

Compendium of International Human Rights Law for Parliamentarians

**COMPILED BY: THE OFFICE OF THE OMBUDSMAN
DATE : JULY 2015**

FOREWORD

Human Rights Conventions and Treaties are international legally binding instruments that commit signatory governments and legal institutions to taking every measure to make the rights enshrined in such instruments a reality in their countries, be it through adaptation or improvement of legislation, development of national or local policies and implementation of programmes that promote the respect for human rights.

Human Rights are universal and indispensable, meaning that every person is born with the same rights such as to life, to a name and a nationality, to shelter, education and health, and a life free from hunger, discrimination, violence and abuse. Whether rich or poor, educated, or otherwise, our human rights are the same.

However, in many contexts, human rights are not promoted, respected, protected, or realised. This may be due to a lack of awareness and understanding of the rights and how to claim rights. Sometimes it is due to governance challenges. In this respect Parliaments have a duty to ensure that citizens are educated about their rights and that Governments respect, observe, and promote human rights consistent with international norms and standards enshrined in international human rights treaties and conventions.

In order to fulfil these responsibilities parliamentarians in Namibia need to know the Human Rights Conventions and instruments that the country has ratified or signed as well as the obligations enshrined in those instruments. Such knowledge will empower the parliamentarians to monitor the fulfilment of those obligations and ensure the enjoyment by citizens of their fundamental human rights and freedoms. In order to do this effectively, Government and Parliament need to partner and work closely with key constituencies such as civil society and the Office of the Ombudsman which has the custodial role for human rights in the country including for overseeing the implementation of the Human Rights Conventions and Treaties as well as reporting.

This compendium of International Human Rights Conventions and Treaties will be a valuable reference resource for parliamentarians as well as an educational tool for greater understanding of human rights overall, and especially the treaties and instruments that Namibia has ratified, and how such instruments can also be used to enhance human development in the country.

I wish to thank and commend the Office of the Ombudsman for the initiative to prepare this compendium and for its continued good work in the service of human rights in Namibia



Musinga T. Bandora
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INTRODUCTION

The Namibian Ombudsman's institution is a constitutional office with a specific human rights mandate and is therefore the national human rights institution. Besides its duty to investigate complaints concerning alleged or apparent instances of violation of fundamental rights and freedoms, the Ombudsman also has the duty to promote an awareness and understanding of human rights. The materials in this compendium have been compiled by the Ombudsman in part fulfilment of this duty.

As the state institution that represents the people and through which they participate in the management of public affairs, parliament is indeed a guardian of human rights. Parliament must be aware of this role at all times. One of the functions of Parliament in terms of Article 63(3) (e) of the Namibian Constitution is "..... to agree to the ratification of or accession to international agreements...." Namibia has ratified or acceded to a number of international and regional human rights treaties that are contained in this manual.

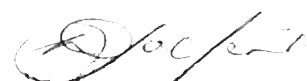
By ratifying or acceding to these treaties, Namibia resolves to implement the obligations laid down in the treaties and to allow international scrutiny of its progress in human rights promotion and protection. Namibia incurs an additional obligation, to submit regular reports to the monitoring committees set up under the treaties on measures adopted to align its legislation with treaty norms and how the obligations are implemented. For example, under the Convention against Torture and Other cruel, Inhuman and Degrading Treatment or Punishment (CAT), Parliament should enact legislation criminalizing torture and empower the authorities to prosecute and punish the crime of torture. To meet its reporting obligation, Namibia must submit an initial report, usually one year after ratifying and then periodically in accordance with the provision of the treaty (usually every 4-5 years). In addition to the state report, the monitoring committee may receive information on Namibia's human rights situation from other sources, including NGO'S, UN agencies, academic institutions, the press and the Ombudsman. In light of all the information available, the committee examines the report with government representatives. Based on the dialogue, the committee publishes its concerns and recommendations, referred to as "concluding observations".

Although Namibia has submitted 14 report, it has failed to submit other reports as required by the treaties, 5 are still overdue of which 4 are overdue for longer than 5 years of which 3 are initial reports. The concluding observations on the reports which Namibia has submitted are part of this compendium. The 100 International Parliamentary Conference "calls on Parliaments to work actively to ensure... that national governments fulfil their reporting responsibilities towards human rights treaty bodies in a timely and effective way....."

It is the duty of parliamentarians to follow up on the recommendations, concluding observations and other comments formulated by treaty bodies regarding Namibia: Parliamentarians should further check whether action has been taken to implement these recommendations and if not, use parliamentary procedure to determine the reasons and to initiate follow-up action.

The Office of the Ombudsman has realized that there is a need for a compendium in this format. Experience has shown that members of parliament know little about international and regional human rights instruments, the obligations Namibia has entered into by ratifying or acceding to human rights treaties and the various international and regional bodies and mechanisms that exist to monitor their implementation.

The challenge for parliamentarians is to acquaint themselves with the content of this compendium, to recognize the country's human rights obligations, to ensure that these obligations are implemented and to turn Parliament into a true guardian of human rights. A further challenge is to ratify all outstanding international and regional human rights instruments.



ADV J R WALTERS
OMBUDSMAN: NAMIBIA

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PART I

Chapter 1: The role of Parliamentarians in the Protection and Promotion of Human Rights

Chapter 2: The Universal Periodic Review - Basic Facts Report of the Working Group on the Universal Periodic Review

Chapter 3: Definitions of Key Terms

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CHAPTER 1

THE ROLE OF PARLIAMENTARIANS IN THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

1. BASIC PRINCIPLES

When it comes to human rights promotion and protection, parliaments and members of parliament are essential actors. Parliamentary activity as a whole - legislating, adopting the budget and overseeing the executive branch - covers the entire spectrum of political, civil, economic, social and cultural rights and thus has an immediate impact on the enjoyment of human rights by the people. As the State institution that represents the people and through which they participate in the management of public affairs, parliament is indeed a guardian of human rights. Parliament must be aware of this role at all times as the country's peace, social harmony and steady development largely depend on the extent to which human rights permeate all parliamentary activity. For parliaments to effectively fulfil their role as guardians of human rights, specific criteria must be met and safeguards must be established.

2. ENSURING THE REPRESENTATIVE NATURE OF PARLIAMENT

Parliament's authority derives, to a large extent, from its capacity to reflect faithfully the diversity of all components of society. These include, inter alia, men and women, various political opinions, ethnic groups, and minorities. To achieve this, members of parliament must be chosen by the sovereign people in free and fair elections by universal, equal and secret suffrage, in accordance with the principles set forth in article 21 of the Universal Declaration of Human Rights and article 25 of CCPR.

3. GUARANTEEING THE SOVEREIGNTY OF PARLIAMENT BY PROTECTING THE FREEDOM OF EXPRESSION OF ITS MEMBERS

Parliament can fulfil its role only if its members enjoy the freedom of expression necessary to speak on behalf of their constituents. Members of parliament must be free to seek, receive and impart information and ideas without fear of reprisal. They are, therefore, generally granted a special status, intended to provide them with the requisite independence. Parliamentarians enjoy parliamentary privilege or parliamentary immunities. Parliament immunities ensure the independence and dignity of the representatives of the nation by protecting them against any threat, intimidation or arbitrary measure directed against them by public officials or other citizens. They thus ensure the autonomy and independence of the institution of parliament. The scope of immunities varies. The minimum guarantee, which applies to all parliaments, is non-accountability. Under this guarantee, parliamentarians in the exercise of their functions, may say what they please without the risk of sanctions, other than that of being disavowed by the electorate, which may eventually not renew their mandates. In many countries, members of parliament also enjoy inviolability: it is only with the consent of parliament that they may be arrested, detained and subjected to civil or criminal proceedings. Inviolability is not equivalent to impunity. It merely entitles parliament to verify that proceedings brought against its members are legally founded.

Inter-Parliamentary Council, Resolution establishing the procedure for the examination and treatment of communications concerning violations of the human rights of parliamentarians, Mexico City, April 1976.

"The protection of the rights of parliamentarians is the necessary prerequisite to enable them to protect and promote human rights and fundamental freedoms in their respective countries; in addition, the representative nature of a parliament closely depends on the respect of the rights of the members of that parliament."

3.1 Protecting parliamentarians' human rights: the IPU Committee on the Human Rights of Parliamentarians

- If parliamentarians are to defend the human rights of the people they represent, they must themselves be able to exercise their human rights, most importantly the right to freedom of expression. Noting that this often is not the case, IPU in 1976 adopted a procedure for the examination and treatment of alleged violations of the human rights of parliamentarians.
- It entrusted a Committee on the Human Rights of Parliamentarians with the task of examining complaints concerning parliamentarians "who are or who have been subjected to arbitrary actions during the exercise of their mandate, whether parliament is sitting, [is] in recess or has been dissolved as the result of unconstitutional or extraordinary measures." The procedure applies to members of the national parliament of any country.
- The Committee is composed of five full members and five substitutes, each elected on an individual basis to represent a geopolitical region for five years. It holds four closed meetings per year.

- Once it has found that a complaint is admissible, the Committee examines the case in the light of national, regional and international human rights law. The procedure is mainly based on comparative verification of all information referred to the Committee by the authorities of the country concerned, particularly parliament, and the complainants. All evidence before the Committee is dealt with confidentially.
- The Committee also holds hearings with the parties and - subject to approval by the State concerned and fulfilment of certain minimum conditions - may carry out on - the - spot missions.
- The Committee may bring a case to the attention of all IPU members in public reports. It does so to enable parliaments and their members to take action in favour of the colleagues concerned.
- The Committee pursues cases as long as it considers that their examination can help to find solutions respectful of human rights. When this is no longer applicable, it may close a case and recommend that the IPU Governing Council pronounce a condemnation of the authorities concerned.

4. UNDERSTATING THE LEGAL FRAMEWORK, IN PARTICULAR PARLIAMENTARY PROCEDURE

It is essential that members of parliament be familiar with the constitution and the State's human rights obligations, the functioning of government and public administration and, of course, parliamentary procedure. Certain parliaments, for instance the Parliament of South Africa, organize seminars for newly elected parliamentarians to enable them to familiarize themselves with the legal framework of their work and parliamentary procedure. To fulfil their functions, members of parliament must be provided with adequate resources. Technical assistance can enhance the knowledge of parliamentarians in the area of human rights and help to overcome potential inadequacies of available resources.

5. DETERMINING PARLIAMENT'S ROLE IN STATES OF EMERGENCY

When a state of emergency is declared, the first victim is often the parliament: its powers may be drastically reduced, or it may even be dissolved. To avoid such an eventuality, the parliament should ensure that:

- States of emergency do not open the door to arbitrary measures;
- The parliament is responsible for declaring and lifting a state of emergency in accordance with international human rights principles, including the fact that specific human rights are not subject to derogation;
- The dissolution or suspension of parliament in a state of emergency is prohibited by law;
- In states of emergency, parliament closely monitors the activities of the authorities-particularly law enforcement agencies - invested with special powers;
- States of emergency are defined in constitutions or in laws having constitutional status, so that they are sheltered from opportunistic reforms.

6. PARLIAMENTARY ACTION TO PROMOTE AND PROTECT HUMAN RIGHTS

6.1 Ratifying human rights treaties

The ratification of human rights treaties is an important means of demonstrating to the international community and domestic public a State's commitment of human rights. Ratification - an expression of the State's resolve to implement the obligations laid down in the treaty and to allow international scrutiny of its progress in human rights promotion and protection - has far-reaching consequences for the ratifying State. Human rights treaties are signed and ratified by a representative of the executive, usually the head of State or Government or the minister for foreign affairs. The ultimate decision, however, on whether or not a treaty should be ratified rests, in most countries, with the parliament, which must approve ratification. Ratification renders the international human rights norms guaranteed in a treaty legally effective in the ratifying country and obliges it to report to the international community on measures adopted to align its legislation with treaty norms.

6.2 Involvement of parliament in the negotiation and drafting of treaties

Members of national parliaments are generally not directly involved in drafting international or regional treaties or in the related political decision-making processes. Only the Parliamentary Assembly of the Council of Europe, a regional parliamentary assembly established in 1949, plays an increasingly important role in human rights monitoring and in the drafting of new instruments. Its Committee on Legal Affairs and Human Rights cooperates closely with the Committee of Ministers (consisting of the ministers for foreign affairs of the Council's member States, which currently number 46) and the Steering Committee for Human Rights when new instruments are drawn up or major human rights problems emerge. For instance, the Committee of Ministers has invited the Parliamentary Assembly to assist it in addressing the problem posed by the steadily increasing number of applications referred to the European Court of Human Rights. IPU has consistently called for greater involvement of members of parliament in negotiating international human rights instruments, insisting that parliament, since it must eventually enact relevant legislation and ensure its implementation, should intervene prior to the ratification stage and participate, along with Government representatives, in the drafting of new instruments within international deliberative bodies.

What you can do as parliamentarians

- Check whether your Government has ratified (at least) the seven core treaties and the existing regional treaties on human rights.
- If not, ascertain whether the Government has the intention of signing those instruments. If not, use parliamentary procedure to determine the reasons for such inaction and to encourage the Government to start the signing and ratification process without delay.
- If a signing procedure is under way, check whether the Government intends to make reservations to the treaty and, if so, determine whether the reservations are necessary and compatible with the content and purpose of the treaty (see Chapter 4). If you conclude that they are groundless, take action to ensure that the Government reverses its position.
- Check whether any reservations made by your country to treaties already in force are still necessary. If you conclude that they are not, take action for their withdrawal.
- Check whether your Government has made the necessary declarations or ratified the relevant Optional Protocols (see Part 1, Chapter 5) with a view to:
 - Recognizing the competence of treaty bodies to receive individual complaints (under CCPR, CEDAW, CERD, CAT and the Migrant Workers Convention);
 - Recognizing the competence of treaty-monitoring bodies (CAT and CEDAW) to institute an inquiry procedure;
- Ratifying the Optional Protocol to CAT (the Optional Protocol provides for a system of regular visits to detention centres).
- If not, take action to ensure that the declarations are made or the Optional Protocols are ratified.
- Make sure that public officials, State agents and the general public are aware of ratified human rights treaties and their provisions
- If your country has not yet signed and ratified the ICC Statute, take action to ensure that it does, and that it abstains from any agreements reducing the force of the Statute and undermining the Court's authority.

7. ENSURING NATIONAL IMPLEMENTATION

7.1 Adoption of a budget

Guaranteeing enjoyment of human rights by all is not costless. Effective measures for human rights protection and, especially, for preventing human rights violations require considerable funds. In approving the national budget, thereby setting national priorities, the parliament must ensure that sufficient funds are provided for human rights implementation. Then, in monitoring Government spending, the parliament can, if necessary, hold the Government accountable for inadequate performance in the area of human rights.

7.2 Overseeing the executive branch

Through their oversight function, subjecting the policies and acts of the executive to constant scrutiny, parliaments and members of parliament can and must ensure that laws are actually implemented by the administration and any other bodies concerned. Under parliamentary procedure, the means available to members of parliament for scrutinizing Government action include:

- Written and oral questions to ministers, civil servants and other executive officials;
- Interpellations;
- Fact-finding or investigation committees or commissions;
- Votes of no confidence, if the above attempts fail.

7.3 Following up on recommendations and decisions

Recommendations formulated by United Nations treaty-monitoring bodies and special rapporteurs and by other international or regional monitoring bodies can be effectively used by members of parliament to scrutinize the compliance of executive action with the human rights obligations of the State.

Resolution on "Strong action by national parliaments in the year of the 50th anniversary of the Universal Declaration of Human Rights to ensure the promotion and protection of all human rights in the 21st century", Moscow, September 1998, Paragraph 4 (ii).

The 100th Inter – Parliamentary Conference "calls on Parliaments to work actively to ensure ... that national Governments fulfil their reporting responsibilities towards the human rights treaty bodies in a timely and effective way and that the competent government agencies cooperate fully with the United Nations Special Rapporteurs so that they receive the necessary support to carry out their work effectively."

An example: Implementing recommendations of a regional treaty body

Parliaments, particularly their human rights committees, can be instrumental in ensuring the implementation of decisions or recommendations of international or regional human rights bodies. For instance, the Human Rights Committee of the House of Representatives of Brazil played a decisive role in the implementation

of the first decision of the Inter-American Commission on Human Rights in a case against Brazil: the case of João Canuto, Chairman of the Rural Labour Union of Rio Maria, State of Pará, who was assassinated in 1985. In 1998, the Commission concluded that the State of Brazil had violated the American Convention on Human Rights by failing to provide Mr. Canuto with due protection when he reported that he had received death threats, and by failing to conduct an effective investigation and initiate judicial proceedings in relation to his assassination. It recommended that Brazil should streamline criminal procedures and pay the victim's family compensation for physical and moral loss. In 1999, the Human Rights Committee of the House of Representatives organized a national campaign to make the authorities aware of the decision and the importance of implementing it. The decision was implemented soon thereafter.

7.4 Establishing parliamentary human rights bodies

Human rights should thoroughly permeate parliamentary activity. Within its area of competence, each parliamentary committee should consistently take into consideration human rights and assess the impact of bills and other proposed legal norms on the enjoyment of human rights by the population. To ensure that human rights are duly taken into account in parliamentary work, ever more parliaments set up specialized human rights bodies or entrust existing committees with the task of considering human rights issues. Many parliaments have also established committees for specific human rights issues, such as gender equality or minority rights. Moreover, informal groups of members of parliament are active in the area of human rights. Parliamentary human rights bodies are assigned various tasks, including - almost always - assessing the conformity of bills or legislation with human rights obligations. In some cases such bodies are competent to receive individual petitions.

Ideal competence of a parliamentary human rights committee

To be fully effective, a parliamentary human rights body should:

- Have a comprehensive human rights mandate, encompassing legislative and oversight functions;
- Be competent to deal with any human rights issue it deems important, take legislative and other initiatives in the area of human rights and address human rights problems and concerns referred to it by third parties;
- Be competent to advise other parliamentary bodies on human rights issues;
- Have the power to send for persons and documents and to carry out on-site missions.

What you can do as a parliamentarian

Parliaments should regularly follow and contribute to the work of treaty-monitoring bodies. Accordingly, you may wish to:

- Verify the status of cooperation between your State, the United Nations treaty bodies and other international or regional monitoring mechanism by requesting information from your Government. You may wish to put a question to your Government on this subject;
- Ensure that the parliament is kept abreast of the work of the treaty bodies and related mechanism, and that relevant information is regularly made available to it by the parliamentary support services;
- Follow up on the recommendations, concluding observations and other comments formulated by treaty bodies regarding your country;
- Study the recommendations formulated by United Nations special rapporteurs, particularly those addressing the situation in your country, if applicable;
- Check whether any action has been taken to implement these recommendations and, if not, use parliamentary procedure to determine the reasons and to initiate follow - up action;
- Make sure that special rapporteurs conducting on-site missions visit your parliament or the competent parliamentary committees, and that the parliament receives a copy of their reports;
- Make sure that standing invitations to visit your country are extended to special rapporteurs;

To monitor your State's compliance with its obligations under human rights treaties, you may wish to ensure to that:

- The required national reports are submitted regularly, by enquiring after your country's reporting timetable and ensuring that the Government respects it. When reporting is delayed, you may request an explanation and, if necessary, use parliamentary procedure to urge the Government to comply with its obligations;
- Complete reports are submitted.

To that end, make sure that:

- The parliament (through the competent committees) is involved in the preparation of the
- State report, provides input in terms of information, ensures that its action is properly included in the report and in any case is informed of its contents;
- The report complies with guidelines on reporting procedures (see Part I, Chapter 25) and takes account of the treaty bodies' general recommendations and concluding observations on preceding reports, with reference to any related lessons learned;
- A member of your parliament is present when the report is presented to the relevant treaty body. If this is not possible, recommend that your country's permanent mission to the United Nations (either in New York or Geneva, depending on where the treaty body meets) follow the work of the treaty body and ensure that its report is forwarded to your parliament.

7.5 Adopting enabling legislation

If international legal obligations are not implemented at the domestic level, the respective treaties become dead letters. Parliaments and parliamentarians have key roles to play when it comes to adopting the necessary implementing legislation in any area including, inter alia, civil, criminal, administrative or labour law, education, health care or social security law.

The procedure for translating international treaties into national law is generally laid down in a State's constitution, which determines the extent to which individuals may directly invoke treaty provisions before national courts. There are two types of approaches:

- (a) The system of automatic incorporation, under which treaties upon ratification or accession become part of domestic law and may, therefore, be invoked by individuals. In some cases, publication of the treaties in the official gazette or enactment of national implementing legislation is required before the treaties have the force of national law and individuals are able to invoke their provisions before domestic courts;
- (b) The dualistic system, under which treaties become part of the national legal system only through actual enactment. Under this system, an individual may not invoke treaty provisions that are not part of national legislation. They do not prevail over contrary domestic law.

In civil law countries, it is essential that human rights be enshrined in the constitution, as that instrument sets the norms and serves as the framework for all other national legislation, which must be in conformity with its spirit and principles.

What you can do as a parliamentarian

You may:

- Ensure that international human rights provisions are incorporated into national law and, if possible, given constitutional status so that they enjoy maximum protection under national law;
- Ensure that bills brought before your parliament and the parliamentary committees on which you sit are consistent with the human rights obligations of your country, and review existing legislation to determine whether it is compatible with those obligations;
- To this end, familiarize yourself with the work of the treaty bodies, the recommendations formulated by them and other international or regional monitoring mechanisms, and with the work of national or international human rights NGOs and national human rights institutions. If you find lack of conformity, take action to redress the situation by ensuring that amendments or new bills are drafted or that a petition is filed with the constitutional court or a similar judicial body in your country;
- Ensure that Government decrees issued under existing legislation do not run counter to the spirit of the laws and the human rights guarantees that they are intended to provide;
- Ensure that public officials, particularly law enforcement agencies, are aware of their duties under human rights law and receive appropriate training;
- In view of the importance of public awareness of human rights, ensure that human rights education is part of the curricula in your country's schools;
- Ensure that human rights obligations under constitutional and international law are implemented openly, constructively, innovatively and proactively.

7.6 Parliamentary action to promote the justifiability of economic, social and cultural rights

In many States, individuals may not claim their economic, social and cultural rights before a court of law. Parliaments can remedy that situation by enacting domestic laws enabling courts to rule on individual complaints regarding such rights. In practice, this may not require major reforms. For instance, most

countries have labour courts competent to hear cases of arbitrary dismissal, discriminatory recruitment practices or unsafe working conditions. In that context, the main difference is that very few laws refer explicitly to the rights to work and to just and favourable working conditions as laid down in articles 6 and 7 of CESC, and few judges realize that they are in fact implementing and enforcing those fundamental economic rights. Similarly, since most States implement laws ensuring free and compulsory primary education, parents whose children are denied access to schools on arbitrary or discriminatory grounds ought to have recourse to domestic administrative and judicial bodies. It should not be difficult to relate such claims and remedies to the human rights to education, thereby ensuring the justifiability of that right.

Resolution adopted on the occasion of the 50th anniversary of the Universal Declaration of Human Rights, Cairo, September 1997, paragraph 3 (ii)

The Inter-Parliamentary Council “calls on all Parliaments and their members to take action at the nation level to ensure that enabling legislation is enacted and that the provisions of national laws and regulations are harmonized with the norms and standards contained in these (international) instruments with a view to their full implementation.”

An example: The legislative process and international human rights standards:

The legislative process in Finland - in particular the work of the parliamentary Constitutional Law Committee - exemplifies frequent use of international standards (including the output of treaty bodies) in drafting and scrutinizing legislative proposals. The framework for such use is laid down in section 22 of the Constitution (2000), which stipulates that “the public authorities shall guarantee the observance of basic rights and liberties and (international) human rights”, and section 74, which provides that “the Constitutional Law Committee shall issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties”.

The mandate of the Constitutional Law Committee is to review the consistency of proposed bills with the Constitution and human rights standards, and to address relevant opinions to the parliament and other institutions. The Committee relies heavily on external academic expertise.

The types of treaty body output - particularly the output of the Human Rights Committee - which are used extensively in the Finnish legislative process include primarily decisions on individual cases and general comments, but also concluding observations, reporting guidelines and other material. The country-specific material includes references not only to Finland, but to other countries as well. In some cases the reference to the treaty body source results directly from an international or constitutional legal obligation to comply. This may be done in response to a specific finding by a treaty body that a violation has occurred, or it may result from the general constitutional requirement to ensure compliance with human rights provisions.

8. CREATING AND SUPPORTING AN INSTITUTIONAL INFRASTRUCTURE

8.1 National human rights institutions (NHRIs)

Over the past 20 years, there has been growing awareness of the need to strengthen, at the national level, concerted action aimed at implementing and ensuring compliance with human rights standards. One of the means used to that end has been the establishment of national human rights institutions (NHRIs). While the term covers a range of bodies whose legal status, composition, structure, functions and mandates vary, all such bodies are set up by Governments to operate independently - like the judiciary - with a view to promoting and protecting human rights.

NHRIs, often called human rights commissions, should have the capacity and authority to:

- Submit recommendations, proposals and reports to the Government or parliament on any matter relating to human rights;
- Promote the conformity of national laws and practices with international standards;
- Receive and act upon individual or group complaints of human rights violations;
- Encourage the ratification and implementation of international human rights standards and contribute to reporting procedures under international human rights treaties;
- Promote awareness of human rights through information and education, and carry out research in the area of human rights;
- Cooperate with the United Nations, regional institutions, national institutions of other countries and NGOs.

Relations between NHRIs and parliaments have great potential for human rights protection and promotion at the national level. They were discussed at an international workshop entitled National Human Rights Institutions and Legislatures: Building an Effective Relationship, which was held in Abuja, Nigeria, from 22 to 25 March 2004.

The Paris Principles

In 1993, the United Nations General Assembly adopted a set of principles applicable to the establishment of national human rights institutions (see next page). Known as the “Paris Principles”, these have become the internationally accepted benchmark setting out core minimum standards for the role and functioning of such institutions. According to these principles, national human rights institutions must:

- Be independent, and their independence must be guaranteed either by statutory law or constitutional provisions;
- Be pluralistic in their roles and memberships;
- Have as broad a mandate as possible;
- Have adequate powers of investigation;
- Be characterized by regular and effective functioning;
- Be adequately funded;
- Be accessible to the general public.

Countries that have established national human rights institutions

Countries with national institutions accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human rights:

Asia and the Pacific:	Australia, Fiji, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, Philippines, Republic of Korea, Sri Lanka, Thailand
Africa:	Algeria, Cameroon, Ghana, Malawi, Mauritius, Morocco, Niger, Nigeria, Rwanda, Senegal, South Africa, Togo, Uganda Namibia was accredited in April 2006
Americas:	Argentina, Bolivia, Canada, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Venezuela
Europe:	Albania, Bosnia and Herzegovina, Denmark, France, Germany, Greece, Ireland, Luxembourg, Poland, Portugal, Spain, Sweden
Others:	
Asia and the Pacific:	Hong Kong Special Administrative Region of China, Islamic Republic of Iran
Africa:	Benin, Burkina Faso, Chad, Madagascar, Namibia, United Republic of Tanzania, Zambia
Americas: Europe:	Antigua and Barbuda, Barbados Australia, Belgium, Netherlands, Norway, Russian Federation, Slovakia, Slovenia and United Kingdom

A set of guidelines for strengthening cooperation between NHRIs and parliaments, known as the Abuja Guidelines, was drawn up during the above workshop.

8.2 Recommendations for parliamentarians from the Abuja Guidelines

- Parliaments should produce an appropriate legislative framework for the establishment of NHRIs in accordance with the Paris Principle
- Parliaments and NHRIs should evolve an effective working relationship to better promote and protect human rights.
- Parliaments should ensure that adequate resources and facilities are provided to NHRIs to enable them to perform their functions effectively. Parliaments should also ensure that resources are in fact made available to the NHRIs.
- NHRIs’ annual reports and other reports should be debated - and the Government’s response presented - in parliament promptly.
- An all-party parliamentary committee should have specific responsibilities overseeing and supporting the work of NHRIs. In smaller States, this function might be undertaken by an existing parliamentary standing committee.
- Members of NHRIs should be invited to appear regularly before the appropriate parliamentary committees to discuss the bodies’ annual reports and other reports.
- Parliamentarians should invite members of NHRIs to meet regularly with them to discuss matters of mutual interest.
- Parliamentarians should ensure that sufficient time is given to the consideration of the work of NHRIs.
- Parliamentarians should ensure that their constituents are made aware of the work of NHRIs.
- Parliamentarians should scrutinize carefully any Government proposals that might adversely affect the work of NHRIs, and seek the views of NHRI members on such proposals.
- Parliamentarians should ensure that NHRI recommendations for action are followed up and implemented.

8.3 Ombudsman's office

The ombudsman's office is a national institution found in many countries. There is some overlap between the activities of an ombudsman's office and those of a national human rights commission, but the ombudsman's role is usually somewhat more restricted, consisting generally of ensuring fairness and legality in public administration. Ombudsmen generally report to parliament. Only an ombudsman with a specific human rights mandate can be properly described as a national human rights institution, as is the case in Namibia.

8.4 National human rights action plans

No State in the world has a perfect human rights record. Moreover, since every country must develop its human rights policy in the light of its specific political, cultural, historical and legal circumstances, there is no single approach for countries to tackle human rights problems. Accordingly, the Vienna World Conference on Human Rights, held in 1993, encouraged States to draw up national human rights action plans to develop a human rights strategy suited to their own situations. The adoption of national action plans should be a national endeavour, free from partisan political considerations. A national action plan must be supported by the Government and involve all sectors of society, because its success largely depends on the extent to which the population takes ownership of it.

The main function of such a plan is to improve the promotion and protection of human rights.

To that end, human rights improvements are expressed as tangible objectives of public policy, which are to be attained through the implementation of specific programmes, the participation of all relevant sectors of Government and society, and the allocation of sufficient resources. The plan should be based on a solid assessment of a country's human rights needs. It should provide guidance to Government officials, NGOs, professional groups, educators and advocates and other civil society members of human rights promotion and protection tasks. It should also promote the ratification of human rights instruments and awareness of human rights standards, with particular regard for the human rights situation of vulnerable groups. Detailed information on national human rights action plans and how to develop them can be found in OHCHR's Handbook on National Human Rights Plans of Action.

A national action plan requires considerable organizational effort. Some of the factors that have a direct positive impact on its effectiveness are:

- Steady political support;
- Transparent and participatory planning;
- Comprehensive assessment of the human rights situation;
- Realistic prioritization of problems to be solved, and action-oriented approach;
- Clear performance criteria and strong participatory mechanisms for monitoring and evaluation;
- Adequate commitment of resources.

What you can do as a parliamentarian

- In view of the importance of parliamentary and non-parliamentary human rights mechanisms for human rights promotion and protection and for raising public awareness, you may wish to:
- Promote the establishment in your parliament of a parliamentary committee specializing in human rights;
- Promote in your country the establishment of a national human rights institution in accordance with the Paris Principles, and take action to implement the Abuja Guidelines;
- Propose the development of a national human rights action plan and, if such a decision is taken, ensure that the parliament participates in all stages of preparation, drafting and implementation.

8.5 National Human Rights Action Plan for Namibia

The office of the Ombudsman took the initiative for the development of a national human rights action plan starting with a National Human Rights Conference which was held on 27 - 28 May 2009. A coordinating committee was selected to drive the process with the Ombudsman as focal agency.

In 2014, the Office of the Ombudsman conducted numerous consultative workshops in the 14 regions of Namibia to discuss the human rights issues most pertinent to Namibians. Several workshops were held in each region, allowing the Office to compile the feedback and results into the National Human Rights Action Plan. The NHRAP was officially released in December 2014.

9. MOBILIZING PUBLIC OPINION

Parliaments can contribute enormously to raising public awareness of human rights and mobilizing public opinion on related issues - all the more so since political debate often focuses on such questions as discrimination against various groups, gender equality, minority rights or social issues. Parliamentarians should at all times be sensitive to the impact that their public statements on a human rights issue can have on the public's perception of the issue in question.

To raise general human rights awareness in their country, parliamentarians should work with other national actors involved in human rights activities, including NGOs.

IPU Symposium on
"The Parliament:
Guardian of Human
Rights", Budapest, May
1993, Deliberations

"Non-governmental organizations such as trade unions, private associations and human rights organizations constitute an invaluable source of information and expertise for parliamentarians who, in many countries, lack the resources and assistance needed if they are to be effective in monitoring the policy and practice of the Government in the field of human rights."

What you can do as a parliamentarian

You can:

- Encourage parliamentary debate on human rights issues, particularly those on which public debate focuses;
- Encourage debate within your own political party on human rights issues and your country's international obligations in that area;
- Organize local, regional or national campaigns to raise awareness of human rights issues;
- Participate in debates on television or the radio or in meetings, or give interviews on human rights issues;
- Write articles on human rights issues for newspapers and magazines;
- Liaise with NGOs and other national human rights actors and political parties to mobilize public opinion and, where appropriate, to develop information strategies on human rights issues;
- Organize or contribute to workshops, seminars, meetings and other events in your constituency in favour of human rights;
- Support local human rights campaigns;
- Use the International Human Rights Day, observed on 10 December, to draw public attention to human rights.

10. PARTICIPATING IN INTERNATIONAL EFFORTS

Parliaments and parliamentarians can contribute significantly to international human rights protection and promotion efforts. As discussed earlier, respect for human rights is a legitimate concern of the international community and, under international law, States parties to human rights treaties have a legal interest in the fulfilment of the obligations by other States parties. In accordance with the inter-State complaints procedure provided for in some of the core human rights treaties, a State may therefore call attention to acts committed by another State in breach of a treaty. Parliaments, through their human rights bodies, may raise human rights issues involving such possible breaches and thereby promote compliance with human rights norms worldwide.

Parliaments and parliamentarians can support international human rights organizations by securing the funding that they require. They should participate actively in the work of the United Nations Commission on Human Rights and in drawing up new international human rights instruments that they will eventually be called upon to ratify.

In our increasingly globalized world, decisions taken at the international level have an ever greater impact on national politics and limit the scope of national decisions-making. Ever more frequently, major economic decisions affecting citizens' lives are taken outside their country's borders by international bodies that are not accountable, but that have an impact on the ability of the State to ensure the exercise of human rights, particularly economic, social and cultural rights.

There is consequently a need to "democratize" these institutions if individual countries are to maintain their capacity to ensure human rights, especially economic, social and cultural rights. Parliaments and their members must therefore take a more active part in the deliberations of these institutions so as to make their voices heard. In that context, IPU has embarked on a process of bringing parliaments closer to institutions such as the World Trade Organization (WTO).

Resolution on “The role of parliaments in developing public policy in an era of globalization, multilateral institutions and international trade agreement”, Marrakech, March 2002, paragraph 9.

The 107th Inter-Parliamentary Conference “calls on parliaments to play an active role in monitoring decisions taken and activities carried out by the multilateral institutions, in particular those affecting the development of nations, in bringing trade- and finance-related multilateral institutions closer to the peoples they are meant to serve; and in making multilateral institutions more democratic, transparent and equitable”.

International trade agreements, human rights and the obligations of States

At the request of the United Nations Commission on Human Rights, OHCHR issued several reports on human rights and trade, in particular on the human rights implications of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, known as the TRIPS Agreement, the WTO Agreement on Agriculture and the WTO General Agreement on Trade in Services, or GATS. The reports point out that all WTO members have ratified at least one human rights instrument, most of them have ratified CESC and all but one have ratified CRC. They also affirm that WTO members should therefore ensure that international rules on trade liberalization do not run counter to their human rights obligations under those treaties. Trade law and policy should therefore “focus not only on economic growth, markets or economic development, but also on health systems, education, water supply, food security, labour, political processes and so on.” States have a responsibility to ensure that the loss of autonomy which they incur when they enter into trade agreements “does not disproportionately reduce their capacity to set and implement national development policy”. All this requires “constant examination of trade law and policy as it affects the enjoyment of human rights. Assessing the potential and real impact of trade policy and law on the enjoyment of human rights is perhaps the principal means of avoiding the implementation of any retrogressive measure that reduces the enjoyment of human rights”.

In the same vein, CESC general comment No. 14 on the right to health stipulates that States parties should ensure that the right to health is given due consideration in international agreement, and take steps “to ensure that these instruments do not adversely impact upon the right to health. Similarly, States parties have an obligation to ensure that their actions as members of international organizations take due account of the right to health.....”.

Acknowledgment

This part was taken from Chapter 11 of the publication: Human Rights Handbook for Parliamentarians published by the OHCHR.

CHAPTER 2

THE UNIVERSAL PERIODIC REVIEW – BASIC FACTS

1. WHAT IS THE UNIVERSAL PERIODIC REVIEW?

The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all 192 UN Member States once every four years. The UPR is a significant innovation of the Human Rights Council which is based on equal treatment for all countries. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The UPR also includes a sharing of best human rights practices around the globe. Currently, no other mechanism of this kind exists.

2. HOW WAS THE UPR ESTABLISHED?

The UPR was established when the Human Rights Council was created on 15 March 2006 by the UN General Assembly in resolution 60/251. This mandated the Council to “undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States”. On 18 June 2007, one year after its first meeting, members of the new Council agreed to its institution-building package (A/HRC/RES/5/1) providing a road map guiding the future work of the Council. One of the key elements of this package was the new Universal Periodic Review.

3. WHAT IS THE GOAL OF THE UPR?

The ultimate goal of UPR is the improvement of the human rights situation in every country with significant consequences for people around the globe. The UPR is designed to prompt, support, and expand the promotion and protection of human rights on the ground. To achieve this, the UPR involves assessing States’ human rights records and addressing human rights violations wherever they occur. The UPR also aims to provide technical assistance to States and enhance their capacity to deal effectively with human rights challenges and to share best practices in the field of human rights among States and other stakeholders.

4. WHEN WILL STATES HAVE THEIR HUMAN RIGHTS RECORDS REVIEWED BY THE UPR?

All UN Member States will be reviewed every four years - with 48 States reviewed each year. All the 47 members of the Council will be reviewed during their term of membership. On 21 September 2007, the Human Rights Council adopted a calendar detailing the order in which the 192 UN Member States will be considered during the first four-year cycle of the UPR (2008-2011). The reviews will take place during the sessions of the UPR Working Group (see below) which will meet three times a year. The first and second sessions took place in April and May 2008, respectively. The third review will take place from 1 to 15 December 2008.

5. WHO CONDUCTS THE REVIEW?

The reviews are conducted by the UPR Working Group which consists of the 47 members of the Council; however any UN Member State can take part in the discussion/dialogue with the reviewed States. Each State review is assisted by groups of three States, known as “troikas”, who serve as rapporteurs. The selection of the troikas for each State review is done through a drawing of lots prior for each Working Group session.

6. WHAT ARE THE REVIEWS BASED ON?

The documents on which the reviews are based are: 1) information provided by the State under review, which can take the form of a “national report”; 2) information contained in the reports of independent human rights experts and groups, known as the Special Procedures, human rights treaty bodies, and other UN entities; 3) information from other stakeholders including non-governmental organizations and national human rights institutions.

7. HOW ARE THE REVIEWS CONDUCTED?

Reviews take place through an interactive discussion between the State under review and other UN Member States. This takes place during a meeting of the UPR Working Group. During this discussion any UN Member State can pose questions, comments and/or make recommendations to the States under review. The troikas may group issues or questions to be shared with the State under review to ensure that the interactive dialogue takes place in a smooth and orderly manner. The duration of the review will be three hours for each country in the Working Group.

8. CAN NON-GOVERNMENTAL ORGANIZATIONS (NGOS) PARTICIPATE IN THE UPR PROCESS?

Yes. NGOs can submit information which can be added to the “other stakeholders” report which is considered during the review. Information they provide can be referred to by any of the States taking part in the interactive discussion during the review at the Working Group meeting. NGOs can attend the UPR Working Group sessions and can make statements at the regular session of the Human Rights Council when the outcome of the State reviews are considered. OHCHR has released “Technical guidelines for the submission of stakeholders”.

9. WHAT HUMAN RIGHTS OBLIGATIONS ARE ADDRESSED?

The UPR will assess the extent to which States respect their human rights obligations set out in:

- the UN Charter;
- the Universal Declaration of Human Rights;
- human rights instruments to which the State is party (human rights treaties ratified by the State concerned);
- voluntary pledges and commitments made by the State (e.g. national human rights policies and/or programmes implemented); and,
- applicable international humanitarian law.

10. WHAT IS THE OUTCOME OF THE REVIEW?

Following the State review by the Working Group a report is prepared by the troika with the involvement of the State under review and assistance from the OHCHR. This report, referred to as the “outcome report”, provides a summary of the actual discussion. It therefore consists of the questions, comments and recommendations made by States to the country under review, as well as the responses by the reviewed State.

11. HOW IS THE REVIEW ADOPTED?

During the Working Group session half an hour is allocated to adopt each of the “outcome reports” for the States reviewed that session. These take place no sooner than 48 hours after the country review. The reviewed State has the opportunity to make preliminary comments on the recommendations choosing to either accept or reject them. Both accepted and refused recommendations are included in the report. After the report has been adopted, editorial modifications can be made to the report by States on their own statements, within the following two weeks. The report then has to be adopted at a plenary session of the Human Rights Council. During the plenary session, the State under review can reply to questions and issues that were not sufficiently addressed during the Working Group and respond to recommendations that were raised by States during the review. Time is also allotted to member and observer States who may wish to express their opinion on the outcome of the review and for NGOs and other stakeholders to make general comments.

12. WHAT STEPS ARE TAKEN AS FOLLOW UP TO THE REVIEW?

The State has the primary responsibility to implement the recommendations contained in the final outcome. The UPR ensures that all countries are accountable for progress or failure in implementing these recommendations. When it comes time for the second review of a State they must provide information on what they have been doing to implement the recommendations made during the 1st review four years earlier. The international community will assist in implementing the recommendations and conclusions regarding capacity-building and technical assistance, in consultation with the country concerned. If necessary, the Council will address cases where States are not cooperating.

13. WHAT HAPPENS IF A STATE IS NOT COOPERATING WITH THE UPR?

The Human Rights Council will decide on the measures it would need to take in case of persistent non-cooperation by a State with the UPR.

Acknowledgment

OHCHR, November 2008

REPORT BY WORKING GROUP ON UPR

General Assembly

Human Rights Council Seventeenth session Agenda item 6 Universal Periodic Review

Report of the Working Group on the Universal Periodic Review* Namibia

* The annex to the present report is circulated as received.

United Nations A/HRC/17/14
General Assembly Distr.: General
24 March 2011
Original: English

Introduction

1. The Working Group on the Universal Periodic Review (UPR), established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its tenth session from 24 January to 4 February 2011. The review of Namibia was held at the 12th meeting on 31 January 2011. The delegation of Namibia was headed by Hon. Pendukeni Iivula-Ithana, MP, Minister of Justice. At its 16th meeting held on 2 February 2011, the Working Group adopted the report on Namibia.
2. On 21 June 2010, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of Namibia: Pakistan, Brazil and Mauritius.
3. In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of Namibia:
 - (a) A national report submitted/written presentation made in accordance with paragraph 15 (a) (A/HRC/WG.6/10/NAM/1) and (A/HRC/WG.6/10/NAM/1/Corr.1);
 - (b) A compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR) in accordance with paragraph 15 (b) (A/HRC/WG.6/10/NAM/2);
 - (c) A summary prepared by OHCHR in accordance with paragraph 15 (c) (A/HRC/WG.6/10/NAM/3).
4. A list of questions prepared in advance by the Czech Republic, France, Germany, Latvia, Netherlands, Norway, Slovenia, Sweden and the United Kingdom was transmitted to Namibia through the troika. These questions are available on the extranet of the UPR.

I. Summary of the proceedings of the review process

A. Presentation by the State under review

5. Namibia welcomed the opportunity of participating in the review process to provide an overview of its human rights landscape.
6. Namibia noted that it had become independent only in 1990, after more than 100 years of oppressive apartheid rule, and that its history had been characterized by widespread human rights violations and brutal repression. At independence, Namibia had put in place a framework to promote and protect human rights. Chapter 3 of the Constitution protected most of the human rights referred to in the various international human rights instruments.

7. To repeal past discriminatory laws, the Government established the Law Reform and Development Commission (LRDC) in 1991 to review such laws with a view to enacting progressive legislation. Both the higher courts and the LRDC have made important contributions to reform Namibia's pre-independence legislation and policies.
8. The Constitution established the Office of the Ombudsman with a specific mandate to investigate alleged violations of human rights and recommend remedial action.
9. Namibia ratified the core international human rights instruments, which are directly applicable in the national legal order. The Government submitted various reports in line with its international treaty obligations and intends to submit those that were still outstanding. The Ministry of Justice has put in place the necessary measures to address this backlog, but capacity-building remained a challenge.
10. Namibia has made significant strides in gender equality, education, law reform, land reform and the transformation of the public service and economic sector. Significant progress has also been made in enabling Namibians to share in its natural resources. A food security strategy had been adopted.
11. Namibia has adopted policies and laws to strengthen the social protection of vulnerable groups by providing a monthly social grant to war veterans, the elderly, persons with disabilities, orphans and vulnerable children. Special assistance programmes have been put in place to provide free access to health services, housing, employment and other services to previously marginalized communities. The Social Security Commission administers a number of social welfare funds.
12. Namibia has enacted labour laws to promote good industrial relations, recognizing the freedom to organize, the right to collective bargaining and the right to strike.
13. Regarding civil and political rights, there is an open playing field for political parties to contest elections, supervised by the Electoral Commission of Namibia. Individuals are free to associate and form political parties. Since independence, Namibia has held regular presidential and national elections.
14. Regarding the rights of indigenous communities, the Government identified certain communities that were particularly deprived (the San, the Ovaherero and the Nama) and had implemented support programmes to raise their standard of living.
15. There are approximately 60,000 San people in Namibia, but only about 2,000 of them still follow a traditional way of life. As Namibia is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples, it is committed to ensuring that these formerly marginalized groups are fully integrated in mainstream society and the economy.
16. The 1991 Land Conference resolved that there would be no claims to ancestral lands by any person in Namibia. In an effort to assist indigenous groups, the Government bought and continues to acquire land for formally disadvantaged Namibians for resettlement.
17. All the indigenous communities have free access to health facilities and antiretroviral medicine is offered to them free of charge.
18. The Ministry of Home Affairs and Immigration employed mobile teams in all 13 regions to go to the remote areas and assist citizens, and especially the formally marginalized groups, in obtaining national identity documents. Parliament had passed legislation to enable members of the formally marginalized groups to actively take part in economic activities without being discriminated against as was the case before independence.
19. Violence against women and children is a serious problem and had increased in recent years. A number of rape cases had been prosecuted, resulting in sentences of 5 to 45 years' imprisonment for convicted rapists, while other cases were pending before the courts for further police investigation. However, a lack of police vehicles, of expertise in dealing with violence against women and children, and of facilities to accommodate vulnerable witnesses, as well as the withdrawal of complaints by victims, continued to hamper investigations and prosecution. Legislation that the Government had enacted to curb violence against women and children included the Combating of Domestic Violence Act No. 4 of 2003, the Combating of Rape Act No. 8 of 2000, the Combating of Immoral Practices Amendment Act No. 7 of 2000 and the Criminal Procedure Amendment Act No. 24 of 2003.

20. Women and Child Protection Units have been established in all 13 regions in Namibia to handle and investigate cases relating to sexual offences. The Ministry of Gender Equality and Child Welfare and various stakeholders launched an annual awareness campaign against gender-based violence. The Government has also launched a “Zero Tolerance Campaign against Gender-Based Violence including Human Trafficking”.
21. On homosexuality, it was noted that the Constitution outlawed discrimination of any kind. Since independence, no single case of discrimination on the basis of sexual preference or orientation had appeared before the courts. Homosexuals were not prosecuted for practising same-sex activities in private, although this practice was not condoned, and was considered immoral and prohibited in public. Same-sex marriages were not recognized. The Government has no intention of amending current laws.
22. With reference to the right not to be subjected to cruel, inhuman or degrading treatment or torture, Namibia stated that incidents of excessive use of force by members of the Police Force during arrest of suspects had been noted with concern. The Police had embarked on awareness campaigns and training on the use of minimum force during arrests. The Namibian Police Force also offers human rights training during its Basic and Developmental Courses.
23. According to the Constitution, evidence obtained by torture shall not be admitted in court. A bill to criminalize torture was under consideration.
24. Regarding the signing of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), the relevant Ministries would do the necessary research and make submissions to the Inter-Ministerial Committee on Human Rights, which would then make a recommendation to the Cabinet. This approach applies to all outstanding treaties which Namibia has not yet ratified.
25. Namibia noted that police holding cells were seriously overcrowded because of a lack of detention facilities. The Cabinet has authorized the Ministry of Safety and Security to budget for the construction of remand prisons.
26. Convicted minors are detained separately from adults at a Juvenile Centre, which has educational facilities. However, the availability of juvenile detention facilities, especially in police cells, remained a major challenge.
27. There is no Government policy authorizing the forced sterilization of HIV-positive persons. The alleged forced sterilization of women living with HIV/AIDS is a matter that is before the court and the outcome of the case will determine what action to take.
28. All Namibians have access to health facilities and antiretroviral medicine is offered free of charge.
29. Namibia provides constitutional guarantees to a fair trial. The Government has taken measures to reduce the backlog of criminal cases through the appointment of additional judicial officers and prosecutors, with the provision of legal aid to indigent persons. The Government was also working on a strategy to improve the working conditions of legal officers in order to reduce staff turnover, which contributed to the backlog in the courts. Both the High and Lower Courts were implementing case management systems to overcome administrative bottlenecks in the management of the case flow.
30. The Ministry of Gender Equality and Child Welfare had embarked on awareness raising campaigns as one way of addressing the problem of human trafficking. In 2009, the Ministries of Labour and Social Welfare, Gender Equality and Child Welfare, and Safety and Security had conducted joint inspections on child labour and trafficking in the agricultural sector in nine regions. The purpose was to withdraw all children found to be gaged in child labour; to issue Compliance Orders; to lay criminal charges against persons employing children under-age as prohibited by the Labour Act 2007; and to raise public awareness of child labour through the media, regional councillors and traditional leaders.
31. Whenever children were found to be engaged in child labour they were placed in the care of social workers while a criminal case was opened by the Namibian police.
32. The Electoral Commission of Namibia had always been mindful to compile and publish an accurate Voters’ Register. The Ministry of Home Affairs and Immigration has embarked upon a project to automate all birth, marriage and death records in order to eliminate possible errors in the data required by the Electoral Commission.

33. With respect to media freedom, Namibia referred to Article 21 of the Constitution. Parliament had enacted the Broadcasting Act No. 9 of 1991 and the Communications Act No. 8 of 2009 to provide the legal framework and create a liberal environment for the media. In 2007, Namibia was ranked 25th out of 169 countries in the world on the World Press Freedom Index rankings of Reporters Without Borders, and, in 2010, Namibia topped Africa on press freedom on the same rankings.
34. Regarding the establishment of a national human rights institution, Namibia stressed that the Office of the Ombudsman was in full compliance with the Paris Principles and had received “A” status in April 2006.
35. With reference to cooperation with special procedures, it was noted that thus far there had been only one request for a visit, namely from the independent expert on the right to access to safe drinking water and sanitation, who would visit in July 2011. While the Government did not see the need to have a standing invitation, it was open to requests for more visits.

B. Interactive dialogue and responses by the State under review

36. During the interactive dialogue, 48 delegations made statements. Recommendations made during the dialogue are to be found in section II of the present report. A number of delegations commended Namibia for its human rights accomplishments in such a short period of time, since its independence in 1990. They commended Namibia for the comprehensive report and for the co-operative attitude of the Namibian Government in this process, identifying the main challenges, commitments, progresses and difficulties in the protection of human rights. Delegations appreciated Namibia for its open and constructive consultations in preparation of the National report.
37. Botswana commended Namibia for maintaining a stable democratic and political culture since independence, and for its commitment to promoting a policy of national reconciliation, after years of human rights violations under minority white administration. It also commended Namibia for several impressive legislative and administrative measures to ensure effective enjoyment of human rights, including the adoption of more than 20 Acts of Parliament. It also noted Namibia’s desire to review legislation with respect to human trafficking. Botswana made a recommendation.
38. South Africa welcomed Namibia’s efforts to enhance the protection of women’s rights and to eliminate all forms of discrimination against women, and encouraged it to continue this trend and to take further action in this regard. It welcomed the priority given to the health sector and applauded the encouraging decrease in the HIV/AIDS infection rate, sought additional information on the progress made in fighting this pandemic. It noted that violence against women remained a challenge. South Africa made recommendations.
39. Nigeria recognized that Namibia is facing enormous challenges in the fulfilment of its commitments to the promotion and protection of human rights, including inadequate financial and other resources, capacity-building and technical assistance needs, lack of technology and technical know-how. Nigeria urged Namibia to intensify efforts in enhancing the effectiveness of the various mechanisms entrusted with the enforcement of human rights. Nigeria made recommendations.
40. Zimbabwe commended Namibia for its socio-economic, judicial and political actions regarding the promotion and protection of human rights. Zimbabwe was fully cognizant of the fact that more is yet to be done and achieved, noting that further progress is needed; it called on the international community to assist Namibia in consolidating gains made. Zimbabwe made recommendations.
41. Swaziland noted Namibia’s policy of national reconciliation entailing forgiveness of those who resisted freedom and independence. It commended its efforts to integrate indigenous minority groups into mainstream society and economy, particularly the San Development Programme aimed at improving the San’s socio-economic lives. It also acknowledged, inter alia, the establishment of the Ombudsman Office, prohibition of torture, inhuman treatment and of racial discrimination, the rights to health and access to safe drinking water and affirmative action and gender equality programmes. Swaziland commended the Zero Tolerance Against Gender-based Violence, including Human Trafficking, and passing the Prevention of Organized Crime.
42. Portugal welcomed Namibia’s efforts to define and criminalize torture and, regarding the Traditional Courts and Traditional Authorities Act, requested clarification on the powers of traditional judges, their knowledge of and abidance by human rights law, including the prohibition of torture. Acknowledging progress concerning gender issues, Portugal noted persisting societal discrimination against women, particularly regarding inheritance, land ownership and school access for young pregnant women and asked about measures taken. Portugal

expressed concern about discrimination, violence and punitive acts against homosexuals and enquired about measures taken regarding HIV/AIDS campaigns. It also asked about measures to ensure the right of access to safe drinking water and basic sanitation. Portugal made recommendations.

43. Cuba recalled Namibia's colonial history and the consequences of apartheid on the economy, including structural difficulties in employment creation and the perpetuation of poverty and inequality. International exploitation and pillaging of resources was key to Namibia's underdevelopment. Cuba acknowledged the policies and measures adopted since independence to mitigate the negative effects of the past. It recognized difficulties to ensure food security. It noted improvements in areas of health, primary education, rights of women, children and ethnic minorities including the San and efforts to address HIV/AIDS. Cuba made recommendations.
44. China noted the implementation by Namibia's parliament of the constitutional protection accorded to the economic, social and cultural rights, including through enacting legislation. It acknowledged Namibia's investment in education and efforts to improve health services. China also noted its commitment to reducing inequalities and improving social welfare, while understanding the challenges it faces as a developing country. China made a recommendation.
45. Algeria acknowledged Namibia's palpable achievements including on national reconciliation, combating racial discrimination, empowerment of women, rights of the child, and access to health and education, reflecting the country's wish to break with its colonial history of human rights denial. Algeria noted income distribution inequalities, despite relatively high per capita income. Noting that HIV/AIDS remained a challenge for the population's welfare and the economy, it appealed to stakeholders to contribute to combating this pandemic. Algeria made recommendations.
46. Palestine welcomed the progress made in Namibia regarding women's empowerment, socially and legally, in addition to the number of constitutional and legislative provisions and Government policies that support gender equality. Palestine commended Namibia for its accession to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), on 11 November 1982. Palestine made a recommendation.
47. India commended Namibia's transition to parliamentary democracy from apartheid and a colonial past, noting inherited socio-economic inequalities and structural distortions. It acknowledged the establishment of judicial oversight mechanisms and the Office of the Ombudsman and emphasized efforts towards environmental protection, despite challenges of water scarcity and food security and the mining sector's economic importance, and commended high public expenditure on education and health. Efforts to combat discrimination were welcomed. India sought information on planned measures to reduce high income inequalities and address perennial food deficits and encouraged Namibia to continue improving the administration of justice and expanding participation of indigenous peoples and minorities in development.
48. Singapore noted that, given its painful experience under apartheid colonial rule, Namibia has since its independence enacted various laws aimed at protecting human rights. It noted that Namibia had been among the countries with the highest HIV/AIDS prevalence rates, leaving many children orphaned. It noted that Namibia has rightly prioritized HIV/AIDS in its overall national human and economic development agenda. It also noted that Namibia is among the countries in the world that spend the highest share of GDP on public expenditures such as education and the health sector. It noted that Namibia has implemented a Comprehensive Primary Health Care Programme in all health districts in the country. Singapore made recommendations.
49. Turkey welcomed the enactment of the Prevention of Organized Crime Act and the database on gender-based violence, including human trafficking statistics and child labour victims. It noted restoration of social facilities as shelters for victims of trafficking and gender-based violence and a social awareness campaign on these issues. Turkey welcomed the establishment of the Communication Regulatory Authority, the Media Ombudsman Office including the nomination of a human rights lawyer to the latter, and commended Namibia for collaborating with UNICEF regarding birth certificates for newborns and identity cards for orphans. It noted decreasing HIV/AIDS infections. Turkey made recommendations.
50. Italy welcomed Namibia's abolitionist stance towards the death penalty, and its cooperation with the International Committee of the Red Cross, UNHCR and the Namibian Red Cross. Concerning freedom of press and information, Italy noted that criticism of the ruling party could, in some political circles, provoke harsh reactions including intimidation of journalists, which induced journalists to practice self-censorship. Italy sought information about measures to address this specific problem. It noted overcrowding of prisons and detention centres, which are poorly maintained. Italy touched on the prevalence of domestic violence and alleged forced sterilizations of women affected by HIV/AIDS in public hospitals. Italy made recommendations.

51. Namibia noted that it has gone into farms where child labour was reported to be a concern. Namibia has taken action to stop this offence and has taken measures to stop the perpetuation of this crime. Namibia will continue to look into child labour issues and will combine that issue with trafficking issues, including across the borders of neighbouring countries.
52. Namibia is working towards eliminating social inequality. It has decided to formulate a policy entitled the New Equitable Economic Empowerment Framework.
53. In response to questions and comments, Namibia explained, inter alia, that traditional leaders were recognized to the extent that their practice of traditional laws did not contradict the Constitution. Traditional leaders were not instruments for the subjugation of women and it was incorrect to presume that the traditional leaders were perpetuating gender inequality and violence. Instead, they were part of that reform process.
54. Almost 65 per cent of the population now had access to safe drinking water on tap. Namibia was doing everything possible to improve upon this achievement.
55. Namibia would continue to build on its achievements in education. The education sector had received eight per cent of annual GDP ever since independence. Health received the second highest budget support annually.
56. To eliminate social inequality, the Government had formulated the New Equitable Economic Empowerment Framework.
57. On the HIV/AIDS pandemic, the Government had made great strides. In the 1990s, some 22 per cent of pregnant women had HIV, against the current 16 per cent. With the introduction of free antiretroviral medicine, the death rate had also dropped.
58. The Government was introducing free meals at schools and had enacted grants for orphans and other programmes for orphans, vulnerable children, the elderly and war veterans.
59. The policies of the apartheid regime did not allow Namibians to be educated in order to man the court. The number of judges and lawyers was therefore very low. Namibia was now using the expertise of its own citizens. The Supreme Court still received support from neighbouring countries, for which Namibia is grateful.
60. On the issue of forced sterilization of women of child-bearing age living with HIV/AIDS, Namibia stated that it did not have such a policy, and the assumption was based on allegations which were before the courts.
61. Morocco noted Namibia's commitment and its rich culture and traditions, reflected in its legal and institutional framework, which is constantly being improved. Morocco welcomed inter alia the draft law on the realization and protection of children, which, once adopted, will cover all its international commitments. Morocco asked about the importance given to the draft law on trafficking. At the institutional level, Morocco welcomed the annual children's Parliament in promoting and respecting the rights of children by ensuring that they freely participate effectively in public life. Morocco asked for more information on the role of the Office of the Ombudsman in human rights training. Morocco made recommendations.
62. Chile noted the awareness of the international community of the reality that affected Namibia and its efforts to achieve national reconciliation and overcome structural inequality, which are vital for the proper working of multiparty democracies and the upholding of human rights. Chile believed that the creation of the Ombudsman as a national human rights institution with "A" status in line with the Paris Principles, reveals Namibia's commitment to society to protect and uphold human rights. Chile highlighted the efforts made to implement public policies that guarantee economic, social and cultural rights, in particular the action of the Government in the area of education and primary education. Chile made recommendations.
63. Austria commended Namibia for its achievements since its independence, but noted remaining challenges. Expressing concerns that the accused in the Caprivi High Treason Trial remain detained without judgement, it enquired about measures to ensure their right to be tried without undue delay. Concerning gender-based violence, it commended Namibia's zero-tolerance policy, but noted the call by the Committee on the Elimination of Discrimination against Women to review the Married Persons Equality Act to eliminate discrimination against women in customary marriages, and enquired about the entry into force of the related draft bill. It also requested information on steps taken to end discrimination of indigenous groups and minorities. Austria made recommendations.

64. Norway was concerned about reported harassment of journalists, media organizations, human rights defenders and non-governmental organizations (NGOs). It noted that the right to fair trial is implemented in the Namibian Constitution, but that reports from civil society indicate serious delays in hearing cases and frequent postponement of criminal court cases, while the accused are being kept under arrest. It also noted that there is still room for improvement regarding women's rights. Norway commended Namibia for its initiative in protecting the rights of indigenous peoples and marginalized communities. Norway made recommendations.
65. Malaysia was encouraged to note Namibia's democratic principles and successive, regular and peaceful elections at the local, regional and national levels. Malaysia noted that some areas require further efforts, including difficulties related to unemployment, income disparity, HIV/AIDS, and the rights of the indigenous and minority groups. Malaysia was convinced of the Government's commitment to make improvements in those areas. Malaysia made recommendations.
66. Ghana noted that challenges Namibia faces in the timely submission of reports to the human rights treaty bodies are due to human resource constraints. Ghana commended Namibia's Comprehensive Primary Health Care Programme, which has been implemented since independence in all districts in the country. It also commended Namibia for the educational reforms it has pursued since 2000 and urged Namibia to remain steadfast in its quest to achieve universal education for all its citizens. It observed that in 2010 UNICEF noted widespread violence against children. The response of the legal system in cases of rape and gender-based violence remained inadequate, especially concerning the reporting of cases through to the courts. Ghana made a recommendation.
67. Sweden welcomed information provided on efforts to address overcrowding of prisons and detention centres. While acknowledging that the Constitution provides for freedom of speech and of the press, it noted reports of limitations to press freedom. Sweden sought an assessment of the Communications Regulatory Authority Act and its impact. It noted continued discrimination of women in practice and through traditional practices. Sweden made recommendations.
68. Azerbaijan noted that Namibia's national human rights institution is accredited with "A" status. It also noted the measures taken for prevention of gender-based discrimination and violence against women, including the anti-rape legislation, the Married Persons Equality Act and Combating of Domestic Violence Act. Azerbaijan made recommendations.
69. Lesotho acknowledged Namibia's strides to harmonize domestic legislation with regional and international human rights instruments and noted with satisfaction its efforts in the field of education, by ensuring free and compulsory education in Government schools. Lesotho noted remaining challenges, mainly due to limited capacity and resources and appealed to the international community to provide needed technical and financial assistance. Lesotho made a recommendation.
70. Angola emphasized its ties with Namibia and noted that its policy of reconciliation and pardon had contributed to the successful and peaceful transition from apartheid to multi-party democracy and to consolidating institutions, including regular elections. It commended Namibia for its example given in protecting human rights reflected by the incorporation of a Charter of Rights into the Constitution and welcomed its contribution to regional peace and stability. Angola recognized efforts targeting the Khoisan groups towards their economic and social inclusion. It also acknowledged the reduction of HIV/AIDS rates and easier access to anti-retroviral medication and thanked Namibia for its assistance on refugee issues. Angola made a recommendation.
71. Zambia acknowledged the accreditation with "A" status by the International Criminal Court of Namibia's National Human Rights Institution. Applauding socioeconomic achievements, including with regard to education and health, it expressed concerns that violence against women and children remained a challenge and urged Namibia to address this issue as well as child labour and migrants, and to make torture a specific crime. Zambia welcomed the HIV/AIDS Strategic Plan and the Policy calling on all stakeholders to contribute in fighting HIV/AIDS. Zambia made recommendations.
72. Burkina Faso observed that Namibia had incorporated a Charter of Rights in its Constitution and invited it to place all sets of rights on an equal footing. It noted that human rights treaties are not applicable in all cases, thus limiting their application, and enquired about measures to remedy this situation, including through constitutional amendments. It also sought information on plans to integrate human rights education in its educational system and encouraged Namibia to pursue efforts to improve indigenous peoples' and women's rights. Burkina Faso made recommendations.
73. Mozambique commended Namibia for promoting the rights of indigenous peoples, including Bank funds,

farm allocations, employment-related affirmative action and feeding programmes. It noted the Ombudsman's powers to protect, promote and enhance human rights. Mozambique acknowledged compulsory and free of charge primary education and expansion of health care facilities in the countryside and health-care service improvements. Progress in empowering women and the scrapping of discriminatory traditional practices was acknowledged. Mozambique encouraged Namibia to continue enacting human trafficking legislation and implementing its HIV/AIDS programmes.

74. Sudan welcomed the consultative approach adopted for drafting Namibia's national UPR report. Sudan commended Namibia for its multiple national legislation adopted to support international human rights instruments. Sudan welcomed the ratification of a large number of regional and international treaties of human right. Sudan raised one question concerning gender in particularly with regard to Namibia's efforts to guarantee equality between men and women in land ownership. Sudan made recommendations.
75. France noted prison overcrowding and torture in prisons, and enquired about measures to prevent ill-treatment in detention, improve prison conditions and ensure detainees are judged within reasonable time frames. Noting widespread violence, including sexual violence against children, France enquired about measures improving the effectiveness of mechanisms to punish and prevent violence against children. Concerning prevailing discrimination against indigenous populations, impacting access to health care, income, education and basic services, France sought information on planned remedial measures. France made recommendations.
76. Nicaragua noted that Namibia began its democracy with a firm commitment to human rights and fundamental freedoms. With only one per cent of its land being arable, Namibia faces problems such as extreme poverty. Nicaragua welcomed the high public spending and expressed support for Namibia's long-term economic and social policy. Challenges also include high levels of inequality inherited from apartheid, which could be overcome through joint efforts in a single culture of equality. Nicaragua emphasized that a solid policy of education is fundamental if Namibia is to achieve this common objective. Nicaragua made a recommendation.
77. Pakistan reminded the Council to keep in mind during the review process for Namibia that it must remain cognizant of the harsh fact that the present situation of human rights cannot be seen in a vacuum, as the people of Namibia had suffered one of the most horrific violations of human rights for more than 100 years during the apartheid colonial rule. Pakistan took note of a number of measures taken to promote economic, social and cultural rights, in particular efforts to provide health and education services at the grassroots level. Pakistan was pleased to note progress in the promotion of women and would expect that advancement in all spheres of life would be instrumental in their struggle to end violence against women, which remains a challenge for Namibian society. Pakistan made a recommendation.
78. Canada commended Namibia for its commitment to promoting human rights, including of women and children, assist HIV/AIDS orphans, and eliminate discrimination against the San people. Recognizing Namibia's role in the Kimberley Process, it noted the need to strengthen and refine efforts regarding trade in conflict diamonds. Despite measures in place, domestic violence and rape and inequalities, including in accessing and owning land, prevailed. Canada was also concerned at reported sterilizations of women with HIV/AIDS and potential limitations of the right to privacy by the Communications Act. Canada made recommendations.
79. Germany noted the backlog of cases reported by the Human Rights Committee in 2004 and requested an update on progress in the Caprivi trial and when a court ruling was expected. Germany made recommendations.
80. Spain welcomed Namibia's accession to most international human rights instruments. Spain invited Namibia to begin a process of consultation with representatives of civil society and persons with disabilities concerning the application of recommendations in this review. Spain made recommendations.
81. The United Kingdom of Great Britain and Northern Ireland recognized Namibia's progress since independence. Recognizing capacity issues regarding police, prison and judicial system, it expressed concerns about prison facilities, overcrowding and the length of time for court cases to be heard, which could be considered a violation of international obligations, despite the right to a fair trial and the presumption of innocence provided for in the Constitution. It made recommendations.
82. Mexico recognized Namibia's efforts in promoting and ensuring respect for human rights, particularly its efforts in the transition to a parliamentary democracy and noted the establishment of a national human rights institution in accordance with the Paris Principles. Mexico made recommendations.

83. The United States of America commended Namibia for improvements of the human rights situation despite recent challenges and acknowledged the establishment of the Office of the Ombudsman and the projected national human rights action plan. Noting prevailing gender-based violence and traditional practices impeding exercise by women of their inheritance and land ownership rights, it sought information on measures to combat gender based discriminatory practices. It welcomed the Prevention of Organized Crime Act and the Zero Tolerance Campaign on gender-based violence and human trafficking, but remained concerned at the lack of legislative protection and prevention measures. It made recommendations.
84. Argentina welcomed Namibia's initiatives to promote the civic participation of children. Argentina enquired about measures taken to strengthen the administration of justice and due process and to improve the political and economic participation of women, with particular attention to women in vulnerable situations. Argentina made recommendations.
85. Australia recognized the impact of poverty, HIV/AIDS and food insecurity on the full enjoyment of human rights in Namibia. Noting its strong ratification record, Australia called on Namibia to implement the commitments in domestic legislation. Noting progress in promoting women's rights, Australia remained concerned by high rates of rape and sexual and gender-based violence and child abuse, including sexual violence and trafficking. Australia encouraged Namibia to enact the Child Care and Protection Bill. Australia made recommendations.
86. Ecuador commended Namibia on its achievements in many important areas of human rights. It noted remaining challenges requiring many efforts and economic and human resources, and encouraged Namibia to continue efforts to ensure equality, and security and guarantee of rights. Ecuador made recommendations.
87. Slovakia commended Namibia for the A-status accreditation with the International Criminal Court of the Office of the Ombudsman and for integrating human rights education into national curricula. It observed that torture was not defined as statutory crime and, noting the backlog of pending cases, that the right to be tried without undue delay was not fully implemented. It noted concerns about the large number of children under 14 engaged in economic activities. Slovakia made recommendations.
88. Latvia noted Namibia's good level of press freedom. Appreciating information provided on the issue of standing invitations to special procedures, it noted the recent request for a visit by the independent expert on human rights obligations related to access to safe drinking water and sanitation. Latvia made a recommendation.
89. Slovenia commended Namibia for respecting children's rights to civic participation, including when developing the Child Care and Protection Bill, but expressed concerns about trafficking in children, child prostitution and child labour, and the lack of access of women to adequate health-care services, including to sexual and reproductive health services, widespread illegal abortion and increasing rates of HIV/AIDS infected women and of maternal mortality. It also noted persistent discrimination on the grounds of ethnicity. Slovenia made recommendations.
90. Niger paid tribute to Namibia's policy of national reconciliation and encouraged its authorities to continue constructive policies in the areas of health, education and the promotion and protection of society's most vulnerable. It noted with satisfaction women's participation in the democratic progress, including involvement in decision-making and in elected office. Namibia's sectoral policies allowed it to become a middle-income country. Niger made recommendations.
91. Uganda commended Namibia's achievements in protecting and promoting human rights. It noted persisting patriarchal attitudes and stereotypes about gender roles and was concerned that the Traditional Authorities Act may negatively impact women by perpetuating the use of harmful and discriminatory customs and cultural and traditional practices and enquired about measures to address these concerns. Uganda encouraged the international community to provide required assistance. Uganda made recommendations.
92. Mauritius commended Namibia for its continuous and diligent effort to improve the promotion and protection of human rights through the implementation of strategic policies, which had led Namibia to be classified as one of the top five countries to live in, in Africa according to the International Living and New Quality of Life Index of 2011. As part of the African Union, Namibia has always supported regional and international initiatives to protect fundamental rights, including the African Charter. Mauritius commended Namibia for signing and ratifying many of the core human rights treaties. Mauritius also commended Namibia's effort to address social and economic inequalities through the implementation of its long term strategic plan – Vision 2030. Mauritius made a recommendation.

93. The Democratic Republic of the Congo commended Namibia's efforts to protect minority indigenous peoples and welcomed the social, legal and political progress in empowering women. It sought information on consequences of the past apartheid policy and on progress made in combating HIV/AIDS.
94. In response to comments, Namibia confirmed once more that it would set in motion a process of reviewing treaties to which it was not yet a party and that it might want to ratify. On questions concerning the Convention on Migrant Workers, Namibia noted that it did not have a large number of immigrants, although nobody was prohibited from applying for work in Namibia.
95. In conclusion, Namibia stressed that it would continue its efforts to eliminate obstacles to the full enjoyment of human rights by all Namibians. Namibia would take into consideration all concerns expressed during the review. Its main priorities at this time are food security, education and health, which take up much of its budget. Bearing in mind that it had reached independence only recently, Namibia asked the international community to show understanding for its continued need for international assistance

II. Conclusions and/or recommendations

96. The following recommendations formulated during the interactive dialogue/listed below enjoy the support of Namibia:
 - 96.1. Strengthen efforts to fulfil obligations under the Convention on the Rights of the Child (Australia);
 - 96.2. Review its criminal law framework with a view to incorporate the crime of torture in accordance with its international obligations (Slovakia);
 - 96.3. Adopt appropriate legislation on trafficking in human beings, prohibit the use, procuring or offering of children for prostitution and ensure that children under the age of 14 are not engaged in child labour (Slovenia);
 - 96.4. Intensify its efforts regarding the process of enacting legislation on human trafficking (Azerbaijan);
 - 96.5. Accelerate the passage and implementation of anti-trafficking legislation and, in the interim, use current laws, like the Prevention of Organized Crime Act (POCA), to prosecute sex and labour trafficking offences and adequately punish trafficking offenders (United States of America);
 - 96.6. Strengthen the mechanisms of legal and social protection of children against violence, particularly sexual, of which they are victims (France);
 - 96.7. Ensure that the national legislation is in line with the obligations of the Convention on the Rights of Persons with Disabilities and its Optional Protocol (Spain);
 - 96.8. Conduct a review process and if necessary, amend its national legislation (Spain);
 - 96.9. Pursue efforts to address concerns regarding child labour, in particular through its Action Programme to Eliminate Child Labour in Namibia 2008- 2012 (Botswana);
 - 96.10. Redouble efforts aimed at fully implementing the Action Programme to Eliminate Child labour in Namibia 2008-2012 (Malaysia);
 - 96.11. Continue applying strategies and socio-economic development plans in the country (Cuba);
 - 96.12. Continue its economic and social policies in the framework of Vision 2030 by paying greater attention to programmes for the fight against poverty and the reduction of social inequalities (Algeria);
 - 96.13. Further promote women's and children's rights taking into consideration the views of relevant treaty bodies of the United Nations system (Italy);
 - 96.14. Continue its policy of promoting and protecting the rights of indigenous peoples by consolidating it with further measures to ensure the full exercise of the rights of all components of Namibian society while respecting its traditions and identity (Morocco);¹

- 96.15. Remain steadfast in pursuing its exemplary policies towards gender equality, particularly by strengthening measures to eradicate gender-based violence (Lesotho);
- 96.16. Put in place mechanisms to systematically collect and analyse disaggregated data to enable assessment of the effectiveness of policies and initiatives aimed at preventing and eliminating violence against women (Canada);
- 96.17. Continue the policy of national reconciliation in a spirit of accommodation (Niger);
- 96.18. A participatory and inclusive process with civil society in the implementation of UPR recommendations (Norway);
- 96.19. Seek technical assistance from OHCHR in regard to human and material constraints faced (Azerbaijan);
- 96.20. Request technical assistance from OHCHR regarding the preparation of reports which need to be submitted to treaty bodies (Burkina Faso);
- 96.21. Continue to take effective measures to eliminate social inequalities such as skewed distribution of income and to promote the sound and sustained development of the country's economy and society (China);
- 96.22. Make more efforts to, pass additional legislation and carry out awareness- raising and counselling to eliminate the consequences of racial discrimination in all its forms (Sudan);
- 96.23. Continue its efforts in combating racial segregation and discrimination in various fields, particularly in education and continue the adoption of special measures in the context of the Durban Declaration and Programme of Action (Palestine);
- 96.24. Continue investing in the breaking down of a culture of inequality, which was inherited from apartheid, from a human rights angle (Nicaragua);
- 96.25. Ensure that persons who only speak non-official languages used widely by the population are not denied access to public services (Austria);
- 96.26. Take effective measures to ensure the equal treatment of women in accordance with its international obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Sweden);
- 96.27. Strengthen its legislation as well as promptly implement existing legislation, with a view to promote and protect women's rights (Sweden);
- 96.28. Enhance the rights of women to civic participation (Turkey);
- 96.29. Increase measures to strengthen women's rights and combat stereotypes that can interfere with the enjoyment of women's fundamental rights (Morocco);
- 96.30. Continue its efforts to put a halt to all negative cultural practices and stereotypes that discriminate against women (Azerbaijan);
- 96.31. Continue its efforts to prevent, punish and eradicate all forms of violence against women as well overcoming stereotypes which provoke gender based discrimination (Argentina);
- 96.32. That practices and traditional cultural customs are neither harmful to women, nor have a discriminatory impact, since during the Namibian struggle for national liberation women fought alongside and on par with men for the country's independence, and that they receive the necessary merit and attention in society (Angola);
- 96.33. Ensure that women in customary marriages enjoy the same rights as those in civil marriages (Austria);
- 96.34. Develop and implement, in cooperation with local customary authorities, a strategy to eliminate discriminatory traditional practices against women, including in respect of access to and ownership of land (Canada);

- 96.35. Promote a policy of equality and non-discrimination and that Namibia step up its efforts to reduce poverty with economic and social measures which ensure equal opportunity to citizens in the social, economic and political life of the country (Spain);
- 96.36. More efforts be made to combat gender violence, principally through the adoption of political measures to include the representation of women in decision-making-posts and in public administration (Spain);
- 96.37. Take effective measures to enhance the access to public services concerning persons who do not speak the official language (Germany);
- 96.38. Adopt measures to ensure access to public services for persons who do not speak English as they are a significant proportion of the Namibian population. This was recommended by the Human Rights Committee in 2004 (Spain);
- 96.39. Close cooperation with civil society, NGOs and the media in order to prevent harassment and threats against journalists, media organizations, human rights defenders and NGOs in the future (Norway);
- 96.40. Take steps to fully implement and enforce laws on violence against women and to ensure that victims were able to benefit from the existing legislative framework (South Africa);
- 96.41. Prioritize the elimination of discrimination and violence against women (Norway);
- 96.42. Apply fully the legislation geared towards combating discrimination and violence, particularly sexual, against women and young girls, particularly in terms of access of victims to justice and of training of magistrates, judges and police regarding this problem (France);
- 96.43. Move forward quickly with a national action plan to combat genderbased violence, including human trafficking (United States of America);
- 96.44. Implement standard procedures to identify victims and provide them with protection, conduct national anti-trafficking public awareness campaigns, and incorporate anti-human trafficking training into its police training curriculum (United States of America);
- 96.45. Improve the living conditions and infrastructure of detention facilities in the country (Italy);
- 96.46. For the purposes of fully protecting the human rights of all Namibians, secessionists be pursued and be brought to book (Zimbabwe);
- 96.47. Undertake steps to guarantee that trials take place within a reasonable period of time, and that special measures be taken to address the backlog of criminal cases (Austria);
- 96.48. Continue its efforts to ensure that trials take place within a reasonable period of time (Slovakia);
- 96.49. Take immediate measures to address the capacity issues faced by security and justice sectors, including reducing the amount of time it takes for court cases to be heard (United Kingdom);
- 96.50. Investigate the cases and assess the possibility of making improvements to the facilities in local prisons (Norway);
- 96.51. Take measures to safeguard the human rights of prisoners, and to separate juvenile and adult prisoners (Sweden);
- 96.52. The existing women's and children units in the country which are staffed with police officers be strengthened with sufficient human and logistical resources (Ghana);
- 96.53. Conduct thorough and impartial investigation into all allegations of discrimination against women (Sweden);
- 96.54. Investigate reports of forced or coerced sterilization in HIV-positive women and that it takes steps to ensure women are educated about the effects of sterilization and options available to them (United Kingdom);

- 96.55. Take effective measures to encourage the registration of customary marriages and to grant the spouses and children of registered customary marriages the same rights as those married under civil law (Portugal);
 - 96.56. Take effective measures to safeguard freedom of expression for individuals and the media (Sweden);
 - 96.57. Continue its efforts to promote economic, social and cultural rights and initiate national policies to guarantee the rights of its people and create a conducive environment for socio-economic development (Nigeria);
 - 96.58. Strengthen measures to combat AIDS and if necessary seek the assistance of the World Health Organization (Morocco);
 - 96.59. Continue its efforts to combat HIV/AIDS (Pakistan);
 - 96.60. Issue clear directives to all health officials prohibiting the sterilization of women living with HIV/AIDS without their informed consent (Canada);
 - 96.61. Promote, in a comprehensive manner, sexual education, particularly of adolescents, with special attention to the prevention of early pregnancy and sexually transmitted diseases and HIV/AIDS (Mexico);
 - 96.62. Seek financial and technical assistance necessary to meet the challenges identified by the World Food Programme, namely the persistent food deficits, recurring drought and high malnutrition rates (Morocco);
 - 96.63. Expand micro-credit and financing schemes, with a view to expanding the formal economy in the country and gradually reducing the inequality in income distribution (Malaysia);
 - 96.64. Take effective measures to ensure that all women have access to adequate health facilities (Germany);
 - 96.65. Increase efforts to reduce poverty and stimulate development of the most marginalized groups, particularly indigenous communities, involving them in the decisions regarding their rights and interests (Mexico);
 - 96.66. Take all the necessary measures to ensure women have access to adequate health-care services, including sexual and reproductive health services (Slovenia);
 - 96.67. Ensure access to education, employment, health care and other basic services for the members of all ethnic communities, including the San and Himba communities (Slovenia);
 - 96.68. Continue its education policy, giving special emphasis to the education of young girls (Niger);
 - 96.69. Take all necessary measures to eradicate discrimination against indigenous peoples (France);
 - 96.70. Formulate a white paper in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and that recommendations from the Committee on the Elimination of Racial Discrimination, the International Labour Organization (ILO) and the African Commission's Working Group on Indigenous Populations/Communities are taken into consideration in this process (Norway);
 - 96.71. Consider requesting assistance from the international community to facilitate the implementation of its obligations in the protection and promotion of human rights (Uganda);
 - 96.72. Continue to seek international assistance to sustain its efforts aimed at the promotion and protection of human rights, in line with its national policies (Nigeria).
97. The following recommendations enjoy the support of Namibia which considers that they have already been implemented or are in the process of implementation:
- 97.1. Review the law on equality of spouses in order to eliminate discrimination against women in customary marriages in relation to property rights, so that the rights recognized in customary marriages are the same as in civil marriages (Mexico);

- 97.2 Explore the possibility of strengthening the institutional and operational capacity of the Office of the Ombudsman by allocating human and financial resources (Malaysia);
- 97.3 Provide the Office of the Ombudsman with the necessary financial and human resources so that it can implement its action plan (Niger);
- 97.4 Continue pursuing appropriate policies, such as the Action Programme to Eliminate Child Labour in Namibia 2008-2012, in particular with regard to ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, to address the phenomenon of child labour (Slovakia);
- 97.5 Implement further policies to ensure gender equality throughout society and strengthen the promotion of the rights of women (South Africa);
- 97.6 Continue to prioritize the education and health sectors in its development plans (Singapore);
- 97.7 Develop a National Plan of Action on eliminating violence against women and strengthen efforts to fulfil its obligations under CEDAW (Australia);
- 97.8 Consider undertaking measures that promote gender equality and the rights of women in the internal normative framework (Chile);
- 97.9 Continue its efforts to prevent, punish and eradicate violence against boys and girls (Argentina);
- 97.10 Allocate the resources necessary for the full implementation of the “Zero Tolerance Campaign against Gender Based Violence, Including Human Trafficking”, and ensure engagement at the highest political level in the campaign to highlight the unacceptability of violence against women and address the attitudes and stereotypes that perpetuate discriminatory practices that are harmful and violent toward women (Canada);
- 97.11 Increase its efforts to combat violence against women and children (Germany);
- 97.12 Consider continuing increasing allocation of more resources to the sectors of education, health and employment (Zimbabwe);
- 97.13 Continue applying programmes and measures to improve the enjoyment of the right to education and the right to health, including addressing the HIV/AIDs pandemic (Cuba);
- 97.14 Give top priority to reducing further the national prevalence rate [of HIV/AIDS], especially among pregnant women (Algeria);
- 97.15 Maintain and further build upon its HIV/AIDS preventive, care and treatment programmes (Singapore);
- 97.16 Adopt a systematic approach to prevent mother-to-child transmission of HIV (Turkey);
- 97.17 Explore the feasibility of establishing a network of mobile clinics in order to reach out to the widely dispersed population (Malaysia);
- 97.18 Continue towards providing safe drinking water in the inhabited areas (Sudan);
98. The following recommendations will be examined by Namibia which will provide responses in due time, but no later than the seventeenth session of the Human Rights Council in June 2011:
 - 98.1 Consider ratifying all outstanding international instruments to which it is not yet party and endeavour to domesticate them in its national legislation (Nigeria);
 - 98.2 Become a party to the outstanding core international human rights treaties (Austria);
 - 98.3 Ratify the following international instruments: the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), the International Convention for the Protection of All Persons from Enforced Disappearances (CED), OP-CAT and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) (Ecuador);

- 98.4 Sign and ratify OP-CAT (Sweden);
 - 98.5 Should ratify CMW (Zambia);
 - 98.6 Ratify CMW (Burkina Faso);
 - 98.7 Consider, in its spirit of commitment, the possibility of acceding to CMW (Algeria);
 - 98.8 Accede to OP-CAT, and incorporate this into domestic law (Australia);
 - 98.9 Sign and ratify OP-CAT (United Kingdom);
 - 98.10 Sign and ratify OP-CAT and put in place an independent national mechanism for the inspection of places of deprivation of liberty (France);
 - 98.11 Consider becoming a party to OP-CAT (Uganda);
 - 98.12 Consider signing and ratifying OP-CAT (Mauritius);
 - 98.13 Sign and ratify CED, as it constitutes an important instrument for the prevention against torture (France);
 - 98.14 Sign and ratify OP-ICESCR as soon as possible, allowing individual complaints of alleged violations of these rights to be heard by the Committee on Economic, Social and Cultural Rights (Portugal);
 - 98.15 Sign and ratify OP-ICESCR, OP-CAT and CED (Spain);
 - 98.16 Become a party to OP-ICESCR, OP-CAT, CMW and CED (Argentina);
 - 98.17 Review the reservation to article 26 of the Refugee Convention to authorize the free movement and residence of persons with recognized refugee status and to also extend this to asylum seekers (Ecuador);
 - 98.18 Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Slovakia);
 - 98.19 Sign and ratify the Conventions and Protocols to which it is not a party (Niger);
 - 98.20 Assess the possibility of extending an invitation to the United Nation special procedures, with thanks for the information provided regarding the invitation to the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation (Chile);
 - 98.21 Should extend standing invitations to the special procedures mandate holders (Zambia);
 - 98.22 Extend an open and standing invitation to the special procedures of the Human Rights Council and be proactive when questionnaires are sent by mandate holders (Ecuador);
 - 98.23 Consider extending a standing invitation to all special procedures of the Human Rights Council (Latvia);
 - 98.24 Amend the labour law to address the inconsistency with regard to the minimum age to work and the school age for compulsory education, as well as more vigorously enforce the labour laws related to child labour (United States of America);
 - 98.25 Review its legislation on communications and bring it in line with international standards (Sweden);
 - 98.26 Strengthen measures to end discrimination, exclusion and marginalization of indigenous groups and minorities, in particular the San people (Austria);
 - 98.27 Guarantee non-discrimination against persons belonging to minorities (Spain);
99. The following recommendations below did not enjoy the support of Namibia.

- 99.1 Revoke the law which criminalizes consensual, non-commercial adult homosexual conduct, as it violates the rights to privacy, and the protection against discrimination (Portugal);
 - 99.2 Abrogate all laws prohibiting consensual sexual relations between adults of the same sex (France);
 - 99.3 Legislative measures be adopted to decriminalize consensual sexual relations between adults of the same sex including a provision on the prohibition of discrimination on the basis of sexual orientation or on gender identity (Spain);
100. All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and/or the State under review. They should not be construed as endorsed by the Working Group as a whole.

Annex

Composition of the delegation

The delegation of Namibia was headed by Hon. Pendukeni Iivula-Ithana, MP, Minister and composed of the following members:

- Mr. Issaskar Ndjoze- Deputy Permanent Secretary, Ministry of Justice- Alternate;
- Mr. Simon Madjumo Maruta- Chargé d’Affaires, Permanent Mission of Namibia to UNOG;
- Ms. Elisabeth N. Negumbo, Chief of Immigration, Ministry of Home Affairs and Immigration;
- Ms. Gladice Pickering- Deputy Chief, Ministry of Justice;
- Mr. Tertius Ndevaetela- Deputy Commissioner of Police, Ministry of Safety and Security;
- Mr. Christiaan Horn, Deputy Director, Ministry of Labour and Social Welfare;
- Mr. Gerson Kamatuka, Deputy Director, Office of the Prime Minister;
- Mr. Theodore Grunewald, Deputy Director, Ministry of Foreign Affairs;
- Ms. Albertina Ipinge, Deputy Director, Ministry of Lands and Resettlement;
- Mr. Cedric Limbo- Chief: Health Programmes, Ministry of Health and Social Services;
- Ms. Sophia T. Peter, Chief Development Planner Legislation, Ministry of Gender, Equality and Child Welfare;
- Mr. Basilius Dyakugha, Principal Legal Officer, Ministry of Justice;
- Mr. Jackson Eixab, Principal Legal Officer, Office of the Prosecutor-General, Ministry of Justice;
- Mr. David Sampson, Education Officer, Ministry of Education;
- Mr. Absalom Nghifitikeko, First Secretary, Permanent Mission of Namibia to UNOG;
- Ms. Selma Nghinamundova, First Secretary, Permanent Mission of Namibia to UNOG;
- Ms. Violette Isaacs, Personal Assistant to the Minister of Justice;
- Ms. Johanna Salomo, Third Secretary, Permanent Mission of Namibia to UNOG.

CHAPTER 3

TREATY REFERENCE GUIDE

United Nation Treaty Collection

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1. DEFINITION OF KEY TERMS USED IN THE UN TREATY COLLECTION

1.1 Introduction

This introductory note seeks to provide a basic - but not an exhaustive - overview of the key terms employed in the United Nations Treaty Collection to refer to international instruments binding at international law: treaties, agreements, conventions, charters, protocols, declarations, memoranda of understanding, modus vivendi and exchange of notes. The purpose is to facilitate a general understanding of their scope and function.

Over the past centuries, State practice has developed a variety of terms to refer to international instruments by which States establish rights and obligations among themselves. The terms most commonly used are the subject of this overview. However, a fair number of additional terms have been employed, such as “statutes”, “covenants”, “accords” and others. In spite of this diversity of terminology, no precise nomenclature exists. In fact, the meaning of the terms used is variable, changing from State to State, from region to region and instrument to instrument. Some of the terms can easily be interchanged: an instrument that is designated “agreement” might also be called “treaty”.

The title assigned to such international instruments thus has normally no overriding legal effects. The title may follow habitual uses or may relate to the particular character or importance sought to be attributed to the instrument by its parties. The degree of formality chosen will depend upon the gravity of the problems dealt with and upon the political implications and intent of the parties.

Although these instruments differ from each other by title, they all have common features and international law has applied basically the same rules to all of these instruments. These rules are the result of long practice among the States, which have accepted them as binding norms in their mutual relations. Therefore, they are regarded as international customary law. Since there was a general desire to codify these customary rules, two international conventions were negotiated. The 1969 Vienna Convention on the Law of Treaties ("1969 Vienna Convention"), which entered into force on 27 January 1980, contains rules for treaties concluded between States. The 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations ("1986 Vienna Convention"), which has still not entered into force, added rules for treaties with international organizations as parties. Both the 1969 Vienna Convention and the 1986 Vienna Convention do not distinguish between the different designations of these instruments. Instead, their rules apply to all of those instruments as long as they meet certain common requirements.

Article 102 of the Charter of the United Nations provides that "every treaty and every international agreement entered into by any Member State of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it". All treaties and international agreements registered or filed and recorded with the Secretariat since 1946 are published in the UNTS. By the terms "treaty" and "international agreement", referred to in Article 102 of the Charter, the broadest range of instruments is covered. Although the General Assembly of the UN has never laid down a precise definition for both terms and never clarified their mutual relationship, Art.1 of the General Assembly Regulations to Give Effect to Article 102 of the Charter of the United Nations provides that the obligation to register applies to every treaty or international agreement "whatever its form and descriptive name". In the practice of the Secretariat under Article 102 of the UN Charter, the expressions "treaty" and "international agreement" embrace a wide variety of instruments, including unilateral commitments, such as declarations by new Member States of the UN accepting the obligations of the UN-Charter, declarations of acceptance of the compulsory jurisdiction of the International Court of Justice under Art.36 (2) of its Statute and certain unilateral declarations that create binding obligations between the declaring nation and other nations. The particular designation of an international instrument is thus not decisive for the obligation incumbent on the Member States to register it.

It must however not be concluded that the labelling of treaties is haphazard or capricious. The very name may be suggestive of the objective aimed at, or of the accepted limitations of action of the parties to the arrangement. Although the actual intent of the parties can often be derived from the clauses of the treaty itself or from its preamble, the designated term might give a general indication of such intent. A particular treaty term might indicate that the desired objective of the treaty is a higher degree of cooperation than ordinarily aimed for in such instruments. Other terms might indicate that the parties sought to regulate only technical matters. Finally, treaty terminology might be indicative of the relationship of the treaty with a previously or subsequently concluded agreement.

1.2 Treaties

The term "treaty" can be used as a common generic term or as a particular term which indicates an instrument with certain characteristics.

- (a) Treaty as a generic term: The term "treaty" has regularly been used as a generic term embracing all instruments binding at international law concluded between international entities, regardless of their formal designation. Both the 1969 Vienna Convention and the 1986 Vienna Convention confirm this generic use of the term "treaty". The 1969 Vienna Convention defines a treaty as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation". The 1986 Vienna Convention extends the definition of treaties to include international agreements involving international organizations as parties. In order to speak of a "treaty" in the generic sense, an instrument has to meet various criteria. First of all, it has to be a binding instrument, which means that the contracting parties intended to create legal rights and duties. Secondly, the instrument must be concluded by states or international organizations with treaty-making power. Thirdly, it has to be governed by international law. Finally the engagement has to be in writing. Even before the 1969 Vienna Convention on the Law of Treaties, the word "treaty" in its generic sense had been generally reserved for engagements concluded in written form.
- (b) Treaty as a specific term: There are no consistent rules when state practice employs the terms "treaty" as a title for an international instrument. Usually the term "treaty" is reserved for matters of some gravity that require more solemn agreements. Their signatures are usually sealed and they normally require ratification. Typical examples of international instruments designated as "treaties" are Peace Treaties, Border Treaties, Delimitation Treaties, Extradition Treaties and Treaties of Friendship, Commerce and

Co-operation. The use of the term “treaty” for international instruments has considerably declined in the last decades in favour of other terms.

1.3 Agreements

The term “agreement” can have a generic and a specific meaning. It also has acquired a special meaning in the law of regional economic integration.

- (a) Agreement as a generic term: The 1969 Vienna Convention on the Law of Treaties employs the term “international agreement” in its broadest sense. On the one hand, it defines treaties as “international agreements” with certain characteristics. On the other hand, it employs the term “international agreements” for instruments, which do not meet its definition of “treaty”. Its Art.3 refers also to “international agreements not in written form”. Although such oral agreements may be rare, they can have the same binding force as treaties, depending on the intention of the parties. An example of an oral agreement might be a promise made by the Minister of Foreign Affairs of one State to his counterpart of another State. The term “international agreement” in its generic sense consequently embraces the widest range of international instruments.
- (b) Agreement as a particular term: “Agreements” are usually less formal and deal with a narrower range of subject matter than “treaties”. There is a general tendency to apply the term “agreement” to bilateral or restricted multilateral treaties. It is employed especially for instruments of a technical or administrative character, which are signed by the representatives of government departments, but are not subject to ratification. Typical agreements deal with matters of economic, cultural, scientific and technical co-operation. Agreements also frequently deal with financial matters, such as avoidance of double taxation, investment guarantees or financial assistance.
The UN and other international organizations regularly conclude agreements with the host country to an international conference or to a session of a representative organ of the organization. Especially in international economic law, the term “agreement” is also used as a title for broad multilateral agreements (e.g. the commodity agreements). The use of the term “agreement” slowly developed in the first decades of this century. Nowadays by far the majority of international instruments are designated as agreements.
- (c) Agreements in regional integration schemes: Regional integration schemes are based on general framework treaties with constitutional character. International instruments which amend this framework at a later stage (e.g. accessions, revisions) are also designated as “treaties”. Instruments that are concluded within the framework of the constitutional treaty or by the organs of the regional organization are usually referred to as “agreements”, in order to distinguish them from the constitutional treaty. For example, whereas the Treaty of Rome of 1957 serves as a quasi-constitution of the European Community, treaties concluded by the EC with other nations are usually designated as agreements. Also, the Latin American Integration Association (LAIA) was established by the Treaty of Montevideo of 1980, but the sub-regional instruments entered into under its framework are called agreements.

1.4 Conventions

The term “convention” again can have both a generic and a specific meaning.

- (a) Convention as a generic term: Art.38 (1) (a) of the Statute of the International Court of Justice refers to “international conventions, whether general or particular” as a source of law, apart from international customary rules and general principles of international law and - as a secondary source - judicial decisions and the teachings of the most highly qualified publicists. This generic use of the term “convention” embraces all international agreements, in the same way as does the generic term “treaty”. Black letter law is also regularly referred to as “conventional law”, in order to distinguish it from the other sources of international law, such as customary law or the general principles of international law. The generic term “convention” thus is synonymous with the generic term “treaty”.
- (b) Convention as a specific term: Whereas in the last century the term “convention” was regularly employed for bilateral agreements, it now is generally used for formal multilateral treaties with a broad number of parties. Conventions are normally open for participation by the international community as a whole, or by a large number of states. Usually the instruments negotiated under the auspices of an international organization are entitled conventions (e.g. Convention on Biological Diversity of 1992, United Nations Convention on the Law of the Sea of 1982, Vienna Convention on the Law of Treaties of 1969). The same holds true for instruments adopted by an organ of an international organization (e.g. the 1951 ILO Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, adopted by the International Labour Conference or the 1989 Convention on the Rights of the Child, adopted by the General Assembly of the UN).

1.5 Charters

The term “charter” is used for particularly formal and solemn instruments, such as the constituent treaty of an international organization. The term itself has an emotive content that goes back to the Magna Carta of 1215. Well known recent examples are the Charter of the United Nations of 1945 and the Charter of the Organization of American States of 1952.

1.6 Protocols

The term “protocol” is used for agreements less formal than those entitled “treaty” or “convention”. The term could be used to cover the following kinds of instruments:

- (a) A Protocol of Signature is an instrument subsidiary to a treaty, and drawn up by the same parties. Such a Protocol deals with ancillary matters such as the interpretation of particular clauses of the treaty, those formal clauses not inserted in the treaty, or the regulation of technical matters. Ratification of the treaty will normally ipso facto involve ratification of such a Protocol.
- (b) An Optional Protocol to a Treaty is an instrument that establishes additional rights and obligations to a treaty. It is usually adopted on the same day, but is of independent character and subject to independent ratification. Such protocols enable certain parties of the treaty to establish among themselves a framework of obligations which reach further than the general treaty and to which not all parties of the general treaty consent, creating a “two-tier system”. The Optional Protocol to the International Covenant on Civil and Political Rights of 1966 is a well-known example.
- (c) A Protocol based on a Framework Treaty is an instrument with specific substantive obligations that implements the general objectives of a previous framework or umbrella convention. Such protocols ensure a more simplified and accelerated treaty-making process and have been used particularly in the field of international environmental law. An example is the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer adopted on the basis of Arts.2 and 8 of the 1985 Vienna Convention for the Protection of the Ozone Layer.
- (d) A Protocol to amend is an instrument that contains provisions that amend one or various former treaties, such as the Protocol of 1946 amending the Agreements, Conventions and Protocols on Narcotic Drugs.
- (e) A Protocol as a supplementary treaty is an instrument which contains supplementary provisions to a previous treaty, e.g. the 1967 Protocol relating to the Status of Refugees to the 1951 Convention relating to the Status of Refugees.
- (f) A Process-Verbal is an instrument that contains a record of certain understandings arrived at by the contracting parties.

1.7 Declarations

The term “declaration” is used for various international instruments. However, declarations are not always 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. An example is the 1992 Rio Declaration. Declarations can however also be treaties in the generic sense intended to be binding at international law. It is therefore necessary to establish in each individual case whether the parties intended to create binding obligations. Ascertaining the intention of the parties can often be a difficult task. Some instruments entitled “declarations” were not originally intended to have binding force, but their provisions may have reflected customary international law or may have gained binding character as customary law at a later stage. Such was the case with the 1948 Universal Declaration of Human Rights. Declarations that are intended to have binding effects could be classified as follows:

- (a) A declaration can be a treaty in the proper sense. A significant example is the Joint Declaration between the United Kingdom and China on the Question of Hong Kong of 1984.
- (b) An interpretative declaration is an instrument that is annexed to a treaty with the goal of interpreting or explaining the provisions of the latter.
- (c) A declaration can also be an informal agreement with respect to a matter of minor importance.
- (d) A series of unilateral declarations can constitute binding agreements. Atypical example is declarations under the Optional Clause of the Statute of the International Court of Justice that create legal bonds between the declarants, although not directly addressed to each other. Another example is the unilateral Declaration on the Suez Canal and the arrangements for its operation issued by Egypt in 1957 which was considered to be an engagement of an international character.

1.8 Memoranda of Understanding

A memorandum of understanding is an international instrument of a less formal kind. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation

of technical or detailed matters. It is typically in the form of a single instrument and does not require ratification. They are entered into either by States or International Organizations. The United Nations usually concludes memoranda of understanding with Member States in order to organize its peacekeeping operations or to arrange UN Conferences. The United Nations also concludes memoranda of understanding on co-operation with other international organizations.

1.9 Modus Vivendi

A modus vivendi is an instrument recording an international agreement of temporary or provisional nature intended to be replaced by an arrangement of a more permanent and detailed character. It is usually made in an informal way, and never requires ratification.

1.10 Exchange of Notes

An “exchange of notes” is a record of a routine agreement that has many similarities with the private law contract. The agreement consists of the exchange of two documents, each of the parties being in the possession of the one signed by the representative of the other. Under the usual procedure, the accepting State repeats the text of the offering State to record its assent. The signatories of the letters may be government Ministers, diplomats or departmental heads. The technique of exchange of notes is frequently resorted to, either because of its speedy procedure, or, sometimes, to avoid the process of legislative approval.

2. GLOSSARY OF TERMS RELATING TO TREATY ACTIONS

2.1. Adoption

“Adoption” is the formal act by which the form and content of a proposed treaty text are established. As a general rule, the adoption of the text of a treaty takes place through the expression of the consent of the states participating in the treaty-making process. Treaties that are negotiated within an international organization will usually be adopted by a resolution of a representative organ of the organization whose membership more or less corresponds to the potential participation in the treaty in question. A treaty can also be adopted by an international conference which has specifically been convened for setting up the treaty, by a vote of two thirds of the states present and voting, unless, by the same majority, they have decided to apply a different rule.

[Art.9, Vienna Convention of the Law of Treaties 1969]

2.2 Acceptance and Approval

The instruments of “acceptance” or “approval” of a treaty have the same legal effect as ratification and consequently express the consent of a state to be bound by a treaty. In the practice of certain states acceptance and approval have been used instead of ratification when, at a national level, constitutional law does not require the treaty to be ratified by the head of state.

[Arts.2 (1) (b) and 14 (2), Vienna Convention on the Law of Treaties 1969]

2.3 Accession

“Accession” is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The Secretary-General of the United Nations, in his function as depositary, has also accepted accessions to some conventions before their entry into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. A treaty might provide for the accession of all other states or for a limited and defined number of states. In the absence of such a provision, accession can only occur where the negotiating states were agreed or subsequently agree on it in the case of the state in question.

[Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969]

2.4 Act of Formal Confirmation

“Act of formal confirmation” is used as an equivalent for the term “ratification” when an international organization expresses its consent to be bound to a treaty.

[Arts.2 (1) (b bis) and 14, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations 1986]

2.5 Amendment

The term “amendment” refers to the formal alteration of treaty provisions affecting all the parties to the particular agreement. Such alterations must be effected with the same formalities that attended the original formation of the treaty. Many multilateral treaties lay down specific requirements to be satisfied for amendments to be adopted. In the absence of such provisions, amendments require the consent of all the parties.

[Art.40, Vienna Convention of the Law of Treaties 1969]

2.6 Authentication

The term “authentication” refers to the procedure whereby the text of a treaty is established as authentic and definitive. Once a treaty has been authenticated, states cannot unilaterally change its provisions. If states which negotiated a given treaty do not agree on specific procedures for authentication, a treaty will usually be authenticated by signature, signature ad referendum or the initialling by the representatives of those states.

[Art.10, Vienna Convention on the Law of Treaties 1969]

2.7 Correction of Errors

If, after the authentication of a text, the signatory and contracting states are agreed that it contains an error, it can be corrected by initialling the corrected treaty text, by executing or exchanging an instrument containing the correction or by executing the corrected text of the whole treaty by the same procedure as in the case of the original text. If there is a depositary, the depositary must communicate the proposed corrections to all signatory and contracting states. In the UN practice, the Secretary-General, in his function as depositary, informs all parties to a treaty of the errors and the proposal to correct it. If, on the expiry of an appropriate time-limit, no objections are raised by the signatory and contracting states, the depositary circulates a process-verbal of rectification and causes the corrections to be effected in the authentic text(s).

[Art.79, Vienna Convention on the Law of Treaties 1969]

2.8 Declarations

Sometimes states make “declarations” as to their understanding of some matter or as to the interpretation of a particular provision. Unlike reservations, declarations merely clarify the state’s position and do not purport to exclude or modify the legal effect of a treaty. Usually, declarations are made at the time of the deposit of the corresponding instrument or at the time of signature.

2.9 Definitive Signature

When the treaty is not subject to ratification, acceptance or approval, “definitive signature” establishes the consent of the state to be bound by the treaty. Most bilateral treaties dealing with more routine and less politicized matters are brought into force by definitive signature, without recourse to the procedure of ratification.

[Art.12, Vienna Convention on the Law of Treaties 1969]

2.10 Deposit

After a treaty has been concluded, the written instruments, which provide formal evidence of consent to be bound, and also reservations and declarations, are placed in the custody of a depositary. Unless the treaty provides otherwise, the deposit of the instruments of ratification, acceptance, approval or accession establishes the consent of a state to be bound by the treaty. For treaties with a small number of parties, the depositary will usually be the government of the state on whose territory the treaty was signed. Sometimes various states are chosen as depositaries. Multilateral treaties usually designate an international organization or the Secretary-General of the United Nations as depositaries. The depositary must accept all notifications and documents related to the treaty, examine whether all formal requirements are met, deposit them, register the treaty and notify all relevant acts to the parties concerned.

[Arts.16, 76 and 77, Vienna Convention on the Law of Treaties 1969]

2.11 Entry into Force

Typically, the provisions of the treaty determine the date on which the treaty enters into force. Where the treaty does not specify a date, there is a presumption that the treaty is intended to come into force as soon as all the negotiating states have consented to be bound by the treaty. Bilateral treaties may provide for their entry into force on a particular date, upon the day of their last signature, upon exchange of the instruments of ratification or upon the exchange of notifications. In cases where multilateral treaties are involved, it is common to provide for a fixed number of states to express their consent for entry into force. Some treaties provide for additional conditions to be satisfied, e.g., by specifying that a certain category of states must be among the consenters. The treaty may also provide for an additional time period to elapse after the required number of countries have expressed their consent or the conditions have been satisfied. A treaty enters into force for those states which gave the required consent. A treaty may also provide that, upon certain conditions having been met, it shall come into force provisionally.

[Art.24, Vienna Convention on the Law of Treaties 1969]

2.12 Exchange of Letters/Notes

States may express their consent to be bound by an “exchange of letters/notes”. The basic characteristic of this procedure is that the signatures do appear not on one letter or note but on two separate letters or notes. The agreement therefore lies in the exchange of both letters and notes, each of the parties having in their possession one letter or note signed by the representative of the other party. In practice, the second letter or note, usually the letter or note in response, will typically reproduce the text of the first. In a bilateral treaty, letters or notes may also be exchanged to indicate that all necessary domestic procedures have been completed.

[Art.13, Vienna Convention on the Law of Treaties 1969]

2.13 Full Powers

“Full powers” means a document emanating from the competent authority of a state designating a person or persons to represent the state for negotiating, adopting, authenticating the text of a treaty, expressing the consent of a state to be bound by a treaty, or for accomplishing any other act with respect to that treaty. Heads of State, Heads of Government and Ministers for Foreign Affairs are considered as representing their state for the purpose of all acts relating to the conclusion of a treaty and do not need to present full powers. Heads of diplomatic missions do not need to present full powers for the purpose of adopting the text of a treaty between the accrediting state and the state to which they are accredited. Likewise, representatives accredited by states to an international conference or to an international organization or one of its organs do not need to present full powers for the purpose of adopting the text of a treaty in that conference, organization or organ.

[Art.2 (1) (c) and Art.7 Vienna Convention on the Law of Treaties 1969]

2.14 Modification

The term “modification” refers to the variation of certain treaty provisions only as between particular parties of a treaty, while in their relation to the other parties the original treaty provisions remain applicable. If the treaty is silent on modifications, they are allowed only if the modifications do not affect the rights or obligations of the other parties to the treaty and do not contravene the object and the purpose of the Treaty.

[Art.41, Vienna Convention on the Law of Treaties 1969]

2.15 Notification

The term “notification” refers to a formality through which a state or an international organization communicates certain facts or events of legal importance. Notification is increasingly resorted to as a means of expressing final consent. Instead of opting for the exchange of documents or deposit, states may be content to notify their consent to the other party or to the depository. However, all other acts and instruments relating to the life of a treaty may also call for notifications.

[Arts.16 (c), 78 etc, Vienna Convention on the Law of Treaties 1969]

2.16 Objection

Any signatory or contracting state has the option of objecting to a reservation, inter alia, if, in its opinion, the reservation is incompatible with the object and purpose of the treaty. The objecting state may further declare that its objection has the effect of precluding the entry into force of the treaty as between objecting and reserving states.

[Art.20-23, Vienna Convention on the Law of Treaties 1969]

2.17 Provisional Application

A treaty or a part of a treaty can be applied provisionally, if the treaty itself so provides or if the contracting parties have in some other manner so agreed. The provisional application ends once the treaty enters into force.

[Art.25, Vienna Convention on the Law of Treaties 1969]

2.18 Ratification

Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties the usual procedure is for the depository to collect the ratifications of all states, keeping all parties informed of the situation. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty.

[Arts.2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969]

2.19 Registration and Publication

Article 102 of the Charter of the United Nations provides that “every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it”. Treaties or agreements that are not registered cannot be invoked before any organ of the United Nations. Registration promotes transparency and the availability of texts of treaties to the public. Article 102 of the Charter and its predecessor, Article 18 of the Pact of the League of Nations, have their origin in one of Woodrow Wilson’s Fourteen Points in which he outlined his idea of the League of Nations: “Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always openly and in the public view”.

[Art.80, Vienna Convention on the Law of Treaties 1969]

2.20 Reservation

A reservation is a declaration made by a state by which it purports to exclude or alter the legal effect of certain provisions of the treaty in their application to that state. A reservation enables a state to accept a multilateral treaty as a whole by giving it the possibility not to apply certain provisions with which it does not want to comply.

Reservations can be made when the treaty is signed, ratified, accepted, approved or acceded to. Reservations must not be incompatible with the object and the purpose of the treaty. Furthermore, a treaty might prohibit reservations or only allow for certain reservations to be made.

[Arts.2 (1) (d) and 19-23, Vienna Convention of the Law of Treaties 1969]

2.21 Revision

Revision has basically the same meaning as amendment. However, some treaties provide for a revision additional to an amendment (i.e., Article 109 of the Charter of the United Nations). In that case, the term “revision” refers to an overriding adoption of the treaty to changed circumstances, whereas the term “amendment” refers only to a change of singular provisions.

2.22 Signature ad referendum

A representative may sign a treaty “ad referendum”, i.e., under the condition that the signature is confirmed by his state. In this case, the signature becomes definitive once it is confirmed by the responsible organ.

[Art.12 (2) (b), Vienna Convention on the Law of Treaties 1969]

2.23 Signature Subject to Ratification, Acceptance or Approval

Where the signature is subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. However, it is a means of authentication and expresses the willingness of the signatory state to continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.

[Arts.10 and 18, Vienna Convention on the Law of Treaties 1969]

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CHAPTER 4

REPORTING STATUS OF NAMIBIA

CONVENTION/COVENANT	REPORTING ROUND	DATE DUE	DATE SUBMITTED	OVERDUE
CAT - Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	1	12/27/1995	23/08/1996	Submitted
	2	12/27/1999	-	15 years
	3	27/12/2003	-	11 years
CCPR - International Covenant on Civil and Political Rights	1	27/02/1996	15/10/2003	Submitted
	2	01/08/2008	13/10/2014	Submitted
CEDAW - Convention on the Elimination of All Forms of Discrimination against Women	1	23/12/1993	04/11/1996	Submitted
	2+3	23/12/2001	24/03/2005	Submitted
	4+5	23/12/2009	23/07/2013	Submitted
CERD - International Convention on the Elimination of All Forms of Racial Discrimination	1	11/12/1983	09/12/1983	Submitted
	2 and 3	11/12/1985	03/12/1987	Submitted
	4,5,6 and 7	11/12/1989	02/11/1995	Submitted
	ROI	11/12/2005	-	-
	8,9,10,11 and 12	11/12/2007	17/07/2007	Submitted
	13,14 and 15	31/07/2012	13/10/2014	Submitted
CESCR - International Covenant on Economic, Social and Cultural Rights	1(initial report)	30/06/1997	13/10/2014	Submitted
	2	30/06/2002	-	13 years
	3	30/06/2007	-	8 years
CRC - Convention on the Rights of the Child	1	29/10/1992	21/12/1992	Submitted
	2-3	29/10/1997	06/11/2009	Submitted
	4-5	29/10/2017	-	
CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	1 (initial report)	16/05/2004	-	11 years
CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography	1 (initial report)	16/05/2004	-	11 years
CRPD - Convention on the Rights of Persons with Disabilities	1 (initial report)	03/06/2010	-	5 years

PART 2

International Human Rights Instruments Ratified by Namibia and Concluding Observations by Committees

- **United Nations Charter (UN Charter)**

UNITED NATIONS CHARTER

Introductory Note

The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. The Statute of the International Court of Justice is an integral part of the Charter.

Amendments to Articles 23, 27 and 61 of the Charter were adopted by the General Assembly on 17 December 1963 and came into force on 31 August 1965. A further amendment to Article 61 was adopted by the General Assembly on 20 December 1971, and came into force on 24 September 1973. An amendment to Article 109, adopted by the General Assembly on 20 December 1965, came into force on 12 June 1968.

The amendment to Article 23 enlarges the membership of the Security Council from eleven to fifteen. The amended Article 27 provides that decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members (formerly seven) and on all other matters by an affirmative vote of nine members (formerly seven), including the concurring votes of the five permanent members of the Security Council.

The amendment to Article 61, which entered into force on 31 August 1965, enlarged the membership of the Economic and Social Council from eighteen to twenty-seven. The subsequent amendment to that Article, which entered into force on 24 September 1973, further increased the membership of the Council from twenty-seven to fifty-four.

The amendment to Article 109, which relates to the first paragraph of that Article, provides that a General Conference of Member States for the purpose of reviewing the Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members (formerly seven) of the Security Council.

Paragraph 3 of Article 109, which deals with the consideration of a possible review conference during the tenth regular session of the General Assembly, has been retained in its original form in its reference to a “vote, of any seven members of the Security Council”, the paragraph having been acted upon in 1955 by the General Assembly, at its tenth regular session, and by the Security Council.

Preamble

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

CHAPTER I

PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and, justice, are not endangered.
4. 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.
5. 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.
6. 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.
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

CHAPTER II

MEMBERSHIP

Article 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of 1 January 1942, sign the present Charter and ratify it in accordance with Article 110.

Article 4

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.
2. The admission of any such state to membership in the Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Article 5

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

Article 6

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council

CHAPTER III**ORGANS****Article 7**

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.
2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

Article 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

CHAPTER IV**THE GENERAL ASSEMBLY****COMPOSITION****Article 9**

1. The General Assembly shall consist of all the Members of the United Nations.
2. Each Member shall have not more than five representatives in the General Assembly.

FUNCTIONS AND POWERS**Article 10**

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

1. The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.
2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.
3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.
4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.
2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

Article 13

1. The General Assembly shall initiate studies and make recommendations for the purpose of:
 - a. promoting international co-operation in the political field and encouraging the progressive development of international law and its codification;
 - b. promoting international co-operation in the economic, social, cultural, educational, and health fields, an assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.
2. The further responsibilities, functions and powers of the General with respect to matters mentioned in paragraph) above are set forth in Chapters IX and X.

Article 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

Article 15

1. The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.
2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

Article 16

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

Article 17

1. The General Assembly shall consider and approve the budget of the Organization.
2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.
3. The Assembly shall consider and approve any financial and budgetary arrangements with specialize agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

VOTING

Article 18

1. Each member of the General Assembly shall have one vote.
2. Decisions of the General Assembly on important questions shall be made by a two- thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.
3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

Article 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond of the Member.

PROCEDURE

Article 20

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

Article 21

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

Article 22

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

CHAPTER V

THE SECURITY COUNCIL

COMPOSITION

Article 23

1. The Security Council shall consist of fifteen Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.
2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members after the increase of the membership of the Security Council from eleven to fifteen, two of the four additional members shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.
3. Each member of the Security Council shall have one representative.

FUNCTIONS AND POWERS

Article 24

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.
2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.
3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Article 25

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Article 26

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

VOTING

Article 27

1. Each member of the Security Council shall have one vote.
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.
3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

PROCEDURE

Article 28

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at times at the seat of the Organization.
2. The Security Council shall hold meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.
3. The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work.

Article 29

The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

Article 30

The Security Council shall adopt its own rules of procedure, including the method of selecting its President.

Article 31

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

Article 32

Any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations.

CHAPTER VI

PACIFIC SETTLEMENT OF DISPUTES

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.
2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.
3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.
2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.
3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.
2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

CHAPTER VII**ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION****Article 39**

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 4 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.
2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.
3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council.

They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Article 44

When Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfilment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.
2. The Military Staff Committee consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member its work.
3. The Military Staff Committee be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.
4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish sub-committees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.
2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

CHAPTER VIII

REGIONAL ARRANGEMENTS

Article 52

1. Nothing in the present Charter the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.
2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.
3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.
4. This Article in no way the application of Articles 34 and 35.

Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.
2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

CHAPTER IX

INTERNATIONAL ECONOMIC AND SOCIAL CO-OPERATION

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

Article 57

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.
2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

Article 58

The Organization shall make recommendations for the co-ordination of the policies and activities of the specialized agencies.

Article 59

The Organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

Article 60

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

CHAPTER X**THE ECONOMIC AND SOCIAL COUNCIL****COMPOSITION****Article 61**

1. The Economic and Social Council shall consist of fifty-four Members of the United Nations elected by the General Assembly.
2. Subject to the provisions of paragraph 3, eighteen members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.
3. At the first election after the increase in the membership of the Economic and Social Council from twenty-seven to fifty-four members, in addition to the members elected in place of the nine members whose term of office expires at the end of that year, twenty-seven additional members shall be elected. Of these twenty-seven additional members, the term of office of nine members so elected shall expire at the end of one year, and of nine other members at the end of two years, in accordance with arrangements made by the General Assembly.
4. Each member of the Economic and Social Council shall have one representative.

FUNCTIONS AND POWERS**Article 62**

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.
2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.
3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.
4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

Article 63

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.
2. It may co-ordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

Article 64

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies and may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.
2. It may communicate its observations on these reports to the General Assembly.

Article 65

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

Article 66

1. The Economic and Social Council shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly.
2. It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.
3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

VOTING**Article 67**

1. Each member of the Economic and Social Council shall have one vote.
2. Decisions of the Economic and Social Council shall be made by a majority of the members present and voting.

PROCEDURE**Article 68**

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

Article 69

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

Article 70

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies.

Article 71

The Economic and Social Council may make suitable arrangements for consultation 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 organizations after consultation with the Member of the United Nations concerned.

Article 72

1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its President.
2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

CHAPTER XI**DECLARATION REGARDING NON-SELF-GOVERNING TERRITORIES****Article 73**

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

- a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

- b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
- c. to further international peace and security;
- d. to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and
- e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

CHAPTER XII

INTERNATIONAL TRUSTEESHIP SYSTEM

Article 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed there under by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

Article 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

- a. to further international peace and security;
- b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
- c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
- d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

Article 77

1. The trusteeship system shall apply to such territories in the following categories as may be placed there under by means of trusteeship agreements:
 - a. territories now held under mandate;
 - b. territories which may be detached from enemy states as a result of the Second World War; and
 - c. territories voluntarily placed under the system by states responsible for their administration.
2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trustee-ship system and upon what terms.

Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

Article 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

Article 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.
2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

Article 81

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.

Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.
2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.
3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

Article 84

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defence and the maintenance of law and order within the trust territory.

Article 85

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.
2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

CHAPTER XIII**THE TRUSTEESHIP COUNCIL****COMPOSITION****Article 86**

1. The Trusteeship Council shall consist of the following Members of the United Nations:
 - a. those Members administering trust territories;
 - b. such of those Members mentioned by name in Article 23 as are not administering trust territories; and
 - c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.
2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

FUNCTIONS AND POWERS

Article 87

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

- a. consider reports submitted by the administering authority;
- b. accept petitions and examine them in consultation with the administering authority;
- c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and
- d. take these and other actions in conformity with the terms of the trusteeship agreements.

Article 88

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

VOTING

Article 89

1. Each member of the Trusteeship Council shall have one vote.
2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

PROCEDURE

Article 90

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.
2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

CHAPTER XIV

THE INTERNATIONAL COURT OF JUSTICE

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93

1. All Members of the United Nations are *facto* parties to the Statute of the International Court of Justice.
2. A state which is not of the United Nations may become a party to the Statute of the International Court of Justice on to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Article 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.
2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give to the judgment.

Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Article 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.
2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

CHAPTER XV**THE SECRETARIAT****Article 97**

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

Article 98

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

Article 99

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

Article 100

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might on their position as international officials responsible only to the Organization.
2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.
2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.
3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

CHAPTER XVI**MISCELLANEOUS PROVISIONS****Article 102**

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.
2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

Article 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Article 104

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

Article 105

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.
2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.
3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

CHAPTER XVII**TRANSITIONAL SECURITY ARRANGEMENTS****Article 106**

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, 30 October 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

Article 107

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

CHAPTER XVIII**AMENDMENTS****Article 108**

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

Article 109

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council. Each Member of the United Nations shall have one vote in the conference.
2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including the permanent members of the Security Council.
3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

CHAPTER XIX

RATIFICATION AND SIGNATURE

Article 110

1. The present Charter shall be ratified by the signatory states in accordance with their respective constitutional processes.
2. The shall be deposited with the Government of the United States of America, which shall notify the signatory states of each deposit as well as the Secretary-General of the Organization when he has been appointed.
3. The present Charter shall come into force upon the deposit of by the Republic of China, France, the Union of Soviet Socialist, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory states. A protocol of the deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory states.
4. The states signatory to the present Charter which ratifies it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications.

Article 111

The present Charter, of which the Chinese, French, Russian, English, and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory states.

IN FAITH WHEREOF the representatives of the Governments of the United Nations have signed the present Charter. DONE at the city of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

PART 2

International Human Rights Instruments Ratified by Namibia and Concluding Observations by Committees

- **Universal Declaration of Human Rights**

THE UNITED NATIONS

Universal Declaration of Human Rights

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights the full text of which appears in the following pages. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and “to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories.”

Preamble

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

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission, which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

-End-

PART 2

International Human Rights Instruments Ratified by Namibia and Concluding Observations by Committees

- **Convention Against Torture and other Cruel and Inhuman or Degrading Treatment or Punishment (CAT)**
- **Concluding observations of the Committee against Torture: Namibia. 06/05/97.**

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
2. This article is without prejudice to any international instrument or national legislation, which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. 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.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

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.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person, which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties, which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
 - (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
 - (b) When the alleged offender is a national of that State;
 - (c) When the victim is a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.
3. This Convention accordance with internal law does not exclude any criminal jurisdiction exercised in.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances, which warrant his detention. The State, which makes the preliminary inquiry contemplated in paragraph 2 of this article, shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.
3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party, which makes extradition conditional on the existence of a treaty, receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties, which do not make extradition conditional on the existence of a treaty, shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall 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.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party 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 arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

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 in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. 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. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation, which may exist under national law.

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

1. Each State Party shall undertake 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 I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law, which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter Referred to as the Committee), which shall carry out the functions hereinafter, provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.
3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute

a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties, which have nominated them, and shall submit it to the States Parties.
5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if re-nominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.
6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.
7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties. (Amendment (see General Assembly resolution 47/111 of 16 December 1992).

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
 - (a) Six members shall constitute a quorum;
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.
3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.
4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article. (Amendment (see General Assembly resolution 47/111 of 16 December 1992).

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.
2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.
3. Each report shall be considered by the Committee, which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.
4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

Article 20

1. If the Committee receives reliable information, which appears to it to contain well-founded indications that torture is being systematically practiced in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions, which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of the article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party, which has made a declaration recognizing in regard to itself the competence of the Committee. The Committee under this article shall deal with no communication if it concerns a State Party, which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;
 - (a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;
 - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
 - (c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;
 - (d) The Committee shall hold closed meetings when examining communications under this article;
 - (e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;
 - (f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
 - (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;
 - (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
 - (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
 - (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. The States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties, shall deposit such declarations. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party, which has not made such a declaration.
2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this

article to the attention of the State Party to this Convention which has made a declaration under paragraph I and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:
 - (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
 - (b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
6. The Committee shall hold closed meetings when examining communications under this article.
7. The Committee shall forward its views to the State Party concerned and to the individual.
8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary General, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph I (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary General shall thereupon communicate the proposed amendment to the States Parties with a

request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties, which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments, which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention, which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation.
3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.
3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

CONCLUDING OBSERVATIONS – COMMITTEE AGAINST TORTURE

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

Concluding observations of the Committee against Torture: Namibia 06/05/97.

A/52/44, paras. 227-252. (*Concluding Observations/Comments*)

Convention Abbreviation: CAT

COMMITTEE AGAINST TORTURE CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Conclusions and recommendations of the Committee against Torture

L. Namibia

227. The Committee considered the initial report of Namibia (CAT/C/28/Add.2) at its 293rd and 294th meetings, on 6 May 1997 (CAT/C/SR.293 and 294/Add.1), and adopted the following conclusions and recommendations.

1. Introduction

228. The Committee thanks the State party for submitting the initial report and for its responses to the questions and concerns expressed by the Committee.

2. Positive aspects

229. The Committee welcomes the goodwill shown by Namibia in its accession to the Convention against Torture and other instruments of international human rights and humanitarian law.

230. The Committee welcomes the Government's growing awareness of the importance of human rights, as demonstrated by the fact that the Government now permits nongovernmental organizations and diplomatic officers regular access to prisons and prisoners and that local non-governmental organizations operate freely, dealing openly with a variety of human rights issues.

231. The Committee expresses its satisfaction with the explicit proclamation in the Namibian Constitution that no person shall be subjected to torture or cruel, inhuman or degrading treatment or punishment and that testimony obtained under torture is not admissible as evidence in a Namibian court of law.

232. The Committee welcomes the improvement in Namibia's asylum and refugee policy according to which asylum seekers from other African countries are permitted to enter the country and are granted refugee status.

3. Factors and difficulties impeding the application of the provisions of the Convention

233. The Committee is aware that Namibia, which only became an independent State in 1990, is confronted with the legacy of the pre-independence period which hinders desirable efforts to fully harmonize the Namibian legal order with the requirements of international humanitarian law instruments.

234. The Committee has tried to take this fact into consideration in formulating its conclusions and recommendations. However, it must be emphasized that no exceptional circumstances can ever provide a justification for failure to comply with certain terms of the Convention against Torture.

4. Subjects of concern

235. The Committee is concerned that Namibia has not integrated, as required by articles 2 (1) and 4 (1) of the Convention, the specific definition of the crime of torture into its penal legislation in terms legally consistent with the definition contained in article 1 of the Convention. In the absence of a strict legal definition of torture and other offences and of a precise description of appropriate and corresponding punishment for torture and other offences, it is impossible for the Namibian courts to adhere to the principle of legality (*nullum crimen, nulla poena sine lege previa*) and to article 4 of the Convention.

236. The Committee is also concerned about the alleged cases of torture referred to specifically during the discussion of the State party's report.

237. The Committee deeply regrets that in many cases, because of the lack of judicial personnel, pre-trial detention extends for up to one year.

238. The Committee is concerned that although torture and physical assaults by the Namibian police have been reduced considerably since independence, treatment which falls under the category of torture or cruel, inhuman or degrading treatment or punishment still occurs in certain areas of the country.

239. The Committee is also concerned at the State party's failure in many cases to promptly and impartially investigate and prosecute those responsible for past and present acts of torture or cruel, inhuman or degrading treatment. Namibia also fails to institute consistently disciplinary proceedings against public officials responsible for acts of torture or ill-treatment.

240. The Committee expresses concern that there are no legal instruments to deal specifically with compensating victims of torture or other ill-treatment. The existing procedures for obtaining redress, compensation and rehabilitation seem to be inadequate and in many cases ineffective. Moreover, they limit the right to redress and compensation to the victim of torture, failing to give, in accordance with article 14 (1) of the Convention, the same standing to the deceased victim's dependents.

5. Recommendations

241. Namibia should enact a law defining the crime of torture in terms of article 1 of the Convention and should legally integrate this definition into the Namibian substantive and procedural criminal law system, taking especially into account:

- (a) the need to define torture as a specific offence committed by or at the instigation of or with the consent of a public official (*delictum proprium*) with the special intent to extract a confession or other information, to arbitrarily punish, to intimidate, to coerce or to discriminate;
- (b) the need to legislate for complicity in torture and attempts to commit torture as equally punishable;
- (c) the need to exclude the legal applicability of all justification in cases of torture;
- (d) the need to exclude procedurally all evidence obtained by torture in criminal and all other proceedings except in proceedings against the perpetrator of torture himself; and
- (e) the need to legislate for and enforce prompt and impartial investigation into any substantiated allegations of torture.

242. Namibia should enact laws, particularly prohibiting torture, as required under the Convention against Torture and other human rights agreements binding on Namibia, in fields that are not yet regulated. Existing national laws should be further reviewed in the light of the Convention and protection of human rights in general.

243. Education of members of the Police Department, the National Defence Force, the Prisons Service, other law enforcement personnel and medical officers regarding the prohibition of torture and other cruel, inhuman and degrading treatment should be fully included in their training, in accordance with article 10 of the Convention, with special emphasis on the definition of torture as contained in article 1 of the Convention and also emphasizing the criminal liability of those who commit acts of torture.

244. Independent governmental bodies consisting of persons of high moral standing should be appointed to take over the inspection of detention centres and places of imprisonment. The Government should also establish an independent authority to deal with complaints against members of the Police Department.

245. The Government should introduce measures to reduce the accumulation of criminal cases resulting in long and illegal pre-trial detention, which violates the right of defendants to be tried within a reasonable time.

246. The Government should provide the Office of the Ombudsman with the personnel and financial means to exercise its functions in the field of protection of human rights, as foreseen by the Namibian Constitution.

247. The Committee recommends that the specific allegations of ill-treatment which have been brought to its attention be investigated and that the results of such investigations be transmitted to the Committee. The Committee also recommends that the cases of disappearance of former members of the South West Africa People's Organization (SWAPO) be, according to article 12 of the Convention, promptly and impartially investigated. In all situations where reasonable grounds exist to believe that those disappearances amounted either to torture or to other forms of cruel, inhuman or degrading treatment, the dependents of the deceased victims should, according to article 14 of the Convention, be afforded fair and adequate compensation. The perpetrators of those acts should be brought to justice.

248. Traditional leaders in community courts in Namibia should either be effectively made to comply with the legal limits of their power to order pre-trial detainment of suspects or they should be stripped of their power to order such pre-trial detention.

249. The Namibian authorities should institute proper procedures in order to comply with article 3 of the Convention, i.e. to enable refugees to apply for residence in cases where substantial grounds exist for believing that they would be in danger of being subjected to torture if expelled, returned or extradited to another country.

250. The Committee recommends the prompt abolition of corporal punishment insofar as it is legally still possible under the Prisons Act of 1959 and the Criminal Procedure Act of 1977.

251. The Committee recommends that victims of torture in Namibia be given standing to institute, apart from civil action for damages, criminal procedures against the perpetrators of torture.

252. In view of the normal separation of disciplinary proceedings from criminal procedure, the Committee considers the legal dependence in Namibia of disciplinary proceedings against the perpetrator of torture upon the outcome of criminal proceedings as unnecessary.

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*Office of the United Nations High Commissioner for Human Rights
Geneva, Switzerland*

PART 2

International Human Rights Instruments Ratified by Namibia and Concluding Observations by Committees

- **International Covenant on Civil and Political Rights (ICCPR)**
- **Optional Protocol to the International Covenant on Civil and Political Rights (OP-ICCPR)**
- **Concluding observations of the Human Rights Committee: Namibia. 30/07/2004.**

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

Entry into force 23 March 1976, in accordance with Article 9

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
 - (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
 - (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any

- national service required by law of conscientious objectors;
- (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- (iv) Any work or service, which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as un-convicted persons;
3. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those, which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
 6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
 7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission, which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion, which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities.

It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

- 1. Any propaganda for war shall be prohibited by law.
- 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

- 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
- 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
- 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

- 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
- 2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
- 3. No marriage shall be entered into without the free and full consent of the intending spouses.
- 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

- 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
- 2. Every child shall be registered immediately after birth and shall have a name.
- 3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for re-nomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if re-nominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:
 - (a) Twelve members shall constitute a quorum;
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:
 - (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
 - (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party, which has made a declaration recognizing in regard to

itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party, which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

- (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State, which sent the communication an explanation, or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;
 - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
 - (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;
 - (d) The Committee shall hold closed meetings when examining communications under this article;
 - (e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;
 - (f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
 - (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;
 - (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
 - (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
 - (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.
2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter, which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;
- (b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.
2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary General of the United Nations and the States Parties concerned.
5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.
6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.
7. When the Commission has fully considered the matter, but in any event not later than twelve months after having

been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

- (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;
 - (b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;
 - (c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;
 - (d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.
8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.
 9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
 10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment, which they have accepted.

Article 52

1. Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:
 - (a) Signatures, ratifications and accessions under article 48;
 - (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

-End-

OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

**Adopted and opened for signature, ratification and accession by General Assembly resolution
2200A (XXI) of 16 December 1966
Entry into force 23 March 1976, in accordance with Article 9**

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant. Have agreed as follows:

Article 1

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.
2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.
2. The Committee shall not consider any communication from an individual unless it has ascertained that:
 - (a) The same matter is not being examined under another procedure of international investigation or settlement;
 - (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.
3. The Committee shall hold closed meetings when examining communications under the present Protocol.
4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of resolution 1514(XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.
2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.
2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph I, of the Covenant of the following particulars:

- (a) Signatures, ratifications and accessions under article 8;
- (b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;
- (c) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE: NAMIBIA 30/07/2004 CCPR/CO/81/NAM. (Concluding Observations/Comments)

Convention Abbreviation: CCPR
Human Rights Committee
81st session

UNEDITED VERSION
CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 40 OF THE COVENANT
Concluding observations of the Human Rights Committee
Namibia

1. The Committee considered the initial report of Namibia (CCPR/C/NAM/2003/1) at its 2200th, 2201st and 2202nd meetings (CCPR/C/SR.2200, CCPR/C/SR.2201 and CCPR/C/SR.2202) on 14 and 15 July 2004, and adopted the following concluding observation at its 2216th meeting (CCPR/C/SR.2216) on 26 July 2004.

A. Introduction

2. The Committee welcomes the initial report of Namibia, although it regrets the delay of over eight years in its submission. The Committee encourages the State party to use the Committee's guidelines for the preparation of the next periodic report, and to include more factual information on the actual implementation of the Covenant.

B. Positive aspects

3. The Committee notes the efforts made by the State party in the establishment and development of democratic institutions since independence in 1990. The Committee commends the State party for doing so in a spirit of cooperation with non- governmental organizations and international bodies.
4. The Committee commends the State party for having abolished, at the constitutional level, the death penalty for all crimes (art. 6).
5. The Committee welcomes the fact that the Constitution envisages that general rules of international law and international agreements binding on the State party are part of the domestic law and appreciates the information on the use made by the State party's courts in recent cases of provisions of the Covenant (art. 2).

C. Principal subjects of concern and recommendations

6. The Committee is concerned that article 144 of the Namibian Constitution may negatively affect the full implementation of the Covenant at the domestic level (art. 2).

The State party should reconsider the status of the Covenant vis-à-vis domestic law in order to ensure the effective implementation of the rights enshrined in the Covenant.

7. The Committee welcomes the establishment of the institution of the Ombudsman. It notes that the legislation concerning the Ombudsman requires further strengthening (art. 2).

The State party should strengthen the legislative mandate of the institution of the Ombudsman and provide further resources to it, so that it may be in a position to fulfil its mandate efficiently.

8. The Committee acknowledges the information provided by the State party on the implementation of its Views adopted under the Optional Protocol, with regard to cases No. 760/1997 (Diergaardt et al. v. Namibia) and No. 919/2000 (Müller and Engelhard v. Namibia). It nevertheless notes with concern the absence of a mechanism to implement the Committee's Views adopted under the Optional Protocol (art. 2).

The State party should establish a mechanism to implement the Committee's Views under the Optional Protocol.

9. The Committee welcomes the Married Persons Equality Act, which eliminates discrimination between spouses. It nevertheless remains concerned by the high number of customary marriages which continue to be unregistered. It is also concerned about the deprivation of rights that women and children experience as a consequence, in particular with regard to inheritance and land ownership (arts. 3, 23 and 26).

The State party should take effective measures to encourage the registration of customary marriages and to grant the spouses and children of registered customary marriages the same rights as those married under civil law. The future Bill on Intestate Inheritance and Succession and the future Bill on Recognition of Customary Law Marriages should take these considerations into account.

10. The Committee appreciates the efforts undertaken by the State party to combat HIV/AIDS, and to provide wider sexual education in this regard. However, these efforts are not adequate to the magnitude of the problem (art. 6).
The State party should pursue its efforts to protect its population from HIV/AIDS. It should adopt comprehensive measures encouraging and facilitating greater number of persons suffering from the disease to obtain adequate antiretroviral treatment.

11. The Committee notes with concern that the crime of torture is not defined in domestic criminal law and is still considered a common law offence to be charged as assault or *crimen injuria* (art. 7).
The State party should, as a matter of priority, make torture a specific statutory crime.
12. Although the Committee notes the decrease in reported violations of human rights in the Northern parts of Namibia, it regrets that no extensive fact-finding initiatives have been undertaken accounting for alleged acts of torture, extra-judicial killings and disappearances (arts. 6, 7 and 9).
The State party should establish an effective mechanism for the investigation and punishment of such acts.
13. The Committee appreciates the efforts undertaken by the State party in increasing the number of magistrates throughout the country, so as to ensure strict observance of the 48-hour rule for bringing the suspect before the trial judge. Nevertheless, it remains concerned that cases of prolonged pre-trial detention not compatible with article 9 of the Covenant may continue to occur.
The State party should continue its efforts to ensure respect of the 48-hour rule and should monitor closely all those cases where this rule is not respected.
14. While the Committee takes note that, at present, magistrates are mandated to carry out independent inspections of detention centres, the Committee reiterates the need for an additional external and independent body entrusted with the functions of visiting the centres and receiving and investigating complaints emanating from such centres (arts. 9 and 10). A strong and independent mechanism is also required for the investigation of allegations of acts of police brutality in general.
The State party should consider establishing an independent body which would be able to visit all places of detention and conduct investigations into violations of rights and abuses in prisons and places of detention, and to investigate acts of police brutality in general.
15. The Committee takes note of the reports that certain media personnel and journalists have faced harassment, and that these allegations have not been investigated either promptly or thoroughly by the competent authorities (arts. 18 and 19).
The State party should take appropriate steps to prevent threats to and harassment of media personnel and journalists, and ensure that such cases are investigated promptly and with the requisite thoroughness and that suitable action is taken against those responsible.
16. The Committee notes with appreciation the decision of the Supreme Court in *The State v John Sikundeka Samboma and others* (known as the Caprivi treason trial) reaffirming the right of persons in Namibia to legal aid. However, the Committee is concerned that access to this right is not properly ensured in practice (art. 14).
The State party should take measures to strengthen the implementation of the legal aid scheme and ensure provision of legal aid to individuals entitled to receive it, in particular by augmenting the availability of finances.
17. The Committee is concerned that the State party is not fully complying with the obligation to ensure the right to be tried without undue delay as consecrated in article 14, paragraph 3(c) of the Covenant, especially taking into account the backlog of cases that remain pending.
The State party should undertake urgent steps to guarantee that trials take place within a reasonable period of time. Special measures should be taken to address the backlog of cases, in particular through the necessary increase in the number of judges.
18. The Committee expresses its concern about the absence of any mechanism and procedure for the removal of judges on the basis of misconduct (art. 14).
The State party should establish an effective and independent mechanism and provide for a proper procedure for the impeachment and removal of judges found guilty of misconduct.
19. The Committee takes note of the draft Child Status Bill, which seeks to enable children born out of wedlock to have the same rights as those born within wedlock. The Committee, however, notes with concern that children do not get the type of special protection which they require in the area of administration of justice, in particular in the criminal justice system (arts. 10, 14 and 24).
The State party should take measures to establish an appropriate juvenile criminal justice system in order to ensure that juveniles are treated in a manner commensurate with their age.
20. While the Committee commends the State party for the enactment of the Combating Domestic Violence Act which criminalises domestic violence, the Committee regrets that, despite wide prevalence of domestic violence, so far only 62 persons have been prosecuted and no victims have been compensated (art. 23).
The State party should encourage further use of this Act, especially by training the police force and sensitising it to the needs of victims. Additional special shelters for those suffering from domestic violence should be created.
21. While the Committee notes the reason why the State party recognizes only one official language, it is concerned that those persons who do not speak the official language may be discriminated against in the administration of public affairs and in the administration of justice (arts. 25, 26 and 27).
The State party should take measures to ensure, to the extent possible, that persons who only speak non-official languages used widely by the population are not denied access to public service. It should undertake measures to protect the use of such languages.

22. The Committee notes the absence of anti-discrimination measures for sexual minorities, such as homosexuals (arts. 17 and 26).

The State party should consider, while enacting anti-discrimination legislation, introducing the prohibition of discrimination on grounds of sexual orientation.

D. Dissemination of information about the Covenant (art. 2)

23. The second periodic report should be prepared in accordance with the Committee's reporting guidelines (CCPR/C/66/GU/Rev.1) and be submitted by 1 August 2008. The State party should pay particular attention to providing practical information on the implementation of legal standards existing in the country. The Committee requests that the text of the present concluding observations be published and disseminated throughout the country.
24. In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide information, within one year, on its response to the Committee's recommendations contained in paragraphs 9 and 11. The Committee requests the State party to provide information in its next report on the other recommendations made and on the implementation of the Covenant as a whole.

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*Office of the United Nations High Commissioner for Human Rights
Geneva, Switzerland*

PART 2

International Human Rights Instruments Ratified by Namibia and Concluding Observations by Committees

- **International Covenant on Economic, Social and Cultural Rights (ICESCR)**

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

PREAMBLE

The States Parties to the present Covenant

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all the members of the human family is the foundation of freedom, justice and peace in world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights and freedom,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant 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 present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by

law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The Steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

1. Remuneration, which, provides all workers, as a minimum, with:
 - Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - A decent living for themselves and their families in accordance with the provisions of the present Covenant;
2. Safe and healthy working conditions;
3. Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
4. Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure:
 - The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - The right of trade unions to establish national federations of confederations and the right of the latter to form or join international trade-union organizations;
 - The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - The right to strike provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of

1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in the Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the international co-operation based on free consent.
2. The States Parties to present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
 - To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
 - Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - The improvement of all aspects of environmental and industrial hygiene;
 - The prevention, treatment and control epidemic, endemic, occupational and other diseases;
 - The creation of conditions, which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education

shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - Primary education shall be compulsory and available free to all;
 - Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by ever appropriate means, and in particular by the progressive introduction of free education;
 - Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
 - No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present covenant recognize the right of everyone:
 - To take part in cultural life;
 - To enjoy the benefits of scientific progress and its applications;
 - To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.
 - 1.1 All reports shall be submitted to Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

- 1.2 The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts there from, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts there from, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.
3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment, which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

1. Signatures, ratifications and accessions under article 26;
2. The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

-End-

PART 2

International Human Rights Instruments Ratified by Namibia and Concluding Observations by Committees

- **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**
- **Concluding Observations of the Committee on the Elimination of Racial Discrimination: Namibia 22/09/08**
- **Concluding Observations of the Committee on the Elimination of Racial Discrimination: Namibia 27/9/96**

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

**G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47,
U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force Jan.**

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in cooperation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,
Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,
Have agreed as follows:

PART I

Article I

1. In this Convention, the term “racial discrimination” shall mean 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.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.
4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties 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, and, to this end:
 - (a) Each State Party undertakes 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;
 - (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
 - (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
 - (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
 - (e) Each State Party undertakes 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.
2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
 - (i) The right to freedom of movement and residence within the border of the State;
 - (ii) The right to leave any country, including one's own, and to return to one's country;
 - (iii) The right to nationality;
 - (iv) The right to marriage and choice of spouse;
 - (v) The right to own property alone as well as in association with others;
 - (vi) The right to inherit;
 - (vii) The right to freedom of thought, conscience and religion;
 - (viii) The right to freedom of opinion and expression;
 - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
 - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
 - (ii) The right to form and join trade unions;
 - (iii) The right to housing;
 - (iv) The right to public health, medical care, social security and social services;
 - (v) The right to education and training;
 - (vi) The right to equal participation in cultural activities;
- (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.

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake 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 and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

PART II

Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare

a list in alphabetical order of all persons thus nominated, indicating the States Parties, which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee;
(b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention:
 - (a) within one year after the entry into force of the Convention for the State concerned; and
 - (b) thereafter every two years and whenever the Committee so requests.
 The Committee may request further information from the States Parties.
2. The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

Article 10

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The secretariat of the Committee shall be provided by the Secretary General of the United Nations.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.
3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.
4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.
5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

Article 12

1. (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;
(b) If the States Parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.
5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.
6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.
8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

Article 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.
2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.
3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

Article 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.
2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.
3. A declaration made in accordance with paragraph 1 of this article and the name of anybody established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.
4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.
5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.
6. (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications;
(b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
7. (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged;
(b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.
8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph I of this article.

Article 15

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.
2. (a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies;
(b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in subparagraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.
3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.
4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

Article 16

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

PART III

Article 17

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall be open to accession by any State referred to in Article 17, paragraph 1, of the Convention.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary General that it does not accept it.
2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a

reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

Article 21

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary General.

Article 22

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

Article 23

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 24

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

- (a) Signatures, ratifications and accessions under articles 17 and 18;
- (b) The date of entry into force of this Convention under article 19;
- (c) Communications and declarations received under articles 14, 20 and 23;
- (d) Denunciations under article 21.

Article 25

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

UNITED NATIONS

Distr.
GENERAL
CERD/C/NAM/CO/12
19 August 2008

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-third session
28 July - 15 August 2008

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION Concluding observations of the Committee on the Elimination of Racial Discrimination

NAMIBIA

1. The Committee considered the eighth to twelfth periodic reports of Namibia (CERD/C/NAM/12), submitted in one document, at its 1878th and 1879th meetings (CERD/C/SR.1878 and CERD/C/SR.1879), held on 29 and 30 July 2008. At its 1896th meeting (CERD/C/SR.1896), held on 12 August 2008, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the eighth to twelfth periodic reports by the State party. It notes with appreciation the efforts made by the State party to comply with the guidelines for the preparation of reports and to address the issues raised by the Committee in its previous concluding observations.
3. The Committee welcomes the opportunity to resume the dialogue with the State party and expresses appreciation for the frank and sincere dialogue held with the delegation and the comprehensive responses provided to the list of issues and questions posed by Committee members.
4. Noting that the report was almost 10 years overdue when submitted, the Committee invites the State party to observe the deadlines set for the submission of its reports in the future.

B. Positive aspects

5. The Committee welcomes the commitment expressed by the State party to reconciling Namibian society and building a nation in which all communities can live in peace and harmony, irrespective of their national and ethnic origin, colour, belief or language. It acknowledges the difficulties with which the State party has been confronted in eliminating racial discrimination following decades of its institutionalization during colonial occupation. The Committee commends the State party for its critical self-assessment during the dialogue with the Committee.
6. The Committee welcomes the State party's efforts to combat segregation and racial discrimination in various areas, particularly education.
7. The Committee also welcomes the adoption of special measures in the context of the Durban Declaration and Programme of Action and, in accordance with article 1, paragraph 4, and article 2, paragraph 2, of the Convention, with the purpose of securing adequate advancement of racial, ethnic and other groups that have experienced discrimination.
8. The Committee welcomes the intention of the State party to hold a national census in the near future and notes that information obtained from such census will enable a better assessment of the implementation by the Committee and the State party itself.

C. Concerns and recommendations

9. The Committee notes with concern the paucity of socio-economic data provided in the current report and underline the importance and value it attaches to such data. The Committee recommends that the State party take all necessary measures to ensure that socio-economic data relevant for the monitoring of the Convention is available in the next report. In this connection, the Committee draws the State party's attention to paragraphs 10 to 12 of the reporting guidelines for the CERD-specific document adopted at its seventy-first session.
10. While noting with satisfaction that, according to article 144 of the Namibian Constitution, the Convention is directly applicable by Namibian courts, the Committee is concerned that the definition of racial discrimination in the Racial Discrimination Prohibition Act of 1991 is not completely consistent with article 1 of the Convention.

The Committee recommends the State party to ensure that its domestic law conforms to the Convention. The State party is also encouraged to strengthen its efforts to provide training for judges and lawyers to increase their awareness of the content and the direct applicability of the Convention at the national level.

11. While noting the establishment of a Law Reform and Development Commission which is charged with, *inter alia*, the review of discriminatory laws dating back to colonial times, the Committee reiterates its concern about the discriminatory character of some Namibian laws that remain in force, including with regard to the administration of intestate inheritance. It also remains concerned about aspects of customary laws of certain ethnic groups on personal status that discriminate against women and girls, including laws pertaining to marriage and inheritance. (arts. 2 and 5(d) (iv) and (vi))

The Committee urges the State party to review its laws with a view to removing discriminatory laws in order to provide equal protection and treatment to all persons. Recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends in particular that the State party urgently ensure that its laws, especially on marriage and inheritance, do not discriminate against women and girls of certain ethnic groups. It invites the State party to consider introducing a system which allows individuals a choice between customary law systems and the national law while ensuring that the discriminatory aspects of customary laws are not applied.

12. The Committee notes with appreciation the State party's intention to increase the budget allocated for special measures, but remains concerned that not all communities might benefit from these programmes in practice. While noting the State party's assertion that it consults the affected communities when devising special measures, it is concerned by the existing perception that these programmes are imposed without consultation and active participation of these communities. (arts. 2 (2) and 5 (c)).

The Committee encourages the State party to engage in a data-gathering exercise to ensure that special measures are designed and implemented for all beneficiary communities on the basis of their prior consultation and active participation, and that they will not result in the maintenance of unequal or separate rights for those groups after the objectives for which they were taken have been achieved.

13. The Committee notes with appreciation the legal provisions regarding the desegregation of the educational system. However, it remains concerned about the persistence of *de facto* discrimination regarding access to education, as well as the high illiteracy rate that continues to exist among marginalized parts of the population. (arts. 3 and 5(e) (v)).

The Committee urges the State party to strengthen the implementation of its laws and policies aimed at the desegregation of education. In particular, the State party should increase its efforts aimed at reducing illiteracy, especially among the most marginalized communities. It requests the State party to provide, in its next periodic report, information on the impact achieved by these measures.

14. The Committee is concerned that the 1998 Racial Discrimination Prohibition Amendment Act restricts the scope of the original law regarding the prohibition of hate speech by limiting the possibility to prosecute such acts only as *crimen injuria*. It regrets that it did not receive any information on concrete measures taken to ensure that verbal attacks on minority groups by Government officials or other actors are subject to sanctions. (art.4)

The Committee recommends that the State party review its laws in order to prevent, combat and punish hate speech with a view to upholding the provisions of article 4 of the Convention. Recalling its general recommendation No. 15 (1993) on article 4 of the Convention, the Committee reminds the State party that the exercise of the right to freedom of opinion and expression carries special duties and responsibilities, and that the prohibition of the dissemination of ideas based on racial superiority or racial hatred is compatible with the right to freedom of opinion and expression. The State party is urged to take firm action to counter any tendency to target, stigmatize, stereotype or profile persons and communities on the basis of race, colour, descent, or national or ethnic origin, especially by politicians.

15. The Committee notes with concern that it did not receive sufficient information on the status and situation of refugees and asylum-seekers in the State party, in particular with regard to their right to identity documents and the requirement for refugees and asylum-seekers to reside in special camps, unless a special permit is granted. (art. 5 (a) and (d) (i)).

The Committee urges the State party to respect the right to freedom of movement of refugees and asylum-seekers within the borders of the State party's territory, as well as their right to identity documents, including by issuing official birth certificates to newborn children of asylum-seekers and refugees.

16. The Committee regrets that it did not receive sufficient information on the criteria used by the State party to recognize traditional leaders under the Traditional Authorities Act of 2000 as well as the Council of Traditional Leaders Act of 1997, including on whether the scope of the laws includes all indigenous communities. It is therefore particularly concerned that no institution exists to assess applications for recognition independently of the Government. (art. 5(b)).

The Committee requests the State party to provide, in its next periodic report, information on the criteria used for the recognition of traditional leaders. The State party should ensure that the criteria used for the recognition of traditional leaders under the Traditional Authorities Act of 2000 are objective and fair and that their application process is monitored by an independent body charged with assessing the legitimacy of applications for recognition by indigenous groups.

17. The Committee acknowledges the difficulties within a democratic system in implementing land reform policies with a view to addressing existing imbalances. However, it is concerned about the apparent lack of clear and transparent criteria for the redistribution of land in practice, and notes with concern the paucity of information concerning the implementation of relevant policies in this field. (art. 5(d)(v)).
The State party is encouraged to implement its policies on land reform in such a way to ensure the equal exercise by the different ethnic communities of the rights enshrined in the Convention within the framework of a democratic system. The Committee invites the State party to provide information on the measures taken to ensure the implementation of land reform policy and particularly its impact on vulnerable groups.
18. The Committee is concerned about the lack of recognition of the rights of ownership of indigenous communities over the lands which they traditionally occupy or have occupied. (art. 5(d)(v)).
The Committee reminds the State party of its general recommendation No. 23 (1997) on the rights of indigenous peoples, in particular paragraph 5, which calls on State parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their lands and territories. It therefore encourages the State party, in consultation with the indigenous communities concerned, to demarcate or otherwise identify the lands which they traditionally occupy or use, and to establish adequate procedures to resolve land claims by indigenous communities within the domestic judicial system while taking due account of relevant indigenous customary laws.
19. The Committee welcomes the statement that local communities participate in the management of new conservation areas. However, it is concerned about the ability of the local indigenous communities to pursue their traditional way of life in such parks. The Committee is also concerned that those communities whose lands were taken before 1990 have not been able to receive redress for this dispossession (arts. 5(d)(v) and (e)(vi)).
The Committee encourages the State party to strengthen its laws and policies aimed at ensuring that national parks established on ancestral lands of indigenous communities allow for sustainable economic and social development compatible with the cultural characteristics and living indigenous communities have been deprived of their lands and territories traditionally owned, the Committee recommends that the State party take steps to return those lands and territories or to provide adequate reparation measures, in accordance with paragraph 5 of general recommendation No. 23 (1997) on the rights of indigenous peoples.
20. The Committee remains concerned that despite the special measures taken by the State party to reduce poverty and to progressively realize equal and sustainable development, discrimination on the grounds of ethnicity with regard to the enjoyment of economic, social and cultural rights persists in the State party. (art. 5(e)).
The Committee recommends that the State party conduct studies with a view to assessing and evaluating the level of enjoyment of economic, social and cultural rights by the different ethnic groups in the State party, based on which the State party should strengthen its efforts in combating poverty among marginalized groups as well as its measures aimed at promoting equal opportunities for all persons.
21. The Committee acknowledges the State party's stated intention to review the development programmes currently in place, as well as the steps taken by the State party to improve the economic and social situation of the indigenous communities, including by mobile school units, scholarships for San children, and non-discrimination training for employers. However, it remains concerned about the extreme poverty of the indigenous communities and its impact on their equal enjoyment of human rights. The Committee is particularly concerned about the high rate of HIV/AIDS infection among the San, their lack of access to identification documents, their low level of school attendance, and the comparatively low life expectancy among those communities. (art. 5(e)).
The Committee recommends that the State party enhance its efforts to reduce poverty and to stimulate economic growth and development for the most marginalized groups, namely the indigenous communities, especially with regard to education and health. It requests that the State party provide, in its next periodic report, information on the active involvement of targeted beneficiaries in the decisions directly relating to their rights and interests.
22. The Committee notes with concern the low level of participation in political life and, in particular, the lack of representation in Parliament as well as regional and local public authorities of the indigenous communities, particularly the San community (art. 5(c)).
The Committee recommends that the State party strengthen its efforts to ensure the full participation of indigenous communities in public affairs at all levels. It encourages the State party to revise its electoral laws with a view to encouraging political parties to broaden their appeal to ethnic minorities and to include a minimum proportion of candidates from these groups.
23. The Committee is concerned about the high incidence of rape of San women by members of other communities, which seems to be caused by negative stereotypes, and it regrets the lack of detailed information provided by the State party on this issue. (art. 5(b)).
The Committee recommends that the State party adopt all necessary measures to ensure prompt, thorough and independent investigations into all allegations of rape against San women. It also urges the State party to increase its efforts aimed at combating prejudices against the San and to promote tolerance and foster intercultural dialogue among the different ethnic groups of Namibia.
24. The Committee, while welcoming the State party's efforts to enhance the economic and social participation of persons belonging to marginalized groups, in particular the San, notes with concern that integration policies and programmes might be detrimental to the protection of ethnic and cultural diversity of these communities. (arts. 5 and 7).

Recalling that the principle of non-discrimination requires that the cultural characteristics of all ethnic groups be taken into consideration, the Committee urges the State party to ensure that its integration policies and programmes respect and protect the cultural identities of persons belonging to national or ethnic minorities within its territory. The Committee further encourages the State party to ensure the participation of these groups in the design and implementation of integration policies and programmes, at both national and local levels.

25. The Committee commends the State party for the planned increase of the financial and human resources of the Office of the Ombudsman. However, the Committee expresses its concern about the limited mandate of the Ombudsman. (art. 6).

The Committee encourages the State party to take all necessary steps to strengthen the legislative mandate and the capacity of the Office of the Ombudsman, so that it effectively fulfil its mandate. The Committee, while noting that only a small number of complaints have been received, reminds the State party that this may be due to victims' lack of information about their rights and of the accessibility of legal remedies. The State party is therefore encouraged to sensitize the general public about their rights and the availability of legal remedies for victims of racial discrimination.

26. The Committee encourages the State party to consider ratifying the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted by the General Assembly in resolution 45/158).
27. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2 when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee urges that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level. The Committee also encourages the State party to increase its efforts to actively participate in the Preparatory Committee for the Durban Review Conference, as well as in the Durban Review Conference in 2009.
28. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and invites the State party to consider doing so.
29. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in resolution 47/111. In this connection, the Committee cites General Assembly resolution 61/148, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.
30. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official, most commonly spoken, and indigenous languages.
31. The Committee recommends that the State party consult widely with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.
32. The Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 . 3
33. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 11, 14, and 23 above.
34. The Committee recommends that the State party submit its thirteenth, fourteenth, and fifteenth periodic reports, in a single document, due on 31 July 2012, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session, 4 and that it address all points raised in the present concluding observation.

CONCLUDING OBSERVATIONS – COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

International Convention on the Elimination of all Forms of Racial Discrimination

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION
Forty-ninth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION Concluding observations of the Committee on the Elimination of Racial Discrimination

Namibia

1. The Committee considered the fourth, fifth, sixth and seventh periodic reports of Namibia, submitted in one document (CERD/C/275/Add.1), at its 1169th and 1170th meetings (CERD/C/SR.1169-1170), held on 13 and 14 August 1996. At its 1180th meeting, on 21 August 1996, the Committee adopted the following concluding observations:

A. Introduction

2. The Committee particularly welcomes the opportunity to engage in a frank and fruitful dialogue with the Government of Namibia and expresses its satisfaction at the presence of an official of the Ministry of Justice. Although several reports were submitted in the past on behalf of Namibia by the Council for Namibia, the consideration of the present report - which may well be considered as an initial report - constitutes the first opportunity for the Committee to assess the implementation of the Convention in Namibia since its independence.
3. The Committee commends the State party for the frankness of the report and notes with appreciation its general compliance with the guidelines for the preparation of State party reports. Despite its brevity, the report contains useful information on legal and administrative measures taken to give effect to the Convention, as well as on some difficulties faced in the implementation process. Those difficulties were, however, described in broad terms without details of the concrete steps envisaged to overcome them. Furthermore, the report was lacking economic, social and demographic indicators that would have assisted the Committee in the evaluation of the situation.
4. The Committee expresses its satisfaction with the additional information provided by the representative of the State party in response to questions asked and observations made by Committee members in the course of the discussion. In that respect, the statement by the State party's representative that the core document containing information referred to in the guidelines concerning the initial part of reports of States parties would be submitted in the near future was particularly welcomed.
5. Some members of the Committee recommend that the State party envisage the possibility of making the declaration provided for in article 14 of the Convention.

B. Factors and difficulties impeding the implementation of the Convention

6. It is recognized that much remains to be done to overcome vestiges of a long period of subjection to colonialism and apartheid. The State party's efforts towards full enforcement of the principles and provisions enshrined in the Convention have been seriously hampered by continuing resort to a number of out-of-date - although still in force - discriminatory laws of the former Government. It is also noted that some discriminatory social attitudes still prevalent and generally tolerated in certain parts of the population are not conducive to the promotion of the implementation of the Convention.

C. Positive aspects

7. It is noted with particular satisfaction that, despite severe economic and social difficulties, important steps have been taken by the Government since independence to put an end to racial discrimination in all its forms, notably through a remarkable policy of national reconciliation.
8. It is noted with appreciation that the Constitution of Namibia includes a bill of rights which can be invoked before

the Courts. Furthermore, the Racial Discrimination Prohibition Amendment Act was adopted in December 1991 and subsequent legislative measures were passed to reinforce it, such as the Land Redistribution Act and the Agricultural Reform Act. Through these constitutional and legislative provisions, certain acts of discrimination and practices of apartheid have been made criminally punishable.

9. It is also appreciated that serious efforts are being undertaken by the Master of the High Court, the Law Reform and Development Commission and the Ministry of Justice to amend or repeal out-of-date or discriminatory legal provisions. Note is taken of the establishment under the Constitution of the office of the Ombudsman with a view to the promotion and protection of human rights.
10. The policy of affirmative action in areas such as education, training and employment is particularly welcomed.

D. Principal subjects of concern

11. Concern is expressed at the subsistence of out-of-date and discriminatory laws and the persistence of practices inherited from the apartheid regime.
12. Concern is expressed at the fact that, despite affirmative measures taken to eliminate social and economic disparities, black people and mixed race people (coloureds) who comprise 95 per cent of the population, still face serious discrimination in many areas, such as access to property, education, employment, health care or housing.
13. Concern is expressed over the persistence of a dual legal system regulating important aspects of personal status, such as marriage and succession. In that regard, it is noted with concern that there remain serious discrepancies in the system applicable to white, coloured and black people under the Administration of Estate Act.
14. Concern is expressed at the extent of persistent discriminatory attitudes still prevalent in certain parts of the population and the private sector, as well as at the insufficient effectiveness of measures taken to overcome those difficulties. It is further noted with concern that there seem to exist instances of discrimination in the public sector on the grounds of ethnic identity.
15. Concern is expressed at the lack of information in the report relating to the implementation in law and practice of article 5 of the Convention, as well as on the situation of vulnerable groups, particularly the San/Bushmen.
16. Concern is expressed about apparent delays in the process of desegregation in the field of education, as well as the persistence of serious difficulties faced by black children in their access to public and private education, particularly insofar as secondary and higher education are concerned.

E. Suggestions and recommendations

17. The Committee invites the Government to include in its next periodic report information on the points raised in the present concluding observations, as well as on remaining questions posed and observations made by Committee members in the course of the discussion.
18. The Committee recommends that urgent measures be taken to eliminate all remaining discriminatory laws and practices. It encourages the State party to strengthen measures taken to foster a culture that effectively protects human rights by disseminating as widely as possible information on the international human rights instruments to which it is party and on the outcome of the consideration of the present report, among the authorities responsible for the enforcement of the Convention's provisions, as well as among the general public.
19. The Committee recommends that additional steps be taken to combat racial discrimination in the fields of property, land distribution, education, housing, employment, health care and equitable distribution of resources. Affirmative measures should thus be adopted to overcome vestiges of the past that still hamper the possibilities for black people, including vulnerable groups among them, to have access to secondary and higher education and to enjoy just and favourable conditions of work in the private sector. Similarly, additional measures should be taken in the field of land redistribution.
20. The Committee encourages efforts currently under way by the Master of the High Court and the Law Reform and Development Commission to revise the dual system governing marriage and inheritance. More generally, a systematic study of the domestic law should be undertaken to ensure its full compliance with the provisions of the Convention.
21. The Committee recommends that the State party provide, in its next periodic report, information on the number of complaints filed and judgments passed on acts of racism or racial discrimination.
22. The Committee suggests that publicity be given to the State party's seventh periodic report, as well as to the present concluding observations.
23. The Committee recommends that the State party ratify at its earliest convenience the amendments to article 8, paragraph 6, of the Convention, adopted by the fourteenth meeting of States parties.
24. The Committee recommends that the State party's next periodic report be an updating report and that it address all the points raised in these concluding observations.

PART 2

International Human Rights Instruments Ratified by Namibia and Concluding Observations by Committees

- **Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)**
- **Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (OP-CEDAW)**
- **List of issues and questions in relation to the combined 4th and 5th periodic reports: Namibia 2-24/7/14**
- **Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women: Namibia 02/02/07**
- **Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women: Namibia 11/07/1997**

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

**Adopted and opened for signature, ratification and accession by General Assembly resolution
34/180 of 18 December 1979**

Entry into force 3 September 1981, in accordance with article 27(1)

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole, Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to

achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1

For the purposes of the present Convention, the term “discrimination against women” shall mean 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.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary 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 men and women;
- (b) 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.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
- 2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
 - (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
 - (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
 - (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
 - (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.
- 3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

- 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
- 2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

- 1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.
- 2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
 - (a) To participate in the elaboration and implementation of development planning at all levels;
 - (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
 - (c) To benefit directly from social security programmes;
 - (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
 - (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
 - (f) To participate in all community activities;
 - (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
 - (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

- 1. States Parties shall accord to women equality with men before the law.
- 2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and

to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.
6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.
7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:
 - (a) Within one year after the entry into force for the State concerned;
 - (b) Thereafter at least every four years and further whenever the Committee so requests.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure. 2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.
2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.
2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Resolution adopted by the General Assembly
[without reference to a Main Committee (A/54/L.4)]

The General Assembly,

Reaffirming the Vienna Declaration and Programme of Action¹ and the Beijing Declaration² and Platform for Action³

Recalling that the Beijing Platform for Action, pursuant to the Vienna Declaration and Programme of Action, supported the process initiated by the Commission on the Status of Women with a view to elaborating a draft optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women that could enter into force as soon as possible on a right-to-petition procedure,

Noting that the Beijing Platform for Action also called on all States that have not yet ratified or acceded to the Convention to do so as soon as possible so that universal ratification of the Convention can be achieved by the year 2000,

1. Adopts and opens for signature, ratification and accession the Optional Protocol to the Convention, the text of which is annexed to the present resolution;
2. Calls upon all States that have signed, ratified or acceded to the Convention to sign and ratify or to accede to the Protocol as soon as possible;
3. Stresses that States parties to the Protocol should undertake to respect the rights and procedures provided by the Protocol and cooperate with the Committee on the Elimination of Discrimination against Women at all stages of its proceedings under the Protocol;
4. Stresses also that in the fulfilment of its mandate as well as its functions under the Protocol, the Committee should continue to be guided by the principles of non-selectivity, impartiality and objectivity;
5. Requests the Committee to hold meetings to exercise its functions under the Protocol after its entry into force, in addition to its meetings held under article 20 of the Convention; the duration of such meetings shall be determined and, if necessary, reviewed by a meeting of the States parties to the Protocol, subject to the approval of the General Assembly;
6. Requests the Secretary-General to provide the staff and facilities necessary for the effective performance of the functions of the Committee under the Protocol after its entry into force;
7. Also requests the Secretary-General to include information on the status of the Protocol in her or his regular reports submitted to the General Assembly on the status of the Convention.

28th plenary meeting

6 October 1999

ANNEX

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

The States Parties to the present Protocol,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Also noting that the Universal Declaration of Human Rights⁵ proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Recalling that the International Covenants on Human Rights and other international human rights instruments prohibit discrimination on the basis of sex,

Also recalling the Convention on the Elimination of All Forms of Discrimination against Women ("the Convention"), in which the States Parties thereto condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women,

Reaffirming their determination to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms,

Have agreed as follows:

Article 1

A State Party to the present Protocol ("State Party") recognizes the competence of the Committee on the Elimination of Discrimination against Women ("the Committee") to receive and consider communications submitted in accordance with article 2.

Article 2

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 3

Communications shall be in writing and shall not be anonymous. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

Article 4

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.
2. The Committee shall declare a communication inadmissible where:
 - (a) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
 - (b) It is incompatible with the provisions of the Convention;
 - (c) It is manifestly ill-founded or not sufficiently substantiated;
 - (d) It is an abuse of the right to submit a communication;
 - (e) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

Article 5

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.
2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 6

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, and provided that the individual or individuals consent to the disclosure of their identity to that State Party, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.
2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

Article 7

1. The Committee shall consider communications received under the present Protocol in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned.
2. The Committee shall hold closed meetings when examining communications under the present Protocol.
3. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.
4. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.
5. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article 18 of the Convention.

Article 8

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.
3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.
4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.
5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

Article 9

1. The Committee may invite the State Party concerned to include in its report under article 18 of the Convention details of any measures taken in response to an inquiry conducted under article 8 of the present Protocol.
2. The Committee may, if necessary, after the end of the period of six months referred to in article 8.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 10

1. Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 8 and 9.
2. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

Article 11

A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

Article 12

The Committee shall include in its annual report under article 21 of the Convention a summary of its activities under the present Protocol.

Article 13

Each State Party undertakes to make widely known and to give publicity to the Convention and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party.

Article 14

The Committee shall develop its own rules of procedure to be followed when exercising the function conferred on it by the present Protocol.

Article 15

1. The present Protocol shall be open for signature by any State that has signed ratified or acceded to the Convention.
2. The present Protocol shall be subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 16

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 17

No reservations to the present Protocol shall be permitted.

Article 18

1. Any State Party may propose an amendment to the present Protocol and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify her or him whether they favour a conference of States Parties for the purpose of considering and voting on the proposal. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 19

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.
2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 or any inquiry initiated under article 8 before the effective date of denunciation.

Article 20

The Secretary-General of the United Nations shall inform all States of:

- (a) Signatures, ratifications and accessions under the present Protocol;
- (b) The date of entry into force of the present Protocol and of any amendment under article 18;
- (c) Any denunciation under article 19.

Article 21

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 25 of the Convention.

LIST OF ISSUES AND QUESTIONS IN RELATION TO THE COMBINED 4TH AND 5TH PERIODIC REPORTS

Convention on the Elimination of All Forms of Discrimination against Women

1. Any State Party may denounce the present Protocol at any time by written notification

Committee on the Elimination of Discrimination
against Women
Sixty-first session
2-24 July 2014
Item 4 of the provisional agenda*

Consideration of Reports Submitted By States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women

List of issues and questions in relation to the combined fourth and fifth periodic reports of Namibia

Legal status of the Convention and legal framework

1. Please provide additional examples of court cases or instances, if any, in which the national courts have used the Convention in interpreting the law in the State party. What steps have been taken to disseminate the concluding observations and recommendations of the Committee in the State party? What measures are envisaged to resolve inconsistencies between statutory law and customary law and tackle practices that discriminate against women and girls? What challenges does the plural legal system present to the enjoyment of rights by women in the State party?
2. Please provide an update on the progress made to adopt the following legislative measures: the Bill on the Recognition of Customary Marriages, which sets the minimum age for customary marriages at 18 years; the Child Care and Protection Bill, which also addresses the legal age of marriage, as well as harmful and cultural practices; the Procurement Bill, which makes provision for gender equality and the economic empowerment of women; the Marital Property Bill, which pertains to the division of marital property; and the Divorce Bill, which introduces a no-fault divorce regime in the event of the irretrievable breakdown of the marriage.

Data collection

3. Please state the specific measures that have been adopted to tackle the problem of inadequate data disaggregation in order to fully understand the impact of legal and policy measures aimed at addressing sex- and/or gender-based discrimination in the State party. Specifically, what measures have been taken to resolve inconsistencies in data sources and research methodologies?

National machinery for the advancement of women

4. It is indicated that the Gender Commission has been replaced by national and regional task forces (table 2). Please provide information on their mandates and budgetary resources. Please also indicate the coordination mechanisms in place so that women's organizations are involved in the planning, implementation and evaluation of gender policies and programmes. Please provide information on the impact of the gender-responsive budgeting exercise undertaken by the Ministry of Gender Equality and Child Welfare, the extent to which gender has been mainstreamed in all government structures, the role of civil society organizations in the advancement of women's rights and the coordination of the 48 gender focal points appointed by the Ministry (ibid.). Please also provide information on the progress made to implement the National Gender Policy (2010-2020).

Access to justice

5. Please provide information on measures taken to eliminate the multiple barriers faced by women in gaining access to justice, such as negative stereotypes, prejudices and attitudes towards women who are victims of gender-based violence, in particular on the part of law enforcement officials. Please provide further information on the measures being taken to increase the prosecution and conviction rates for sexual offences, especially rape, which are very low (sect. 3.1). Please also indicate the number of registered cases, investigations and prosecutions of violations of women's rights, in particular violence against women, in addition to the nature of the punishments imposed on perpetrators. What efforts are being made to improve the capacity and knowledge of the judiciary, the education sector, civil society and the general public regarding gender equality and women's rights? Please provide information on the measures being taken to tackle challenges associated with the cost of gaining access to justice and the need to ensure that legal aid is available and accessible to all indigent women.

Temporary special measures

6. It is indicated that the Employment Equity Commission tasked the Labour Resource and Research Institute to assess the

impact of the Affirmative Action (Employment) Act (Act No. 29 of 1998) and that it reported that gender inequalities were still apparent at most workplaces (sect. 4.1). Please provide information on what kind of temporary special measures are envisaged and when they will be introduced in order to accelerate the achievement of de facto equality for women in all areas covered by the Convention, in particular in employment, decision-making positions and Parliament. What measures are in place to promote understanding of temporary special measures for the advancement of women and their implementation in the State party?

Stereotypes and harmful practices

7. It is indicated that traditional opinions about gender roles are often deeply entrenched and the Government must take care to ensure that efforts to combat stereotypes continue (sect. 5.3). It is also indicated that a certain level of gender-based violence is tolerated and permitted in traditional culture (sect. 14.2). Please provide information on the specific measures that the State party envisages taking to eliminate the deep-rooted traditional stereotypical attitudes regarding the role of women in society and gender-based violence. In its previous concluding observations, the Committee expressed its concern over the impact of the Traditional Authorities Act (Act No. 25 of 2000), which gives traditional authorities the right to supervise and ensure the observance of customary law, some of which may have a negative impact on women (CEDAW/C/NAM/CO/3, para. 16). Please indicate whether the study to assess the impact of the implementation of the Traditional Authorities Act and the Community Courts Act (October 2003) has been conducted as recommended (ibid. para. 17). If it has been, what were its results?
8. Please explain the measures taken to eliminate the harmful cultural practices of widow inheritance, sexual initiation practices and child marriage in the State party. Please provide data on the prevalence of those practices and on the sanctions that have been imposed on the perpetrators.

Violence against women

9. It is indicated that the number of reported rapes and attempted rapes per year has more than doubled since independence, even though the population has increased only by 39 per cent (sect. 3.1). Please provide information on the effectiveness of measures taken to combat violence against women, in particular rape and domestic violence. Specifically, please provide an update on the progress made on the proposals adopted at a special meeting of the Cabinet held on 20 February 2014 to tighten the requirements for bail in cases of gender-based violence, amend the Correctional Service Act (Act No. 9 of 2012) in order to deny parole to persons convicted of gender-based violence offences, introduce legislation that imposes longer prison sentences on persons convicted of gender-based violence offences, ensure that the school curricula contains information on the prevention of gender-based violence and ways to raise the awareness of young people of it, initiate a campaign on gender-based violence, fast-track the investigation and trial of gender-based violence cases and introduce a witness protection programme to protect witnesses who testify against persons accused of gender-based violence.
10. Please respond to reports that the high levels of violence in the State party, especially cases of rape and murder by intimate partners, are partly as a result of the weak implementation of laws, the poor coordination of gender-based violence programmes and the absence of earmarked funding to tackle gender-based violence. What measures have been taken to respond to violence targeting HIV-positive women and the attendant low-level reporting of such violence? Please provide information on the number of shelters available and their funding from the State party, protection orders issued and hotlines established. What measures have been taken to tackle the challenges faced in the implementation of the Combating of Domestic Violence Act (Act No. 4 of 2003)? Please also provide an update on progress made in revising the Combating of Rape Act (Act No. 8 of 2000) in the light of the recommendations for amendments being considered by the Law Reform and Development Commission (sect. 3.1).

Trafficking and exploitation of prostitution

11. It is indicated that the State party undertook a national baseline study on human trafficking in Namibia in 2009, which found that children were trafficked from neighbouring countries for purposes of labour and sexual exploitation, while adult women were mainly trafficked for sexual exploitation (sect. 6.2). It is also indicated that further research would be conducted towards the end of 2011 (sect. 6.4). Please provide an update, including the results, if further research has indeed been conducted. Please provide updated information on the number of prosecutions and convictions as well as the nature of sanctions imposed against perpetrators involved in trafficking in women and girls.
12. It is indicated that prostitution is illegal and that women engaged in prostitution in the State party are subjected to various forms of violence, which contributes to their vulnerability to HIV/AIDS (sect. 6.1). It is stated that studies conducted in the State party indicate that the root cause of prostitution is poverty and unemployment (sects. 6.1 and 6.4). Please state the measures taken to deal with the lack of funding affecting exit programmes for women in prostitution. Please provide information on specific measures in place to protect women engaged in prostitution against violence and HIV.

Participation in political and public life

13. It is indicated that the representation of women in the National Assembly, local government, the civil service and the judiciary is very low (sects. 7.1-7.3). It is also indicated that, although the representation of women in foreign missions shows gender parity at 50 per cent, most female representation is in supportive positions rather than ambassadors

(sect. 8). Please provide information on the specific measures being taken to ensure equal representation of women in decision-making bodies, both in the public and private spheres of life, in particular in the National Assembly, local government, the civil service, international organizations and the judiciary.

Nationality

14. It is stated that the Ministry of Home Affairs and Immigration, in collaboration with the Ministry of Health and Social Services, launched a pilot birth registration project at the Katutura State Hospital in Windhoek in 2009 and that the State party plans to roll out the facility of issuing birth certificates to other hospitals (sect. 9.4). Please provide information on the progress made and challenges encountered in rolling out the project on birth registration. Please also provide data, disaggregated by sex and other factors, on children whose births have been registered in the State party since the project was rolled out.

Education

15. It is indicated that, in 2009, there were 1,735 cases of pregnancy-related dropout, of which 96 per cent were girls, and that pregnancy affects the retention of learners (sects. 10.1.1 and 10.8). Please provide information on the progress made in the implementation of the new policy for the prevention and management of “learner pregnancy”, including the resources allocated therefor. What measures are being taken to tackle the high rate of adolescent pregnancy in the State party? It is also stated that parents are required to pay school development fees, but are entitled to exemptions under certain conditions. At the same time, however, it is indicated that exemptions are not always consistently applied and/or that parents are not aware of how to gain access to them (sect. 10.1.2). Please state the specific measures taken to ensure the consistent application of those exemptions and to raise awareness among parents of how to benefit from them.

Employment

16. It is indicated that the rate of unemployment among women is significantly higher than that among men and that women are concentrated in jobs in private households and the wholesale and retail sectors, among others (sect. 11.1). Please provide information on the specific measures taken to improve the employment of women in the State party. To what extent has the Affirmative Action (Employment) Act been used in this regard? What were its results? Please provide information on the full range of measures taken to address occupational segregation between men and women in employment.

Health

17. It is indicated that, although access to maternal health care has increased in the State party, the maternal mortality rate has also risen (sect. 12.3.1). Please provide information on the strategies and programmes in place to deal with the increased levels of maternal mortality. According to information before the Committee, complications associated with abortion are the second most important cause (20.7 per cent) of maternal mortality. What measures have been taken to streamline the complex and onerous administrative procedures for obtaining approval for abortion, which disproportionately affect poor women? Please also explain the measures being taken to deal with the problems associated with illegal abortion, infanticide and baby-dumping.
18. According to information before the Committee, the problem of forced/ coerced sterilization of women, in particular targeting HIV-positive women, is rampant in the State party. Please explain the specific measures that have been put in place to ensure that medical practitioners obtain full and informed consent from all women, regardless of their HIV status, before conducting sterilization procedures. Please explain the steps that the State party has taken to investigate and provide redress to women who are victims of coerced sterilization. Please also provide data, disaggregated by sex and other factors, on the number of HIV-positive persons in the State party. What measures are envisaged to address the prevalence of HIV infection of people, in particular women, in their thirties (sects. 12.6 and 12.7)? What progress has been made to accelerate the gains achieved regarding the prevention of mother-to-child transmission of HIV since the launch of a national elimination plan on that subject in 2012 (sect. 12.6)? Please provide information on the status of the draft bill on mental health, which is to replace the currently outdated legislation (ibid.).

Rural women

19. Please respond to reports that the Communal Land Reform Act (Act No. 5 of 2002), which is intended to increase women's access to communal land by repealing the discriminatory customary practice that prevented widows from remaining on communal land allocated to their deceased husbands, has had limited impact in rural areas. Please explain the measures being taken to tackle the challenges affecting the implementation of the Act in rural areas. Please also state the measures being taken to combat the practice of property-grabbing. What measures have been put in place to enhance the participation of rural women, in particular San indigenous women, in developing policies and legislation in areas that affect their rights? Please provide information on existing programmes aimed at ensuring that San women have access to health care, employment, education and agricultural land.

Amendment to article 20 (1) of the Convention

20. Please indicate what progress has been made towards the acceptance of the amendment to article 20 (1) of the Convention concerning the meeting time of the Committee.

CONCLUDING OBSERVATIONS – COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Convention on the Elimination of All Forms of Discrimination against Women

Committee on the Elimination of Discrimination against Women

Thirty-seventh session
15 January-2 February 2007

Concluding comments of the Committee on the Elimination of Discrimination against Women: Namibia

1. The Committee considered the combined second and third periodic report of Namibia (CEDAW/C/NAM/2-3) at its 759th and 760th meetings, on 17 January 2007 (see CEDAW/C/SR.759 and 760). The Committee's list of issues and questions is contained in CEDAW/C/NAM/Q/3 and Namibia's responses are contained in CEDAW/C/NAM/Q/3/Add.1.

Introduction

2. The Committee expresses its appreciation to the State party for its combined second and third periodic report, which followed the Committee's guidelines for the preparation of reports, while regretting that it did not refer to the Committee's general recommendations. The Committee also expresses its appreciation for the oral presentation, which elaborated on the recent developments in the implementation of the Convention in Namibia. It takes note of the written replies to the list of issues and questions raised by the pre-session working group and the oral responses to the questions posed by the Committee, while regretting that they insufficiently addressed the Committee's questions.
3. The Committee commends the State party on its high-level delegation, headed by the Minister of Gender Equality and Child Welfare, and expresses its appreciation for the constructive dialogue held between the delegation and the members of the Committee.
4. The Committee notes with satisfaction that the report includes reference to the implementation of the Beijing Platform for Action.
5. The Committee notes with appreciation that the report was prepared in a participatory process involving government bodies and non-governmental organizations.
6. The Committee commends the State party for its early ratification, in May 2000, to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

Positive aspects

7. The Committee commends the State party on the range of recent legal reforms and policies aimed at eliminating discrimination against women and promoting gender equality. In particular, it welcomes the Married Persons Equality Act (Act No. 1 of 1996), which abolishes the marital power of the husband that was previously applied in civil marriages, the Affirmative Action (Employment) Act (Act No. 29 of 1998), which encourages the participation of women in the formal workforce, the Combating of Rape Act (Act No. 8 of 2000), which provides protection to victims of rape and sexual abuse and prescribes stiffer sentences for perpetrators, the Communal Land Reform Act (Act No. 5 of 2002), which provides for equal opportunities for men and women to apply for and be granted land rights in communal areas, the Maintenance Act (Act No. 9 of 2003), which confers equal rights and obligations on spouses with respect to the support of their children, and the Domestic Violence Act (Act No. 4 of 2004), which provides for protection measures in domestic violence cases. It also welcomes the 1997 National Gender Policy, which outlines the framework and sets out principles for the implementation and coordination of activities on gender equality.
8. The Committee notes with appreciation that, in 2000, the Department of Women Affairs was upgraded to a full-fledged Ministry of Gender Equality and Child Welfare.

Principal areas of concern and recommendations

9. While recalling the obligation of the State party to systematically and continuously implement all the provisions of the Convention, the Committee views the concerns and recommendations identified in the present concluding comments as requiring the State party's priority attention between now and the submission of the next periodic report. Consequently, the Committee calls upon the State party to focus on those areas in its implementation activities and to report on action taken and results achieved in its next periodic report. It also calls upon the State party to submit the present concluding comments to all relevant ministries and to Parliament so as to ensure their full implementation.
10. The Committee regrets that the report does not contain information on mechanisms in place to monitor the impact of laws, policies and programmes aimed at promoting women's empowerment and gender equality. The Committee also regrets the limited availability of statistical data disaggregated by sex as well as by ethnicity, age and by urban and rural

areas, which makes it difficult to assess over time the progress and trends in the actual situation of women and in their enjoyment of human rights in all areas covered by the Convention. The Committee is further concerned that no information was provided on measures taken on the results of the strengths, weaknesses (SWOT) analysis carried out in, opportunities and threats 2001 to identify the nature and level of the existing capacity for the effective use of the gender mainstreaming strategy in the State party.

11. **The Committee calls upon the State party to enhance its collection of data in all areas covered by the Convention, disaggregated by sex as well as by ethnicity, age and by urban and rural areas, as applicable, in order to assess the actual situation of women and their enjoyment of human rights and to track trends over time. It also calls upon the State party to monitor, through measurable indicators, the impact of laws, policies and programmes and to evaluate progress achieved towards realization of women's de facto equality. It encourages the State party to use those data and indicators in the formulation of laws, policies and programmes for the effective implementation of the Convention. The Committee requests the State party to include in its next report such statistical data and analysis. The Committee further calls upon the State party to take steps to implement the results of the SWOT analysis in order to ensure the effective and systematic use of the gender mainstreaming strategy in the State party's programmes and policies.**
12. The Committee is concerned that the provisions of the Convention, the Optional Protocol and the general recommendations of the Committee are not sufficiently known, including by judges, lawyers and prosecutors, and by women themselves, as indicated by the absence of any court decisions that referred to the Convention.
13. **The Committee calls upon the State party to take measures to disseminate information about the Convention, the procedures under the Optional Protocol and the Committee's general recommendations and to implement programmes for prosecutors, judges, ombudspersons and lawyers that cover all relevant aspects of the Convention and the Optional Protocol. It also recommends that sustained awareness-raising and legal literacy campaigns targeting women, including rural women as well as non-governmental organizations working on women's issues, be undertaken to encourage and empower women to avail themselves of available procedures and remedies for violations of their rights under the Convention.**
14. While welcoming the adoption of the Affirmative Action (Employment) Act (Act No. 29 of 1998), to encourage the participation of women in the workforce, and the Local Authority Act (Act No. 23 of 1992), to ensure higher representation of women in the decision-making process, the Committee is concerned that these temporary special measures are limited to the areas of employment and women's political representation at the local level.
15. **The Committee recommends that the State party use temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation 25, in all appropriate areas of political, economic, social and cultural life so as to accelerate the achievement of women's de facto equality with men.**
16. The Committee expresses concern about the persistence of strong patriarchal attitudes and stereotypes regarding the roles and responsibilities of women and men in the family and society. The Committee is also concerned that the Traditional Authorities Act (Act No. 25 of 2000), which gives traditional authorities the right to supervise and ensure the observance of customary law, may have a negative impact on women in cases where such laws perpetuate the use of customs and cultural and traditional practices that are harmful to and discriminate against women.
17. **The Committee calls upon the State party to take measures to bring about change in the widely accepted stereotypical roles of men and women. Such efforts should include comprehensive awareness-raising and educational campaigns that address women and men and girls and boys, with a view to eliminating the stereotypes associated with traditional gender roles in the family and in society, in accordance with articles 2 (f) and 5 (a) of the Convention. The Committee urges the State party to monitor carefully the impact of these measures and to report on the results achieved in its next periodic report. The Committee also calls on the State party to study the impact of the implementation of the Traditional Authorities Act (Act No. 25 of 2000) and the Community Courts Act (October 2003) so as to ensure that customs and cultural and traditional practices that are harmful to and discriminate against women are discontinued.**
18. While noting the various legal and other initiatives taken by the State party to address violence against women, the Committee is concerned that violence against women remains a serious problem. The Committee is also concerned that no statistical data and information are provided to measure the impact and effectiveness of the State party's legal and policy measures aimed at preventing and redressing violence against women.
19. The Committee calls upon the State party to take steps to fully implement and enforce laws on violence against women and to ensure that women victims of violence are able to benefit from the existing legislative framework. It also calls upon the State party to ensure that all violence against women is effectively prosecuted and adequately punished. It requests that the State party put in place an effective data collection system on all forms of violence against women and to provide statistical data and information in its next report on the number of cases of violence reported to the police and other relevant authorities, as well as on the number of convictions. It further calls upon the State party to establish a monitoring and evaluation mechanism in order to regularly assess the impact and effectiveness of relevant laws, their enforcement, as well as of programmes aimed at preventing and redressing violence against women.
20. The Committee regrets that insufficient information was provided in the report on the issue of trafficking in women and girls.

21. **The Committee requests the State party to carry out a study in order to assess the prevalence of trafficking in women and girls in the country and to include in its next periodic report a comprehensive assessment of the extent of trafficking and its root causes and measures taken to eliminate the vulnerability of women and girls to trafficking. Such information should be disaggregated by age and geographical areas and should also include information on the impact of measures taken and of results achieved.**
22. The Committee expresses concern about the high dropout rates of girls from formal education. The Committee is also concerned that the provision contained in the Policy on Pregnancy among Learners requiring that girls who become pregnant should be allowed to return to normal schooling only after spending at least one year with the baby could act as a deterrent for girls to resume their studies after childbirth. The Committee regrets that insufficient statistical data and information were provided on girls' education.
23. **The Committee recommends that the State party implement measures to retain girls in school and monitor the impact of the Policy on Pregnancy among Learners on the rate at which girls return to school after childbirth. The Committee requests that the State party give high priority to the implementation of its programme on population and family life education. The Committee calls on the State party to include, in its next report, statistical data disaggregated by sex, ethnicity and region, as well as information on girls' education, providing analysis of trends over time and progress towards the achievement of goals.**
24. The Committee expresses its concern about the lack of access of women to adequate health-care services, including to sexual and reproductive health services. It remains concerned at the widespread use of unsafe illegal abortions, with consequent risks on women's life and health. The Committee is also concerned about the steady increase in the number of HIV/AIDS infected women, who account for 53 per cent of all reported new HIV cases. The Committee further expresses its concern over the increasing rate of maternal mortality and the fact that reliable data on this subject is not available.
25. **The Committee urges the State party to take concrete measures to enhance women's access to health care, in particular to sexual and reproductive health services, in accordance with article 12 of the Convention and the Committee's general recommendation 24 on women and health. It also recommends the adoption of measures to increase knowledge of and access to affordable contraceptive methods, so that women and men can make informed choices about the number and spacing of children, as well as access to safe abortion in accordance with domestic legislation. It further recommends that sex education be widely promoted and targeted at adolescent girls and boys, with special attention paid to the prevention of early pregnancy and the control of sexually transmitted diseases and HIV/AIDS. The Committee also calls upon the State party to ensure that its National Strategic Plan (MTP III) 2004-2009 is effectively implemented and its results monitored and that the socio-economic factors that contribute to HIV infection among women are properly addressed. The Committee urges the State party to improve women's access to maternal health services, including antenatal, post-natal, obstetric and delivery services. It encourages the State party to take steps to ensure accurate recording of maternal deaths and to obtain assistance for this from the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA) and the World Health Organization (WHO).**
26. The Committee is concerned about the situation of women in rural areas, especially women from ethnic minorities, who often lack access to health, education, decision-making processes and the means and opportunities for economic survival, as well as about women's underrepresentation in the regional councils.
27. **The Committee recommends that the State party pay special attention to the situation of rural women of all ethnic groups, in compliance with article 14 of the Convention, to ensure that rural women have access to education, health services and credit facilities and land and that they participate fully in decision-making processes, especially in the regional councils. The Committee also urges the State party to disseminate information on the Communal Land Reform Act (Act No. 5 of 2002) and to ensure that mechanisms are in place to monitor implementation of the Act.**
28. While welcoming the passage of the Married Persons Equality Act (Act No. 1 of 1996), which gives wives and husbands in both civil and customary marriages equal power of guardianship in respect of children, the Committee is concerned that this law does not address the gender inequalities in customary marriages regarding property. The Committee is also concerned that Namibian law does not require the registration of customary marriages. The Committee is further concerned that early marriage continues in spite of the fact that the Married Persons Equality Act fixes the legal age of marriage at 18 years for both boys and girls.
29. **The Committee calls upon the State party to review the Married Persons Equality Act (Act No. 1 of 1996), with a view to eliminating discrimination against women in customary marriages related to property rights in order to bring such rights in customary marriages into line with those in civil marriages. The Committee also calls upon the State party to take all necessary steps, including the process of consulting traditional leaders, women and civil society organizations, in order to draft a bill on the registration of customary marriages. The Committee recommends that the State party take steps to ensure that the legal age of marriage is respected.**
30. The Committee encourages the State party to accept, as soon as possible, the amendment to article 20, paragraph 1, of the Convention concerning the meeting time of the Committee.
31. The Committee urges the State party, in its implementation of its obligations under the Convention, to

- utilize fully the Beijing Declaration and Platform for Action, which reinforce the provisions of the Convention, and requests the State party to include information thereon in its next periodic report.
32. The Committee also emphasizes that full and effective implementation of the Convention is indispensable for achieving the Millennium Development Goals. It calls for the integration of a gender perspective and explicit reflection of the provisions of the Convention in all efforts aimed at the achievement of the Millennium Development Goals and requests the State party to include information thereon in its next periodic report.
 33. The Committee notes that the adherence of States to the seven major international human rights instruments¹ enhances the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. The Committee therefore encourages the Government of Namibia to consider ratifying the treaty to which it is not yet a party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
 34. The Committee requests the wide dissemination in Namibia of the present concluding comments in order to make the people, including government officials, politicians, parliamentarians and women's and human rights organizations, aware of the steps that have been taken to ensure *de jure* and *de facto* equality of women, as well as the further steps that are required in that regard. The Committee requests the State party to continue to disseminate widely, in particular to women's and human rights organizations, the Convention, its Optional Protocol, the Committee's general recommendations, the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly, entitled "Women 2000: gender equality, development and peace for the twenty-first century".
 35. The Committee requests the State party to respond to the concerns expressed in the present concluding comments in its next periodic report under article 18 of the Convention. The Committee invites the State party to submit its fourth periodic report, which was due in December 2005, and its fifth periodic report, due in December 2009, in a combined report in 2009.

CONCLUDING OBSERVATIONS – COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

**United Nations Report of the Committee on the Elimination of Discrimination
against Women
(Sixteenth and seventeenth sessions)**

**General Assembly
Official Records · Fifty-second Session
Supplement No.38 (A/52/38/Rev.1)
Report of the Committee on the Elimination of Discrimination
against Women
(Sixteenth and seventeenth sessions)
General Assembly
Official Records · Fifty-second Session
Supplement No.38 (A/52/38/Rev.1)
Namibia**

1. The Committee considered the initial report of Namibia (CEDAW/C/NAM/1) at its 336th, 337th and 342nd meetings, on 8 and 11 July 1997 (see CEDAW/C/SR.336, 337 and 342).
2. The report was introduced by the Director-General of Namibia's Department of Women Affairs in the Office of the President. She recounted that Namibia had acceded to the Convention on the Elimination of All Forms of Discrimination against Women, without reservations, on 23 November 1992, within two years of gaining its independence. The Convention had served as a complement to a Constitution designed to promote the rights of women.
3. The Department of Women Affairs had been established shortly after independence in 1990. Its aim was to ensure the integration of women into the overall development process, to guide policy formulation, to monitor its implementation and to see that the gender component was always taken into account. The Department actively publicized the Convention and encouraged women to assert their rights. The representative explained that all government policies and programmes in Namibia would be guided by a more integrated gender policy to be finalized in 1997.
4. She explained that Namibia's initial report described nine gender-sectorial committees comprising representatives of governmental and non-governmental organizations who were consulted in the implementation of national programmes to ensure that all government policies and programmes were gender-sensitive.
5. The initial report, which had been submitted to the Secretariat in 1996, covered the period from 1992 to 1995. The representative summarized the report and supplied further information up to 1997, thereby giving an up-to-date summary of the situation in Namibia. She highlighted the Married Persons Equality Act, which had been passed since the submission of the report, and which provided for equality between spouses in financial transactions, marital property and guardianship of children.
6. The Committee was informed that the Department of Women Affairs was in the process of formulating a national gender policy, and that the Law Reform and Development Commission had responsibility for guiding law reform, which would remove all existing legal discrimination against women. Violence against women and children had emerged as one of the greatest challenges to the advancement of women in Namibia, and was perceived to be a widespread and serious problem despite a lack of current statistical information. Legislation was currently being enacted to address violence against women. Reports of rape and attempted rape were increasing annually, and there were calls for law reform in that area, as the current law remained discriminatory in some areas and was considered ineffective.
7. Religious beliefs, cultural practices and remaining inequities under general and customary laws were factors that continued to allow men to dominate women in the family context. Sexual stereotyping of women as mothers had led to difficulties for many women in choosing career paths other than motherhood. Regional gender workshops organized by the Government were being used to combat sexual stereotyping.
8. The representative stated that there had been a slight improvement in the proportion of women in political positions, and that the impact of women in Parliament would be strengthened by the Parliamentary Women's Caucus. She emphasized that the implementation of affirmative action would serve to attract the participation of more women in politics. Women still tended to be underrepresented in senior positions in both government and the private sector. Namibia's first woman judge had been appointed since the initial report was completed, and the post of Ombudsman was occupied by a woman.
9. The Namibian Constitution guaranteed the right of education to all persons, and education was compulsory up to 16 years of age. Female enrolment had increased at every age level, and there had been a corresponding improvement in female literacy among younger age groups. Teenage pregnancy, which was common, was the biggest challenge to female educational advancement. It was a major factor in the school drop-out rate for girls.
10. Sex discrimination and sexual harassment in the labour sector were forbidden by the 1992 Labour Act. Equal pay for equal work was a mandate of the Act, although women currently worked in occupations that tended to be associated with low levels of remuneration. Rural women were the largest demographic group in Namibia.
11. Namibia's fertility rate was one of the highest in the world and the Government continued to be committed to reducing that rate through public campaigns and expanded family planning services. Abortion was illegal, except

in cases of incest and rape and for reasons of health of the mother or baby. Legal abortions and infanticide were significant problems in Namibia, but the law on abortion and sterilization was under discussion. There was also a high incidence of polygamy in some communities. HIV and AIDS were increasing at an alarming rate, especially among women, as a result of their low social and economic status.

12. Workshops to implement the Beijing Platform for Action were being held nationally, and community programmes were being developed. The Convention and the Platform for Action were seen as complementary and of equal importance, but she noted that the implementation of both was affected by a lack of funds. She reminded the Committee that Namibia had made a firm commitment at the Fourth World Conference on Women to pay special attention in four areas: education, training and the girl child; women and law; violence against women and children; and health.
13. The representative concluded by stating that Namibia had made great strides in improving the position of women, although it would take more time to transform Namibia into a truly gender-equal society. That was a realizable objective because of the willingness of Namibian women to have their voices heard, and the progressive realization of the guarantees in the Constitution and the Convention, and the promises of the Platform for Action.

Concluding comments of the Committee: Introduction.

1. The Committee thanked the State party for its report, which was both well-structured and contained detailed information. It also complimented the Director-General of the Department of Women Affairs in the Office of the President for her lucid and frank presentation.
2. The Committee was satisfied with the detailed analysis given in the report, which presented a clear and frank picture of the situation of women in Namibia.
3. The Committee commended the Government of Namibia for the peaceful transition to an independent State and for demonstrating general respect for the human rights of all people in Namibia.

Positive aspects

1. The Committee commended the Government of Namibia for ratifying the Convention without reservations so soon after its successful and long struggle for independence.
2. The Committee noted with satisfaction that non-governmental organizations had been involved in the preparation of the report.
3. The establishment of the Department of Women Affairs and the recent upgrading of the Department to cabinet level were also commended by the Committee. The Committee noted with satisfaction the achievements of the Department.
4. The Committee noted with appreciation the establishment of the Law Reform and Development Commission and the legal measures that had been put in place following the ratification of the Convention. It noted that they had contributed to the impressive progress towards gender equality.
5. The Committee welcomed the Married Persons Equality Act and looked forward to the enactment of the proposed Children's Act.
6. The Committee noted with satisfaction the positive developments in the area of women in decision-making and, in particular, the appointment in December 1996 of a woman as the first Ombudsman.
7. The Committee commended Namibia for the establishment of women and child abuse centres.
8. The Committee welcomed the appointment of the first woman judge.
9. It commended the Government for focusing on affirmative action as a means of closing the gap in gender equality.
10. The Committee welcomed the establishment of nine gender-sectorial committees and commended the programme of sensitization of parliamentarians and public officers with respect to the Convention.

Factors and difficulties affecting the implementation of the Convention.

1. The Committee noted that women in Namibia continued to face persistent discrimination which arose out of some traditional and customary laws.
2. The Committee also identified the general lack of knowledge relating to human and legal rights as an obstacle to the implementation of the Convention.
3. The Committee noted that poverty afflicted the majority of the Namibian population and a majority of the poor were women. It considered that women's poverty made it difficult for them to fulfil their aspirations as guaranteed by the Convention.

Principal areas of concern.

1. The Committee expressed its concern that the report did not address the Committee's general recommendations.
2. The Committee identified as areas of concern the lack of a time-frame in the implementation of affirmative action programmes and also the lack of programmes to sustain the objectives and achievements of those programmes.
3. The Committee was concerned with the lack of human rights education, as well as education for legal literacy, and advocacy programmes to achieve de facto equality.
4. The Committee was greatly concerned about the prevalence of domestic violence and the persistence of certain traditional practices which reinforced stereotyped attitudes and strengthened discrimination against women.
5. The Committee expressed concern about the fact that despite new laws, women, in particular those in the rural areas, were unable to own land.
6. The Committee was concerned that the issue of maternity leave was dealt with under article 4 of the Convention

as it was of the view that such a measure was not a measure of affirmative action.

7. The Committee noted with concern that the Married Persons Equality Act did not sufficiently address discrimination in the family.
8. The Committee expressed concern that the health of prostitutes was not taken into account and that, unlike other women, they did not have access to healthcare.
9. The Committee noted with serious concern the low level of participation of women in higher education and the high drop-out rate of girls from the formal education system.
10. The Committee also expressed concern with respect to the current inadequacy of the law on rape and other forms of violence against women.
11. The Committee was concerned that pregnant teenage women were punished by expulsion from school.
12. The Committee noted with concern the incidence of discrimination against women in the labour market.
13. The Committee was concerned about the prevalence of polygamous marriages and the non-registration of customary marriages.
14. The Committee was also concerned about the high number of illegal abortions in Namibia and the high rate of maternal mortality, and the fact that the inadequacy of the existing law on abortion contributed to the problem.
15. The Committee expressed dissatisfaction with the fact that although the Director-General of the Department of Women Affairs had been upgraded to cabinet level she did not have the right to vote in the Cabinet.

Suggestions and recommendations

1. The Committee requested the State party to ensure that the Committee's general recommendations were addressed in Namibia's next report to the Committee.
2. The Committee stressed that the implementation of affirmative action measures should have time-frames and should include educational and other programmes that would sustain the objectives and achievements of existing affirmative action programmes.
3. The Committee recommended the adoption of an integrated programme for the full implementation of the Convention.
4. The Committee recommended that the Government intensify educational and advocacy programmes to achieve de facto equality and design and implement programmes that would redefine the roles of women and men in the family.
5. The Committee recommended that the Government introduce, at all levels, more educational programmes on human rights and legal literacy for women.
6. The Committee recommended that the Department of Women Affairs ensure that research was done to identify the customary laws that contravened the letter and spirit of the Convention and that attempts be made to replace those laws.
7. The Committee recommended that the Government ensure the effective monitoring of the implementation of all affirmative action policies and programmes.
8. The Committee recommended that the Government take immediate action to combat domestic violence. That should include such legal measures as amending the law on rape and extending it to include marital rape. The Committee also recommended that the State courts have sole jurisdiction in cases of sexual violence, and that victims be given better privacy and protection during court proceedings.
9. The Committee emphasized the importance of measures such as improving the economic empowerment of women, to reduce their dependence on men and their vulnerability to domestic violence. The Committee also recommended that the Government introduce awareness-raising programmes for health professionals, the police and the judiciary to improve their understanding of the problem that violence posed for women.
10. The Committee recommended that the Government introduce measures and programmes, including affirmative action, to increase women's participation at all levels of the judiciary.
11. The Committee suggested that the Government should endeavour to bring about legal change with regard to land ownership by women, especially in rural areas.
12. Recalling its recommendations contained in general recommendation 21 in this regard, the Committee urged the Government to address the issue of polygamous marriages. The Department of Women Affairs should introduce an intensive programme to discourage polygamy.
13. The Committee recommended that the Government ensure, as soon as feasible, the registration of all customary marriages, so as to ensure that women could enjoy all rights that accrued as a result of marriage.
14. While the Committee recognized the need to sustain traditional courts, it urged the Government to ensure that those courts comply with the principles of the Convention in all respects.
15. The Committee recommended that the Government of Namibia adopt the necessary measures to review the laws containing punitive measures against women who had undergone illegal abortions.
16. The Committee recommended that the Government continue its collaboration with non-governmental organizations in implementing the Convention and reporting under it.
17. The Committee strongly urged the State party to encourage political parties in Namibia to encourage the participation of women and to take all appropriate measures in that regard.
18. The Committee requested the Government to address in its next report the concerns included in the present comments and to provide information on the implementation of the Committee's general recommendations.
19. The Committee requested the wide dissemination in Namibia of these concluding comments so as to make Namibians aware of the steps that have been taken to ensure de facto equality for women and the further steps required in this regard.

PART 2

International Human Rights Instruments Ratified by Namibia and Concluding Observations by Committees

- **Convention on the Rights of the Child (CRC)**
- **Optional Protocols to the Convention on the Rights of the Child for the Involvement of Children in Armed Conflict, and on the Sale of Children, Child Prostitution and Child Pornography**
- **Concluding Observations of the Committee on the Rights of the Child: Namibia
16/10/2012**
- **Concluding Observations of the Committee on the Rights of the Child: Namibia
07/02/94**

CONVENTION ON THE RIGHTS OF THE CHILD

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children, ‘

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”,

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures,

that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law

and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has 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. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her wellbeing, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the

persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

- 1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
- 2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

- 1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions, which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
- 2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
- 3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
- 4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

- 1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
- 2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

- (f) To develop preventive health care, guidance for parents and family planning education and services.
- 3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
- 4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

- 1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
- 2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

- 1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
- 2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
- 3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
- 4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

- 1. States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
- 2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
- 3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

General comment on its implementation

Article 29

- 1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

Article 31

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

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

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

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which, takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
 - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which, have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if re-nominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.
11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

- (a) Within two years of the entry into force of the Convention for the State Party concerned;
- (b) Thereafter every five years.
- 2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
- 3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
- 4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
- 5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
- 6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
- (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
- (d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

- 1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
- 2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

- 1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request

that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

OPTIONAL PROTOCOLS TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT AND ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

The General Assembly,

Recalling all its previous resolutions on the rights of the child, in particular its resolution 54/149 of 17 December 1999, in which it strongly supported the work of the open-ended inter-sessional working groups and urged them to finalize their work before the tenth anniversary of the entry into force of the Convention on the Rights of the Child,

Expressing its appreciation to the Commission on Human Rights for having finalized the texts of the two optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography,

Conscious of the tenth anniversaries, in the year 2000, of the World Summit for Children and the entry into force of the Convention on the Rights of the Child and of the symbolic and practical importance of the adoption of the two optional protocols to the Convention on the Rights of the Child before the special session of the General Assembly for the follow-up to the World Summit for Children, to be convened in 2001,

Adhering to the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Reaffirming its commitment to strive for the promotion and protection of the rights of the child in all avenues of life,

Recognizing that the adoption and implementation of the two optional protocols will make a substantial contribution to the promotion and protection of the rights of the child,

1. Adopts and opens for signature, ratification and accession the two optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, the texts of which are annexed to the present resolution;
2. Invites all States that have signed, ratified or acceded to the Convention on the Rights of the Child to sign and ratify or accede to the annexed optional protocols as soon as possible in order to facilitate their early entry into force;
3. Decides that the two optional protocols to the Convention on the Rights of the Child will be opened for signature at the special session of the General Assembly, entitled 'Women 2000: gender equality, development and peace for the twenty-first century', to be convened from 5 to 9 June 2000 in New York, and thereafter at United Nations Headquarters, at the special session of the General Assembly, entitled 'World Summit for Social Development and beyond: achieving social development for all in a globalizing world', to be convened from 26 to 30 June 2000 in Geneva, and at the Millennium Summit of the United Nations, to be convened from 6 to 8 September 2000 in New York;
4. Requests the Secretary-General to include information on the status of the two optional protocols in his report to the General Assembly on the status of the Convention on the Rights of the Child.

97th plenary meeting: 25 May 2000

ANNEX I

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

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences this has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places generally having a significant presence of children, such as schools and hospitals,

Noting the adoption of the Statute of the International Criminal Court² and, in particular, its inclusion as a war crime of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts,

Considering, therefore, that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention raising the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth international Conference of the Red Cross and Red Crescent in December 1995 recommended, inter alia, that parties to conflict take every feasible step to ensure that children under the age of 18 years do not take part in hostilities,

Welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, inter alia, forced or compulsory recruitment of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that this Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to this Protocol owing to their economic or social status or gender,

Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts,

Convinced of the need to strengthen international cooperation in the implementation of this Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

Have agreed as follows:

Article 1

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3

1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection.
2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.
3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:
 - (a) Such recruitment is genuinely voluntary;
 - (b) Such recruitment is done with the informed consent of the person's parents or legal guardians;
 - (c) Such persons are fully informed of the duties involved in such military service;
 - (d) Such persons provide reliable proof of age prior to acceptance into national military service.
4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.
5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.
2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

Article 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 6

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.
2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.
3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organizations.
2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes, or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

Article 8

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.
2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.
3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 9

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.
3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 13.

Article 10

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

Article 12

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 13

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

ANNEX II

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

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation, and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet (Vienna, 1999) and, in particular, its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-

rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking of children,

Believing that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and also believing in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on the Protection of Children and Cooperation with Respect to Inter-Country Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography³ and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held at Stockholm from 27 to 31 August 1996,⁴ and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purpose of the present Protocol:

Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/22), chap. II, sect. A, resolution 1992/74, annex.

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis:
 - (a) In the context of sale of children as defined in article 2:
 - (i) The offering, delivering or accepting, by whatever means, a child for the purpose of:
 - a. Sexual exploitation of the child;
 - b. Transfer of organs of the child for profit;
 - c. Engagement of the child in forced labour;
 - (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
 - (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
 - (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.
2. Subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.
3. Each State Party shall make these offences punishable by appropriate penalties that take into account their grave nature.
4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish

the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.
2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:
 - (a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;
 - (b) When the victim is a national of that State.
3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.
4. This Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in those treaties.
2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.
3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.
5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and if the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

- (a) Take measures to provide for the seizure and confiscation, as appropriate, of:
 - (i) Goods such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;
 - (ii) Proceeds derived from such offences;
- (b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a) (i);
- (c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:
 - (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
 - (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and

- of the disposition of their cases;
 - (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
 - (d) Providing appropriate support services to child victims throughout the legal process;
 - (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
 - (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
 - (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.
2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.
 3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.
 4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.
 5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.
 6. Nothing in the present article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to these practices.
2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.
3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.
4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.
5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.
2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.
3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.
4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral regional bilateral or other programmes.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

Article 12

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a

report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.
3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

CONCLUDING OBSERVATIONS – COMMITTEE ON THE RIGHTS OF THE CHILD

Convention on the Rights of the Child

16 October 2012

Original: English

Committee on the Rights of the Child

**Concluding observations on the consolidated second and third periodic reports of Namibia,
adopted by the Committee at its sixty-first session (17 September–5 October 2012)**

1. The Committee considered the consolidated second and third periodic reports of Namibia (CRC/C/NAM/2-3) at its 1732nd and 1733rd meetings (see CRC/C/SR.1732 and 1733), held on 20 September 2012, and adopted, at its 1754th meeting, held on 5 October 2012, the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the consolidated second and third periodic reports of the State party (CRC/C/NAM/2-3) and the written replies to its list of issues (CRC/C/NAM/Q/2-3/Add.1), which allowed for a better understanding of the situation of children's rights in the State party. The Committee expresses appreciation for the constructive dialogue held with the high-level and multi-sectorial delegation of the State party.

II. Follow-up measures undertaken and progress achieved by the State party

3. The Committee also welcomes the adoption of the following legislative measures:
 - (a) Children's Status Act (Act No. 6 of 2006), which came into effect in November 2008;
 - (b) Labour Act (Act No. 11 of 2007);
 - (c) Criminal Procedure Amendment Act (Act No. 24 of December 2003);
 - (d) Maintenance Act (Act No. 9 of July 2003);
 - (e) Combating of Domestic Violence (Act No. 4 of June 2003);
 - (f) Education Act (Act No. 16 of December 2001);
 - (g) Combating of Rape Act (Act No. 8 of April 2000).
4. The Committee also welcomes the ratification of:
 - (a) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (in 2002);
 - (b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (in 2002);
 - (c) Convention on the Rights of Persons with Disabilities (in 2007);
 - (d) Optional Protocol to the Convention on the Rights of Persons with Disabilities (in 2007);
 - (e) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (in 2000);
 - (f) United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (in 2002);
 - (g) International Labour Organization (ILO) Convention No. 182 (1999) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (in 2000).
5. The Committee also welcomes the following policy measures:
 - (a) The National Agenda for Children (2012–2016), June 2012;
 - (b) The Education for All National Plan of Action 2005–2015;
 - (c) The Fourth National Development Plan containing important provisions for children, including an emphasis on early childhood development (July, 2012);
 - (d) The National Action Programme on the Elimination of Child Labour (January, 2008);
 - (e) The Education Sector Policy for Orphans and Vulnerable Children in Namibia (2008);
 - (f) The Education and Training Sector Improvement Programme (February, 2006);
 - (g) The National Plan of Action (2006–2010) for Orphans and Vulnerable Children (October, 2007);
 - (h) The National Policy on HIV/AIDS for the Education Sector (January, 2003).
6. The Committee notes as positive the invitation extended by the State party to the United Nations special procedures mandate holders.

III. Factors and difficulties impeding the implementation of the Convention

7. The Committee takes note of the fact that the State party is one of the countries most affected by climate change and the increasing impact of natural hazards, such as floods, storms and drought, leading to changes in the disease patterns, reduced agricultural outputs and food insecurity.

IV. Main areas of concern and recommendations

A. General measures of implementation (arts. 4, 42 and 44, para. 6, of the Convention)

The Committee's previous recommendations

8. The Committee, while welcoming the State party's objective assessment of the child rights situation and its efforts to implement the concluding observations on its initial report (CRC/C/15/Add.14), adopted in 1994, regrets that some of the Committee's recommendations contained therein have not been implemented.
9. The Committee urges the State party to take all necessary measures to address those recommendations from the previous concluding observations that have not been implemented or sufficiently implemented, particularly those relating to legislative reform, discrimination against girls and children with disabilities, the high incidence of child labour and administration of juvenile justice.

Legislation

10. While welcoming the initiatives to review laws from the pre-independence period, the Committee regrets the failure of the State party to adopt and implement key national legislation concerning children, as required by the Convention. In particular, the Committee notes with concern that despite discussions that began over a decade ago, two notable laws on children's rights, the Child Care and Protection Bill and the Child Justice Bill, have not yet been adopted. Furthermore, noting the existence of plural legal systems, the Committee is concerned that the customary law and practices are not consistent with the principles and provisions of the Convention, in particular those relating to the minimum age of marriage, to divorce and to inheritance.
11. **The Committee urges the State party to expedite the revision and adoption of pending legislation on children's rights, particularly the Child Care and Protection Bill, and the Child Justice Bill. The Committee also recommends that the State party incorporate into all proposed and existing legislation the principles and provisions of the Convention, and in the meantime, take measures to ensure that in case of conflict, the constitutional provisions and statutory laws prevail over the customary law, and that children and women have full access to the formal justice system.**

Comprehensive policy and strategy

12. The Committee notes with appreciation that the State party launched the National Agenda for Children, a five-year framework (2012-2016), in June 2012, guiding all sectors in the State party towards fulfilling their obligations to protect and promote children's rights.
13. **The Committee recommends that the State party allocate adequate human, financial and technical resources for the implementation of the National Agenda for Children, and set up an effective monitoring and evaluation mechanism to track the progress achieved in the implementation of the plan.**

Coordination

14. The Committee notes that the Ministry of Gender Equality and Child Welfare was established as the leading coordinating body for the protection and promotion of children's rights; however, it notes with concern the information provided by the State party that the Ministry lacks adequate staff and resources. The Committee is further concerned that various government departments and ministries have different coordination frameworks for strategic policies across regions and constituencies, which leads to overlapping mandates and roles in the implementation of child rights, negatively affecting the decision-making and implementation of policies.
15. **The Committee urges the State party to reinforce the coordination role of the Ministry of Gender Equality and Child Welfare by ensuring that the Ministry has a high status and authority, including adequate human, technical and financial resources to effectively coordinate actions for children's rights across different sectors and effectively monitor the implementation of the National Agenda for Children (2012-2016). Furthermore, the Committee recommends that the State party review its national, regional and local coordination mechanisms to streamline coordination processes, and reduce duplication between different sectors.**

Allocation of resources

16. While noting that the State party has allocated considerable resources in its national budget to the social sectors, particularly in education, the Committee is concerned that such a level of spending has not necessarily resulted in improved outcomes in many areas of children's rights, including the education sector. The Committee also notes with concern that the State party has not yet undertaken a child rights approach to budgeting to track the allocation and use of resources for children across different sectors.
17. **The Committee urges the State party:**
 - (a) **To monitor public expenditure on children to ensure equity of resources across different sectors and positive outcomes for all children;**
 - (b) **To utilize a child rights approach in preparing the State budget by implementing a tracking system for the allocation and use of resources for children across key ministries. The Committee also urges that this tracking system be used for impact assessments on how investments in any sector serve the best interest**

- of the child, ensuring that any differential impact of such investment on girls and boys is adequately reflected;
- (c) To ensure transparent and participatory budgeting through public dialogue and participation, in particular that of children, and to ensure proper accountability by local authorities;
 - (d) To define strategic budgetary lines, particularly for children in marginalized situations, those living in poverty, in rural areas or in vulnerable situations that require affirmative social measures (such as measures to eliminate discrimination against girls, strengthen birth registration programs, provide free and easy access to health care), and ensure that such budgetary lines are protected even in situations of crisis;
 - (e) To take into account the recommendations of the day of general discussion of 2007 on “Resources for the rights of the child – responsibility of States”.

Data collection

18. While the Committee welcomes that the National Household Income and Expenditure Survey 2009/10 included for the first time a child poverty assessment, it is concerned about the absence of a comprehensive data collection system for the disaggregation and analysis of data on all children under the age of 18. The Committee also regrets the lack of information on the cases of violence against children, including corporal punishment and children with disabilities, disaggregated by sex, age, socioeconomic background, geographic location, and those attending and/or out of schools.
19. **The Committee encourages the State party to set up a comprehensive data collection system with the support of its partners and analyse the data collected on children as a basis for assessing progress achieved in the realization of children’s rights. The data collected should be disaggregated by, inter alia, age, sex, ethnicity, geographic location and socioeconomic background to facilitate analysis of the situation of all children, in particular those groups of children who are in need of special protection, such as girls, children with disabilities and those living in poverty. The Committee also recommends that the State party collect systematic data on cases of violence against children, in particular sexual violence and corporal punishment, including by requiring all schools, alternative care institutions and state structures to report all instances of violence against children.**

Independent monitoring

20. The Committee is concerned about the lack of a children’s rights division within the Office of the Ombudsman that is accessible to all children. The Committee is also concerned that only limited staff and resources have been provided to the Office of the Ombudsman and that the staff have not received any specific training on children’s rights, which severely constrains the capacity of the office to monitor and respond to violations, as reflected by the small number of children’s complaints before this mechanism.
21. **Drawing attention to its general comment No. 2 (CRC/GC/2002/2, 2002), the Committee calls upon the State party to establish a children’s rights division in the Office of the Ombudsman that would be responsible for monitoring children’s rights violations and addressing children’s complaints in a child sensitive manner. The Committee also urges the State party to ensure that this mechanism is provided with the necessary human, technical and financial resources to ensure its independence and efficacy. In this regard, the Committee encourages the State party to seek technical assistance from, inter alia, the United Nations Children’s Fund (UNICEF), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Office of the United Nations High Commissioner for Human Rights.**

Dissemination and awareness-raising

22. The Committee notes as positive the State party’s initiatives to raise awareness of children’s rights, including through the “Day of the Namibian Child”, the “Day of the African Child” and the publication of a child-friendly version of the Convention in English, but remains concerned that the Convention and the Committee’s previous concluding observations (CRC/C/15/Add.14) have not been translated into local languages and widely disseminated.
23. **The Committee recommends that the State party continue and strengthen its programs to raise awareness of children’s rights, and encourages the State party to translate the Convention and the concluding observations into local languages, and incorporate them into its awareness-raising programs.**

Training

24. The Committee is concerned that all professionals working with or for children, including government staff, law enforcement officials, health professionals, and social workers, do not receive adequate and systematic training on children’s rights.
25. **The Committee recommends that the State party strengthen its efforts to ensure that professionals working with or for children are adequately and systematically trained on children’s rights, in particular teachers, school administrators, law enforcement officers, staff at the Office of the Ombudsman, Women and Children’s Protection Units and the Ministry of Gender Equality and Child Welfare, journalists and civil society organizations. In this regard, the Committee reminds the State party of its obligations to ensure that adequate human, technical and financial resources are available for systematic and long-term training on children’s rights.**

Child rights and the business sector

26. The Committee notes the State party's information that as a member of the International Atomic Energy Agency, it has complied with its international obligations to guarantee the safety of uranium activities. However, it is concerned that multinational and national companies in the country, notably the mining and uranium-producing industries, are operating in the absence of clear regulatory frameworks to ensure that international human rights, environment and other standards, especially relating to child and women's rights, are adhered to, in order to protect natural resources such as land, air and water and the persons, families and communities affected by high levels of radioactive toxicity and pollution. In addition, the Committee notes with concern that the Environmental Management Act, which has important safeguards relating to environmental impact assessments prior to licensing and monitoring compliance with the law, has also not entered into force. It also notes with concern that issues relating to the environmental and health impact of uranium mining are neither discussed nor communicated to the persons concerned or disclosed to the public.
27. **The Committee recommends that the State party establish and implement regulations to ensure that the business sector complies with international and national human rights, labour, environment and other standards, particularly with regard to child rights, and in the light of Human Rights Council resolutions 8/7 of 18 June 2008 (para. 4 (d)) and 17/4 of 16 June 2011 (para. 6 (f)). In particular, it recommends that the State party:**
- (a) Establish a clear regulatory framework for the mining and uranium-producing industries operating in the State party to ensure that their activities do not affect human rights or endanger environment and other standards, especially those relating to child and women's rights;
 - (b) Ensure effective implementation by companies, particularly the uranium mining industry, of international and national environment and health standards, and that the implementation is monitored and appropriately sanctioned and remedies provided when violations occur, and that appropriate international certification is sought;
 - (c) Require companies to undertake assessments, consultations, and full public disclosure of the environmental, health-related and human rights impacts of their business activities and their plans to address such impacts;
 - (d) Be guided by the United Nations "Protect, Respect and Remedy" Framework, accepted unanimously in 2008 by the Human Rights Council, while implementing these recommendations.

B. Definition of the child (art. 1 of the Convention)

28. The Committee reiterates its previous concern that the definitions of the child in national legislation vary widely and are contradictory (CRC/C/15/Add.14, para. 6). In particular, it is concerned that the State party's Constitution defines "child" as anyone under the age of 16 years, which is not compatible with article 1 of the Convention. The Committee is gravely concerned that the Married Persons Equality Act, which sets the minimum age of marriage at 18, does not apply to customary marriages.
29. **The Committee strongly recommends that the State party:**
- (a) Review and amend the Constitution and all existing legislation to harmonize the overall definition of the child to comply with the provisions of the Convention, and ensure that all existing legislation affords full protection to all children under 18 as well as respects their evolving capacities and increased autonomy;
 - (b) Ensure that the provision of the Married Persons Equality Act relating to the minimum age for marriage is applicable to customary marriages.

C. General principles (arts. 2, 3, 6 and 12 of the Convention)

Non-discrimination

30. The Committee notes the efforts by the State party to address discrimination, including through the formulation of numerous policies and programs, such as the Education Sector Policy for Orphans and Vulnerable Children and the National Policy on HIV/AIDS for the Education Sector. Despite these efforts, the Committee is concerned about:
- (a) Human rights violations resulting from widespread discrimination against children from indigenous communities, in particular Ovahimba and San, children with disabilities, those living in poverty, children in street situations and refugee and migrant children;
 - (b) Pervasive marginalization and discrimination against women and girls, including patriarchal attitudes and deep-rooted norms and customs that discriminate against girls and place severe restrictions on their human rights. Furthermore, the Committee is concerned about the customary laws and practices that discriminate against women and girls, including those relating to marriage and inheritance.
31. **In the light of article 2 of the Convention, the Committee recommends that the State party:**
- (a) Intensify measures, including timely implementation of relevant policies and strategic plans, to reduce poverty, prevent and combat discrimination in education, health and development, particularly for girls,

- indigenous children, children with disabilities and other groups of children in vulnerable situations;
- (b) Adopt all necessary measures to combat discrimination faced by women and girls under customary law, particularly in the areas of marriage and inheritance rights, including through efforts to prevent the application of such law in rural areas. In these efforts, the Committee calls upon the State party to ensure that girls, women, traditional leaders and civil society organizations are consulted throughout the process;
- (c) Review all relevant civil laws to end legislative discrimination against women and girls. In particular, the State party should review the Married Persons Equality Act of 1996 to eliminate all discriminatory provisions, including those affecting marriage, land ownership and inheritance rights;
- (d) Include detailed information in its next report on measures adopted to prevent the application of customary law that discriminates against girls and women or has the effect of creating or perpetuating discrimination against girls.

Best interests of the child

32. The Committee notes that the principle of the best interests of the child is explicitly protected by the Constitution and the proposed Child Care and Protection Bill and the Child Justice Bill. Nevertheless, the Committee is concerned that this principle is not adequately applied by legislative bodies and, therefore, is absent in most legislation, policies and programmes concerning children. The Committee is further concerned at the lack of awareness on the principle of the best interests of the child among the general public, including traditional and religious leaders and government officials.
33. **The Committee urges the State party to strengthen its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programmes and projects relevant to and with an impact on children. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance for determining the best interests of the child in every area, and to disseminate this to the public, including traditional and religious leaders, and private social welfare institutions, courts of law, administrative authorities and legislative bodies.**

Right to life, survival and development

34. The Committee expresses grave concern at the abandonment of new-born children (or “baby-dumping”) and infanticide in the State party, often resulting from the high number of teenage pregnancies, child rape and inadequate access to sexual and reproductive health care and information.
35. **The Committee reminds the State party of its obligation to ensure the right to life, survival and development for all children by taking all necessary measures, including addressing the root causes of teenage pregnancies, strengthening support for pregnant adolescents and providing them with adequate sexual and reproductive health services.**

Birth registration

36. The Committee welcomes the State party’s progress in ensuring that all children are registered at birth, including through the national mobile registration campaign in 2009 and 2010. However, the Committee is concerned that:
 - (a) Only two thirds of children under the age of 5 have a birth certificate and that birth registration is particularly low in rural areas, especially in Caprivi and Kavango regions and among children living in poverty;
 - (b) The legal framework for birth registration is restrictive, including the requirement to present civic documentation, which creates serious obstacles for parents without such documents to register the births of their children;
 - (c) Refugees face serious challenges in registering the birth of their children, as officials are reluctant to issue birth certificates to foreign children born in Namibia. Furthermore, the legal directive which requires refugees and asylum seekers to reside in the isolated Osire refugee settlement restricts their freedom of movement to register the births of their children;
 - (d) The State party’s legislation on nationality is silent on the issue of granting nationality to children who are found in Namibia but whose parents are unknown.
37. **The Committee strongly urges the State party:**
 - (a) **To strengthen its efforts to ensure immediate and universal birth registration, including through reforms in the Birth, Marriages and Death Registration Act of 1963, and, in the meantime, take immediate special measures to register the births of all children and provide all children with free birth certificates without any discrimination;**
 - (b) **To intensify public awareness campaigns on the importance of birth registration;**
 - (c) **To establish effective procedures to identify unaccompanied and separated asylum-seeking and refugee children and immediately take special measures to register their births;**
 - (d) **To withdraw its reservation to article 26 of the 1951 Convention relating to the Status of Refugees, and allow freedom of movement for the refugees and asylum seekers;**
 - (e) **To accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

D. Violence against children (articles 19, 37 (a) and 39 of the Convention)

Corporal punishment

38. The Committee notes that the Education Act (Act No. 16 of 2001) prohibits corporal punishment in schools, and that the Supreme Court ruling of 1991 ruled that corporal punishment is unlawful in school and as a sentence for crime. However, the Committee is gravely concerned about the information provided by the State party that:
- (a) The practice of corporal punishment remains widespread in all settings, including in schools;
 - (b) Certain new legislation, such as the Combating of Domestic Violence Act (Act No. 4 of 2003), and laws prohibiting corporal punishment in schools are not fully enforced in practice;
 - (c) There is an absence of legislation that explicitly prohibits corporal punishment in the home, penal system and alternative care settings. In addition, the Committee deplores the fact that “reasonable chastisement” of a child is a common law defence to the crimes of corporal punishment.
39. **The Committee strongly calls upon the State party:**
- (a) **To pass, as a matter of priority, the Child Care and Protection Bill with a view to prohibiting corporal punishment under civil and customary law and in all settings, including in the home, in school and in alternative care settings;**
 - (b) **To ensure that laws prohibiting corporal punishment are effectively implemented and that legal proceedings are systematically initiated against those responsible for corporal punishment;**
 - (c) **To immediately repeal all provisions authorising corporal punishment;**
 - (d) **To introduce sustained public education, awareness-raising and social mobilization programmes, involving children, families, communities and religious leaders, on the harmful effects, both physical and psychological, of corporal punishment, with a view to changing the general attitude towards this practice, and to promote positive, non-violent and participatory forms of child-rearing and discipline as an alternative to corporal punishment;**
 - (e) **To ensure that all school teachers and personnel complete mandatory trainings on the rights of child and on the harmful effects, both physical and psychological, of corporal punishment and encourage positive behavioural support and alternative forms of discipline.**

Sexual exploitation and abuse

40. While it notes that the State party has established Women and Child Protection Units in all regions to strengthen child protection, the Committee is alarmed at the high prevalence of abuse and violence against women and children, including rape and sexual abuse in schools and at home. In particular, the Committee is gravely concerned about:
- (a) The high incidence of child rape by family members, caretakers, teachers and local leaders in the State party;
 - (b) The low prosecution for crimes of sexual violence against children and the pervasiveness of extrajudicial settlements, leading to impunity for perpetrators. In this regard, the Committee notes with concern the delay in amending the Combating of Rape Act (Act No. 8 of 2000);
 - (c) The limited access to justice, shelter, medical services, counselling and compensation awarded to victims under the national legislation.
41. **The Committee urges the State party:**
- (a) **To ensure that legislation relating to sexual abuse and exploitation is effectively enforced, and that perpetrators of such crimes are brought to justice and punished with sanctions proportionate to their crimes;**
 - (b) **To amend without delay the Combating of Rape Act (Act No. 8 of 2000) in order to adequately protect all child victims and witnesses of sexual violence and abuse;**
 - (c) **To strengthen the capacity of Women and Child Protection Units in all regions, and establish, as a matter of urgency, effective and child-friendly procedures and mechanisms to receive, monitor and investigate complaint**
 - (d) **To undertake awareness-raising among children, especially among girls, to encourage the reporting of sexual violence and abuse in schools**
 - (e) **To develop a national strategy to respond to the shelter, health, legal and psychosocial needs of child victims of sexual exploitation and violence.**

Harmful practices

42. The Committee is gravely concerned at the continued prevalence of sexual initiation practices and early marriage in the State party. In addition, the Committee is concerned that the State party has not taken any steps to systematically document and curb such harmful practices, including through the introduction of sanctions.
43. **The Committee calls upon the State party to ensure that adequate criminal and civil sanctions are imposed on individuals, including on traditional leaders, who encourage or are involved in sexual initiation practices. In addition, the State party should implement sensitization programmes involving families, community leaders and society at large, including children themselves, to curb the practices of sexual initiation rites and early marriages, particularly in rural areas.**

Freedom of the child from all forms of violence

44. Recalling the recommendations of the United Nations study on violence against children of 2006 (A/61/299), the Committee recommends that the State party prioritize the elimination of all forms of violence against children. The Committee further recommends that the State party take into account general comment No. 13 (CRC/C/GC/13, 2011), and in particular:
- (a) Develop a comprehensive national strategy to prevent and address all forms of violence against children;
 - (b) Adopt a national coordinating framework to address all forms of violence against children;
 - (c) Pay particular attention to the gender dimension of violence;
 - (d) Cooperate with the Special Representative of the Secretary-General on violence against children and other relevant United Nations institutions.

Standard of living

45. While taking note of the national development framework, Vision 2030 and the Fourth National Development Plan (2012/13–2016/17), which are aimed at providing a comprehensive child protection and family support system, the Committee is nonetheless concerned that 34.4 per cent of the State party's children live below the poverty line, that malnutrition, mortality and morbidity rates of children in poverty are high, and that 67 per cent of Namibians do not have access to improved sanitation. In this context, the Committee expresses concern about the lack of basic services in the State party to support families in raising their children, and ensuring children's rights to holistic development.
46. **The Committee calls on the State party to take all necessary measures to address child poverty and vulnerability through, inter alia, family support services and social protection to disadvantaged families, including targeted programmes for families that are particularly vulnerable to poverty, implemented at the community level.**

E. Family environment and alternative care (arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)

Family environment

47. The Committee notes with appreciation that the State party provides disability, foster care and child maintenance grants and also notes that the Fourth National Development Plan (2012/13–2016/17) advocates for the gradual expansion of the grant system to include all children and additional measures to empower families to look after their children. However, the Committee is concerned that due to a shortage of social workers and community child workers, the measures do not yet reach all families and children that require them. In addition, the Committee is concerned about:
- (a) The fact that 28 per cent of Namibian children under the age of 18 are orphans and/or “vulnerable”, 34 per cent do not live with one of the parents, and only 26 per cent of all children live with both parents;
 - (b) The unequal parental responsibilities in families and the high incidence of households headed by single mothers.
48. **The Committee strongly recommends that the State party:**
- (a) Expedite the expansion of the grant system and strengthen consultation with civil society organizations in the monitoring and review of the system to ensure increased access to grants for families, such as those living in poverty and those headed by single mothers;
 - (b) Take additional measures to further increase the number of social workers and community child workers;
 - (c) Develop parental education and awareness, for example by providing parents with support, including training in parental guidance, skills and joint parental responsibilities aimed at changing practices and stereotypes regarding gender roles and parenting;
 - (d) Take immediate measures to avoid the separation of children from the family environment by providing appropriate assistance and support services to parents and legal guardians in the performance of child-rearing responsibilities.

Adoption

49. The Committee is deeply concerned that domestic and inter-country adoptions take place unofficially through unauthorized private channels, and without any oversight by the State party. The Committee also notes with concern the absence of national legislation on inter-country adoptions. The Committee is concerned that in the absence of a legal framework and a specific body to monitor domestic and inter-country adoption, children are exposed to exploitation and child trafficking.
50. **The Committee recommends that the State party:**
- (a) Urgently adopt a comprehensive law on domestic and inter-country adoption and ensure that it is in full compliance with the Convention and other international standards. In the meantime, the State party should take immediate measures to stop unofficial adoptions in order to prevent abusive practices, including the exploitation and trafficking of children;

- (b) Entrust the responsibility of monitoring and collecting data on domestic and inter-country adoption, including post-adoption monitoring, to a specific body, and ensure that the principle of the best interests of the child is always taken into consideration;
- (c) Expedite the ratification of the 1993 Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption.

F. Disability, basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)
Children with disabilities

51. The Committee reiterates its previous concern regarding the discrimination against children with disabilities (CRC/C/15/Add.14, paras. 7 and 15) and that the State party continues to adopt a social welfare approach to disability. The Committee notes that the State party provides grants for children with disabilities; however, it notes with concern that only 10 per cent of them are receiving the disability grant. The Committee is particularly concerned that:
- (a) Children with disabilities, especially girls and those living in rural areas, continue to face multiple forms of discrimination and serious obstacles to the full enjoyment of their rights, including limited access to education, health care and other social services;
 - (b) The establishment of different structures and policies, in particular the National Disability Council and the National Policy on Disability of 1997, have not resulted in sufficient coordinated and concerted actions for children with disabilities. While noting that the National Disability Council is tasked with monitoring the implementation of the National Policy on Disability, the Committee regrets the lack of information on the Council's monitoring activities in the State party's report.
52. Recalling its general comment No. 9 (CRC/C/GC/9 and Corr.1, 2006), the Committee urges the State party to adopt a human rights-based approach to disability and specifically recommends that it:
- (a) Ensure that all legislation on children, including the proposed Child Care and Protection Bill, include a specific prohibition of discrimination on the ground of disability, and develop holistic and coordinated programmes across ministries on the rights of children with disabilities;
 - (b) Ensure that children with disabilities are able to exercise their right to education, and provide for their inclusion in the mainstream education system to the greatest extent possible, including by providing teachers with special training, by increasing facilities for children with disabilities and by making schools more accessible;
 - (c) Provide effective remedies in cases of violations of the rights of children with disabilities, and ensure that those remedies are easily accessible to all children with disabilities, including girls and their parents and/or other caregivers;
 - (d) Promptly implement the wide range of policy and administrative recommendations provided by the Health and Social Services System in 2008, including changes to the national health-care system in order to improve health care services for persons with disability; in addition, the State party should strengthen efforts to ensure that necessary professional (i.e. disability specialists) and financial resources are available, especially at the local level, and promote and expand community-based health services programmes, including to parents, caregivers and parent support groups;
 - (e) Conduct awareness-raising and educational campaigns targeting the public at large and specific groups of professionals with a view to preventing and eliminating de facto discrimination against children with disabilities.

Health and health services

53. The Committee notes as positive the national Strategic Plan (2009-2013) for health. However, it is concerned at the high level of maternal mortality, child malnutrition, limited access to sanitation and clean water, the poor standard of health facilities, and health disparities among children living in rural and remote areas. The Committee is also concerned about the gaps in human resources in the health sector and the efficient allocation of the health budget.
54. The Committee recommends that the State party take all necessary measures to ensure that all children enjoy the same access to and quality of health services, paying special attention to children in vulnerable situations, especially children living in poverty and rural areas. It further urges the State party to address socioeconomic disadvantages and other root causes for the existing health deficits. In particular, the Committee recommends that the State party:
- (a) Strengthen efforts to address, as matter of urgency, the high rates of malnutrition of children, and develop educational programmes, including campaigns to inform parents about basic child health and nutrition, hygiene and environmental sanitation and reproductive health;
 - (b) Seek financial and technical assistance from, inter alia, UNICEF and the World Health Organization (WHO), among others, in this regard;
 - (c) Improve access to maternal care services, particularly in rural areas, by improving health infrastructure and increasing the availability and accessibility to emergency obstetric and neonatal care and skilled

- birth attendants at lower- and district-level health facilities; in addition, take special measures to ensure that pregnant adolescents have easy access to sexual and reproductive health care;
- (d) **Implement the recommendations of the Special Rapporteur on the human right to safe drinking water and sanitation (A/HRC/21/42/Add.3), especially the recommendation on extending the mandate of the Ombudsman to promote and protect economic, social and cultural rights, including the rights to water and sanitation (ibid., para. 68 (b)).**

Mental health

55. The Committee is alarmed by the high levels of suicides among children in the State party. The Committee notes with grave concern the Ministry of Health and Social Services' assessment that the suicide rate among youth has increased in recent years. The Committee is also concerned at the lack of data on mental health problems, the inadequate availability of trained mental health practitioners in schools and rural areas, and the limited awareness among professionals working with children on the importance of identifying and addressing mental health concerns.
56. **The Committee recommends that the State party:**
- (a) **Urgently review the Namibian mental health policy and adopt a comprehensive national child mental health policy as recommended by WHO, and ensure that mental health promotion, counselling, prevention of mental health disorders in primary health care, schools, communities, and child-friendly outpatient and inpatient child mental health services are integral features of the policy;**
 - (b) **Take urgent action to strengthen its efforts to prevent suicide among children and youth, including by increasing available psychological counselling services and social workers in schools and communities, and ensure that all professionals working with children are adequately trained to identify and address early suicidal tendencies and mental health problems;**
 - (c) **Seek technical assistance from WHO and other national and international institutions in the development and implementation of policies and programmes on mental health for children, including those with learning disabilities.**

Adolescent health

57. While welcoming various policies and initiatives undertaken by the State party to improve adolescent health, the Committee is extremely concerned at the high number of teenage pregnancies, including those as a result of rape, the high incidence of sexually transmitted infections and drug and alcohol abuse among adolescents. In particular, the Committee is concerned about:
- (a) The State party's punitive abortion law and various social and legal challenges, including long delays in accessing abortion services within the ambit of the current laws for pregnant girls. In this regard, the Committee notes with concern that such a restrictive abortion law has led adolescents to abandon their infants or terminate pregnancies under illegal and unsafe conditions, putting their lives and health at risk, which violates their rights to life, to freedom from discrimination, and to health;
 - (b) Inadequate access by teenagers to reproductive health education and services, including contraceptives and emergency care. The Committee further regrets the absence of information in the State party's report on the measures taken to ensure the right of children to sexual and reproductive health care with or without parental consent.
58. **Referring to its general comment No. 4 (CRC/GC/2003/4, 2003), the Committee recommends that the State party:**
- (a) **Review and amend its legislation concerning abortion to prevent adolescents from resorting to clandestine and unsafe abortions and to reduce unwanted pregnancies, maternal mortality and the abandonment of infants;**
 - (b) **Intensify and expand its efforts to ensure the accessibility and availability of sexual and reproductive health services, including contraceptives, institutional birth services and health care at delivery, particularly in rural areas, and expedite the implementation of its policies and programmes to address the high rate of teenage pregnancies through preventative actions, and ensure that pregnant adolescents have easy access to confidential counselling and support;**
 - (c) **Strengthen reproductive health education, including sex education for adolescents, by, inter alia, making health education part of school curricula, and improve knowledge and the availability of reproductive health care services with a view to preventing HIV/AIDS and other sexually transmitted infections and reducing teenage pregnancies;**
 - (d) **Monitor the implementation of policies and services designed to prevent teenage pregnancies, substance abuse and HIV/AIDS infection and other sexually transmitted diseases and ensure that information on such policies and services is widely disseminated to adolescents, including girls, families, schools administrative officers, government officials, and health-care providers;**
 - (e) **Ensure that all children who abuse alcohol and/or use tobacco and drugs have access to effective services for rehabilitation from substance abuse, including access to treatment, counselling, recovery and reintegration.**

HIV/AIDS

59. The Committee welcomes the progress of the State party in reducing HIV prevalence, achieving a high coverage of prevention of mother to child transmission of HIV and providing anti-retroviral therapy. However, the Committee is gravely concerned at:

- (a) The high prevalence of HIV/AIDS infections among children, in particular among adolescent girls;
- (b) The government policy that requires children under 16 years of age to obtain the consent of their parents or guardian to gain access to HIV/AIDS voluntary counselling and testing, which severely restricts the right of children to information and health care;
- (c) The decrease of funds in the area of prevention and treatment of HIV/AIDS, which could result in the reduction of services and care for children infected or affected by HIV/AIDS.

60. In the light of its general comment No. 3 (CRC/GC/2003/4, 2003), the Committee recommends that the State party:

- (a) Take legislative measures to ensure that all children, including girls under the age of 16, have free and confidential access to medical counsel and assistance with or without parental consent;**
- (b) Ensure that policies and programmes to prevent HIV/AIDS infection, including the National Policy on HIV/AIDS for the Education Sector, which safeguards accessibility and availability of condoms in educational institutions and hostels, are effectively implemented;**
- (c) Strengthen and enforce new policies and programmes to provide care and support for children infected or affected by HIV/AIDS, including programmes to strengthen the capacity of families and communities to care for such children;**
- (d) Seek technical assistance from UNICEF and other international organizations to increase the effectiveness of resource allocation and spending, and help explore additional sources of contributions from national partners.**

Breastfeeding

61. The Committee is deeply concerned about the information provided in the State party that only 5.7 per cent of all mothers continue to exclusively breastfeed until their child is 4 to 5 months old and only 1 per cent of all mothers continue to breastfeed until their child is 6 to 8 months old. The Committee is also concerned at the absence of information on the steps taken by the State party to promote, protect and encourage breastfeeding, including the allocation of funding to breastfeeding education and support. In addition, the Committee remains concerned that the State party lacks national legislation and policies to effectively enforce the International Code of Marketing of Breast-milk Substitutes. The Committee also notes with concern that the State party's legislation provides only three months of maternity leave, which, inter alia, prevents mothers from breastfeeding their infants.

62. The Committee recommends that the State party:

- (a) Strengthen the promotion of exclusive breastfeeding up to the age of 6 months by extending maternity leave, while ensuring the rights of working mothers to a secure employment and salary and social security;**
- (b) Institute a national monitoring system to monitor compliance with the International Code of Marketing of Breast-milk Substitutes;**
- (c) Train health professionals, including professionals working in maternity units, and communities on breastfeeding, the significance of initiating it within the first hour following childbirth and the importance of avoiding bottle-feeding or feeding with breast-milk substitutes, to the extent possible, and ensure that they provide appropriate support for new mothers;**
- (d) Initiate countrywide programmes to facilitate the early initiation of breastfeeding in all maternity centres, and strengthen efforts to promote exclusive and continued breastfeeding by providing access to materials and raising public awareness, particularly among new mothers, on the importance of breastfeeding and the risks of formula feeding.**

G. Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)

63. The Committee welcomes that the State party has allocated substantial resources to the education sector. The Committee also welcomes the Education and Training Sector Improvement Programme for inclusive education. However, it is concerned about:

- (a) The disparities between urban and rural areas in terms of access to education, the insufficient number of well-trained teaching staff, and poor school infrastructure and children's limited access to school materials and textbooks;
- (b) The low retention and high drop-out rates in primary and secondary schools;
- (c) The private costs, including the contribution to the school development funds and its impact on children's right to education, particularly of certain groups of children, such as children living in poverty, pregnant adolescents, children with disabilities, migrant, refugee and indigenous children;
- (d) The high level of dropout among girls due to teenage pregnancies and lack of implementation of the policy on the prevention and management of learner pregnancy.

64. Taking into account its general comment No. 1 (CRC/GC/2001/1, 2001), the Committee recommends that the State party continue to strengthen programmes and policies to ensure the accessibility of quality education for all children in Namibia. In particular, the Committee urges the State party:
- (a) To increase the number of well-trained teachers, improve school infrastructure, and increase children's access to school materials and textbooks with the view to eradicating regional disparities with regard to school enrolment and attendance;
 - (b) To strengthen support to improve school attendance and retention programmes, and provide vocational training for drop-out students;
 - (c) To eliminate all types of hidden or additional fees in the school system, including an immediate abolishment of the school development fund scheme, to ensure unhindered and equal access to education for all children;
 - (d) To implement special education programmes, taking into account the needs of vulnerable children, and to ensure the effective enforcement of the Policy for the Prevention and Management of Learner Pregnancy to ensure that pregnant girls have full and easy access to education.

Early childhood development

65. The Committee welcomes the State party's policy on integrated early childhood development (ECD) and the commitment indicated in the National Agenda for Children (2012–2016) and the Fourth National Development Plan (2012–2017) to provide free government-run ECD centres focusing on the poorest sections of society and supporting the training of ECD workers. However, the Committee is concerned about the lack of data on preschool children, and the capacity of the Ministry of Education and the Ministry of Gender Equality and Child Welfare to effectively coordinate the implementation and evaluation of the multispectral ECD programme.
66. **The Committee recommends that the State party undertake a survey of all preschool children and accelerate the implementation of the ECD policy through adequate human, financial and technical resources and effective monitoring and evaluation mechanisms, and prioritize children in the most disadvantaged situations, including girls and children in rural and remote areas, and the use of efficient community-based approaches where necessary.**

H. Other special protection measures (arts. 22, 30, 38, 39, 40, 37 (b)-(d), 32-36 of the Convention)

Economic exploitation, including child labour

67. The Committee reiterates its previous concern (CRC/C/15/Add.14, para. 10) about the prevalence of child labour, particularly in the informal sector and rural areas. The Committee is particularly concerned about:
- (a) The inconsistency between the minimum age for employment in the Labour Act, which is 14 years of age, and the age of completing education, which is 16 years;
 - (b) The reports of exploitation and abuse of children in the domestic and agricultural sectors, including physical abuse, denial of education and long working hours;
 - (c) The prevalence of the worst forms of child labour, including the involvement of children in hazardous work.
68. **The Committee reiterates its previous recommendation (CRC/C/15/Add.14, para. 21) that the State party ensure that its policy and legislation on the issue of child labour is in conformity with the provisions of the Convention and relevant ILO conventions. In addition, the Committee urges that the State party to take all available means to address child labour, with particular emphasis on the worst forms of child labour. The Committee specifically recommends that the State party:**
- (a) Amend the Labour Act, raising the minimum age of employment to the level of the age of completing education and the minimum age of employment in hazardous work to 18 years;
 - (b) Increase inspections and investigation into suspected cases of child labour, including in the agricultural sector, and provide compensation and criminal penalties to improve compliance with child labour provisions;
 - (c) Require employers of agricultural and child domestic workers to report all work-related injuries and serious illnesses to the Office of the Labour Commissioner at the Ministry of Labour and Social Welfare in order to collect and publish better statistics than are currently available about such incidents
 - (d) Undertake awareness-raising programmes for the general public on child labour and the enforcement of legal provisions, particularly in farming areas;
 - (e) Ratify ILO Convention No. 189 (2011) concerning Decent Work for Domestic Workers,
 - (f) Seek technical assistance from the International Programme on the Elimination of Child Labour of the International Labour Office in this regard;
 - (g) Strictly enforce the labour laws, in particular by ensuring civil and criminal penalties to improve compliance with the provision of access to education for children engaged in employment.

Children in street situations

69. The Committee welcomes the State party's countrywide campaign to raise awareness of children in street

situations and integrate them back into schools. The Committee, however, is concerned at reports that children in street situations are regularly subject to exploitation, abuse, discrimination and stigmatization, as well as to arrest and detention by police. In addition, the Committee is concerned at the institutionalization of children in street situations in the State party.

70. The Committee recommends that the State party:

- (a) **Develop a comprehensive strategy to protect children in street situations and reduce their number, including identifying the underlying causes, such as poverty, family violence, migration and the lack of access to education, with the aim of preventing and reducing this phenomenon. In this regard, the Committee calls upon the State party to pay special attention to the specific vulnerability of girls in street situations to sexual abuse, exploitation and early pregnancy;**
- (b) **Develop initiatives that offer effective alternatives to institutionalization and facilitate the reunification of children in street situations with their families, whenever feasible and appropriate, taking into account the best interests of the child. In this context, the Committee recommends that the State party develop programmes that support their long-term educational and developmental needs, including through psychological support where possible;**
- (c) **Ensure that children in street situations are not subject to discrimination, abuse and harassment by public and law enforcement officials and that they are not subject to arbitrary arrest and illegal detention;**
- (d) **Promptly investigate complaints concerning ill-treatment and abuse of children in street situations by police and staff in police custody or in the government detention facilities and initiate disciplinary measures.**

Sale, trafficking and abduction

71. The Committee is deeply concerned that children are trafficked within the State party for employment in agriculture, road construction, vending and commercial sex work, and that children from other countries are trafficked to the State party for livestock and child-minding work. The Committee also notes with concern the absence of specific legislation on human trafficking and the lack of prosecutions for trafficking in persons.

72. The Committee urges the State party:

- (a) **To urgently adopt legislation on human trafficking in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) and article 35 of the Convention on the Rights of the Child;**
- (b) **To strengthen its efforts to combat international and internal child trafficking, including by establishing more rigorous border control;**
- (c) **To ensure that adequate measures are taken to hold perpetrators of child sale, trafficking and abduction accountable for their offences.**

Administration of juvenile justice

73. The Committee welcomes the Criminal Procedure Amendment (Act No. 24 of 2003) and its provisions on child-friendly courts; however, it is concerned that despite the exceptionally long delay, the Child Justice Bill has not been adopted. The Committee is also concerned about:

- (a) The minimum age of criminal responsibility, which is 7 years of age in the State party, being unacceptably low;
- (b) The children's courts not being operational in all regions;
- (c) The absence of information in the State party report and public domain on the situation of children in conflict with the law;
- (d) The lack of special detention facilities for children, both boys and girls, children being incarcerated with adults, and the poor conditions of detention, including in prisons;
- (e) The reports that judges do not consistently enforce the amendments to the Criminal Procedure Code (Act No. 24 of 2003).

74. **The Committee reiterates its previous recommendation (CRC/C/15/Add.14, para. 20) that the State party bring its juvenile justice system fully into line with the Convention, in particular articles 37, 39 and 40, and with other relevant standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Guidelines for Action on Children in the Criminal Justice System, and the Committee's general comment No. 10 (CRC/C/GC/10, 2007). In particular, the Committee urges the State party:**

- (a) **To urgently update and adopt the pending Child Care and Protection Bill and Child Justice Bill;**
- (b) **To amend the age of criminal responsibility to an internationally acceptable level, ensuring that such provision does not allow, by way of exception, the use of a lower age;**
- (c) **To ensure that all the provisions relating to juvenile justice in the Criminal Procedure Amendment Act are effectively enforced, including those relating to children's courts;**
- (d) **To establish children's courts in all regions of the State party;**

- (e) To provide all professionals working in the juvenile justice system with training on the Convention, other relevant international standards and the Committee's general comment No. 10;
- (f) To protect the rights of children deprived of their liberty and improve their conditions of detention and imprisonment, in particular by establishing special prisons for children with conditions suited to their age and needs, and ensuring the provision of social services in all detention centres in the country, and, in the meantime, guarantee separation of children from adults in all prisons and pre-trial detention centres throughout the country;
- (g) To gather information on the number and legal situation of children in detention, their conditions of detention and cases of children who have been provided with legal assistance, and to make such information publicly available.

Child victims and witnesses of crimes

- 75. The Committee notes as positive the pilot project developed with non-governmental organizations and professionals on the protection of child victims and witnesses of crimes. However, the Committee is concerned about the lack of a mechanism to protect child victims and witnesses of sexual abuse during legal proceedings, which expose children to further trauma and insecurity, and that the child witness programmes are not operational in all regions.
- 76. The Committee recommends that the State party accelerate the development and implementation of protection programmes for child victims and witnesses of crime in all the regions of the country, in order to increase protection for child victims and witnesses and their right to privacy and ensure that the child witness programmes are effectively enforced in all regions.

I. Ratification of international human rights instruments

- 77. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the treaties to which it is not yet a party, namely the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- 78. The Committee urges the State party to fulfil its reporting obligations under the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography, the reports of which are both overdue as of 16 May 2004.

J. Cooperation with regional and international bodies

- 79. The Committee recommends that the State party cooperate with the African Committee of Experts on the Rights and Welfare of Children of the African Union towards the implementation of the Convention and other human rights instruments, both in the State party and in other African Union member States.

K. Follow-up and dissemination

- 80. The Committee recommends that the State party take all appropriate measures to ensure that the present recommendations are fully implemented by, inter alia, transmitting them to the Head of State, Parliament, relevant ministries, the Supreme Court and local authorities for appropriate consideration and further action.
- 81. The Committee further recommends that the combined second and third periodic reports and the written replies by the State party and the related recommendations (concluding observations) be made widely available in the languages of the country, including (but not exclusively) through the Internet, to the public at large, civil society organizations, media, youth groups, professional groups and children, in order to generate debate and awareness of the Convention and the Optional Protocols thereto and of their implementation and monitoring.

L. Next report

- 82. The Committee invites the State party to submit its next consolidated fourth to sixth periodic report by 29 October 2017 and to include in it information on the implementation of the present concluding observations. The Committee draws attention to its harmonized treaty-specific reporting guidelines adopted on 1 October 2010 (CRC/C/58/Rev.2 and Corr. 1) and reminds the State party that future reports should be in compliance with the guidelines and not exceed 60 pages. The Committee urges the State party to submit its report in accordance with the guidelines. In the event a report exceeding the page limitations is submitted, the State party will be asked to review and resubmit the report in accordance with the above-mentioned guidelines. The Committee reminds the State party that if it is not in a position to review and resubmit the report, translation of the report for purposes of examination of the treaty body cannot be guaranteed.
- 83. The Committee also invites the State party to submit an updated core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, approved at the fifth Inter-Committee Meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3).

CONCLUDING OBSERVATIONS – COMMITTEE ON THE RIGHTS OF THE CHILD

Concluding observations of the Committee on the Rights of the Committee on the Rights of the Child

Fifth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Concluding observations of the Committee on
the Rights of the Child: Namibia

1. The Committee considered the initial report of Namibia (CRC/C/3/Add.12) at its 109th and 110th meetings (CRC/C/SR.109-110), held on 13 January 1994, and adopted* the following concluding observations:

A. Introduction

2. The Committee welcomes the ratification of the Convention by the Government of Namibia. The Committee also wishes to express its appreciation to the State party for the particularly detailed and comprehensive report prepared and for the frank and constructive dialogue with the delegation.

B. Positive aspects

3. The Committee welcomes the political commitment within the country to improve the situation of children. The Committee also wishes to express its appreciation as regards the Government's willingness to be self-critical and to search for creative and innovative approaches to address the problems facing children in society. The Committee takes particular note of the following initiatives: the activities undertaken to promote greater public awareness of the rights of the child, also among children themselves; the encouragement of cooperation with the local, national and international communities in efforts to promote and protect the rights of the child; the Early Childhood Protection and Development Programme; the "street children" programme; the "Discipline from Within" Programme in the schools; and the development of Youth Councils. With regard to the latter two programmes, the Committee underlines their importance in respect of the possible measures to be taken to make a reality of various provisions of the Convention, particularly its article 12.
4. The Committee also notes with interest the suggestion that more vocational schools be established to try and reduce the level of school drop-outs.

C. Factors and difficulties impeding the implementation of the Convention

5. The Committee takes note that Namibia became an independent State in 1990 having suffered the consequences of colonial administration, apartheid and war. The Committee recognizes that these factors, combined with the problems of poverty, have had a constraining influence on the implementation of the provisions of the Convention. In particular, the Committee draws attention to the legacy of laws from the pre-independence period which are contrary to the provisions of international instruments and the Namibian Constitution.

D. Principal subjects of concern

6. The Committee observes that Namibia is not yet a State party to all the major international human rights instruments and is concerned that the reform of much national legislation remains to be undertaken to bring it into conformity with the provisions of the Convention on the Rights of the Child. In this connection, the Committee notes the contradictions to be found in national legislation with respect to the definition of the child.
7. The Committee is concerned at the extent of discrimination on the ground of gender as well as against children born out of wedlock and children in especially difficult circumstances. It also expresses concern at the discrimination practised against children with disabilities.
8. Certain phenomena which may have a possible negative impact or consequence on the situation of children, such as: teenage pregnancies, the high incidence of households headed by a single person, and the apparent lack of widespread understanding among parents of their joint parental responsibilities, are of concern to the Committee.
9. The Committee also takes note of the problems involved with improving the quality of education.
10. Equally, the Committee is concerned at the situation of children in especially difficult circumstances, including the

incidence of child labour, particularly on farms and in the informal sector, and the number of children dropping out of school.

11. As regards the system of juvenile justice in place in Namibia, the Committee is concerned as to its conformity with the Convention on the Rights of the Child, namely its articles 37 and 40, as well as with relevant international instruments such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

E. Suggestions and recommendations

12. The Committee recommends that consideration be given to the possibility of Namibia becoming a party to all the major international human rights instruments, and suggests that the State party may wish to request assistance from the United Nations Centre for Human Rights in this regard.
13. Equally, the Committee suggests that the State party fully integrate the Convention on the Rights of the Child into the national legal framework and into national plans of action for the implementation of the rights of the child. Moreover, the Committee recommends the early adoption of a new Children's Act which will take fully into account the principles and provisions of the Convention on the Rights of the Child and observations made by the Committee during its dialogue with the State party.
14. While noting with satisfaction the establishment of an Ombudsman's Office which has a mandate to deal with complaints of human rights violations, including those relating to children, the Committee suggests that the State party evaluate the work of the present Ombudsman Office to protect the rights of the child with a view to determining whether any further measures would be required to support the Office in its endeavours to contribute to the implementation of the rights of the child.
15. The Committee notes the important role being played by community leaders in efforts to improve the implementation of the rights of the child, particularly in order to overcome the negative influences of certain traditions and customs which may contribute to discrimination against the girl child, children suffering from disabilities and children born out of wedlock. The Committee also encourages the State party to continue to fully involve civil society and NGOs in activities to promote and protect the rights of the child.
16. Concerning the implementation of the rights of children to participate and express their views, the Committee is interested in receiving more information in the State party's next report on the functioning of the Youth and School Councils and of their involvement in any initiatives to address problems facing children and youth.
17. The Committee notes the clear recognition by the State party of the problems facing children in the family situation and the need to develop programmes, such as the training of social workers, education in family planning and the establishment of an alcohol and drug abuse centre, to address these problems. It also suggests that research be undertaken on the issue of sexual abuse within the family context.
18. With regard to educational matters, the Committee encourages the development of the initiative to provide more training to schoolteachers as a means to improve the quality of education and provide an opportunity to raise awareness within this profession of the rights of the child.
19. The Committee recommends that the study on marginalized groups of children be undertaken as a matter of priority.
20. The Committee is of the opinion that the system of the administration of juvenile justice in the State party must be guided by the provisions of articles 37 and 40 of the Convention on the Rights of the Child as well as relevant international standards in this field, including the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Moreover, it is suggested that measures be taken to train law enforcement officials, judges, personnel working in detention centres and counsellors of young offenders about international standards for the administration of juvenile justice. The Committee underlines the need for technical assistance programmes in the light of these recommendations and encourages the State party to continue its cooperation with the Centre for Human Rights, the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat and UNICEF in this regard.
21. The Committee also recommends that the State party ensures that its policy and legislation on the issue of child labour is in conformity with the provisions of the Convention on the Rights of the Child and relevant ILO Conventions.
22. Furthermore, the Committee suggests that the State party undertake measures and programmes to educate the general public on parental responsibilities and to consider the possibility of providing counselling in this regard. In addition, the Committee recommends that the State party, in its efforts to further disseminate awareness of the Convention on the Rights of the Child, make widely available, by appropriate means, the State party report, the summary records and the concluding observations by the Committee.

*** At the 130th meeting, held on 28 January 1994.**

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PART 2

International Human Rights Instruments Ratified by Namibia and Concluding Observations by Committees

- **Convention on the Rights of Persons With Disabilities**
- **Optional Protocol to the Convention on the Rights of Persons with Disabilities**

CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Resolution adopted by the General Assembly [without reference to a Main Committee (A/61/611)] 61/106.

The General Assembly,

Recalling its resolution 56/168 of 19 December 2001, by which it decided to establish an Ad Hoc Committee, open to the participation of all Member States and observers to the United Nations, to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on a holistic approach in the work done in the fields of social development, human rights and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development,

Recalling also its previous relevant resolutions, the most recent of which was resolution 60/232 of 23 December 2005, as well as relevant resolutions of the Commission for Social Development and the Commission on Human Rights,

Welcoming the valuable contributions made by intergovernmental and non-governmental organizations and national human rights institutions to the work of the Ad Hoc Committee,

1. Expresses its appreciation to the Ad Hoc Committee for having concluded the elaboration of the draft Convention on the Rights of Persons with Disabilities and the draft Optional Protocol to the Convention;
2. Adopts the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention annexed to the present resolution, which shall be open for signature at United Nations Headquarters in New York as of 30 March 2007;
3. Calls upon States to consider signing and ratifying the Convention and the Optional Protocol as a matter of priority, and expresses the hope that they will enter into force at an early date;
4. Requests the Secretary-General to provide the staff and facilities necessary for the effective performance of the functions of the Conference of States Parties and the Committee under the Convention and the Optional Protocol after the entry into force of the Convention, as well as for the dissemination of information on the Convention and the Optional Protocol;
5. Also requests the Secretary-General to implement progressively standards and guidelines for the accessibility of facilities and services of the United Nations system, taking into account relevant provisions of the Convention, in particular when undertaking renovations;
6. Requests United Nations agencies and organizations, and invites intergovernmental and non-governmental organizations, to undertake efforts to disseminate information on the Convention and the Optional Protocol and to promote their understanding;
7. Requests the Secretary-General to submit to the General Assembly at its sixty-second session a report on the status of the Convention and the Optional Protocol and the implementation of the present resolution, under a sub-item entitled "Convention on the Rights of Persons with Disabilities".

76th plenary meeting
13 December 2006

Annex I

Convention on the Rights of Persons with Disabilities

Preamble

The States Parties to the present Convention,

Recalling the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

Recognizing that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,

Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,

Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,

Recognizing the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,

Emphasizing the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,

Recognizing also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,

Recognizing further the diversity of persons with disabilities,

Recognizing the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,

Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,

Recognizing the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,

Recognizing the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,

Recognizing the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,

Considering that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,

Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,

Recognizing that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

Recognizing that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,

Emphasizing the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

Highlighting the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,

Bearing in mind that conditions of peace and security based on full respect for the purposes and principles contained

in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,

Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights,

Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,

Convinced that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

Have agreed as follows:

Article 1

Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. 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.

Article 2

Definitions

For the purposes of the present Convention:

“Communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

“Language” includes spoken and signed languages and other forms of non-spoken languages;

“Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

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

Article 3

General principles

The principles of the present Convention shall be:

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination;

- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women;
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 4

General obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:
 - (a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
 - (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
 - (c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
 - (d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
 - (e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
 - (f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
 - (g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;
 - (h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;
 - (i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights.
2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.
3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.
4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.
5. The provisions of the present Convention shall extend to all parts of federal States without any limitations or exceptions

Article 5

Equality and non-discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

Article 6

Women with disabilities

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.
2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

Article 7

Children with disabilities

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

Article 8

Awareness-raising

1. States Parties undertake to adopt immediate, effective and appropriate measures:
 - (a) To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;
 - (b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life.
 - (c) To promote awareness of the capabilities and contributions of persons with disabilities.
2. Measures to this end include:
 - (a) Initiating and maintaining effective public awareness campaigns designed:
 - (i) To nurture receptiveness to the rights of persons with disabilities;
 - (ii) To promote positive perceptions and greater social awareness towards persons with disabilities;
 - (iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;
 - (b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;
 - (c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;
 - (d) Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

Article 9

Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:
 - (a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
 - (b) Information, communications and other services, including electronic services and emergency services.
2. States Parties shall also take appropriate measures:
 - (a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
 - (b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
 - (c) To provide training for stakeholders on accessibility issues facing persons with disabilities;
 - (d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
 - (e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

- (f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- (g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- (h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Article 10

Right to life

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

Article 11

Situations of risk and humanitarian emergencies

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

Article 12

Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

Article 13

Access to justice

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Article 14

Liberty and security of person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:
 - (a) Enjoy the right to liberty and security of person;
 - (b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.
2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.

Article 15

Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.
2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Article 16

Freedom from exploitation, violence and abuse

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.
3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age specific needs.
5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Article 17

Protecting the integrity of the person

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

Article 18

Liberty of movement and nationality

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:
 - (a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
 - (b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
 - (c) Are free to leave any country, including their own;
 - (d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.
2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

Article 19

Living independently and being included in the community

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- (a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- (b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

- (c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

Article 20

Personal mobility

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

- (a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;
- (b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;
- (c) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;
- (d) Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

Article 21

Freedom of expression and opinion, and access to information

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- (a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- (b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- (c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
- (d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- (e) Recognizing and promoting the use of sign languages.

Article 22

Respect for privacy

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.
2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

Article 23

Respect for home and the family

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:
 - (a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;
 - (b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;
 - (c) Persons with disabilities, including children, retain their fertility on an equal basis with others.
2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, ward ship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their childrearing responsibilities.
3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.
5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

Article 24

Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:
 - (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
 - (b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
 - (c) Enabling persons with disabilities to participate effectively in a free society.
2. In realizing this right, States Parties shall ensure that:
 - (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
 - (b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
 - (c) Reasonable accommodation of the individual's requirements is provided;
 - (d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
 - (e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.
3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:
 - (a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
 - (b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
 - (c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deaf blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.
4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.
5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Article 25

Health

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;
- (b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
- (c) Provide these health services as close as possible to people's own communities, including in rural areas;
- (d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including

on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

- (e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;
- (f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

Article 26

Habilitation and rehabilitation

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:
 - (a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;
 - (b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.
2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.
3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

Article 27

Work and employment

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:
 - (a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
 - (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
 - (c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
 - (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
 - (e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
 - (f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
 - (g) Employ persons with disabilities in the public sector;
 - (h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
 - (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
 - (j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
 - (k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.
2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

Article 28

Adequate standard of living and social protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:
 - (a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
 - (b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
 - (c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
 - (d) To ensure access by persons with disabilities to public housing programmes;
 - (e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

Article 29

Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

- (a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
 - (i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
 - (ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
 - (iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;
- (b) To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:
 - (i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
 - (ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

Article 30

Participation in cultural life, recreation, leisure and sport

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:
 - (a) Enjoy access to cultural materials in accessible formats;
 - (b) Enjoy access to television programmes, films, theatre and other cultural activities, inaccessible formats;
 - (c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.
2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.
3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.
4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.
5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:
 - (a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
 - (b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;
 - (c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;
 - (d) To ensure that children with disabilities have equal access with other children to participation in play,

- recreation and leisure and sporting activities, including those activities in the school system;
- (e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

Article 31

Statistics and data collection

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:
 - (a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;
 - (b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.
2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.
3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

Article 32

International cooperation

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:
 - (a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;
 - (b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;
 - (c) Facilitating cooperation in research and access to scientific and technical knowledge;
 - (d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.
2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

Article 33

National implementation and monitoring

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.
2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.
3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

Article 34

Committee on the Rights of Persons with Disabilities

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as "the Committee"), which shall carry out the functions hereinafter provided.
2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.
3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in article 4, paragraph 3, of the present Convention.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.
5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.
8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.
9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.
10. The Committee shall establish its own rules of procedure.
11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.
12. With the approval of the General Assembly of the United Nations, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.
13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 35

Reports by States Parties

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned.
2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.
3. The Committee shall decide any guidelines applicable to the content of the reports.
4. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, States Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in article 4, paragraph 3, of the present Convention.
5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 36

Consideration of reports

1. Each report shall be considered by the Committee, which 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 State Party may respond with any information it chooses to the Committee. The Committee may request further information from States Parties relevant to the implementation of the present Convention.
2. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 1 of this article will apply?

3. The Secretary-General of the United Nations shall make available the reports to all States Parties.
4. States Parties shall make their reports widely available to the public in their own countries and facilitate access to the suggestions and general recommendations relating to these reports.
5. The Committee shall transmit, as it may consider appropriate, to the specialized agencies, funds and programmes of the United Nations, and other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

Article 37

Cooperation between States Parties and the Committee

1. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate.
2. In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation.

Article 38

Relationship of the Committee with other bodies

In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present Convention:

- (a) The specialized agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) The Committee, as it discharges its mandate, shall consult, as appropriate, other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

Article 39

Report of the Committee

The Committee shall report every two years to the General Assembly and to the Economic and Social Council on its activities, and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

Article 40

Conference of States Parties

1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention.
2. No later than six months after the entry into force of the present Convention, the Conference of States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General biennially or upon the decision of the Conference of States Parties.

Article 41

Depositary

The Secretary-General of the United Nations shall be the depositary of the present Convention.

Article 42

Signature

The present Convention shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007.

Article 43

Consent to be bound

The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organizations. It shall be open for accession by any State or regional integration organization which has not signed the Convention.

Article 44

Regional integration organizations

1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the present Convention. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the present Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.
2. References to "States Parties" in the present Convention shall apply to such organizations within the limits of their competence.
3. For the purposes of article 45, paragraph 1, and article 47, paragraphs 2 and 3, of the present Convention, any instrument deposited by a regional integration organization shall not be counted.
4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 45

Entry into force

1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.
2. For each State or regional integration organization ratifying, formally confirming or acceding to the present Convention after the deposit of the twentieth such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

Article 46

Reservations

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.
2. Reservations may be withdrawn at any time.

Article 47

Amendments

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly of the United Nations for approval and thereafter to all States Parties for acceptance.
2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.
3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of this article which relates exclusively to articles 34, 38, 39 and 40 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

Article 48

Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General. Article 49

Article 49

Accessible format

The text of the present Convention shall be made available in accessible formats.

Article 50

Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The States Parties to the present Protocol have agreed as follows:

Article 1

1. A State Party to the present Protocol ("State Party") recognizes the competence of the Committee on the Rights of Persons with Disabilities ("the Committee") to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention.
2. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

Article 2

The Committee shall consider a communication inadmissible when:

- (a) The communication is anonymous;
- (b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention;
- (c) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
- (d) All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;
- (e) It is manifestly ill-founded or not sufficiently substantiated; or when
- (f) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

Article 3

Subject to the provisions of article 2 of the present Protocol, the Committee shall bring any communications submitted to it confidentially to the attention of the State Party. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 4

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.
2. Where the Committee exercises its discretion under paragraph 1 of this article, this does not imply a determination on admissibility or on the merits of the communication.

Article 5

The Committee shall hold closed meetings when examining communications under the present Protocol. After examining a communication, the Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

Article 6

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end submit observations with regard to the information concerned.
2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.
3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.
4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.
5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

Article 7

1. The Committee may invite the State Party concerned to include in its report under article 35 of the Convention details of any measures taken in response to an inquiry conducted under article 6 of the present Protocol.
2. The Committee may, if necessary, after the end of the period of six months referred to in article 6, paragraph 4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 8

Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 6 and 7.

Article 9

The Secretary-General of the United Nations shall be the depositary of the present Protocol.

Article 10

The present Protocol shall be open for signature by signatory States and regional integration organizations of the Convention at United Nations Headquarters in New York as of 30 March 2007.

Article 11

The present Protocol shall be subject to ratification by signatory States of the present Protocol which have ratified or acceded to the Convention. It shall be subject to formal confirmation by signatory regional integration organizations of the present Protocol which have formally confirmed or acceded to the Convention. It shall be open for accession by any State or regional integration organization which has ratified, formally confirmed or acceded to the Convention and which has not signed the Protocol.

Article 12

1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the Convention and the present Protocol. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the Convention and the present Protocol. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.
2. References to "States Parties" in the present Protocol shall apply to such organizations within the limits of their competence.
3. For the purposes of article 13, paragraph 1, and article 15, paragraph 2, of the present Protocol, any instrument deposited by a regional integration organization shall not be counted.
4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the meeting of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 13

1. Subject to the entry into force of the Convention, the present Protocol shall enter into force on the thirtieth day after the deposit of the tenth instrument of ratification or accession.
2. For each State or regional integration organization ratifying, formally confirming or acceding to the present Protocol after the deposit of the tenth such instrument, the Protocol shall enter into force on the thirtieth day after the deposit of its own such instrument.

Article 14

1. Reservations incompatible with the object and purpose of the present Protocol shall not be permitted.
2. Reservations may be withdrawn at any time.

Article 15

1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly of the United Nations for approval and thereafter to all States Parties for acceptance.
2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

Article 16

A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 17

The text of the present Protocol shall be made available in accessible formats.

Article 18

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Protocol shall be equally authentic.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

PART 3

International Human Rights Declarations supported by Namibia

- **United Nations Declaration on the Rights of Indigenous Peoples**

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Resolution adopted by the General Assembly on 13 September 2007

[without reference to a Main Committee (A/61/L.67 and Add.1)]

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,¹ by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

107th plenary meeting 13 September 2007

Annex

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter, Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such, Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind, Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights² and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

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 Rights⁴ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples

can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development is entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

PART 3

Special Procedures Reports of the Special Rapporteur – Conclusions and Recommendations on:

- **The Rights of Indigenous Peoples**
- **The Human Right to Safe Drinking Water and Sanitation**
- **Extreme Poverty and Human Rights**

CONCLUSIONS AND RECOMMENDATIONS EXTRATED FROM THE REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES, JAMES ANAYA ON HIS MISSION TO NAMIBIA

20-28 September 2012

V. Conclusions and recommendations

Overarching issues

74. Indigenous peoples in Namibia have suffered injustices in the past that leave them disadvantaged, to varying degrees, in the present. Since the independence of Namibia in 1990, the Government has made many significant achievements in rolling back some of the destructive legacies left by colonialism and apartheid. However, certain indigenous peoples - including the San, Himba, Ovazemba, Ovatie and Ovatjimba people - are disadvantaged relative to other groups in the country and have not seen the promises and benefits brought by independence fulfilled for them.
75. Namibia is a country rich with diverse indigenous cultural and ethnic identities, including those of indigenous peoples who have suffered marginalization in various aspects of life. However, overall, the Special Rapporteur observes a lack of coherent Government policy in Namibia that assigns a positive value to the distinctive identities and practices of these indigenous peoples, or that promotes their ability to survive as peoples with their distinct cultures intact in the fullest sense, including in relation to their traditional lands, authorities and languages.
76. The Government should strengthen and adopt affirmative measures to protect the right of non-dominant indigenous groups to retain and develop the various attributes of their distinctive cultural identities. Laws and government programmes should be reviewed and reformed as needed to ensure that they do not discriminate against particular indigenous groups, and that they accommodate and strengthen cultural diversity and adhere to the United Nations Declaration on the Rights of Indigenous Peoples. Furthermore, in consultation with indigenous peoples, the Government should look to ratify International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

Lands and resources

77. Especially in recent years, the Government has entered into some innovative arrangements with San and other groups through which they have been able to increase their control over management of lands and natural resources, and derive some substantial benefits. However, in accordance with international standards, much more needs to be done to recognize and respect the rights of marginalized indigenous peoples over their traditional lands and resources, and to provide redress for any land that has been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
78. The Government of Namibia should step up efforts to address the problem of landlessness of San groups and to carry out initiatives to secure for them rights to land, and do so, to the extent compatible with the rights of others, in accordance with their historical or traditional land tenure patterns.
79. The Ministry of Lands and Resettlement should be provided with an increased budget to purchase lands for the purpose of resettlement. The selection of lands should be done in close coordination with the groups concerned and in accordance with prior feasibility studies. Lands purchased should be sufficient in size, location, and quality to guarantee that resettled groups have a sustainable basis for their economic, social and cultural development.
80. Resettled San groups should be provided with the necessary financial and technical support to ensure that they are able to establish viable communities, and support should continue for as long as may be required to achieve this purpose. Non-governmental organizations in Namibia and abroad should also consider providing assistance to resettled San communities.
81. The Government should give high priority to purchasing adequate resettlement lands for the Hai//om people living in Oshivelo and other similarly situated San groups who were removed from the Etosha National Park in the 1950s. When selecting lands, the Government should make all efforts to accommodate the Oshivelo community's desire to have access to lands in Etosha National Park for tourism purposes and also receive lands adjacent to the park suitable for agricultural and other economic activities.
82. Namibia should take measures to reform protected-area laws and policies that now prohibit San people, especially the Khwe in Bwabwata National Park and the Hai//om in Etosha National Park, from securing rights to lands and resources that they have traditionally occupied and used within those parks. The Government should guarantee that San people currently living within the boundaries of national parks are allowed to stay, with secure rights over the lands they occupy.
83. In addition, the Government should take steps to increase the participation of San people in the management of park lands, through concessions or other constructive arrangements, and should minimize any restrictions that prohibit San from carrying out traditional subsistence and cultural activities within these parks.

84. The Government should review its decision not to allow the Hai//om San people to operate a tourism lodge within the boundaries of Etosha National Park under their current tourism concession. Further, management of concessions should not be limited to only those Hai//om groups that opt to move to the resettlement farms.
85. The Government should enforce the provisions of the Communal Land Reform Act that prohibit the erection of fences in communal lands. It should also investigate allegations of illegal fencing in the Nyae Nyae and Nǃa Jaqna conservancy areas and in communal areas occupied by Himba people. Furthermore, efforts should be made to harmonize any inconsistent laws and policies regarding conservancy areas and communal lands or other actions that promote competing interests on those lands.
86. The Government should also address the concerns over lands and natural resources of other groups, including the long-standing land claim of the Baster people and the concern over natural resource exploitation expressed by the Nama people.

Self-governance and participation

87. Recognition of the traditional authorities of indigenous peoples in Namibia is an important step in advancing their rights to self-governance and in maintaining their distinct identities. The State should review past decisions denying the recognition of traditional authorities put forth by certain indigenous groups, with a view to promoting the recognition of legitimate authorities selected in accordance with traditional decision-making processes.
88. In this regard, the Government should confirm the traditional authority of the Khwe San in Caprivi as a matter of priority. Further, allegations of discrimination or abuse by the traditional authorities of the dominant tribes in areas inhabited also by other, smaller tribes live should be investigated and actions taken to sanction any mistreatment.
89. Indigenous peoples or tribes that are ethnically distinct from the majority tribes are underrepresented in legislative and administrative institutions at both the national and district levels. Affirmative measures should be further developed and implemented, in consultation with the affected peoples, to enhance representation by indigenous groups at all levels and in all institutions of government, including in administrative and legislative bodies at both the national and district levels.
90. Consultations should be carried out with the communities that might be adversely affected by development projects and the exploitation of natural resources, including mining taking place near the lands of Nama people, with the aim of obtaining their free, prior and informed consent for the potential project activities.
91. The creation of the Division of San Development within the Office of the Prime Minister is a positive step towards tackling some of the issues faced by indigenous and marginalized groups, and appears to have potential for improving the lives of indigenous peoples in the country. However, the Division should review its work, in consultation with the groups that it supports, in order to ensure that it is responding effectively to the needs of those groups.

Education

92. The Special Rapporteur takes note with satisfaction of the high level of attention that Namibia has given to education since independence. The Government should also be commended for its progressive laws and policies regarding mother-tongue and culturally appropriate education.
93. However, more needs to be done to address the troubling educational situation of San and Himba groups in particular, whose members continue to lag behind in educational attainment relative to other groups. In this connection, Namibia should work to remove the barriers that are keeping the San, Himba and other groups from accessing education, including in relation to school development fees, distances from schools, and bullying faced in schools. Himba people should not be forced to abandon their traditional, semi-nomadic way of life in order to gain access to education, and thus the Government should strengthen efforts to provide mobile schools in remote areas.
94. The Government should make greater efforts to respond to the problems facing indigenous women and girls and investigate any allegations of sexual abuse of indigenous girls in schools. Health
95. The Government should make concerted efforts to address the structural factors contributing to the health problems suffered by indigenous peoples in the country, including poverty and a lack of access to their traditional lands and natural resources. Measures also need to be taken to combat discrimination against indigenous peoples in health centres and to ensure that those people who use their own language can communicate with and understand medical staff.
96. Namibia must strengthen efforts to collect data disaggregated by ethnicity in order to appropriately identify, monitor and evaluate health services provided to disadvantaged indigenous peoples.

CONCLUSIONS AND RECOMMENDATIONS EXTRATED FROM THE REPORT OF THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHT TO SAFE DRINKING WATER AND SANITATION, CATARINA DE ALBUQUERQUE, ON HER MISSION TO NAMIBIA

4 - 11 July 2011

XIII. Conclusions and recommendations

68. The Special Rapporteur perceived a readiness and willingness on the part of the Government to realize its vision of increased access to safe, affordable and acceptable water and sanitation for everyone. While challenges remain to reach this objective, she was impressed by the dedication of staff of the Ministry of Agriculture, Water and Forestry. In this spirit, she offers the following recommendations to the Government in its move towards better implementation of the rights to water and sanitation in the country.
- (a) Explicitly recognize the rights to water and sanitation as justiciable rights and carry out awareness-raising activities, especially for judges and lawyers, about the nature and context of economic, social and cultural rights, including the rights to water and sanitation.
 - (b) Extend the mandate of the Ombudsman to promotion and protection of economic, social and cultural rights, including the rights to water and sanitation.
 - (c) Enact the Water Resources Management Act and ensure sufficient resources for its effective implementation.
 - (d) Enact the Environmental Management Act and ensure sufficient resources for its full implementation.
 - (e) Ensure full implementation of the Water Supply and Sanitation Policy, and the Sanitation Strategy.
 - (f) Strengthen consultation with communities in implementing water and sanitation solutions and ensure community participation in the design, implementation and monitoring of these initiatives.
 - (g) Establish a more thorough water quality testing system throughout the country to ensure that water reaching peoples' homes is safe to drink.
 - (h) Coordinate Government action on sanitation, including through the Sanitation Forum, in accordance with the Sanitation Strategy. Strengthen awareness-raising activities, including concerning hygiene addressed to the public at large, but also targeted towards members of the legislature, the judiciary and the executive. These activities could be carried out in cooperation with the Ombudsman's Office.
 - (i) Promote dry sanitation as a sustainable sanitation solution for a variety of situations in Namibia, given the scarcity and price of water.
 - (j) Urgently address and solve the situation of people who cannot afford to pay their water bills. In those cases where the high water bill is due to the use of flush toilets, provide support so those concerned may adopt an alternative sanitation solution. Consider the adoption of lifeline or social tariffs in order to enable low-income households to have access to affordable water and sanitation.
 - (k) Devote special attention to the particular challenges in rural areas, including distance to water points and maintenance of water points, by, inter alia, taking steps to reduce these distances.
 - (l) Devise solutions for access to water and sanitation which are affordable and acceptable for people lacking secure tenure.
 - (m) Establish an independent regulatory system to monitor water and sanitation service provision in Namibia, especially with respect to performance, tariffs and water quality.
 - (n) Ensure that funding to regional councils takes into account the poverty profile of regions, as well as their level of marginalization and social exclusion, so as to ensure that the sanitary needs of the most marginalized and vulnerable groups in a given region are addressed.
 - (o) Undertake an in-depth analysis to ascertain whether budget allocations for sanitation are being fully and efficiently expended.
 - (p) Establish a separate budget line for sanitation, better target funds and closely monitor the implementation and impact of sanitation policies and programmes.

REPORT OF THE SPECIAL RAPPORTEUR ON EXTREME POVERTY AND HUMAN RIGHTS, MS. MAGDALENA SEPÚLVEDA CARMONA, ON HER MISSION TO NAMIBIA FROM 1 TO 8 OCTOBER 2012

VII. Conclusions and final recommendations

1. Recognizing the immense levels of inequality that existed at independence as a legacy of colonial rule, and the compounded challenges faced by Namibia – including the fact that Namibia has one of the world's lowest population densities – the Special Rapporteur notes that since independence, progress in the reduction of inequality has not been fast enough and unacceptable levels of inequality persist along the lines of gender, race, region, ethnicity and class. While a number of poverty reduction goals have been reached (such as an increase in primary and secondary school enrolment), disappointing outcomes in some key policies are disproportionately impacting the enjoyment of rights by the poorest segments of the population.
2. The report includes recommendations in each of its sections, but the Special Rapporteur would like to especially urge Namibia to take the following steps to improve the enjoyment of rights by the poorest sectors of society:

Legal and institutional framework

- (a) Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Rights of Migrant Workers and Members of Their Families; and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure;
- (b) Adopt, without further delay, the Child Care and Protection Bill and allocate the necessary budgetary and human resources for its effective implementation;
- (c) Revise the Birth, Marriage and Death Registration Act of 1963 in line with human rights obligations;
- (d) Review the Married Persons Equality Act of 1996 to eliminate all discriminatory provisions, including those affecting marriage, land ownership and inheritance rights;
- (e) Strengthen the institutional and operational capacity of the Office of the Ombudsman by allocating sufficient human and financial resources to carry out its work to the full potential, particularly regarding the development of a National Human Rights Action Plan; ensure compliance with its recommendations and consider extending the mandate of the Ombudsman to include the promotion and protection of all economic, social and cultural rights;
- (f) Develop a national anti-corruption strategy, strengthen the cooperation between the Anti-Corruption Committee and other law enforcement agencies; and consider strengthening the anti-corruption legislation with the adoption of an access to information law and legislation to protect whistle-blowers.

Women

- (a) Take all appropriate measures to eliminate prejudices and negative practices that undermine women's enjoyment of rights in line with the obligations assumed by Namibia under the Convention on the Elimination of Discrimination against Women;
- (b) Review, analyse and modify policies and programmes on poverty reduction to ensure that gender concerns are taken into account in effective ways;
- (c) Ensure that women have access to land and productive resources; ensure the effective implementation of the Communal Land Reform Act 2002, particularly in rural areas.
- (d) Ensure that women have access to appropriate health care services related to pregnancy, particularly in rural areas, granting free services where necessary, and provide quality family planning services that include counselling and advice, focusing on young and poor populations;
- (e) Ensure that well-equipped Women and Child Protection Units are available throughout the country; invest in police training and increase public awareness with regard to the negative impact of gender-based violence; improve access for victims of gender-based violence, particularly those living in rural areas, to justice, counselling and shelter;
- (f) Simplify the legal and administrative process for protection orders under the Domestic Violence Act;
- (g) Take a strong public stand against the practice of forced sterilization of women with HIV/AIDS and establish a mechanism to assess the extent of the practice, taking concrete measures to actively prevent and protect women against it.

Children

- (a) Ensure the effective implementation of the National Agenda for Children, which calls for an integrated response to vulnerable children, encompassing issues of child protection and social protection;
- (b) Improve governance, resource allocation and monitoring mechanisms for effective implementation of child protection services;
- (c) Take immediate steps to reduce newborn and under-five mortality, including building capacity of health workers to provide quality maternal and newborn health care, equipping health facilities with the necessary medicines and equipment, improving community transportation to health facilities, particularly in rural and remote areas, and improving referral systems and community-based services.

- (d) Ensure immediate and universal birth registration of all children without discrimination of any kind; ensure that the lack of a birth certificate is not an impediment for children accessing basic public services such as education, health and social protection;
- (e) Ensure that every child under its jurisdiction enjoys the right to acquire a nationality; accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;
- (f) Establish a children's rights division in the Office of the Ombudsman, to be responsible for monitoring children's rights violations.

Persons living with HIV/AIDS

- (a) Establish mechanisms to ensure that stigma and discrimination towards persons living with HIV/AIDS are eradicated in both the public and private sectors, including effective mechanisms for accountability and redress;
- (b) Take immediate measures to provide training to health service providers on health-related human rights issues, particularly in terms of non-discrimination and confidentiality; establish accountability mechanisms to ensure that health staff abide by the relevant laws and standards;
- (c) Mobilize the necessary financial and technical resources necessary for the effective realization of the Strategy Framework for HIV and AIDS 2010/11–2015/16.

Persons with disabilities

- (a) Ensure that national legislation is in line with the obligations of Namibia under the Convention on the Rights of Persons with Disabilities;
- (b) Take appropriate measures to ensure that persons with disabilities have equal access to transportation, information and communications; progressively remove barriers to accessibility in buildings, roads, transportation and other facilities, including schools, medical centres and workplaces;
- (c) Effectively implement the National Policy on Inclusive Education and provide the human and financial resources necessary to make this policy a reality; ensure access to free primary education to all children with disabilities;
- (d) Improve health-care services for persons with disabilities, particularly community-based health services programmes;

Undertake research and gather updated, disaggregated data on the characteristics and needs of this population.

Sex workers

- (a) Repeal the provisions relating to sex work in the Combating of Immoral Practices Act (Act 21 of 1980) and all similar municipal regulations;
- (b) Provide training to all health service providers and law enforcement agents, in relation to their obligations and attitudes towards sex workers;
- (c) Ensure that law enforcement personnel are held accountable for any act of violence or abuse against sex workers and improve mechanisms of legal recourse for sex workers; develop support systems (legal and counselling) for sex workers;
- (d) Strengthen the capacity of organizations representing sex workers by, inter alia, providing a platform for their participation in public decision-making processes that affect them.

Education

- (a) Ensure that the abolition of the School Development Fund scheme is fully and immediately implemented and ensure that schools most in need of additional resources receive adequate funding from the State;
- (b) Increase efforts to improve the quality of education through a more efficient use of resources, standardization measures and monitoring of results;
- (c) Solidify a universal pre-primary education system;
- (d) Prioritize improvement of school infrastructure, especially with regard to sanitation facilities, availability of schooling materials and improvement of teaching and learning in rural and remote schools;
- (e) Commit substantive resources to minority language teacher training, and the availability of teaching and learning materials in minority languages, so that all Namibian children have the opportunity to become literate in their home language.

Health

- (a) Remove the system of health-care "user fees";
- (b) Strengthen programmes to ensure health-care provision in remote areas; ensure that health-care centres in rural areas are well resourced, including by establishing a mechanism of incentives to ensure the provision of quality professional staff in rural areas;
- (c) Ensure access to adequate sexual and reproductive rights for women and address the root causes of teenage pregnancies by allocating resources commensurate with the scale of the problem;
- (d) Ensure universal and equal access to quality maternal health care, including postnatal and emergency obstetric services; improve neonatal and nutrition services; ensure availability of skilled birth attendance at all levels of care, particularly in rural and remote areas;

- (e) Ensure equitable distribution of trained staff between urban and rural areas and between the private and public sectors;
- (f) Expand and strengthen community-based health care services and strengthen delivery of low-cost interventions;

Improve the quality of the provision of health services by improving and better equipping health facilities and training health-care professionals, in particular with regard to non-discrimination, the right to informed consent and confidentiality of patients.

Adequate housing and access to land

- (a) Review the National Housing Policy, specifically with regard to the provision of funding for low-income housing;
- (b) Assist local authorities in increasing the supply of serviced residential land by, inter alia, simplifying the approval process for land acquisition, providing the necessary budget and qualified human resources to local authorities required to service land;
- (c) Develop slum upgrading projects and provide serviced land and support for effective community initiatives.

Work

- (a) Reassess unemployment reduction policies following a broad consultation process with a diverse spread of Namibian society;
- (b) Ensure that employment generation policies target the specific needs of groups most severely affected by unemployment such as women, youth, people living in rural areas and indigenous peoples.

Social security

- (a) Continue the universal non-contributory old age grant programme; introduce a universal, non-conditional, child grant based on sustainable resource allocation; assess and consider the wider implementation of the Basic Income Grant pilot;
- (b) Improve the identification of eligible beneficiaries, in order to ensure that existing schemes reach the poorest and most disadvantaged sectors of society, including those living in remote areas;
- (c) Remove all administrative barriers currently limiting the coverage of the existing grants, particularly by avoiding unnecessary documentation requirements and simplifying procedures;
- (d) Regularly adjust the value of the existing grants according to the inflation rate and regularly review the amount to assess whether it should be raised in real terms;
- (e) Consolidate existing social grants schemes, so as to diminish fragmentation and bureaucratic procedures;
- (f) Ensure that non-contributory grants are complemented with broader poverty alleviation policies, in particular those aimed at improving access to public services, agricultural productivity and job opportunities.

International assistance and cooperation

- (a) The international community should continue to provide assistance to Namibia, including financial and technical support;
- (b) Donors should align their country assistance strategies and interventions to the priorities identified in NDP4;
- (c) The Namibian Government should increase efforts to take ownership over services currently provided with the assistance of the donor community and international agencies.

PART 4

International Criminal Instruments Ratified by Namibia

- **Rome Statute of the International Criminal Court**

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

Preamble

The States Parties to this Statute,

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain 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,

Emphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State,

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,

Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,

Resolved to guarantee lasting respect for and the enforcement of international justice,

Have agreed as follows:

PART 1. ESTABLISHMENT OF THE COURT

Article 1

The Court

An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

Article 2

Relationship of the Court with the United Nations

The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

Article 3

Seat of the Court

1. The seat of the Court shall be established at The Hague in the Netherlands ("the host State").
2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.
3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

Article 4

Legal status and powers of the Court

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.
2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

Article 5

Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:
 - (a) The crime of genocide;
 - (b) Crimes against humanity;
 - (c) War crimes;
 - (d) The crime of aggression.
2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Article 6

Genocide

For the purpose of this Statute, “genocide” means 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.

Article 7

Crimes against humanity

1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - (a) Murder;
 - (b) Extermination;
 - (c) Enslavement;
 - (d) Deportation or forcible transfer of population;
 - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) Torture
 - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - (i) Enforced disappearance of persons;
 - (j) The crime of apartheid;
 - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
2. For the purpose of paragraph 1:
 - (a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
 - (b) “Extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

- (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
 - (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
 - (e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
 - (f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
 - (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
 - (h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
 - (i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.
3. For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, “war crimes” means:
 - a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - (i) Wilful killing; Torture or inhuman treatment, including biological experiments;
 - (ii) Wilfully causing great suffering, or serious injury to body or health;
 - (iii) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and want only;
 - (iv) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - (v) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - (vi) Unlawful deportation or transfer or unlawful confinement;
 - (vii) Taking of hostages.
 - b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
 - (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated
 - (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
 - (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
 - (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in

- death or serious personal injury;
- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
 - (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
 - (xii) Declaring that no quarter will be given;
 - (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
 - (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
 - (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
 - (xvi) Pillaging a town or place, even when taken by assault; (xvii) Employing poison or poisoned weapons;
 - (xvii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - (xviii) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
 - (xix) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
 - (xx) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (xxi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Convention
 - (xxii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - (xxiii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (xxiv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
 - (xxv) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
 - (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (iii) Taking of hostages;
 - d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
 - e) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
 - f) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
 - (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved

in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (v) Pillaging a town or place, even when taken by assault;
 - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
 - (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
 - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (ix) Killing or wounding treacherously a combatant adversary
 - (x) Declaring that no quarter will be given;
 - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- g) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.
3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Article 9

Elements of Crimes

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.
2. Amendments to the Elements of Crimes may be proposed by:
 - (a) Any State Party;
 - (c) The judges acting by an absolute majority;
 - (d) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

Article 10

Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

Article 11

Jurisdiction *ratione temporis*

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.
2. If a State becomes a Party to this Statute after its entry into force, the court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

Article 12

Preconditions to the exercise of jurisdiction

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5. a) In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
 - (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

- (b) The State of which the person accused of the crime is a national.
- 2. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

Article 13

Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

- (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
- (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
- (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

Article 14

Referral of a situation by a State Party

- 1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes
- 2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

Article 15

Prosecutor

- 1. The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court.
- 2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.
- 3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.
- 4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.
- 5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation.
- 6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.

Article 16

Deferral of investigation or prosecution

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

Article 17

Issues of admissibility

- 1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:
 - (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
 - (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to

prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

- (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
 - (d) The case is not of sufficient gravity to justify further action by the Court.
2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:
 - (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;
 - (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
 - (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.
 3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

Article 18

Preliminary rulings regarding admissibility

1. When a situation has been referred to the Court pursuant to article 13 (a) and the Prosecutor has determined that there would be a reasonable basis to commence an investigation, or the Prosecutor initiates an investigation pursuant to articles 13 (c) and 15, the Prosecutor shall notify all States Parties and those States which, taking into account the information available, would normally exercise jurisdiction over the crimes concerned. The Prosecutor may notify such States on a confidential basis and, where the Prosecutor believes it necessary to protect persons, prevent destruction of evidence or prevent the absconding of persons, may limit the scope of the information provided to States.
2. Within one month of receipt of that notification, a State may inform the Court that it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States. At the request of that State, the Prosecutor shall defer to the State's investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.
3. The Prosecutor's deferral to a State's investigation shall be open to review by the Prosecutor six months after the date of deferral or at any time when there has been a significant change of circumstances based on the State's unwillingness or inability genuinely to carry out the investigation.
4. The State concerned or the Prosecutor may appeal to the Appeals Chamber against a ruling of the Pre-Trial Chamber, in accordance with article 82. The appeal may be heard on an expedited basis.
5. When the Prosecutor has deferred an investigation in accordance with paragraph 2, the Prosecutor may request that the State concerned periodically inform the Prosecutor of the progress of its investigations and any subsequent prosecutions. States Parties shall respond to such requests without undue delay.
6. Pending a ruling by the Pre-Trial Chamber, or at any time when the Prosecutor has deferred an investigation under this article, the Prosecutor may, on an exceptional basis, seek authority from the Pre-Trial Chamber to pursue necessary investigative steps for the purpose of preserving evidence where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence may not be subsequently available.
7. A State which has challenged a ruling of the Pre-Trial Chamber under this article may challenge the admissibility of a case under article 19 on the grounds of additional significant facts or significant change of circumstances.

Article 19

Challenges to the jurisdiction of the Court or the admissibility of a case

1. The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.
2. Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by:
 - (a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;
 - (b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or
 - (c) A State from which acceptance of jurisdiction is required under article 12.
3. The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In

proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.

4. The admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or State referred to in paragraph 2. The challenge shall take place prior to or at the commencement of the trial. In exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or at a time later than the commencement of the trial. Challenges to the admissibility of a case, at the commencement of a trial, or subsequently with the leave of the Court, may be based only on article 17, paragraph 1 (c).
5. A State referred to in paragraph 2 (b) and (c) shall make a challenge at the earliest opportunity.
6. Prior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the jurisdiction of the Court shall be referred to the Pre-Trial Chamber. After confirmation of the charges, they shall be referred to the Trial Chamber. Decisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber in accordance with article 82.
7. If a challenge is made by a State referred to in paragraph 2 (b) or (c), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 17.
8. Pending a ruling by the Court, the Prosecutor may seek authority from the Court:
 - (a) To pursue necessary investigative steps of the kind referred to in article 18, paragraph 6;
 - (b) To take a statement or testimony from a witness or complete the collection and examination of evidence which had begun prior to the making of the challenge; and
 - (c) In cooperation with the relevant States, to prevent the absconding of persons in respect of whom the Prosecutor has already requested a warrant of arrest under article 58.
9. The making of a challenge shall not affect the validity of any act performed by the Prosecutor or any order or warrant issued by the Court prior to the making of the challenge.
10. If the Court has decided that a case is inadmissible under article 17, the Prosecutor may submit a request for a review of the decision when he or she is fully satisfied that new facts have arisen which negate the basis on which the case had previously been found inadmissible under article 17.
11. If the Prosecutor, having regard to the matters referred to in article 17, defers an investigation, the Prosecutor may request that the relevant State make available to the Prosecutor information on the proceedings. That information shall, at the request of the State concerned, be confidential. If the Prosecutor thereafter decides to proceed with an investigation, he or she shall notify the State to which deferral of the proceedings has taken place.

Article 20

Ne bis in idem

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.
2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.
3. No person who has been tried by another court for conduct also proscribed under article 6, 7 or 8 shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:
 - (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or
 - (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

Article 21

Applicable law

1. The Court shall apply:
 - (a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
 - (b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
 - (c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.
2. The Court may apply principles and rules of law as interpreted in its previous decisions.
3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

PART 3. GENERAL PRINCIPLES OF CRIMINAL LAW

Article 22

Nullum crimen sine lege

1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.
2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.
3. This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

Article 23

Nulla poena sine lege

A person convicted by the Court may be punished only in accordance with this Statute.

Article 24

Non-retroactivity ratione personae

1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.
2. In the event of a change in the law applicable to a given case prior to a final judgment, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

Article 25

Individual criminal responsibility

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
 - (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
 - (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
 - (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
 - (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 - (ii) Be made in the knowledge of the intention of the group to commit the crime;
 - (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;
 - (f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.
4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

Article 26

Exclusion of jurisdiction over persons under eighteen

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

Article 27

Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Article 28

Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

- (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces were:
 - (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
 - (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
 - (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
 - (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
 - (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Article 29

Non-applicability of statute of limitations

The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

Article 30

Mental element

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
2. For the purposes of this article, a person has intent where:
 - (a) In relation to conduct, that person means to engage in the conduct;
 - (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
3. For the purposes of this article, “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. “Know” and “knowingly” shall be construed accordingly.

Article 31

Grounds for excluding criminal responsibility

1. In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person’s conduct:
 - (a) The person suffers from a mental disease or defect that destroys that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;
 - (b) The person is in a state of intoxication that destroys that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court;
 - (c) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;
 - (d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:

- (i) Made by other persons; or
 - (ii) constituted by other circumstances beyond that person's control.
2. The Court shall determine the applicability of the grounds for excluding criminal responsibility provided for in this Statute to the case before it.
 3. At trial, the Court may consider a ground for excluding criminal responsibility other than those referred to in paragraph 1 where such a ground is derived from applicable law as set forth in article 21. The procedures relating to the consideration of such a ground shall be provided for in the Rules of Procedure and Evidence.

Article 32

Mistake of fact or mistake of law

1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.
2. A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in article 33.

Article 33

Superior orders and prescription of law

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:
 - a) The person was under a legal obligation to obey orders of the Government or the superior in question;
 - b) The person did not know that the order was unlawful; and
 - c) The order was not manifestly unlawful.
2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

PART 4. COMPOSITION AND ADMINISTRATION OF THE COURT

Article 34

Organs of the Court

The Court shall be composed of the following organs:

- (a) The Presidency;
- (b) An Appeals Division, a Trial Division and a Pre-Trial Division;
- (c) The Office of the Prosecutor;
- (d) The Registry.

Article 35

Service of judges

1. All judges shall be elected as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office.
2. The judges composing the Presidency shall serve on a full-time basis as soon as they are elected.
3. The Presidency may, on the basis of the workload of the Court and in consultation with its members, decide from time to time to what extent the remaining judges shall be required to serve on a full-time basis. Any such arrangement shall be without prejudice to the provisions of article 40.
4. The financial arrangements for judges not required to serve on a full-time basis shall be made in accordance with article 49.

Article 36

Qualifications, nomination and election of judges

1. Subject to the provisions of paragraph 2, there shall be 18 judges of the Court.
2. (a) The Presidency, acting on behalf of the Court, may propose an increase in the number of judges specified in paragraph 1, indicating the reasons why this is considered necessary and appropriate. The Registrar shall promptly circulate any such proposal to all States Parties.
 - (b) Any such proposal shall then be considered at a meeting of the Assembly of States Parties to be convened in accordance with article 112. The proposal shall be considered adopted if approved at the meeting by a vote of two thirds of the members of the Assembly of States Parties and shall enter into force at such time as decided by the Assembly of States Parties.
- (c) (i) Once a proposal for an increase in the number of judges has been adopted under subparagraph (b), the election of the additional judges shall take place at the next session of the Assembly of States Parties in accordance with paragraphs 3 to 8, and article 37, paragraph 2;

- (ii) Once a proposal for an increase in the number of judges has been adopted and brought into effect under subparagraphs (b) and (c) (i), it shall be open to the Presidency at any time thereafter, if the workload of the Court justifies it, to propose a reduction in the number of judges, provided that the number of judges shall not be reduced below that specified in paragraph 1. The proposal shall be dealt with in accordance with the procedure laid down in subparagraphs (a) and (b). In the event that the proposal is adopted, the number of judges shall be progressively decreased as the terms of office of serving judges expire, until the necessary number has been reached.
3. (a) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.
(b) Every candidate for election to the Court shall:
 - (i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or
 - (ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;
 (c) Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.
4. (a) Nominations of candidates for election to the Court may be made by any State Party to this Statute, and shall be made either:
 - (i) By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question; or
 - (ii) By the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court.
 Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of paragraph 3.
(b) Each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a national of a State Party.
(c) The Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee's composition and mandate shall be established by the Assembly of States Parties.
5. For the purposes of the election, there shall be two lists of candidates: List A containing the names of candidates with the qualifications specified in paragraph 3 (b) (i); and List B containing the names of candidates with the qualifications specified in paragraph 3 (b) (ii). A candidate with sufficient qualifications for both lists may choose on which list to appear. At the first election to the Court, at least nine judges shall be elected from list A and at least five judges from list B. Subsequent elections shall be so organized as to maintain the equivalent proportion on the Court of judges qualified on the two lists.
6. (a) The judges shall be elected by secret ballot at a meeting of the Assembly of States Parties convened for that purpose under article 112. Subject to paragraph 7, the persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting.
(b) In the event that a sufficient number of judges is not elected on the first ballot, successive ballots shall be held in accordance with the procedures laid down in subparagraph (a) until the remaining places have been filled.
7. No two judges may be nationals of the same State. A person who, for the purposes of membership of the Court, could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.
8. (a) The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for:
 - (i) The representation of the principal legal systems of the world;
 - (ii) Equitable geographical representation; and
 - (iii) A fair representation of female and male judges.
 (b) States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children.
9. (a) Subject to subparagraph (b), judges shall hold office for a term of nine years and, subject to subparagraph (c) and to article 37, paragraph 2, shall not be eligible for re-election.
(b) At the first election, one third of the judges elected shall be selected by lot to serve for a term of three years; one third of the judges elected shall be selected by lot to serve for a term of six years; and the remainder shall serve for a term of nine years.
(c) A judge who is selected to serve for a term of three years under subparagraph (b) shall be eligible for re-election for a full term.
10. Notwithstanding paragraph 9, a judge assigned to a Trial or Appeals Chamber in accordance with article 39 shall continue in office to complete any trial or appeal the hearing of which has already commenced before that Chamber.

Article 37

Judicial vacancies

1. In the event of a vacancy, an election shall be held in accordance with article 36 to fill the vacancy.
2. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is three years or less, shall be eligible for re-election for a full term under article 36.

Article 38

The Presidency

1. The President and the First and Second Vice-Presidents shall be elected by an absolute majority of the judges. They shall each serve for a term of three years or until the end of their respective terms of office as judges, whichever expires earlier. They shall be eligible for re-election once.
2. The First Vice-President shall act in place of the President in the event that the President is unavailable or disqualified. The Second Vice-President shall act in place of the President in the event that both the President and the First Vice-President are unavailable or disqualified.
3. The President, together with the First and Second Vice-Presidents, shall constitute the Presidency, which shall be responsible for:
 - (a) The proper administration of the Court, with the exception of the Office of the Prosecutor; and
 - (b) The other functions conferred upon it in accordance with this Statute.
4. In discharging its responsibility under paragraph 3 (a), the Presidency shall coordinate with and seek the concurrence of the Prosecutor on all matters of mutual concern.

Article 39

Chambers

1. As soon as possible after the election of the judges, the Court shall organize itself into the divisions specified in article 34, paragraph (b). The Appeals Division shall be composed of the President and four other judges, the Trial Division of not less than six judges and the Pre-Trial Division of not less than six judges. The assignment of judges to divisions shall be based on the nature of the functions to be performed by each division and the qualifications and experience of the judges elected to the Court, in such a way that each division shall contain an appropriate combination of expertise in criminal law and procedure and in international law. The Trial and Pre-Trial Divisions shall be composed predominantly of judges with criminal trial experience.
2. (a) The judicial functions of the Court shall be carried out in each division by Chambers.
 - (b) (i) The Appeals Chamber shall be composed of all the judges of the Appeals Division;
 - (ii) The functions of the Trial Chamber shall be carried out by three judges of the Trial Division;
 - (iii) The functions of the Pre-Trial Chamber shall be carried out either by three judges of the Pre-Trial Division or by a single judge of that division in accordance with this Statute and the Rules of Procedure and Evidence;
 - (c) Nothing in this paragraph shall preclude the simultaneous constitution of more than one Trial Chamber or Pre-Trial Chamber when the efficient management of the Court's workload so requires.
3. (a) Judges assigned to the Trial and Pre-Trial Divisions shall serve in those divisions for a period of three years, and thereafter until the completion of any case the hearing of which has already commenced in the division concerned.
 - (b) Judges assigned to the Appeals Division shall serve in that division for their entire term of office.
4. Judges assigned to the Appeals Division shall serve only in that division. Nothing in this article shall, however, preclude the temporary attachment of judges from the Trial Division to the Pre-Trial Division or vice versa, if the Presidency considers that the efficient management of the Court's workload so requires, provided that under no circumstances shall a judge who has participated in the pre-trial phase of a case be eligible to sit on the Trial Chamber hearing that case.

Article 40

Independence of the judges

1. The judges shall be independent in the performance of their functions.
2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.
3. Judges required to serve on a full-time basis at the seat of the Court shall not engage in any other occupation of a professional nature.
4. Any question regarding the application of paragraphs 2 and 3 shall be decided by an absolute majority of the judges. Where any such question concerns an individual judge, that judge shall not take part in the decision.

Article 41

Excusing and disqualification of judges

1. The Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute, in accordance with the Rules of Procedure and Evidence.
2. (a) A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, *inter alia*, that judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted. A judge shall also be disqualified on such other grounds as may be provided for in the Rules of Procedure and Evidence.
(b) The Prosecutor or the person being investigated or prosecuted may request the disqualification of a judge under this paragraph.
(c) Any question as to the disqualification of a judge shall be decided by an absolute majority of the judges. The challenged judge shall be entitled to present his or her comments on the matter, but shall not take part in the decision.

Article 42

The Office of the Prosecutor

1. The Office of the Prosecutor shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. A member of the Office shall not seek or act on instructions from any external source.
2. The Office shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The Prosecutor shall be assisted by one or more Deputy Prosecutors, who shall be entitled to carry out any of the acts required of the Prosecutor under this Statute. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. They shall serve on a full-time basis.
The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.
3. The Prosecutor shall be elected by secret ballot by an absolute majority of the members of the Assembly of States Parties. The Deputy Prosecutors shall be elected in the same way from a list of candidates provided by the Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. Unless a shorter term is decided upon at the time of their election, the Prosecutor and the Deputy Prosecutors shall hold office for a term of nine years and shall not be eligible for re-election.
4. Neither the Prosecutor nor a Deputy Prosecutor shall engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence. They shall not engage in any other occupation of a professional nature.
5. The Presidency may excuse the Prosecutor or a Deputy Prosecutor, at his or her request, from acting in a particular case.
6. Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground. They shall be disqualified from a case in accordance with this paragraph if, *inter alia*, they have previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted.
7. Any question as to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by the Appeals Chamber.
(a) The person being investigated or prosecuted may at any time request the disqualification of the Prosecutor or a Deputy Prosecutor on the grounds set out in this article;
(b) The Prosecutor or the Deputy Prosecutor, as appropriate, shall be entitled to present his or her comments on the matter
8. The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.

Article 43

The Registry

1. The Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor in accordance with article 42.
2. The Registry shall be headed by the Registrar, who shall be the principal administrative officer of the Court. The Registrar shall exercise his or her functions under the authority of the President of the Court.
3. The Registrar and the Deputy Registrar shall be persons of high moral character, be highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. The judges shall elect the Registrar by an absolute majority by secret ballot, taking into account any recommendation by the Assembly of States Parties. If the need arises and upon the recommendation of the Registrar, the judges shall elect, in the same manner, a Deputy Registrar.
5. The Registrar shall hold office for a term of five years, shall be eligible for re-election once and shall serve on a full-time basis. The Deputy Registrar shall hold office for a term of five years or such shorter term as may be decided upon by an absolute majority of the judges, and may be elected on the basis that the Deputy Registrar shall be called upon to serve as required.
6. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.

Article 44

Staff

1. The Prosecutor and the Registrar shall appoint such qualified staff as may be required to their respective offices. In the case of the Prosecutor, this shall include the appointment of investigators.
2. In the employment of staff, the Prosecutor and the Registrar shall ensure the highest standards of efficiency, competency and integrity, and shall have regard, *mutatis mutandis*, to the criteria set forth in article 36, paragraph 8.
3. The Registrar, with the agreement of the Presidency and the Prosecutor, shall propose Staff Regulations which include the terms and conditions upon which the staff of the Court shall be appointed, remunerated and dismissed. The Staff Regulations shall be approved by the Assembly of States Parties.
4. The Court may, in exceptional circumstances, employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court. The Prosecutor may accept any such offer on behalf of the Office of the Prosecutor. Such gratis personnel shall be employed in accordance with guidelines to be established by the Assembly of States Parties.

Article 45

Solemn undertaking

Before taking up their respective duties under this Statute, the judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall each make a solemn undertaking in open court to exercise his or her respective functions impartially and conscientiously.

Article 46

Removal from office

1. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or the Deputy Registrar shall be removed from office if a decision to this effect is made in accordance with paragraph 2, in cases where that person:
 - (a) Is found to have committed serious misconduct or a serious breach of his or her duties under this Statute, as provided for in the Rules of Procedure and Evidence; or
 - (b) Is unable to exercise the functions required by this Statute.
2. A decision as to the removal from office of a judge, the Prosecutor or a Deputy Prosecutor under paragraph 1 shall be made by the Assembly of States Parties, by secret ballot:
 - (a) In the case of a judge, by a two-thirds majority of the States Parties upon a recommendation adopted by a two-thirds majority of the other judges;
 - (b) In the case of the Prosecutor, by an absolute majority of the States Parties;
 - (c) In the case of a Deputy Prosecutor, by an absolute majority of the States Parties upon the recommendation of the Prosecutor.
3. A decision as to the removal from office of the Registrar or Deputy Registrar shall be made by an absolute majority of the judges.
4. A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar whose conduct or ability to exercise the functions of the office as required by this Statute is challenged under this article shall have full opportunity to present and receive evidence and to make submissions in accordance with the Rules of Procedure and Evidence. The person in question shall not otherwise participate in the consideration of the matter.

Article 47

Disciplinary measures

A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar who has committed misconduct of a less serious nature than that set out in article 46, paragraph 1, shall be subject to disciplinary measures, in accordance with the Rules of Procedure and Evidence.

Article 48

Privileges and immunities

1. The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.
2. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity.
3. The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry shall enjoy the privileges and immunities and facilities necessary for the performance of their functions, in accordance with the agreement on the privileges and immunities of the Court.
4. Counsel, experts, witnesses or any other person required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court, in accordance with the agreement on the privileges and immunities of the Court.
5. The privileges and immunities of:
 - (a) A judge or the Prosecutor may be waived by an absolute majority of the judges;
 - (b) The Registrar may be waived by the Presidency;
 - (c) The Deputy Prosecutors and staff of the Office of the Prosecutor may be waived by the Prosecutor;
 - (d) The Deputy Registrar and staff of the Registry may be waived by the Registrar.

Article 49

Salaries, allowances and expenses

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall receive such salaries, allowances and expenses as may be decided upon by the Assembly of States Parties. These salaries and allowances shall not be reduced during their terms of office.

Article 50

Official and working languages

1. The official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish. The judgements of the Court, as well as other decisions resolving fundamental issues before the Court, shall be published in the official languages. The Presidency shall, in accordance with the criteria established by the Rules of Procedure and Evidence, determine which decisions may be considered as resolving fundamental issues for the purposes of this paragraph.
2. The working languages of the Court shall be English and French. The Rules of Procedure and Evidence shall determine the cases in which other official languages may be used as working languages.
3. At the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified.

Article 51

Rules of Procedure and Evidence

1. The Rules of Procedure and Evidence shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.
2. Amendments to the Rules of Procedure and Evidence may be proposed by:
 - (a) Any State Party;
 - (b) The judges acting by an absolute majority; or
 - (c) The Prosecutor.

Such amendments shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.
3. After the adoption of the Rules of Procedure and Evidence, in urgent cases where the Rules do not provide for a specific situation before the Court, the judges may, by a two thirds majority, draw up provisional Rules to be applied until adopted, amended or rejected at the next ordinary or special session of the Assembly of States Parties.
4. The Rules of Procedure and Evidence, amendments thereto and any provisional Rule shall be consistent with this Statute. Amendments to the Rules of Procedure and Evidence as well as provisional Rules shall not be applied retroactively to the detriment of the person who is being investigated or prosecuted or who has been convicted.
5. In the event of conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail.

Article 52

Regulations of the Court

1. The judges shall, in accordance with this Statute and the Rules of Procedure and Evidence, adopt, by an absolute majority, the Regulations of the Court necessary for its routine functioning.
2. The Prosecutor and the Registrar shall be consulted in the elaboration of the Regulations and any amendments thereto.
3. The Regulations and any amendments thereto shall take effect upon adoption unless otherwise decided by the judges. Immediately upon adoption, they shall be circulated to States Parties for comments. If within six months there are no objections from a majority of States Parties, they shall remain in force.

PART 5. INVESTIGATION AND PROSECUTION

Article 53

Initiation of an investigation

1. The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether:
 - (a) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;
 - (b) The case is or would be admissible under article 17; and
 - (c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.
 If the Prosecutor determines that there is no reasonable basis to proceed and his or her determination is based solely on subparagraph (c) above, he or she shall inform the Pre-Trial Chamber.
2. If, upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because:
 - (a) There is not a sufficient legal or factual basis to seek a warrant or summons under article 58;
 - (b) The case is inadmissible under article 17; or
 - (c) A prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime; d) the Prosecutor shall inform the Pre-Trial Chamber and the State making a referral under article 14 or the Security Council in a case under article 13, paragraph (b), of his or her conclusion and the reasons for the conclusion.
3.
 - (a) At the request of the State making a referral under article 14 or the Security Council under article 13, paragraph (b), the Pre-Trial Chamber may review a decision of the Prosecutor under paragraph 1 or 2 not to proceed and may request the Prosecutor to reconsider that decision.
 - (b) In addition, the Pre-Trial Chamber may, on its own initiative, review a decision of the Prosecutor not to proceed if it is based solely on paragraph 1 (c) or 2 (c). In such a case, the decision of the Prosecutor shall be effective only if confirmed by the Pre-Trial Chamber.
4. The Prosecutor may, at any time, reconsider a decision whether to initiate an investigation or prosecution based on new facts or information.

Article 54

Duties and powers of the Prosecutor with respect to investigations

1. The Prosecutor shall:
 - (a) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally;
 - (b) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children; and
 - (c) Fully respect the rights of persons arising under this Statute.
2. The Prosecutor may conduct investigations on the territory of a State:
 - (a) In accordance with the provisions of Part 9; or
 - (b) As authorized by the Pre-Trial Chamber under article 57, paragraph 3
3. The Prosecutor may:
 - (a) Collect and examine evidence;
 - (b) Request the presence of and question persons being investigated victims and witnesses;
 - (c) Seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and/or mandate;

- (d) Enter into such arrangements or agreements, not inconsistent with this Statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person;
- (e) Agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents; and
- (f) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence.

Article 55

Rights of persons during an investigation

1. In respect of an investigation under this Statute, a person:
 - (a) Shall not be compelled to incriminate himself or herself or to confess guilt;
 - (b) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;
 - (c) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness; and
 - (d) Shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in this Statute.
2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9, that person shall also have the following rights of which he or she shall be informed prior to being questioned:
 - (a) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;
 - (b) To remain silent, without such silence being a consideration in the determination of guilt or innocence;
 - (c) To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it; and
 - (d) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

Article 56

Role of the Pre-Trial Chamber in relation to a unique investigative opportunity

1. (a) Where the Prosecutor considers an investigation to present a unique opportunity to take testimony or a statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial, the Prosecutor shall so inform the Pre-Trial Chamber.
 - (b) In that case, the Pre-Trial Chamber may, upon request of the Prosecutor, take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to protect the rights of the defence.
 - (c) Unless the Pre-Trial Chamber orders otherwise, the Prosecutor shall provide the relevant information to the person who has been arrested or appeared in response to a summons in connection with the investigation referred to in subparagraph (a), in order that he or she may be heard on the matter.
2. The measures referred to in paragraph 1 (b) may include:
 - (a) Making recommendations or orders regarding procedures to be followed;
 - (b) Directing that a record be made of the proceedings;
 - (c) Appointing an expert to assist;
 - (d) Authorizing counsel for a person who has been arrested, or appeared before the Court in response to a summons, to participate, or where there has not yet been such an arrest or appearance or counsel has not been designated, appointing another counsel to attend and represent the interests of the defence;
 - (e) Naming one of its members or, if necessary, another available judge of the Pre-Trial or Trial Division to observe and make recommendations or orders regarding the collection and preservation of evidence and the questioning of persons;
 - (f) Taking such other action as may be necessary to collect or preserve evidence.
3. (a) Where the Prosecutor has not sought measures pursuant to this article but the Pre-Trial Chamber considers that such measures are required to preserve evidence that it deems would be essential for the defence at trial, it shall consult with the Prosecutor as to whether there is good reason for the Prosecutor's failure to request the measures. If upon consultation, the Pre-Trial Chamber concludes that the Prosecutor's failure to request such measures is unjustified, the Pre-Trial Chamber may take such measures on its own initiative.

- (b) A decision of the Pre-Trial Chamber to act on its own initiative under this paragraph may be appealed by the Prosecutor. The appeal shall be heard on an expedited basis.
- 4. The admissibility of evidence preserved or collected for trial pursuant to this article, or the record thereof, shall be governed at trial by article 69, and given such weight as determined by the Trial Chamber.

Article 57

Functions and powers of the Pre-Trial Chamber

- 1. Unless otherwise provided in this Statute, the Pre-Trial Chamber shall exercise its functions in accordance with the provisions of this article.
- 2. (a) Orders or rulings of the Pre-Trial Chamber issued under articles 15, 18, 19, 54, paragraph 2, 61, paragraph 7, and 72 must be concurred in by a majority of its judges.
(b) In all other cases, a single judge of the Pre-Trial Chamber may exercise the functions provided for in this Statute, unless otherwise provided for in the Rules of Procedure and Evidence or by a majority of the Pre-Trial Chamber.
- 3. In addition to its other functions under this Statute, the Pre-Trial Chamber may:
 - (a) At the request of the Prosecutor, issue such orders and warrants as may be required for the purposes of an investigation;
 - (b) Upon the request of a person who has been arrested or has appeared pursuant to a summons under article 58, issue such orders, including measures such as those described in article 56, or seek such cooperation pursuant to Part 9 as may be necessary to assist the person in the preparation of his or her defence;
 - (c) Where necessary, provide for the protection and privacy of victims and witnesses, the preservation of evidence, the protection of persons who have been arrested or appeared in response to a summons, and the protection of national security information;
 - (d) Authorize the Prosecutor to take specific investigative steps within the territory of a State Party without having secured the cooperation of that State under Part 9 if, whenever possible having regard to the views of the State concerned, the Pre-Trial Chamber has determined in that case that the State is clearly unable to execute a request for cooperation due to the unavailability of any authority or any component of its judicial system competent to execute the request for cooperation under Part 9.
 - (e) Where a warrant of arrest or a summons has been issued under article 58, and having due regard to the strength of the evidence and the rights of the parties concerned, as provided for in this Statute and the Rules of Procedure and Evidence, seek the cooperation of States pursuant to article 93, paragraph 1 (k), to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims.

Article 58

Issuance by the Pre-Trial Chamber of a warrant of arrest or a summons to appear

- 1. At any time after the initiation of an investigation, the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that:
 - (a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and
 - (b) The arrest of the person appears necessary:
 - (i) To ensure the person's appearance at trial,
 - (ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings, or
 - (iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.
- 2. The application of the Prosecutor shall contain:
 - (a) The name of the person and any other relevant identifying information;
 - (b) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed;
 - (c) A concise statement of the facts which are alleged to constitute those crimes;
 - (d) A summary of the evidence and any other information which establish reasonable grounds to believe that the person committed those crimes; and
 - (e) The reason why the Prosecutor believes that the arrest of the person is necessary.
- 3. The warrant of arrest shall contain:
 - (a) The name of the person and any other relevant identifying information;
 - (b) A specific reference to the crimes within the jurisdiction of the Court for which the person's arrest is sought; and
 - (c) A concise statement of the facts which are alleged to constitute those crimes.

4. The warrant of arrest shall remain in effect until otherwise ordered by the Court.
5. On the basis of the warrant of arrest, the Court may request the provisional arrest or the arrest and surrender of the person under Part.
6. The Prosecutor may request the Pre-Trial Chamber to amend the warrant of arrest by modifying or adding to the crimes specified therein. The Pre-Trial Chamber shall so amend the warrant if it is satisfied that there are reasonable grounds to believe that the person committed the modified or additional crimes.
7. As an alternative to seeking a warrant of arrest, the Prosecutor may submit an application requesting that the Pre-Trial Chamber issue a summons for the person to appear. If the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that the person committed the crime alleged and that a summons is sufficient to ensure the person's appearance, it shall issue the summons, with or without conditions restricting liberty (other than detention) if provided for by national law, for the person to appear. The summons shall contain:
 - (a) The name of the person and any other relevant identifying information;
 - (b) The specified date on which the person is to appear;
 - (c) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed; and
 - (d) A concise statement of the facts which are alleged to constitute the crime.
 The summons shall be served on the person.

Article 59

Arrest proceedings in the custodial State

1. A State Party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person in question in accordance with its laws and the provisions of Part 9.
2. A person arrested shall be brought promptly before the competent judicial authority in the custodial State which shall determine, in accordance with the law of that State, that:
 - (a) The warrant applies to that person;
 - (b) The person has been arrested in accordance with the proper process; and
 - (c) The person's rights have been respected.
3. The person arrested shall have the right to apply to the competent authority in the custodial State for interim release pending surrender.
4. In reaching a decision on any such application, the competent authority in the custodial State shall consider whether, given the gravity of the alleged crimes, there are urgent and exceptional circumstances to justify interim release and whether necessary safeguards exist to ensure that the custodial State can fulfil its duty to surrender the person to the Court. It shall not be open to the competent authority of the custodial State to consider whether the warrant of arrest was properly issued in accordance with article 58, paragraph 1 (a) and (b).
5. The Pre-Trial Chamber shall be notified of any request for interim release and shall make recommendations to the competent authority in the custodial State. The competent authority in the custodial State shall give full consideration to such recommendations, including any recommendations on measures to prevent the escape of the person, before rendering its decision.
6. If the person is granted interim release, the Pre-Trial Chamber may request periodic reports on the status of the interim release.
7. Once ordered to be surrendered by the custodial State, the person shall be delivered to the Court as soon as possible.

Article 60

Initial proceedings before the Court

1. Upon the surrender of the person to the Court, or the person's appearance before the Court voluntarily or pursuant to a summons, the Pre-Trial Chamber shall satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under this Statute, including the right to apply for interim release pending trial.
2. A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.
3. The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.
4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.
5. If necessary, the Pre-Trial Chamber may issue a warrant of arrest to secure the presence of a person who has been released.

Article 61

Confirmation of the charges before trial

1. Subject to the provisions of paragraph 2, within a reasonable time after the person's surrender or voluntary appearance before the Court, the Pre-Trial Chamber shall hold a hearing to confirm the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the presence of the Prosecutor and the person charged, as well as his or her counsel.
2. The Pre-Trial Chamber may, upon request of the Prosecutor or on its own motion, hold a hearing in the absence of the person charged to confirm the charges on which the Prosecutor intends to seek trial when the person has:
 - (a) Waived his or her right to be present; or
 - (b) Fled or cannot be found and all reasonable steps have been taken to secure his or her appearance before the Court and to inform the person of the charges and that a hearing to confirm those charges will be held.
 In that case, the person shall be represented by counsel where the Pre-trial Chamber determines that it is in the interests of justice.
3. Within a reasonable time before the hearing, the person shall:
 - (a) Be provided with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial; and
 - (b) Be informed of the evidence on which the Prosecutor intends to rely at the hearing.
 - (c) The Pre-Trial Chamber may issue orders regarding the disclosure of information for the purposes of the hearing.
4. Before the hearing, the Prosecutor may continue the investigation and may amend or withdraw any charges. The person shall be given reasonable notice before the hearing of any amendment to or withdrawal of charges. In case of a withdrawal of charges, the Prosecutor shall notify the Pre Trial Chamber of the reasons for the withdrawal.
5. At the hearing, the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged. The Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial.
6. At the hearing, the person may:
 - (a) Object to the charges;
 - (b) Challenge the evidence presented by the Prosecutor; and
 - (c) Present evidence.
7. The Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on its determination, the Pre-Trial Chamber shall:
 - (a) Confirm those charges in relation to which it has determined that there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;
 - (b) Decline to confirm those charges in relation to which it has determined that there is insufficient evidence;
 - (c) Adjourn the hearing and request the Prosecutor to consider:
 - (i) Providing further evidence or conducting further investigation with respect to a particular charge; or
 - (ii) Amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.
8. Where the Pre-Trial Chamber declines to confirm a charge, the Prosecutor shall not be precluded from subsequently requesting its confirmation if the request is supported by additional evidence.
9. After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing under this article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.
10. Any warrant previously issued shall cease to have effect with respect to any charges which have not been confirmed by the Pre-Trial Chamber or which have been withdrawn by the Prosecutor.
11. Once the charges have been confirmed in accordance with this article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 9 and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings.

PART 6. THE TRIAL

Article 62

Place of trial

Unless otherwise decided, the place of the trial shall be the seat of the Court.

Article 63

Trial in the presence of the accused

1. The accused shall be present during the trial.

2. If the accused, being present before the Court, continues to disrupt the trial, the Trial Chamber may remove the accused and shall make provision for him or her to observe the trial and instruct counsel from outside the courtroom, through the use of communications technology, if required. Such measures shall be taken only in exceptional circumstances after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required.

Article 64

Functions and powers of the Trial Chamber

1. The functions and powers of the Trial Chamber set out in this article shall be exercised in accordance with this Statute and the Rules of Procedure and Evidence.
2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.
3. Upon assignment of a case for trial in accordance with this Statute, the Trial Chamber assigned to deal with the case shall:
 - (a) Confer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings;
 - (b) Determine the language or languages to be used at trial; and
 - (c) Subject to any other relevant provisions of this Statute, provide for disclosure of documents or information not previously disclosed, sufficiently in advance of the commencement of the trial to enable adequate preparation for trial.
4. The Trial Chamber may, if necessary for its effective and fair functioning, refer preliminary issues to the Pre-Trial Chamber or, if necessary, to another available judge of the Pre-Trial Division.
5. Upon notice to the parties, the Trial Chamber may, as appropriate, direct that there be joinder or severance in respect of charges against more than one accused.
6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:
 - (a) Exercise any functions of the Pre-Trial Chamber referred to in article 61, paragraph 11;
 - (b) Require the attendance and testimony of witnesses and production of documents and other evidence by obtaining, if necessary, the assistance of States as provided in this Statute;
 - (c) Provide for the protection of confidential information;
 - (d) Order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties;
 - (e) Provide for the protection of the accused, witnesses and victims; and
 - (f) Rule on any other relevant matters.
7. The trial shall be held in public. The Trial Chamber may, however, determine that special circumstances require that certain proceedings be in closed session for the purposes set forth in article 68, or to protect confidential or sensitive information to be given in evidence.
8.
 - (a) At the commencement of the trial, the Trial Chamber shall have read to the accused the charges previously confirmed by the Pre-Trial Chamber. The Trial Chamber shall satisfy itself that the accused understands the nature of the charges. It shall afford him or her the opportunity to make an admission of guilt in accordance with article 65 or to plead not guilty.
 - (b) At the trial, the presiding judge may give directions for the conduct of proceedings, including to ensure that they are conducted in a fair and impartial manner. Subject to any directions of the presiding judge, the parties may submit evidence in accordance with the provisions of this Statute.
9. The Trial Chamber shall have, inter alia, the power on application of a party or on its own motion to:
 - (a) Rule on the admissibility or relevance of evidence; and
 - (b) Take all necessary steps to maintain order in the course of a hearing.
10. The Trial Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is made and that it is maintained and preserved by the Registrar.

Article 65

Proceedings on an admission of guilt

1. Where the accused makes an admission of guilt pursuant to article 64, paragraph 8 (a), the Trial Chamber shall determine whether:
 - (a) The accused understands the nature and consequences of the admission of guilt;
 - (b) The admission is voluntarily made by the accused after sufficient consultation with defence counsel; and
 - (c) The admission of guilt is supported by the facts of the case that are contained in:
 - (i) The charges brought by the Prosecutor and admitted by the accused;
 - (ii) Any materials presented by the Prosecutor which supplement the charges and which the accused accepts; and
 - (iii) Any other evidence, such as the testimony of witnesses, presented by the Prosecutor or the accused.

2. Where the Trial Chamber is satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt, together with any additional evidence presented, as establishing all the essential facts that are required to prove the crime to which the admission of guilt relates, and may convict the accused of that crime.
3. Where the Trial Chamber is not satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt as not having been made, in which case it shall order that the trial be continued under the ordinary trial procedures provided by this Statute and may remit the case to another Trial Chamber.
4. Where the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is required in the interests of justice, in particular the interests of the victims, the Trial Chamber may:
 - (a) Request the Prosecutor to present additional evidence, including the testimony of witnesses; or
 - (b) Order that the trial be continued under the ordinary trial procedures provided by this Statute, in which case it shall consider the admission of guilt as not having been made and may remit the case to another Trial Chamber.
5. Any discussions between the Prosecutor and the defence regarding modification of the charges, the admission of guilt or the penalty to be imposed shall not be binding on the Court.

Article 66

Presumption of innocence

1. Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.
2. The onus is on the Prosecutor to prove the guilt of the accused.
3. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.

Article 67

Rights of the accused

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;
 - (b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;
 - (c) To be tried without undue delay;
 - (d) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;
 - (f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language which the accused fully understands and speaks;
 - (g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
 - (h) To make an unsworn oral or written statement in his or her defence; and
 - (g) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.
2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

Article 68

Protection of the victims and witnesses and their participation in the proceedings

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the

presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.
4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43, paragraph 6.
5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
6. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

Article 69

Evidence

1. Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness.
2. The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of *viva voce* (oral) or recorded testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused.
3. The parties may submit evidence relevant to the case, in accordance with article 64. The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth.
4. The Court may rule on the relevance or admissibility of any evidence, taking into account, inter alia, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.
5. The Court shall respect and observe privileges on confidentiality as provided for in the Rules of Procedure and Evidence.
6. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.
7. Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:
 - (a) The violation casts substantial doubt on the reliability of the evidence; or
 - (b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.
8. When deciding on the relevance or admissibility of evidence collected by a State, the Court shall not rule on the application of the State's national law.

Article 70

Offences against the administration of justice

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:
 - (a) Giving false testimony when under an obligation pursuant to article 69, paragraph 1, to tell the truth;
 - (b) Presenting evidence that the party knows is false or forged;
 - (c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;
 - (d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;
 - (e) Retaliating against an official of the Court on account of duties performed by that or another official;
 - (f) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.
2. The principles and procedures governing the Court's exercise of jurisdiction over offences under this article shall be those provided for in the Rules of Procedure and Evidence. The conditions for providing international cooperation to the Court with respect to its proceedings under this article shall be governed by the domestic laws of the requested State.

3. In the event of conviction, the Court may impose a term of imprisonment not exceeding five years, or a fine in accordance with the Rules of Procedure and Evidence, or both.
4. (a) Each State Party shall extend its criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed on its territory, or by one of its nationals;
(b) Upon request by the Court, whenever it deems it proper, the State Party shall submit the case to its competent authorities for the purpose of prosecution. Those authorities shall treat such cases with diligence and devote sufficient resources to enable them to be conducted effectively.

Article 71

Sanctions for misconduct before the Court

1. The Court may sanction persons present before it who commit misconduct, including disruption of its proceedings or deliberate refusal to comply with its directions, by administrative measures other than imprisonment, such as temporary or permanent removal from the courtroom, a fine or other similar measures provided for in the Rules of Procedure and Evidence.
2. The procedures governing the imposition of the measures set forth in paragraph 1 shall be those provided for in the Rules of Procedure and Evidence.

Article 72

Protection of national security information

1. This article applies in any case where the disclosure of the information or documents of a State would, in the opinion of that State, prejudice its national security interests. Such cases include those falling within the scope of article 56, paragraphs 2 and 3, article 61, paragraph 3, article 64, paragraph 3, article 67, paragraph 2, article 68, paragraph 6, article 87, paragraph 6 and article 93, as well as cases arising at any other stage of the proceedings where such disclosure may be at issue.
2. This article shall also apply when a person who has been requested to give information or evidence has refused to do so or has referred the matter to the State on the ground that disclosure would prejudice the national security interests of a State and the State concerned confirms that it is of the opinion that disclosure would prejudice its national security interests.
3. Nothing in this article shall prejudice the requirements of confidentiality applicable under article 54, paragraph 3 (e) and (f), or the application of article 73.
4. If a State learns that information or documents of the State are being, or are likely to be, disclosed at any stage of the proceedings, and it is of the opinion that disclosure would prejudice its national security interests, that State shall have the right to intervene in order to obtain resolution of the issue in accordance with this article.
5. If, in the opinion of a State, disclosure of information would prejudice its national security interests, all reasonable steps will be taken by the State, acting in conjunction with the Prosecutor, the defence or the Pre-Trial Chamber or Trial Chamber, as the case may be, to seek to resolve the matter by cooperative means. Such steps may include:
 - (a) Modification or clarification of the request;
 - (b) A determination by the Court regarding the relevance of the information or evidence sought, or a determination as to whether the evidence, though relevant, could be or has been obtained from a source other than the requested State;
 - (c) Obtaining the information or evidence from a different source or in a different form; or
 - (d) Agreement on conditions under which the assistance could be provided including, among other things, providing summaries or redactions, limitations on disclosure, use of in camera or ex parte proceedings, or other protective measures permissible under the Statute and the Rules of Procedure and Evidence.
6. Once all reasonable steps have been taken to resolve the matter through cooperative means, and if the State considers that there are no means or conditions under which the information or documents could be provided or disclosed without prejudice to its national security interests, it shall so notify the Prosecutor or the Court of the specific reasons for its decision, unless a specific description of the reasons would itself necessarily result in such prejudice to the State's national security interests.
7. Thereafter, if the Court determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the accused, the Court may undertake the following actions:
 - (a) Where disclosure of the information or document is sought pursuant to a request for cooperation under Part 9 or the circumstances described in paragraph 2, and the State has invoked the ground for refusal referred to in article 93, paragraph 4:
 - (i) The Court may, before making any conclusion referred to in subparagraph 7 (a)
 - (ii) Request further consultations for the purpose of considering the State's representations, which may include, as appropriate, hearings in camera and ex parte;
 - (iii) If the Court concludes that, by invoking the ground for refusal under article 93, paragraph 4, in the circumstances of the case, the requested State is not acting in accordance with its obligations under

this Statute, the Court may refer the matter in accordance with article 87, paragraph 7, specifying the reasons for its conclusion; and

- (iv) The Court may make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances; or
- (b) In all other circumstances:
 - (i) Order disclosure; or
 - (ii) To the extent it does not order disclosure, make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances.

Article 73

Third-party information or documents

If a State Party is requested by the Court to provide a document or information in its custody, possession or control, which was disclosed to it in confidence by a State, intergovernmental organization or international organization, it shall seek the consent of the originator to disclose that document or information. If the originator is a State Party, it shall either consent to disclosure of the information or document or undertake to resolve the issue of disclosure with the Court, subject to the provisions of article 72. If the originator is not a State Party and refuses to consent to disclosure, the requested State shall inform the Court that it is unable to provide the document or information because of a pre-existing obligation of confidentiality to the originator.

Article 74

Requirements for the decision

1. All the judges of the Trial Chamber shall be present at each stage of the trial and throughout their deliberations. The Presidency may, on a case-by-case basis, designate, as available, one or more alternate judges to be present at each stage of the trial and to replace a member of the Trial Chamber if that member is unable to continue attending.
2. The Trial Chamber's decision shall be based on its evaluation of the evidence and the entire proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Court may base its decision only on evidence submitted and discussed before it at the trial.
3. The judges shall attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges.
4. The deliberations of the Trial Chamber shall remain secret.
5. The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority. The decision or a summary thereof shall be delivered in open court.

Article 75

Reparations to victims

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.
2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.
4. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.
5. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1.
6. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article.
7. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

Article 76

Sentencing

1. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence.
2. Except where article 65 applies and before the completion of the trial, the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or

submissions relevant to the sentence, in accordance with the Rules of Procedure and Evidence.

3. Where paragraph 2 applies, any representations under article 75 shall be heard during the further hearing referred to in paragraph 2 and, if necessary, during any additional hearing.
4. The sentence shall be pronounced in public and, wherever possible, in the presence of the accused.

PART 7. PENALTIES

Article 77

Applicable penalties

1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute:
 - (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or
 - (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.
2. In addition to imprisonment, the Court may order:
 - (a) A fine under the criteria provided for in the Rules of Procedure and Evidence;
 - (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

Article 78

Determination of the sentence

1. In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.
2. In imposing a sentence of imprisonment, the Court shall deduct the time, if any, previously spent in detention in accordance with an order of the Court. The Court may deduct any time otherwise spent in detention in connection with conduct underlying the crime.
3. When a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life imprisonment in conformity with article 77, paragraph 1 (b).

Article 79

Trust Fund

1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.
2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.
3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.

Article 80

Non-prejudice to national application of penalties and national laws

Nothing in this Part affects the application by States of penalties prescribed by their national law, nor the law of States, which do not provide for penalties prescribed in this Part.

PART 8. APPEAL AND REVISION

Article 81

Appeal against decision of acquittal or conviction or against sentence

1. A decision under article 74 may be appealed in accordance with the Rules of Procedure and Evidence as follows:
 - (a) The Prosecutor may make an appeal on any of the following grounds:
 - (i) Procedural error,
 - (ii) Error of fact, or
 - (iii) Error of law;
 - (b) The convicted person, or the Prosecutor on that person's behalf, may make an appeal on any of the following grounds:
 - (i) Procedural error,
 - (ii) Error of fact
 - (iii) Error of law, or
 - (iv) Any other ground that affects the fairness or reliability of the proceedings or decision.

2. (a) A sentence may be appealed, in accordance with the Rules of Procedure and Evidence, by the Prosecutor or the convicted person on the ground of disproportion between the crime and the sentence;
(b) If on an appeal against sentence the Court considers that there are grounds on which the conviction might be set aside, wholly or in part, it may invite the Prosecutor and the convicted person to submit grounds under article 81, paragraph 1 (a) or (b), and may render a decision on conviction in accordance with article 83;
(c) The same procedure applies when the Court, on an appeal against conviction only, considers that there are grounds to reduce the sentence under paragraph 2 (a).
3. (a) Unless the Trial Chamber orders otherwise, a convicted person shall remain in custody pending an appeal;
(b) When a convicted person's time in custody exceeds the sentence of imprisonment imposed, that person shall be released, except that if the Prosecutor is also appealing, the release may be subject to the conditions under subparagraph (c) below;
(c) In case of an acquittal, the accused shall be released immediately, subject to the following:
 - (i) Under exceptional circumstances, and having regard, *inter alia*, to the concrete risk of flight, the seriousness of the offence charged and the probability of success on appeal, the Trial Chamber, at the request of the Prosecutor, may maintain the detention of the person pending appeal;
 - (ii) A decision by the Trial Chamber under subparagraph (c) (i) may be appealed in accordance with the Rules of Procedure and Evidence.
4. Subject to the provisions of paragraph 3 (a) and (b), execution of the decision or sentence shall be suspended during the period allowed for appeal and for the duration of the appeal proceedings.

Article 82

Appeal against other decisions

1. Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:
 - (a) A decision with respect to jurisdiction or admissibility;
 - (b) A decision granting or denying release of the person being investigated or prosecuted;
 - (c) A decision of the Pre-Trial Chamber to act on its own initiative under article 56, paragraph 3;
 - (d) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.
2. A decision of the Pre-Trial Chamber under article 57, paragraph 3 (d), may be appealed against by the State concerned or by the Prosecutor, with the leave of the Pre-Trial Chamber. The appeal shall be heard on an expedited basis.
3. An appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence.
4. A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under article 75 may appeal against the order for reparations, as provided in the Rules of Procedure and Evidence.

Article 83

Proceedings on appeal

1. For the purposes of proceedings under article 81 and this article, the Appeals Chamber shall have all the powers of the Trial Chamber.
2. If the Appeals Chamber finds that the proceedings appealed from were unfair in a way that affected the reliability of the decision or sentence, or that the decision or sentence appealed from was materially affected by error of fact or law or procedural error, it may:
 - (a) Reverse or amend the decision or sentence; or
 - (b) Order a new trial before a different Trial Chamber.

For these purposes, the Appeals Chamber may remand a factual issue to the original Trial Chamber for it to determine the issue and to report back accordingly, or may itself call evidence to determine the issue. When the decision or sentence has been appealed only by the person convicted, or the Prosecutor on that person's behalf, it cannot be amended to his or her detriment.
3. If in an appeal against sentence the Appeals Chamber finds that the sentence is disproportionate to the crime, it may vary the sentence in accordance with Part 7.
4. The judgment of the Appeals Chamber shall be taken by a majority of the judges and shall be delivered in open court. The judgment shall state the reasons on which it is based. When there is no unanimity, the judgment of the Appeals Chamber shall contain the views of the majority and the minority, but a judge may deliver a separate or dissenting opinion on a question of law.
5. The Appeals Chamber may deliver its judgment in the absence of the person acquitted or convicted.

Article 84

Revision of conviction or sentence

1. The convicted person or, after death, spouses, children, parents or one person alive at the time of the accused's death who has been given express written instructions from the accused to bring such a claim, or the Prosecutor on the person's behalf, may apply to the Appeals Chamber to revise the final judgment of conviction or sentence on the grounds that:
 - (a) New evidence has been discovered that:
 - (i) Was not available at the time of trial, and such unavailability was not wholly or partially attributable to the party making application; and
 - (ii) Is sufficiently important that had it been proved at trial it would have been likely to have resulted in a different verdict;
 - (b) It has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;
 - (c) One or more of the judges who participated in conviction or confirmation of the charges has committed, in that case, an act of serious misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office under article 46.
2. The Appeals Chamber shall reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:
 - (a) Reconvene the original Trial Chamber;
 - (b) Constitute a new Trial Chamber; or
 - (c) Retain jurisdiction over the matter, with a view to, after hearing the parties in the manner set forth in the Rules of Procedure and Evidence, arriving at a determination on whether the judgment should be revised.

Article 85

Compensation to an arrested or convicted person

1. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.
2. When a person has by a final decision been convicted of a criminal offence, and when subsequently his or her conviction has been reversed on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her.
3. In exceptional circumstances, where the Court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice, it may in its discretion award compensation, according to the criteria provided in the Rules of Procedure and Evidence, to a person who has been released from detention following a final decision of acquittal or a termination of the proceedings for that reason.

PART 9. INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

Article 86

General obligation to cooperate

States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.

Article 87

Requests for cooperation: general provisions

1. (a) The Court shall have the authority to make requests to States Parties for cooperation. The requests shall be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, acceptance, approval or accession. Subsequent changes to the designation shall be made by each State Party in accordance with the Rules of Procedure and Evidence.

(b) When appropriate, without prejudice to the provisions of subparagraph (a), requests may also be transmitted through the International Criminal Police Organization or any appropriate regional organization.
2. Requests for cooperation and any documents supporting the request shall either be in or be accompanied by a translation into an official language of the requested State or one of the working languages of the Court, in accordance with the choice made by that State upon ratification, acceptance, approval or accession. Subsequent changes to this choice shall be made in accordance with the Rules of Procedure and Evidence.
3. The requested State shall keep confidential a request for cooperation and any documents supporting the request, except to the extent that the disclosure is necessary for execution of the request.
4. In relation to any request for assistance presented under this Part, the Court may take such measures, including measures related to the protection of information, as may be necessary to ensure the safety or physical or

psychological well-being of any victims, potential witnesses and their families. The Court may request that any information that is made available under this Part shall be provided and handled in a manner that protects the safety and physical or psychological well-being of any victims, potential witnesses and their families.

5. (a) The Court may invite any State not party to this Statute to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.
(b) Where a State not party to this Statute, which has entered into an ad hoc arrangement or an agreement with the Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties or, where the Security Council referred the matter to the Court, the Security Council.
6. The Court may ask any intergovernmental organization to provide information or documents. The Court may also ask for other forms of cooperation and assistance which may be agreed upon with such an organization and which are in accordance with its competence or mandate.
7. Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and reference.

Article 88

Availability of procedures under national law

States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this specific part.

Article 89

Surrender of persons to the Court

1. The Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in article 91, to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties shall, in accordance with the provisions of this Part and the procedure under their national law, comply with requests for arrest and surrender.
2. Where the person sought for surrender brings a challenge before a national court on the basis of the principle of *ne bis in idem* as provided in article 20, the requested State shall immediately consult with the Court to determine if there has been a relevant ruling on admissibility. If the case is admissible, the requested State shall proceed with the execution of the request. If an admissibility ruling is pending, the requested State may postpone the execution of the request for surrender of the person until the Court makes a determination on admissibility.
3. (a) A State Party shall authorize, in accordance with its national procedural law, transportation through its territory of a person being surrendered to the Court by another State, except where transit through that State would impede or delay the surrender.
(b) A request by the Court for transit shall be transmitted in accordance with article 87. The request for transit shall contain:
 - (i) A description of the person being transported;
 - (ii) A brief statement of the facts of the case and their legal characterization; and
 - (iii) The warrant for arrest and surrender;
 (c) A person being transported shall be detained in custody during the period of transit;
(d) No authorization is required if the person is transported by air and no landing is scheduled on the territory of the transit State;
(e) If an unscheduled landing occurs on the territory of the transit State, that State may require a request for transit from the Court as provided for in subparagraph (b). The transit State shall detain the person being transported until the request for transit is received and the transit is effected, provided that detention for purposes of this subparagraph may not be extended beyond 96 hours from the unscheduled landing unless the request is received within that time.
4. If the person sought is being proceeded against or is serving a sentence in the requested State for a crime different from that for which surrender to the Court is sought, the requested State, after making its decision to grant the request, shall consult with the Court.

Article 90

Competing requests

1. A State Party which receives a request from the Court for the surrender of a person under article 89 shall, if it also receives a request from any other State for the extradition of the same person for the same conduct which forms the basis of the crime for which the Court seeks the person's surrender, notify the Court and the requesting State of that fact.
2. Where the requesting State is a State Party, the requested State shall give priority to the request from the Court if:
 - (a) The Court has, pursuant to article 18 or 19, made a determination that the case in respect of which surrender

is sought is admissible and that determination takes into account the investigation or prosecution conducted by the requesting State in respect of its request for extradition; or

- (b) The Court makes the determination described in subparagraph (a) pursuant to the requested State's notification under paragraph 1.
3. Where a determination under paragraph 2 (a) has not been made, the requested State may, at its discretion, pending the determination of the Court under paragraph 2 (b), proceed to deal with the request for extradition from the requesting State but shall not extradite the person until the Court has determined that the case is inadmissible. The Court's determination shall be made on an expedited basis.
4. If the requesting State is a State not Party to this Statute the requested State, if it is not under an international obligation to extradite the person to the requesting State, shall give priority to the request for surrender from the Court, if the Court has determined that the case is admissible.
5. Where a case under paragraph 4 has not been determined to be admissible by the Court, the requested State may, at its discretion, proceed to deal with the request for extradition from the requesting State.
6. In cases where paragraph 4 applies except that the requested State is under an existing international obligation to extradite the person to the requesting State not Party to this Statute, the requested State shall determine whether to surrender the person to the Court or extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to:
 - (a) The respective dates of the requests;
 - (b) The interests of the requesting State including, where relevant, whether the crime was committed in its territory and the nationality of the victims and of the person sought; and
 - (c) The possibility of subsequent surrender between the Court and the requesting State.
7. Where a State Party which receives a request from the Court for the surrender of a person also receives a request from any State for the extradition of the same person for conduct other than that which constitutes the crime for which the Court seeks the person's surrender:
 - (a) The requested State shall, if it is not under an existing international obligation to extradite the person to the requesting State, give priority to the request from the Court;
 - (b) The requested State shall, if it is under an existing international obligation to extradite the person to the requesting State, determine whether to surrender the person to the Court or to extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to those set out in paragraph 6, but shall give special consideration to the relative nature and gravity of the conduct in question.
8. Where pursuant to a notification under this article, the Court has determined a case to be inadmissible, and subsequently extradition to the requesting State is refused, the requested State shall notify the court of this decision.

Article 91

Contents of request for arrest and surrender

1. A request for arrest and surrender shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1 (a).
2. In the case of a request for the arrest and surrender of a person for whom a warrant of arrest has been issued by the Pre-Trial Chamber under article 58, the request shall contain or be supported by:
 - (a) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;
 - (b) A copy of the warrant of arrest; and
 - (c) Such documents, statements or information as may be necessary to meet the requirements for the surrender process in the requested State, except that those requirements should not be more burdensome than those applicable to requests for extradition pursuant to treaties or arrangements between the requested State and other States and should, if possible, be less burdensome, taking into account the distinct nature of the Court.
3. In the case of a request for the arrest and surrender of a person already convicted, the request shall contain or be supported by:
 - (a) A copy of any warrant of arrest for that person;
 - (b) A copy of the judgement of conviction;
 - (c) Information to demonstrate that the person sought is the one referred to in the judgement of conviction; and
 - (d) If the person sought has been sentenced, a copy of the sentence imposed and, in the case of a sentence for imprisonment, a statement of any time already served and the time remaining to be served.
4. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2 (c). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.

Article 92

Provisional arrest

1. In urgent cases, the Court may request the provisional arrest of the person sought, pending presentation of the request for surrender and the documents supporting the request as specified in article 91.
2. The request for provisional arrest shall be made by any medium capable of delivering a written record and shall contain:
 - (a) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;
 - (b) A concise statement of the crimes for which the person's arrest is sought and of the facts which are alleged to constitute those crimes, including, where possible, the date and location of the crime;
 - (c) A statement of the existence of a warrant of arrest or a judgement of conviction against the person sought; and
 - (d) A statement that a request for surrender of the person sought will follow.
3. A person who is provisionally arrested may be released from custody if the requested State has not received the request for surrender and the documents supporting the request as specified in article 91 within the time limits specified in the Rules of Procedure and Evidence. However, the person may consent to surrender before the expiration of this period if permitted by the law of the requested State. In such a case, the requested State shall proceed to surrender the person to the Court as soon as possible.
4. The fact that the person sought has been released from custody pursuant to paragraph 3 shall not prejudice the subsequent arrest and surrender of that person if the request for surrender and the documents supporting the request are delivered at a later date.

Article 93

Other forms of cooperation

1. States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions:
 - (a) The identification and whereabouts of persons or the location of items;
 - (b) The taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court;
 - (c) The questioning of any person being investigated or prosecuted;
 - (d) The service of documents, including judicial documents;
 - (e) Facilitating the voluntary appearance of persons as witnesses or experts before the Court;
 - (f) The temporary transfer of persons as provided in paragraph 7;
 - (g) The examination of places or sites, including the exhumation and examination of grave sites;
 - (h) The execution of searches and seizures;
 - (i) The provision of records and documents, including official records and documents;
 - (j) The protection of victims and witnesses and the preservation of evidence;
 - (k) The identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties; and
 - (l) Any other type of assistance which is not prohibited by the law of the requested State, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the Court.
2. The Court shall have the authority to provide an assurance to a witness or an expert appearing before the Court that he or she will not be prosecuted, detained or subjected to any restriction of personal freedom by the Court in respect of any act or omission that preceded the departure of that person from the requested State.
3. Where execution of a particular measure of assistance detailed in a request presented under paragraph 1, is prohibited in the requested State on the basis of an existing fundamental legal principle of general application, the requested State shall promptly consult with the Court to try to resolve the matter. In the consultations, consideration should be given to whether the assistance can be rendered in another manner or subject to conditions. If after consultations the matter cannot be resolved, the Court shall modify the request as necessary.
4. In accordance with article 72, a State Party may deny a request for assistance, in whole or in part, only if the request concerns the production of any documents or disclosure of evidence which relates to its national security.
5. Before denying a request for assistance under paragraph 1 (l), the requested State shall consider whether the assistance can be provided subject to specified conditions, or whether the assistance can be provided at a later date or in an alternative manner, provided that if the Court or the Prosecutor accepts the assistance subject to conditions, the Court or the Prosecutor shall abide by them.
6. If a request for assistance is denied, the requested State Party shall promptly inform the Court or the Prosecutor of the reasons for such denial.
7. (a) The Court may request the temporary transfer of a person in custody for purposes of identification or for obtaining testimony or other assistance. The person may be transferred if the following conditions are fulfilled:
 - (i) The person freely gives his or her informed consent to the transfer; and

- (ii) The requested State agrees to the transfer, subject to such conditions as that State and the Court may agree.
- (b) The person being transferred shall remain in custody. When the purposes of the transfer have been fulfilled, the Court shall return the person without delay to the requested State.
- 8. (a) The Court shall ensure the confidentiality of documents and information, except as required for the investigation and proceedings described in the request.
 - (b) The requested State may, when necessary, transmit documents or information to the Prosecutor on a confidential basis. The Prosecutor may then use them solely for the purpose of generating new evidence.
 - (c) The requested State may, on its own motion or at the request of the Prosecutor, subsequently consent to the disclosure of such documents or information. They may then be used as evidence pursuant to the provisions of Parts 5 and 6 and in accordance with the Rules of Procedure and Evidence.
- 9. (a) (i) In the event that a State Party receives competing requests, other than for surrender or extradition, from the Court and from another State pursuant to an international obligation, the State Party shall endeavour, in consultation with the Court and the other State, to meet both requests, if necessary by postponing or attaching conditions to one or the other request.
 - (ii) Failing that, competing requests shall be resolved in accordance with the principles established in article 90.
 - (b) Where, however, the request from the Court concerns information, property or persons which are subject to the control of a third State or an international organization by virtue of an international agreement, the requested States shall so inform the Court and the Court shall direct its request to the third State or international organization.
- 10. (a) The Court may, upon request, cooperate with and provide assistance to a State Party conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court or which constitutes a serious crime under the national law of the requesting State.
 - (b) (i) The assistance provided under subparagraph (a) shall include, inter alia: a. The transmission of statements, documents or other types of evidence obtained in the course of an investigation or a trial conducted by the Court; and
 - b. The questioning of any person detained by order of the Court;
 - (ii) In the case of assistance under subparagraph (b) (i) a:
 - a. If the documents or other types of evidence have been obtained with the assistance of a State, such transmission shall require the consent of that State;
 - b. If the statements, documents or other types of evidence have been provided by a witness or expert, such transmission shall be subject to the provisions of article 68.
 - (c) The Court may, under the conditions set out in this paragraph, grant a request for assistance under this paragraph from a State which is not a Party to this Statute.

Article 94

Postponement of execution of a request in respect of ongoing investigation or prosecution

- 1. If the immediate execution of a request would interfere with an ongoing investigation or prosecution of a case different from that to which the request relates, the requested State may postpone the execution of the request for a period of time agreed upon with the Court. However, the postponement shall be no longer than is necessary to complete the relevant investigation or prosecution in the requested State. Before making a decision to postpone, the requested State should consider whether the assistance may be immediately provided subject to certain conditions.
- 2. If a decision to postpone is taken pursuant to paragraph 1, the prosecutor may, however, seek measures to preserve evidence, pursuant to article 93, paragraph 1 (j).

Article 95

Postponement of execution of a request in respect of an admissibility challenge

Where there is an admissibility challenge under consideration by the Court pursuant to article 18 or 19, the requested State may postpone the execution of a request under this Part pending a determination by the Court, unless the Court has specifically ordered that the Prosecutor may pursue the collection of such evidence pursuant to article 18 or 19.

Article 96

Contents of request for other forms of assistance under article 93

- 1. A request for other forms of assistance referred to in article 93 shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1 (a).
- 2. The request shall, as applicable, contain or be supported by the following:
 - (a) A concise statement of the purpose of the request and the assistance sought, including the legal basis and the grounds for the request;

- (b) As much detailed information as possible about the location or identification of any person or place that must be found or identified in order for the assistance sought to be provided;
 - (c) A concise statement of the essential facts underlying the request;
 - (d) The reasons for and details of any procedure or requirement to be followed;
 - (e) Such information as may be required under the law of the requested State in order to execute the request; and
 - (f) Any other information relevant in order for the assistance sought to be provided.
3. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2 (e). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.
 4. The provisions of this article shall, where applicable, also apply in respect of a request for assistance made to the Court.

Article 97

Consultations

Where a State Party receives a request under this Part in relation to which it identifies problems which may impede or prevent the execution of the request, that State shall consult with the Court without delay in order to resolve the matter. Such problems may include, inter alia:

- (a) Insufficient information to execute the request;
- (b) In the case of a request for surrender, the fact that despite best efforts, the person sought cannot be located or that the investigation conducted has determined that the person in the requested State is clearly not the person named in the warrant; or
- (c) The fact that execution of the request in its current form would require the requested State to breach a pre-existing treaty obligation undertaken with respect to another State.

Article 98

Cooperation with respect to waiver of immunity and consent to surrender

1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.
2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.

Article 99

Execution of requests under articles 93 and 96

1. Requests for assistance shall be executed in accordance with the relevant procedure under the law of the requested State and, unless prohibited by such law, in the manner specified in the request, including following any procedure outlined therein or permitting persons specified in the request to be present at and assist in the execution process.
2. In the case of an urgent request, the documents or evidence produced in response shall, at the request of the Court, be sent urgently.
3. Replies from the requested State shall be transmitted in their original language and form.
4. Without prejudice to other articles in this Part, where it is necessary for the successful execution of a request which can be executed without any compulsory measures, including specifically the interview of or taking evidence from a person on a voluntary basis, including doing so without the presence of the authorities of the requested State Party if it is essential for the request to be executed, and the examination without modification of a public site or other public place, the Prosecutor may execute such request directly on the territory of a State as follows:
 - (a) When the State Party requested is a State on the territory of which the crime is alleged to have been committed, and there has been a determination of admissibility pursuant to article 18 or 19, the Prosecutor may directly execute such request following all possible consultations with the requested State Party;
 - (b) In other cases, the Prosecutor may execute such request following consultations with the requested State Party and subject to any reasonable conditions or concerns raised by that State Party. Where the requested State Party identifies problems with the execution of a request pursuant to this subparagraph it shall, without delay, consult with the Court to resolve the matter.
5. Provisions allowing a person heard or examined by the Court under article 72 to invoke restrictions designed to prevent disclosure of confidential information connected with national security shall also apply to the execution of requests for assistance under this article.

Article 100

Costs

1. The ordinary costs for execution of requests in the territory of the requested State shall be borne by that State, except for the following, which shall be borne by the Court:
 - (a) Costs associated with the travel and security of witnesses and experts or the transfer under article 93 of persons in custody;
 - (b) Costs of translation, interpretation and transcription;
 - (c) Travel and subsistence costs of the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar and staff of any organ of the Court;
 - (d) Costs of any expert opinion or report requested by the Court;
 - (e) Costs associated with the transport of a person being surrendered to the Court by a custodial State; and
 - (f) Following consultations, any extraordinary costs that may result from the execution of a request.
2. The provisions of paragraph 1 shall, as appropriate, apply to requests from States Parties to the Court. In that case, the Court shall bear the ordinary costs of execution.

Article 101

Rule of Speciality

1. A person surrendered to the Court under this Statute shall not be proceeded against, punished or detained for any conduct committed prior to surrender, other than the conduct or course of conduct which forms the basis of the crimes for which that person has been surrendered.
2. The Court may request a waiver of the requirements of paragraph 1 from the State which surrendered the person to the Court and, if necessary, the Court shall provide additional information in accordance with article 91. States Parties shall have the authority to provide a waiver to the Court and should endeavour to do so.

Article 102

Use of terms

For the purposes of this Statute:

- (a) “surrender” means the delivering up of a person by a State to the Court, pursuant to this Statute.
- (b) “extradition” means the delivering up of a person by one State to another as provided by treaty, convention or national legislation.

PART 10. ENFORCEMENT

Article 103

Role of States in enforcement of sentences of imprisonment

1. (a) A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons.
 (b) At the time of declaring its willingness to accept sentenced persons, a State may attach conditions to its acceptance as agreed by the Court and in accordance with this Part.
 (c) A State designated in a particular case shall promptly inform the Court whether it accepts the Court's designation.
2. (a) The State of enforcement shall notify the Court of any circumstances, including the exercise of any conditions agreed under paragraph 1, which could materially affect the terms or extent of the imprisonment. The Court shall be given at least 45 days' notice of any such known or foreseeable circumstances. During this period, the State of enforcement shall take no action that might prejudice its obligations under article 110.
 (b) Where the Court cannot agree to the circumstances referred to in subparagraph (a), it shall notify the State of enforcement and proceed in accordance with article 104, paragraph 1.
3. In exercising its discretion to make a designation under paragraph 1, the Court shall take into account the following:
 - (a) The principle that States Parties should share the responsibility for enforcing sentences of imprisonment, in accordance with principles of equitable distribution, as provided in the Rules of Procedure and Evidence;
 - (b) The application of widely accepted international treaty standards governing the treatment of prisoners;
 - (c) The views of the sentenced person;
 - (d) The nationality of the sentenced person;
 - (d) Such other factors regarding the circumstances of the crime or the person sentenced or the effective enforcement of the sentence, as may be appropriate in designating the State of enforcement.
4. If no State is designated under paragraph 1, the sentence of imprisonment shall be served in a prison facility made available by the host State, in accordance with the conditions set out in the headquarters agreement referred to in article 3, paragraph 2. In such a case, the costs arising out of the enforcement of a sentence of imprisonment shall be borne by the Court.

Article 104**Change in designation of State of enforcement**

1. The Court may, at any time, decide to transfer a sentenced person to a prison of another State.
2. A sentenced person may, at any time, apply to the Court to be transferred from the State of enforcement.

Article 105**Enforcement of the sentence**

1. Subject to conditions which a State may have specified in accordance with article 103, paragraph 1 (b), the sentence of imprisonment shall be binding on the States Parties, which shall in no case modify it.
2. The Court alone shall have the right to decide any application for appeal and revision. The State of enforcement shall not impede the making of any such application by a sentenced person.

Article 106**Supervision of enforcement of sentences and conditions of imprisonment**

1. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international treaty standards governing treatment of prisoners.
2. The conditions of imprisonment shall be governed by the law of the State of enforcement and shall be consistent with widely accepted international treaty standards governing treatment of prisoners; in no case shall such conditions be more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement.
3. Communications between a sentenced person and the Court shall be unimpeded and confidential.

Article 107**Transfer of the person upon completion of sentence**

1. Following completion of the sentence, a person who is not a national of the State of enforcement may, in accordance with the law of the State of enforcement, be transferred to a State which is obliged to receive him or her, or to another State which agrees to receive him or her, taking into account any wishes of the person to be transferred to that State, unless the State of enforcement authorizes the person to remain in its territory.
2. If no State bears the costs arising out of transferring the person to another State pursuant to paragraph 1, such costs shall be borne by the Court.
3. Subject to the provisions of article 108, the State of enforcement may also, in accordance with its national law, extradite or otherwise surrender the person to a State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.

Article 108**Limitation on the prosecution or punishment of other offences**

1. A sentenced person in the custody of the State of enforcement shall not be subject to prosecution or punishment or to extradition to a third State for any conduct engaged in prior to that person's delivery to the State of enforcement, unless such prosecution, punishment or extradition has been approved by the Court at the request of the State of enforcement.
2. The Court shall decide the matter after having heard the views of the sentenced person.
3. Paragraph 1 shall cease to apply if the sentenced person remains voluntarily for more than 30 days in the territory of the State of enforcement after having served the full sentence imposed by the Court, or returns to the territory of that State after having left it.

Article 109**Enforcement of fines and forfeiture measures**

1. States Parties shall give effect to fines or forfeitures ordered by the Court under Part 7, without prejudice to the rights of bona fide third parties, and in accordance with the procedure of their national law.
2. If a State Party is unable to give effect to an order for forfeiture, it shall take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited, without prejudice to the rights of bona fide third parties.
3. Property, or the proceeds of the sale of real property or, where appropriate, the sale of other property, which is obtained by a State.
4. Property as a result of its enforcement of a judgment of the Court shall be transferred to the Court.

Article 110**Review by the Court concerning reduction of sentence**

1. The State of enforcement shall not release the person before expiry of the sentence pronounced by the Court.

2. The Court alone shall have the right to decide any reduction of sentence, and shall rule on the matter after having heard the person.
3. When the person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time.
4. In its review under paragraph 3, the Court may reduce the sentence if it finds that one or more of the following factors are present:
 - (a) The early and continuing willingness of the person to cooperate with the Court in its investigations and prosecutions;
 - (b) The voluntary assistance of the person in enabling the enforcement of the judgements and orders of the Court in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims; or
 - (c) Other factors establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence, as provided in the Rules of Procedure and Evidence.
5. If the Court determines in its initial review under paragraph 3 that it is not appropriate to reduce the sentence, it shall thereafter review the question of reduction of sentence at such intervals and applying such criteria as provided for in the Rules of Procedure and Evidence.

Article 111

Escape

If a convicted person escapes from custody and flees the State of enforcement, that State may, after consultation with the Court, request the person's surrender from the State in which the person is located pursuant to existing bilateral or multilateral arrangements, or may request that the Court seek the person's surrender, in accordance with Part 9. It may direct that the person be delivered to the State in which he or she was serving the sentence or to another State designated by the Court.

PART 11. ASSEMBLY OF STATES PARTIES

Article 112

Assembly of States Parties

1. An Assembly of States Parties to this Statute is hereby established. Each State Party shall have one representative in the Assembly who may be accompanied by alternates and advisers. Other States which have signed this Statute or the Final Act may be observers in the Assembly.
2. The Assembly shall:
 - (a) Consider and adopt, as appropriate, recommendations of the Preparatory Commission;
 - (b) Provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court;
 - (c) Consider the reports and activities of the Bureau established under paragraph 3 and take appropriate action in regard thereto;
 - (d) Consider and decide the budget for the Court;
 - (e) Decide whether to alter, in accordance with article 36, the number of judges;
 - (f) Consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation;
 - (g) Perform any other function consistent with this Statute or the Rules of Procedure and Evidence.
3.
 - (a) The Assembly shall have a Bureau consisting of a President, two Vice-Presidents and 18 members elected by the Assembly for three-year terms.
 - (b) The Bureau shall have a representative character, taking into account, in particular, equitable geographical distribution and the adequate representation of the principal legal systems of the world.
 - (c) The Bureau shall meet as often as necessary, but at least once a year. It shall assist the Assembly in the discharge of its responsibilities.
4. The Assembly may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy.
5. The President of the Court, the Prosecutor and the Registrar or their representatives may participate, as appropriate, in meetings of the Assembly and of the Bureau.
6. The Assembly shall meet at the seat of the Court or at the Headquarters of the United Nations once a year and, when circumstances so require, hold special sessions. Except as otherwise specified in this Statute, special sessions shall be convened by the Bureau on its own initiative or at the request of one third of the States Parties.
7. Each State Party shall have one vote. Every effort shall be made to reach decisions by consensus in the Assembly and in the Bureau. If consensus cannot be reached, except as otherwise provided in the Statute:
 - (a) Decisions on matters of substance must be approved by a two-thirds majority of those present and voting provided that an absolute majority of States Parties constitutes the quorum for voting;

- (b) Decisions on matters of procedure shall be taken by a simple majority of States Parties present and voting.
- 8. A State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, never the less, permit such a State Party to vote in the Assembly and in the Bureau if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.
- 9. The Assembly shall adopt its own rules of procedure.
- 10. The official and working languages of the Assembly shall be those of the General Assembly of the United Nations.

PART 12. FINANCING

Article 113

Financial Regulations

Except as otherwise specifically provided, all financial matters related to the Court and the meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be governed by this Statute and the Financial Regulations and Rules adopted by the Assembly of States Parties.

Article 114

Payment of expenses

Expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be paid from the funds of the Court.

Article 115

Funds of the Court and of the Assembly of States Parties

The expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, as provided for in the budget decided by the Assembly of States Parties, shall be provided by the following sources:

- (a) Assessed contributions made by States Parties;
- (b) Funds provided by the United Nations, subject to the approval of the General Assembly, in particular in relation to the expenses incurred due to referrals by the Security Council.

Article 116

Voluntary contributions

Without prejudice to article 115, the Court may receive and utilize, as additional funds, voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Assembly of States Parties.

Article 117

Assessment of contributions

The contributions of States Parties shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based.

Article 118

Annual audit

The records, books and accounts of the Court, including its annual financial statements, shall be audited annually by an independent auditor.

PART 13. FINAL CLAUSES

Article 119

Settlement of disputes

- 1. Any dispute concerning the judicial functions of the Court shall be settled by the decision of the Court.
- 2. Any other dispute between two or more States Parties relating to the interpretation or application of this Statute which is not settled through negotiations within three months of their commencement shall be referred to the Assembly of States Parties. The Assembly may itself seek to settle the dispute or may make recommendations on further means of settlement of the dispute, including referral to the International Court of Justice in conformity with the Statute of that Court.

Article 120

Reservations

No reservations may be made to this Statute.

Article 121

Amendments

1. After the expiry of seven years from the entry into force of this Statute, any State Party may propose amendments thereto. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall promptly circulate it to all States Parties.
2. No sooner than three months from the date of notification, the Assembly of States Parties, at its next meeting, shall, by a majority of those present and voting, decide whether to take up the proposal. The Assembly may deal with the proposal directly or convene a Review Conference if the issue involved so warrants.
3. The adoption of an amendment at a meeting of the Assembly of States Parties or at a Review Conference on which consensus cannot be reached shall require a two-thirds majority of States Parties.
4. Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by seven-eighths of them.
5. Any amendment to articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance. In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory.
6. If an amendment has been accepted by seven-eighths of States Parties in accordance with paragraph 4, any State Party which has not accepted the amendment may withdraw from this Statute with immediate effect, notwithstanding article 127, paragraph 1, but subject to article 127, paragraph 2, by giving notice no later than one year after the entry into force of such amendment.
7. The Secretary-General of the United Nations shall circulate to all States Parties any amendment adopted at a meeting of the Assembly of States Parties or at a Review Conference.

Article 122

Amendments to provisions of an institutional nature

1. Amendments to provisions of this Statute which are of an exclusively institutional nature, namely, article 35, article 36, paragraphs 8 and 9, article 37, article 38, article 39, paragraphs 1 (first two sentences), 2 and 4, article 42, paragraphs 4 to 9, article 43, paragraphs 2 and 3, and articles 44, 46, 47 and 49, may be proposed at any time, notwithstanding article 121, paragraph 1, by any State Party. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations or such other person designated by the Assembly of States Parties who shall promptly circulate it to all States Parties and to others participating in the Assembly.
2. Amendments under this article on which consensus cannot be reached shall be adopted by the Assembly of States Parties or by a Review Conference, by a two-thirds majority of States Parties. Such amendments shall enter into force for all States Parties six months after their adoption by the Assembly or, as the case may be, by the Conference.

Article 123

Review of the Statute

1. General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in article 5. The Conference shall be open to those participating in the Assembly of States Parties and on the same conditions.
2. At any time thereafter, at the request of a State Party and for the purposes set out in paragraph 1, the Secretary-General of the United Nations shall, upon approval by a majority of States Parties, convene a Review Conference.
3. The provisions of article 121, paragraphs 3 to 7, shall apply to the adoption and entry into force of any amendment to the Statute considered at a Review Conference.

Article 124

Transitional Provision

Notwithstanding article 12, paragraphs 1 and 2, a State, on becoming a party to this Statute, may declare that, for a period of seven years after the entry into force of this Statute for the State concerned, it does not accept the jurisdiction of the Court with respect to the category of crimes referred to in article 8 when a crime is alleged to have been committed by its nationals or on its territory. A declaration under this article may be withdrawn at any time. The provisions of this article shall be reviewed at the Review Conference convened in accordance with article 123, paragraph 1.

Article 125

Signature, ratification, acceptance, approval or accession

1. This Statute shall be open for signature by all States in Rome, at the headquarters of the Food and Agriculture Organization of the United Nations, on 17 July 1998. Thereafter, it shall remain open for signature in Rome at the Ministry of Foreign Affairs of Italy until 17 October 1998. After that date, the Statute shall remain open for signature in New York, at United Nations Headquarters, until 31 December 2000.
2. This Statute is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Statute shall be open to accession by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 126

Entry into force

1. This Statute shall enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to this Statute after the deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 127

Withdrawal

1. General of the United Nations, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.
2. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, including any financial obligations which may have accrued. Its withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.

Article 128

Authentic texts

The original of this Statute, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Statute.

DONE at Rome, this 17th day of July 1998.

PART 4

International Criminal Instruments Ratified by Namibia

- **Convention Against Transnational Organized Crime**
- **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**
- **Protocol Against Smuggling Migrants by Land, Sea and Air**

CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

G.A. Res. 25, annex I, U.N. GAOR, 55th Sess., Supp. No. 49, at 44, U.N. Doc. A/45/49 (Vol. I) (2001), entered into force Sept. 29, 2003.

Article 1

Statement of purpose

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

Article 2

Use of terms

For the purposes of this Convention:

- (a) "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;
- (b) "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
- (c) "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;
- (d) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;
- (e) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;
- (f) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;
- (g) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;
- (h) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;
- (i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;
- (j) "Regional economic integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to "States Parties" under this Convention shall apply to such organizations within the limits of their competence.

Article 3

Scope of application

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:
 - (a) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and
 - (b) Serious crime as defined in article 2 of this Convention; where the offence is transnational in nature and involves an organized criminal group.
2. For the purpose of paragraph 1 of this article, an offence is transnational in nature if:
 - (a) It is committed in more than one State;
 - (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
 - (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
 - (d) It is committed in one State but has substantial effects in another State.

Article 4

Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 5

Criminalization of participation in an organized criminal group

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
 - (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:
 - (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtain in of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;
 - (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:
 - a. Criminal activities of the organized criminal group;
 - b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;
 - (b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.
2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.
3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

Article 6

Criminalization of the laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
 - (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
 - (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
 - (b) Subject to the basic concepts of its legal system:
 - (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
 - (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.
2. For purposes of implementing or applying paragraph 1 of this article:
 - (a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;
 - (b) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;
 - (c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;
 - (d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

- (e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;
- (f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

Article 7

Measures to combat money-laundering

1. Each State Party:
 - (a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;
 - (b) Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.
2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.
3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.
4. States Parties shall endeavour to develop and promote global, regional, sub regional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Article 8

Criminalization of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
 - (a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
 - (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.
3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.
4. For the purposes of paragraph 1 of this article and article 9 of this Convention, “public official” shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

Article 9

Measures against corruption

1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.
2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

Article 10

Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish

the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 11

Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.
2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.
3. In the case of offences established in accordance with articles 5, 6, 8 and 23 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.
4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.
5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.
6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

Article 12

Confiscation and seizure

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:
 - (a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;
 - (b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.
2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.
3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.
4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.
5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.
6. For the purposes of this article and article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.
7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.
8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.
9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 13

International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:
 - (a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or
 - (b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.
2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.
3. The provisions of article 18 of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:
 - (a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;
 - (b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;
 - (c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.
4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.
5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.
6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.
7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.
8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.
9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

Article 14

Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.
2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.
3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:
 - (a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;
 - (b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

Article 15

Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:
 - (a) The offence is committed in the territory of that State Party; or
 - (b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.
2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:
 - (a) The offence is committed against a national of that State Party;
 - (b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or
 - (c) The offence is:
 - (i) One of those established in accordance with article 5, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;
 - (ii) One of those established in accordance with article 6, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.
3. For the purposes of article 16, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.
4. Each State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.
5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.
6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 16

Extradition

1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.
2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.
3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.
5. States Parties that make extradition conditional on the existence of a treaty shall:
 - (a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and
 - (b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.
6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.
7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.
8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.
9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.
11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.
12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.
13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.
14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.
15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.
16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.
17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 17

Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

Article 18

Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 (a) or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.
2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.
3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:
 - (a) Taking evidence or statements from persons;
 - (b) Effecting service of judicial documents;
 - (c) Executing searches and seizures, and freezing;
 - (d) Examining objects and sites;
 - (e) Providing information, evidentiary items and expert evaluations;
 - (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
 - (h) Facilitating the voluntary appearance of persons in the requesting State Party;
 - (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.
4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.
 5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.
 6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.
 7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.
 8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.
 9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.
 10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:
 - (a) The person freely gives his or her informed consent;
 - (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.
 11. For the purposes of paragraph 10 of this article:
 - (a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;
 - (b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;
 - (c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;
 - (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.
 12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.
 13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and

- communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.
14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.
 15. A request for mutual legal assistance shall contain:
 - (a) The identity of the authority making the request;
 - (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
 - (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
 - (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
 - (e) Where possible, the identity, location and nationality of any person concerned; and
 - (f) The purpose for which the evidence, information or action is sought.
 16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.
 17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.
 18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.
 19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.
 20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.
 21. Mutual legal assistance may be refused:
 - (a) If the request is not made in conformity with the provisions of this article;
 - (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;
 - (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
 - (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.
 22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.
 23. Reasons shall be given for any refusal of mutual legal assistance.
 24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.
 25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.
 26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.
28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.
29. The requested State Party:
 - (a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;
 - (b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.
30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 19

Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 20

Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.
2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.
3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.
4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

Article 21

Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 22

Establishment of criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under

such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

Article 23

Criminalization of obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;
- (b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

Article 24

Protection of witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.
2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:
 - (a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;
 - (b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.
3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.
4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Article 25

Assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.
2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.
3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 26

Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:
 - (a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:
 - (i) The identity, nature, composition, structure, location or activities of organized criminal groups;
 - (ii) Links, including international links, with other organized criminal groups;
 - (iii) Offences that organized criminal groups have committed or may commit;
 - (b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.
2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.
3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

4. Protection of such persons shall be as provided for in article 24 of this Convention.
5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 27

Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:
 - (a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;
 - (b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:
 - (i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
 - (ii) The movement of proceeds of crime or property derived from the commission of such offences;
 - (iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;
 - (c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;
 - (d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;
 - (e) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;
 - (f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.
2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.
3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.

Article 28

Collection, exchange and analysis of information on the nature of organized crime

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.
2. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.
3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency.

Article 29

Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

- (a) Methods used in the prevention, detection and control of the offences covered by this Convention;
 - (b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;
 - (c) Monitoring of the movement of contraband;
 - (d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;
 - (e) Collection of evidence;
 - (f) Control techniques in free trade zones and free ports;
 - (g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;
 - (h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and
 - (i) Methods used in the protection of victims and witnesses.
2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.
 3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.
 4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

Article 30

Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on society in general, in particular on sustainable development.
2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:
 - (a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime;
 - (b) To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement this Convention successfully;
 - (c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;
 - (d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.
3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.
4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of transnational organized crime.

Article 31

Prevention

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.
2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:

- (a) The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;
- (b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;
- (c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;
- (d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:
 - (i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;
 - (ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;
 - (iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and
 - (iv) The exchange of information contained in the records referred to in subparagraphs (d) (i) and (iii) of this paragraph with the competent authorities of other States Parties.
- 3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.
- 4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organized criminal groups.
- 5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.
- 6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent transnational organized crime.
- 7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime.

Article 32

Conference of the Parties to the Convention

- 1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention.
- 2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).
- 3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:
 - (a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;
 - (b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;
 - (c) Cooperating with relevant international and regional organizations and non-governmental organizations;
 - (d) Reviewing periodically the implementation of this Convention;
 - (e) Making recommendations to improve this Convention and its implementation.
- 4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.
- 5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

Article 33

Secretariat

- 1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.

2. The secretariat shall:
 - (a) Assist the Conference of the Parties in carrying out the activities set forth in article 32 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;
 - (b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 32, paragraph 5, of this Convention; and
 - (c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Article 34

Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.
2. The offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.
3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.

Article 35

Settlement of disputes

1. States' Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 36

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one Member State of such organization has signed this Convention in accordance with paragraph 1 of this article.
3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Convention is open for accession by any State or any regional economic integration organization of which at least one Member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 37

Relation with protocols

1. This Convention may be supplemented by one or more protocols.
2. In order to become a Party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.
3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.

4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

Article 38

Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

Article 39

Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 40

Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.
3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

Article 41

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.
2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention

PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/55/49 (Vol. I) (2001), entered into force Dec. 25, 2003.

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
 - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
 - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
 - (a) To prevent and combat trafficking in persons; and
 - (b) To protect victims of trafficking in persons, especially women and children, from re-victimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multi-lateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:
 - (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
 - (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
 - (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.
2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.
2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

1. States' Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one Member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one Member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL CRIME

G.A. Res. 55/25, annex III, U.N. GAOR, 55th Sess., Supp. No. 49, at 65, U.N. Doc. A/45/49 (Vol. I) (2001), entered into force Jan. 28, 2004.

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels,

Recalling General Assembly resolution 54/212 of 22 December 1999, in which the Assembly urged Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of migration, especially those related to poverty, and to maximize the benefits of international migration to those concerned, and encouraged, where relevant, interregional, regional and sub-regional mechanisms to continue to address the question of migration and development,

Convinced of the need to provide migrants with humane treatment and full protection of their rights,

Taking into account the fact that, despite work undertaken in other international forums, there is no universal instrument that addresses all aspects of smuggling of migrants and other related issues,

Concerned at the significant increase in the activities of organized criminal groups in smuggling of migrants and other related criminal activities set forth in this Protocol, which bring great harm to the States concerned,

Also concerned that the smuggling of migrants can endanger the lives or security of the migrants involved,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing illegal trafficking in and transporting of migrants, including by sea,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the smuggling of migrants by land, sea and air will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 6 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.

Article 3

Use of terms

For the purposes of this Protocol:

- (a) "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;
- (b) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;
- (c) "Fraudulent travel or identity document" shall mean any travel or identity document:
 - (i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or
 - (ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
 - (iii) That is being used by a person other than the rightful holder;
- (d) "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences.

Article 5

Criminal liability of migrants

Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.

Article 6

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:
 - (a) The smuggling of migrants;
 - (b) When committed for the purpose of enabling the smuggling of migrants:
 - (i) Producing a fraudulent travel or identity document;
 - (ii) Procuring, providing or possessing such a document;
 - (c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
 - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of this article;
 - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:
 - (a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or
 - (b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.
4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.

II. Smuggling of migrants by sea

Article 7

Cooperation

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

Article 8

Measures against the smuggling of migrants by sea

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance to the extent possible within their means.
2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, *inter alia*:
 - (a) To board the vessel;
 - (b) To search the vessel; and
 - (c) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorized by the flag State.
3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.
4. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made in accordance with paragraph 2 of this article.
5. A flag State may, consistent with article 7 of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.
6. Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.
7. A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law.

Article 9

Safeguard clauses

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:
 - (a) Ensure the safety and humane treatment of the persons on board;
 - (b) Take due account of the need not to endanger the security of the vessel or its cargo;
 - (c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;
 - (d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.
3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:
 - (a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or
 - (b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.
4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

III. Prevention, cooperation and other measures

Article 10

Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:
 - (a) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group engaged in conduct set forth in article 6 of this Protocol;
 - (b) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;
 - (c) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;
 - (d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;
 - (e) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and
 - (f) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.
2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.
2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of the offence established in accordance with article 6, paragraph 1 (a), of this Protocol.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for purposes of conduct set forth in article 6 of this Protocol.

Article 14

Training and technical cooperation

1. States Parties shall provide or strengthen specialized training for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.
2. States Parties shall cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:
 - (a) Improving the security and quality of travel documents;
 - (b) Recognizing and detecting fraudulent travel or identity documents;
 - (c) Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol, the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes of conduct set forth in article 6 and the means of concealment used in the smuggling of migrants;
 - (d) Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit; and
 - (e) The humane treatment of migrants and the protection of their rights as set forth in this Protocol.
3. States Parties with relevant expertise shall consider providing technical assistance to States that are frequently countries of origin or transit for persons who have been the object of conduct set forth in article 6 of this Protocol. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the conduct set forth in article 6.

Article 15

Other prevention measures

1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.
2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups.
3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

Article 16

Protection and assistance measures

1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.
2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.

3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.
4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.
5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

Article 17

Agreements and arrangements

States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:

- (a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or
- (b) Enhancing the provisions of this Protocol among themselves.

Article 18

Return of smuggled migrants

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.
2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.
3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.
4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.
6. States Parties may cooperate with relevant international organizations in the implementation of this article.
7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.
8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

IV. Final provisions

Article 19

Saving clause

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 20

Settlement of disputes

1. States' Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties,

be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one Member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one Member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 22

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 23

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 24

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 25

Depositary and language

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

PART 5

African Union Human Rights Instruments ratified by Namibia and Concluding Observations by the Commission

- **African (Banjul) Charter on Human and Peoples' Rights**
- **Protocol to the African Charter on Human and Peoples' Rights of Women in Africa**
- **Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights**
- **Extract from the report of the African Commission's Working Group on Indigenous Populations / Communities in Africa: Namibia; Findings, Observations, Conclusions and Recommendations; Mission to Namibia July-August 2005.**

AFRICAN (BANJUL) CHARTER ON HUMAN AND PEOPLES' RIGHTS

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

Preamble

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

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

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

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

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

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

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

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

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

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

Have agreed as follows:

Part I: Rights and Duties

Chapter I: Human and Peoples' Rights

Article 1

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

Article 2

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

Article 3

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

Article 4

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

Article 5

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

Article 6

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

Article 7

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

Article 8

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

Article 9

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

Article 10

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

Article 11

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

Article 12

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

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

Article 13

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

Article 14

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

Article 15

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

Article 16

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

Article 17

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

Article 18

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

Article 19

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

Article 20

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

Article 21

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

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

Article 22

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

Article 23

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

Article 24

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

Article 25

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

Article 26

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

Chapter II: Duties

Article 27

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

Article 28

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

Article 29

The individual shall also have the duty:

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

Part II: Measures of Safeguard

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

Article 30

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

Article 31

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

Article 32

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

Article 33

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

Article 34

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

Article 35

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

Article 36

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

Article 37

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

Article 38

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

Article 39

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

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

Article 40

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

Article 41

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

Article 42

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

Article 43

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

Article 44

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

Chapter II -- Mandate of the Commission**Article 45**

The functions of the Commission shall be:

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

Chapter III -- Procedure of the Commission**Article 46**

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

Communication from States**Article 47**

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

relevant information relating to the laws and rules of procedure applied and applicable, and the redress already given or course of action available.

Article 48

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

Article 49

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

Article 50

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

Article 51

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

Article 52

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

Article 53

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

Article 54

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

Article 55

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

Article 56

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

Article 57

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

Article 58

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

Article 59

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

Chapter IV -- Applicable Principles**Article 60**

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

Article 61

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

Article 62

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

Article 63

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

Part III: General Provisions**Article 64**

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

Article 65

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

Article 66

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

Article 67

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

Article 68

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

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

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

The States Parties to this Protocol,

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

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

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

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

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

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

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

REAFFIRMING the principle of promoting gender equality as enshrined in the Constitutive Act of the African Union

as well as the New Partnership for Africa's Development, relevant Declarations, Resolutions and Decisions, which underline the commitment of the African States to ensure the full participation of African women as equal partners in Africa's development;

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

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

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

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

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

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

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

For the purpose of the present Protocol:

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

Article 2

Elimination of Discrimination Against Women

1. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:
 - a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;
 - b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women;
 - c) integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;

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

Article 3

Right to Dignity

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

Article 4

The Rights to Life, Integrity and Security of the Person

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

Article 5

Elimination of Harmful Practices

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

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

Article 6

Marriage

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

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

Article 7

Separation, Divorce and Annulment of Marriage

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

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

Article 8

Access to Justice and Equal Protection before the Law

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

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

Article 9

Right to Participation in the Political and Decision-Making Process

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

Article 10

Right to Peace

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

Article 11

Protection of Women in Armed Conflicts

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

Article 12

Right to Education and Training

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

Article 13

Economic and Social Welfare Rights

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

- a) promote equality of access to employment;
- b) promote the right to equal remuneration for jobs of equal value for women and men;
- c) ensure transparency in recruitment, promotion and dismissal of women and combat and punish sexual harassment in the workplace;
- d) guarantee women the freedom to choose their occupation, and protect them from exploitation by their employers violating and exploiting their fundamental rights as recognised and guaranteed by conventions, laws and regulations in force;
- e) create conditions to promote and support the occupations and economic activities of women, in particular, within the informal sector;

- f) establish a system of protection and social insurance for women working in the informal sector and sensitise them to adhere to it;
- g) introduce a minimum age for work and prohibit the employment of children below that age, and prohibit, combat and punish all forms of exploitation of children, especially the girl-child;
- h) take the necessary measures to recognise the economic value of the work of women in the home;
- i) guarantee adequate and paid pre-and post-natal maternity leave in both the private and public sectors;
- j) ensure the equal application of taxation laws to women and men;
- k) recognise and enforce the right of salaried women to the same allowances and entitlements as those granted to salaried men for their spouses and children;
- l) recognise that both parents bear the primary responsibility for the upbringing and development of children and that this is a social function for which the State and the private sector have secondary responsibility;
- m) take effective legislative and administrative measures to prevent the exploitation and abuse of women in advertising and pornography.

Article 14

Health and Reproductive Rights

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

Article 15

Right to Food Security

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

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

Article 16

Right to Adequate Housing

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

Article 17

Right to Positive Cultural Context

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

Article 18

Right to a Healthy and Sustainable Environment

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

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

Article 19

Right to Sustainable Development

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

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

Article 20

Widows' Rights

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

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

Article 21

Right to Inheritance

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

Article 22

Special Protection of Elderly Women

The States Parties undertake to:

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

Article 23

Special Protection of Women with Disabilities

The States Parties undertake to:

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

Article 24

Special Protection of Women in Distress

The States Parties undertake to:

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

which is suitable to their condition and the right to be treated with dignity.

Article 25

Remedies

States Parties shall undertake to:

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

Article 26

Implementation and Monitoring

1. States Parties shall ensure the implementation of this Protocol at national level, and in their periodic reports submitted in accordance with Article 62 of the African Charter, indicate the legislative and other measures undertaken for the full realisation of the rights herein recognised.
2. States Parties undertake to adopt all necessary measures and in particular shall provide budgetary and other resources for the full and effective implementation of the rights herein recognised.

Article 27

Interpretation

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

Article 28

Signature, Ratification and Accession

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

Article 29

Entry into Force

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

Article 30

Amendment and Revision

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

Article 31

Status of the Present Protocol

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

Article 32

Transitional Provisions

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

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

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

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

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

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

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

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

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

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

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

HAVE AGREED AS FOLLOWS:

Article 1

ESTABLISHMENT OF THE COURT

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

Article 2

RELATIONSHIP BETWEEN THE COURT AND THE COMMISSION

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

Article 3

JURISDICTION

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

Article 4

ADVISORY OPINIONS

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

Article 5

ACCESS TO THE COURT

1. The following are entitled to submit cases to the Court
 - a. The Commission;
 - b. The State Party which has lodged a complaint to the Commission;
 - c. The State Party against which the complaint has been lodged at the Commission;
 - d. The State Party whose citizen is a victim of human rights violation;
 - e. African Intergovernmental Organizations.
2. When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join.
3. The Court may entitle relevant Non-Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34 (6) of this Protocol.

Article 6

ADMISSIBILITY OF CASES

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

Article 7

SOURCES OF LAW

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

Article 8

CONSIDERATION OF CASES

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

Article 9

AMICABLE SETTLEMENT

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

Article 10

HEARINGS AND REPRESENTATION

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

Article 11

COMPOSITION

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

Article 12

NOMINATIONS

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

Article 13

LIST OF CANDIDATES

1. Upon entry into force of this Protocol, the Secretary-General of the OAU shall request each State Party to the

Protocol to present, within ninety (90) days of such a request, its nominees for the office of judge of the Court.

2. The Secretary-General of the OAU shall prepare a list in alphabetical order of the candidates nominated and transmit it to the Member States of the OAU at least thirty days prior to the next session of the Assembly of Heads of State and Government of the OAU hereinafter referred to as “the Assembly”.

Article 14

ELECTIONS

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

Article 15

TERM OF OFFICE

1. The judges of the Court shall be elected for a period of six years and may be re-elected only once. The terms of four judges elected at the first election shall expire at the end of two years, and the terms of four more judges shall expire at the end of four years.
2. The judges whose terms are to expire at the end of the initial periods of two and four years shall be chosen by lot to be drawn by the Secretary-General of the OAU immediately after the first election has been completed.
3. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of the predecessor's term.
4. All judges except the President shall perform their functions on a part-time basis. However, the Assembly may change this arrangement as it deems appropriate.

Article 16

OATH OF OFFICE

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

Article 17

INDEPENDENCE

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

Article 18

INCOMPATIBILITY

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

Article 19

CESSATION OF OFFICE

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

Article 20

VACANCIES

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

Article 21

PRESIDENCY OF THE COURT

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

Article 22

EXCLUSION

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

Article 23

QUORUM

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

Article 24

REGISTRY OF THE COURT

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

Article 25

SEAT OF THE COURT

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

Article 26

EVIDENCE

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

Article 27

FINDINGS

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

Article 28

JUDGMENT

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

Article 29

NOTIFICATION OF JUDGMENT

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

Article 30**EXECUTION OF JUDGMENT**

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

Article 31**REPORT**

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

Article 32**BUDGET**

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

Article 33**RULES OF PROCEDURE**

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

Article 34**RATIFICATION**

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

Article 35**AMENDMENTS**

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

EXTRACT FROM THE REPORT OF THE AFRICAN COMMISSION'S WORKING GROUP ON INDIGENOUS POPULATIONS / COMMUNITIES IN AFRICA: NAMIBIA; FINDINGS, OBSERVATIONS, CONCLUSIONS AND RECOMMENDATIONS; MISSION TO NAMIBIA JULY-AUGUST 2005.

PART V

38. The Delegation's Findings and Observations

- 38.1 The Mission of the WGIP was undertaken for 11 days, during which the delegation travelled long distances to meet and discuss with indigenous communities, who in most cases live in the remote parts of the country. The delegation visited indigenous communities in four regions of the country and held discussions with a cross-section of institutions and organizations dealing with indigenous issues, notably, relevant government ministries and NGOs. The delegation also had the opportunity to meet with the Honourable Royal /Ui/o/oo, MP, the only MP from an indigenous community in the country at the moment.
- 38.2 Due to lack of time, the delegation could not travel to Kunene region to meet the Himba indigenous group nor could it visit more San communities, as it would have wanted.
- 38.3 However, the delegation raised the situation of all indigenous peoples with government officials and other stakeholders and believes that the persons met and the discussions held with the different institutions provided it with sufficient information to enable it to have a better understanding of the situation of indigenous issues in the country.
- 38.4 Although the African Commission recognizes the Himba as an indigenous community in Namibia, and although they have been included as beneficiaries in similar programmes to the San to uplift the living conditions of indigenous communities, it was the observation of the delegation that there was no government policy that recognised the Himba as indigenous. Some officials argued that the Himba are a subgroup of the Herero and hence from the Bantu ethnic group, and no Bantu group could claim indigeneity in any African country.
- 38.5 Though not recognized as an indigenous group, but because of their strong adherence to their culture and their resistance to having modernity interfere with that culture - a characteristic similar to other indigenous populations - the government has tended to treat the Himba community like the San indigenous group. However, the Himba are not considered by the government of Namibia as an indigenous population, but are rather treated like any other marginalised community in the country.
- 38.6 The positive phenomenon is that while they are all categorized as marginalized communities, the government has programmes specifically tailored to address the specific needs of individual groups. For example, for the Himba, the government has provided veterinary stations to assist them with the herds; for the San, the government is providing them with agricultural training such as crop farming and cattle rearing.
- 38.7 As the delegation did not visit the Himba community, this report documents only the findings and observations of the delegation with regard to the San indigenous group.
- 38.8 This section of the report analyses the findings and observations of the delegation. It discusses the human rights situation of the San communities in terms of land and resource rights, health, education, hunger, poverty, employment, traditional leadership and political representation, and other government policies.

39. Recognition

- 39.1 There is no specific recognition of indigenous peoples' rights in the Namibian Constitution and Namibia has not signed any of the international conventions that recognize indigenous peoples' rights.

40. Land and Resource Rights of the San

- 40.1 In its White Paper released in October 2001, the Ministry of Lands, Resettlement and Rehabilitation indicated that, against the background of the past unequal distribution of land, it was the government's aim to redress this imbalance and facilitate access to available land to the majority of the Namibian people, within the framework of social justice. In particular, this policy is aimed at specific target groups which have been forced into destitution and landlessness by the successive colonial regimes. Among these are displaced citizens, members of the San community, former fighters, Namibians from exile, people with disabilities and people from overcrowded communal areas.
- 40.2 The Ministry added that the primary objective of the government's Resettlement Policy would focus on the resettlement of eligible persons in ways which are institutionally, sociologically, economically and environmentally sustainable and which would allow the beneficiaries to become self-supporting.
- 40.3 According to the Ministry, resettlement does not only mean providing people with land, housing, infrastructure, knowledge and skills to maintain and develop their new environment and entitlements, but it means establishing an innovative attitude in which the spirit of self-reliance is the underlying principle on which development is to be built by the government or the people themselves.
- 40.4 The San people, the country's earliest known inhabitants, have historically been exploited by other ethnic

groups. The government has taken a number of measures to end this societal discrimination against the San, including seeking their advice about proposed legislation on communally held lands and increasing their access to primary education. By law, all indigenous groups are able to participate equally in decisions affecting their lands, cultures, traditions and allocations of natural resources.

- 40.5 Measures thus far taken by the Namibian Government to facilitate land redistribution and reform include the establishment of the Ministry of Lands, Resettlement and Rehabilitation, the enactment of the Agricultural (Commercial) Land Reform Act of 1995, the National Resettlement Policy of 1997 and the National Land Policy of 1998 and the recent Communal Land Reform Act (Act No. 5) of 2002. The purpose of the latter piece of legislation is “to provide for the allocation of land rights in communal areas, establish communal land boards and describe the powers of chiefs and traditional authorities and boards with regard to communal land”. The Communal Land Reform Act seeks to regulate the land tenure relationship between the State and those occupying communal land owned by the State. It recognizes the existence of communal area conservancies and, by extension, the role they play in conservation. The Act makes provision for the conversion of traditional rights to leasehold rights for periods of up to 99 years.
- 40.6 The Communal Land Reform Act is therefore the principal mechanism for allocating land decision-making, representation and consultation.
- 40.7 Nevertheless, the San and other indigenous Namibians have been unable to exercise these rights fully as a result of historically minimal access to education and economic opportunities under colonial rule, coupled with their relative isolation in remote areas of the country. The hopes of the families residing at resettlement projects for land tenure have not yet been satisfied. The estimated 7,000 San supported by resettlement projects are constantly reporting on their dependency, frustration and lack of trust in the projects.
- 40.8 Though land is being acquired for resettlement under the Land Reform Act, the primary objectives of the national resettlement policy have thus far been achieved only in part, and in some cases not at all. Recent research has revealed that since the inception of the resettlement programme, the objective of attaining self-sufficiency by means of “creating employment through full-time farming and bringing smallholder farmers into the mainstream of the Namibian economy by producing for the market” has not been accomplished. The San in all the areas visited, except Tsumkwe, reported a lack of access to the wildlife and forest fruits they were used to. They also complained about their inability to do large-scale commercial farming due not only to lack of resources but also due to lack of training. Most of them depend almost entirely on government food aid, which is very irregular.
- 40.9 The process of applying for resettlement also often bypasses the San, one reason being that most San in Namibia live in remote areas and are not made aware of resettlement projects planned in their areas until it is too late to apply, another reason being that many are illiterate and unable to submit a written application.
- 40.10 Regarding land tenure, of the six broader Namibian San communities, only two, the !Kung and Ju|’hoansi of Tsumkwe district, today control their ancestral land (now state-owned communal land) and thus have access to natural resources. The Hai||om in north-western Namibia still live on their ancestral land, but lost control over it when it was absorbed into the Etosha National Park and commercial farms in the Outjo and Tsumeb districts. The ancestral lands of the !Xóõ and Ju|’hoansi in the Omaheke region in south-eastern Namibia and the Khwe in West Caprivi in the far north-east have all been turned into communal or commercial farms that employ some San as farm labourers, paying them either a meager wage or in kind. Minimum wages for farm workers have been established by the Namibian government. The government has also stipulated other amenities that farm workers have to be provided with, however, these were not being observed. Farmers continue to ignore the law and pay the San less than the minimum wage and at times in kind. Due to their ignorance, poor living conditions and high levels of unemployment among the San communities, they continue to work under such exploitative conditions.
- 40.11 The Namibian government and the Communal Land Boards have been unwilling to recognize and grant land rights to groups who make claims on the basis of customary rights and traditional livelihoods. The efforts to lay claim to ancestral territories in at least four San communities have been rejected by the Namibian government.
- 40.12 Challenges continue to face the San with respect to land and resource rights in Namibia. There have been thousands of people dispossessed, commercial farmers have reduced the numbers of San workers and chase them and their families from the farms. It is estimated, for example, that several thousand people lost their residence rights in the Gobabis Farms in eastern Namibia. Large numbers of dispossessed San are found today in places such as Gobabis and in Western Caprivi attempting to eke out an existence doing odd jobs and seeking help from their neighbours while waiting for government food aid.
- 40.13 Apart from dispossession, the San are very concerned about the activities of other ethnic groups on what they consider their ancestral land. The San are concerned by the massive influx of commercial farmers, in most cases cattle farmers, into territories on which the San depend for their meager livelihood. The pattern of other groups’ livestock using San water sources, leaving insufficient amounts for game which consequently leave the area, destroying and diminishing the bushfoods on which San depend, and thereby creating total dependency on the intruders themselves, is all too well known to the San, who find themselves at a loss to prevent it recurring.

- 40.14 This pattern in itself leads to further land dispossession for San communities; it is a vicious cycle of San claiming land anew to begin anew and being dispossessed of it by some stronger force. The Ju|'hoansi on Skoonheid Farm in Omaheke region and the !Kung community in Nǃa Jaqna Conservancy in Tsumkwe district complained about the encroachment of neighbouring stronger ethnic groups onto their territory with large herds of cattle which might overgraze the land. The presence of increasing numbers of cattle is accompanied by a vibrant trade in livestock in the district. This newly emerging livestock economy is seriously threatening the livelihood of the San residents because of the damage to a fragile ecology and its bushfood resources.
- 40.15 Through land dispossession San communities have lost their food security; they have become economically dependent on other ethnic groups and government food aid; they have experienced a loss of dignity, disruption of their social fabric, and degradation of their environment by intruders with large cattle herds; and, in sum, they remain a marginalized population. In West Caprivi, for example, the government in 2003 turned the West Caprivi Game Reserve into a national park - the Bwabwata National Park. This placed stringent restrictions on where people can live in the national park and on the kind of activities that they can pursue there. For example, the people are not allowed to keep cattle in some parts of the new National Park, such as in Masambo and Omega III Villages, and there are limits placed on agricultural activities. The Khwe in West Caprivi are not permitted to hunt for animals within the National Park, are restricted on the quantity of veld fruits (such as devil claw) they can harvest, and food aid from government is very irregular. Where they do grow food, it is most often destroyed by elephants and other wild animals in the park. They receive no compensation from the government for the loss.
- 40.16 In 2001, it was estimated by the government of Namibia's Emergency Management Unit (EMU) that between 17,000 and 22,000 San were dependent on food aid. In Tsumkwe district, in particular, the Nyae Nyae Conservancy, populated primarily by Ju|'hoan San, there was hunger in 2002. In 2003, the government supplied mealie meal (maize meal) to some San communities to offset nutritional problems. The Ju|'hoansi in Nyae Nyae have also dealt with the impacts of wild animals, notably elephants, on their water points and gardens. The large numbers of elephants in Tsumkwe district reportedly are wreaking havoc on water pumps, gardens and fences around people's homes.
- 40.17 The San feel that they are marginalized minorities who have less access to land rights and resources than other groups in Namibia. They are concerned about the trend, even in community-based natural resource management in Namibia, which they see as having potential benefits but which increasingly to them appears to be overseen by other groups or individuals who reap the majority of the rewards. If current trends continue, some San believe they will face further problems in terms of lack of access to natural resources and development programmes.
- 40.18 There are some potential bright spots, however. An innovation in Namibian development is the concept of the conservancy. A conservancy is an area of communal land where communities have some control over natural resource management and utilization. They do this through a statutory body that is recognized officially by the government of Namibia, a conservancy committee. While there have been over a dozen conservancies established on communal land in northern Namibia, some of which are in the hands of San communities, there are threats to the long-term viability of these conservancies because of population growth, in-migration of other groups, and possible changes in land tenure.
- 40.19 For the San, land means survival, development and economic gain. Wherever possible, to this day, the San gather bushfoods to ensure a balanced diet. They would like to retain game as a complementary food source, but today only two San communities in the entire country are officially permitted to hunt traditionally, namely the members of the Nyae Nyae Conservancy and the Nǃa Jaqna Conservancy in north-eastern Namibia.

41. Stereotyping and Discrimination

- 41.1 The term San is used to refer to a diverse group of indigenous peoples living in southern Africa who share historical and linguistic connections. The term "Bushmen" is no longer used officially in Namibia. Unfortunately, the San have historically been regarded as second-class citizens in Namibia by both the Europeans and Bantu speaking peoples. They have historically been exploited by other ethnic groups. Members of the San community have endured exploitation and discrimination at the hands of their fellow citizens throughout history. This includes exploitation by colonial forces, who used them as trackers and later left them helpless in former military camps. At present the San people are at the mercy of farmers in both the communal and commercial areas in Omaheke and Caprivi regions as well as other employers across the country, where they are marginalized and subjected to unfair labour practices and inadequate shelter.
- 41.2 The government has taken measures to end societal discrimination against the San, including seeking their advice about proposed legislation on communally held lands and increasing their access to education. However, many San children do not attend school and most of those who attend never proceed beyond grade 10.
- 41.3 Other ethnic groups regard the San as useless, lazy and primitive. The stereotypical attitude of their neighbours has instilled in the San a sense of despair and low self-esteem. Many of them hide their identity while in public. This attitude was confirmed by the Honourable Royal /Ui/o/oo, and his concern is that this

is seriously undermining San culture as many youths no longer associate with San culture.

42. Poverty and Unemployment

- 42.1 The San are undeniably the worst-off ethnic group in Namibia and their level of poverty is unmatched by that of any other ethnic group in the country. Their Human Development Index is less than half the national average, while their Human Poverty Index is more than double the national average. Per capita income of the San is the lowest among all language groups in Namibia, and the majority of the San population lacks access to the means of earning a cash income.
- 42.2 Although some inhabitants were given jobs and housing inside Etosha when the Etosha National Park was established, the majority of the Hai||om San are resident on farms and towns in Outjo and Tsumeb districts. There are also San living in other communal areas and among other ethnic groups, and some are present as small minorities in at least seven other conservancies. In Omaheke, Otjozondjupa and Kavango regions, most San are unpaid labourers for local Herero and Kavango farmers. They may be given some maize meal and milk for carrying out various types of work. This labour practice is illegal under Namibian law, but it continues to be perpetrated against the San while government officials turn a blind eye.
- 42.3 The majority of the San are said to have no work prospects and no access to education and basic services and, on the whole, their communities are starving, with mortality rates among them ever-increasing due to hunger and untreated illnesses such as TB, typhoid fever and malaria.
- 42.4 Food security is a major problem – with up to 70% of Namibian San dependent on food-aid programmes. Other problems facing the population include landlessness, lack of education, extreme poverty and dependency, as well as vulnerability to poverty-related diseases.
- 42.5 While all this is undeniable, it should also be noted that a small number of San in Namibia are now self-employed, producing crafts and running community-based campsites, and a few are employed by development organisations and the government, especially in the police, army and prison services, earning fair wages.

43. Culture and Modernisation

- 43.1 The San ethnic group can be divided into 6 sub-groups, Ju|'hoansi, !Kung, !Xóõ, Khwe or Barakwengo, Hai||om and Naro. Some of these groups have little or no relations with one another, but this is changing as San interests begin to form into units of solidarity.
- 43.2 The San live in isolated groups and traditionally used to be huntergatherers who migrated in small family bands. The San did not keep domestic livestock and they moved with everything they possessed to follow the availability of water, game and edible plants. Ownership of possessions or livestock was not typical in San society. Traditionally, women tended to look after the children as well as collecting plants and the men were involved in hunting.
- 43.3 Today, however, San communities in Namibia are settled permanently in villages where they are diversifying their sources of livelihood like other communities. Some San members are engaged in livestock and crop farming although at a very small scale; some are employed to earn income, selling crafts, benefiting from the social welfare grants provided by the government, participating in national programmes and having access to social services such as education, water, health, transport and communication, etc.
- 43.4 Since being dispossessed of their land by one or another party, the San cultural roots have been threatened. They have been unable to practice their traditional skills and knowledge, one effect of this being that San women, men and children alike are degraded by others as culturally 'rootless', which further undermines the already shattered San cultural dignity and pride. This despairing situation is probably the root cause of the widespread alcohol abuse in many San communities, which obviously leads to other problems, such as violence and theft. As Le Roux writes "most San people who were questioned about the reason for the San's reported tendencies for increased drinking said that the drink made them feel powerful, brave, or made them forget their poverty and hunger".

44. Nutrition and Healthcare

- 44.1 Since most San occupy the lower rungs of the social ladder, their poverty and vulnerability make them more prone to infection by treatable diseases such as tuberculosis and malaria. HIV/AIDS is reported to be on the increase among San communities. This could be explained by the fact that San communities that hitherto were isolated from other ethnic groups, have now been exposed to these groups, and tourism has been encouraged in most San communities, further exposing them to visitors from other areas. The average life expectancy of the San is 46 years, which is about 25% less than the national average of around 61.
- 44.2 The San have the worst access to healthcare of all Namibians, with more than 80% of them living more than 80 km (about an hour's drive away) from any sort of health facility, with these facilities being in addition very expensive to go to. They rely on mobile outreach centers which are often ill-equipped to deal with the complicated problems the people could potentially face. The mobile clinics make irregular visits to San communities and there are no arrangements for emergencies. In some cases, the delegation was informed that the staff of the mobile units were usually rude and hardly spoke the San languages, with the likely risk of miscommunication and wrong diagnosis. In Masambo, Omega III and Mushanshani Villages there are no health facilities and the residents, who are usually very poor, find it very difficult to access health facilities. In Masambo and Omega III in particular transportation is a major problem.

- 44.3 The majority of the health problems that the San face are related to their poverty and marginalization. Diseases such as AIDS, tuberculosis and malaria can affect all Namibians but, due to lack of information, low standards of living and the unavailability of adequate treatment, the impact on the San is greater than on the ordinary Namibian.
- 44.4 The San communities are the only ethnic group in Namibia whose health and education status have declined since independence. This can be explained by the loss of their land and means of livelihood as hunter-gatherers, resulting in a rapid decline into destitution and cultural breakdown. Due to poverty and the high unemployment rate, coupled with the fact that most of them have been confined to villages and prohibited from hunting, they have lost their original sources of food and depend almost entirely on the government for food. They are not able to grow enough food to feed themselves. The little they grow is usually destroyed by animals. The result has been persistent hunger in the San communities leading to poor feeding, which affects their immune system and resistance to diseases. Most San communities also lack clean potable water, and in Masambo and Omega III in particular, the water seems to be contaminated. The residents of Omega III blame the water for the numerous ailments in the village.

45. The San and Education

- 45.1 The San in Namibia remain the least educated sector of society. It is even suggested that no other language group is even remotely close to the San in the area of education. The literacy rate among the San is the lowest, at just 23% compared to a national literacy level of 66%.⁷
- 45.2 Enrolment rates show that there has been an increase in the number of San children attending school over the years. Yet, this is still woefully inadequate and some researchers suggest that if all San school children of school age were to attend school, there would need to be an additional 8-10,000 places created for them in the system.
- 45.3 The increase in enrolment has unfortunately not been matched with an increase in teachers or teaching materials. There is an acute shortage of teachers in San schools and inadequate teaching materials for the teachers and reading materials for the learners. In Masambo, for example, there were only two teachers teaching three grades and, in Omega III, there were only five teachers for the entire grade seven school. The teachers complained about the lack of teaching materials such as books, blackboards, chalk, etc. There are no houses for teachers and, in the case of Omega III, the headmaster was sharing the school store with another staff member.
- 45.4 The increase in enrolment is deflated by a corresponding increase in school drop-out rates among San learners. It is suggested that, as the San progress up the grades, the drop-out rate increases. As a result, there are very few San learners in lower secondary schools, even fewer in upper secondary and a marked absence in tertiary institutions.
- 45.5 This high drop-out rate has been explained in many ways. Some suggest that the reasons vary as they progress in education. In primary schools, there are less drop-outs because the pupils go to school closer to their parents and rarely mix with pupils from other ethnic groups. In secondary school, they move away from their parents and are put in hostels where they have to face children from other ethnic groups.
- 45.6 In Namibia, education for the San is free from grades 1 to 10. However, in practice there are instances of schools demanding tuition fees from San pupils. After grade 10, however, the government ceases to support the San and requires the parents or philanthropic organizations to continue.
- 45.7 The fees waiver for the San, that is, tuition, uniforms and hostel fees, is believed to be in recognition of the fact that the San have been marginalized for a very long period and have the lowest literacy rate in the country. It is also in recognition of the fact that San parents are poor and cannot afford to pay fees for their children.
- 45.8 It would be unproductive both for the government and the San community if San learners were to be educated and abandoned mid-way. Since the government has recognized their vulnerable situation and undertaken to honour its obligation as government, it should endeavour to ensure that San learners are assisted up to a reasonable level of education, at least to grade 12.
- 45.9 In Mkata Village in the Nǃa Jaqna Conservancy, the enrolment rate from grades 1 - 6 was reported to be 100%. After grade 6, the children have to travel to Mangeti, some 15 km from Mkata to attend grade 7. The delegation of the Working Group was informed that some children simply decide not to continue because of the distance. Some went to Mangeti for a few months and stopped. After completing grade 7 at Mangeti, the learners have to move to Tsumkwe for grades 8 - 10 as there are no secondary schools in Mangeti. Tsumkwe is about 80 - 100 km from Mkata. Here again, some children simply declined to continue. Thus, there are very few children who eventually make it to secondary school from the village. The few who make it to secondary school have to contend with all the ridicule and stereotypical discrimination from other learners and teachers. Some simply cannot withstand the humiliation and decide to abandon school. Those who brave the humiliation and continue to grade 10 have another hurdle awaiting them. They either pass the grade 10 examinations or that is the end of their education. Even if they do pass, they must now turn to their parents for support to continue. In Mkata Village, therefore, there are students who failed the grade 10 examinations and could not continue because they had to pay to repeat, there are those who passed the

exams but could not proceed because their parents could not afford to pay their fees in grades 11 and 12 and as a result, the village has never produced a grade 12 graduate.

- 45.10 Another problem with the education of the San is the lack of mother tongue instruction in primary schools. Mother tongue education has been introduced in very few schools in Tsumkwe district. Many San groups acknowledge the importance of mother tongue education for at least the first three years of school. These groups value the development of critical thinking skills as well as promoting the retention of endangered languages and heritage.
- 45.11 In the Nyae Nyae Conservancy, the Ju|'hoan San have introduced the concept of the Village Schools Project (VSP), which has provided a matrix for the creation of a broad range of local-language curriculum and enrichment materials. There has been wide participation of community members of all ages in the production of materials. The VSP has also tried to honour the very effective means of learning and child socialization long practiced by the Ju|'hoansi and other San. San societies have valued equality and sharing highly, and in the VSP their children's learning has taken place in a hands-on, informal, narrative and experience-rich environment, involving children of all ages with local teachers and many adults.
- 45.12 Local language committees have taken on the challenge of providing user-friendly orthographies of these phonetically complex languages, often with the help of professional linguists and anthropologists. Linguists have also sometimes been in a position to provide grammatical training in linguistic methods to young San who may be contemplating becoming scholars of their own languages. In a few cases, computer literacy and the use of digital media have also become available to San educational projects, where technological empowerment has quickly increased the political effectiveness of the surrounding communities.
- 45.13 This said, it is important to note that the structural violence often afflicting San in the wider societies in which they live continues to have deleterious effects on their education as well as on other areas of life. Inter-ethnic strife is frequent in school contexts, and is often sufficient to contribute to San student absenteeism and educational failure.
- 45.14 However, though there remain many areas where San still have little access to educational opportunities, the places where they do, are having an impact on their chances for the future. NGOs such as WIMSA have done a great deal to provide secondary and tertiary educational options to some San students, who are then effective models for other San to emulate.

46. San Traditional Authorities

- 46.1 An ongoing obstacle to securing San human rights in Namibia is the government's continued denial of official recognition for some San traditional authorities. According to Article 102 (5) of the Namibian Constitution, a Council of Traditional Leaders has been established "in order to advise the President on the control and utilisation of communal land and on all such other matters as may be referred to it by the President for advice". The now more than 40 officially recognised Namibian traditional authorities play a vital role in allocating communal land – which makes up, according to Haring and Odendaal, 10 41% of the "82.4 million hectares of surface area in Namibia". Traditional leaders allocate land for residential purposes, cultivation and grazing.
- 46.2 To date the Namibian government has officially recognised only two of the six Namibian San traditional authorities, namely the !Kung Traditional Authority in Tsumkwe District West (formerly West Bushmanland) and the Ju|'hoan Traditional Authority in Nyae Nyae. One core duty of a traditional authority is "to ensure that the members of his or her traditional community use the natural resources at their disposal on a sustainable basis" (!Kung) and Nyae Nyae (Ju|'hoan) conservancies respectively, but they do not get directly involved in conservancy affairs.
- 46.3 The former President denied official recognition to the Khwe Traditional Authority of West Caprivi, the !Xóõ Traditional Authority of Omaheke South and the Ju|'hoan Traditional Authority of Omaheke North.
- 46.4 In the case of the Khwe, the Minister of Home Affairs wrote on the President's behalf in response to the former's application for recognition that "the area claimed by the Khwe community traditionally in terms of chieftainship belongs to the Mbukushu traditional authority"; in the case of the !Xóõ, the President based his decision on the assumption that "there is no history of the establishment of !Xóõ traditional authority"; and in the case of the Ju|'hoansi, he instructed the relevant Minister to inform the Ju|'hoan chief designate that "there is no need to establish another traditional authority for the Ju|'hoan community".
- 46.5 The government wants the Ju|'hoan tribe in Omaheke region to be under the leadership of SWAPO member and Chief of the Ju|'hoan tribe in the Tsumkwe area, Bobo Tsamkxao =Oma. The Ju|'hoan tribe in Omaheke, who number around 2,000, have chosen their own Chief, Frederik Langman, as their tribal leader. They argue that even though the two tribes are from the same language group, they speak different dialects and stay in a different area with a different environment and culture.
- 46.6 Many Namibians, including some government officials, believe that the San comprise one homogenous group and therefore need only one traditional authority. People also assume that the San lack leadership structures, speak the same language and have no ties to any land because they are nomadic. On the contrary, San is a common term to describe an ethnic group composed of more than six subgroups with different languages, some completely unrelated. The San leadership structure may not be so apparent because it is

dissimilar to the common hierarchical leadership structures and because they choose to make decisions by reaching consensus, but all San communities exhibit leadership structures which they have followed for years.

- 46.7 The denial of recognition for the Khwe, Ju|'hoan and !Xóõ Traditional Authorities means they will remain excluded from the local land boards in charge of allocating land to community members and, in the case of the Khwe who have been put under the leadership of another ethnic group, it means their rights to access land and natural resources for their livelihood is further compromised.
 - 46.8 If the government continues to deny them official recognition, they will remain excluded from the land boards in charge of allocating communal land to community members. The denial of recognition is weakening their position and strengthening the ongoing domination of their people by other ethnic groups, perpetuating San marginalisation in local political affairs.
 - 46.9 The government's authority to confer recognition or withhold it from traditional leaders, even in opposition to local preference, is controversial because of the leaders' influence on local events, including local police powers. In some cases, the government could be seen to be withholding recognition from genuine traditional leaders for political reasons. This has been the case with the Khwe community in Western Caprivi, where most of the San are believed to be either in the opposition or sympathizing with it.
 - 46.10 A problem facing all current San traditional leaders is that the young and formally educated members of their communities do not respect their traditional leaders and tend to follow civic but not traditional guidance. The majority of leaders rely on traditional values and have either attained a low level of formal education or are illiterate.
 - 46.11 The San traditional leaders attach profound significance to the fact that recognised traditional authorities will serve on the regional land boards and advise the President on land matters as members of the Council of Traditional Leaders. They are painfully aware that if they do not gain a say on land matters, their marginalisation and domination by other ethnic groups will be further entrenched. The fact that recognised leaders are entitled to remuneration from the government is encouraging for the San, because the salary would enable them to visit their communities regularly, which is currently difficult for them as they often do not even have enough funds to pay for the public transport that enables them to reach at least some of their communities.
 - 46.12 The Traditional Authorities Act, which came into effect in December 1995, defines the role, duties and powers of traditional leaders. The Act provides that customary law that is inconsistent with the provisions of the Constitution is invalid and delineates which types of crimes may be dealt with in traditional courts. The Act assigns to traditional leaders the role of guardians of culture and tradition, and also mandates that traditional leaders elected to Parliament must choose between their traditional and elected offices before the end of 1996. While the latter requirement could be seen as contrary to the provisions of the Charter, in particular Article 13, it also puts at a disadvantage indigenous communities such as the San and Himba. In most of these societies, the traditional leaders may be the only knowledgeable persons that could effectively articulate the concerns of the community and in most African societies, including the indigenous communities, traditional leadership is hereditary. To require a community to disrupt, or an individual to abandon, a harmless traditional customary practice as a condition for exercising their constitutionally guaranteed right, would not only be a violation of the collective right of the community, but also a violation of an individual human right to participate in the affairs of his/her country.
 - 46.13 Some traditional leaders and human rights organizations have maintained that this provision is unconstitutional and court challenges are being pursued.
- 47. Political Representation**
- 47.1 The San are the least represented in government structures. Apart from Tsumkwe District Constituency where they are represented in Parliament and have a majority of San as Senior and Junior Councillors, they are insignificant in other regions and nationally. The only San MP seems not to be representative of all the communities, as many of those outside Tsumkwe seem not to know him and complain that he does not articulate their grievances in Parliament.

PART VI

48. Conclusions and Recommendations

- 48.1 This report presents a narrative account of discussions between the delegation of the African Commission's Working Group on Indigenous Populations/ Communities and major stakeholders working to protect the rights of indigenous populations in Namibia. It is the view of the African Commission that the mission succeeded in establishing dialogue between the African Commission, the Government of the Republic of Namibia, the local civil society organizations and the indigenous communities themselves. The main aim of the mission was to work with all stakeholders to enhance the human rights situation of indigenous communities in the country. Approaches to achieving this may be different but, through dialogue, the

African Commission believes a common ground can be found.

48.2 The African Commission notes the positive initiatives taken by the Government of the Republic of Namibia to promote and protect the human rights of indigenous populations in the country, such as free education to indigenous groups, training programmes, etc. The African Commission, however, believes that there is room to do more and calls on the government to intensify its programmes and policies aimed at enhancing the rights of indigenous populations.

48.3 The African Commission makes the following recommendations, which it hopes will be implemented by the government as a first step towards advancing the rights of indigenous communities in the country. The recommendations are made with due regard for the measures already taken by government to enhance the welfare of indigenous populations in the country and bearing in mind the socioeconomic and political situation of the country, and with the understanding that the African Commission would be available at all times to support the government in their implementation. The recommendations also keep the gateway to dialogue between the African Commission and the Government of the Republic of Namibia open.

49. Education

49.1 The African Commission appreciates the effort being made by the government to provide free education to the San as education is the catalyst to development. The poverty, marginalization and low life expectancy of the San can only be addressed if they are informed through education. However, the government should provide the San with sufficient educational support to enable them to make informed decisions about their development and the development of their future generations. It is not sufficient to provide them with free education up to grade 10 and then abandon them. The government should make further sacrifices and provide the San with free education at least up to grade 12 level. The government should ensure that the policy of free education for San learners is respected and implemented.

49.2 Those San learners who fail grade 10 examinations should be supported by the government to repeat and those who drop out of school should be encouraged to return or be provided with vocational training that is relevant to the economic development of the country. Vocational training should also be introduced for grade 10 drop-outs and others unable to proceed to grade 11 in order to avoid wasting human resources.

49.3 The government should provide mother tongue education for all San pupils up to grade 3 and train San teachers to teach them. Grade 10 drop-outs could be trained as mother tongue instructors in their communities.

49.4 Complaints about discrimination and stereotypical utterances against San learners should be thoroughly investigated and punished. The government should criminalize discrimination in all forms but in particular based on race or ethnicity in accordance with Article 4 of the Convention on the Elimination of all Forms of Racial Discrimination and Article 2 of the African Charter on Human and Peoples' Rights.

50. Training

50.1 The government should provide agricultural training to those San members who wish to engage in either crop or cattle farming, or both. In Mkata, the residents complained about members of some other ethnic community refusing to plough for them, rendering them helpless. They should all be trained in farming techniques and provided with the necessary farming tools and equipment.

51. Land rights

51.1 The San should be provided with communal land they can call their own. Access to land and land security for the San population is the most critical element that should be addressed by the Namibian government. Land security would greatly facilitate efforts on the part of the government, NGOs, and the communities themselves aimed at addressing their critical health issues, educational and political marginalisation, and numerous social problems. The protection and expansion of land rights is one of the most fundamental interventions that can be made on behalf of the San in Namibia to secure their sustainable livelihood.

52. Traditional Leadership and Political Representation

52.1 The traditional leadership of the San should be recognized by the government. Insisting that a particular ethnic group such as the Khwe San in Western Caprivi be ruled by another ethnic group, the Mbukushu, is a recipe for disorder and, eventually, conflict. Government should legislate affirmative action measures to increase the representation of San and other indigenous communities in governance structures such as Parliament, the National Council and local government structures. A quota system could be adopted to give indigenous communities a certain percentage of representation in these structures.

53. Health

53.1 The government should establish health centers nearer to San communities or ensure that mobile health centers visit these communities on a regular basis.

54. Employment

54.1 The government should encourage the development of income generating activities in and around San communities and give priority to the employment of San members to fill vacancies. The government should ensure that labour laws are enforced so that proper working conditions are ensured for the San.

55. Hunger

55.1 San communities should be encouraged to grow crops for their subsistence. Those living in parks should be provided with safe places where their crops will not be destroyed by animals and, in the event the crops are

destroyed, they should be entitled to compensation from the government.

55.2 Food aid and drought relief should be monitored on a regular basis and local officials should be given adequate means to enable them to deliver food aid to the communities. The delegation was surprised to learn that tonnes of maize had been left to rot in a warehouse in Katima Molilo in Caprivi region while San residents in the region had been going for months without food.

55.3 The San community should also be issued with Special Game Licenses to enable them to hunt for specific animals that can supplement their nutrition or income. In particular, the government should consider establishing a conservancy for the Khwe of Western and Eastern Caprivi, where the people already live side-by-side with wildlife.

56. Discrimination

56.1 The government should ensure that acts of racial discrimination are dealt with in accordance with internationally recognized instruments such as the African Charter, the Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Elimination of all Forms of Discrimination Against Women. The government should also establish sensitisation programmes for civil servants on issues relating to anti-discrimination, particularly with regard to the San and other indigenous peoples.

57. Recognition of Indigenous Peoples

57.1 The government should ratify ILO Convention 169 on Indigenous and Tribal Peoples. The government should further include recognition and protection of indigenous peoples in its constitution and in national policies that affect the lives of the San and other indigenous peoples in Namibia. Where necessary, affirmative action should be considered.

58. Submission of Reports

58.1 The Commission acknowledges that the Republic of Namibia has submitted its initial Report to the African Commission in conformity with Article 62 of the African Charter on Human and Peoples' Rights. However, the African Commission wishes to note that the Republic of Namibia has overdue reports to submit to it and urges the government to expedite the submission of these reports and to include in them the various issues on indigenous populations in the country and measures taken or being taken to implement these recommendations.

59. To the NGOs

59.1 NGOs should continue and intensify their support to promote the welfare of indigenous communities in the country. NGOs should also work closely with government and other institutions to enhance the welfare of indigenous communities in the country.

60. To the International Community

60.1 The international community, in particular donors, should support San projects, especially the conservancies, and support the Namibian government to provide adequate services to San communities.

PART 5

African Union Human Rights Instruments ratified by Namibia and Concluding Observations by the Commission

- **African Charter on the Rights and Welfare of the Child**

AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

PREAMBLE

The African Member States of the Organization of African Unity, Parties to the present Charter entitled 'African Charter on the Rights and Welfare of the Child';

CONSIDERING that the Charter of the Organization of African Unity recognizes the paramountcy of Human Rights and the African Charter on Human and People's Rights proclaimed and agreed that everyone is entitled to all the rights and freedoms recognized and guaranteed therein, without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status,

RECALLING the Declaration on the Rights and Welfare of the African Child (AHG/ST.4 Rev. I) adopted by the Assembly of Heads of State and Government of the Organization of African Unity, at its Sixteenth Ordinary Session in Monrovia, Liberia from 17 to 20 July 1979, recognized the need to take appropriate measures to promote and protect the rights and welfare of the African Child,

NOTING WITH CONCERN that the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he/she needs special safeguards and care,

RECOGNIZING that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality. the child should grow up in a family environment in an atmosphere of happiness, love and understanding, RECOGNIZING that the child, due to the needs of his physical and mental development requires particular care with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security,

TAKING INTO CONSIDERATION the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child,

CONSIDERING that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone,

REAFFIRMING ADHERENCE To the principles of the rights and welfare of the child contained in the declaration, conventions and other instruments of the Organization of African Unity and in the United Nations and in particular the United Nations Convention on the Rights of the Child; and the OAU Heads of State and Government's Declaration on the Rights and Welfare of the African Child.

HAVE AGREED AS FOLLOWS:

PART 1: RIGHTS AND DUTIES

CHAPTER ONE: RIGHTS AND WELFARE OF THE CHILD

Article 1: Obligation of States Parties

1. Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.
2. Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.
3. Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.

Article 2: Definition of a Child

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

Article 3: Non-Discrimination

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

Article 4: Best Interests of the Child

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

Article 5: Survival and Development

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

Article 6: Name and Nationality

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

Article 7: Freedom of Expression

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

Article 8: Freedom of Association

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

Article 9: Freedom of Thought, Conscience and Religion

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

Article 10: Protection of Privacy

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

Article 11: Education

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

- (d) the preparation of the child for responsible life in a free society, in the spirit of understanding tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups;
 - (e) the preservation of national independence and territorial integrity;
 - (f) the promotion and achievements of African Unity and Solidarity;
 - (g) the development of respect for the environment and natural resources;
 - (h) the promotion of the child's understanding of primary health care.
3. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:
 - (a) provide free and compulsory basic education;
 - (b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;
 - (c) make the higher education accessible to all on the basis of capacity and ability by every appropriate means;
 - (d) take measures to encourage regular attendance at schools and the reduction of drop-out rates;
 - (e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.
 4. States Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children's schools, other than those established by public authorities, which conform to such minimum standards may be approved by the State, to ensure the religious and moral education of the child in a manner with the evolving capacities of the child.
 5. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.
 6. States Parties to the present Charter shall have all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.
 7. No part of this Article shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject to the observance of the principles set out in paragraph I of this Article and the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the States.

Article 12: Leisure, Recreation and Cultural Activities

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

Article 13: Handicapped Children

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

Article 14: Health and Health Services

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:
 - (a) to reduce infant and child mortality rate;
 - (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) to ensure the provision of adequate nutrition and safe drinking water;
 - (d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;

- (e) to ensure appropriate health care for expectant and nursing mothers;
- (f) to develop preventive health care and family life education and provision of service;
- (g) to integrate basic health service programmes in national development plans;
- (h) to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;
- (i) to ensure the meaningful participation of non-governmental organizations, local communities and the beneficiary population in the planning and management of a basic service programme for children;
- (j) to support through technical and financial means, the mobilization of local community resources in the development of primary health care for children.

Article 15: Child Labour

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

Article 16: Protection Against Child Abuse and Torture

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

Article 17: Administration of Juvenile Justice

1. Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.
2. States Parties to the present Charter shall in particular:
 - (a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;
 - (b) ensure that children are separated from adults in their place of detention or imprisonment;
 - (c) ensure that every child accused in infringing the penal law:
 - (i) shall be presumed innocent until duly recognized guilty;
 - (ii) shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;
 - (iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;
 - (iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;
 - (d) prohibit the press and the public from trial.
3. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.
4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

Article 18: Protection of the Family

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

Article 19: Parent Care and Protection

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

Article 20: Parental Responsibilities

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

Article 21: Protection against Harmful Social and Cultural Practices

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

Article 22: Armed Conflicts

1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.
2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.
3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

Article 23: Refugee Children

1. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties.
2. States Parties shall undertake to cooperate with existing international organizations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives or an unaccompanied refugee child in order to obtain information necessary for reunification with the family.
3. Where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.

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

Article 24: Adoption

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

- (a) establish competent authorities to determine matters of adoption and ensure that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if necessary, the appropriate persons concerned have given their informed consent to the adoption on the basis of appropriate counselling;
- (b) recognize that inter-country adoption in those States who have ratified or adhered to the International Convention on the Rights of the Child or this Charter, may, as the last resort, be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) ensure that the child affected by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) take all appropriate measures to ensure that in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child;
- (e) promote, where appropriate, the objectives of this Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs;
- (f) establish a machinery to monitor the well-being of the adopted child.

Article 25: Separation from Parents

1. Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance;
2. States Parties to the present Charter:
 - (a) shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children;
 - (b) shall take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.
3. When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's up-bringing and to the child's ethnic, religious or linguistic background.

Article 26: Protection Against Apartheid and Discrimination

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

Article 27: Sexual Exploitation

1. States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:
 - (a) the inducement, coercion or encouragement of a child to engage in any sexual activity;
 - (b) the use of children in prostitution or other sexual practices;
 - (c) the use of children in pornographic activities, performances and materials.

Article 28: Drug Abuse

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

Article 29: Sale, Trafficking and Abduction

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

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

Article 30: Children of Imprisoned Mothers

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

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

Article 31: Responsibility of the Child

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

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

PART 11 CHAPTER TWO: ESTABLISHMENT AND ORGANIZATION OF THE COMMITTEE ON THE RIGHTS AND WELFARE OF THE CHILD

Article 32: The Committee

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

Article 33: Composition

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

Article 34: Election

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

Article 35: Candidates

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

Article 36

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

Article 37: Term of Office

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

Article 38: Bureau

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

Article 39: Vacancy

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

Article 40: Secretariat

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

Article 41: Privileges and Immunities

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

CHAPTER THREE: MANDATE AND PROCEDURE OF THE COMMITTEE**Article 42: Mandate The functions of the Committee shall be:**

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

Article 43: Reporting Procedure

1. Every State Party to the present Charter shall undertake to submit to the Committee through the Secretary-General of the Organization of African Unity, reports on the measures they have adopted which give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights:
 - (a) within two years of the entry into force of the Charter for the State Party concerned: and
 - (b) and thereafter, every three years.
2. Every report made under this Article shall:
 - (a) contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country; and
 - (b) shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter.
3. A State Party which has submitted a comprehensive first report to the Committee need not, in its subsequent reports

submitted in accordance with paragraph I (a) of this Article, repeat the basic information previously provided.

Article 44: Communications

1. The Committee may receive communication, from any person, group or non-governmental organization recognized by the Organization of African Unity, by a Member State, or the United Nations relating to any matter covered by this Charter.
2. Every communication to the Committee shall contain the name and address of the author and shall be treated in confidence.

Article 45: Investigations by the Committee

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

CHAPTER FOUR: MISCELLANEOUS PROVISIONS

Article 46: Sources of Inspiration

The Committee shall draw inspiration from International Law on Human Rights, particularly from the provisions of the African Charter on Human and Peoples' Rights, the Charter of the Organization of African Unity, the Universal Declaration on Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights, and from African values and traditions.

Article 47: Signature, Ratification or Adherence

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

Article 48: Amendment and Revision of the Charter

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

PART 5

African Union Human Rights Instruments ratified by Namibia

- **African Youth Charter**

AFRICAN YOUTH CHARTER

PREAMBLE

GUIDED by the Constitutive Act of the African Union, the States Parties to the present “African Youth Charter”,

GUIDED by the vision, hopes and aspirations of the African Union, inclusive of Africa’s integration, the inherent dignity and inalienable rights afforded to all members of the human family as set out in the United Nations Universal Declaration of Human Rights (1948), the International Covenant of Civil and Political Rights (1976) and the International Covenant on Economic, Social and Cultural Rights (1976), and articulated for the African peoples through the African Charter on Human and People’s Rights (1986);

RECALLING the resolution of the Heads of State and government during the 1999 Algiers Summit for the development of the Pan-African Charter;

FULLY ATTACHED to the virtues and values of African historical tradition and civilization which form the foundation for our concept of people’s rights;

RECALLING the historic injustices imposed on Africa such as slavery, colonization, depletion of natural resources and taking into account the firm will of African peoples for self-determination and the economic integration of Africa;

CONVINCED that Africa’s greatest resource is its youthful population and that through their active and full participation, Africans can surmount the difficulties that lie ahead;

BEARING IN MIND the international Convention on the Elimination of All Forms of Discrimination Against Women (1979) and the Protocol to the African Charter on Human and Peoples’ Rights relating to the Rights of Women in Africa (2003) and the progress achieved in eliminating gender discrimination, but ever cognizant of the obstacles that still prevent girls and women from fully participating in African society;

REAFFIRMING the need to take appropriate measures to promote and protect the rights and welfare of children as outlined in the Convention of the Rights of the Child (1989) and through the African Charter on the Rights and Welfare of the Child (1999),

ACKNOWLEDGING the commitments already made towards the United Nations Millennium Development Goals (MDGs) and inviting the partners to reaffirm their support to advance the well-being of youth;

RECOGNISING the efforts made by States Parties and civil societies to address the economic, social, educational, cultural and spiritual needs of youth;

NOTING with concern the situation of African youth, many of whom are marginalized from mainstream society through inequalities in income, wealth and power, unemployment and underemployment, infected and affected by the HIV/AIDS pandemic, living in situations of poverty and hunger, experiencing illiteracy and poor quality educational systems, restricted access to health services and to information, exposure to violence including gender violence, engaging in armed conflicts and experiencing various forms of discrimination;

RECALLING the United Nations World Programme of Action for Youth to the Year 2000 and beyond and the ten priority areas identified for youth (education, employment, hunger and poverty, health, environment, drug abuse, juvenile delinquency, leisure-time activities, girls and young women and youth participating in decision-making), and the five additional areas (HIV/AIDS, ICT, Inter-generational dialogue,...) adopted at the 2005 UN General assembly;

RECOGNISING that youth are partners, assets and a prerequisite for sustainable development and for the peace and prosperity of Africa with a unique contribution to make to the present and to future development;

CONSIDERING the role that youth have played in the process of decolonisation, the struggle against apartheid and more recently in its efforts to encourage the development and to promote the democratic processes on the African Continent;

REAFFIRMING that the continuous cultural development of Africa rests with its youth and therefore requires their active and enlightened participation as espoused in the Cultural Charter for Africa;

GUIDED by the New Partnership for Africa's Development Strategic Framework for Youth Programme of 2004 that is working towards youth empowerment and development;

ACKNOWLEDGING the increasing calls and the enthusiasm of youth to actively participate at local, national, regional and international levels to determine their own development and the advancement of society at large;

ACKNOWLEDGING ALSO the call in Bamako (2005) by the youth organisations across Africa to empower youth by building their capacity, leadership, responsibilities and provide access to information such that they can take up their rightful place as active agents in decision-making and governance;

TAKING INTO CONSIDERATION the inter-relatedness of the challenges facing youth and the need for cross-sectoral policies and programmes that attends to the needs of youth in a holistic manner;

CONSIDERING that the promotion and protection of the rights of youth also implies the performance of duties by youth as by all other actors in society;

TAKING INTO CONSIDERATION the needs and aspirations of young displaced persons, refugees and youth with special needs;

HAVE AGREED AS FOLLOWS: DEFINITIONS

"Chairperson" shall mean the Chairperson of the African Union Commission;

"Charter" shall mean the African Youth Charter;

"Commission" shall mean the Commission of African Union

"Diaspora" shall mean peoples of African descent and heritage living outside the continent, irrespective of their citizenship and who remain committed to contribute to the development of the continent and the building of the African

"Member States" shall mean Member States of the African Union

"Minors" shall mean young people aged 15 to 17 years subject to each country's

"States Parties" shall mean Member States, which have ratified or acceded to the present Charter

"Union" shall mean the African Union for the purposes of this Charter

"Youth" youth or young people shall refer to every person between the ages of 15 and 35 years.

PART 1: RIGHTS AND DUTIES

Article 1: Obligation of State Parties

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

Article 2: Non-discrimination

1. Every young person shall be entitled to the enjoyments of the rights and freedoms recognized and guaranteed in this Charter irrespective of their race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.
2. States Parties shall take appropriate measures to ensure that youth are protected against all forms of discrimination on the basis of status, activities, expressed opinions or beliefs.
3. State Parties shall recognize the rights of Young people from ethnic, religious and linguistic marginalized groups or youth of indigenous origin, to enjoy their own culture, freely practice their own religion or to use their own language in community with other members of their group.

Article 3: Freedom of Movement

1. Every young person has the right to leave any country, including his/her own, and to return to his/her country.

Article 4: Freedom of Expression

1. Every young person shall be assured the right to express his or her ideas and opinions freely in all matters and to disseminate his or her ideas and opinions subject to the restrictions as are prescribed by laws.
2. Every young person shall have the freedom to seek, receive and disseminate information and ideas of all kinds, either orally, in writing, in print, in the form of art or through any media of the young person's choice subject to the restrictions as are prescribed by laws.

Article 5: Freedom of Association

1. Every young person shall have the right to free association and freedom of peaceful assembly in conformity with the law.
2. Young people shall not be compelled to belong to an association.

Article 6: Freedom of Thought, Conscience and Religion

Every young person shall have the right to freedom of thought, conscience and religion.

Article 7: Protection of Private Life

No young person shall be subject to the arbitrary or unlawful interference with his/her privacy, residence or correspondence, or to attacks upon his/her honour or reputation.

Article 8: Protection of the Family

1. The family, as the most basic social institution, shall enjoy the full protection and support of States Parties for its establishment and development noting that the structure and form of families varies in different social and cultural contexts.
2. Young men and women of full age who enter into marriage shall do so based on their free consent and shall enjoy equal rights and responsibilities.

Article 9: Property

1. Every young person shall have the right to own and to inherit property.
2. States Parties shall ensure that young men and young women enjoy equal rights to own property.
3. States Parties shall ensure that youth are not arbitrarily deprived of their property including inherited property.

Article 10: Development

1. Every young person shall have the right to social, economic, political and cultural development with due regard to their freedom and identity and in equal enjoyment of the common heritage of mankind.
2. States Parties shall encourage youth organizations to lead youth programmes and to ensure the exercise of the right to development.

States Parties shall:

- a) Encourage the media to disseminate information that will be of economic, political, social and cultural benefit to youth;
- b) Promote the development of youth media for the dissemination of information to young people;
- c) Encourage international co-operation in the production, exchange and dissemination of information from both national and international sources that are of economic, social and cultural value to youth;
- d) Provide access to information and education and training for young people to learn their rights and responsibilities, to be schooled in democratic processes, citizenship, decision-making, governance and leadership such that they develop the technical skills and confidence to participate in these processes;

Article 11: Youth Participation

1. Every young person shall have the right to participate in all spheres of society.
2. States Parties shall take the following measures to promote active youth participation in society:
They shall:
 - a) Guarantee the participation of youth in parliament and other decision-making bodies in accordance with the prescribed laws;
 - b) Facilitate the creation or strengthening of platforms for youth participation in decision-making at local, national, regional, and continental levels of governance;
 - c) Ensure equal access to young men and young women to participate in decision-making and in fulfilling civic duties;
 - d) Give priority to policies and programmes including youth advocacy and peer-to-peer programmes for marginalised youth, such as out-of-school and out-of-work youth, to offer them the opportunity and motivation to re-integrate into mainstream society;
 - e) Provide access to information such that young people become aware of their rights and of opportunities to participate

- in decision-making and civic life;
- f) Institute measures to professionalize youth work and introduce relevant training programmes in higher education and other such training institutions;
- g) Provide technical and financial support to build the institutional capacity of youth organisations;
- h) Institute policy and programmes of youth voluntarism at local, national, regional and international levels as an important form of youth participation and as a means of peer-to-peer training.
- i) Provide access to information and services that will empower youth to become aware of their rights and responsibilities,
- j) Include youth representatives as part of delegations to ordinary sessions and other relevant meetings to broaden channels of communication and enhance the discussion of youth related issues.

Article 12: National Youth Policy

1. Every State Party shall develop a comprehensive and coherent national youth policy.
 - a) The policy shall be cross-sectorial in nature considering the inter-relatedness of the challenges facing young people;
 - b) The development of a national youth policy shall be informed by extensive consultation with young people and cater for their active participation in decision-making at all levels of governance in issues concerning youth and society as a whole;
 - c) A youth perspective shall be integrated and mainstreamed into all planning and decision-making as well as programme development. The appointment of youth focal points in government structures shall enable this process;
 - d) Mechanisms to address these youth challenges shall be framed within the national development framework of the country;
 - e) The policy shall provide guidelines on the definition of youth adopted and specify subgroups that shall be targeted for development;
 - f) The policy shall advocate equal opportunities for young men and for young women;
 - g) A baseline evaluation or situation analysis shall inform the policy on the priority issues for youth development;
 - h) The policy shall be adopted by parliament and enacted into law;
 - i) A national youth coordinating mechanism shall be set up and shall provide a platform as well as serve as a linking agent for youth organisations to participate in youth policy development as well as the implementation, monitoring and evaluation of related programmes;
 - j) National programmes of action shall be developed that are time bound and that are connected to an implementation and evaluation strategy for which indicators shall be outlined;
 - k) Such a programme of action shall be accompanied by adequate and sustained budgetary allocation.

Article 13: Education and Skills Development

1. Every young person shall have the right to education of good quality.
2. The value of multiple forms of education, including formal, non-formal, informal, distance learning and life-long learning, to meet the diverse needs of young people shall be embraced.
3. The education of young people shall be directed to:
 - a) The promotion and holistic development of the young person's cognitive and creative and emotional abilities to their full potential;
 - b) Fostering respect for human rights and fundamental freedoms as set out in the provisions of the various African human and people's rights and international human rights declarations and conventions;
 - c) Preparing young people for responsible lives in free societies that promote peace, understanding, tolerance, dialogue, mutual respect and friendship among all nations and across all groupings of people;
 - d) The preservation and strengthening of positive African morals, traditional values and cultures and the development of national and African identity and pride;
 - e) The development of respect for the environment and natural resources;
 - f) The development of life skills to function effectively in society and include issues such as HIV/AIDS, reproductive health, substance abuse prevention and cultural practices that are harmful to the health of young girls and women as part of the education curricula;
4. States Parties shall take all appropriate measures with a view to achieving full realisation of this right and shall, in particular:
 - a) Provide free and compulsory basic education and take steps to minimise the indirect costs of education;
 - b) Make all forms of secondary education more readily available and accessible by all possible means including progressively free;
 - c) Take steps to encourage regular school attendance and reduce drop-out rates;
 - d) Strengthen participation in and the quality of training in science and technology;
 - e) Revitalise vocational education and training relevant to current and prospective employment opportunities and expand access by developing centres in rural and remote areas;

- f) Make higher education equally accessible to all including establishing distance learning centres of excellence;
 - g) Avail multiple access points for education and skills development including opportunities outside of mainstream educational institutions e.g., workplace skills development, distance learning, adult literacy and national youth service programmes;
 - h) Ensure, where applicable, that girls and young women who become pregnant or married before completing their education shall have the opportunity to continue their education;
 - i) Allocate resources to upgrade the quality of education delivered and ensure that it is relevant to the needs of contemporary society and engenders critical thinking rather than rote learning;
 - j) Adopt pedagogy that incorporates the benefits of and trains young people in the use of modern information and communication technology such that youth are better prepared for the world of work;
 - k) Encourage youth participation in community work as part of education to build a sense of civic duty;
 - l) Introduce scholarship and bursary programmes to encourage entry into post-primary school education and into higher education outstanding youth from disadvantaged communities, especially young girls;
 - m) Establish and encourage participation of all young men and young women in sport, cultural and recreational activities as part of holistic development;
 - n) Promote culturally appropriate, age specific sexuality and responsible parenthood education;
 - o) Promote the equivalence of degrees between African educational institutions to enable the youth to study and work in State Parties;
 - p) Adopt preferential recruitment policies for African youth with specialised skills amongst States Parties.
5. Youth are determined to transform the continent in the fields of science and technology. Therefore they are committed to:
 - a) Promoting and using science and technology in Africa;
 - b) Conducting research towards science and technology.
 6. State Parties should encourage youth to conduct research. In this regard, an African discoveries day should be established along with mechanism of awarding prizes at the continental level.
 7. Enterprises that are located in Africa should establish partnerships with training institutions to contribute to technology transfer for the benefit of African students and researchers.

Article 14: Poverty Eradication and Socio-economic Integration of Youth

1. States Parties shall: Recognise the right of young people to a standard of living adequate for their holistic development.
 2. Recognise the right of young people to be free from hunger and shall take individual or collective measures to:
 - a) Enhance the attractiveness of rural areas to young people by improving access to services and facilities such as educational and cultural services;
 - b) Train young people to take up agricultural, mineral, commercial and industrial production using contemporary systems and promote the benefits of modern information and communication technology to gain access to existing and new markets;
 - c) Provide grants of land to youth and youth organisations for socio-economic development purposes;
 - d) Facilitate access to credit to promote youth participation in agricultural and other sustainable livelihood projects;
 - e) Facilitate the participation of young people in the design, implementation, monitoring and evaluation of national development plans, policies and poverty reduction strategies.
 3. Recognise the right of every young person to benefit from social security, including social insurance.
- In this regard, States Parties shall take the necessary measures to achieve the full realisation of these rights in accordance with their national law especially when the security of food tenure, clothing, housing and other basic needs are compromised.

Article 15: Sustainable Livelihoods and Youth Employment

1. Every young person shall have the right to gainful employment.
2. Every young person shall have the right to be protected from economic exploitation and from performing work that is likely to be hazardous to or interfere with the young person's education, or to be harmful to the young person's health or holistic development.
3. States Parties shall address and ensure the availability of accurate data on youth employment, unemployment and underemployment so as to facilitate the prioritisation of the issue in National development programmes complemented by clear programmes to address unemployment;
4. States Parties shall take all appropriate measures with a view to achieving full realisation of this right to gainful employment and shall in particular:
 - a) Ensure equal access to employment and equal pay for equal work or equal value of work and offer protection against discrimination regardless of ethnicity, race, gender, disability, religion, political, social, cultural or economic background;
 - b) Develop macroeconomic policies that focus on job creation particularly for youth and for young women;
 - c) Develop measures to regulate the informal economy to prevent unfair labour practices where the majority of youth work;

- d) Foster greater linkages between the labour market and the education and training system to ensure that curricula are aligned to the needs of the labour market and that youth are being trained in fields where employment opportunities are available or are growing;
- e) Implement appropriately-timed career guidance for youth as part of the schooling and post-schooling education system;
- f) Promote youth entrepreneurship by including entrepreneurship training in the school curricula, providing access to credit, business development skills training, mentorship opportunities and better information on market opportunities;
- g) Institute incentive schemes for employers to invest in the skills development of employed and unemployed youth; h) Institute national youth service programmes to engender community participation and skills development for entry into the labour market.

Article 16: Health

1. Every young person shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
2. States Parties shall undertake to pursue the full implementation of this right and in particular shall take measures to:
 - a) Make available equitable and ready access to medical assistance and health care especially in rural and poor urban areas with an emphasis on the development of primary health care;
 - b) Secure the full involvement of youth in identifying their reproductive and health needs and designing programmes that respond to these needs with special attention to vulnerable and disadvantaged youth;
 - c) Provide access to youth friendly reproductive health services including contraceptives, antenatal and post-natal services;
 - d) Institute programmes to address health pandemics in Africa such as HIV/AIDS, tuberculosis and malaria;
 - e) Institute comprehensive programmes to prevent the transmission of sexually transmitted infections and HIV/AIDS by providing education, information, communication and awareness creation as well as making protective measures and reproductive health services available;
 - f) Expand the availability and encourage the uptake of voluntary counselling and confidential testing for HIV/AIDS;
 - g) Provide timely access to treatment for young people infected with HIV/AIDS including prevention of mother to child transmission, post rape prophylaxis, and anti-retroviral therapy and creation of health services specific for young people;
 - h) Provide food security for people living with HIV/AIDS;
 - i) Institute comprehensive programmes including legislative steps to prevent unsafe abortions;
 - j) Take legislative steps such as banning advertising and increasing price in addition to instituting comprehensive preventative and curative programmes to control the consumption of tobacco, exposure to environmental tobacco smoke and alcohol abuse;
 - k) Raise awareness amongst youth on the dangers of drug abuse through partnerships with youth, youth organisations and the community;
 - l) Strengthen local, national, regional and international partnerships to eradicate the demand, supply and trafficking of drugs including using youth to traffic drugs;
 - m) Provide rehabilitation for young people abusing drugs such that they can be re-integrated into social and economic life;
 - n) Provide technical and financial support to build the institutional capacity of youth organisations to address public health concerns including issues concerning youth with disabilities and young people married at an early age.

Article 17: Peace and Security

In view of the important role of youth in promoting peace and non-violence and the lasting physical and psychological scars that result from involvement in violence, armed conflict and war, States Parties shall:

- a) Strengthen the capacity of young people and youth organisations in peace building, conflict prevention and conflict resolution through the promotion of intercultural learning, civic education, tolerance, human rights education and democracy, mutual respect for cultural, ethnic and religious diversity, the importance of dialogue and cooperation, responsibility, solidarity and international cooperation;
- b) Institute mechanisms to promote a culture of peace and tolerance amongst young people that discourages their participation in acts of violence, terrorism, xenophobia, racial discrimination, gender-based discrimination, foreign occupation and trafficking in arms and drugs;
- c) Institute education to promote a culture of peace and dialogue in all schools and training centres at all levels;
- d) Condemn armed conflict and prevent the participation, involvement, recruitment and sexual slavery of young people in armed conflict;
- e) Take all feasible measures to protect the civilian population, including youth, who are affected and displaced by armed conflict;

- f) Mobilise youth for the reconstruction of areas devastated by war, bringing help to refugees and war victims and promoting peace, reconciliation and rehabilitation activities;
- g) Take appropriate measures to promote physical and psychological recovery and social reintegration of young victims of armed conflict and war by providing access to education and skills development such as vocational training to resume social and economic life.

Article 18: Law Enforcement

1. Every young person accused or found guilty of having infringed the penal law shall have the right to be treated with humanity and with respect for the inherent dignity of the human person.
2. States Parties shall in particular:
 - a) Ensure that youth who are detained or imprisoned or in rehabilitation centres are not subjected to torture, inhumane or degrading treatment or punishment;
 - b) Ensure that accused minors shall be segregated from convicted persons and shall be subject to separate treatment appropriate to their status;
 - c) Build rehabilitation facilities for accused and imprisoned youth who are still minors and house them separately from adults;
 - d) Provide induction programmes for imprisoned youth that are based on reformation, social rehabilitation and re-integration into family life;
 - e) Make provisions for the continued education and skills development of imprisoned young people as part of the restorative justice process.
 - f) Ensure that accused and convicted young people are entitled to a lawyer.

Article 19: Sustainable Development and Protection of the Environment

1. States Parties shall ensure the use of sustainable methods to improve the lives of young people such that measures instituted do not jeopardise opportunities for future generations.
2. States Parties shall recognise the vested interest of young people in protecting the natural environment as the inheritors of the environment. In this regard, they shall:
 - a) Encourage the media, youth organisations, in partnership with national and international organisations, to produce, exchange and disseminate information on environmental preservation and best practices to protect the environment;
 - b) Train youth in the use of technologies that protect and conserve the environment;
 - c) Support youth organisations in instituting programmes that encourage environmental preservation such as waste reduction, recycling and tree planting programmes;
 - d) Facilitate youth participation in the design, implementation and evaluation of environmental policies including the conservation of African natural resources at local, national, regional and international levels;
 - e) Develop realistic and flexible strategies for the regeneration of forests;
 - f) Initiate intensive actions to prevent the expansion of deserts.

Article 20: Youth and Culture

1. States Parties shall take the following steps to promote and protect the morals and traditional values recognised by the community:
 - a) Eliminate all traditional practices that undermine the physical integrity and dignity of women;
 - b) Recognise and value beliefs and traditional practices that contribute to development;
 - c) Establish institutions and programmes for the development, documentation, preservation and dissemination of culture;
 - d) Work with educational institutions, youth organisations, the media and other partners to raise awareness of and teach and inform young people about African culture, values and indigenous knowledge;
 - e) Harness the creativity of youth to promote local cultural values and traditions by representing them in a format acceptable to youth and in a language and in forms to which youth are able to relate;
 - f) Introduce and intensify teaching in African languages in all forms of education as a means to accelerate economic, social, political and cultural development;
 - g) Promote inter-cultural awareness by organising exchange programmes between young people and youth organisations within and across States Parties.
2. States Parties recognise that the shift towards a knowledge-based economy is dependent on information and communication technology which in turn has contributed towards a dynamic youth culture and global consciousness. In this regard, they shall:
 - a) Promote widespread access to information and communication technology as a means for education, employment creation, interacting effectively with the world and building understanding, tolerance and appreciation of other youth cultures;
 - b) Encourage the local production of and access to information and communication technology content;

- c) Engage young people and youth organisations to understand the nexus between contemporary youth culture and traditional African culture, and enable them to express this fusion through drama, art, writing, music and other cultural and artistic forms;
- d) Help young people to use positive elements of globalisation such as science and technology and information and communication technology to promote new cultural forms that link the past to the future;

Article 21: Youth in the Diaspora

States Parties shall recognise the right of young people to live anywhere in the world. In this regard, they shall:

- a) Promote the equivalence of degrees between African educational institutions to enable the youth to study and work in State Parties;
- b) Promote the recruitment of African youth with specialized skills, in the spirit of African solutions for African problems, according to national policies and priorities;
- c) Facilitate youth organisations to liaise and collaborate with the African youth Diaspora;
- d) Establish structures that encourage and assist the youth in the diaspora to return to and fully re-integrate into the social and economic life in Africa;
- e) Promote and protect the rights of young people living in the diaspora;
- f) Encourage young people in the diaspora to engage themselves in development activities in their country of origin.

Article 22: Leisure, Recreation, Sportive and Cultural Activities

- 1. Young people shall have the right to rest and leisure and to engage in play and recreational activities that are part of a healthy lifestyle as well as to participate freely in sport, physical education drama, the arts, music and other forms of cultural life. In this regard, States Parties shall:
 - a) Make provision for equal access for young men and young women to sport, physical education, cultural, artistic, recreational and leisure activities;
 - b) Put in place adequate infrastructure and services in rural and urban areas for youth to participate in sport, physical education, cultural, artistic, recreational and leisure activities.

Article 23: Girls and Young Women

- 1. States Parties acknowledge the need to eliminate discrimination against girls and young women according to obligations stipulated in various international, regional and national human rights conventions and instruments designed to protect and promote women's rights. In this regard, they shall:
 - a) Introduce legislative measures that eliminate all forms of discrimination against girls and young women and ensure their human rights and fundamental freedoms;
 - b) Ensure that girls and young women are able to participate actively, equally and effectively with boys at all levels of social, educational, economic, political, cultural, civic life and leadership as well as scientific endeavours;
 - c) Institute programmes to make girls and young women aware of their rights and of opportunities to participate as equal members of society;
 - d) Guarantee universal and equal access to and completion of a minimum of nine years of formal education;
 - e) Guarantee equal access to and completion of vocational, secondary and higher education in order to effectively address the existing imbalance between young men and women in certain professions;
 - f) Ensure that education material and teaching practices are gender sensitive and encourage girls and young women to undertake studies in the sciences;
 - g) Provide educational systems that do not impede girls and young women, including married and/or pregnant young women, from attending;
 - h) Take steps to provide equal access to health care services and nutrition for girls and young women;
 - i) Protect girls and young women from economic exploitation and from performing work that is hazardous, takes them away from education or that is harmful to their mental or physical health;
 - j) Offer equal access to young women to employment and promote their participation in all sectors of employment;
 - k) Introduce special legislation and programmes of action that make available opportunities to girls and young women including access to education as a prerequisite and a priority for rapid social and economic development;
 - l) Enact and enforce legislation that protect girls and young women from all forms of violence, genital mutilation, incest, rape, sexual abuse, sexual exploitation, trafficking, prostitution and pornography;
 - m) Develop programmes of action that provide legal, physical and psychological support to girls and young women who have been subjected to violence and abuse such that they can fully re-integrate into social and economic life;
 - n) Secure the right for young women to maternity leave.

Article 24: Mentally and Physically Challenged Youth

1. States Parties recognise the right of mentally and physically challenged youth to special care and shall ensure that they have equal and effective access to education, training, health care services, employment, sport, physical education and cultural and recreational activities.
2. State Parties shall work towards eliminating any obstacles that may have negative implications for the full integration of mentally and physically challenged youth into society including the provision of appropriate infrastructure and services to facilitate easy mobility.

Article 25: Elimination of Harmful Social and Cultural Practices

State Parties shall take all appropriate steps to eliminate harmful social and cultural practices that affect the welfare and dignity of youth, in particular;

- a) Customs and practices that harm the health, life or dignity of the youth;
- b) Customs and practices discriminatory to youth on the basis of gender, age or other status.

Article 26: Responsibilities of Youth

Every young person shall have responsibilities towards his family and society, the State, and the international community. Youth shall have the duty to:

- a) Become the custodians of their own development;
- b) Protect and work for family life and cohesion;
- c) Have full respect for parents and elders and assist them anytime in cases of need in the context of positive African values;
- d) Partake fully in citizenship duties including voting, decision making and governance;
- e) Engage in peer-to-peer education to promote youth development in areas such as literacy, use of information and communication technology, HIV/AIDS prevention, violence prevention and peace building;
- f) Contribute to the promotion of the economic development of States Parties and Africa by placing their physical and intellectual abilities at its service;
- g) Espouse an honest work ethic and reject and expose corruption;
- h) Work towards a society free from substance abuse, violence, coercion, crime, degradation, exploitation and intimidation;
- i) Promote tolerance, understanding, dialogue, consultation and respect for others regardless of age, race, ethnicity, colour, gender, ability, religion, status or political affiliation;
- j) Defend democracy, the rule of law and all human rights and fundamental freedoms;
- k) Encourage a culture of voluntarism and human rights protection as well as participation in civil society activities;
- l) Promote patriotism towards and unity and cohesion of Africa;
- m) Promote, preserve and respect African traditions and cultural heritage and pass on this legacy to future generations;
- n) Become the vanguard of re-presenting cultural heritage in languages and in forms to which youth are able to relate;
- o) Protect the environment and conserve nature.

Article 27: Popularization of the Charter

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

Article 28: Duties of the African Union Commission

The African Union Commission shall ensure that States Parties respect the commitments made and fulfil the duties outlined in the present Charter by;

- a) Collaborating with governmental, non-governmental institutions and developmental partners to identify best practices on youth policy formulation and implementation and encouraging the adaptation of principles and experiences among States Parties;
- b) Inviting States Parties to include youth representatives as part of their delegations to the ordinary sessions of the African Union and other relevant meetings of the policy organs to broaden the channels of communication and enhance the discussion of youth-related issues;
- c) Instituting measures to create awareness of its activities and make information on its activities more readily available and accessible to youth;
- d) Facilitating exchange and co-operation between youth organisations across national borders in order to develop regional youth solidarity, political consciousness and democratic participation in collaboration with development partners.

PART 2: Final Provisions

Article 29: Savings clause

Nothing in this Charter shall be taken as minimizing higher standards and values contained in other relevant human rights instruments ratified by States concerned or rational law or policies.

Article 30: Signature, Ratification or Adherence

1. The present Charter shall be open to signature by all the Member States. The present Charter shall be subject to ratification or accession by Member States. The instrument of ratification or accession to the present Charter shall be deposited with the Chairperson of the Commission.
2. The present Charter shall come into force thirty (30) days after the deposit with the Chairperson of the Commission of the instruments of ratification of fifteen (15) Member States.

Article 31: Amendment and Revision of the Charter

1. The present Charter may be amended or revised if any Member State makes a written request to that effect to the Chairperson of the Commission, provided that the proposed amendment is not submitted to the Assembly of the Union for consideration until all Member States have been duly notified of it.
2. An amendment shall be approved by a simple majority of the Member States. Such amendment shall come into force for each Member States that has ratified or acceded to it on the date of the deposit of its instrument of ratification.

ADOPTED BY THE SEVENTH ORDINARY SESSION OF THE ASSEMBLY, HELD IN BANJUL, THE GAMBIA ON 2ND JULY 2006

PART 5

African Union Human Rights Instruments ratified by Namibia

- **Cultural Charter for Africa**

CULTURAL CHARTER FOR AFRICA

PREAMBLE

We, Heads of State and Government of the Organization of African Unity meeting in its Thirteenth Ordinary Session, in Port Louis, Mauritius, from 2nd to 5th July, 1976,

GUIDED

by the Organization of African Unity Charter,
by Resolution CM/Res.371 (XXIII) adopted by the Twenty-third Ordinary Session of the Council of Ministers and by the Assembly of Heads of State and Government of the OAU (June 1974, Mogadiscio),

by the Declaration of principles of international cultural co-operation adopted by the General Conference of UNESCO at its fourteenth session in 1966,

by the Pan-African Cultural Manifesto of Algiers (1969), and by the Inter-governmental Conference on cultural policies in Africa organized by UNESCO in Accra in 1975 in co-operation with the Organization of African Unity;

CONVINCED

that any human society is necessarily governed by rules and principles based on traditions, languages, ways of life and thought in other words on a set of cultural values which reflect its distinctive character and personality;

CONVINCED

that all cultures emanate from the people, and that any African cultural policy should of necessity enable the people to expand for increased responsibility in the development of its cultural heritage;

AWARE OF THE FACT

that any people has the inalienable right to organize its cultural life in full harmony with its political, economic, social, philosophical and spiritual ideas;

CONVINCED

that all the cultures of the world are equally entitled to respect just as all individuals are equal as regards free access to culture;

RECALLING

that, under colonial domination, the African countries found themselves in the same political, economic, social and cultural situation;

that cultural domination led to the depersonalization of part of the African peoples, falsified their history, systematically disparaged and combated African values, and tried to replace progressively and officially, their languages by that of the colonizer,

that colonization has encouraged the formation of an elite which is too often alienated from its culture and susceptible to assimilation and that a serious gap has been opened between the said elite and the African popular masses;

CONVINCED

that the unity of Africa is founded first and foremost on its History,
that the affirmation of cultural identity denotes a concern common to all peoples of Africa,

that African cultural diversity, the expression of a single identity, is a factor making for equilibrium and development in the service of national integration;

that it is imperative to edify educational systems which embody the African values of civilization, so as to ensure the rooting of youth in African culture and mobilize the social forces in the context of permanent education;

that it is imperative to resolutely ensure the promotion of African languages, mainstay, and media of cultural heritage in its most authentic and essentially popular form,

that it is imperative to carry out a systematic inventory of the cultural heritage, in particular in the spheres of Traditions, History and Arts;

GUIDED

by a common determination to strengthen understanding among our peoples and co-operation among our States in order to meet the aspirations of our peoples to see brotherhood and solidarity reinforced and integrated within a greater cultural unity which transcends ethnic and national divergences;

AWARE

that culture constitutes for our peoples the surest means of overcoming our technological backwardness and the most efficient force of our victorious resistance to imperialist blackmail;

CONVINCED

that African culture is meaningless unless it plays a full part in the political and social liberation struggle, and in the rehabilitation and unification efforts and that there is no limit to the cultural development of a people;

CONVINCED

that a common resolve provides the basis for promoting the harmonious cultural development of our States;

AGREE to establish the Cultural Charter for Africa as set out below.

PART I - AIMS, OBJECTIVES AND PRINCIPLES

Article 1

The aims and objectives of this Charter are as follows:—

- (a) to liberate the African peoples from socio-cultural conditions which impede their development in order to recreate and maintain the sense and will for progress, the sense and will for development;
- (b) the rehabilitation, restoration, preservation and promotion of the African cultural heritage;
- (c) the assertion of the dignity of the African and of the popular foundations of his culture;
- (d) the combating and elimination of all forms of alienation and cultural suppression and oppression everywhere in Africa, especially in countries still under colonial and racist domination including apartheid;
- (e) the encouragement of cultural co-operation among the States with a view to the strengthening of African unity;
- (f) the encouragement of international cultural co-operation for a better understanding among peoples within which Africa will make its original and appropriate contribution to human culture;
- (g) promotion in each country of popular knowledge of science and technology; a necessary condition for the control of nature;
- (h) development of all dynamic values in the African cultural heritage and rejection of any element which is an impediment to progress.

Article 2

In order to fulfill the objectives set out in Article 2, the African States solemnly subscribe to the following principles:—

- (a) access of all citizens to education and to culture;
- (b) respect for the freedom to create and the liberation of the creative genius of the people;
- (c) respect for national authenticities and specificities in the field of culture;
- (d) selective integration of science and modern technology into the cultural life of the African peoples;
- (e) exchange and dissemination of cultural experience between African countries, in the field of cultural decolonization in all its forms.

PART II - CULTURAL DIVERSITY AND NATIONAL IDENTITY

Article 3

The African States recognize the need to take account of national identities, cultural diversity being a factor making for balance within the nation and a source of mutual enrichment for various communities.

Article 4

The African States recognize that African cultural diversity is the expression of the same identity; a factor of unity and an effective weapon for genuine liberty, effective responsibility and full sovereignty of the people.

Article 5

The assertion of national identity must not be at the cost of impoverishing or subjecting various cultures within the State.

PART III - NATIONAL CULTURAL DEVELOPMENT

Chapter I – Basic principles governing a National Cultural Policy

Article 6

Each African State recognizes that it is the working people who make history and establish the foundations and conditions for the advancement of culture. As culture has an innovating and beneficial influence on the means of production and on man, each African State agrees:—

- (a) to work out a national cultural policy for each State. This policy should be designed as a codification of social practices and concerted activities whose aim is to satisfy cultural needs through the optimal utilization of all the available material and human resources;
- (b) to integrate the cultural development plan in the overall program for economic and social development;
- (c) that individual States shall be free to establish their priorities and select the methods they consider best suited for attaining their cultural development objectives and to that end individual States regard the following priorities and methods as guidelines;

1. PRIORITIES

- (a) the transcription, teaching and development of national languages with a view to using them for the dissemination and the development of science and technology;
- (b) the recording, conservation, use and dissemination of information on oral tradition;
- (c) the adaptation of educational curricula to development needs and to the National and African Cultural and Social realities;
- (d) the promotion of cultural activities, encouragement to artists and assistance to creativity in the people;
- (e) the protection of creative artists and cultural assets;
- (f) the development of research and the establishment of permanent research centres in the field of culture;
- (g) research, on the basis of modern science, in the field of local African medicine and pharmacopeia.

2. METHODS AND MEANS

- (a) the introduction of African Culture into all national educational systems;
- (b) the introduction and intensification of the teaching in national languages in order to accelerate the economic, social, political and cultural development in our States;
- (c) the establishment of appropriate institutions for the development, preservation and dissemination of culture;
- (d) the training of competent staff, at all levels;
- (e) the concrete and effective establishment of links between the school and the national realities as well as the life of the people, a link which should be apparent in the school curricula and structure;
- (f) the sensitization and exhortation of all citizens to ensure their willing participation in the field of culture;
- (g) the provision of a budget corresponding to the needs of culture and of research in the humanities, natural sciences and technology;
- (h) the financing of cultural programmes essentially out of national resources in order to implement certain cultural projects;
- (i) the organization of competitions offering prizes;
- (j) the organizational of national and pan-African cultural festivals, in the spirit of this Charter.

Chapter II – The Democratization of Culture

Article 7

The African States recognize that the driving force of Africa is based more on development of the collective personality than on individual advancement and profit, and that culture cannot be considered as the privilege of an elite.

Article 8

The African States agree to undertake the following:—

- (a) create conditions which will enable their peoples to participate to the full in the development and implementation of cultural policies;
- (b) defend and develop the peoples' culture;
- (c) implement a cultural policy providing for the advancement of creative artists;
- (d) to, whenever necessary, abolish the caste system and rehabilitate the functions of artist and craftsman (griots and craftsmen).

Chapter III – The Need for Active Participation by Youth in National Cultural Life

Article 9

Continuous cultural development in Africa rests with its young people. Therefore the African States should create conditions for the active and enlightened participation of young people in African cultural life.

Article 10

The African States shall endeavour to raise continually the cultural awareness of young people through the introduction of African cultural values into education and through the organization of national and Pan-African festivals, conferences, seminars and training and refresher courses.

Article 11

The cultural policies of the various States shall ensure that young African people also have the means of familiarizing themselves with the whole of African and other civilizations in order to prepare them for fruitful inter-cultural relations.

PART IV - TRAINING AND LIFE-LONG EDUCATION

Chapter V – Training

Article 12

Professional training is as important both for cultural development as for economic and social development. Consequently, the African States should devote themselves to creating conditions favoring large scale participation of culture by the African working class and peasant at the actual work-sites.

Article 13

To achieve the aim laid down in the preceding Article, States should adopt a training policy for specialists at all levels and in all fields.

Article 14

Professional training for creative artists should be improved, renewed and adapted to modern methods, without breaking the umbilical cord linking it with the traditional sources of African art. Hence, specialist training should be provided in national, regional and sub-regional training centers.

Chapter V – Life-long Education

Article 15

African governments will have to pay special attention to the growing importance of life-long education in modern societies.

Article 16

African governments should take steps to organize continuous training in a rational way and to establish an appropriate system of education which satisfied the specific needs of their people.

PART V - THE USE OF AFRICAN LANGUAGES

Article 17

The African States recognize the imperative need to develop African languages which will ensure their cultural advancement and accelerate their economic and social development and to this end will endeavor to formulate a national policy in regard to languages.

Article 18

The African States should prepare and implement the reforms necessary for the introduction of African languages into education. To this end each state may choose one or more languages.

Article 19

The introduction of African languages at all levels of education should have to go hand-in-hand with literacy work among the people at large.

PART VI - USE OF MASS MEDIA

Article 20

The African States should recognize that there can be no cultural policy without corresponding policies on information and communication.

Article 21

The African States should encourage the use of the information and communication media for their cultural development.

Article 22

- (a) The African Governments should ensure the total decolonization of the mass media and increase the production of radio and television broadcasts, cinematographic films which reflect the political, economic and social realities of the people in order to enable the masses to have greater access to and participation in the cultural riches.
- (b) African Governments should create publishing and distribution institutions for books, school manuals, records and instruments of the press in Africa to combat market speculators and make them into instruments of popular education.
- (c) African Governments should establish joint co-operation in order to break the monopoly of non-African countries in this field.

PART VII - THE ROLE OF GOVERNMENTS IN CULTURAL DEVELOPMENT

Chapter VI – Assistance to Artistic Creation

Article 23

African states should be active in promoting national cultural development through a policy of effective assistance both as regards collective methods of creation and in favor of individual artists.

Such assistance may take various forms:

- (a) Organization of competitions offering prizes and mobile exhibitions of works of art and artistic visits;
- (b) Fiscal assistance through a policy in which African cultural assets are exempted wholly or partly from tax;
- (c) Supporting artists, writers and research workers by providing financial assistance and scholarships for training or refresher courses;
- (d) The creation of National Fund for the promotion of culture and the Arts.

Chapter VII – The Protection of African Works

Article 24

African States should prepare inter-African convention on copyright so as to guarantee the protection of African Works. They should also intensify their efforts to modify existing international conventions to meet African interests.

Article 25

African governments should enact national and inter-African laws and regulations guaranteeing the protection of copyright, set up national copyright offices and encourage the establishment of authors' associations responsible for protecting the moral and material interests of those who produce work that gives spiritual and mental pleasure.

Chapter VII – Protection of the African Cultural Heritage

Article 26

The African cultural heritage must be protected on the legal and practical planes in the manner laid down in the international instruments in force and in conformity with the best standards applicable in this field.

Article 27

The African governments should have to adopt national laws and inter-African regulations governing the protection of cultural property in times of peace and in the event of war.

Article 28

The African States should take steps to put an end to the despoliation of African cultural property and ensure that cultural assets, in particular archives works of art and archeological objects, which have been removed from Africa, are returned there. To this end they should, in particular, support the efforts exerted by UNESCO and take all other necessary steps to ensure the implementation of the United Nations General Assembly resolution on the restitution of works of art removed from their country of origin.

Article 29

The African States should take steps to ensure that the archives which have been removed from Africa are returned to African governments in order that they may have complete archives concerning the history of their country.

PART VIII - INTER-AFRICAN CULTURAL CO-OPERATION**Article 30**

The African States acknowledge that it is vital to establish inter-African cultural co-operation as a contribution to the mutual understanding of national cultures and enrichment of African cultures, thus to take the form of a two-way exchange, firstly, among all the countries on the continent and, secondly, between Africa and the rest of the world through specialized institutions like UNESCO.

Article 31

To achieve the aims set out in the previous Article, the African States agree:

- (a) to consolidate their co-operation by way of joint cultural activities and periodical discussions of major issues;
- (b) to develop the exchange of information, documentation and cultural material by:
 - strengthening the Association of African Universities;
 - university and specialist exchange, in order that scientific cultural studies can develop in the research institutes;
 - exchange and meetings between young people;
 - the organization of joint cultural events such as festivals, symposia, sports and art exhibitions;
 - establishment of cultural research centres on national, regional and pan-African level;
 - creation of an Inter-African Fund for the support and promotion of cultural studies and programmes.
- (c) to endeavour to ensure that African cultural values are deployed to maximum effect in order to illustrate that all African States are members of one and the same community;
- (d) creation of Regional Specialized Institutions for the training of specialized cultural cadres.

Article 32

The African Cultural Council should function in close co-operation and consultation with the OAU Commission on Education, Science, Health and Culture in the field of cultural policies.

PART IX - FINAL PROVISIONS**Article 33: Signature and Ratification**

- (a) This Charter shall be open for signature to all Member States of the Organization of African Unity and shall be ratified by the signatory States in accordance with their respective constitutional processes.
- (b) The original instrument, done if possible in African languages and in English and French, all texts being equally authentic, shall be deposited with the Secretary General of the Organization of African Unity which shall transmit copies thereof to all OAU Member States.
- (c) Instruments of ratification shall be deposited with the OAU General Secretariat which shall notify all signatories of such deposit.

Article 34: Entry into force

This Charter shall come into force immediately upon receipt by the OAU General Secretariat of the instruments of ratification and adhesion from two-thirds of the total membership of the OAU.

Article 35: Registration of the Charter

This Charter shall, after due ratification, be registered with the Secretariat of the United Nations through the OAU General Secretariat in conformity with Article 102 of the Charter of the United Nations.

Article 36: Interpretation of the Charter

Any question which may arise concerning the interpretation of this Charter shall be resolved by decision of Assembly of Heads of State and Government of the OAU.

Article 37: Adhesion and Accession

- (a) Any OAU Member State may at any time notify the General Secretariat of the OAU of its intention to adhere or accede to this Charter.
- (b) The General Secretariat shall, on receipt of such notification, communicate a copy of it to all the Member States. Adhesion and accession shall take effect fourteen days after communication of the applicant's notice, to all Member States by the General Secretariat of the OAU.

PART 6

SADC Human Rights Conventions ratified by Namibia

- **SADC Declaration on Poverty Eradication and Sustainable Development**

SADC DECLARATION ON POVERTY ERADICATION AND SUSTAINABLE DEVELOPMENT

PREAMBLE

We, the Heads of State and/or Government or our duly authorised Representatives of:

The Republic of Angola
The Republic of Botswana
The Democratic Republic of Congo
The Kingdom of Lesotho
The Republic of Madagascar
The Republic of Malawi
The Republic of Mauritius
The Republic of Mozambique
The Republic of Namibia
The Republic of South Africa
The Kingdom of Swaziland
The United Republic of Tanzania
The Republic of Zambia
The Republic of Zimbabwe

In attendance: the President of the Federal Islamic Republic of Comoros, the Prime Minister of Norway, the Vice President of the Republic of Seychelles, the Representative of the President of the Federal Republic of Brazil, the President of the African Development Bank, the Secretary General of the Commonwealth and the European Commissioner for Development Aid.

RECALLING that the objectives of the Southern African Development Community (SADC) are, among others, to:

- (i) Promote sustainable and equitable economic growth and socio-economic development that will ensure poverty alleviation with the ultimate objective of its eradication;
- (ii) Enhance the standard and quality of life of the people of SADC and support the socially disadvantaged through regional integration;
- (iii) Mainstream gender in the process of community and nation building;

NOTING that despite enormous efforts that SADC Member States have undertaken to achieve sustainable economic and social development, on average over 40 percent of the SADC population continues to live in abject poverty;

RECOGNISING that in addition to diseases, underdevelopment, deficient economic structures, gender inequalities, inadequate capital and skills and marginalisation from the world economy, there are new developments that are further frustrating efforts to combat poverty in particular surging food and energy prices, diverting food into energy production as well as climatic upheavals;

REAFFIRMING our commitment to the achievement of key international development goals aimed at sustainable social and economic development including the Millennium Development Goals (MDGs);

FURTHER reaffirming our commitment to the roadmap for the creation of a common market;

REAFFIRMING our commitment to the SADC Declaration on Gender and Development of 1997, the SADC Maseru Declaration of 2003 on HIV and AIDS, the 2004 Dar-es-Salaam Declaration on Agriculture and Food Security in the SADC Region;

HEREBY

REITERATE our commitment to combating and eradicating poverty in all its manifestations and dimensions as a matter of utmost urgency, through regional cooperation and integration, sound political and economic governance, the pursuit of appropriate trade and growth policies and gainful participation in the world economy and in that regard recommit to mobilise the necessary resources;

ENCOURAGE all SADC Member States to fully implement their strategies aimed at poverty eradication in pursuance of our commitment to the Regional Indicative Strategic Development Plan (RISDP) and the Strategic Indicative Plan of the Organ (SIPO) as the SADC long-term strategy for deepening regional integration to contribute to the acceleration of economic growth, poverty eradication and the achievement of a sustainable pattern of economic growth as well as meaningful participation in the world economy;

THEREFORE:

1. **DECLARE** the following as priority areas requiring our urgent attention at the regional level in view of the new challenges;
 - (i) Achieving food security in a situation of growing global food shortages;
 - (ii) Addressing the adverse impact of climate change in the fight against poverty;
 - (iii) Increasing capacity in power generation and transmission as well as secure greater use of renewable and alternative sources of energy;
 - (iv) Achieving higher economic growth through accelerated regional integration, pro-poor trade liberalisation and economic development;
 - (v) Developing and sustaining human capabilities through increased access of the population to quality and appropriate education, training, welfare and social development, nutrition, health, and sporting services as well as information in all Member States; and
 - (vi) Accelerating development, rehabilitation and maintenance of Infrastructure for Regional Integration.
2. **To address these priorities, we RESOLVE TO:**
 - (i) achieve food security by setting up a Task Force of Ministers of Trade, Agriculture and Finance to encourage regional collaboration and by sustainably improving the production capacity and productivity, facilitating cross border and internal food flows based on improved infrastructure and distribution networks;
 - (ii) mandate the Task Force to immediately focus on the current food crisis;
 - (iii) promote financial sector development including micro finance and develop small and medium enterprises with particular emphasis on gender;
 - (iv) promote relevant education and skills development at all levels in order to ensure higher general efficiency, productivity and boosting the required innovative processes by, amongst others, bridging the digital divide;
 - (v) ensure wide access to health services including primary health care and step up efforts to combat HIV and AIDS and other diseases;
 - (vi) achieve resilience against the impact of climate change by preparing and implementing nation and regional adaptation and mitigation plans;
 - (vii) accelerate implementation of regional integration including intra-regional trade liberalisation, cross border investment and value addition by improving the business and investment climate;
 - (viii) enhance, expand and upgrade infrastructure with emphasis on labour intensive methods and Public Private Partnerships; and
 - (ix) strengthen our partnerships with the private sector and civil society at large to mobilise financial and technical resources to combat poverty at its roots.
3. **We further RESOLVE TO:**
 - (i) work towards the establishment of a Regional Poverty Observatory to monitor progress made in the implementation of actions in the main priority areas of poverty eradication; and
 - (ii) acquire and develop adequate capacity both at the SADC Secretariat and at Member States level to ensure effective implementation of poverty eradication programmes.
4. **We also RESOLVE TO:**
 - (i) Continue negotiations for resources under "Aid for Trade";
 - (ii) Set up the required framework for the rapid operationalisation of the SADC Development Fund to implement regional projects linked mainly to promote trade and infrastructure development;
 - (iii) Encourage partnerships with civil society organisations and community leaders in poverty reduction programmes; and
 - (iv) Urge the international cooperating partners to assist and provide predictable, additional and dedicated resources and encourage Foreign Direct Investments in the SADC Region in order to achieve key international development goals including the MDGs by substantially increasing their financial and technical assistance, reducing unnecessary procedural impediments and supporting reform programmes at country and regional level as well as through effective implementation of the existing initiatives and commitments.

IN WITNESS WHEREOF, WE, the Heads of State and/or Government, and the duly authorized Representatives have signed this Declaration.

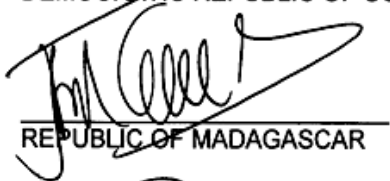
Done at Pailles, Republic of Mauritius, this 20th day of April 2008, in three (3) original texts in the English, French and Portuguese languages, all texts being equally authentic.


 REPUBLIC OF ANGOLA


 REPUBLIC OF BOTSWANA

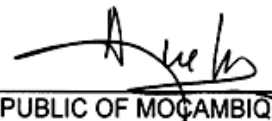

 DEMOCRATIC REPUBLIC OF CONGO

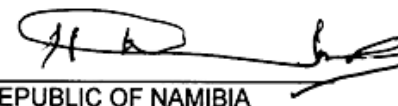

 KINGDOM OF LESOTHO


 REPUBLIC OF MADAGASCAR

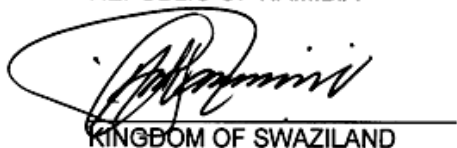

 REPUBLIC OF MALAWI


 REPUBLIC OF MAURITIUS

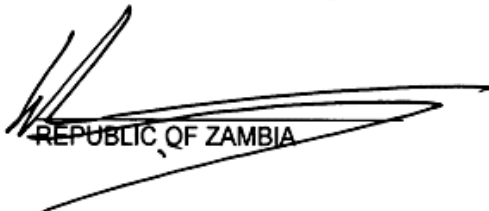

 REPUBLIC OF MOZAMBIQUE



 REPUBLIC OF NAMIBIA


 REPUBLIC OF SOUTH AFRICA


 KINGDOM OF SWAZILAND


 UNITED REPUBLIC OF TANZANIA


 REPUBLIC OF ZAMBIA


 REPUBLIC OF ZIMBABWE

PART 6

SADC Human Rights Conventions ratified by Namibia

- **SADC Protocol on Gender and Development**

SADC PROTOCOL ON GENDER AND DEVELOPMENT

PREAMBLE

We, the Heads of State or Government of:

The Republic of Angola
 The Republic of Botswana
 The Democratic Republic of Congo
 The Kingdom of Lesotho
 The Republic of Madagascar
 The Republic of Malawi
 The Republic of Mauritius
 The Republic of Mocambique
 The Republic of Namibia
 The Republic of South Africa
 The Kingdom of Swaziland
 The United Republic of Tanzania
 The Republic of Zambia
 The Republic of Zimbabwe

CONVINCED that the integration and mainstreaming of gender issues into the Southern African Development Community (SADC) Programme of Action and Community Building Initiatives is key to the sustainable development of the SADC region;

NOTING that Member States undertook, in the SADC Treaty (Article 6(2)), not to discriminate against any person on the grounds of, inter alia, sex or gender;

NOTING further that all SADC Member States are convinced that gender equality and equity is a fundamental human right and are committed to gender equality and equity and have signed and ratified or acceded to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women;

RECALLING that Member States reaffirmed their commitment to the Nairobi Forward Looking Strategies (1985); Convention on the Rights of the Child (1989); the Africa Platform of Action; the Beijing Declaration and its Platform for Action (1995); and United Nations Resolution 1325 on Women, Peace and Security (2000); and resolved, through the SADC Declaration on Gender and Development (1997) and its Addendum on the Prevention and Eradication of Violence Against Women and Children (1998); to ensure the elimination of all gender inequalities in the region and the promotion of the full and equal enjoyment of rights;

TAKING COGNISANCE of the decision on gender parity taken at the inaugural session of the African Union Assembly of Heads of State and Government in July 2002 in Durban, South Africa, and the adoption of the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa during the Second Ordinary Session of the Assembly of the African Union in Maputo, Mozambique in 2003;

RECOGNISING that Member States are obliged to meet their commitments and set targets under the said instruments, and that the fragile gains made face new threats as a result of, inter alia, HIV and AIDS, globalisation, human trafficking, especially of women and children, the feminisation of poverty, and gender based violence;

RECOGNISING further that social, cultural and religious practices, attitudes and mindsets continue to militate against the attainment of gender equality and equity which are central to democracy and development;

RECALLING that Article 26 of the SADC Addendum on the Prevention and Eradication of Violence Against Women and Children recognises that urgent consideration must be given to the adoption of legally binding SADC instruments;

DETERMINED to consolidate and create synergy between the various commitments on gender equality and equity made at regional, continental and international levels into one comprehensive regional instrument that enhances the capacity to report effectively on all instruments and also addresses new challenges; and

COMMITTED to drawing up a plan of action setting specific targets and timeframes for achieving gender equality and equity in all areas, as well as effective monitoring and evaluation mechanisms for measuring progress.

HEREBY AGREED as follows:

PART ONE

DEFINITIONS, GENERAL PRINCIPLES AND OBJECTIVES

ARTICLE 1

DEFINITIONS

1. In this Protocol, terms and expressions defined in Article 1 of the Treaty establishing SADC shall bear the same meaning unless the context otherwise requires.
2. In this Protocol, unless the context otherwise requires.

“affirmative action”	means a policy programme or measure that seeks to redress past discrimination through active measures to ensure equal opportunity and positive outcomes in all spheres of life;
“AIDS”	means Acquired Immune Deficiency Syndrome;
“child”	means every human being below the age of eighteen;
“care-giver”	means any person who provides emotional, psychological, physical, economic, spiritual or social care and support services to another;
“discrimination”	means any distinction, exclusion or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise, by any person of human rights, and fundamental freedoms in the political, economic, social, cultural, civil or any other field;
“gender”	means the roles, duties and responsibilities which are culturally or socially ascribed to women, men, girls and boys;
“equality”	means state of being equal in terms of enjoyment of rights, treatment, quantity or value, access to opportunities and outcomes, including resources;
“gender based violence”	means all acts perpetrated against women, men, girls and boys on the basis of their sex which cause or could cause them physical, sexual, psychological, emotional or 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 or other forms of conflict;
“gender equality”	means the equal enjoyment of rights and the access to opportunities and outcomes, including resources, by women, men, girls and boys;
“gender equity”	means the just and fair distribution of benefits, rewards and opportunities between women, men, girls and boys;
“gender mainstreaming”	means the process of identifying gender gaps and making women’s, men’s, girls’ and boys’ concerns and experiences integral to the design, implementation, monitoring and evaluation of policies and programmes in all spheres so that they benefit equally;
“gender stereotypes”	means the beliefs held about characteristics, traits and activity domains that are deemed appropriate for women, men, girls and boys based on their conventional roles both domestically and socially;
“gender sensitive”	means acknowledging and taking into account the specific gender needs of both men and women at all levels of planning, implementation, monitoring and evaluation;

“health”	means complete state of physical, mental, spiritual and social well-being of an individual and not merely the absence of disease or infirmity;
“HIV”	means Human Immunodeficiency Virus;
“Human trafficking”	means the recruitment, transportation, harbouring or receipt of persons, by means of threat, abuse of power, position of vulnerability, force or other forms of coercion, abduction, fraud or deception to achieve the consent of a person having control over another person for the purpose of amongst other things, sexual and financial exploitation;
“informal sector”	means the portion of a country’s economy that lies outside of any formal regulatory environment;
“multiple roles of women”	means the several responsibilities that women shoulder in the reproductive, productive and community management spheres;
“National Gender Machineries”	means national structures with the mandate of executing and monitoring gender and related policies and programmes in line with national, regional and international commitments;
“quasi-judicial proceedings”	means administrative proceedings that are undertaken for the settlement of specific rights or obligations which may require discretion and decision and which may be the subject to notice and hearing requirements and judicial review;
“sex”	means the biological differences between females and males;
“sexual harassment”	means any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another whether or not such sexual advance or request arises out of unequal power relations;
“sexual and reproductive rights”	means the universal human rights relating to sexuality and reproduction, sexual integrity and safety of the person, the right to sexual privacy, the right to make free and responsible reproductive choices, the right to sexual information based on scientific enquiry, and the right to sexual and reproductive health care; and
“social safety nets”	means the measures taken or applied to mitigate the effects of poverty, gender based violence and other social ills; and
“State Party”	means a Member State that is a Party to this Protocol.

ARTICLE 2

GENERAL PRINCIPLES

- For the purposes of this Protocol, the following principles shall apply:
 - 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;
 - State Parties shall decide all matters relating to the implementation of this Protocol by consensus; and
 - States Parties shall cooperate in facilitating the development of human, technical and financial capacity for the implementation of this Protocol.
- State Parties shall adopt the necessary policies, strategies and programmes such as affirmative action to facilitate the implementation of this 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.

ARTICLE 3**OBJECTIVES**

The objectives of this 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 harmonise 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;
- (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.

PART TWO**CONSTITUTIONAL AND LEGAL RIGHTS****ARTICLE 4****CONSTITUTIONAL RIGHTS**

1. States Parties shall endeavour, by 2015, to enshrine gender equality and equity in their Constitutions and ensure that these rights are not compromised by any provisions, laws or practices.
2. States Parties shall 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.

ARTICLE 5**AFFIRMATIVE ACTION**

States Parties shall put in place affirmative action measures with particular reference to women in order to eliminate all barriers which prevent them from participating meaningfully in all spheres of life and create a conducive environment for such participation.

ARTICLE 6**DOMESTIC LEGISLATION**

1. States Parties shall review, amend and or repeal all laws that discriminate on the ground of sex or gender by 2015.
2. States Parties shall enact and enforce legislative and other measures to:
 - (a) ensure equal access to justice and protection before the law;
 - (b) abolish the minority status of women by 2015;
 - (c) eliminate practices which are detrimental to the achievement of the rights of women by prohibiting such practices and attaching deterrent sanctions thereto; to
 - (d) eliminate gender based violence.

ARTICLE 7**EQUALITY IN ACCESSING JUSTICE**

States Parties shall put in place legislative and other measures which promote and ensure the practical realization of equality for women. These measures shall ensure:

- (a) equality in the treatment of women in judicial and quasi-judicial proceedings, or similar proceedings, including customary and traditional courts, and national reconciliation processes;
- (b) equal legal status and capacity in civil and customary law, including, amongst other things, full contractual rights, the right to acquire and hold rights in property, the right to equal inheritance and the right to secure credit;
- (c) the encouragement of all public and private institutions to enable women to exercise their legal capacity;
- (d) that positive and practical measures are taken to ensure equality for women complainants in the criminal justice system;
- (e) the provision of educational programmes to address gender bias and stereotypes and promote equality for women in the legal system;

- (f) that women have equitable representation on, and participation in, all courts including traditional courts, alternative dispute resolution mechanisms and local community courts; and
- (g) accessible and affordable legal services for women.

ARTICLE 8

MARRIAGE AND FAMILY RIGHTS

1. States Parties shall 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.
2. 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.
3. States Parties shall enact and adopt appropriate legislative and other measures to ensure that where spouses separate, divorce or have their marriage annulled:
 - (a) they shall have reciprocal rights and duties towards their children with the best interests of the children always being paramount; and
 - (b) they shall, subject to the choice of any marriage regime or marriage contract, have equitable share of property acquired during their relationship.
4. States Parties shall put in place legislative and other measures to ensure that parents honour their duty of care towards their children, and maintenance orders are enforced.
5. States Parties shall put in place legislative provisions which ensure that married women and men have the right to choose whether to retain their nationality or acquire their spouse's nationality.

ARTICLE 9

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.

ARTICLE 10

WIDOWS' AND WIDOWERS' RIGHTS

1. States Parties shall enact and enforce legislation to ensure that:
 - (a) widows are not subjected to inhuman, humiliating or degrading treatment;
 - (b) a widow automatically becomes the guardian and custodian of her children when her husband dies, unless otherwise determined by a competent court of law;
 - (c) a widow shall have the right to continue to live in the matrimonial house after her husband's death;
 - (d) a widow shall have access to employment and other opportunities to enable her to make a meaningful contribution to society;
 - (e) a widow shall have the right to an equitable share in the inheritance of the property of her husband;
 - (f) a widow shall have the right to remarry any person of her choice; and
 - (g) a widow shall have protection against all forms of violence and discrimination based on her status.
2. States Parties shall put in place legislative measure to ensure that widowers enjoy the same rights as widows under sub-Article 1.

ARTICLE 11

THE GIRL AND BOY CHILD

1. States Parties shall 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.

2. States Parties shall put in place legislative and other measures to ensure that the boy child enjoys the same rights as the girl child under sub-Article 1.

PART THREE GOVERNANCE

ARTICLE 12 REPRESENTATION

1. States Parties shall endeavour that, by 2015, at least fifty percent of decision-making positions in the public and private sectors are held by women including the use of affirmative action measures as provided for in Article 5.
2. States Parties shall ensure that all legislative and other measures are accompanied by public awareness campaigns which demonstrate the vital link between the equal representation and participation of women and men in decision making positions, democracy, good governance and citizen participation.

ARTICLE 13 PARTICIPATION

1. States Parties shall adopt specific legislative measures and other strategies to enable women to have equal opportunities with men to participate in all electoral processes including the administration of elections and voting.
2. States Parties shall ensure the equal participation of women and men in decision making by putting in place policies, strategies and programmes for:
 - (a) building the capacity of women to participate effectively through leadership and gender sensitivity training and mentoring;
 - (b) providing support structures for women in decision-making positions;
 - (c) the establishment and strengthening of structures to enhance gender mainstreaming; and
 - (d) changing discriminatory attitudes and norms of decision making structures and procedures.
3. State Parties shall ensure the inclusion of men in all gender related activities, including gender training and community mobilisation.

PART FOUR EDUCATION AND TRAINING

ARTICLE 14 GENDER EQUALITY IN EDUCATION

1. States Parties shall, by 2015, enact laws that promote equal access to and retention in primary, secondary, tertiary, vocational and no-formal education in accordance with the Protocol on Education and Training and the Millennium Development Goals.
2. States Parties shall by 2015 adopt and implement gender sensitive educational policies and programmes addressing gender stereotypes in education and gender based violence, amongst others.

PART FIVE PRODUCTIVE RESOURCES AND EMPLOYMENT

ARTICLE 15 ECONOMIC POLICIES AND DECISION MAKING

1. States Parties shall, by 2015, ensure equal participation, of women and men, in policy formulation and implementation of economic policies.
2. States Parties shall ensure gender sensitive and responsive budgeting at the micro and macro levels, including tracking, monitoring and evaluation.

ARTICLE 16 MULTIPLE ROLES OF WOMEN

States Parties shall conduct time use studies by 2015 and adopt policy measures to ease the burden of the multiple roles played by women.

ARTICLE 17**ECONOMIC EMPOWERMENT**

1. States Parties shall, by 2015, adopt policies and enact laws which ensure equal access, benefit and opportunities for women and men in trade and entrepreneurship, taking into account the contribution of women in the formal and informal sectors.
2. States Parties shall, by 2015, review their national trade and entrepreneurship policies, to make them gender responsive.
3. States Parties shall, by 2015, and with regard to the affirmative action provisions in Article 5, introduce measures to ensure that women benefit equally from economic opportunities, including those created through public procurement processes.

ARTICLE 18**ACCESS TO PROPERTY AND RESOURCES**

States Parties shall, by 2015, review all policies and laws that determine access to, control of, and benefit from, productive resources by women in order to:

- (a) end all discrimination against women and girls with regard to water rights and property such as land and tenure thereof;
- (b) ensure that women have equal access and rights to credit, capital, mortgages, security and training as men; and
- (c) ensure that women and men have access to modern, appropriate and affordable technology and support services.

ARTICLE 19**EQUAL ACCESS TO EMPLOYMENT AND BENEFITS**

1. States Parties shall, by 2015 review, amend and enact laws and policies that ensure women and men have equal access to wage employment in all sectors of the economy.
2. State Parties shall review, adopt and implement legislative, administrative and other appropriate measures to ensure:
 - (a) equal pay for equal work and equal remuneration for jobs of equal value for women and men;
 - (b) the eradication of occupational segregation and all forms of employment discrimination;
 - (c) the recognition of the economic value of, and protection of, persons engaged in agricultural and domestic work; and
 - (d) the appropriate minimum remuneration of persons engaged in agricultural and domestic work.
3. States Parties shall enact and enforce legislative measures prohibiting the dismissal or denial of recruitment on the grounds of pregnancy or maternity leave.
4. States Parties shall provide protection and benefits for women and men during maternity and paternity leave.
5. States Parties shall ensure that women and men receive equal employment benefits, irrespective of their marital status including on retirement.

PART SIX**GENDER BASED VIOLENCE****ARTICLE 20****LEGAL**

1. States Parties shall:
 - (a) by 2015, enact and enforce legislation prohibiting all forms of gender based violence; and
 - (b) ensure that perpetrators of gender based violence, including domestic violence, rape, femicide, sexual harassment, female genital mutilation and all other forms of gender based violence are tried by a court of competent jurisdiction.
2. States Parties shall, by 2015 ensure that laws on gender based violence provide for the comprehensive testing, treatment and care of survivors of sexual offences, which shall include:
 - (a) emergency contraception;
 - (b) ready access to post exposure prophylaxis at all health facilities to reduce the risk of contracting HIV; and
 - (c) preventing the onset of sexually transmitted infections.
3. States Parties shall, by 2015, review and reform their criminal laws and procedures applicable to cases of sexual offences and gender based violence to:
 - (a) eliminate gender bias; and
 - (b) ensure justice and fairness are accorded to survivors of gender based violence in a manner that ensures dignity, protection and respect.
4. States Parties shall put in place mechanisms for the social and psychological rehabilitation of perpetrators of gender based violence.

5. States Parties shall, by 2015.
 - (a) enact and adopt specific legislative provisions to prevent human trafficking and provide holistic services to survivors, with the aim of re-integrating them into society;
 - (b) put in place mechanisms by which all relevant law enforcement authorities and institutions may eradicate national, regional and international human trafficking networks;
 - (c) put in place harmonised data collection mechanisms to improve data collection and reporting on the types and modes of trafficking to ensure effective programming and monitoring;
 - (d) establish bilateral and multilateral agreements to run joint actions against human trafficking among countries of origin, transit and destination countries; and
 - (e) ensure capacity building, awareness raising and sensitisation campaigns on human trafficking are put in place for law enforcement officials all parties.
6. States Parties shall ensure that cases of gender based violence are conducted in a gender sensitive environment.
7. States Parties shall establish special counselling services, legal and police units to provide dedicated and sensitive services to survivors of gender based violence.

ARTICLE 21

SOCIAL, ECONOMIC, CULTURAL AND POLITICAL PRACTICES

1. States Parties shall take measures including legislation, where appropriate, to discourage traditional norms, including social, economic, cultural and political practices which legitimise and exacerbate the persistence and tolerance of gender based violence with a view to eliminate them.
2. State Parties shall, in all sectors of society, introduce and support gender sensitisation and public awareness programmes aimed at changing behaviour and eradicating gender based violence.

ARTICLE 22

SEXUAL HARASSMENT

1. States parties shall, by 2015, enact legislative provisions, and adopt and implement policies, strategies and programmes which define and prohibit sexual harassment in all spheres, and provide deterrent sanctions for perpetrators of sexual harassment.
2. States Parties shall ensure equal representation of women and men in adjudicating bodies hearing sexual harassment cases.

ARTICLE 23

SUPPORT SERVICES

1. States Parties shall provide accessible information on services available to survivors of gender bases violence.
2. States Parties shall ensure accessible, effective and responsive police, prosecutorial, health, social welfare and other services to redress cases of gender based violence.
3. States Parties shall provide accessible, affordable and specialised legal services, including legal aid, to survivors of gender based violence.
4. States Parties shall provide specialised facilities, including support mechanisms for survivors of gender based violence.
5. States Parties shall provide effective rehabilitation and re-integration programmes for perpetrators of gender based violence.

ARTICLE 24

TRAINING OF SERVICE PROVIDERS

States Parties shall introduce, promote and provide:

- (a) gender education and training to service providers involved in gender based violence including the police, the judiciary, health and social workers;
- (b) community sensitisation programmes regarding available services and resources for survivors of gender based violence; and
- (c) training for all service providers to enable them to offer services to people with special needs.

ARTICLE 25

INTEGRATED APPROACHES

States Parties shall adopt integrated approaches, including institutional cross sector structures, with the aim of reducing current levels of gender based violence, by half by 2015.

PART SEVEN

HEALTH AND HIV AND AIDS

ARTICLE 26

HEALTH

States Parties shall, by 2015, in line with the SADC Protocol on Health and other regional and international commitments by Member States on issues relating to health, adopt and implement legislative frameworks, policies, programmes and services to enhance gender sensitive, appropriate and affordable quality health care, in particular, to:

- (a) reduce the maternal mortality ration by 75% by 2015;
- (b) develop and implement policies and programmes to address the mental, sexual and reproductive health needs of women and men; and
- (c) ensure the provision of hygiene and sanitary facilities and nutritional needs of women, including women in prison.

ARTICLE 27

HIV AND AIDS

1. States Parties shall take every step necessary to adopt and implement gender sensitive policies and programmes, and enact legislation, that will address prevention, treatment, care and support in accordance with, but not limited to, the Maseru Declaration on HIV and AIDS.
2. States Parties shall ensure that the policies and programmes referred to in sub-Article 1 take account of the unequal status of women, the particular vulnerability of the girl child as well as harmful practices and biological factors that result in women constituting the majority of those infected and affected by HIV and AIDS.
3. States Parties shall, by 2015.
 - (a) develop gender sensitive strategies to prevent new infections;
 - (b) ensure universal access to HIV and AIDS treatment for infected women, men, girls and boys; and
 - (c) develop and implement policies and programmes to ensure appropriate recognition of the work carried out by care givers, the majority of whom are women, the allocation of resources and the psychological support for care-givers as well as promote the involvement of men in the care and support of people living with HIV and AIDS

PART EIGHT

PEACE BUILDING AND CONFLICT RESOLUTION

ARTICLE 28

PEACE BUILDING AND CONFLICT RESOLUTION

1. States Parties shall endeavour to put in place measures to ensure that women have equal representation and participation in key decision-making positions in conflict resolution and peace building processes by 2015 in accordance with United Nations Security Council Resolution 1325 on Women, Peace and Security.
2. States Parties shall, during times of armed and other forms of conflict take such steps as are necessary to prevent and eliminate incidences of human rights abuses, especially of women and children, and ensure that the perpetrators of such abuses are brought to justice before a court of competent jurisdiction.

PART NINE

MEDIA, INFORMATION AND COMMUNICATION

ARTICLE 29

GENERAL PRINCIPLES

1. States Parties shall ensure that gender is mainstreamed in all information, communication and media policies, programmes, laws and training in accordance with the Protocol on Culture, Information and Sport and other regional and international commitments by Member States on issues relating to media, information and communication.
2. States Parties shall encourage the media and media-related bodies to mainstream gender in their codes of conduct, policies and procedures, and adopt and implement gender aware ethical principles, codes of practice and policies in accordance with the Protocol on Culture, Information and Sport.
3. States Parties shall take measures to promote the equal representation of women in the ownership of, and decision making structures of the media, in accordance with Article 12.1 that provides for equal representation of women in decision making positions by 2015.

ARTICLE 30**GENDER IN MEDIA CONTENT**

1. States Parties shall take measures to discourage the media from:
 - (a) promoting pornography and violence against all persons, especially women and children;
 - (b) depicting women as helpless victims of violence and abuse;
 - (c) degrading or exploiting women, especially in the area of entertainment and advertising, and undermining their role and position in society; and
 - (d) reinforcing gender oppression and stereotypes.
2. States Parties shall encourage the media to give equal voice women and men in all areas of coverage, including increasing the number of programmes for, by and about women on gender specific topics and that challenge gender stereotypes.
3. States Parties shall take appropriate measures to encourage the media to play a constructive role in the eradication of gender based violence by adopting guidelines which ensure gender sensitive coverage.

ARTICLE 31**UNIVERSAL ACCESS TO INFORMATION, COMMUNICATION AND TECHNOLOGY**

States Parties shall put in place information and communication technology policies and laws in the social, economic and political development arena for women's empowerment, regardless of race, age, religion, or class. These policies and laws shall include specific targets developed through an open and participatory process, in order to ensure women's and girl's access to information and communication technology.

PART TEN**FINAL PROVISIONS****ARTICLE 32****REMEDIES**

States Parties shall:

- (a) provide appropriate remedies in their legislation to any person whose rights or freedoms have been violated on the basis of gender; and
- (b) ensure that remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided by law.

ARTICLE 33**FINANCIAL PROVISIONS**

1. States Parties shall ensure gender sensitive budgets and planning, including designating the necessary resources towards initiatives aimed at empowering women and girls.
2. States Parties shall mobilise and allocate the necessary human, technical and financial resources for the successful implementation of this Protocol.

ARTICLE 34**INSTITUTIONAL ARRANGEMENTS**

1. The institutional mechanisms for the implementation of this Protocol shall comprise the:
 - (a) Committee of Ministers Responsible for Gender/Women's Affairs;
 - (b) Committee of Senior Officials Responsible for Gender/Women's Affairs; and
 - (c) SADC Secretariat.
2. The Committee of Ministers responsible for Gender/Women's Affairs shall:
 - (a) ensure the implementation of this Protocol; and
 - (b) supervise the work of any committee or sub-committee established under this Protocol.
3. The Committee of Senior Officials shall:
 - (a) report to the Committee of Ministers on matters relating to the implementation of the provisions contained in this Protocol;
 - (b) supervise the work of the secretariat;
 - (c) clear the documents prepared by the Secretariat to be submitted to the Committee of Ministers;
 - (d) invite the Secretariat to make presentations on gender and development to the Committee of Ministers, as and when necessary; and
 - (e) liaise closely with both the Committee of Ministers and the Secretariat.
4. The SADC Secretariat shall:
 - (a) facilitate and monitor reporting by States Parties on the implementation of the Protocol;

- (b) coordinate the implementation of this Protocol;
- (c) identify research needs and priorities in gender/women's affairs areas; and
- (d) provide technical and administrative assistance to the Committee of Ministers and the Committee of Senior Officials.

ARTICLE 35

IMPLEMENTATION, MONITORING AND EVALUATION

1. States Parties shall ensure the implementation of this Protocol at the national level.
2. States Parties shall ensure that national action plans, with measurable time frames, are put in place, and that national and regional monitoring and evaluation mechanisms are developed and implemented.
3. States Parties shall collect and analyse baseline data against which progress in achieving targets will be monitored.
4. States Parties shall submit reports to the Executive Secretary of SADC once every two years, indicating the progress achieved in the implementation of the measures agreed to in this Protocol.
5. The Executive Secretary of SADC shall submit the progress reports to Council and Summit for considerations.

ARTICLE 36

SETTLEMENT OF DISPUTES

1. States Parties shall strive to resolve any dispute regarding application, interpretation or implementation of the provisions of this Protocol amicably.
2. Any dispute arising from the application, interpretation or implementation of this Protocol, which cannot be settled amicably, shall be referred to the SADC Tribunal, in accordance with Article 16 of the Treaty.

ARTICLE 37

WITHDRAWAL

1. A State Party may withdraw from this Protocol upon the expiration of twelve (12) months from the date of giving written notice to that effect to the Executive Secretary.
2. Such State Party shall cease to enjoy all rights and benefits under this Protocol upon the withdrawal becoming effective, but shall remain bound by the obligations under this Protocol for a period of twelve (12) months from the date of notice.

ARTICLE 38

AMENDMENTS

1. A proposal for the amendment of this Protocol shall be submitted to the Executive Secretary of SADC by any State Party that is party to the Protocol.
2. The Executive Secretary of SADC shall submit a proposal for amendment of the Protocol to Council after:
 - (a) all Member States that are parties to the Protocol have been notified of the proposal; and
 - (b) thirty days have elapsed since notification to the Member States that are parties to the Protocol.
3. An amendment to this Protocol shall be adopted by a decision of three-quarters of the Member States that are Parties to the Protocol.

ARTICLE 39

SIGNATURE

This Protocol shall be signed by the duly authorised representatives of Member States.

ARTICLE 40

RATIFICATION

This Protocol shall be ratified by the Signatory States in accordance with their constitutional procedures.

ARTICLE 41

ENTRY INTO FORCE

This Protocol shall enter into force thirty (30) days after the deposit of the Instruments of Ratification by two-thirds of the Member States.

ARTICLE 42

ACCESSION

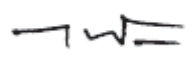
This Protocol shall remain open for accession by any Member State.

ARTICLE 43**DEPOSITARY**

1. The original texts of this Protocol and all Instruments of Ratification and Accession shall be deposited with the Executive Secretary of SADC, who shall transmit certified copies to all Member States.
2. The Executive Secretary of SADC shall notify the Member States of the dates on which Instruments of Ratification and Accession have been deposited under paragraph 1.
3. The Executive Secretary of SADC shall register the Protocol with the Secretariat of the United Nations, the Commission of the African Union and such other organisation as the Council may determine.

IN WITNESS WHEREOF, WE, the Heads of State or Government or duly Authorised Representatives of SADC Member states have signed this Protocol.

Done at this day of 2008 in three (3) original texts in the English, French and Portuguese languages, all texts being equally authentic.



 Republic of Angola



 Democratic Republic of Congo




 Republic of Madagascar


 Republic of Mauritius




 Republic of Namibia



 Kingdom of Swaziland




 Republic of Zambia



 Republic of Botswana



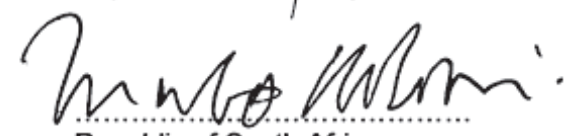
 Kingdom of Lesotho



 Republic of Malawi



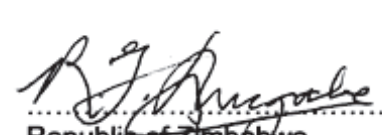
 Republic of Mozambique



 Republic of South Africa



 United Republic of Tanzania



 Republic of Zimbabwe



 Republic of Botswana

PART 6

SADC Human Rights Conventions ratified by Namibia

- **SADC Charter of Fundamental Social Rights**

SADC CHARTER OF FUNDAMENTAL SOCIAL RIGHTS

PREAMBLE

WE, the Heads of State or Government of:

The Republic of Angola
 The Republic of Botswana
 The Democratic Republic of Congo
 The Kingdom of Lesotho
 The Republic of Malawi
 The Republic of Mozambique
 The Republic of Namibia
 The Republic of Seychelles
 The Republic of South Africa
 The Kingdom of Swaziland
 The United Republic of Tanzania
 The Republic of Zambia
 The Republic of Zimbabwe

RECALLING the objectives of SADC as spelt out in article 5 of the Treaty;

FURTHER RECALLING that the SADC Council of Ministers approved the main objectives of the SADC Employment and Labour Sector;

NOW THEREFORE, SADC hereby adopts the following Charter:

ARTICLE 1

DEFINITIONS

1. In this Charter, terms and expressions defined in article 1 of the Treaty establishing SADC shall bear the same meaning unless the context otherwise requires.
2. In this Charter, unless the context otherwise requires:

“Charter”	means this Charter of Fundamental Social Rights in SADC;
“consultation”	means a process of discussion which involves information sharing, and the making of representations on relevant issues with a view of achieving consensus;
“essential services”	has the meaning assigned to it under national legislation and consistent with international labour standards;
“international instrument”	means any international treaty, declaration, recommendation, or relevant international agreement in the social, human rights and labour fields subscribed to by Member States;
“ILO”	means the International Labour Organisation; and
“social partners”	means Governments, representative organizations of workers and representative organizations of employers in respective Member States.

ARTICLE 2

OBJECTIVES OF THE CHARTER

1. The objective of this Charter shall be to facilitate, through close and active consultations among social partners and in a spirit conducive to harmonious labour relations, the accomplishment of the following objectives:
 - a) ensure the retention of the tripartite structure of the three social partners, namely: governments, organisations of employers and organisations 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 labour policies, practices and measures, which facilitate labour mobility, remove distortions in labour markets and enhance industrial harmony and increase productivity, in Member States;
 - d) provide a framework for regional co-operation in the collection and dissemination of labour market information;
 - e) promote the establishment and harmonization of social security schemes;
 - f) harmonise 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.
2. It shall be the responsibility of Governments to create an enabling environment in order that objectives referred to in paragraph 1 of this Article are realised.

ARTICLE 3

BASIC HUMAN RIGHTS AND ORGANIZATIONAL RIGHTS

1. 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 Constitutions of the ILO, the Philadelphia Declaration and other relevant international instruments.
2. Member States undertake to observe the basic rights referred to in this charter.

ARTICLE 4

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Members States shall 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 defence 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 of 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) organisational rights for representative unions shall include:
 - i. the right to access the employer premises for union purposes subject to agreed procedures;
 - ii. the right to deduct trade union dues from member's wages;
 - iii. the right to elect trade union representatives;
 - iv. the right to choose and appoint full time trade union officials;
 - v. the right to trade union representatives to education and training leave;
 and
 - vi. the right of the trade unions to disclose 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.

ARTICLE 5

CONVENTIONS OF THE INTERNATIONAL LABOUR ORGANISATION

For the purpose of attaining the objectives of this Charter:

- a) Member States shall establish a priority list of ILO Conventions which shall include Conventions on abolition of forced labour (Nos. 29 and 105), freedom of association and collective bargaining (Nos. 87 and 98), elimination of discrimination in employment (Nos. 100 and 111), and the minimum age of entry into employment (No. 138) and other relevant instruments;
- b) Member States shall take appropriate action to ratify and implement relevant ILO instruments and as a priority the core ILO Conventions; and
- c) Member States shall establish regional mechanisms to assist Member States in complying with the ILO reporting system.

ARTICLE 6

EQUAL TREATMENT FOR MEN AND WOMEN

Member States shall create an enabling environment consistent with ILO Conventions on discrimination and equality and other relevant instruments so that:

- a) gender equality, equal treatment and opportunities for men and women are ensured;
- b) equal opportunities for both men and women shall apply, in particular, to access to employment, remuneration, working conditions, social protection, education, vocational training and career development; and
- c) reasonable measures are developed to enable men and women to reconcile their occupational and family obligations.

ARTICLE 7

PROTECTION OF CHILDREN AND YOUNG PEOPLE

Member States shall 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 so that:

- a) without prejudice to such rules as may be more favourable 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 No. 138;
- b) employers shall be liable for employment practices of adult employees that lead to the indirect employment of children;
- c) young people who are in gainful employment shall receive an equitable remuneration in accordance with national law and practice;
- d) appropriate measures shall be taken to adjust labour regulations applicable to young workers so that their specific development and vocational training and access to employment needs are met;
- e) the duration of work for young people shall be limited, and shall not be resorted to, save in the case of certain jobs laid down in national laws or regulations; and
- f) young people shall be entitled to receive initial vocational training of a sufficient duration to enable them to adapt to the requirement of their future working life and for young workers, the training shall take place during normal working hours.

ARTICLE 8

ELDERLY PERSONS

Member States shall endeavour 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 labour standards and rates of remuneration that apply to all workers.

ARTICLE 9

PERSONS WITH DISABILITIES

1. 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.
2. The measures shall relate to, in particular, according to the capacities of beneficiaries, vocational training, accessibility and mobility, means of transport and housing and appropriate organisations of work and workplaces to take into account their needs.

ARTICLE 10

SOCIAL PROTECTION

1. Member States shall 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.
2. Persons who have been unable to either enter or re-enter the labour market and have no means of subsistence shall be entitled to receive sufficient resources and social assistance.

ARTICLE 11**IMPROVEMENT OF WORKING AND LIVING CONDITIONS**

Member States shall create an enabling environment so that:

- a) harmonisation of minimum requirements laid down in labour 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 harmonised 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.

ARTICLE 12**PROTECTION OF HEALTH, SAFETY AND ENVIRONMENT**

Member States shall endeavour to create an enabling environment so that:

- a) subject to paragraphs b) to g), 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;
- b) employers shall provide safe workplaces that do not pose a risk to the health of employers of any other person exposed;
- c) basic work environment and occupational health and safety standards as set out in ILO Convention No. 155 are provided;
- d) engineering is prioritised to control risk from hazards at source;
- e) the organisation of occupational health and safety shall be on the basis of bipartite and tripartite co-operation and the full participation of all parties;
- f) workers have a right to information on workplace hazards and the procedures being taken to address them, and to appropriate health and safety training in paid working time;
- g) workers have the right to stop work that they reasonably believe poses an immediate and serious risk to their health, safety or physical well being according to ILO convention No. 155;
- h) workers have the right to services, that provide for the prevention, recognition, detection and compensation of work related illness or injury, including emergency care, with rehabilitation and reasonable job security after injury and adequate inflation adjusted compensation;
- i) employers control and are liable for work related environmental risks according to the “polluter pays” principle;
- j) workplace based health service for workers is accessible, affordable and equitable, and is provided on a professional ethical basis; and
- k) economic and investment measures take into consideration health, safety and environmental standards.

ARTICLE 13**INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS**

Member States shall create an enabling environments so that:

- a) industrial and workplace democracy is promoted;
- b) workers shall have the right to information, consult and participate particularly in the following cases:
 - i. when technological changes which, from the point of view of working conditions, have major implications for the work force are introduced into undertakings;
 - ii. in connection with the restructuring operations in the undertakings having an impact on the employment of workers;
 - iii. in connection with social responsibility or other outreach programmes carried out by the community;
- 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.

ARTICLE 14**EMPLOYMENT AND REMUNERATION**

Member States shall create an enabling environment so that:

- a) every individual shall be free to choose and engage in an occupation of 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 and equitable current rate.

ARTICLE 15**EDUCATION AND TRAINING**

Member States shall create an enabling environment consistent with ILO Convention on paid education and training (No 140) so that:

- a) government, employers and trade unions contribute towards workers education, training and skills development; and
- b) all workers have the right to paid study leave subject to the provision of the ILO Convention and to a collective agreement.

ARTICLE 16**IMPLEMENTATION OF THE CHARTER**

1. The responsibility for the implementation of this Charter lies with the national tripartite institutions and regional structures.
2. 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.
3. All Member States shall submit regular progress reports to the Secretariat
4. The most representative organisation of employers and workers shall be consulted in the preparation of the reports referred to in paragraph 3.

ARTICLE 17**ENTRY INTO FORCE**

This Charter shall enter into force upon signature by the Member States.

ARTICLE 18**AMENDMENTS OF THE CHARTER**

1. An amendment to this Charter shall be adopted by a decision of three-quarters of the Member State.
2. A proposal for the amendment of this Charter may be made to the Secretariat by any Member State for preliminary consideration by the social partners provided that the proposed amendment shall not be submitted for preliminary consideration until all Member States have been duly notified of it and a period of three months has lapsed after such notification.

IN WITNESS WHEREOF, WE, the Heads of State or Government or duly Authorised Representatives of SADC Member states have signed this Charter.

Done at this day of 2008 in three (3) original texts in the English, French and Portuguese languages, all texts being equally authentic.

..... REPUBLIC OF ANGOLA REPUBLIC OF BOTSWANA
 DEMOCRATIC REPUBLIC OF CONGO	 KINGDOM OF LESOTHO
 REPUBLIC OF MALAWI	 REPUBLIC OF MAURITIUS
 REPUBLIC OF MOZAMBIQUE	 REPUBLIC OF NAMIBIA
..... REPUBLIC OF SEYCHELLES	 REPUBLIC OF SOUTH AFRICA
 KINGDOM OF SWAZILAND	 UNITED REPUBLIC OF TANZANIA
 REPUBLIC OF ZAMBIA	 REPUBLIC OF ZIMBABWE

PART 6

SADC Human Rights Declarations supported by Namibia

- **A Declaration on Refugee Protection by the Southern African Development Community (SADC)**

A DECLARATION ON REFUGEE PROTECTION BY THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

WE, the Heads of State or Government of:

The Republic of Angola
The Republic of Botswana
The Democratic Republic of Congo
The Kingdom of Lesotho
The Republic of Malawi
The Republic of Mauritius
The Republic of Mozambique
The Republic of Namibia
The Republic of Seychelles
The Republic of South Africa
The Kingdom of Swaziland
The United Republic of Tanzania
The Republic of Zambia
The Republic of Zimbabwe

A. RECALLING THAT

- i) Member States, at Windhoek, Namibia on 7 August 1992, committed themselves to establishing the South African Development Community (SADC) on the foundations laid down by the Southern African Development Co-ordination Conference (SADCC), as a vehicle for the attainment of the cherished ideals of economic well-being, the improvement of the standards and quality of life, freedom, social justice, peace and security for the peoples of Southern Africa, as well as a vehicle for development and integration of the Region;
- ii) A Memorandum of Understanding between SADC and UNHCR was concluded on 25th July 1996 which enjoins the parties to co-operate in the area of refugees, forced population movements into and within the Region;

B. NOTING THAT

- i) For many years, SADC countries have hosted large numbers of refugees both from within and outside the Region, fleeing the effects of the policy of apartheid as well as external aggression, occupation, foreign domination and other events seriously disturbing public order in the countries of origin;
- ii) While the resolution of long-standing conflicts in the Region and ongoing consolidation of Peace, national reconciliation and democratic governance, conditions have been and continue to be created for the return to their homes of large numbers of refugees, the Region continues to receive influxes of people in search of safety and security from within and into the Region;
- iii) Refugees and internally displaced persons are symptoms of crisis which afflict many societies, in particular conflicts and civil strife, economic and social imbalances, ethnic and other forms of intolerance, lack of respect for human rights and good governance.

C. CONCERNED ABOUT

- i) The security, social and economic burdens which the refugee phenomena has brought to the SADC countries that have generously provided and continue to provide asylum;
- ii) The new problems facing SADC states such as the question of (1)urban refugees) and xenophobia linked thereto, irregular movement of asylum seekers and refugees, return of unsuccessful asylum seekers and the special plight of refugee children and women;

D. BEARING IN MIND THAT

- i) The right to seek asylum and to enjoy it is a right enshrined in Article 14 of the Universal Declaration of Human Rights;
- ii) Every individual, when persecuted, has the right to seek and obtain asylum in other countries under Article 12(3) of the African Charter of Human and Peoples Rights;

E. FIRMLY BELIEVING THAT

- i) In addressing the needs of refugees and the challenges of refugee protection regard must be given to the African values and hospitality, human rights and relevant humanitarian principles of refugees protection enshrined in the 1951 Convention and its 1967 Protocol relating to the Status of Refugees as well as the 1969 OAU convention Governing the Specific Aspects of Refugees problems in Africa;

- ii) The 1969 OAU Convention governing the specific aspects of refugee problems in Africa has continuing validity as the regional foundation for providing protection and finding solutions for refugees in Africa.

F. CONVINCED THAT

- i) The challenges of refugee protection can be more effectively addressed through Regional and international co-operation;
- ii) Member States of SADC will benefit by harmonizing and co-ordinating their refugee policies, laws and procedures.

G. RECALLING IN THIS REGARD

The General Assembly Resolution A/RES/50/118 of 16th February 1996 and other resolutions affirmed therein requesting the Secretary-General to promote co-operation between the organs, organizations and bodies of the United Nations System and the Southern African Development Community;

H. EXPRESSING GRATITUDE

To members of the international community, in particular the office of the United Nations High Commissioner for Refugees, for the assistance they continue to offer to refugees in the SADC Region.

WE THEREFORE

1. Reaffirm our commitment to the principles enshrined in the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa; in 1951 Convention Relating to the Status of refugees as amended by the 1967 Protocol thereto and, undertake to respect, and to give full effect at national level, the principles enshrined therein including the principle of non-refoulement and to observe international standards for refugee protection, being well aware of the humanitarian character of asylum.
2. Commit ourselves to address the root cause of refugee movement and internal displacement within SADC through inter-alia the establishment of a firm foundation for democratic institutions and good governance.
3. Seek to avert refugee flows from countries neighboring the SADC Region through preventive diplomacy, facilitation of resolution of conflicts and reducing tensions, especially where these have potential to creating displacements of people and the flow of refugees in co-operation with the United Nations and OAU.
4. Call upon the international community, the United Nations, the UNHCR in particular, and other relevant organizations to support and assist host Governments in fulfilling their responsibilities towards refugees in a manner consistent with the principles of International refugee law on the one hand, taking into account legitimate national security, social and economic interests.
5. Undertake to put in place modalities to determine refugee status of persons seeking asylum in a fair and efficient manner, and to ensure that those who do not need or deserve international protection do not abuse the humanitarian institution of asylum.
6. Appeal to the international community and co-operating partners to assist in ensuring that the social and economic structures, community services, and the environment of host countries or communities are not unduly stretched as a result of having to host refugees.
7. Undertake to respond effectively to situations which may contribute to deterioration in security, law and order in the refugee-hosting areas through, inter-alia, isolating and disarming individuals or groups among the refugee populations who may be armed and threatening the lives of innocent refugees, local citizens, and humanitarian personnel, or engaging in other criminal acts.
8. Further undertake to trace and impound for safe custody or destruction, dangerous weapons circulating or hidden, particularly in refugee-hosting areas.
9. Undertake to adopt measures, individually and collectively, to address the issues of xenophobia towards refugees, irregular movement, return of unsuccessful asylum seekers and (burden sharing²) through, among other means, harmonization of procedures and criteria for the protection and provision of material and social support to refugees within our individual countries.
10. Encourage voluntary repatriation of refugees to their countries of origin whenever feasible, as the best solution to the problem of refugees, in keeping with the 1969 OAU Convention, which calls upon Governments of asylum and Governments of origin to create conducive conditions for the return home of refugees in safety and dignity.
11. Call upon the international community to provide assistance for the rehabilitation and reconstruction of the social and economic infrastructures, including clearance of mines and other munitions, in the areas of return so that conditions for successful repatriation are created.
12. Call upon the Member States, in collaboration with the United Nations High Commissioner for Refugees, to provide durable solutions for those refugees for whom voluntary repatriation is not possible through local intergration and resettlement
13. Call upon members of the international community, and UNHCR in particular, to provide technical support to the governments in the SADC Region, including in capacity building and capacity sustaining.

ANNEX 1

ADDITIONAL TREATIES TO WHICH NAMIBIA IS A PARTY

The Republic of Namibia has agreed to uphold the following Conventions:

Name	Date
Convention on the Prevention and Punishment of the Crime of Genocide, 1948	28 Nov 1994
Geneva Conventions of 12 August 1949, and Additional Protocols thereto	22 Aug 1991
Convention Relating to the Status of Refugees and Stateless Persons, 1951	17 Feb 1995
International Labour Organization:	
Forced Labour Convention, 1930	15 Nov 2000
Freedom of Association and Protection of the Right to Organise, 1948	03 Jan 1995
Right to Organise and Collective Bargaining, 1949	03 Jan 1995
Equal Remuneration Convention, 1951	06 Apr 2010
Abolition of Forced Labour Convention, 1957	15 Nov 2000
Discrimination (Employment and Occupation) Convention, 1957	15 Nov 2000
Minimum Age Convention, 1973	15 Nov 2000
Worst Forms of Child Labour Convention, 1999	15 Nov 2000
Tripartite Consultation (International Labour Standards) Convention, 1976	03 Jan 1995
Labour Administration Convention, 1978	28 Jun 1996
Termination of Employment Convention, 1982	28 Jun 1996

ANNEX 2

TREATIES TO WHICH NAMIBIA IS NOT A PARTY

The Republic of Namibia has yet to sign the following Conventions:

Name	Date
Optional Protocol to the Convention Against Torture	18 Dec 2002
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	10 Dec 2008
Optional Protocol to the Convention of the Rights of the Child on a Communications Procedure	19 Dec 2011
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	18 Dec 1990
International Convention for the Protection of all Persons from Enforced Disappearance	20 Dec 2006

PART 7

Directives from the United Nations

- Guiding principles on business and human rights

Guiding Principles on Business and Human Rights

Implementing the United Nations “Protect, Respect and Remedy” Framework

Note

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries. Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a figure indicates a reference to a United Nations document.

HR/PUB/11/04

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This publication contains the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", which were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The Special Representative annexed the Guiding Principles to his final report to the Human Rights Council (A/HRC/17/31), which also includes an introduction to the Guiding Principles and an overview of the process that led to their development. The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011.

General principles

These Guiding Principles are grounded in recognition of:

- (a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.

These Guiding Principles should be understood as a coherent whole and should be read, individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization.

Nothing in these Guiding Principles should be read as creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regard to human rights.

These Guiding Principles should be implemented in a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men.

I. THE STATE DUTY TO PROTECT HUMAN RIGHTS

A. FOUNDATIONAL PRINCIPLES

1. **States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.**

Commentary

States' international human rights law obligations require that they respect, protect and fulfil the human rights of individuals within their territory and/ or jurisdiction. This includes the duty to protect against human rights abuse by third parties, including business enterprises. The State duty to protect is a standard of conduct. Therefore, States are not per se responsible for human rights abuse by private actors. However, States may breach their international

human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures, including policies, legislation, regulations and adjudication. States also have the duty to protect and promote the rule of law, including by taking measures to ensure equality before the law, fairness in its application, and by providing for adequate accountability, legal certainty, and procedural and legal transparency.

This chapter focuses on preventative measures while chapter III outlines remedial measures.

2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

Commentary

At present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. Nor are they generally prohibited from doing so, provided there is a recognized jurisdictional basis. Within these parameters some human rights treaty bodies recommend that home States take steps to prevent abuse abroad by business enterprises within their jurisdiction.

There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State's own reputation.

States have adopted a range of approaches in this regard. Some are domestic measures with extraterritorial implications. Examples include requirements on "parent" companies to report on the global operations of the entire enterprise; multilateral soft-law instruments such as the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development; and performance standards required by institutions that support overseas investments. Other approaches amount to direct extraterritorial legislation and enforcement. This includes criminal regimes that allow for prosecutions based on the nationality of the perpetrator no matter where the offence occurs. Various factors may contribute to the perceived and actual reasonableness of States' actions, for example whether they are grounded in multilateral agreement.

B. OPERATIONAL PRINCIPLES

GENERAL STATE REGULATORY AND POLICY FUNCTIONS

3. In meeting their duty to protect, States should:

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

Commentary

States should not assume that businesses invariably prefer, or benefit from, State inaction, and they should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights.

The failure to enforce existing laws that directly or indirectly regulate business respect for human rights is often a significant legal gap in State practice. Such laws might range from non-discrimination and labour laws to environmental, property, privacy and anti-bribery laws. Therefore, it is important for States to consider whether such laws are currently being enforced effectively, and if not, why this is the case and what measures may reasonably correct the situation.

It is equally important for States to review whether these laws provide the necessary coverage in light of evolving circumstances and whether, together with relevant policies, they provide an environment conducive to business respect for human rights. For example, greater clarity in some areas of law and policy, such as those governing access to land, including entitlements in relation to ownership or use of land, is often necessary to protect both rights-holders and business enterprises.

Laws and policies that govern the creation and ongoing operation of business enterprises, such as corporate and securities laws, directly shape business behaviour. Yet their implications for human rights remain poorly understood. For example, there is a lack of clarity in corporate and securities law regarding what companies and their officers are permitted, let alone required, to do regarding human rights. Laws and policies in this area should provide sufficient guidance to enable enterprises to respect human rights, with due regard to the role of existing governance structures such as corporate boards.

Guidance to business enterprises on respecting human rights should indicate expected outcomes and help share best practices. It should advise on appropriate methods, including human rights due diligence, and how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families.

National human rights institutions that comply with the Paris Principles have an important role to play in helping States identify whether relevant laws are aligned with their human rights obligations and are being effectively enforced, and in providing guidance on human rights also to business enterprises and other non-State actors.

Communication by business enterprises on how they address their human rights impacts can range from informal engagement with affected stakeholders to formal public reporting. State encouragement of, or where appropriate requirements for, such communication are important in fostering respect for human rights by business enterprises. Incentives to communicate adequate information could include provisions to give weight to such self-reporting in the event of any judicial or administrative proceeding. A requirement to communicate can be particularly appropriate where the nature of business operations or operating contexts pose a significant risk to human rights. Policies or laws in this area can usefully clarify what and how businesses should communicate, helping to ensure both the accessibility and accuracy of communications.

Any stipulation of what would constitute adequate communication should take into account risks that it may pose to the safety and security of individuals and facilities; legitimate requirements of commercial confidentiality; and variations in companies' size and structures. Financial reporting requirements should clarify that human rights impacts in some instances may be "material" or "significant" to the economic performance of the business enterprise.

THE STATE -BUSINESS NEXUS

- 4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.**

Commentary

States individually are the primary duty-bearers under international human rights law, and collectively they are the trustees of the international human rights regime. Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligations. Moreover, the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy rationale becomes for ensuring that the enterprise respects human rights.

Where States own or control business enterprises, they have greatest means within their powers to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented. Senior management typically reports to State agencies, and associated government departments have greater scope for scrutiny and oversight, including ensuring that effective human rights due diligence is implemented. (These enterprises are also subject to the corporate responsibility to respect human rights, addressed in chapter II.)

A range of agencies linked formally or informally to the State may provide support and services to business activities. These include export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions. Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk – in reputational, financial, political and potentially legal terms – for supporting any such harm, and they may add to the human rights challenges faced by the recipient State.

Given these risks, States should encourage and, where appropriate, require human rights due diligence by the agencies themselves and by those business enterprises or projects receiving their support. A requirement for human rights due

diligence is most likely to be appropriate where the nature of business operations or operating contexts pose significant risk to human rights.

- 5. States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.**

Commentary

States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights. Failure by States to ensure that business enterprises performing such services operate in a manner consistent with the State's human rights obligations may entail both reputational and legal consequences for the State itself. As a necessary step, the relevant service contracts or enabling legislation should clarify the State's expectations that these enterprises respect human rights. States should ensure that they can effectively oversee the enterprises' activities, including through the provision of adequate independent monitoring and accountability mechanisms.

- 6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.**

Commentary

States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. This provides States – individually and collectively – with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States' relevant obligations under national and international law.

SUPPORTING BUSINESS RESPECT FOR HUMAN RIGHTS IN CONFLICT-AFFECTED AREAS

- 7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:**
 - (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;**
 - (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;**
 - (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;**
 - (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.**

Commentary

Some of the worst human rights abuses involving business occur amid conflict over the control of territory, resources or a Government itself – where the human rights regime cannot be expected to function as intended. Responsible businesses increasingly seek guidance from States about how to avoid contributing to human rights harm in these difficult contexts. Innovative and practical approaches are needed. In particular, it is important to pay attention to the risk of sexual and gender-based violence, which is especially prevalent during times of conflict.

It is important for all States to address issues early before situations on the ground deteriorate. In conflict-affected areas, the “host” State may be unable to protect human rights adequately due to a lack of effective control. Where transnational corporations are involved, their “home” States therefore have roles to play in assisting both those corporations and host States to ensure that businesses are not involved with human rights abuse, while neighbouring States can provide important additional support.

To achieve greater policy coherence and assist business enterprises adequately in such situations, home States should foster closer cooperation among their development assistance agencies, foreign and trade ministries, and export finance institutions in their capitals and within their embassies, as well as between these agencies and host Government actors; develop early-warning indicators to alert government agencies and business enterprises to problems; and attach appropriate consequences to any failure by enterprises to cooperate in these contexts, including by denying or withdrawing existing public support or services, or where that is not possible, denying their future provision.

States should warn business enterprises of the heightened risk of being involved with gross abuses of human rights in conflict-affected areas. They should review whether their policies, legislation, regulations and enforcement measures effectively address this heightened risk, including through provisions for human rights due diligence by business.

Where they identify gaps, States should take appropriate steps to address them. This may include exploring civil, administrative or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to gross human rights abuses. Moreover, States should consider multilateral approaches to prevent and address such acts, as well as support effective collective initiatives. All these measures are in addition to States' obligations under international humanitarian law in situations of armed conflict, and under international criminal law.

ENSURING POLICY COHERENCE

- 8. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.**

Commentary

There is no inevitable tension between States' human rights obligations and the laws and policies they put in place that shape business practices. However, at times, States have to make difficult balancing decisions to reconcile different societal needs. To achieve the appropriate balance, States need to take a broad approach to managing the business and human rights agenda, aimed at ensuring both vertical and horizontal domestic policy coherence.

Vertical policy coherence entails States having the necessary policies, laws and processes to implement their international human rights law obligations. Horizontal policy coherence means supporting and equipping departments and agencies, at both the national and sub-national levels, that shape business practices – including those responsible for corporate law and securities regulation, investment, export credit and insurance, trade and labour – to be informed of and act in a manner compatible with the Governments' human rights obligations.

- 9. States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.**

Commentary

Economic agreements concluded by States, either with other States or with business enterprises – such as bilateral investment treaties, free-trade agreements or contracts for investment projects – create economic opportunities for States. But they can also affect the domestic policy space of Governments. For example, the terms of international investment agreements may constrain States from fully implementing new human rights legislation, or put them at risk of binding international arbitration if they do so. Therefore, States should ensure that they retain adequate policy and regulatory ability to protect human rights under the terms of such agreements, while providing the necessary investor protection.

- 10. States, when acting as members of multilateral institutions that deal with business-related issues, should:**
- (a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;**
 - (b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;**
 - (c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.**

Commentary

Greater policy coherence is also needed at the international level, including where States participate in multilateral institutions that deal with business related issues, such as international trade and financial institutions. States retain their international human rights law obligations when they participate in such institutions. Capacity-building and awareness-raising through such institutions can play a vital role in helping all States to fulfil their duty to protect, including by enabling the sharing of information about challenges and best practices, thus promoting more consistent approaches. Collective action through multilateral institutions can help States level the playing field with regard to business respect for human rights, but it should do so by raising the performance of laggards. Cooperation between States, multilateral institutions and other stakeholders can also play an important role.

These Guiding Principles provide a common reference point in this regard, and could serve as a useful basis for building a cumulative positive effect that takes into account the respective roles and responsibilities of all relevant stakeholders.

II. THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

A. FOUNDATIONAL PRINCIPLES

- 11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.**

Commentary

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.

Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation.

Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations.

Business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes.

- 12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.**

Commentary

Because business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights. In practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention. However, situations may change, so all human rights should be the subject of periodic review.

An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work. These are the benchmarks against which other social actors assess the human rights impacts of business enterprises. The responsibility of business enterprises to respect human rights is distinct from issues of legal liability and enforcement, which remain defined largely by national law provisions in relevant jurisdictions.

Depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law.

- 13. The responsibility to respect human rights requires that business enterprises:**
- (a) **Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;**
 - (b) **Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.**

Commentary

Business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. Guiding Principle 19 elaborates further on the implications for how business enterprises should address these situations. For the purpose of these Guiding Principles a business

enterprise's "activities" are understood to include both actions and omissions; and its "business relationships" are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.

Commentary

The means through which a business enterprise meets its responsibility to respect human rights will be proportional to, among other factors, its size. Small and medium-sized enterprises may have less capacity as well as more informal processes and management structures than larger companies, so their respective policies and processes will take on different forms. But some small and medium-sized enterprises can have severe human rights impacts, which will require corresponding measures regardless of their size. Severity of impacts will be judged by their scale, scope and irremediable character. The means through which a business enterprise meets its responsibility to respect human rights may also vary depending on whether, and the extent to which, it conducts business through a corporate group or individually. However, the responsibility to respect human rights applies fully and equally to all business enterprises.

15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

Commentary

Business enterprises need to know and show that they respect human rights. They cannot do so unless they have certain policies and processes in place. Principles 16 to 24 elaborate further on these.

B. OPERATIONAL PRINCIPLES

POLICY COMMITMENT

16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

- (a) Is approved at the most senior level of the business enterprise;
- (b) Is informed by relevant internal and/or external expertise;
- (c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
- (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
- (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

Commentary

The term "statement" is used generically, to describe whatever means an enterprise employs to set out publicly its responsibilities, commitments, and expectations.

The level of expertise required to ensure that the policy statement is adequately informed will vary according to the complexity of the business enterprise's operations. Expertise can be drawn from various sources, ranging from credible online or written resources to consultation with recognized experts.

The statement of commitment should be publicly available. It should be communicated actively to entities with which the enterprise has contractual relationships; others directly linked to its operations, which may include State security forces; investors; and, in the case of operations with significant human rights risks, to the potentially affected stakeholders. Internal communication of the statement and of related policies and procedures should make clear what the lines and systems of accountability will be, and should be supported by any necessary training for personnel in relevant business functions.

Just as States should work towards policy coherence, so business enterprises need to strive for coherence between their responsibility to respect human rights and policies and procedures that govern their wider business activities and relationships. This should include, for example, policies and procedures that set financial and other performance incentives for personnel; procurement practices; and lobbying activities where human rights are at stake.

Through these and any other appropriate means, the policy statement should be embedded from the top of the business enterprise through all its functions, which otherwise may act without awareness or regard for human rights.

HUMAN RIGHTS DUE DILIGENCE

17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- (a) **Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;**
- (b) **Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;**
- (c) **Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.**

Commentary

This Principle defines the parameters for human rights due diligence, while Principles 18 through 21 elaborate its essential components. Human rights risks are understood to be the business enterprise's potential adverse human rights impacts. Potential impacts should be addressed through prevention or mitigation, while actual impacts – those that have already occurred – should be a subject for remediation (Principle 22).

Human rights due diligence can be included within broader enterprise riskmanagement systems, provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders. Human rights due diligence should be initiated as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements, and may be inherited through mergers or acquisitions.

Where business enterprises have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, business enterprises should identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers' or clients' operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence.

Questions of complicity may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties. Complicity has both non-legal and legal meanings. As a nonlegal matter, business enterprises may be perceived as being "complicit" in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party.

As a legal matter, most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases. Typically, civil actions can also be based on an enterprise's alleged contribution to a harm, although these may not be framed in human rights terms. The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime. Conducting appropriate human rights due diligence should help business enterprises address the risk of legal claims against them by showing that they took every reasonable step to avoid involvement with an alleged human rights abuse. However, business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing to human rights abuses. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as result of their business relationships. This process should:

- (a) Draw on internal and/or independent external human rights expertise;
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

Commentary

The initial step in conducting human rights due diligence is to identify and assess the nature of the actual and potential adverse human rights impacts with which a business enterprise may be involved. The purpose is to understand the specific impacts on specific people, given a specific context of operations. Typically this includes assessing the human rights context prior to a proposed business activity, where possible; identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified.

In this process, business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, and bear in mind the different risks that may be faced by women and men.

While processes for assessing human rights impacts can be incorporated within other processes such as risk assessments or environmental and social impact assessments, they should include all internationally recognized human rights as a reference point, since enterprises may potentially impact virtually any of these rights.

Because human rights situations are dynamic, assessments of human rights impacts should be undertaken at regular intervals: prior to a new activity or relationship; prior to major decisions or changes in the operation (e.g. market entry, product launch, policy change, or wider changes to the business); in response to or anticipation of changes in the operating environment (e.g. rising social tensions); and periodically throughout the life of an activity or relationship.

To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement.

In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society. The assessment of human rights impacts informs subsequent steps in the human rights due diligence process.

In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.

(a) Effective integration requires that:

- (i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;
- (ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.

(b) Appropriate action will vary according to:

- (i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;
- (ii) The extent of its leverage in addressing the adverse impact.

Commentary

The horizontal integration across the business enterprise of specific findings from assessing human rights impacts can only be effective if its human rights policy commitment has been embedded into all relevant business functions. This is required to ensure that the assessment findings are properly understood, given due weight, and acted upon.

In assessing human rights impacts, business enterprises will have looked for both actual and potential adverse impacts. Potential impacts should be prevented or mitigated through the horizontal integration of findings across the business enterprise, while actual impacts—those that have already occurred – should be a subject for remediation (Principle 22).

Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact.

Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.

Where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity, the situation is more complex. Among the factors that will enter into the determination of the appropriate action in such situations are

the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences. The more complex the situation and its implications for human rights, the stronger is the case for the enterprise to draw on independent expert advice in deciding how to respond. If the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there may be ways for the enterprise to increase it. Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors.

There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so. Where the relationship is "crucial" to the enterprise, ending it raises further challenges. A relationship could be deemed as crucial if it provides a product or service that is essential to the enterprise's business, and for which no reasonable alternative source exists. Here the severity of the adverse human rights impact must also be considered: the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship. In any case, for as long as the abuse continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection.

In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:

- (a) Be based on appropriate qualitative and quantitative indicators;
- (b) Draw on feedback from both internal and external sources, including affected stakeholders.

Commentary

Tracking is necessary in order for a business enterprise to know if its human rights policies are being implemented optimally, whether it has responded effectively to the identified human rights impacts, and to drive continuous improvement.

Business enterprises should make particular efforts to track the effectiveness of their responses to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization.

Tracking should be integrated into relevant internal reporting processes. Business enterprises might employ tools they already use in relation to other issues. This could include performance contracts and reviews as well as surveys and audits, using gender-disaggregated data where relevant.

Operational-level grievance mechanisms can also provide important feedback on the effectiveness of the business enterprise's human rights due diligence from those directly affected (see Principle 29).

In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- (a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;
- (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;
- (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

Commentary

The responsibility to respect human rights requires that business enterprises have in place policies and processes through which they can both know and show that they respect human rights in practice. Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors.

Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports. Formal reporting is itself evolving, from traditional annual reports and corporate responsibility/sustainability reports, to include online updates and integrated financial and non-financial reports.

Formal reporting by enterprises is expected where risks of severe human rights impacts exist, whether this is due to the nature of the business operations or operating contexts. The reporting should cover topics and indicators concerning

how enterprises identify and address adverse impacts on human rights. Independent verification of human rights reporting can strengthen its content and credibility. Sector-specific indicators can provide helpful additional detail.

Remediation

Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

Commentary

Even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent.

Where a business enterprise identifies such a situation, whether through its human rights due diligence process or other means, its responsibility to respect human rights requires active engagement in remediation, by itself or in cooperation with other actors. Operational-level grievance mechanisms for those potentially impacted by the business enterprise's activities can be one effective means of enabling remediation when they meet certain core criteria, as set out in Principle 31.

Where adverse impacts have occurred that the business enterprise has not caused or contributed to, but which are directly linked to its operations, products or services by a business relationship, the responsibility to respect human rights does not require that the enterprise itself provide for remediation, though it may take a role in doing so.

Some situations, in particular where crimes are alleged, typically will require cooperation with judicial mechanisms. Further guidance on mechanisms through which remediation may be sought, including where allegations of adverse human rights impacts are contested, is included in chapter III on access to remedy.

Issues of context

In all contexts, business enterprises should:

- (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;
- (b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;
- (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

Commentary

Although particular country and local contexts may affect the human rights risks of an enterprise's activities and business relationships, all business enterprises have the same responsibility to respect human rights wherever they operate. Where the domestic context renders it impossible to meet this responsibility fully, business enterprises are expected to respect the principles of internationally recognized human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard.

Some operating environments, such as conflict-affected areas, may increase the risks of enterprises being complicit in gross human rights abuses committed by other actors (security forces, for example). Business enterprises should treat this risk as a legal compliance issue, given the expanding web of potential corporate legal liability arising from extraterritorial civil claims, and from the incorporation of the provisions of the Rome Statute of the International Criminal Court in jurisdictions that provide for corporate criminal responsibility. In addition, corporate directors, officers and employees may be subject to individual liability for acts that amount to gross human rights abuses.

In complex contexts such as these, business enterprises should ensure that they do not exacerbate the situation. In assessing how best to respond, they will often be well advised to draw on not only expertise and cross-functional consultation within the enterprise, but also to consult externally with credible, independent experts, including from Governments, civil society, national human rights institutions and relevant multi-stakeholder initiatives.

Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.

Commentary

While business enterprises should address all their adverse human rights impacts, it may not always be possible to address them simultaneously. In the absence of specific legal guidance, if prioritization is necessary business enterprises should begin with those human rights impacts that would be most severe, recognizing that a delayed response may affect remediability.

Severity is not an absolute concept in this context, but is relative to the other human rights impacts the business enterprise has identified.

III. ACCESS TO REMEDY

A. Foundational principle

As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

Commentary

Unless States take appropriate steps to investigate, punish and redress business-related human rights abuses when they do occur, the State duty to protect can be rendered weak or even meaningless.

Access to effective remedy has both procedural and substantive aspects. The remedies provided by the grievance mechanisms discussed in this section may take a range of substantive forms the aim of which, generally speaking, will be to counteract or make good any human rights harms that have occurred. Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.

Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome.

For the purpose of these Guiding Principles, a grievance is understood to be a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities. The term grievance mechanism is used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.

State-based grievance mechanisms may be administered by a branch or agency of the State, or by an independent body on a statutory or constitutional basis. They may be judicial or non-judicial. In some mechanisms, those affected are directly involved in seeking remedy; in others, an intermediary seeks remedy on their behalf. Examples include the courts (for both criminal and civil actions), labour tribunals, national human rights institutions, National Contact Points under the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development, many ombudsperson offices, and Government-run complaints offices.

Ensuring access to remedy for business-related human rights abuses requires also that States facilitate public awareness and understanding of these mechanisms, how they can be accessed, and any support (financial or expert) for doing so. State-based judicial and non-judicial grievance mechanisms should form the foundation of a wider system of remedy. Within such a system, operational-level grievance mechanisms can provide early stage recourse and resolution. State-based and operational-level mechanisms, in turn, can be supplemented or enhanced by the remedial functions of collaborative initiatives as well as those of international and regional human rights mechanisms. Further guidance with regard to these mechanisms is provided in Guiding Principles 26 to 31.

B. OPERATIONAL PRINCIPLES

State-based judicial mechanisms

States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

Commentary

Effective judicial mechanisms are at the core of ensuring access to remedy. Their ability to address business-related human rights abuses depends on their impartiality, integrity and ability to accord due process.

States should ensure that they do not erect barriers to prevent legitimate cases from being brought before the courts in situations where judicial recourse is an essential part of accessing remedy or alternative sources of effective remedy are unavailable. They should also ensure that the provision of justice is not prevented by corruption of the judicial process, that courts are independent of economic or political pressures from other State agents and from business actors, and

that the legitimate and peaceful activities of human rights defenders are not obstructed.

Legal barriers that can prevent legitimate cases involving business-related human rights abuse from being addressed can arise where, for example:

- The way in which legal responsibility is attributed among members of a corporate group under domestic criminal and civil laws facilitates the avoidance of appropriate accountability;
- Where claimants face a denial of justice in a host State and cannot access home State courts regardless of the merits of the claim;
- Where certain groups, such as indigenous peoples and migrants, are excluded from the same level of legal protection of their human rights that applies to the wider population. Practical and procedural barriers to accessing judicial remedy can arise where, for example:
- The costs of bringing claims go beyond being an appropriate deterrent to unmeritorious cases and/or cannot be reduced to reasonable levels through Government support, "market-based" mechanisms (such as litigation insurance and legal fee structures), or other means;
- Claimants experience difficulty in securing legal representation, due to a lack of resources or of other incentives for lawyers to advise claimants in this area;
- There are inadequate options for aggregating claims or enabling representative proceedings (such as class actions and other collective action procedures), and this prevents effective remedy for individual claimants;
- State prosecutors lack adequate resources, expertise and support to meet the State's own obligations to investigate individual and business involvement in human rights-related crimes.

Many of these barriers are the result of, or compounded by, the frequent imbalances between the parties to business-related human rights claims, such as in their financial resources, access to information and expertise. Moreover, whether through active discrimination or as the unintended consequences of the way judicial mechanisms are designed and operate, individuals from groups or populations at heightened risk of vulnerability or marginalization often face additional cultural, social, physical and financial impediments to accessing, using and benefiting from these mechanisms. Particular attention should be given to the rights and specific needs of such groups or populations at each stage of the remedial process: access, procedures and outcome.

State-based non-judicial grievance mechanisms

States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

Commentary

Administrative, legislative and other non-judicial mechanisms play an essential role in complementing and supplementing judicial mechanisms. Even where judicial systems are effective and well-resourced, they cannot carry the burden of addressing all alleged abuses; judicial remedy is not always required; nor is it always the favoured approach for all claimants. Gaps in the provision of remedy for business-related human rights abuses could be filled, where appropriate, by expanding the mandates of existing non-judicial mechanisms and/or by adding new mechanisms.

These may be mediation-based, adjudicative or follow other culturally appropriate and rights-compatible processes – or involve some combination of these – depending on the issues concerned, any public interest involved, and the potential needs of the parties. To ensure their effectiveness, they should meet the criteria set out in Principle 31. National human rights institutions have a particularly important role to play in this regard. As with judicial mechanisms, States should consider ways to address any imbalances between the parties to business-related human rights claims and any additional barriers to access faced by individuals from groups or populations at heightened risk of vulnerability or marginalization.

Non-State-based grievance mechanisms

States should consider ways to facilitate access to effective non-Statebased grievance mechanisms dealing with business-related human rights harms.

Commentary

One category of non-State-based grievance mechanisms encompasses those administered by a business enterprise alone or with stakeholders, by an industry association or a multi-stakeholder group. They are non-judicial, but may use adjudicative, dialogue-based or other culturally appropriate and rights-compatible processes. These mechanisms may offer particular benefits such as speed of access and remediation, reduced costs and/or transnational reach.

Another category comprises regional and international human rights bodies. These have dealt most often with alleged violations by States of their obligations to respect human rights. However, some have also dealt with the failure of a State to meet its duty to protect against human rights abuse by business enterprises.

States can play a helpful role in raising awareness of, or otherwise facilitating access to, such options, alongside the mechanisms provided by States themselves.

To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

Commentary

Operational-level grievance mechanisms are accessible directly to individuals and communities who may be adversely impacted by a business enterprise. They are typically administered by enterprises, alone or in collaboration with others, including relevant stakeholders. They may also be provided through recourse to a mutually acceptable external expert or body. They do not require that those bringing a complaint first access other means of recourse. They can engage the business enterprise directly in assessing the issues and seeking remediation of any harm.

Operational-level grievance mechanisms perform two key functions regarding the responsibility of business enterprises to respect human rights.

- First, they support the identification of adverse human rights impacts as a part of an enterprise's ongoing human rights due diligence. They do so by providing a channel for those directly impacted by the enterprise's operations to raise concerns when they believe they are being or will be adversely impacted. By analysing trends and patterns in complaints, business enterprises can also identify systemic problems and adapt their practices accordingly;
- Second, these mechanisms make it possible for grievances, once identified, to be addressed and for adverse impacts to be remediated early and directly by the business enterprise, thereby preventing harms from compounding and grievances from escalating.

Such mechanisms need not require that a complaint or grievance amount to an alleged human rights abuse before it can be raised, but specifically aim to identify any legitimate concerns of those who may be adversely impacted. If those concerns are not identified and addressed, they may over time escalate into more major disputes and human rights abuses.

Operational-level grievance mechanisms should reflect certain criteria to ensure their effectiveness in practice (Principle 31). These criteria can be met through many different forms of grievance mechanism according to the demands of scale, resource, sector, culture and other parameters.

Operational-level grievance mechanisms can be important complements to wider stakeholder engagement and collective bargaining processes, but cannot substitute for either. They should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to judicial or other non-judicial grievance mechanisms.

Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.

Commentary

Human rights-related standards are increasingly reflected in commitments undertaken by industry bodies, multi-stakeholder and other collaborative initiatives, through codes of conduct, performance standards, global framework agreements between trade unions and transnational corporations, and similar undertakings.

Such collaborative initiatives should ensure the availability of effective mechanisms through which affected parties or their legitimate representatives can raise concerns when they believe the commitments in question have not been met. The legitimacy of such initiatives may be put at risk if they do not provide for such mechanisms. The mechanisms could be at the level of individual members, of the collaborative initiative, or both.

These mechanisms should provide for accountability and help enable the remediation of adverse human rights impacts. Effectiveness criteria for non-judicial grievance mechanisms.

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;

- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

Operational-level mechanisms should also be:

- (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

Commentary

A grievance mechanism can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it. These criteria provide a benchmark for designing, revising or assessing a non-judicial grievance mechanism to help ensure that it is effective in practice. Poorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.

The first seven criteria apply to any State-based or non-State-based, adjudicative or dialogue-based mechanism. The eighth criterion is specific to operational-level mechanisms that business enterprises help administer.

The term "grievance mechanism" is used here as a term of art. The term itself may not always be appropriate or helpful when applied to a specific mechanism, but the criteria for effectiveness remain the same. Commentary on the specific criteria follows:

- (a) Stakeholders for whose use a mechanism is intended must trust it if they are to choose to use it. Accountability for ensuring that the parties to a grievance process cannot interfere with its fair conduct is typically one important factor in building stakeholder trust;
- (b) Barriers to access may include a lack of awareness of the mechanism, language, literacy, costs, physical location and fears of reprisal;
- (c) In order for a mechanism to be trusted and used, it should provide public information about the procedure it offers. Time frames for each stage should be respected wherever possible, while allowing that flexibility may sometimes be needed;
- (d) In grievances or disputes between business enterprises and affected stakeholders, the latter frequently have much less access to information and expert resources, and often lack the financial resources to pay for them. Where this imbalance is not redressed, it can reduce both the achievement and perception of a fair process and make it harder to arrive at durable solutions;
- (e) Communicating regularly with parties about the progress of individual grievances can be essential to retaining confidence in the process. Providing transparency about the mechanism's performance to wider stakeholders, through statistics, case studies or more detailed information about the handling of certain cases, can be important to demonstrate its legitimacy and retain broad trust. At the same time, confidentiality of the dialogue between parties and of individuals' identities should be provided where necessary;
- (f) Grievances are frequently not framed in terms of human rights and many do not initially raise human rights concerns. Regardless, where outcomes have implications for human rights, care should be taken to ensure that they are in line with internationally recognized human rights;
- (g) Regular analysis of the frequency, patterns and causes of grievances can enable the institution administering the mechanism to identify and influence policies, procedures or practices that should be altered to prevent future harm;
- (h) For an operational-level grievance mechanism, engaging with affected stakeholder groups about its design and performance can help to ensure that it meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success.

Since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism.

