna Declaration and Program of Action 1993

On 25 June 1993, representatives of 171 States adopted by consensus the Vienna Declaration and Program of Action of the World Conference on Human Rights, thus successfully closing the two-week World conference and presenting to the International community a common plan for the strengthening of human rights work around the world.

The World Conference on Human Rights in the Vienna Declaration and Program of Action (in particular, para. 33 of Section I) stated that human rights education, training and public information were essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace.

The Conference recommended that States should strive to eradicate illiteracy and should direct education towards the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. It called on all States and institutions to include human rights, humanitarian law, democracy and rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings.

The Vienna Declaration also made concrete recommendations for strengthening and harmonizing the monitoring capacity of the United Nations system. In this regard, it called for the establishment of a High Commissioner for Human Rights by the General Assembly, which subsequently created the post on 20 December 1993 (resolution 48/141).

Art 5 of the declaration is very key and a milestone to the realization of universal human rights. It provides that 'All human rights are universal, indivisible and interdependent and interrelated'. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.

3.3.3 United Nations Millennium Declaration 2000

Only through broad and sustained efforts to create a shared future, based upon our common humanity in all its diversity, can globalization be made fully inclusive and equitable", world leaders stated when they unanimously adopted a "United Nations Millennium Declaration" at the conclusion of their Millennium Summit on 8 September 2000.

The 3-day summit held on 6-8 September at New York was the largest-ever gathering of world leaders. The Declaration was the main document of the Summit and it contained a statement of values, principles and objectives for the international agenda for the twenty-first century. It also set deadlines for many collective actions.

In an address delivered at the concluding meeting of the Summit, the then United Nations Secretary-General Kofi Annan told world leaders that it had sketched out clear directions for adapting the Organization to its role in the new century. "It lies in your power, and therefore is your responsibility, to reach the goals that you have defined", he declared. "Only you can determine whether the United Nations rises to the challenge. For my part, I hereby re-dedicate myself, as from today, to carrying out your mandate."

The Declaration reaffirmed Member States' faith in the United Nations and its Charter as indispensable for a more peaceful, prosperous and just world. The collective responsibility of the governments of the world to uphold human dignity, equality and equity is recognized, as is the duty of world leaders to all people, and especially children and the most vulnerable.

The Summit Declaration cited freedom, equality (of individuals and nations), solidarity, tolerance, respect for nature and shared responsibility as six values fundamental to international relations for the twenty-first century.

3.3.4 UN Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is an international instrument adopted by the United Nations on September 13, 2007, to enshrine (according to Article 43) the rights that "constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world."

Indigenous peoples, also known as first peoples, aboriginal peoples or native peoples, are ethnic groups who are the original inhabitants of a given region, in contrast to groups that have settled,

occupied or colonized the area more recently. Groups are usually described as indigenous when they maintain traditions or other aspects of an early culture that is associated with a given region. Not all indigenous peoples share this characteristic, usually having adopted substantial elements of a colonising culture, such as dress, religion or language. Indigenous peoples may be settled in a given region (sedentary) or exhibit a nomadic lifestyle across a large territory, but they are generally historically associated with a specific territory on which they depend. Indigenous societies are found in every inhabited climate zone and continent of the world.

The UNDRIP protects collective rights that may not be addressed in other human rights charters that emphasize individual rights, and it also safeguards the individual rights of Indigenous people. The Declaration is the product of almost 25 years of deliberation by U.N. member states and Indigenous groups.

The first of the UNDRIP's 46 articles declares that "Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights (4) and international human rights law." The Declaration goes on to guarantee the rights of Indigenous peoples to enjoy and practice their cultures and customs, their religions, and their languages, and to develop and strengthen their economies and their social and political institutions. Indigenous peoples have the right to be free from discrimination, and the right to a nationality.

Significantly, in Article 3 the UNDRIP recognizes Indigenous peoples' right to self-determination, which includes the right "to freely determine their political status and freely pursue their economic, social and cultural development." Article 4 affirms Indigenous peoples' right "to autonomy or self-government in matters relating to their internal and local affairs," and Article 5 protects their right "to maintain and strengthen their distinct political, legal, economic, social and cultural institutions." Article 26 states that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired," and it directs states to give legal recognition to these territories. The Declaration does not override the rights of Indigenous peoples contained in their treaties and agreements with individual states, and it commands these states to observe and enforce the agreements.

The UNDRIP was adopted by 144 countries, with 11 abstentions and 4 countries voting against it. These four countries were Canada, the USA, New Zealand, and Australia. Since 2009 Australia and New Zealand have reversed their positions and now support the Declaration, while the United States and Canada have announced that they will revise their positions.

3.3.5 UN Declaration on Human Rights Defenders

In 1998, after 14 years of ISHR lobbying, advocacy and negotiation, the UN General Assembly adopted the landmark Declaration on Human Rights Defenders. The adoption of the Declaration was a critical point in human rights history because it recognized in international law the extreme importance and legitimacy of human rights activity, and the need to protect it along with those who carry it out.

Also known as the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, the Declaration defines a human rights defender as anyone working for the promotion and protection of human rights. This broad definition encompasses professional as well as non-professional human rights workers, volunteers, journalists, lawyers and anyone else carrying out, even on an occasional basis, a human rights activity.

The Declaration articulates existing human rights in a way that makes it easier to apply them to the situation of human rights defenders. It specifies how the rights contained in the major human rights instruments; including the right to freedom of expression, association and assembly, apply to defenders. It also outlines the specific duties of States and the responsibility of everyone with regard to defending human rights. The rights protected under the Declaration include:

- The right to be protected;
- The right to freedom of assembly, and of association;
- The right to develop and discuss new human rights ideas and to advocate for their acceptance;
- The right to criticize government bodies and agencies and to make proposals to improve their functioning;
- The right to provide legal assistance or other advice and assistance in defence of human rights;
- The right to unhindered access to and communication with non-governmental and intergovernmental organizations, and international bodies;
- The right to access resources for the purpose of protecting human rights, including the receipt of funds from abroad.

3.4 Human Rights Treaty Bodies

The human rights treaty bodies are the committees of independent experts that monitor the implementation of the United Nations human rights treaties by States parties. They do this by reviewing reports submitted periodically by States parties on steps taken to implement treaty provisions. Most human rights treaty bodies are competent to receive and consider individual complaints, while several may conduct inquiries.

One, the Subcommittee on Prevention of Torture, is mandated to conduct visits to places where persons may be deprived of their liberty in order to prevent torture.

3.4.1 How do they work

In addition to its obligation to implement the substantive provisions of the treaties to which it is a party, each State party is required to submit regular reports on how it has implemented treaty provisions. The relevant human rights treaty body considers these reports in the presence of a delegation of the State party and in the light of all information, including further written information provided by the State party, as well as information provided orally during the consideration of the report.

The committees also receive information from United Nations agencies, national human rights institutions (NHRIs) and civil society actors, in particular non-governmental organizations (NGOs), professional associations and academic institutions.

Based on this process, human rights treaty bodies adopt what are generally known as “concluding observations”, which refer to the positive aspects of a State’s implementation of the treaty and the areas where the treaty body recommends the State to take further action.

3.4.2 How to Access and Work with the Human Rights Treaty Bodies

Working with human rights treaty bodies has proved to be an effective way for civil society to contribute to the implementation of human rights and the development of human rights measures. There are a number of ways in which civil society, individuals and other human rights actors can engage with the human rights treaty bodies system, while taking into account the specific arrangements of each treaty body, for instance:

- Promoting the ratification of a treaty;
- Monitoring compliance by States parties with their reporting obligations;
- Submitting written information and material to human rights treaty bodies, including through written reports;
- Depending on the rules of each human rights treaty body, participating in human rights treaty body sessions as observers or through oral submissions;
- Following up on human rights treaty bodies’ concluding observations;
- Submitting an individual complaint to human rights treaty bodies.

Let us examine some of the treaty body mechanisms (committees) that monitor human rights instruments.

3.4.3 Human Rights Committee

This committee monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocols.

The Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”.

In addition to the reporting procedure, article 41 of the Covenant provides for the Committee to consider inter-state complaints. Furthermore, the First Optional Protocol to the Covenant gives the Committee competence to examine individual complaints with regard to alleged violations of the Covenant by States parties to the Protocol.

The full competence of the Committee extends to the Second Optional Protocol to the Covenant on the abolition of the death penalty with regard to States who have accepted the Protocol.

The Committee meets in Geneva and normally holds three sessions per year. The Committee also publishes its interpretation of the content of human rights provisions, known as General Comments on thematic issues or its methods of work.

3.4.4 Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights (CESCR) is the body of independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties. The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially within two years of accepting the Covenant and thereafter every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”.

In addition to the reporting procedure, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which entered into force on 5th May 2013, provides the Committee competence to receive and consider communications from individuals claiming that their rights under the Covenant have been violated. The Committee may also, under certain circumstances, undertake inquiries on grave or systematic violations of any of the economic, social and cultural rights set forth in the Covenant, and consider inter-state complaints.

The Committee meets in Geneva and normally holds two sessions per year, consisting of a three-week plenary and a one-week pre-sessional working group. The Committee also publishes its interpretation of the provisions of the Covenant, known as general comments

3.4.5 Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination (CERD) is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its State parties.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every two years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”.

In addition to the reporting procedure, the Convention establishes three other mechanisms through which the Committee performs its monitoring functions: the early-warning procedure, the examination of inter-state complaints and the examination of individual complaints.

The Committee meets in Geneva and normally holds three sessions per year consisting of three-four-three weeks per year. The Committee also publishes its interpretation of the content of human rights provisions, known as general recommendations (or general comments), on thematic issues and organizes thematic discussions.

3.4.6 Committee on the Elimination of Discrimination Against Women

The Committee on the Elimination of Discrimination against Women (CEDAW) is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW Committee consists of 23 experts on women's rights from around the world.

Countries who have become party to the treaty (States parties) are obliged to submit regular reports to the Committee on how the rights of the Convention are implemented. During its sessions the Committee considers each State party report and addresses its concerns and recommendations to the State party in the form of concluding observations.

In accordance with the Optional Protocol to the Convention, the Committee is mandated to: (1) receive communications from individuals or groups of individuals submitting claims of violations of rights protected under the Convention to the Committee and (2) initiate inquiries into situations of grave or systematic violations of women's rights. These procedures are optional and are only available where the State concerned has accepted them.

The Committee also formulates general recommendations and suggestions. General recommendations are directed to States and concern articles or themes in the Conventions.

3.4.7 Committee Against Torture

The Committee Against Torture (CAT) is the body of 10 independent experts that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its State parties.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every four years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations".

In addition to the reporting procedure, the Convention establishes three other mechanisms through which the Committee performs its monitoring functions: The Committee may also, under certain circumstances, consider individual complaints or communications from individuals claiming that their rights under the Convention have been violated, undertake inquiries, and consider inter-state complaints.

The Optional Protocol to the Convention, which entered into force in June 2006, creates the Subcommittee on Prevention of Torture (SPT). The SPT has a mandate to visit places where persons are deprived of their liberty in the States parties. Under the Optional Protocol, States parties shall establish independent national preventive mechanisms for the prevention of torture at the domestic level which has also a mandate to inspect places of detention. The Committee publishes its interpretation of the content of the provisions of the Convention, known as general comments on thematic issues.

3.4.8 Committee on the Rights of the Child

The Committee on the Rights of the Child (CRC) is the body of 18 independent experts that monitors implementation of the Convention on the Rights of the Child by its State parties. It also monitors implementation of two Optional Protocols to the Convention, on involvement of children in armed conflict (OPAC) and on sale of children, child prostitution and child pornography (OPSC). On 19 December 2011, the UN General Assembly approved a third Optional Protocol on a communications procedure (OPIC), which allow individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols. The Protocol entered into force in April 2014.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must submit an initial report two year after acceding to the Convention and then periodic reports every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”.

The Committee also reviews the initial reports which must be submitted by States who have acceded to the first two Optional Protocols to the Convention, on involvement of children in armed conflict and on sale of children, child prostitution and child pornography.

The Committee is also able to consider individual complaints alleging violations of the Convention on the Rights of the Child and its first two optional protocols (OPAC and OPSC) by States parties to the OPIC, as well as to carry out inquiries into allegations of grave or systematic violations of rights under the Convention and its two optional protocols.

The Committee meets in Geneva and normally holds three sessions per year consisting of a three-week plenary and a one-week pre-session working group. In 2010, the Committee considered reports in two parallel chambers of 9 members each, “as an exceptional and temporary measure”, in order to clear the backlog of reports.

The Committee also publishes its interpretation of the content of human rights provisions, known as general comments on thematic issues and organizes days of general discussion.

3.4.9 Committee on Migrant Workers

The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) is the body of independent experts that monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by its State parties. It held its first session in March 2004.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every five years. The Committee will examine each report and address its concerns and recommendations to the State party in the form of “concluding observations”.

The Committee will also, under certain circumstances, be able to consider individual complaints or communications from individuals claiming that their rights under the Convention have been violated once 10 States parties have accepted this procedure in accordance with article 77 of the Convention.

The Committee meets in Geneva and normally holds two sessions per year. The Committee also organizes days of general discussion and can publish statements on themes related to its work and interpretations of the content of the provisions in the Convention (general comments).

3.4.10 Committee on the Rights of Persons with Disabilities

The Committee on the Rights of Persons with Disabilities (CRPD) is the body of independent experts which monitors implementation of the Convention by the States Parties.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially within two years of accepting the Convention and thereafter every four years. The Committee examines each report and shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned.

The Optional Protocol to the Convention gives the Committee competence to examine individual complaints with regard to alleged violations of the Convention by States parties to the Protocol.

3.4.11 Committee on Enforced Disappearances

The Committee on Enforced Disappearances (CED) is the body of independent experts which monitors implementation of the Convention by the States Parties.

All States parties are obliged to submit reports to the Committee on how the rights are being implemented. States must report within two years of ratifying the Convention. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”.

In accordance with article 31, a State Party may at the time of ratification of this Convention or at any time afterwards declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State Party of provisions of this Convention. In addition to the reporting procedure, article 32 of the Convention provides for the Committee to consider inter-state complaints. The Committee meets in Geneva and holds two sessions per year.

3.4.12 Subcommittee On Prevention Of Torture

The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“SPT”) is a new kind of treaty body in the United Nations human rights system. It has a preventive mandate focused on an innovative, sustained and proactive approach to the prevention of torture and ill treatment. The SPT started its work in February 2007.

The SPT was established pursuant to the provisions of a treaty, the Optional Protocol to the Convention against Torture (“OPCAT”). The OPCAT was adopted on December 2002 by the General Assembly of the United Nations and entered into force in June 2006.

The SPT is composed of 25 independent and impartial experts coming from different backgrounds and from various regions of the world. Members are elected by States Parties to the OPCAT for a four-year mandate and can be re-elected once.

A. What does the SPT do?

Mandate – The SPT has two primary operational functions. First, it may undertake visits to States Parties, during the course of which it may visit any place where persons may be deprived of their liberty. Second, it has an advisory function which involves providing assistance and advice to States Parties on the establishment of National Preventive Mechanisms (“NPM”), which OPCAT requires that they establish, and also providing advice and assistance to both the NPM and the State Party regarding the working of the NPM. In addition, the SPT cooperates, for the prevention of torture in general, with relevant United Nations organs and mechanisms as well as with international, regional, and national institutions or organizations. The SPT produces a public annual report on its activities which it presents to the Committee against Torture and the UN General Assembly in New York. In addition to its field work, the SPT also convenes three times a year for one week-long sessions at the United Nations Office at Geneva.

Visits – Under the OPCAT, the SPT has unrestricted access to all places where persons may be deprived of their liberty, their installations and facilities and to all relevant information. The SPT visits police stations, prisons (military and civilian), detention centres (e.g. pre-trial detention centres, immigration detention centres, juvenile justice establishments, etc.), mental health and social care institutions and any other places where people are or may be deprived of their liberty.

The SPT is able to interview in private persons deprived of their liberty and any other person who in the SPT’s view may be able to assist it with relevant information, including Government officials, NPMs, representatives of national human rights institutions, non-governmental organizations, custodial staff, lawyers, doctors, family members, etc. People who provide information to the SPT must not be subject to any form of sanction or reprisal for having provided information to the SPT.

In order for the SPT to fully realize its mandate under the OPCAT, the SPT has so far devised four types of visits: these are SPT country visits, SPT country follow-up visits, NPM advisory visits and OPCAT advisory visits. (For details see the information on SPT visits and follow-up).

All visits are conducted by at least two members of the SPT, accompanied, if necessary by experts with relevant professional experience and knowledge, as well as by members of its Secretariat and, where needed, interpreters.

Assistance and advice – Pursuant to article 17 of the OPCAT, State Parties have an obligation to establish NPMs, which are independent national bodies for the prevention of torture and ill treatment at the domestic level. The OPCAT and the SPT provide guidance concerning the establishment of those bodies, including their mandate, powers and methods of working. It is the responsibility of the State to ensure that it has in place a NPM which complies with the requirements of the OPCAT.

For its part, the SPT’s mandate includes assisting and advising States in the establishment of NPMs and it has produced guidelines on NPMs to add further clarity to what is required of states in this regard. The SPT also assists NPMs by providing them with guidance on effective operational practice and on how best to reinforce their powers, independence and capacities in order to strengthening safeguards against ill treatment of persons deprived of their liberty. To that end, the SPT makes itself available for engaging in continuous dialogue and works in close collaboration with NPMs.

B. How does the SPT do its work?

The SPT undertakes country visits during which a delegation of its members visits places where persons may be deprived of their liberty. During its visits, the SPT examines the conditions of their detention, their daily life, including the manner in which they are treated, the relevant legislative and institutional frameworks, and other questions that may be related to the prevention of torture and ill treatment. At the end of its visits, the SPT draws up a written report which contains recommendations and observations to the State, requesting a written response within 6 months of its receipt. This then triggers a further round of discussion regarding the implementation of the SPT's recommendations, and thus begins the process of continual dialogue. The SPT visit reports are confidential, though State Parties are encouraged to make them public documents, as permitted by the OPCAT.

When undertaking NPM advisory visits, the SPT focuses on issues concerning the establishment and/or operation of the NPM in the country concerned. OPCAT advisory visits focus on high-level discussions with the relevant authorities concerning a whole range of issues concerning OPCAT compliance.

The SPT is guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity. The SPT conducts its work in a spirit of co-operation. It aims to engage with States Parties through a process of constructive dialogue and collaboration rather than condemnation. Nevertheless, if the State party refuses to co-operate or fails to take steps to improve the situation in light of the SPT's recommendations, the SPT may request the Committee against Torture to make a public statement or to publish the SPT report if it has not yet been made public.

3.5 The Human Rights Council and its Mechanisms

The Human Rights Council is the principal United Nations inter governmental body responsible for human rights. Established by General Assembly resolution 60/251, it replaced and assumed most mandates, mechanisms, functions and responsibilities previously entrusted to the Commission on Human Rights. It meets for at least 10 weeks a year spread over no fewer than three sessions, and can also hold special sessions. While the Commission was a subsidiary organ of the Economic and Social Council (ECOSOC), the Human Rights Council is a subsidiary organ of the General Assembly. Its role includes addressing violations of human rights, including gross and systematic violations, and the promotion of effective coordination and the mainstreaming of human rights within the United Nations system. On 18 June 2007, one year after its first meeting, the Human Rights Council agreed on a package that established the procedures, the secretariat for the Human Rights Council, as it was for the Commission on Human Rights.

3.5.1 How does it work

The Human Rights Council is an intergovernmental body of 47-member States mechanisms and structures to form the basis for its future work. This package, adopted as its resolution 5/1, included the Council's agenda, programme of work and rules of procedure and made modifications to the system of expert advice and the complaint procedure inherited from the Commission. Resolution 5/1 also set out the modalities for the operation of the Council's new Universal Periodic Review mechanism and established a process for reviewing, rationalizing and improving all special procedures mandates

3.5.2 How to access and work with the Human Rights Council and its mandates and mechanisms
In resolution 60/251 the General Assembly acknowledged the important role played by non-governmental organizations (NGOs) and other civil society actors nationally, regionally and internationally in the promotion and protection of human rights. The participation of observers, including NGOs, in the sessions of the Council is based on arrangements and practices observed by the former Commission. These practices and arrangements continue to develop and evolve, with the Council required to ensure “the most effective contribution” of observers.

The consultative status with ECOSOC is required for NGOs to be accredited as observers to the Human Rights Council’s sessions. The first time that non-governmental organizations (NGOs) took a role in formal UN deliberations was through the Economic and Social Council (ECOSOC) in 1946. Article 71 of the UN Charter opened the door for suitable arrangements for consultation with NGOs. This relationship with ECOSOC is governed today by ECOSOC resolution 1996/3. International, regional and national NGOs, non-profit public or voluntary organizations are eligible to obtain consultative status. There are three categories of status: General, special and roster consultative status.³¹

3.5.3 Council meetings

Whereas the former Commission met only once a year for a total of six weeks, the Council meets at the Palais des Nations in Geneva, Switzerland, for at least three regular sessions a year, for a total duration of no less than 10 weeks. The Council’s main (four-week) session is normally held in March. The Council may also hold special sessions at the request of a member State, where such a request is supported by at least one third of its member States. The Council also organizes panel discussions and special events to enhance dialogue and mutual understanding on specific issues.

3.5.4 Council’s Mandates and mechanisms

A. Universal Periodic Review (UPR)

The universal periodic review (UPR) is a new human rights mechanism. Through it the Council periodically reviews the fulfillment by each of the United Nations 193 Member States of its human rights obligations and commitments. The UPR is a cooperative mechanism, based on an interactive dialogue with the State under review. It is intended to complement, not duplicate, the work of the treaty bodies.

- I. The UPR’s objectives
 - The improvement of the human rights situation on the ground;
 - The fulfillment of the State’s human rights obligations and commitments, and an assessment of the positive developments and challenges it faces;
 - The enhancement of the State’s capacity and the provision of technical assistance, in consultation with, and with the consent of, the State concerned;
 - The sharing of best practice among States and other stakeholders;
 - Support for cooperation in the promotion and protection of human rights; and

³¹ For more details about this status, visit the NGO Branch website or the page Apply for Consultative Status at <http://esango.un.org/civilsociety/displayConsultativeStatusSearch.do?method=search&sessionCheck=false>

- The encouragement of full cooperation and engagement with the Human Rights Council, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

II. Basis for the Review

- Each State is examined on the basis of:
 - The Charter of the United Nations;
 - The Universal Declaration of Human Rights;
 - The human rights instruments to which it is a party;
 - Its voluntary pledges and commitments, including (where relevant) those undertaken when presenting its candidature for election to the Council; and
 - Applicable international humanitarian law.

III. Periodicity

Operating on a four-year cycle, the UPR is composed of several stages, including the preparation of the documents that reviews are based on, the review itself, and follow-up to the conclusions and recommendations stemming from reviews. The participation of regional intergovernmental organizations, national human rights institutions (NHRIs), as well as civil society representatives, including non-governmental organizations (NGOs), human rights defenders, academic institutions and research institutes, is envisaged at relevant stages of the review process.

At the conclusion of the first UPR cycle, the Human Rights Council may review the modalities and the periodicity of the reviews, based on best practices and lessons learned.

UPR Cycle



The following are Principles guiding the universal periodic review:

It must:

- Promote the universality, interdependence, indivisibility and interrelatedness of all human rights
- Be a cooperative mechanism based on objective and reliable information and on interactive dialogue;
- Ensure universal coverage and equal treatment of all States;
- Be an intergovernmental process, United Nations Member-driven and action-oriented;
- Fully involve the country under review;
- Complement and not duplicate other human rights mechanisms, thus adding value;
- Be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner;
- Not be overly burdensome to the concerned State or the agenda of the Council;
- Not be overly long; it should be realistic and not absorb a disproportionate amount of time, human and financial resources;
- Not diminish the Human Rights Council's capacity to respond to urgent human rights situations;
- Fully integrate a gender perspective;
- Take into account the level of development and specificities of countries; and
- Ensure the participation of all relevant stakeholders, including non-governmental organizations (NGOs), in accordance with General Assembly resolution 60/251 and Economic and Social Council (ECOSOC) resolution 1996/31, as well as any decisions that the Human Rights Council may take in this regard.

B. Special procedures

"Special procedures" is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. A key feature of the special procedures is their ability to respond rapidly to allegations of human rights violations occurring anywhere in the world at any time.

Special procedures mandate usually require mandate-holders to monitor, advise and publicly report on human rights situations in specific countries or territories (country mandates), or on major phenomena of human rights violations worldwide (thematic mandates). Each special procedure's mandate is defined in the UN Resolution that created it. Thematic mandates are renewed every three years and country mandates annually, unless otherwise decided by the Human Rights Council. As of 2018, there are 44 thematic and 12 country mandates.

Special procedures mandate-holders are either an individual (special rapporteur, special representative of the Secretary-General, representative of the Secretary-General or independent expert) or a group of individuals (working group). Mandate-holders serve in their personal capacity for a maximum of six years and do not receive salaries or any other financial compensation for

their work. The independent status of mandate-holders is crucial to the impartial performance of their functions. The Office of the United Nations High Commissioner for Human Rights (OHCHR) provides special procedures mandate-holders with personnel, logistical and research assistance to support them in their mandates.

A. Special procedures mandate-holders

- Receive and analyze information on human rights situations provided by various sources on an ongoing basis
- Network and share information with partners, both governmental and non-governmental, within and outside the United Nations
- Seek—often urgently—clarification from Governments on alleged violations and, where required, request Governments to implement protection measures to guarantee or restore the enjoyment of human rights
- Raise awareness about specific human rights situations and phenomena, and threats to and violations of human rights;
- When specific circumstances so warrant, communicate their concerns through the media and other public statements;
- Undertake country visits to assess human rights situations pertaining to their respective mandates, and make recommendations to Governments with a view to improving those situations;
- Report and make recommendations to the Human Rights Council and, where relevant to their mandates, to the General Assembly (and in some cases to the Security Council) on: regular activities under their mandate; field visits; and specific thematic trends and phenomena;
- Contribute thematic studies to the development of authoritative norms and standards for the subject area of the mandate, and may provide legal expertise on specific issues.

B. Appointment of mandate-holders

In line with Resolution 5/1, the following general criteria apply to the nomination, selection and appointment of mandate-holders:

- Expertise;
- Experience in the field of the mandate;
- Independence;
- Impartiality;
- Personal integrity; and
- Objectivity.

In the appointment of mandate-holders, due consideration is also given to gender balance and equitable geographic representation, as well as to an appropriate representation of different legal systems.

C. Who is eligible for appointment?

Highly qualified individuals with established competence, relevant expertise, extensive professional experience in the field of human rights and flexibility/availability of time are considered eligible candidates for appointment as mandate-holders.

Individuals holding decision-making positions in Government or in any other organization or entity (including non-governmental organizations (NGOs)), national human rights institutions (NHRIs) and other human rights organizations) which may give rise to a conflict of interest with the responsibilities inherent in the mandate are excluded.

The principle of non-accumulation of human rights functions is also respected when appointing mandate-holders. This means that individuals should not occupy multiple United Nations human rights mandates at the same time.

D. Who can nominate candidates

The following may nominate candidates as special procedures mandate-holders:

- Governments;
- Regional groups operating within the United Nations human rights system;
- International organizations or their offices (e.g., OHCHR);
- NGOs;
- Other human rights bodies; and
- Individuals

E. The thematic mandates

As mentioned above, there are two types of Special Procedures mandates: the thematic mandates, such as water and sanitation, arbitrary detention, the rights of migrants, violence against women, torture and human trafficking, and the country-specific mandates. The following is the list of special procedure thematic mandates;

I. Independent Experts

- Independent Expert on the enjoyment of human rights of persons with albinism
- Independent Expert on the promotion of a democratic and equitable international order
- Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights
- Independent Expert on human rights and international solidarity
- Independent Expert on the enjoyment of all human rights by older persons
- Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity
- Special Rapporteurs
- Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context
- Special Rapporteur on the sale of children, child prostitution and child pornography
- Special Rapporteur in the field of cultural rights

- Special Rapporteur on the right to development
- Special Rapporteur on the rights of persons with disabilities
- Special Rapporteur on the right to education
- Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment
- Special Rapporteur on extrajudicial, summary or arbitrary executions
- Special Rapporteur on extreme poverty and human rights
- Special Rapporteur on the right to food
- Special Rapporteur on the rights to freedom of peaceful assembly and of association
- Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
- Special Rapporteur on freedom of religion or belief
- Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes
- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
- Special Rapporteur on the situation of human rights defenders
- Special Rapporteur on the independence of judges and lawyers
- Special Rapporteur on the rights of indigenous peoples
- Special Rapporteur on the human rights of internally displaced persons
- Special Rapporteur on the elimination of discrimination against persons affected by leprosy and their family members
- Special Rapporteur on the human rights of migrants
- Special Rapporteur on minority issues
- Special Rapporteur on the right to privacy
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance
- Special Rapporteur on contemporary forms of slavery, including its causes and its consequences
- Special Rapporteur on the promotion and protection of human rights while countering terrorism
- Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
- Special Rapporteur on trafficking in persons, especially women and children
- Special Rapporteur on the promotion of truth, justice, reparation & guarantees of non-recurrence
- Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights
- Special Rapporteur on violence against women, its causes and consequences
- Special Rapporteur on the human right to safe drinking water and sanitation

F. Working Groups

- Working Group on people of African descent
- Working Group on Arbitrary Detention
- Working Group on enforced or involuntary disappearances
- Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination
- Working Group on the issue of human rights and transnational corporations and other business enterprises
- Working Group on the issue of discrimination against women in law and in practice

G. Country-Specific Special Procedures

I. Special Rapporteur on the Situation of Human Rights in Belarus

The Special Rapporteur on the situation of human rights in Belarus was created by Human Rights Council Resolution 20/13, Situation of human rights in Belarus, 5 July 2012. The Council decides whether to extend the Special Rapporteur's mandate on an annual basis.

The Special Rapporteur monitors the situation of human rights in Belarus and makes recommendations for its improvement; helps to implement the recommendations contained in the report of the High Commissioner (A/HRC/20/8) to the Human Rights Council in June 2012; assists the government in fulfilling its human rights obligations; offers support and advice to civil society; and seeks, receives, examines and acts upon information from all relevant stakeholders pertaining to the situation of human rights in Belarus.

The Special Rapporteur submits an annual report to the Human Rights Council. Previous annual reports to the Human Rights Council are found on the Office of High Commissioner for Human Rights' webpage for Belarus.

II. Special Rapporteur on the Situation of Human Rights in Cambodia

The Special Rapporteur on the situation of human rights in Cambodia's mandate was first created as a special representative by the former Commission on Human Rights in Resolution 1993/6, Situation of human rights in Cambodia, 19 February 1993. In 2013, the Human Rights Council extended the mandate for another two years. Human Rights Council Resolution 24/29, Advisory services and technical assistance for Cambodia, 27 September 2013.

The Special Rapporteur is responsible for coordinating the UN's human rights activities in Cambodia and providing technical assistance to the Cambodian government in the promotion and protection of human rights.

The Special Rapporteur submits an annual report to the Human Rights Council. Previous annual reports to the Human Rights Council are found on the Special Rapporteur on the situation of human rights in Cambodia's webpage under "Documents."

III. Independent Expert on the Situation of Human Rights in Central African Republic

The Independent Expert on the situation of human rights in Central African Republic was appointed in 2013 for an initial one-year period. The Independent Expert's specific mandate is provided in Human Rights Council Resolution 24/34, Technical assistance to the Central African Republic in the field of human rights, A/HRC/RES/23/34, 27 September 2013.

The mandate holder is tasked with monitoring the human rights situation in the country and making recommendations on the necessary technical assistance and capacity building.

The Special Rapporteur must submit an annual report to the Human Rights Council. See the OHCHR's webpage on the Central African Republic for additional information.

IV. Independent Expert on the Situation of Human Rights in Côte d'Ivoire

The Independent Expert on the situation of human rights in Côte d'Ivoire was first established in Human Rights Council Resolution 17/21, Assistance to Côte d'Ivoire in the field of human rights, 19 July 2011. The Council decides whether to extend the mandate on an annual basis.

The Independent Expert is charged with helping the government implement the commission of inquiry's recommendations and Human Rights Council's resolutions, including through coordination with national, regional and international governmental bodies. The Independent Expert prepares reports and organizes conferences concerning specific challenges, such as restoring security along Côte d'Ivoire's borders, combating impunity, remedying violations of the right to life, preventing acts of torture, and addressing violations of the rights to freedom of expression, education, health, and food. See Report of the Independent Expert on the Situation of Human Rights in Côte d'Ivoire, Doudou Diène, A/HRC/19/72, 9 January 2012, Summary.

V. Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea

The Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea Special Rapporteur was first created by the former Commission on Human Rights through Resolution 2004/13, Situation of human rights in the Democratic People's Republic of Korea, 15 April 2004.

As part of his or her mandate, the Special Rapporteur is strive to establish direct contact with the Government, including through country visits, for the purpose of investigating and reporting on the situation of human rights within the State. The Special Rapporteur is instructed to receive credible and reliable information from all relevant actors who may have knowledge about alleged violations of human rights. Furthermore, the Special Rapporteur serves on a special three-member commission of inquiry to investigate the widespread and systematic human rights violations, and to ensure full accountability of the Government to its people.

The Special Rapporteur submits an annual report to both the Human Rights Council and the General Assembly. Previous annual reports are available on the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea's webpage under "Documents." See the OHCHR's webpage on Democratic People's Republic of Korea for additional information.

VI. Special Rapporteur on the Situation of Human Rights in Eritrea

The Special Rapporteur on the situation of human rights in Eritrea's mandate was first provided for in Human Rights Council Resolution 20/20, Situation of human rights in Eritrea, 17 July 2012, and may be extended on an annual basis.

As part of his or her mandate, the Special Rapporteur is to gather first-hand information about allegations of widespread and systematic human rights abuses perpetrated by Eritrean authorities against their own population and to help address the root causes of the current refugee situation. See, e.g., Statement by the United Nations Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth, after her visit to Tunisia and Malta (11 – 20 November 2013). The Special Rapporteur is also authorized to conduct country visits with the cooperation of Eritrean authorities and to make recommendations towards improving human rights conditions for the Eritrean people. The Special Rapporteur has provided a questionnaire to help assist in the submission of relevant information about alleged human rights violations.

The Special Rapporteur submits an annual report to the Human Rights Council. Previous annual reports to the Human Rights Council are found on the Special Rapporteur on the situation of human rights in Eritrea's webpage under "Documents." See the OHCHR's webpage on Eritrea for additional information and documents.

VII. Independent Expert on the Situation of Human Rights in Haiti

The Independent Expert on the situation of human rights in Haiti's mandate was first established by the former Commission on Human Rights in Resolution 1995/70, Situation of human rights in Haiti, 8 March 1995. Every year, the Human Rights Council decides whether to extend the mandate.

The Independent Expert's mandate now includes a focus on technical assistance and capacity-building, and encourages the mandate holder to work with international institutions as well as Haitian non-governmental organizations to contribute recommendations for the improvement of human rights, especially with regard to economic, social, and cultural rights. As part of his or her work, the Independent Expert monitors and investigates Haiti's human rights situation and transmits urgent appeals and letters to the Haitian government, writes press releases, and may conduct country visits.

The Independent Expert submits annual reports to the Human Rights Council. See previous annual reports on the Independent Expert's webpage, under "Documents," or on the OHCHR's webpage for Haiti.

- VIII. Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran
The Special Rapporteur on the situation of human rights in the Islamic Republic of Iran's mandate was first provided in Human Rights Council Resolution 16/9, Situation of human rights in the Islamic Republic of Iran, 8 April 2011. The Council decides whether to extend the mandate on an annual basis.

The Special Rapporteur monitors and investigates human rights violations, transmits urgent appeals and letters to the government concerning alleged violations, may conduct country visits with the government's authorization, and engages with the public on issues of concern through press releases and other means.

The Special Rapporteur submits an annual report to both the Human Rights Council and the General Assembly. Previous annual reports are available on the OHCHR webpage for the Islamic Republic of Iran.

- IX. Independent Expert on the Situation of Human Rights in Mali

The Independent Expert on the situation of human rights in Mali was created in Human Rights Council Resolution 22/18, Assistance to the Republic of Mali in the field of human rights, 10 April 2013. The Council decides whether to renew the mandate on an annual basis.

The Independent Expert is responsible for assisting the government in promoting and protecting human rights, including by working closely with regional and international organizations and civil society.

The Independent Expert must submit an annual report to the Human Rights Council. See the "Documents" section of the Independent Expert's webpage or the OHCHR webpage on Mali for reports and other documents.

- X. Special Rapporteur on the Situation of Human Rights in Myanmar

The Special Rapporteur on the situation of human rights in Myanmar's mandate was first created by the Commission on Human Rights in Resolution 1992/58, Situation of human rights in Myanmar, 3 March 1992. The Human Rights Council has decided whether to extend the Special Rapporteur's mandate on an annual basis.

The Special Rapporteur is instructed to continue engaging with Myanmar's government, conduct country visits, and make further recommendations on Myanmar's needs with respect to technical assistance and capacity-building in the field of human rights.

The Special Rapporteur submits an annual report to both the Human Rights Council and the General Assembly. Previous annual reports are available on the Special Rapporteur on the situation of human rights in Myanmar's webpage under "Documents," or on the OHCHR's webpage on Myanmar.

XI. Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 was first created by the former Commission on Human Rights in Resolution 1993/2, Question of the violation of human rights in the occupied Arab territories, including Palestine, 19 February 1993. The duration of the Special Rapporteur's mandate is provided as "until the end of Israeli occupation."

The Special Rapporteur is instructed to conduct country visits, investigate Israel's violations of the principles of international law and international humanitarian law, and receive communications from witnesses who have reliable and credible information.

Special Rapporteur will also issue an annual report containing conclusions and recommendations to both the Human Rights Council and the General Assembly. Previous annual reports are available in the "Documents" section of the Special Rapporteur's webpage, or on the OHCHR webpage for the Occupied Palestinian Territory.

XII. Independent Expert on the Situation of Human Rights in Somalia

The Independent Expert on the situation of Human Rights in Somalia's mandate was first created by the former Commission on Human Rights in Resolution 1993/86, Assistance to Somalia in the field of human rights, 10 March 1993. The mandate has most recently been extended for a two-year period.

The Independent Expert was initially directed to provide assistance to the Special Representative of the UN Secretary General for Somalia by developing a long-term program for the re-establishment of human rights and the creation of a democratic constitution. Currently, the Independent Expert is to continue his or her engagement with Somalia's government in order to help with implementation of Somalia's human rights obligations, Human Rights Council resolutions, accepted Universal Periodic Review recommendations, and other human rights commitments.

The Independent Expert submits an annual report to the Human Rights Council. These reports, other documents and press releases concerning Somalia's human rights situation can be found on the Independent Expert's webpage and on the OHCHR webpage on Somalia.

XIII. Independent Expert on the Situation of Human Rights in the Sudan

The Independent Expert on the situation of human rights in Sudan's mandate was first created by Human Rights Council Resolution 11/10, Situation of human rights in the Sudan, 18 June 2009.

The Independent Expert is to engage with Sudan's government in order to assist in the implementation of Sudan's human rights obligations and accepted Universal Periodic Review recommendations.

The Independent Expert submits an annual report to the Human Rights Council. These reports, other documents and press releases concerning Somalia's human rights situation can be found on the Independent Expert's webpage or on the OHCHR webpage on Sudan.

XIV. Special Rapporteur on the Situation of Human Rights in the Syrian Arab Republic

The Special Rapporteur on the situation of human rights in the Syrian Arab Republic was established in Human Rights Council Resolution S-18/1, adopted by the Human Rights Council at the 18th Special Session on the human rights situation in the Syrian Arab Republic, held on December 2, 2011.

The Special Rapporteur's mandate will begin once the Commission of Inquiry on the Syrian Arab Republic concludes its mandate. The Special Rapporteur is tasked with monitoring the human rights situation in Syria and the government's implementation of recommendations made by the Commission of Inquiry and resolutions adopted by the Human Rights Council.

The Special Rapporteur will then submit an annual report to both the Human Rights Council and General Assembly. Visit the OHCHR webpage on Syria for additional information.

3.6 Calendar and Events Relevant for HRDs and CSO

OHCHR's cooperation with civil society remains a strategic priority because it bolsters our shared objectives, helps to address our mutual concerns, and supports the Office's human rights mission and initiatives. Civil society actors can visit the following link for detailed calendar events of the OHCHR; <https://www.ohchr.org/EN/NewsEvents/Pages/Meetings.aspx>.

Alternatively, CSOs can access the details of planned meetings and events through the website of the NGO Branch, Office for ECOSOC Support and Coordination, UN DESA. The office supports the work of the Committee on NGOs of the United Nations Economic and Social Council (ECOSOC), the intergovernmental body responsible for granting consultative status with ECOSOC to non-governmental organizations (NGOs). NGOs with ECOSOC status can see invitation to engage with the council on the planned events; <http://csonet.org/>

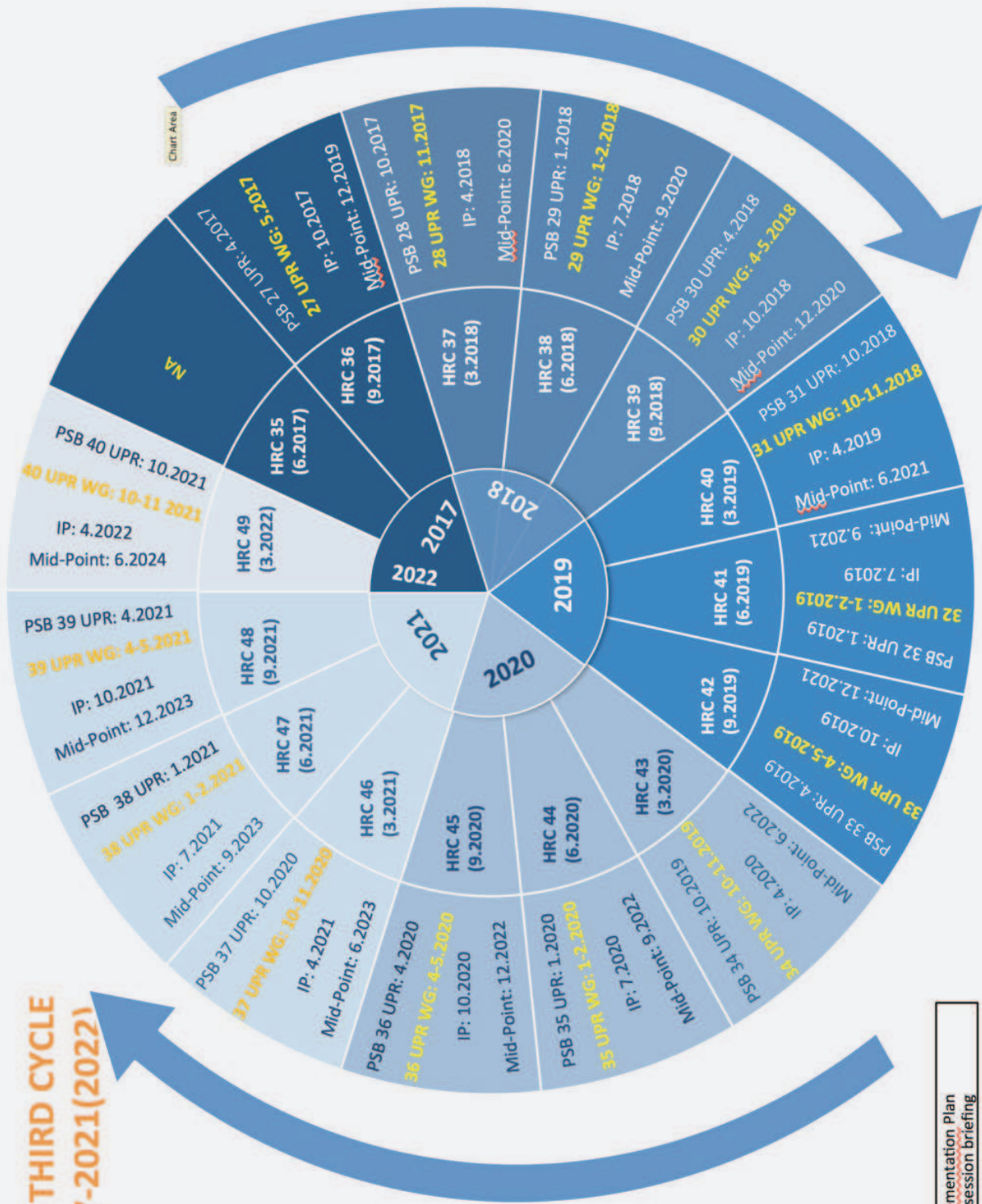
3.6.1 Annual UN calendar events and celebrations

Date	Celebration
08 January	World Literacy Day
20 February	Non-violent Resistance Day
21 February	International Mother Language Day (UNESCO)
8 March	International Women's Day
21 March	World Poetry Day (UNESCO)
21 March	International Day for the Elimination of Racial Discrimination
22 March	World Day for Water

23 March	World Meteorological Day (WMO)
24 March	World Tuberculosis Day (WHO)
7 April	World Health Day (WHO)
8 April	World Roma Day
22 April	Earth Day
23 April	World Book and Copyright Day (UNESCO)
30 April	Holocaust Memorial Day (Yom ha Shoah)
1 May	International Workers Day
3 May	World Press Freedom Day (UNESCO)
8 May	World Red cross and Red Crescent Day
15 May	International Day of Families
17 May	International Day against Homophobia
17 May	World Telecommunication Day (ITU)
31 May	World No-Tobacco Day (WHO)
4 June	International Day of Innocent Children Victims of Aggression
5 June	World Environment Day (UNEP)
15 June	World Food Day
17 June	World Day to Combat Desertification and Drought
20 June	World Refugee Day
21 June	World Peace and Prayer Day
26 June	International Day against Drug Abuse and Illicit Trafficking
26 June	United Nations International Day in Support of Victims of Torture
26 June	UN Charter Day
1st Saturday July	International Day of Co-operatives
11 July	World Population Day (UNFPA)
6 August	Hiroshima Day (remembers victims of the first atomic bombing in Hiroshima, Japan, 1945)
7 August	Transgender International Rights and Education Day
9 August	International Day of Indigenous People
12 August	International Youth Day
23 August	International Day for the Remembrance of the Slave Trade and Its Abolition (UNESCO)
Tuesday following second Monday September	Peace Day
8 September	International Literacy Day (UNESCO)
16 September	International Day for the Preservation of the Ozone Layer
1st Monday October	World Habitat Day (Cities without slums)
2nd Wednesday October	International Day for Natural Disaster Reduction

1 October	International Day of Older Persons
1 October	International Music Day
5 October	World Teachers' Day (UNESCO)
10 October	World Mental Health Day
16 October	World Food Day (FAO)
17 October	International Day for the Eradication of Poverty
24 October	World Development Information Day
24 October	United Nations Day
09 November	World Men's Day
09 November	Kristallnacht, International Day Against Fascism and Anti-Semitism
09 November	1989 Berlin Wall came down
11 November	International Day of Science and Peace
16 November	International Day for Tolerance (UNESCO)
20 November	Universal Children's Day
21 November	World Television Day
25 November	International Day for the Elimination of Violence against Women
29 November	International Day of Solidarity with the Palestinian People
01 December	World AIDS Day (WHO)
02 December	International Day for the Abolition of Slavery
03 December	International Day of Disabled Persons
05 December	International Volunteer Day for Economic and Social Development
10 December	Human Rights Day (1948)
18 December	International Migrants Day

**UPR THIRD CYCLE
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Chapter 4

Regional Human Rights Instruments and the Mechanisms

4.0 Introduction

This Chapter presents the avenues available for CSOs, human rights defenders and the general public in Africa to access and seek redress to violations of human rights at regional level. These mechanisms range from judicial and non-judicial expressed through different regional human rights instruments.

Regional human rights systems, consisting of regional instruments and mechanisms that play an important role in the promotion and protection of human rights. Regional human rights instruments (e.g. treaties, conventions, declarations) help to localize international human rights norms and standards, reflecting the particular human rights concerns of the region. Regional human rights mechanisms (e.g. commissions, special rapporteurs, courts) then help to implement these instruments on the ground. The existence of an effective regional human rights system is of fundamental importance to the promotion and protection of human rights.

Regional human rights instruments are relatively independently coherent human rights sub-regimes that are connected within the larger frame-work of international human rights practice. Three principal regional human rights instruments can be identified; the African Charter on Human and Peoples' Rights, the American Convention on Human Rights (the Americas) and the European Convention on Human Rights. For the purposes of this Chapter, the African Charter on Human and Peoples Rights shall be the main focus.

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

The African Charter on Human and Peoples' Rights is the region's principal human rights instrument and emerged under the auspices of the Organization of African Unity (OAU) (now the African Union). The intention to draw up the African Charter on Human and Peoples' Rights was announced in 1979 and the Charter was unanimously approved at the OAU's 1981 General Assembly. Pursuant to its Article 63 (whereby it was to "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 OAU's member states), the African Charter on Human and Peoples' Rights came into effect on October 21, 1986 – in honor of which October 21 was declared "African Human Rights Day".

The African Commission on Human and Peoples' Rights (ACHPR) is a quasi-judicial organ of the African Union tasked with promoting and protecting human rights and collective (peoples') rights throughout the African continent as well as interpreting the African Charter on Human and Peoples' Rights and considering individual complaints of violations of the Charter. However, in 1998 OAU Summit adopted the Protocol to establish an African Court on Human and Peoples' Rights which is based in Arusha Tanzania, to complement the protection mandate of the African Commission.

(a) Protected Civil and Political Rights

The Charter recognizes most of what are regarded universally accepted civil and political rights. The civil and political rights recognized in the Charter include the right to freedom from discrimination (Article 2 and 18(3)), equality (Article 3), life and personal integrity (Article 4), dignity (Article 5), freedom from slavery (Article 5), freedom from cruel, inhuman or degrading treatment or punishment (Article 5), rights to due process concerning arrest and detention (Article 6), the right to a fair trial (Article 7 and 25), freedom of religion (Article 8), freedom of information and expression (Article 9), freedom of association (Article 10), freedom to assembly (Article 11), freedom of movement (Article 12), freedom to political participation (Article 13), and the right to property (Article 14).

Some human rights scholars however consider the Charter's coverage of other civil and political rights to be inadequate. For example, the right to privacy or a right against forced or compulsory labor is not explicitly recognised. The provisions concerning fair trial and political participation are considered incomplete by international standards.

However, this is subject to argument and counter argument as for example Article 5 of the Charter states "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". Also, Article 15 states "Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work" - which may be understood to prohibit forced or compulsory labour, although this is not explicitly mentioned. Similarly, the Charter does not explicitly recognize the right to vote as a means of political participation, but Article 13 states "(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 to 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."

(b) Economic, Social and Cultural Rights

The Charter also recognises certain economic, social and cultural rights, and overall the Charter is considered to place considerable emphasis on these rights. The Charter recognises right to work (Article 15), the right to health (Article 16), and the right to education (Article 17). The Charter is also protect the right to housing and a right to food as "implicit" in the Charter, particularly in light of its provisions on the right to life (Article. 4), right to health (Article. 16) and to development (Article. 22)

(c) Peoples' Rights and Group Rights

In addition to recognizing the individual rights mentioned above the Charter also recognises collective or group rights, or peoples' rights called third-generation human rights. As such the Charter recognises group rights to a degree not matched by the European or Inter-American regional human rights instruments. The Charter awards the family protection by the state (Article 18), while "peoples" have the right to equality (Article 19), the right to self-determination (Article 20), to freely dispose of their wealth and natural resources (Article 21), the right to development (Article 22), the right to peace and security (Article 23) and "a generally satisfactory environment" (Article 24).

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

The African Charter on the Rights of the Child was adopted in 1990 and seeks to address specific needs of the Child. It was adopted immediately after the Convention on the Rights of the Child which was adopted in 1989.

(a) Protected Rights

The Child Charter provides for the following in a nutshell;

Article 2: Definition of child:

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

Article 3: Non-Discrimination:

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

Article 4: Best Interests of the Child:

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

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

Article 5: Survival and Development:

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

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

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

Article 6: Name and Nationality:

1. Every child shall have the right from his birth to a name.

2. Every child shall be registered immediately after birth.

3. Every child has the right to acquire a nationality.

4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

Article 7: Freedom of Expression:

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

Article 8: Freedom of Association:

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

Article 9: Freedom of Thought, Conscience and Religion:

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

2. Parents, and where applicable, legal guardians shall have a duty to provide guidance and direction in the exercise of these rights having regard to the evolving capacities, and best interests of the child.

3. States Parties shall respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.

Article 10: Protection of Privacy:

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

Article 11: Education:

1. Every child shall have the right to an education.

2. The education of the child shall be directed to:

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

(b) Fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions;

(c) The preservation and strengthening of positive African morals, traditional values and cultures;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups;

(e) The preservation of national independence and territorial integrity;

(f) The promotion and achievements of African Unity and Solidarity;

(g) The development of respect for the environment and natural resources;

(h) The promotion of the child understands of primary health care.

3. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:

- (a) Provide free and compulsory basic education;
- (b) Encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;
- (c) Make the higher education accessible to all on the basis of capacity and ability by every appropriate means;
- (d) Take measures to encourage regular attendance at schools and the reduction of drop-out rates;
- (e) Take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

4.3 Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol)

On November 25, 2005, the Protocol on the Rights of Women in Africa (the protocol) entered into force, after being ratified by 15 African governments. Two years earlier, in July of 2003, the African Union—the regional body that is charged with promoting unity and solidarity among its 53 member nations—adopted this landmark treaty to supplement the regional human rights charter, the African Charter on Human and Peoples’ Rights (the African Charter). The protocol provides broad protection for women’s rights, including their sexual and reproductive rights. The treaty affirms reproductive choice and autonomy as a key human right. For example, it represents the first time that an international human rights instrument has explicitly articulated a woman’s right to abortion when pregnancy results from sexual assault, rape, or incest; when continuation of the pregnancy endangers the life or health of the pregnant woman; and in cases of grave fetal defects that are incompatible with life. Another first is the protocol’s call for the prohibition of harmful practices such as female circumcision/female genital mutilation (FC/FGM), which have ravaged the lives of countless young women in Africa.

Although the Women Charter is the primary treaty providing a framework for human rights in the region, its provisions on women’s rights are largely seen as ineffective and inadequate. The charter recognizes and affirms women’s rights in three provisions. First, article 18(3) requires states parties to “ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman.” Second, article 2 provides that the rights and freedoms enshrined in the charter shall be enjoyed by all, irrespective of race, ethnic group, color, sex, language, national and social origin, economic status, birth or other status. Third, article 3 of the African Women Charter states that every individual shall be equal before the law and shall be entitled to equal protection of the law. And yet the protocol notes that “despite the ratification of the African Charter, women in Africa still continue to be victims of discrimination and harmful practices.

a) The Protocol in Brief

The protocol requires states to “ensure that the right to health of women, including sexual and reproductive health, is respected and promoted.” The protocol also calls upon states to:

- Provide adequate, affordable, and accessible health services to women;

- Establish and strengthen prenatal, delivery, and postnatal health and nutritional services for women during pregnancy and while breast-feeding;
- Prohibit all medical or scientific experiments on women without their informed consent;
- Guarantee women's right to consent to marriage;
- Set the minimum age of marriage at 18 years;
- Ensure equal rights for women in marriage;
- Protect women against all forms of violence during armed conflict and consider such acts war crimes;
- Enact and enforce laws prohibiting all forms of violence against women, including unwanted or forced sex; and
- Reform laws and practices that discriminate against women.

b) Provisions Relating to Reproductive Health and Reproductive Autonomy

Article 14:

(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 recognized 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) Provisions Relating to Violence Against Women

"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."

Article 3 states, inter alia, that 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 (2) states that 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.

d) Practices Harmful to Women

Article 5

Article 5 provides that 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.

It continues to state that States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including: (a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes; (b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them; (c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting; (d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

4.4 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

OAU Convention Governing the Specific Aspects of Refugee Problems in Africa was adopted on 10th September 1969 by the Assembly of Heads of State. The Convention strives to protect the rights of refugees with specific needs in Africa. The Convention recalls the Resolutions Number 26 and 104 of the OAU Assemblies of Heads of State and Government, calling upon Member States of the Organization to accede to the United Nations Convention of 1951 and to the Protocol of 1967 relating to the Status of Refugees, and meanwhile to apply their provisions to refugees in Africa.

a) Protected Rights

Article 1: Definitions:

For the purposes of this Convention, the term “refugee” shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

Article 1 on Cessation of the Convention provides that the Convention shall cease to apply to any refugee if;

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

Article 2: Asylum

1. Member States of the OAU shall use their best endeavors consistent with their respective legislation to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.
2. The granting of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State.
3. No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article 1, paragraphs 1 and 2.
4. Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum.
5. Where a refugee has not received the right to reside in any country of asylum, he may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his re-settlement in accordance with the preceding paragraph. 6. For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.

Article 4: Non-Discrimination

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

Article 6: Travel Documents

1. Subject to Article 3, Member States shall issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the

Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory.

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

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

Article 7: Co-Operation of the National Authorities with the Organisation of African Unity

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

(a) The condition of refugees,

(b) The implementation of this Convention, and

(c) Laws, regulations and decrees which are, or may hereafter in force relating to refugees.

Article 8: Co-Operation with the Office of the United Nations High Commissioner for Refugees

1. Member States shall co-operate with the Office of the United Nations High Commissioner for Refugees.

2. The Present Convention shall be the effective regional complement in Africa of the 1951 United Nations Convention on the Status of Refugees.

Article 9: Settlement of Disputes

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

4.5 African Charter on Democracy, Elections and Governance, 2007

(a) Introduction

The African Charter on Democracy, Elections and Governance (the Charter) was adopted on 30 January 2007 during the 8th ordinary session of the Assembly of the African Union. It aims to reinforce the commitment of the States Parties of the African Union towards the protection of democracy and the rule of law, as well as human rights. The Charter takes its inspiration and roots from several UN resolutions, as well as in a number of Declarations and Decisions of the Organization of African Unity (OAU) / African Union (AU). The Charter entails the following;

b) Protected Rights

Article 2

The objectives of this Charter are to:

1. Promote adherence, by each State Party, to the universal values and principles of democracy and respect for human rights;
2. Promote and enhance adherence to the principle of the rule of law premised upon the respect for, and the supremacy of, the Constitution and constitutional order in the political arrangements of the State Parties;
3. Promote the holding of regular free and fair elections to institutionalize legitimate authority of representative government as well as democratic change of governments;
4. Prohibit, reject and condemn unconstitutional change of government in any Member State as a serious threat to stability, peace, security and development;
5. Promote and protect the independence of the judiciary;
6. Nurture, support and consolidate good governance by promoting democratic culture and practice, building and strengthening governance institutions and inculcating political pluralism and tolerance;
7. Encourage effective coordination and harmonization of governance policies amongst State Parties with the aim of promoting regional and continental integration;
8. Promote State Parties' sustainable development and human security;
9. Promote the fight against corruption in conformity with the provisions of the AU Convention on Preventing and Combating Corruption adopted in Maputo, Mozambique in July 2003;
10. Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs;
11. Promote gender balance and equality in the governance and development processes;
12. Enhance cooperation between the Union, Regional Economic Communities and the International Community on democracy, elections and governance; and
13. Promote best practices in the management of elections for purposes of political stability and good governance.

Article 3

Principles

State Parties shall implement this Charter in accordance with the following principles:

- Respect for human rights and democratic principles;
- Access to and exercise of state power in accordance with the constitution of the State Party and the principle of the rule of law;
- Promotion of a system of government that is representative;
- Holding of regular, transparent, free and fair elections;
- Separation of powers;
- Promotion of gender equality in public and private institutions;

- Effective participation of citizens in democratic and development processes and in governance of public affairs;
- Transparency and fairness in the management of public affairs;
- Condemnation and rejection of acts of corruption, related offenses and impunity;
- Condemnation and total rejection of unconstitutional changes of government;
- Strengthening political pluralism and recognizing the role, rights and responsibilities of legally constituted political parties, including opposition political parties, which should be given a status under national law.

Article 4

Democracy, Rule of Law and Human Rights

1. State Parties shall commit themselves to promote democracy, the principle of the rule of law and human rights.
2. State Parties shall recognize popular participation through universal suffrage as the inalienable right of the people.

Article 5

State Parties shall take all appropriate measures to ensure constitutional rule, particularly constitutional transfer of power.

Article 8

1. State Parties shall eliminate all forms of discrimination, especially those based on political opinion, gender, ethnic, religious and racial grounds as well as any other form of intolerance.
2. State Parties shall adopt legislative and administrative measures to guarantee the rights of women, ethnic minorities, migrants, people with disabilities, refugees and displaced persons and other marginalized and vulnerable social groups.
3. State Parties shall respect ethnic, cultural and religious diversity, which contributes to strengthening democracy and citizen participation.

Article 9

State Parties undertake to design and implement social and economic policies and programmes that promote sustainable development and human security.

Democratic Elections

Article 17

State Parties re-affirm their commitment to regularly holding transparent, free and fair elections in accordance with the Union's Declaration on the Principles Governing Democratic Elections in Africa.

To this end, State Parties shall:

1. Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections.
2. Establish and strengthen national mechanisms that redress election related disputes in a timely manner.
3. Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections.

4. Ensure that there is a binding code of conduct governing legally recognized political stakeholders, government and other political actors prior, during and after elections. The code shall include a commitment by political stakeholders to accept the results of the election or challenge them in through exclusively legal channels.

Article 18

1. State Parties may request the Commission, through the Democracy and Electoral Assistance Unit and the Democracy and Electoral Assistance Fund, to provide advisory services or assistance for strengthening and developing their electoral institutions and processes.

2. The Commission may at any time, in consultation with the State Party concerned, send special advisory missions to provide assistance to that State Party for strengthening its electoral institutions and processes.

Article 19

1. Each State Party shall inform the Commission of scheduled elections and invite it to send an electoral observer mission.

2. Each State Party shall guarantee conditions of security, free access to information, non-interference, freedom of movement and full cooperation with the electoral observer mission.

Article 20

The Chairperson of the Commission shall first send an exploratory mission during the period prior to elections. This mission shall obtain any useful information and documentation, and brief the Chairperson, stating whether the necessary conditions have been established and if the environment is conducive to the holding of transparent, free and fair elections in conformity with the principles of the Union governing democratic elections.

Article 21

1. The Commission shall ensure that these missions are independent and shall provide them with the necessary resources for that purpose.

2. Electoral observer missions shall be conducted by appropriate and competent experts in the area of election monitoring, drawn from continental and national institutions such as, but not limited to, the Pan-African Parliament, national electoral bodies, national legislatures and eminent persons taking due cognizance of the principles of regional representation and gender equality.

3. Electoral observer missions shall be conducted in an objective, impartial and transparent manner.

4. All electoral observer missions shall present the report of their activities to the Chairperson of the Commission within a reasonable time.

5. A copy of the report shall be submitted to the State Party concerned within a reasonable time.

Article 22 State Parties shall create a conducive environment for independent and impartial national monitoring or observation mechanisms.

Article 23

Sanctions in Cases of Unconstitutional Changes of Government

State Parties agree that the use of, inter alia, the following illegal means of accessing or maintaining power constitute an unconstitutional change of government and shall draw appropriate sanctions by the Union:

1. Any putsch or coup d'Etat against a democratically elected government.
2. Any intervention by mercenaries to replace a democratically elected government.
3. Any replacement of a democratically elected government by armed dissidents or rebels.
4. Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections; or
5. Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government.

4.6 Special Rapporteurs, Working Groups and Committees

The ACHPR has established various working groups, special rapporteurs, and committees to advance specific thematic areas of work and to guide its functioning. The responsibilities of these special mechanisms include gathering and disseminating information on respect for the human rights of certain vulnerable groups. The special mechanisms use this information to provide States or the Commission with guidance toward effectively securing human rights in Africa. The following are the core functions of the Working group;

- Conduct country visits to Member States to investigate the enforcement of human rights;
- Make recommendations to Member States to guide them toward the fulfillment of their international obligations;
- Lend expertise to the Commission when it is considering communications that concern the special mechanism's mandate;
- Submit annual reports to the Commission detailing its activities;
- Propose that the Commission send urgent appeals to Member States regarding imminent human rights violations;
- Send letters to State officials requesting information regarding human rights violations;
- Analyze States' domestic laws and their compliance with international standards;
- Engage in promotional activities, including seminars, workshops, and expert meetings; and,
- Collaborate with civil society organizations and international human rights bodies.

4.6.1 Special Rapporteur on Freedom of Expression and Access to Information

The Special Rapporteur on Freedom of Expression and Access to Information is one of the special mechanisms overseen by the African Commission on Human and Peoples' Rights. The Special Rapporteurship was created in 2004 during the Commission's 36th Ordinary Session³².

a) Composition and Working Methods

The Commission appoints Special Rapporteurs either by a consensus or by a vote. The mandate of the Special Rapporteur on Freedom of Expression and Access to Information has been renewed by the Commission several times, typically every two years. As of October 2014, each individual appointed as Special Rapporteur has been a Commissioner, simultaneously serving on the African Commission.

32 A Comm HPR, Resolution 71, Resolution on the Mandate and Appointment of a Special Rapporteur on Freedom of Expression in Africa, 7 December 2004. Its purpose is to promote and protect the freedom of expression throughout the African Union (AU) Member States.

The Special Rapporteur undertakes a number of duties, including providing guidance on alleged violations, analyzing States' domestic laws and their compliance with international standards, and conducting visits to Member States.

b) Guidance on Alleged Violations

The Special Rapporteur provides the Commission with guidance in responding to communications that concern the freedom of expression and access to information. The mandate holder may lend expertise and insight during the Commission's considering of complaints related to his or her mandate.

The Special Rapporteur is responsible for keeping an accurate record of alleged violations, and publishing these occurrences in the reports that he or she submits to the Commission. The Special Rapporteur may ask the relevant Member State for clarification regarding an alleged violation.

The mandate holder also writes letters of appeal to State officials, requesting them to investigate allegations of violations of the freedom of expression.

c) Analysis of National Practices and Policies

The Special Rapporteurship evaluates Member States' laws and makes recommendations, encouraging the States to better align their policies with their obligations under the African Charter on Human and Peoples' Rights and other international standards, including the Declaration of Principles on Freedom of Expression in Africa.

The Special Rapporteur led the drafting process for the Model Law on Access to Information in Africa, which provides State lawmakers with guidance toward preparing national legislation that meets international standards.

The Special Rapporteurship writes letters of appreciation to Member States that have made significant progress in protecting and promoting the freedom of expression and access to information. See, e.g., Pansy Tlakula, Activity Report of the Special Rapporteur on Freedom of Expression and Access to Information in Africa, Intersession Activity Report, 50th Ordinary Session (2011).

d) Country Visits

The Special Rapporteur's mandate authorizes country visits to Member States, with their consent. During these visits, which are also known as missions, the Special Rapporteur investigates alleged violations of the freedom of expression, and makes recommendations to the State on how to increase respect for the freedom of expression.

According to Rule 60 of the Commission's Rules of Procedure, after the completion of a mission, the Special Rapporteur has a duty to publish a Mission Report, which may be found on its website. These reports contain general recommendations to the State, and often include specific recommendations to actors including the international community and civil society, among others. States are encouraged to cooperate with the Special Rapporteur to ensure that he or she is able to engage with individuals whose freedom of expression or access to information has been violated, government officials, and civil society organizations.

e) Receiving Information

The Special Rapporteur is responsible for seeking and receiving information from individuals, governmental and non-governmental organizations and institutions, and other stakeholders concerning cases or situations that involve the freedom of expression and access to information. Along with information gathered from such actors and during missions, the Special Rapporteur disseminates and obtains information through promotional activities, such as delivering speeches at conferences, participating in panels, publishing press releases, and holding interviews³³. The Special Rapporteur has collaborated with other relevant Rapporteurs of the Inter-American human rights system, Organization for Security and Co-operation in Europe, and the United Nations in publishing joint declarations to advance the freedom of expression.

On the basis of information received, the Special Rapporteur may propose that the Commission take a certain action or decision, or he or she may raise awareness of an issue in his or her reports, press releases, public statements, or other activities.

f) Activity Reports

The Special Rapporteur submits Intersession Activity Reports to the Commission each year, which outline the activities the Special Rapporteurship has undertaken. The Commission also prepares an annual Activity Report that it submits to the African Union Assembly, which includes information gathered from the Special Rapporteur, summarizing positive developments and areas of concern regarding human rights in Africa.

4.6.2 Special Rapporteur on Human Rights Defenders

The Special Rapporteur on Human Rights Defenders is one of the special mechanisms overseen by the African Commission on Human and Peoples' Rights. The Special Rapporteurship was created in 2004 during the Commission's 35th Ordinary Session. The mandate was extended in 2014 to create and monitor a database of cases of reprisals against human rights defenders³⁴. The Special Rapporteurship's purpose is to investigate the situation of human rights defenders in Africa, while developing strategies to increase their protection throughout the African Union (AU) Member States.

a) Composition and Working Methods

The Commission appoints Special Rapporteurs either by a consensus or by a vote. See ACommHPR, Rules of Procedure of the African Commission on Human and Peoples' Rights, 2010, Rule 23(2). The mandate of the Special Rapporteur on Human Rights Defenders was originally authorized for two years, but it has been renewed by the Commission several times³⁵. As of October 2014, each individual appointed as Special Rapporteur has been a Commissioner, simultaneously serving on the African Commission.

33 Pansy Tlakula, Activity Report of Pansy Tlakula as the Special Rapporteur on Freedom of Expression and Access to Information in Africa & Member of the African Commission on Human and Peoples' Rights, Intersession Activity Report, 54th Ordinary Session (2013).

34 ACommHPR, Resolution 273, Resolution on Extending the Scope of the mandate of the Special Rapporteur on Human Rights Defenders in Africa (2014)

35 ACommHPR, Resolution 69, Resolution on the Protection of Human Rights Defenders in Africa, 4 June 2004;

The Special Rapporteur undertakes a number of duties, including providing guidance on alleged violations, addressing cases of reprisals against human rights defenders, conducting visits to Member States, and promoting the implementation of the UN Declaration on Human Rights Defenders in Africa.

b) Guidance on Alleged Violations

The Special Rapporteur provides the Commission with guidance in responding to communications filed that concern the protection of human rights defenders. The mandate holder may lend expertise or insight during the Commission's considering of complaints related to his or her mandate.

c) Cases of Reprisals

The Special Rapporteur's mandate requires the gathering information on cases of reprisals against human rights defenders and civil society stakeholders. The Special Rapporteur is responsible for creating a database of these cases, effectively addressing them, and following up when necessary. The Special Rapporteur may handle these cases in a variety of ways, including engaging the State in constructive dialogue, or issuing press releases publicizing the human rights violations. The Special Rapporteur may also propose that the Commission send an urgent appeal to a State concerning a case if it constitutes an emergency matter, as defined in Rule 79 of the Commission's Rules of Procedure.

d) Country Visits

Although not explicitly included within the Special Rapporteur's mandate, the Special Rapporteur has undertaken country visits to Member States, with their consent. During these visits, which are also known as missions, the Special Rapporteur engages with government officials to learn about the challenges human rights defenders face. The Special Rapporteur collaborates with Member States to develop and recommend effective strategies to protect human rights defenders, and to follow up on the implementation of those recommendations.

According to Rule 60 of the Commission's Rules of Procedure, after the completion of a mission, the Special Rapporteur has a duty to publish a Mission Report, which may be found on its website. These reports contain general recommendations to the State, and often include specific recommendations to the international community and civil society, among others.

e) Receiving Information

The Special Rapporteur is responsible for seeking and receiving information from individuals, governmental and non-governmental organizations and institutions, and other stakeholders concerning cases or situations that involve human rights defenders.

Along with information gathered from such actors and during missions, the Special Rapporteur disseminates and obtains information through promotional activities, such as regional workshops, conferences, and expert meetings. The Special Rapporteur often coordinates these activities with other relevant Special Rapporteurs and Working Groups under the Commission or the United

Nations. See, e.g., Reine Alapini Gansou, Intersession Activity Report by Madam Reine Alapini Gansou Special Rapporteur on Human Rights Defenders in Africa, Intersession Activity Report, 51st Ordinary Session (2012). The Special Rapporteur has also issued calls for articles and papers on the protection of human rights defenders in Africa.

On the basis of the information received, the Special Rapporteur may propose that the Commission take a certain action or decision, or he or she may raise awareness of an issue in his or her reports, press releases, or other activities.

f) Activity Reports

The Special Rapporteur submits Intersession Activity Reports to the Commission each year, which outline the activities the Rapporteurship has undertaken. The Special Rapporteur has a duty to include reports on cases of reprisals within its Intersession Activity Reports. The Commission also prepares an annual Activity Report that it submits to the African Union Assembly, which includes information gathered from the Special Rapporteur, summarizing positive developments and areas of concern regarding human rights in Africa.

4.6.3 Special Rapporteur on Prisons and Conditions of Detention

The function of Special Rapporteur on Prisons and Conditions of Detention was created during the 20th Ordinary Session of the Commission, following the Seminar on Prison Conditions in Africa (Kampala, 19 - 21 September 1996). It is therefore one of the oldest Special Mechanisms. The Special Rapporteur is empowered to examine the situation of persons deprived of their liberty within the territories of States Parties to the African Charter on Human and Peoples' Rights. Resolution 37 adopted by the African Commission on Human and Peoples' Rights at the 25th Ordinary Session held in Bujumbura, Burundi from 26 April to 5 May 1999, extended the mandate of the Special Rapporteur. The mandate was most recently renewed with the adoption of Resolution 156 at the 46th Ordinary Session held in Banjul, The Gambia, in November 2009.

a) Mandate of the Special Rapporteur on Prisons and Conditions of Detention

The Special Rapporteur on Prisons and Conditions of Detention is one of the special mechanisms overseen by the African Commission on Human and Peoples' Rights. The Special Rapporteurship was created in 1996 during the Commission's 20th Ordinary Session. Its purpose is to examine the conditions in prisons and other detention centers to ensure that they comply with African Union (AU) Member States' international obligations toward persons deprived of liberty.

b) Composition and Working Methods

The Commission appoints Special Rapporteurs either by a consensus or by a vote³⁶. The mandate of the Special Rapporteur on Prisons and Conditions of Detention was originally authorized for two years, but it has been renewed by the Commission several times. As of October 2014, each individual appointed as Special Rapporteur has been a Commissioner, simultaneously serving on the African Commission.

³⁶ ACommHPR, Rules of Procedure of the African Commission on Human and Peoples' Rights, 2010, Rule 23(2)

The Special Rapporteur undertakes a number of duties, including providing guidance on alleged violations, proposing urgent action measures to the Commission, analyzing States' domestic laws and their compliance with international standards, conducting visits to Member States, and studying relevant human rights conditions or situations

c) Guidance on Alleged Violations

The Special Rapporteur also provides the Commission with guidance in responding to communications that concern the deprivation of liberty. The mandate holder may lend expertise or insight during the Commission's considering of complaints related to his or her mandate.

And, the Special Rapporteur may propose that the Commission send an urgent appeal to a State concerning an emergency matter, as defined in Rule 79 of the Commission's Rules of Procedure.

d) Analysis of National Practices and Policies

The Special Rapporteurship evaluates Member States' laws and makes recommendations, encouraging the States to better align their policies with their obligations under the African Charter on Human and Peoples' Rights and other international standards.

The Special Rapporteurship's mandate includes the training of different individuals who impact prison conditions, including law enforcement officials, police officers, prison guards, and administrators, among others³⁷.

e) Country Visits

The Special Rapporteur undertakes country visits to Member States, with their consent. During these visits, which are also known as missions, the Special Rapporteur examines the human rights conditions in prisons and detention centers, and makes recommendations to the State on how to improve them.

According to Rule 60 of the Commission's Rules of Procedure, after the completion of a mission, the Special Rapporteur has a duty to publish a Mission Report, which may be found on its website. These reports contain general recommendations to the State, and often include specific recommendations to prison officials, police, the African Union, the international community, and civil society, among others.

States are encouraged to cooperate with the Special Rapporteur to ensure that he or she is able to engage with individuals who are deprived of their liberty, their families, government officials, and civil society organizations.

f) Receiving Information

The Special Rapporteur is responsible for seeking and receiving information from individuals, governmental and non-governmental organizations and institutions, and other stakeholders concerning cases or situations that involve the deprivation of liberty.

Along with information gathered from such actors and during missions, the Special Rapporteur

³⁷ Med S.K. Kaggwa, Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa, Intersession Activity Report, 52nd Ordinary Session (2012).

disseminates and obtains information through promotional activities, such as workshops, conferences, and expert meetings. The Special Rapporteur often coordinates these activities with other relevant Special Rapporteurs and Working Groups of the Commission or the United Nations. On the basis of information received, the Special Rapporteur may propose that the Commission take a certain action or decision, or he or she may raise awareness of an issue in his or her reports, press releases, or other activities.

g) Activity Reports

The Special Rapporteur submits Intersession Activity Reports to the Commission each year, which outline the activities the Special Rapporteurship has undertaken. The Commission also prepares an annual Activity Report that it submits to the African Union Assembly, which includes information gathered from the Special Rapporteur, summarizing positive developments and areas of concern regarding human rights in Africa.

4.6.4 Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons

The Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons is one of the special mechanisms overseen by the African Commission on Human and Peoples' Rights. The Special Rapporteurship was created in 2004 during the Commission's 35th Ordinary Session to protect the rights of refugees, asylum seekers, and internally displaced persons.³⁸ In 2006, the mandate was extended to include migrants as well. See ACommHPR, Resolution 95, Resolution on the Renewal of the Term and Extension of the Mandate of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa. Its purpose is to investigate and improve the treatment of refugees, asylum seekers, migrants, and internally displaced persons throughout the African Union (AU) Member States.

a) Composition and Working Methods

The Commission appoints Special Rapporteurs either by a consensus or by a vote. The mandate of the Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons was originally authorized for two years, but it has been renewed by the Commission several times³⁹. As of October 2014, each individual appointed as Special Rapporteur has been a Commissioner, simultaneously serving on the African Commission.

The Special Rapporteur undertakes a number of duties, including evaluating States' domestic laws and their compliance with international standards, conducting visits to Member States, and studying relevant human rights conditions or situations.

38 See, ACommHPR, Resolution 69, Resolution on the Protection of Human Rights Defenders in Africa, 4 June 2004.

39 ACommHPR, Resolution 116, Resolution on the Renewal of the Mandate of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa, 28 November 2007

b) Analysis of National Practices and Policies

The Special Rapporteurship evaluates Member States' laws, and encourages the States to better align their policies with their obligations under the African Charter on Human and Peoples' Rights and other international standards, including the UN Convention on Refugees of 1951 and the OAU Convention Governing the Specific Aspects of Refugees Problems in Africa. The Special Rapporteur provides Member States with recommendations on efficient strategies that they can implement to better protect the rights of refugees, asylum seekers, migrants, and internally displaced persons. The Special Rapporteur has also sent letters to Member States to encourage their ratification of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), which the Special Rapporteur helped to draft and adopt⁴⁰.

c) Country Visits

The Special Rapporteur undertakes country visits to Member States, with their consent. During these visits, which are also known as missions, the Special Rapporteur examines human rights conditions, particularly in refugee camps and camps for internally displaced persons. The Special Rapporteur then makes recommendations to the State on how to improve these conditions.

According to Rule 60 of the Commission's Rules of Procedure, after the completion of a mission, the Special Rapporteur has a duty to publish a Mission Report, which may usually be found on its website. However, as of October 2014, the Special Rapporteur had not posted any Mission Reports on its website. Mission reports contain general recommendations to the State, and often include specific recommendations to the international community and civil society, among others.

States are encouraged to cooperate with the Special Rapporteur to ensure that he or she is able to engage with refugees, asylum seekers, migrants, internally displaced persons, government officials, and civil society organizations⁴¹.

d) Receiving Information

The Special Rapporteur is responsible for seeking and receiving information from individuals, governmental and non-governmental organizations and institutions, and other stakeholders concerning cases or situations that involve refugees, asylum seekers, migrants, and internally displaced persons.

Along with information gathered from such actors and during missions, the Special Rapporteur disseminates and obtains information through promotional activities, such as conferences, seminars, and expert meetings. The Special Rapporteur often coordinates these activities with civil society organizations, National Human Rights Organizations, and relevant actors within the United Nations⁴². The Special Rapporteurship has also presented various papers and studies on the rights of refugees, asylum seekers, migrants, and internally displaced persons⁴³.

40 Maya Sahli-Fadel, Report of the Mechanism of the Special Rapporteur on the Rights of Refugees, Asylum Seekers, and Internally Displaced Persons and Migrants in Africa Since Its Creation, Intersession Activity Report, 52nd Ordinary Session (2012).

41 ACommHPR, Resolution 72, Resolution on the mandate of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa, 7 December 2004.

42 Zainabo Sylvie Kayitesi, Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons, Intersession Activity Report, 50th Ordinary Session (2011).

43 Bahame Tom Mukiryanyanduga, Report of Activities for the Inter-Session Period June to November 2006 for

On the basis of information received, the Special Rapporteur may propose that the Commission take a certain action or decision, or he or she may raise awareness of an issue in his or her reports, press releases, or other activities.

e) Activity Reports

The Special Rapporteur submits Intersession Activity Reports to the Commission each year, which outline the activities the Special Rapporteurship has undertaken. The Commission also prepares an annual Activity Report that it submits to the African Union Assembly, which includes information gathered from the Special Rapporteur, summarizing positive developments and areas of concern regarding human rights in Africa.

4.6.5 Special Rapporteur on Rights of Women

On the occasion of its 25th Ordinary Session held in Bujumbura, Burundi, from 26 April to 5 May 1999, the African Commission adopted resolution ACHPR/res.38 (XXV) 99 on the appointment of a Special Rapporteur on the Rights of Women in Africa. The Resolution appointed the first Special Rapporteur in May 1999 retroactively as from October 1998.

a) Mandates

The mandate of the Special Rapporteur on the Rights of Women in Africa is provided as follows:

- To serve as a focal point for the promotion and protection of the rights of women in Africa amongst the 11 Members of the African Commission;
- To assist African governments in the development and implementation of their policies of promotion and protection of the rights of women in Africa, particularly in line with the domestication of the newly entered into force Protocol to the African Charter on Human and Peoples' rights, relative to the Rights of Women in Africa and the general harmonization of national legislation to the rights guaranteed in the Protocol;
- To undertake promotional and fact finding missions in African countries Members of the African Union, in order to disseminate the human rights instruments of the African Union and to investigate on the situation of women's rights in the countries visited;
- To follow up on the implementation of the African Charter on Human and Peoples' Rights and its Protocol relative to the Rights of Women in Africa by State Parties, notably by preparing reports on the situation of women rights in Africa and propose recommendations to be adopted by the Commission;
- When appropriate, to draft Resolutions on the situation of women in the various African countries and propose them to the Members of the Commission for adoption.
- To carry a comparative study on the situation of the rights of women in various countries of Africa;
- To define guidelines for State reporting in order to bring Member States to address adequately women's rights issues in their periodic and/or initial reports submitted to the African Commission;

Commissioner Bahame Tom Nyanduga, the Special Rapporteur for Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa, Intersession Activity Report, 40th Ordinary Session (2006).

- To collaborate with relevant actors responsible for the promotion and protection of the rights of women internationally, regionally and nationally, such as:
 - National governmental departments responsible for gender issues in each African Union Member State;
 - Intergovernmental organizations acting at regional and national levels in Africa;
 - Non-governmental organizations (NGOs) and National Human Rights Institutions;
 - Other Special Rapporteurs from the United Nations and from other regional human rights systems.

The Special Rapporteur takes part in various projects organised by International, regional, national organisations. She serves as a resource person and disseminates information on the Protocol to the African Charter on the Rights of Women in Africa and on the African Commission on Human and Peoples' Rights.

b) Composition and Working Methods

The Commission appoints Special Rapporteurs either by a consensus or by a vote.⁴⁴

The Special Rapporteur undertakes a number of duties, including providing guidance on alleged violations, analyzing States' domestic laws and their compliance with international standards, conducting visits to Member States, and studying relevant human rights conditions or situations.

c) Guidance on Alleged Violations

The Special Rapporteur provides the Commission with guidance in responding to communications that concern women's rights. The mandate holder may lend expertise or insight during the Commission's considering of complaints related to his or her mandate.

The mandate holder has also sent notes verbales to State officials requesting that specific measures be taken to address violations of women's human rights⁴⁵.

d) Analysis of National Practices and Policies

The Special Rapporteurship evaluates Member States' laws and makes recommendations, encouraging the States to better align their policies with their obligations under the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and other international standards.

The mandate holder has also sent notes verbales, or diplomatic letters, to State officials encouraging their ratification of the Protocol.

The Special Rapporteur also defines guidelines for State reporting, so that Member States adequately address what measures they have taken to protect and promote women's rights in their periodic and initial reports to the African Commission.

⁴⁴ ACommHPR, Resolution 245, Resolution on the Renewal of the Mandate of the Special Rapporteur on the Rights of Women in Africa, 5 November 2013. As of October 2014, each individual appointed as Special Rapporteur has been a Commissioner, simultaneously serving on the African Commission.

⁴⁵ Soyata Maiga, Intersession Report by Me SoyataMaiga Commissioner/Special Rapporteur on the Rights of Women in Africa, Intersession Activity Report, 45th Ordinary Session (2009).

e) Country Visits

The Special Rapporteur undertakes country visits to Member States, with their consent. During these visits, which are also known as missions, the Special Rapporteur engages with many actors, including women, government officials, and civil society organizations, among others. The Special Rapporteurship investigates the treatment of women's human rights, and provides the State with recommendations for improvement.

According to Rule 60 of the Commission's Rules of Procedure, after the completion of a mission, the Special Rapporteur has a duty to publish a Mission Report, which may be found on its website. These reports contain general recommendations to the State, and often include specific recommendations to the international community, African Commission, or civil society, among others.

f) Receiving Information

The Special Rapporteur is responsible for seeking and receiving information from individuals, governmental and non-governmental organizations and institutions, and other stakeholders concerning cases or situations that involve women's human rights.

Along with information gathered from such actors and during missions, the Special Rapporteur disseminates and obtains information through promotional activities, such as workshops, conferences, and consultative seminars. The Special Rapporteur often coordinates these activities with other relevant Special Rapporteurs and Working Groups of the Commission or the United Nations.

On the basis of information received, the Special Rapporteur may propose that the Commission take a certain action or decision, or he or she may raise awareness of an issue in his or her reports, press releases or other activities. For example, the Special Rapporteurship drafts Resolutions concerning the protection of women's rights and proposes them to the Commission for adoption.

g) Activity Reports

The Special Rapporteur submits Intersession Activity Reports to the Commission each year, which outline the activities the Special Rapporteurship has undertaken. The Commission also prepares an annual Activity Report that it submits to the African Union Assembly, which includes information gathered from the Special Rapporteur, summarizing positive developments and areas of concern regarding human rights in Africa.

4.6.6 Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa

The Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa is one of the special mechanisms overseen by the African Commission on Human and Peoples' Rights. The Working Group was created in 2005 during the Commission's 38th Ordinary Session as the Working Group on the Death Penalty, and the mandate was expanded to include extra-judicial, summary, and arbitrary killings in 2012. Its purpose is to prevent extra-judicial, summary, and arbitrary killings, monitor the use of the death penalty throughout the African Union (AU) Member States, and develop a framework for the abolition of the death penalty.

a) Composition and Working Methods

The Commission appoints the Working Group's Chairperson and members either by a consensus or by a vote. The mandate of the Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa has been renewed by the Commission several times, typically every two years. The composition of the Working Group includes the Chairperson, two Commissioner members, and five expert members that represent the different legal systems and regions throughout Africa. As of October 2014, each individual appointed as Chairperson has been a Commissioner, and all the Commissioners who belonged to the Working Group were simultaneously serving on the African Commission.

The Working Group undertakes a number of duties, including providing guidance on alleged violations, writing letters to State officials regarding alleged violations, developing a practical and legal framework for the abolition of the death penalty in Africa, and monitoring situations relating to the death penalty, extra-judicial, summary, or arbitrary killings.

b) Guidance on Alleged Violations

The Working Group may propose that the Commission send an urgent appeal to a State concerning an emergency matter, as defined in Rule 79 of the Commission's Rules of Procedure.

The Working Group may also send letters of appeal to State officials regarding the imposition of death sentences and extra-judicial, summary or arbitrary killings. In these letters, the mandate holder may urge Member States to observe a moratorium on the death penalty and to conduct investigations into unlawful killings.

c) Framework for Abolition of the Death Penalty

The Working Group strives to create a strategic plan for the abolition of the death penalty. It has concentrated on developing a practical and legal framework for its abolishment. To this end, the Working Group organized multiple regional conferences throughout Africa where the Cotonou Framework Document toward the Abolition of the Death Penalty in Africa and the Kigali Framework Document on the Abolition of the Death Penalty in Africa were both adopted.

d) Monitoring Situations

Although the Working Group does not engage in country visits, also known as missions, it remains informed of situations relating to extra-judicial, summary or arbitrary killings. The Working Group is responsible for compiling information on reported instances of extra-judicial, summary, or arbitrary killings in Africa.

Additionally, the Cotonou Declaration encourages civil society organizations to inform the Working Group and international community of scheduled executions in a timely manner, so that the Working Group may respond to an imminent threat of using the death penalty or to follow-up after the death penalty has been executed.

e) Receiving Information

The Working Group is responsible for seeking and receiving information from individuals, governmental and non-governmental organizations and institutions, and other stakeholders concerning cases or situations that involve the death penalty, extra-judicial, summary, or arbitrary killings.

Along with information gathered from such actors, the Working Group disseminates and obtains information through promotional activities, such as conferences, seminars, and expert meetings. The Working Group often coordinates these activities with other relevant Special Rapporteurs and Working Groups under the Commission or the United Nations.

On the basis of information received, the Working Group may propose that the Commission take a certain action or decision, or the Working Group may raise awareness of an issue in its reports, press releases, or other activities.

f) Activity Report

The Working Group submits Intersession Activity Reports to the Commission each year, which outline the activities the Working Group has undertaken. The Commission also prepares an annual Activity Report that it submits to the African Union Assembly, which includes information gathered from the Working Group, summarizing positive developments and areas of concern regarding human rights in Africa.

4.6.7 Working Group on Economic, Social and Cultural Rights

The Working Group on Economic, Social and Cultural Rights is one of the special mechanisms overseen by the African Commission on Human and Peoples' Rights. The Working Group was created in 2004 during the Commission's 36th Ordinary Session. When the Commission adopted the Resolution creating the Working Group, it simultaneously adopted the Pretoria Declaration on Economic, Social and Cultural Rights in Africa. The Working Group's purpose is to develop guidelines that promote and protect economic, social and cultural rights throughout the African Union (AU) Member States.

a) Composition and Working Methodologies

The Commission appoints the Working Group's Chairperson and members either by a consensus or by a vote. The mandate of the Working Group on Economic, Social and Cultural Rights has been renewed by the Commission several times, typically every two years. The members have been Commissioners or representatives from institutions that focus on economic, social and cultural rights. As of October 2014, each individual appointed as Chairperson has been a Commissioner, and all the Commissioners who belonged to the Working Group were simultaneously serving on the African Commission.

The Working Group undertakes a number of duties, including providing Member States with guidance on their obligations concerning economic, social and cultural rights, studying relevant human rights conditions or situations, and conducting visits to Member States.

b) Guidance on Member State Obligations

The Working Group has drafted and adopted the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Principles). In drafting the Nairobi Principles, the Working Group collaborated with the United Nations Office of the High Commissioner for Human Rights, along with multiple African and international civil society organizations.

The Working Group also drafted and adopted the State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Tunis Reporting Guidelines). These Guidelines help Member States prepare their periodic reports to the Commission, encouraging them to comprehensively address the measures taken to implement economic, social and cultural rights.

The Commission also passed a resolution mandating the Working Group to further define State obligations regarding the right to health. To this end, the Working Group is responsible for developing guidelines that monitor and assess the accessibility of medicine.

c) Country Visits

The Working Group undertakes country visits to Member States, with their consent. During these visits, which are also known as missions, the Working Group engages with government officials and discusses what measures have been taken to protect economic, social and cultural rights. The Chairperson encourages the State to prepare their periodic reports to the Commission in accordance with the Tunis Reporting Guidelines and to consider the Nairobi Principles when implementing policies that affect economic, social and cultural rights.

According to Rule 60 of the Commission's Rules of Procedure, after the completion of a mission, the Working Group has a duty to publish a Mission Report. However, as of October 2014, the Working Group had not posted any accessible Mission Reports on its website. Mission Reports contain general recommendations to the State, and often include specific recommendations to the international community and civil society, among others.

d) Receiving Information

The Working Group is responsible for seeking and receiving information from individuals, governmental and non-governmental organizations and institutions, and other stakeholders concerning cases or situations that involve economic, social and cultural rights.

Along with information gathered from such actors and during missions, the Working Group disseminates and obtains information through promotional activities, such as workshops, seminars, and expert meetings. The Working Group often coordinates these activities with other relevant Special Rapporteurs and Working Groups under the Commission or the United Nations. On the basis of information received, the Working Group may raise awareness of an issue in its reports, press releases, or other activities.

e) Activity Reports

The Working Group submits Intersession Activity Reports to the Commission each year, which outline the activities the Working Group has undertaken. The Commission also prepares an annual Activity Report that it submits to the African Union Assembly, which includes information gathered from the Working Group, summarizing positive developments and areas of concern regarding human rights in Africa.

4.6.7 Working Group on Extractive Industries, Environment and Human Rights Violations

The Working Group on Extractive Industries, Environment and Human Rights Violations in Africa is one of the special mechanisms overseen by the African Commission on Human and Peoples' Rights. The Working Group was created in 2009 during the Commission's 46th Ordinary Session⁴⁶. Its purpose is to address human rights violations committed throughout the African Union (AU) Member States by extractive industries.

a) Composition and Working Methods

The Commission appoints the Working Group's Chairperson and members either by a consensus or by a vote⁴⁷). The mandate of the Working Group on Extractive Industries, Environment and Human Rights in Africa was initially authorized for two years, but it has been renewed by the Commission multiple times⁴⁸. Industries, Environment and Human Rights Violations in Africa, 25 November 2009; ACommHPR, Resolution 198, Resolution Appointing the Chairperson and Members of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa, 5 November 2011.

The Working Group is composed of the Chairperson, Commissioner members, and independent expert members. Eligibility requirements to be an independent expert member include: a proven record of expertise related to extractive industries and human rights abuse in Africa, strong advocacy and written skills, willingness to travel, and fluency in English or French⁴⁹. As of October 2014, each individual appointed as Chairperson has been a Commissioner, and all the Commissioners who belonged to the Working Group were simultaneously serving on the African Commission.

The Working Group undertakes a number of duties, including providing guidance on alleged violations, studying relevant human rights conditions or situations, and conducting country visits.

b) Guidance on Alleged Violations

The Working Group may propose that the Commission send an urgent appeal to a Member State concerning an emergency matter, as defined in Rule 79 of the Commission's Rules of Procedure. If the State initiates investigations into the emergency matter in response to the urgent appeal, the Working Group closely monitors the investigations⁵⁰.

The Working Group may also recommend measures and activities that would address existing human rights violations. The Working Group may notify the Commission of the liability of non-state actors, to prevent the impunity of extractive industries.

46 ACommHPR, Resolution 148, Resolution on the Establishment of a Working Group on Extractive Industries, Environment and Human Rights Violations in Africa, 25 November 2009

47 ACommHPR, Rules of Procedure of the African Commission on Human and Peoples' Rights, 2010, Rule 23(2)

48 ACommHPR, Resolution 148, Resolution on the Establishment of a Working Group on Extractive

49 ACommHPR, Call for Applications for the Nomination of Expert Members to Serve on the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa, Press Release, 21 March 2014

50 PacifiqueManirakiza, Report of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa, Intersession Activity Report, 52nd Ordinary Session (2012).

c) Studying Human Rights Conditions and Situations

The Working Group is responsible for researching human rights violations committed by non-state actors, and examining the impact of extractive industries in Africa. The Working Group is tasked with researching specific issues related to the right of all peoples to freely dispose of their wealth and natural resources, and related to the right to a satisfactory environment.

To this end, the Working Group's independent expert members conduct research projects on extractive industries and human rights violations.

The Commission also passed a resolution mandating the Working Group to study the impact of climate change on human rights in Africa.

d) Country Visits

The Working Group undertakes country visits to Member States, with their consent. During these visits, which are also known as missions, the Working Group investigates situations of human rights violations related to extractive industries. The Working Group engages with State officials, community leaders, representatives from extractive companies, and individuals affected by the violations. The Working Group also assesses any mechanisms the State has put in place to address the violations, including Commissions of Inquiry.

According to Rule 60 of the Commission's Rules of Procedure, after the completion of a mission, the Working Group has a duty to publish a Mission Report, which may usually be found on its website. However, as of October 2014, the Working Group had not posted any Mission Reports on its website. Mission reports contain general recommendations to the State, and often include specific recommendations to the international community and civil society, among others.

e) Receiving Information

The Working Group is responsible for seeking and receiving information from individuals, governmental and non-governmental organizations and institutions, and other stakeholders concerning cases or situations that involve human rights violations related to extractive industries and the environment.

Along with information gathered from such actors and during missions, the Working Group disseminates and obtains information through promotional activities, such as conferences, workshops, and expert meetings. The Working Group often coordinates these activities with other relevant Special Rapporteurs and Working Groups under the Commission or the United Nations.

On the basis of information received, the Working Group may propose that the Commission take a certain action or decision, or the Working Group may raise awareness of an issue in its reports, press releases, or other activities.

f) Activity Report

The Working Group submits Intersession Activity Reports to the Commission each year, which outline the activities the Working Group has undertaken. The Commission also prepares an annual Activity Report that it submits to the African Union Assembly, which includes information gathered from the Working Group, summarizing positive developments and areas of concern regarding human rights in Africa.

4.6.8 Working Group on Indigenous Populations/Communities in Africa

The Working Group on Indigenous Populations/Communities in Africa is one of the special mechanisms overseen by the African Commission on Human and Peoples' Rights. The Working Group was created in 2000 during the Commission's 28th Ordinary Session. Its purpose is to protect and promote the human rights of indigenous peoples and communities throughout the African Union (AU) Member States.

a) Composition and Working Methods

The Commission appoints the Working Group's Chairperson and members either by a consensus or by a vote. The mandate of the Working Group on Indigenous Populations/Communities in Africa has been renewed by the Commission several times, typically every two years. The Working Group is composed of the Chairperson, Commissioner members, and African expert members. As of October 2014, each individual appointed as Chairperson has been a Commissioner, and all the Commissioners who belonged to the Working Group were simultaneously serving on the African Commission.

The Working Group undertakes a number of duties, including sending urgent appeals to Member States and letters to non-State actors, studying and publishing research on relevant human rights situations and conditions, and conducting visits to Member States.

b) Guidance on Alleged Violations

The Working Group sends urgent appeals to Member State officials regarding alleged violations of indigenous peoples' human rights. The urgent appeals remind the State of its international obligations, and often request information regarding what measures have been taken to address the situation⁵¹.

The Working Group also sends letters to non-State actors and institutions, encouraging them to develop protocols that safeguard the human rights of indigenous populations while the institution or actor carries out its functions⁵².

c) Research and Publications

The Working Group has prepared many reports and publications on indigenous peoples' human rights. In 2003, it created the Report of the African Commission's Working Group on Indigenous Populations/Communities, which developed the framework for the treatment of indigenous peoples' human rights in Africa. The Working Group also prepared a summary of that report, entitled *Indigenous Peoples in Africa: The Forgotten Peoples*⁵³.

51 SoyataMaiga, Intersession Report of the Working Group on Indigenous Populations/Communities in Africa, Intersession Activity Report, 54th Ordinary Session (2013).

52 SoyataMaiga, Intersession Report of the Working Group on Indigenous Populations/Communities in Africa, Intersession Activity Report, 53rd Ordinary Session (2013).

53 SoyataMaiga, Intersession Report of the Working Group on Indigenous Populations/Communities in Africa, Intersession Activity Report, 52nd Ordinary Session (2012).

The Working Group also collaborated with the International Labour Organization to research and prepares a report on the legislative and constitutional protections for indigenous populations in 24 African countries.

In addition to publishing reports, the Working Group has collaborated with civil society organizations and government officials to produce a film entitled *A Question of Justice: Indigenous Peoples' Rights in Africa*.

d) Country Visits

The Working Group undertakes country visits to Member States, with their consent. During these visits, which are also known as missions, the Working Group engages with government officials, international and regional civil society organizations, and indigenous communities. The Working Group gathers information about the problems indigenous populations are facing, and makes recommendations to the State on how to improve them.

According to Rule 60 of the Commission's Rules of Procedure, after the completion of a mission, the Working Group has a duty to publish a Mission Report, which may be found on its website. These reports contain general recommendations to the State, and often include specific recommendations to the African Union, international community, and civil society, among others. The Working Group has also published its Mission Reports in book format, which are available in English and French⁵⁴.

e) Receiving Information

The Working Group is responsible for seeking and receiving information from individuals, governmental and non-governmental organizations and institutions, and other stakeholders concerning cases or situations that involve the human rights of indigenous peoples.

Along with information gathered from such actors and during missions, the Working Group disseminates and obtains information through promotional activities, such as workshops, sensitization seminars, and expert meetings. The Working Group often coordinates these activities with other relevant Special Rapporteurs and Working Groups under the Commission or the United Nations.

On the basis of information received, the Working Group may propose that the Commission take a certain action or decision, or the Working Group may raise awareness of an issue in its reports, press releases, or other activities.

f) Activity Reports

The Working Group submits Intersession Activity Reports to the Commission each year, which outline the activities the Working Group has undertaken. The Commission also prepares an annual Activity Report that it submits to the African Union Assembly, which includes information gathered from the Working Group, summarizing positive developments and areas of concern regarding human rights in Africa.

⁵⁴ ACommHPR, Report of the African Commission's Working Group on Indigenous Populations/Communities: Research and Information Visit to the Republic of Uganda 14–17, 24–29 July 2006 (2009).

The Working Group also publishes a bi-annual newsletter entitled The Voice of the Indigenous, which describes the Working Group's activities and promotes awareness of indigenous rights.

4.6.9 Working Group on Rights of Older Persons and People with Disabilities

The Working Group on Rights of Older Persons and People with Disabilities originated as a Focal Point which was established by the adoption of Resolution 118 at the 42nd Ordinary Session held in Brazzaville, Republic of Congo from 15-28 November 2007.

a) Mandates of the Working Group

Resolution 143 of the 45th Ordinary Session (Banjul, The Gambia – May 2009) a) extended the mandate of the group by establishing a Working Group on the Rights of Older Persons and People with Disabilities, with the mandate to:

1. Hold comprehensive brainstorming sessions to articulate the rights of older persons and people with disabilities;
2. Draft a Concept Paper for consideration by the African Commission that will serve as a basis for the adoption of the Draft Protocol on Ageing and People with Disabilities;
3. Facilitate and expedite comparative research on the various aspects of human rights of older persons and people with disabilities on the continent, including their socio-economic rights;
4. Collect data on older persons and people with disabilities to ensure proper mainstreaming of their rights in the policies and development programmes of Member States;
5. Identify good practices to be replicated in Member States;
6. Submit a detailed Report to the African Commission at each Ordinary Session.

The Working Group is elaborating a Draft Protocol on the Rights of Older Persons which was most recently submitted to the 50th Ordinary Session of the African Commission. The Working Group is elaborating a Draft Protocol on the Rights of Older Persons which was most recently submitted to the 50th Ordinary Session of the African Commission.

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

The Committee on the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV was established by the African Commission on Human and Peoples' Rights with the adoption of Resolution 163 at the 47th Ordinary Session held in Banjul, The Gambia in May 2010.

a) The Mandates of the Committee

The mandate calls for the Committee to:

- Seek, request, receive, analyse and respond to reliable information from credible sources including individuals, community-based organisations, non-governmental organisations, specialised agencies, inter-governmental organisations, and State Parties, on the situation and rights of PLHIV and those at risk;

- Undertake fact-finding missions, where necessary, to investigate, verify and make conclusions and recommendations regarding allegations of human rights violations;
- Engage State Parties and non-state actors on their responsibilities to respect the rights of people living with HIV and those proven to be vulnerable to these infections;
- Engage State Parties on their responsibilities to respect, protect and fulfil the rights of people living with HIV and those at risk;
- Recommend concrete and effective strategies to better protect the rights of people living with HIV and those at risk;
- Integrate a gender perspective and give special attention to persons belonging to vulnerable groups, including women, children, sex workers, migrants, men having sex with men, intravenous drugs users and prisoners; and
- Report regularly to the African Commission on Human and Peoples' Rights.

4.6.11 Committee for the Prevention of Torture in Africa

Like other human rights systems, the African Charter on Human and Peoples' Rights establishes the absolute prohibition of torture, cruel, inhuman or degrading treatment or punishment. Article 5 of the Charter provides that "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."

The Charter also establishes a regional human rights body, the African Commission on Human and Peoples' Rights, with the mandate to promote respect for the Charter, ensure the protection of the rights and fundamental freedoms contained therein, and make recommendations for its application.

a) The Mandates of the Committee

To fulfill its mission, the African Commission works with different partners, which include the authorities of States party to the African Charter, national human rights institutions and non-governmental organizations (NGOs). It is in this context of cooperation that the Association for the Prevention of Torture (APT) – an international NGO with Observer Status at the African Commission - suggested, during the African Commission's 28th ordinary session held in Cotonou, Benin, in October 2000, that a joint workshop be organised to draw up concrete measures for implementation of the provisions of Article 5 of the Charter and other international instruments aimed at preventing torture.

The workshop was held from 12 to 14 February 2002 on Robben Island, hence the name "Robben Island Guidelines (RIG)." Robben Island is a deeply symbolical place for Africa, since it was there that President Nelson Mandela was detained for several years, together with other opponents of the South African apartheid regime. This prison, built by men in the middle of the ocean with the purpose of humiliating, isolating and breaking the spirit of other men, is today a symbol of the victory of freedom over oppression, a beacon of hope and a reminder of our shared humanity.

The workshop brought together African and international experts from different professional backgrounds dealing with the issue of torture from its various angles. These joint efforts culminated in the drafting of a set of guidelines and measures for the prohibition and prevention of torture and cruel, inhuman or degrading punishment or treatment in Africa, now known as the "Robben Island Guidelines."

These are contained in a document of fifty articles comprising three main parts: the prohibition of torture, the prevention of torture, and rehabilitation of victims. The Robben Island Guidelines were formally adopted by a resolution of the African Commission during its 32nd ordinary session in October 2002 and approved by the Conference of Heads of State and Government of the African Union held in Maputo, Mozambique, in July 2003.

During its 35th session held in Banjul, Gambia, from 21 May to 4 June 2004, the African Commission on Human and Peoples' Rights established a Follow-up Committee to promote the implementation of the Robben Island Guidelines and help the African Commission deal effectively with the question of torture in Africa. Due to the difficulty national, regional and international stakeholders and partners had in associating the name Robben Island Guidelines Committee with its torture prevention mandate, the African Commission decided during its 46th Ordinary Session held in Banjul, the Gambia, by resolution ACHPR/Res158 (XLVI) 09, to change the name of the mechanism to the Committee for the Prevention of Torture in Africa (CPTA). The CPTA is assigned the following mandate:

To organise, with the support of interested partners, seminars to disseminate the Robben Island Guidelines to national and regional stakeholders;

To develop and propose to the African Commission strategies to promote and implement the Robben Island Guidelines at the national and regional levels;

To promote and facilitate the implementation of the Robben Island Guidelines within member states and;

To make a progress report to the African Commission at each ordinary session

The African Union's Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines or RIG) are an unprecedented instrument to fight against torture and ill treatment in Africa. The RIG is an essential tool for States in fulfilling their national, regional and international obligations to strengthen and implement the prohibition and prevention of torture. The African Commission on Human and Peoples' Rights and NGOs can also use them as a basis for reminding States and other stakeholders of what actions they should take to prevent torture and other cruel, inhuman or degrading punishment or treatment.

The Robben Island Guidelines are divided into three parts:

The first part 'Prohibition of Torture' calls on States on the one hand to ratify existing legal instruments and integrate them into domestic legislation. In particular, the act of torture must be 'criminalized' and prosecuted. On the other hand, it invites States to cooperate with regional and international human rights mechanisms.

The second part 'Prevention of Torture' presents a range of preventive measures, covering the different stages of criminal law procedure in which there is a real risk of torture occurring. It details the safeguards that should be provided, in particular, during arrest, custody, temporary detention, trial and imprisonment in general. The Guidelines also highlight the need to establish mechanisms of oversight, for example a system for regular visits to places of detention and independent bodies empowered to receive complaints. They further advocate for the setting up of educational and awareness-raising programmes for the public as well as human rights training, in particular for law enforcement officials.

The third part 'Responding to the Needs of Victims' looks at ways of responding to the needs of such victims. Indeed, assisting the victims is also a duty of States, which should take measures to treat, support and provide reparation and rehabilitation for the victims.

Chapter 5

Sub-Regional Human Rights Instruments

5.0 Introduction

At the sub regional level, Tanzania is a party to several Instruments which provide for the protection of human rights. This chapter provides for the sub regional Human Rights instruments, scope of application and Human Rights Enforcement Bodies at the sub-regional level. Under this context, this chapter provides for Human Rights Instruments at the East African Community (EAC) and the Southern Africa Development Community (SADC).

5.1 Eac Community

The East African Community was first established in 1967 but became defunct in 1977. The Community was revived in 1999 with the adoption of a new Treaty by Kenya, Tanzania and Uganda. Membership of the EAC was increased in 2007 with the accession of Burundi and Rwanda to the 1999 Treaty. Later in April 2016 the youngest country in Africa (South Sudan) joined the Community. The EAC is one of the regional economic communities recognized by the AU as building blocks of the African Economic Community.

5.1.1 The East African Treaty (1999)

The Treaty establishing the East African Community (EAC) was signed in Arusha, Tanzania on the 30th November 1999. The Treaty entered into force on 7 July 2000 after it was ratified by the founding member states. The Treaty was amended in December 2006 and August 2007. Burundi and Rwanda acceded to the Treaty in 2017 and finally another state South Sudan joined in 2016.

a) Human Rights provisions in the EAC Treaty

Article 2 provides for the establishment of the East African Community. By the Treaty the Contracting Parties declare to establish among themselves an East African Community. In furtherance of the Community the Treaty gives the Member States the power to conclude protocols and establish an East African Customs Union and a Common Market as transitional stages to and integral parts of the Community.

Article 3

This Article stipulates that any other Country may apply for the membership to the Community. However the Treaty sets out specific matters to be taken into account by the Partner States in considering the application by a foreign country to become a member of, be associated with, or participate in any of the activities of the Community. According to Article 3(3) the matters to be considered shall include that foreign country's:

- (a) Acceptance of the Community as set out in this Treaty;
- (b) Adherence to universally acceptable principles of good governance, democracy, the rule of law, observance of human rights and social justice.

Article 5:

Provides for the objectives of the Community, and the major objective of the Community is to inter alia develop policies and programmes aimed at widening and deepening cooperation among the Partner States in political, economic, social and cultural fields, research and technology, defense, security and legal and judicial affairs, for their mutual benefit.

Article 6

Article 6 of the Treaty stipulates the fundamental principles of the Community. The fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States shall include:

- (a) Mutual trust, political will and sovereign equality;
- (b) Peaceful co-existence and good neighborliness;
- (c) Peaceful settlement of disputes;
- (d) Good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;
- (e) Equitable distribution of benefits; and
- (f) Cooperation for mutual benefit.

Article 7(2) provides that the Partner States are required to undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.

States' duty to protect and implement the treaty is provided under Article 8. According to Article 8(1), Partner States are required to:

- (a) plan and direct their policies and resources with a view to creating conditions favorable for the development and achievement of the objectives of the Community and the implementation of the provisions of this Treaty;
- (b) Co-ordinate, through the institutions of the Community, their economic and other policies to the extent necessary to achieve the objectives of the Community; and
- (c) Abstain from any measures likely to jeopardize the achievement of those Objectives or the implementation of the provisions of this Treaty.

5.1.2 The East African Court of Justice

a. Establishment

The Court is established under Article 9(1)(e) of the Treaty establishing the East African Community. Article 23, provides for the roles of the Court. The following are the major roles of the Court:

- i. The Court shall be a judicial body which shall ensure the adherence to law in the interpretation and application of and compliance with this Treaty.

- ii. The Court shall consist of a First Instance Division and an Appellate Division.
 - iii. The First Instance Division shall have jurisdiction to hear and determine, at first instance, subject to a right of appeal to the Appellate Division under Article 35A, any matter before the Court in accordance with the Treaty.
- b. Jurisdiction of the Court

According to Article 27 (1) of the Treaty, the East African Court of Justice has jurisdiction mainly for the interpretation and application of the EAC Treaty. The jurisdiction of the Court on Human Rights matters was initially debatable on the grounds that according to Article 27(2) of the Treaty the Court was not supposed to determine human rights cases. Article 27(2) provides that: "The Court shall have other original, appellate, human rights and other jurisdiction as will be determined by the Council at a suitable subsequent date. To this end, the Partner States shall conclude a protocol to operationalise the extended jurisdiction."

However, the EACJ has authoritatively as well as practically fashioned an implied human and peoples' rights jurisdiction. That, so long as infringement of a provision of EAC law is alleged, it will not shy away from hearing a matter merely on the basis that it contains allegations of violations of human or peoples' rights. Therefore, the Court derives its jurisdiction on Human Rights from Article 27(1) of the Treaty and other provisions of the Treaty, including Article 6 (d) which states clearly, that, member States shall be governed by principles of good governance and human rights, including adherence, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights.

The EAC Treaty through articles 6 and 7 already import the African Charter on Human and Peoples' Rights (ACHPR) to the human rights regime in EAC. Therefore the EACJ already has an explicit human and peoples' rights jurisdiction.

(c) Engaging the EACJ

Cases in the EACJ may be filed either by Partner State, Secretary General of the EAC, Legal and Natural Persons, and Employees of the Community:

Article 28: Reference by Partner States

A Partner State which considers that another Partner State or an organ or institution of the Community has failed to fulfil an obligation under the Treaty or has infringed a provision of the Treaty, may refer the matter to the EACJ for adjudication. A Partner State may also refer for determination by the Court, the legality of any Act, regulation, directive, decision or action on the ground that it is ultra vires or unlawful or an infringement of the provisions of the Treaty or any rule of law relating to its application or amounts to a misuse or abuse of power.

Article 29: Reference by Secretary General

Where the Secretary General considers that a Partner State has failed to fulfill an obligation under the Treaty or has infringed a provision of the Treaty, the Secretary General shall submit his or her findings to the Partner State concerned for that Partner State to submit its observations on the findings.

If the Partner State concerned does not submit its observations to the Secretary General within four months, or if the observations submitted are unsatisfactory, the Secretary General shall refer the matter to the Council which shall decide whether the matter should be referred by the Secretary General to the Court immediately or be resolved by the Council.

Article 30: Reference by Legal and Natural Persons

Subject to the provisions of Article 27 of the EAC Treaty, any person who is resident in a Partner State may refer for determination by the Court, the legality of any Act, regulation, directive, decision or action of a Partner State or an institution of the Community on the grounds that such Act, regulation, directive, decision or action is unlawful or is an infringement of the provisions of the Treaty.

At this juncture the a legal or natural person my appear in Court as an Applicant, Co-Applicant, Intervener or Amicus Curiae. One can be Amicus Curiae even in an Application for Advisory Opinion such as EALS in the Variable Geometry Advisory Opinion

Article 31: Disputes between the Community and its Employees

The Court has the mandate to hear and determine disputes between the Community and its employees that arise out of the terms and conditions of employment of the employees of the Community or the application and interpretation of the staff rules and regulations and terms and conditions of service of the Community.

Number of Cases filed from 2001 to 2015

#		Filed	Disposed	Pending
1	Substantive Matters	105	48 References 2 Claims 15 Appeals 1 Arbitrations 1 Advisory Opinion Total: 67 Matters	25 References 1 Reference on Taxation 9 Appeals 1 Advisory Opinion 2 Case Stated Total: 31
2	Applications	96	84	12
3	# Cases	201	151	43

(d) Proceedings of the Court

Proceedings of the Court, including submissions and evidence may be tendered either orally or written in accordance with Article 41(2) of the Treaty together with Section XII, and Section VII of the the East African Court of Justice Rules of Procedure⁵⁵

(e) Challenges of Filing Cases under the EACJ

⁵⁵ The East African Court of Justice Rules of Procedure 2013

i. Two Months Limitation

All proceedings to be instituted by Legal or Natural persons must be instituted within two months of the enactment, publication, directive, decision or action complained of, or in the absence thereof, of the day in which it came to the knowledge of the complainant in accordance with Article 30(2) of the Treaty.

ii. Cost of Litigation

There are no costs for filing cases in the EACJ (Filing is free). However, Cost of litigation has been one of the major challenges pertaining to access to justice in the EACJ. According to Rule 57 of the East African Court of Justice Rules of Procedure, a party calling a witness shall be responsible for the witness's expenses. These include travelling costs, attendance to the Court and other expenses. There is no provisions in the Treaty or Court Rules that provide a room for the provision of legal aid. But this does not prevent CSOs and those who are ready to provide legal aid from doing so. There are many CSOs that provide free legal representation to Court.

iii. Lack of knowledge amongst government officials, lawyers and citizens

Most of Government Officials, Lawyers and Citizens of the Member States do not have enough knowledge about the operation of the EACJ and its relevance to Human Rights in the East African Region.

iv. Delaying tactics by Respondents

In most cases the respondents (Attorney Generals of the respective countries) have been using loopholes such as frivolous, vexatious litigation; abuse of the process of Court, Preliminary Objections, and other grounds to delay the proceedings of the Court.

5.2 EAC Common Market Protocol

State Parties to the East African Community entered into a Common Market Protocol in November 2009. The Common Market Protocol became effective in July 2010. The overall objective of the Common Market is to widen and deepen cooperation among the partner states in the economic and social fields. This was to be realized through removal of restrictions on the movement of goods, persons, labor, services and capital, and the rights of establishment and residence.

5.2.1 Establishment of the Common Market

The EAC Common Market Protocol establishes the EAC Common Market under Article 2 of the Protocol. In accordance with the provisions of Articles 76 and 104 of the Treaty, the Protocol provides for the following rights:⁵⁶

- (a) The free movement of goods;
- (b) The free movement of persons;
- (c) The free movement of labor;
- (d) The right of establishment;
- (e) The right of residence;
- (f) The free movement of services; and
- (g) The free movement of capital

⁵⁶ Article 2(4) Ibid.

5.2.2 Principles of the Common Market

Article 3 of the Protocol provides for the principles of the Common Market. According to the Protocol the Common Market shall be guided by the fundamental and operational principles of the Community as enshrined in Articles 6 and 7 of the EAC Treaty. The Partner States are obliged to:

- i. Observe the principle of non-discrimination of nationals of other Partner States on grounds of nationality;
- ii. Accord treatment to nationals of other Partner States, not less favorable than the treatment accorded to third parties;
- iii. Ensure transparency in matters concerning the other Partner States; and
- iv. Share information for the implementation of this Protocol.

5.3 The Southern Africa Development Community (SADC)

The Southern African Development Community (SADC) was formally established in August 1992 in Windhoek, Namibia. SADC replaced SADCC (Southern African Development Coordination Conference) that was established in 1980 in Lusaka during the Apartheid era. SADC is one of the regional economic communities recognized by the AU as building blocks for the AEC. SADC has recently served as a platform for the adoption on protocols with implications for human rights. Member states of SADC are Angola, Botswana, DR Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.⁵⁷

Generally under the SADC there are six major instruments which provide for the protection of human rights. These are as follows:

- i. Treaty of the Southern African Development Community (1992)
- ii. SADC Protocol on Education and Training (1997)
- iii. SADC Protocol on Health (1999)
- iv. SADC Protocol on Gender and Development (2008)
- v. Declaration of SADC on Gender and Development (1997)
- vi. Charter of Fundamental Social Rights in SADC (2003)

5.3.1 Treaty of the Southern African Development Community (1992)

The Treaty establishing the Southern African Development Community (SADC) was adopted on 17 August 1992 and entered into force on 30 September 1993. Since then, there have been two amendments to the original treaty. The Consolidated SADC Treaty contains the amendments to the original Treaty. All SADC member states have ratified the Treaty.

5.3.2 Provisions on the Protection of Human Rights under the SADC Treaty

Article 4:

SADC and its Member States are required to act in accordance with the principles which are provided under Article 4 of the Treaty. According to Article 4(c) the State Parties have the obligation to act based on the principles of human rights, democracy, and the rule of law.

⁵⁷ <http://www.sadc.int>

Article 5 of the Treaty provides that, the objectives of SADC and its member states shall be to: a) achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration; b) evolve common political values, systems and institutions; c) promote and defend peace and security; d) promote self-sustaining development on the basis of collective self-reliance, and the interdependence of Member States; e) achieve complementarity between national and regional strategies and programmes; f) promote and maximize productive employment and utilization of resources of the Region; g) achieve sustainable utilization of natural resources and effective protection of the environment;

In order to achieve the objectives set out in the Treaty, SADC shall:

- i) Harmonies political and socio-economic policies and plans of Member States;
- ii) Encourage the people of the Region and their institutions to take initiatives to develop economic, social and cultural ties across the Region, and to participate fully in the implementation of the programmes and projects of SADC;
- iii) Create appropriate institutions and mechanisms for the mobilization of requisite resources for the implementation of programmes and operations of SADC and its Institutions;
- iv) Develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labor, goods and services, and of the people of the Region generally, among Member States;
- v) Promote the development of human resources;
- vi) Promote the development, transfer and mastery of technology;

- vii) Improve economic management and performance through regional co operation;
- viii) Promote the coordination and harmonization of the international relations of Member States;
- ix) Secure international understanding, co-operation and support, and mobilize the inflow of public and private resources into the Region;
- x) Develop such other activities as Member States may decide in furtherance of the objectives of this Treaty.

Article 6: General Undertakings

- i. Member States undertake to adopt adequate measures to promote the achievement of the objectives of SADC, and shall refrain from taking any measure likely to jeopardize the sustenance of its principles, the achievement of its objectives and the implementation of the provisions of this Treaty.
- ii. SADC and Member States shall not discriminate against any person on grounds of gender, religion, political views, race, ethnic origin, culture or disability.
- iii. SADC shall not discriminate against any Member State.
- iv. Member States shall take all steps necessary to ensure the uniform application of this Treaty.

- v. Member States shall take all necessary steps to accord this Treaty the force of national law.
- vi. Member States shall co-operate with and assist institutions of SADC in the performance of their duties.

5.3.3 The SADC Tribunal

The SADC Tribunal was established under the SADC Treaty in order to ensure adherence to, and proper interpretation of the provisions of, the SADC Treaty and subsidiary instruments, and adjudicates upon disputes referred to it. It was established by the Protocol on the Tribunal, which was signed in Windhoek, Namibia during the 2000 Ordinary Summit, and was officially established on 18 August, 2005 in Gaborone, Botswana. The inauguration of the tribunal and the swearing in of members took place on 18 November, 2005 in Windhoek, Namibia where it is based. It consists of appointed judges from Member States.⁵⁸

After several judgments, including the ruling against the Zimbabwean government in the case of *Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe [2008]*,⁵⁹ the Tribunal was de facto suspended at the 2010 SADC Summit. On 17 August 2012 in Maputo, Mozambique, the SADC Summit addressed the issue of the suspended SADC Tribunal. The SADC Summit resolved that a new Tribunal should be negotiated and that its mandate should be confined to interpretation of the SADC Treaty and Protocols relating to disputes between Member States. Currently no individual Human Rights complaints are admissible in the Tribunal.

Article 16: SADC Tribunal

- i. The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of this Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it.
- ii. The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol, which shall, notwithstanding the provisions of Article 22 of this Treaty, form an integral part of this Treaty, adopted by the Summit.
- iii. Members of the Tribunal shall be appointed for a specified period.
- iv. The Tribunal shall give advisory opinions on such matters as the Summit or the Council may refer to it.
- v. The decisions of the Tribunal shall be final and binding.

5.4 Protocols to the SADC Treaty

According to Article 21 of the SADC Treaty member states have the mandate to establish areas of cooperation and identify the scope of cooperation. Under the SADC Treaty there are several Protocols to the implementation of the Treaty as per Article 22 of the Treaty which provides for the duty of State parties to enter into agreements/protocols on the implementation of specific areas of cooperation among them. Some of the Protocols have direct provisions to the protection of human rights. Some of the Protocols are as follows:

⁵⁸ <https://www.sadc.int/about-sadc/sadc-institutions/tribun/>

⁵⁹ *Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe [2008]* SADCT 2 (28 November 2008), SADC Tribunal (SADC)

5.4.1 SADC Protocol on Education and Training (1997)

SADC Protocol on Education and Training was adopted by member's states in 1997 in order to establish the basis for cooperation among the member states in areas of education. The Protocol does not provide directly for individual rights on education, but it provides for the general obligations of the State Parties in the protection and promotion of the right of education.

Article 2 of the Protocol provides for the principles under which all State Parties are required to observe. According to the Protocol State Parties have the duty to guarantee academic freedoms as a major tool for providing quality education.

5.4.2 SADC Protocol on Health (1999)

In order to facilitate and ensure that individual health rights are being protected and respected, the member states adopted a Protocol on Health. The Protocol requires all State Parties to act in common in pursuit of the objectives of the Protocol.

According to Article 2 of the Protocol State Parties are required to act in accordance with the following principles:

- a. Striving towards formulation of regional health policies and strategies which are consistent with the principles enshrined under the SADC Treaty;
- b. Promoting, coordinating and supporting individual and collective efforts of state parties to attain acceptable standard of health for all their people;
- c. Committed to the primary health care approach;
- d. Promoting Health care service for all through better access to health services

5.4.3 SADC Protocol on Gender and Development (2008)

The SADC Declaration on Gender and Development was signed at the state parties' Summit in Blantyre, Malawi on 8 September 1997. State Parties committed themselves to take "urgent measures to prevent and deal with the increasing levels of violence against women and children"⁶⁰ In furtherance of this commitment, SADC Ministers of Justice, Gender/Women's Affairs, Legislators, Government Officials and Representatives of Non-Governmental Organisations convened a SADC Conference on the Prevention of Violence against Women in Durban, South Africa, on 5 to 8 March 1998, which recommended the adoption of certain measures. REAFFIRMING our commitment to the prevention and eradication of violence against women and children in our region;

The SADC Protocol on Gender and Development looks into integration and main streaming of gender issues into the SADC Programme of Action and Community Building initiatives which is important to the sustainable development of the SADC region.

The Protocol aims to provide for the empowerment of women, to eliminate discrimination and achieve gender equality by encouraging and harmonizing the development and implementation of gender responsive legislation, policies and programmes and projects.

⁶⁰ SADC Protocol on Gender and Development (2008)

It is also a tool used to set realistic, measurable targets, time frames and indicators for achieving gender equality and equity and monitor and evaluate the progress made by Member States thereof. To this regard The Protocol clearly speaks to issues of constitutional and legal rights, governance, and education and training, productive resources and employment, gender based violence, HIV/Aids and Conflict Resolution.⁶¹

A. General Principles and Objectives of the Protocol

Under Part One, the protocol stipulates the principles which are required to be observed by State Parties and Objectives of the Protocol.

i) General Principles

Article 2 of the Protocol provides for the Principles to be applied for the implementation of the Protocol. The following principles are to be observed:

- a) States Parties shall harmonise national legislation, policies, strategies and programmes with relevant regional and international instruments related to the empowerment of women and girls for the purpose of ensuring gender equality and equity.
- b) States Parties shall decide all matters relating to the implementation of this Protocol by consensus; and
- c) States Parties shall cooperate in facilitating the development of human, technical and financial capacity for the implementation of this Protocol.

States Parties are required to adopt the necessary policies, strategies and programmes such as affirmative action to facilitate the implementation of the Protocol. Affirmative action measures shall be put in place with particular reference to women and girls, in order to eliminate all barriers which prevent them from participating meaningfully in all spheres of life.

ii) The objectives of the Protocol

The main objectives of the protocol are:

- a) To provide for the empowerment of women, to eliminate discrimination and to achieve gender equality and equity through the development and implementation of gender responsive legislation, policies, programmes and projects;
- b) To harmonize the implementation of the various instruments to which SADC Member States have subscribed to at the regional, continental and international levels on gender equality and equity which, amongst others, are the Convention on the Elimination of all Forms of Discrimination Against Women (1979); Convention on the Rights of the Child (1989); the International Conference on Population and Development (1994); the Beijing Declaration and its Platform For Action (1995); the SADC Declaration on Gender and Development (1997) and its Addendum (1998); the Millennium Development Goals (2000); the UN Security Council Resolution 1325 on Women, Peace and Security (2000); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003); the United Nations Convention on the Rights of People with Disabilities (2008); or any other legal instruments that may be relevant to this Protocol, in order to accelerate implementation;

61 https://www.sadc.int/documents-publications/show/Protocol_on_Gender_and_Development_2008.pdf (Accessed on the 3rd of September 2018)

- c) To address emerging gender issues and concerns;
- (d) To set realistic, measurable targets, time frames and indicators for achieving gender equality and equity;
- (e) To strengthen, monitor and evaluate the progress made by Member States towards reaching the targets and goals set out in this Protocol; and
- (f) To deepen regional integration, attain sustainable development and strengthen community building.

iii) Constitutional and Legal Rights

Article 4 requires State Parties to try hard in the promotion of gender equality. All State Parties were obliged to enshrine gender equality and equity in their Constitutions and ensure that these rights are not compromised by any provisions, laws or practices by 2015. States Parties are required to implement legislative and other measures to eliminate all practices which negatively affect the fundamental rights of women, men, girls and boys, such as their right to life, health, dignity, education and physical integrity.

- Domestic Legislation

According to Article 6, States Parties must review, amend and or repeal all laws that discriminate on the ground of sex or gender by 2015. States Parties have a duty to enact and enforce legislative and other measures in order to ensure equal access to justice and protection before the law; and eliminate practices which are detrimental to the achievement of the rights of women by prohibiting such practices and attaching deterrent sanctions thereto.

- Equality in Accessing Justice

Article 7 stipulates that, States Parties have a duty to put in place legislative and other measures which promote and ensure the practical realization of equality for women. These measures shall ensure equality in the treatment of women in judicial and quasi-judicial proceedings, or similar proceedings, including customary and traditional courts, and national reconciliation processes;

- Marriage and Family Rights

According to Article 8, States Parties should enact and adopt appropriate legislative, administrative and other measures to ensure that women and men enjoy equal rights in marriage and are regarded as equal partners in marriage. Legislation on marriage shall ensure that:

- (a) No person under the age of 18 shall marry unless otherwise specified by law which takes into account the best interests and welfare of the child;
- (b) Every marriage takes place with the free and full consent of both parties;
- (c) Every marriage, including civil, religious, traditional or customary, is registered in accordance with national laws; and

(d) During the subsistence of their marriage the parties shall have reciprocal rights and duties towards their children with the best interests of the children always being paramount.

- Persons With Disabilities

States Parties shall, in accordance with the SADC Protocol on Health and other regional and international instruments relating to the protection and welfare of people with disabilities to which Member States are party, adopt legislation and related measures to protect persons with disabilities that take into account their particular vulnerabilities.⁶²

- Widows' and Widowers' Rights

Article 10 of the Protocol requires, States Parties to enact and enforce legislation to ensure among other things that; Widows are not subjected to inhuman, humiliating or degrading treatment; A widow automatically becomes the guardian and custodian of her children when her husband dies, unless otherwise determined by a competent court of law; A widow have the right to continue to live in the matrimonial house after her husband's death; etc.

- The Girl and Boy Child

Article 11 of the Protocol requires States Parties to adopt laws, policies and programmes to ensure the development and protection of the girl child by:

- (a) Eliminating all forms of discrimination against the girl child in the family, community, institutions and at state levels;
- (b) Ensuring that girls have equal access to education and health care, and are not subjected to any treatment which causes them to develop a negative self-image;
- (c) Ensuring that girls enjoy the same rights as boys and are protected from harmful cultural attitudes and practices in accordance with the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child;
- (d) Protecting girls from economic exploitation, trafficking and all forms of violence including sexual abuse; and
- (e) Ensuring that girl children have equal access to information, education, services and facilities on sexual and reproductive health and rights.

States Parties must put in place legislative and other measures to ensure that the boy child enjoys the same rights as the girl child.

- iv) Other Rights

The Protocol provides for many other gender rights. These are such as the rights of women to participate in decision making, right to equal participation, right to education and the right to work. More over the Protocol provides for the duty of state Parties to enact strict laws that prohibit gender based violence.

62 Article 9 of the SADC Protocol on Gender and Development (2008)

5.5 Charter of Fundamental Social Rights in SADC

The Charter of Fundamental Social Rights in SADC was adopted in Dar es Salaam/Tanzania in 2003 and came into force the same day. The overall objective of the Fundamental Social rights in SADC Charter is to facilitate through close and active consultations amongst social partners, a spirit conducive to harmonious labor relations within the region.

The Charter promotes the formulation and harmonization of legal, economic and social policies and programmes, which contribute to the creation of productive employment and opportunities and generation on incomes in Member States. It further promotes labor policies, practices and measures which facilitate labor mobility in labor markets; enhance industrial harmony and increase productivity.

The Charter also provides a framework for regional cooperation in the collection and dissemination of labor market information, promotes the establishment and harmonization of social security standards and health and safety standards at workplaces across the Region. It also promotes the development of institutional capacities as well as vocational technical skills in the region.

i) Objectives of the Charter

Article 2 of the Charter provides for the Objectives of the Charter. The objective of the Charter shall be to facilitate, through close and active consultations among social partners and in a spirit conducive to harmonious labor relations, the accomplishment of the following objectives:

- (a) Ensure the retention of the tripartite structure of the three social partners, namely: governments, organizations of employers and organizations of workers;
- (b) Promote the formulation and harmonization of legal, economic and social policies and programmes, which contribute to the creation of productive employment opportunities and generation of incomes, in Member States;
- (c) Promote labor policies, practices and measures, which facilitate labor mobility, remove distortions in labor markets and enhance industrial harmony and increase productivity, in Member States;
- (d) Provide a framework for regional cooperation in the collection and dissemination of labor market information;
- (e) Promote the establishment and harmonization of social security schemes;
- (f) Harmonize regulations relating to health and safety standards at work places across the Region; and
- (g) Promote the development of institutional capacities as well as vocational and technical skills in the Region.

Member States have the responsibility to create an enabling environment in order that objectives referred to in paragraph 1 of this Article are realized.

ii) Basic Human Rights and Organizational Rights

This Charter embodies the recognition by governments, employers and workers in the Region of the universality and indivisibility of basic human rights proclaimed in instruments such as the United Nations Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, the Constitution of the ILO, the Philadelphia Declaration and other relevant international instruments.

iii) Freedom of Association and Collective Bargaining

According to Article 4, Member States have the obligation to create an enabling environment consistent with ILO Conventions on freedom of association, the right to organize and collective bargaining so that:

- (a) Employers and workers of the Region shall have the right to form employers' associations or trade unions of their choice for the promotion and defense of their economic and social interests;
- (b) Every employer and every worker shall have the freedom to join or not to join such employers' associations or trade unions without any personal or occupational damage being thereby suffered by him or her;
- (c) Employers associations and trade unions shall have the right to negotiate and conclude collective agreements under the conditions laid down by national legislation and practice;
- (d) The industrial disputes settlement machinery and method of operation shall be autonomous, accessible, efficient and subject to tripartite consultation and in agreement with guaranteed right of recourse to established appeals or review procedures;
- (e) The right to resort to collective action in the event of a dispute remaining unresolved shall:
 - (i) For workers, include the right to strike and to traditional collective bargaining;
 - (ii) For employers, include traditional collective bargaining and remedies consistent with ILO instruments and other international laws;
- (f) Organizational rights for representative unions shall include:
 - (i) The right of access to employer premises for union purposes subject to agreed procedures;
 - (ii) The right to deduct trade union dues from members' wages;
 - (iii) The right to elect trade union representatives;
 - (iv) The right to choose and appoint full time trade union officials;
 - (v) The right of trade union representatives to education and training leave; and
 - (vi) The right of the trade unions to disclosure of information;
- (g) Essential services and their parameters shall mutually be defined and agreed upon by governments, employers associations and trade unions;
- (h) Due to the unique nature of essential services, appropriate and easily accessible machinery for quick resolution of disputes shall be put in place by governments, employers and trade unions;
 - (i) Freedom of association and collective bargaining rights shall apply to all areas including export processing zones.

5.6 Conventions of the International Labor Organization

For the purposes of attaining the objectives of the Charter, Article 5 requires all Member States to establish a priority list of ILO Conventions which shall include Conventions on abolition of forced labor, freedom of association and collective bargaining, elimination of discrimination in employment, the minimum age of entry into employment and other relevant instruments. Member States are required to take appropriate action to ratify and implement relevant ILO instruments and as a priority the core ILO Conventions.

a) Equal Treatment for Men and Women

Article 6 provides that, member States are required to create an enabling environment consistent with ILO Conventions on discrimination and equality and other relevant instruments so as to create among other things gender equity, equal treatment and opportunities for men and women are ensured.

b) Protection of Children and Young People

According to Article 7 of the Charter, Member States have a duty to create an enabling environment consistent with the ILO Convention on the minimum age of entry into employment (No 138) or any other relevant international instrument. The aim is to ensure that rights of the child are respected in the areas work.

Without prejudice to such rules as may be more favorable to young people in particular those ensuring their preparation for work through vocational training, and subject to derogation limited to certain light work, the minimum employment age must not be lower than the minimum school leaving age and in any case, not lower than that set out in the ILO Convention Number 138. The Charter calls on State Parties to develop laws which shall put employers liable for employment practices of adult employees that lead to the indirect employment of children and provide equitable remuneration to employed young people in accordance with national law and practice.

c) Elderly Persons

Article 8 of the Charter requires, Member States to create an enabling environment in accordance with arrangements applying to each Member State so that:

- (a) Every worker in the Region shall at the time of retirement enjoy resources affording him or her a decent standard of living, including equity in post-employment security schemes;
- (b) Every worker who has reached retirement age but who is not entitled to a pension or who does not have other means of subsistence shall be entitled to adequate social assistance to cater specifically for basic needs including medical care; and
- (c) Employment after the normal retirement period shall be under the same labor standards and rates of remuneration that apply to all workers.

v) Persons with Disabilities

Article 9 provides for the responsibility of States to protect People with Disabilities. Member States shall create an enabling environment such that all persons with disabilities, whatever the origin and nature of their disability, shall be entitled to additional concrete measures aimed at improving their social and professional integration.

The measures should relate to, in particular, according to the capacities of beneficiaries, vocational training, accessibility and mobility, means of transport and housing and appropriate organization of work and workplaces to take into account their needs.

vi) Social Protection

Article 10 provides for Social Protection of the people. Member States have a duty to create an enabling environment so that every worker in the Region shall have a right to adequate social protection and shall, regardless of status and the type of employment, enjoy adequate social security benefits. Persons who have been unable to either enter or re-enter the labor market and have no means of subsistence shall be entitled to receive sufficient resources and social assistance.

vii) Improvement of Working and Living Conditions

Article 11 requires Member States to create an enabling environment so that:

- (a) Harmonization of minimum requirements laid down in labor legislation and in particular the introduction of equitable basic working and living conditions, the specifications of minimum rest periods, annual paid leave, compassionate leave, paid maternity leave, occupational health and safety protection, and stipulation of acceptable rules and compensation for overtime and shift work, are achieved;
- (b) Every worker in the Region shall have a right to a weekly rest period and annual paid leave, the duration of which must be progressively harmonized in accordance with the national practice; and
- (c) The conditions of employment for every worker in the Region shall be stipulated in national law, a collective agreement or a contract of employment.

viii) Protection of Health, Safety and Environment

Article 12 provides that, Member States agree to create an enabling environment so that every worker in the Region has the right to health and safety at work and to a healthy and safe environment that sustains human development, access to adequate shelter.

ix) Information, Consultation and Participation of Workers

According to Article 13 of the Charter, Member States are required to create an enabling environment so that:

- (a) Industrial and workplace democracy is promoted;
- (b) Workers shall have the right to information, consult and participate particularly in case the technological changes which, from the point of view of working conditions, have major implications for the work force are introduced into undertakings. Also when in connection with the restructuring operations in the undertakings having an impact on the employment of workers;

- (c) Information, consultation and participation of workers is developed along appropriate lines and similar practices are encouraged in all Member States;
- (d) Information, consultation and participation applies especially in companies or groups of companies having establishments or companies in two or more Member States in the Region.

x) Employment and Remuneration

Article 14 of the Charter requires all Member States to create an enabling environment so that:

- (a) Every individual shall be free to choose and engage in an occupation or that person's choice;
- (b) Workers are provided with fair opportunities to receive wages which provide for a decent standard of living;
- (c) Remuneration systems in the Member States encourage the progressive establishment of equitable wage rates across the Region in accordance with arrangements applying in each Member States; and
- (d) Workers, subject to terms of employment other than full-time contracts, shall benefit from an equitable current rate.

xi) Education and Training

Member states shall create an enabling environment consistent with ILO Convention on paid education and training (No 140) so that Government, employers and trade unions contribute towards workers education, training and skills development. All workers should have the right to paid study leave subject to the provisions of the ILO Convention and to a collective agreement.

xii) Implementation of the Charter

Article 16 provides for the responsibility of state parties to implement the Charter. The responsibility for the implementation lies with the national tripartite institutions and regional structures. The institutions and structures referred to in paragraph 1 shall promote social legislation and equitable growth within the Region and prevent non implementation of this Charter.

All Member States are required to submit regular progress reports to the SADC Secretariat. The most representative organization of employers and workers shall be consulted in the preparation of the reports.

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