

**AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

**PRINCIPLES AND GUIDELINES ON THE IMPLEMENTATION OF  
ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE AFRICAN  
CHARTER ON HUMAN AND PEOPLES' RIGHTS**

## LIST OF ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESR	Center for Economic Social Rights
HIV	Human Immunodeficiency Virus
AIDS	Acquired Immune Deficiency Syndrome
CERD	Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
NHRIs	National Human Rights Institutions
OAU	Organisation of African Unity
SERAC	Social Economic Rights Action Centre
STD	Sexually Transmitted Diseases
STIs	Sexually Transmitted Infections
TB	Tuberculosis
UN CESCR	United Nations Committee on Economic Social and Cultural Rights
WHO	World Health Organisation

# TABLE OF CONTENTS

LIST OF ACRONYMS .....	2
TABLE OF CONTENTS .....	3
Preamble .....	6
PART I: INTERPRETATION.....	8
PART II: NATURE OF MEMBER STATES' OBLIGATIONS.....	10
Obligation to Take Measures to Ensure Enjoyment of Economic, Social and Cultural Rights .....	10
Obligations to Respect, Protect, Promote and Fulfil .....	11
<i>Obligation to respect</i> .....	11
<i>Obligation to protect</i> .....	11
<i>Obligation to promote</i> .....	11
<i>Obligation to fulfil</i> .....	12
Resources and Progressive Realisation .....	12
Immediate Obligations Regarding the Implementation of Economic, Social and Cultural Rights .....	13
Minimum Core Obligations .....	13
Obligation to Take Steps .....	13
G. Non-discrimination.....	13
Presumption against Retrogressive Measures .....	14
Effective Domestic Remedies.....	14
Designing and Implementing a National Policy.....	15
PART III: OTHER KEY OBLIGATIONS.....	16
Equality .....	16
International Cooperation .....	17
Right to Self-determination of Peoples .....	17
Engaging with and Respecting the Rights of Civil Society .....	18
National Human Rights Institutions .....	18
State Party Reporting.....	18
PART IV: ECONOMIC, SOCIAL AND CULTURAL RIGHTS ENSHRINED IN THE AFRICAN CHARTER .....	19
Right to Property .....	19
Vulnerable Groups, Equality and Non-Discrimination .....	20
Right to Work (Article 15).....	21
Minimum Core Obligations .....	21
National Plans, Policies and Systems .....	21

Vulnerable Groups, Equality and Non-discrimination.....	22
Right to Health (Article 16).....	24
Minimum Core Obligations .....	24
National Plans, Policies and Systems .....	24
Cross-cutting Obligations .....	26
Vulnerable Groups, Equality and Non-Discrimination .....	26
Disease Specific Obligations .....	28
<i>Malaria</i> .....	29
<i>HIV/AIDS, Tuberculosis, and other infectious diseases</i> .....	29
Other Significant Diseases .....	31
Sexual and Reproductive Health .....	31
Right to Education (Article 17) .....	34
Minimum Core Obligations .....	34
National Plans, Policies and Systems .....	34
Vulnerable Groups, Equality and Non-discrimination.....	36
Right to Culture.....	38
National Plans, Policies and Systems .....	38
Vulnerable Groups, Equality and Non-discrimination.....	39
Right to Housing (Articles 14, 16 and 18(1)).....	40
Minimum Core Obligations .....	40
National Plans, Policies and Systems .....	40
Vulnerable Groups, Equality and Non-discrimination.....	41
Evictions .....	42
Right to Social Security (Articles 4, 5, 6, 15; 16; 18(1), (2) and (4)).....	45
Minimum Core Obligations .....	45
National Plans, Policies and Systems .....	45
Vulnerable Groups, Equality and Non-discrimination.....	46
Right to Food (articles 4, 16 and 22).....	48
Minimum Core Obligations .....	48
National Plans, Policies and Systems .....	48
Vulnerable Groups, Equality and Non Discrimination .....	50
Right to Water and Sanitation (Articles 4, 5, 15, 16, 22 and 24) .....	51
Minimum Core Obligations .....	51
National Plans, Policies and Systems .....	51
Vulnerable Groups, Equality and Non Discrimination .....	53
Right to Protection of the Family.....	55
Minimum Core Obligations .....	55

National Plans, Policies and Systems .....	55
Vulnerable Groups, Equality and Non Discrimination .....	55
<i>Equality of Spouses</i> .....	55
<i>Children</i> .....	56

## **Preamble**

The African Commission on Human and Peoples' Rights:

*Recalling* that the African Charter on Human and Peoples' Rights (the African Charter) reflects that all human rights are indivisible, interdependent and interrelated, and cannot be enjoyed in isolation from each other;

*Recognising* that the enjoyment of economic, social and cultural rights is not only imperative for but dependant on the enjoyment of civil and political rights, and in particular on the rule of law, democracy and good governance;

*Taking into consideration* the Constitutive Act of the African Union, the Protocol to the Constitutive Act of the African Union on the African Court of Justice and Human Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the African Charter on the Rights and Welfare of the Child, the African Charter on Democracy, Elections and Governance, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, and the treaties adopted by the Regional Economic Communities that relate to economic, social and cultural rights;

*Drawing inspiration* from other international instruments that protect and promote economic, social and cultural rights, such as the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families; the Convention on the Rights of Persons with Disabilities; the European Social Charter, the European Convention for the Protection of Human Rights and Fundamental Freedoms; the American Declaration of the Rights and Duties of Man; the American Convention on Human Rights and the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights;

*Taking into consideration* the African Court of Justice and Human Rights;

*Drawing inspiration* from decisions of domestic courts within the jurisdiction of states parties to the African Charter;

*Drawing inspiration* from the reports of Special Mechanisms of the African Commission on Human and Peoples Rights and Special Procedures of the United Nations human rights system and other declarations, reports and guidelines issued by the United Nations and the African Union;

*Recognising* that, without access to economic, social and cultural rights, the dignity of the individual and of peoples is threatened and that they become vulnerable to multiple threats to their security, and that economic deprivation and marginalisation of peoples, communities and groups results in increased social conflict and instability;

*Bearing in mind* that the implementation of economic, social and cultural rights in Africa requires taking into account the totality of the way of life and the

positive cultural values of individuals and peoples in Africa to ensure the realisation of the dignity of all persons;

*Recognising* also that the Constitutive Act of the African Union is committed to promoting the sustainable development of Africa and to the principles of gender equality, democracy, human rights, the rule of law and good governance and the promotion of social justice to ensure balanced economic development;

*Concerned* about the deep conditions of poverty, inequality and insecurity that continue to prevail on the African Continent, and the many obstacles that exist to the full enjoyment of economic, social and cultural rights in Africa;

*Concerned* that the continuing epidemics of malaria, HIV/AIDS and TB have a negative impact on the rights of individuals not only to health but to all other rights, especially economic, social, cultural and also to political participation and the right to life, thereby emphasising the importance of concerted efforts to control these epidemics;

*Noting* that, despite a range of initiatives to promote Africa's development, mechanisms to ensure the effective protection and full realisation of economic, social and cultural rights continue to be inadequate in many African countries;

*Recognising* that economic, social and cultural rights are justiciable and enforceable rights and that state parties to the African Charter have obligations to ensure that individuals and peoples' have access to enforceable administrative and/or judicial remedies for any violation of these rights;

*Recognising* that in the enjoyment of economic social and cultural rights, the state may only subject such rights to limitations provided that these are strictly in line with human rights principles and obligations;

*Solemnly* proclaims these Principles and Guidelines on the Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, the purpose of which is to assist State Parties to comply with their obligations under the African Charter;

*Urges* that every effort is made to promote them by governments, civil society organisations, national human rights institutions, judges, lawyers, academics and their professional associations so that they become generally known to everyone in Africa;

## PART I: INTERPRETATION

1. In the interpretation of these Guidelines the following terms shall be interpreted as follows:

- a. *Forced evictions* are acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection.<sup>1</sup>
- b. *Indigenous populations/communities* are, for the purposes of these guidelines, any group of people whose culture and way of life and mode of production differ considerably from the dominant society, whose culture depends on access and rights to their traditional land and the natural resources thereon, and whose cultures are under threat. They suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society, which often prevents them from being able to genuinely participate in deciding on their own future and forms of development.<sup>2</sup>
- c. *Peoples* are, for the purpose of these guidelines, any groups or communities of people that have an identifiable interest in common, whether this is from the sharing of an ethnic,<sup>3</sup> linguistic or other factor.<sup>4</sup> Within the scope of these guidelines peoples are therefore not to be equated solely with nations or states.<sup>5</sup>
- d. *Prohibited grounds of discrimination* include but are not limited to race, ethnic group, colour, sex, gender, sexual orientation, language, religion, political or any other opinion, national and social origin, economic status, birth, disability, age or other status.
- e. *Vulnerable and disadvantaged groups* are people who have faced and/or continue to face significant impediments to their enjoyment of economic, social and cultural rights. Vulnerable and disadvantaged groups include, but are not limited to, women, linguistic, racial, religious minorities, children (particularly orphans, young girls, children of low-income groups, children in rural areas, children of immigrants and of migrant workers, children belonging to linguistic, racial, religious or other minorities, and children belonging to indigenous populations/communities), youth, the elderly, people living with, or affected by, HIV/AIDS, and other persons with terminal illnesses, persons with persistent medical problems, child and female-headed households and victims of natural disasters, indigenous populations/communities, persons with disabilities, victims of sexual and economic exploitation, detainees, lesbian, gay, bisexual, transgendered and intersex people, victims of natural disasters and armed conflict, refugees and asylum seekers, internally displaced populations, legal or illegal migrant workers, slum dwellers, landless and nomadic pastoralists, workers in the informal sector of the



economy and subsistence agriculture, persons living in informal settlements and workers in irregular forms of employment such as home-based workers, casual and seasonal workers.

- f. *State Parties* encompasses all branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level; national, regional or local.<sup>6</sup>
- g. *Principle of proportionality* for the purposes of these guidelines involves striking a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.<sup>7</sup> A limitation upon a right, or steps taken positively to protect or fulfil it, will not be proportionate, where there is no evidence that the state institutions have balanced the competing individual and public interests when deciding on the limitation or steps, or where the requirements to be met to avoid or benefit from its application in a particular case are so high as not to permit a meaningful balancing process.<sup>8</sup>
- h. *Public interest concerns the* common well-being or general welfare of the population.
- i. *Acquisition of property* for the purposes of these guidelines includes nationalisation and expropriation of property, and refers to the confiscation of private property with the stated purpose of pursuing the public interest.
- j. *Neglected tropical diseases* are defined by the WHO as those which have a low profile and status in public health priorities but still affects large numbers of people frequently as a result of poverty and disadvantage. Those most affected are the poorest populations often living in remote, rural areas, urban slums or in conflict zones.<sup>9</sup>
- k. *Food security* exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.<sup>10</sup>
- l. *Intersectional or multiple discrimination* occurs when a person is subjected to discrimination on more than one ground at the same time, e.g. race and gender.
- m. *Indirect discrimination* occurs where the effect of certain imposed requirements, conditions or practices has an adverse impact disproportionately on one group or other.
- n. *Patrimony* means the sum total of any person's personal and real entitlements, including movable and immovable property, corporeal and incorporeal elements and any other intangible object capable of having value.
- o. *Basic shelter* refers to the basic minimum housing required by the individual for protection from the elements.

## PART II: NATURE OF MEMBER STATES' OBLIGATIONS

### Obligation to Take Measures to Ensure Enjoyment of Economic, Social and Cultural Rights

2. Article 1 of the Charter requires State Parties to “recognise” the rights, duties and freedoms enshrined in the Charter, and “to adopt legislative or other measures to give effect to them.” Such measures include providing for the protection and realisation of economic, social and cultural rights through constitutional rights<sup>11</sup> and institutions, legislative<sup>12</sup>, policy and budgetary measures, educational and public awareness measures<sup>13</sup> and administrative action as well as ensuring appropriate administrative and judicial remedies<sup>14</sup> for the violation of these rights<sup>15</sup>.
3. States parties are under a general obligation in respect of all the economic, social and cultural rights in the African Charter to ensure that at least the following key elements of the rights are guaranteed:
  - a. The *availability* of the rights, which requires that the state should ensure that the necessary goods and services needed to enjoy the rights are practically available to the individual, regardless of how this is achieved.<sup>16</sup> For example, with regards to the right to water, the water supply for each person must be sufficient and continuous for personal and domestic uses;<sup>17</sup>
  - b. The *adequacy* of the benefits provided in terms of the rights. This requires that the goods and services provided to the individual are sufficient to meet all the requirements of the rights protected.<sup>18</sup> For example, with regards to the right to food, the food must at a minimum be of such quantity and quality sufficient to satisfy the dietary needs of individuals and free from adverse substances;<sup>19</sup>
  - c. The *physical and economic accessibility* (affordability) of the rights to all, particularly to vulnerable and disadvantaged groups. Physical accessibility means that provision of goods and services required for enjoyment of the rights should be available to everyone, including members of vulnerable and disadvantaged groups, for whom special measures may be necessary. For example, with regards to the right to health, the state should ensure that health facilities are accessible to people with disabilities. Economic accessibility means that the individual should be able to acquire the specific requirements for the enjoyment of all economic, social and cultural rights without threatening or compromising the enjoyment of other rights. For example, with respect to the right to education, the state should ensure that secondary and tertiary education is affordable;
  - d. The *acceptability* of the manner of provision of the rights requires that the manner in which economic, social and cultural rights are provided in a society respects societal and cultural norms that are consistent with African and international human rights law. For example this includes the requirement that provision of housing, particularly regarding construction and the building materials used,

should be culturally appropriate<sup>20</sup> for example for minorities and indigenous peoples.

### **Obligations to Respect, Protect, Promote and Fulfil**

4. All human rights, including economic, social and cultural rights, impose a combination of negative and positive duties on States.<sup>21</sup> A useful framework for understanding the nature of the duties imposed by economic, social and cultural rights is the duty “to respect, protect, promote and fulfil” these rights.<sup>22</sup> No hierarchy is accorded to any of these duties and all should be protected through administrative and judicial remedies.

#### *Obligation to respect*

5. The obligation to respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of economic, social and cultural rights. This entails respecting the freedom of individuals and peoples to use all of the resources at their disposal to meet their economic, social and cultural needs and obligations.<sup>23</sup>
6. The obligation to respect also requires States to take positive measures to ensure that all branches of government (legislative, executive and judicial) at all levels (national, regional and local), as well as all organs of state, do not violate economic, social and cultural rights.

#### *Obligation to protect*

7. The obligation to protect requires the State to take positive measures to ensure that non-state actors such as multi-national corporations, local companies, private persons, and armed groups do not violate economic, social and cultural rights.<sup>24</sup> This includes regulating and monitoring the commercial and other activities of non-state actors that affect people’s access to and equal enjoyment of economic, social and cultural rights<sup>25</sup> and ensuring the effective implementation of relevant legislation and programmes and to provide remedies for such violations.<sup>26</sup>

#### *Obligation to promote*

8. The duty to promote economic, social and cultural rights requires States to adopt measures to enhance people’s awareness of their rights, and to provide accessible information relating to the programmes and institutions adopted to realise them.<sup>27</sup> In this regard, the African Charter explicitly places an obligation on States Parties “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.”<sup>28</sup>
9. It also includes an obligation to promote the values and objectives of economic, social and cultural rights in administrative and judicial decision-making.<sup>29</sup> The training of the judiciary and administrative officials should expressly include economic, social and cultural rights.<sup>30</sup>

### *Obligation to fulfil*

10. The duty to fulfil economic, social and cultural rights requires States parties to take positive steps to advance the realisation of the rights. Such measures should be comprehensive, co-ordinated, transparent, and contain clear goals, indicators and benchmarks for measuring progress.<sup>31</sup> This obligation is, “a positive expectation on the part of the State to move its machinery towards the actual realisation of the rights.”<sup>32</sup> The State should continually aim at improving both the range of individuals, communities, groups and peoples who have access to the relevant rights as well as the quality of enjoyment.
11. The duty to fulfil includes the adoption of measures that enable and assist individuals and communities to gain access to these rights on their own. In cases where individual and communities are unable to gain access to these rights by the means at their disposal, the obligation will be, “to take measures necessary to ensure that each person within its jurisdiction may obtain basic economic, social and cultural rights satisfaction”<sup>33</sup>
12. The rights of vulnerable and disadvantaged groups should be prioritised in all programmes of social and economic development, and particular attention must be paid to vulnerable and disadvantaged groups in programmes aimed at ensuring access to appropriate services and resources.<sup>34</sup>

### **Resources and Progressive Realisation**

13. The obligation to progressively and constantly move towards the full realisation of economic, social and cultural rights, within the resources available to a State, including regional and international aid, is referred to as progressive realisation. While the African Charter does not expressly refer to the principle of progressive realisation this concept is widely accepted in the interpretation of economic, social and cultural rights and has been implied into the Charter in accordance with articles 61 and 62 of the African Charter.<sup>35</sup> States parties are therefore under a continuing duty to move as expeditiously and effectively as possible towards the full realisation of economic, social and cultural rights.<sup>36</sup>
14. The concept of progressive realisation means that States must implement a reasonable and measurable plan, including set achievable benchmarks and timeframes, for the enjoyment over time of economic, social and cultural rights within the resources available to the state party.<sup>37</sup> Some obligations in relation to progressive realisation are immediate. For example, States have an obligation to take concrete and targeted steps to realise economic, social and cultural rights.<sup>38</sup> The essential needs of members of vulnerable and disadvantaged groups should be prioritised in all resource allocation processes.<sup>39</sup>
15. States need sufficient resources to progressively realise economic, social and cultural rights. There are a variety of means through which states may raise these resources, including taxation. The duty of the individual to pay taxes imposed by the African Charter<sup>40</sup> implies that there is an obligation on the State to institute an effective and fair taxation system and a budgeting

process that ensures that economic, social and cultural rights are prioritised in the distribution of resources.

### **Immediate Obligations Regarding the Implementation of Economic, Social and Cultural Rights**

16. Despite the obligation to progressively realise economic, social and cultural rights, some of the obligations imposed on States parties to the African Charter are immediate upon ratification of the Charter. These obligations include but are not limited to the obligation to take steps, the prohibition of retrogressive steps, minimum core obligations and the obligation to prevent discrimination in the enjoyment of economic, social and cultural rights.

### **Minimum Core Obligations**

17. States parties have an obligation to ensure the satisfaction of, at the very least, the minimum essential levels of each of the economic, social and cultural rights contained in the African Charter.<sup>41</sup> The minimum core obligation is the obligation of the State to ensure that no significant number of individuals is deprived of the essential elements of a particular right.<sup>42</sup> This obligation exists regardless of the availability of resources<sup>43</sup> and is non-derogable.<sup>44</sup> When a State claims that it has failed to realise minimum essential levels of economic, social and cultural rights it must be able to show that it has allocated all available resources towards the realisation of these rights, and particularly towards the realisation of the minimum core content.<sup>45</sup> Where the State does suffer from demonstrable resource constraints, caused by whatever reason, including economic adjustment, the State should still implement measures to ensure the minimum essential levels of each right to members of vulnerable and disadvantaged groups, particularly by prioritising them in all interventions.<sup>46</sup> While the obligation to realise the minimum core content of the rights means that the state should prioritise the realisation of the rights for the poorest and most vulnerable in society it does not remove the obligation to progressively realise the rights for all individuals.<sup>47</sup>

### **Obligation to Take Steps**

18. All States parties have immediate obligations to take steps, in accordance with a measurable national plan of action, towards the realisation of the protected economic, social and cultural rights. The measures adopted should be deliberate, concrete and targeted as clearly as possible towards ensuring enjoyment of the rights protected in the African Charter.<sup>48</sup> States parties are obliged to take legislative measures for the protection of economic, social and cultural rights. However, these measures will generally not be sufficient. States Parties are also obliged to allocate sufficient resources within national budgets towards the realisation of each right.

### **Non-discrimination**

19. Article 2 of the African Charter prohibits any discrimination in the enjoyment of the protected rights on the following non-exhaustive grounds including race, ethnic group, colour, sex/gender, language, religion, political or any other opinion, national and social origin, economic status and birth.<sup>49</sup> Thus

any discrimination against individuals in their access to or enjoyment of economic, social and cultural rights on any of the prohibited grounds is a violation of the African Charter. Discrimination includes any conduct or omission which has the purpose or effect of nullifying or impairing the equal access to and enjoyment of economic, social and cultural rights.<sup>50</sup> The obligation to protect the individual from discrimination is immediate.

### **Presumption against Retrogressive Measures**

20. Measures that reduce the enjoyment of economic, social and cultural rights by individuals or peoples are *prima facie* in violation of the African Charter. Any such measures must be justified in the light of the totality of the rights provided for in the African Charter and in the context of the full use of the maximum available resources.<sup>51</sup> In this context available resources refers to both the State's own resources and international assistance and cooperation (see paragraph XX below.) In determining whether a state party has violated the Charter by implementing a retrogressive measure the Commission will consider whether:
- a. there was reasonable justification for the action;
  - b. alternatives were comprehensively examined and those which were least restrictive of protected human rights were adopted;<sup>52</sup>
  - c. there was genuine participation of affected groups in examining the proposed measures and alternatives;
  - d. the measures were directly or indirectly discriminatory;
  - e. the measures would have a sustained impact on the realisation of the protected right;
  - f. the measures had an unreasonable impact on whether an individual or group was deprived of access to the minimum essential level of the protected right; and
  - g. there was an independent review of the measures at the national level.<sup>53</sup>

### **Effective Domestic Remedies**

21. All rights recognised in the African Charter must be made effective under national legal systems.<sup>54</sup> Violation of economic, social and cultural rights protected under the African Charter must entitle affected individuals and peoples to effective remedies and redress under domestic law. A rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would be incompatible with the principle that human rights are indivisible and interdependent.<sup>55</sup> International remedies are ultimately only supplementary to effective national remedies.<sup>56</sup>
22. Effective remedies can be either administrative or judicial but must be accessible, affordable and timely. Administrative tribunals and the courts should recognise the justiciability of economic, social and cultural rights, and grant appropriate remedies in the event of violations of these rights by State or non-state actors.<sup>57</sup> The training of the judiciary and administrative officials

should expressly include the enforceability of economic, social and cultural rights.<sup>58</sup>

23. In addition, the State must ensure that persons within its jurisdiction, particularly members of vulnerable and disadvantaged groups, enjoy effective access to quality legal services. Measures to be taken in this regard include the establishment of comprehensive and effective legal aid schemes.<sup>59</sup>
24. Without prejudice to the foregoing, where economic, social and cultural rights are not expressly included in the constitution of a State party, the courts and administrative tribunals should strive to protect the interests and values underlying these rights through an expansive interpretation of other rights, for example, the rights to life, human dignity, security of the person, equality and just administrative action.<sup>60</sup>
25. Domestic law must be interpreted as far as possible in a way which conforms to States parties' obligations under the African Charter.

### **Designing and Implementing a National Policy**

26. For each protected right, national plans and policies should be devised and periodically reviewed, on the basis of a participatory and transparent process. They should take into account all other national plans, including where appropriate, poverty alleviation plans and policies whilst also ensuring that the special needs of members of vulnerable and disadvantaged groups are met. They should also identify the resources available to meet the objectives and the most cost-effective way of using them.
27. The plans and policies should include information on indicators, time-frames and benchmarks, by which progress can be closely monitored. Indicators designed to monitor the implementation of the national plan should include structural indicators (that measure the legal and administrative structures created for the implementation of the rights), process indicators (which measure the progressive realisation of the rights in terms of the process adopted) and outcome indicators (which relate to the realisation of the enjoyment of a protected right).<sup>61</sup> Indicators should include analysis of budget allocation and implementation.<sup>62</sup>
28. Data analysed during the monitoring and evaluation of national plans should be disaggregated according to relevant criteria including emphasis on vulnerable and disadvantaged groups.<sup>63</sup>
29. The State should ensure, through political and financial support, the greater effective participation of the population in all phases of policy and programme design, implementation, monitoring and review.<sup>64</sup>
30. The State should avail itself of the necessary technical assistance and cooperation from both other States and international agencies as required to assist with the fulfilment of its obligations under the Charter.<sup>65</sup>

## PART III: OTHER KEY OBLIGATIONS

### Equality

31. Guarantees of equality and non-discrimination should be interpreted, to the greatest extent possible, in ways which facilitate the full protection of economic, social and cultural rights.<sup>66</sup>
32. In ensuring effective equality in the enjoyment of economic, social and cultural rights, Member States must pay particular attention to members of vulnerable and disadvantaged groups. Such individuals are often disproportionately affected by a failure of the State to ensure economic, social and cultural rights<sup>67</sup> and/or are direct victims of discriminatory laws, policies and customary practices.
33. To ensure realisation of equal access to economic, social and cultural rights States should ensure the provision of basic social services (such as water, electricity, education and health care) and equitable access to resources (such as land and credit) to members of vulnerable and disadvantaged groups.
34. The right to equality includes the adoption of special measures for the purpose of securing the adequate advancement of members of vulnerable and disadvantaged groups to enable their equal enjoyment of economic, social and cultural rights.<sup>68</sup> This means that in some cases States will have to take temporary special measures in favour of these groups in order to reduce or suppress conditions that perpetuate discrimination and to realise substantive equality.<sup>69</sup>
35. Such temporary special measures should accelerate the improvement of the position of vulnerable and disadvantaged groups to achieve their de facto or substantive equality, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination, as well as to provide them with compensation.<sup>70</sup> Consequently, such measures should not result in the maintenance of separate rights for different groups and should be discontinued after their intended objectives have been achieved.<sup>71</sup>
36. Patterns of inequality based on race, ethnicity and religion are endemic to the region and require comprehensive attention in national policies.
37. Due to entrenched patterns of sex/gender discrimination, women often do not enjoy equality in relation to economic, social and cultural rights. States must abolish those customary and traditional rules and practices which are major obstacles to the equal enjoyment of rights by women and girls.
38. States should recognise and take steps to combat intersectional discrimination based on a combination of (but not limited to) the following grounds: sex/gender, race, ethnicity, language, religion, political and other opinion, sexuality, national or social origin, property, birth, age, disability, marital, refugee, migrant and/or other status.<sup>72</sup>



## **International Cooperation**

39. All States have the obligation to engage in international cooperation for the realisation of ESCR and must prioritise allocation of such assistance towards the realisation of these rights<sup>73</sup>. It is particularly incumbent upon developed countries, as well as others which are in a position to assist others, to do so.<sup>74</sup>
40. States must avoid entering into all forms of agreements which undermine the enjoyment of economic, social and cultural rights by individuals and/or peoples within their jurisdiction<sup>75</sup>. In this regard states should prevent the abuse of national resources by both domestic and international economic actors.<sup>76</sup> Macro-economic policies should facilitate and not retard access to and enjoyment of economic, social and cultural rights by individuals or peoples. Existing bilateral and multilateral agreements between states, or with international financial institutions, should not be relied on as a justification for a failure to ensure enjoyment of the economic, social and cultural rights protected under the African Charter.

## **Right to Self-determination of Peoples**

41. The right to self-determination as guaranteed under article 20 (1) the African Charter is exercised within the inviolable national borders of a State party by taking due account of the sovereignty of the State. At the national level this implies the right to take part in the democratic governance of the state, especially through free and fair national elections.<sup>77</sup>
42. The right to self-determination in its application to peoples, including indigenous populations/communities, encompasses economic, social and cultural rights, including (but not limited to) the right to recognition of their structures and traditional ways of living as well as the freedom to preserve and promote their culture.<sup>78</sup> The enjoyment of these rights by individuals obliges the State to promote the abolition of, or amend cultural norms that result in discrimination or violation.
43. States should ensure that there is no discrimination against peoples, including indigenous populations/communities, in their access to economic activities particularly the labour market, land<sup>79</sup> and means of agricultural production, and to health services, education and other facilities.<sup>80</sup> States should facilitate and encourage the use of indigenous and local languages in schools and in local and central government.<sup>81</sup>
44. States parties should ensure the prior informed consent by indigenous populations/communities to any exploitation of the resources of their traditional lands<sup>82</sup> and that they benefit accordingly. States parties should further ensure that indigenous communities/populations give prior consent to any activities aimed at accessing and using their traditional knowledge. States parties should ensure that both state and non-state actors respect the rights of peoples to a satisfactory environment.<sup>83</sup>
45. States parties should encourage peoples, including indigenous populations/communities, to preserve their particular cultural identity. To that State parties should consider establishing separate local structures for this purpose based on the principles of equality and non-discrimination.<sup>84</sup>

46. States parties must take special steps to encourage participation by all peoples, including indigenous populations/communities, in the democratic process of national governance.<sup>85</sup> This may include governance schemes that provide more power and authority to regional and local authorities and/or proportional representation systems.
47. The right to self-determination in Africa does not include a right to secession. Active steps towards the promotion and protection of minority rights and inter-ethnic tolerance are essential towards the prevention of secessionist movements in Africa.<sup>86</sup>

### **Engaging with and Respecting the Rights of Civil Society<sup>87</sup>**

48. Civil society has a key role to play in the implementation of economic, social and cultural rights in Africa. To this end states should actively engage with civil society in the realisation of these rights. States should also respect and protect the rights of civil society actors and human rights defenders. In turn, civil society organisations should prioritize the monitoring and enforcement of economic, social and cultural rights in their advocacy work.

### **National Human Rights Institutions**

49. Recognising that National Human Rights Institutions (NHRIs) play a significant role in the promotion and protection of economic, social and cultural rights, states should establish effective NHRIs which meet the standards set by the Paris Principles Relating to the Status of National Institutions.<sup>88</sup> In addition to active promotion and enforcement of economic, social and cultural rights, NHRIs should be involved in the development and monitoring of implementation policies, including the setting of national benchmarks and indicators.<sup>89</sup>

### **State Party Reporting**

50. State Parties to the African Charter have undertaken to file periodic reports to the African Commission on the steps taken to realise all the rights protected in the Charter, including economic, social and cultural rights. The Commission urges State Parties, by utilising both these Principles and Guidelines and the guidelines on State party reporting, to periodically report on steps taken to realise all the economic, social and cultural rights (explicitly and implicitly) guaranteed under the Charter and included in these principles and guidelines.

## PART IV: ECONOMIC, SOCIAL AND CULTURAL RIGHTS ENSHRINED IN THE AFRICAN CHARTER

### Right to Property

51. 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.”
52. This part sets out certain of the obligations imposed by specific economic, social and cultural rights in the African Charter. It is not intended to constitute a comprehensive statement of the obligations imposed by each article, but rather to highlight key aspects of the interpretation of the relevant rights. The specific duties highlighted below should be read in the light of the general obligations of States elaborated above in relation to the economic, social and cultural rights.
53. The right to property is a broad right that includes the protection of the real rights of individuals and peoples in any material thing which can be possessed as well as any right which may be part of a person’s patrimony.<sup>90</sup> The concept also includes the protection of a legitimate expectation of the acquisition of property.<sup>91</sup> It encompasses the rights of the individual, group or people to peaceful enjoyment of the property. The right may be limited by the State in a non-arbitrary manner, according to the law and the principle of proportionality.
54. Protected under this article are rights guaranteed by traditional custom and law to access to, and use of, land and other natural resources held under communal ownership. This places an obligation on State Parties to ensure security of tenure to rural communities, and their members.
55. The right to property in the African Charter includes the following obligations on State parties to:
- a. Ensure peaceful enjoyment of property and protection from forced eviction.<sup>92</sup> This obligation implies that the State shall protect the enjoyment in all its forms, from interference by third parties as well as its own agents.<sup>93</sup>
  - b. Define by law the terms and conditions for the acquisition, nationalisation or expropriation of property based on acting in the public interest at all times.
  - c. Ensure that “public need or in the general interest of the community” as expressed under the Charter serves legitimate public interest objectives such as economic reform or measures designed to achieve greater social justice.<sup>94</sup>
  - d. Ensure effective public participation and transparency in any acquisition process.

- e. Ensure that compensation for public acquisition of property<sup>95</sup> fairly balances the rights of the individual and the wider interests of society.<sup>96</sup> In general, compensation should be reasonably related to the market value of the acquired property. However, in certain circumstances public interest may require less than market value compensation or, exceptionally, none at all.<sup>97</sup>

### **Vulnerable Groups, Equality and Non-Discrimination**

- f. To ensure that members of vulnerable and disadvantaged groups<sup>98</sup>, including indigenous populations/communities who are victims of historical land injustices, have independent access to and use of land and the right to reclaim their ancestral rights,<sup>99</sup> and are adequately compensated for both historical and current destruction or alienation of wealth and resources. This may include land redistribution programmes implemented according to the due process of the law.<sup>100</sup> States should protect traditional land ownership, while ensuring gender equality.
- g. To prevent unfair exploitation of natural resources by both state and non state national and international actors.<sup>101</sup>
- h. To ensure equitable and non-discriminatory access, acquisition, ownership, inheritance and control of land and housing, especially by women.<sup>102</sup> This includes the obligation to take measures to modify or prohibit harmful social, cultural or other practices that prevent women and other members of vulnerable and disadvantaged groups from enjoying their right to property, particularly in relation to housing and land.<sup>103</sup>

## **Right to Work (Article 15)**

56. Article 15: “Every individual shall have the right to work under equitable and satisfactory conditions, and receive equal pay for equal work.”
57. The right to work is essential for the realisation of other economic, social and cultural rights. It forms an inseparable and inherent part of human dignity, and is integral to an individual’s role within society. Access to equitable and decent work, which respects the fundamental rights of the human person and the rights of workers in terms of conditions, safety and remuneration,<sup>104</sup> can also be critical for both survival and human development.
58. The right to work should not be understood as an absolute and unconditional right to obtain employment.<sup>105</sup> Rather, the State has the obligation to facilitate employment through the creation of an environment conducive to the full employment of individuals within society under conditions that ensure the realisation of the dignity of the individual.<sup>106</sup> The right to work includes the right to freely and voluntarily choose what work to accept.<sup>107</sup>
59. The right to work includes the following obligations of the State to:

### **Minimum Core Obligations**

- a. Prohibit slavery and forced labour, which include all forms of work or service exacted from any person under the menace of any penalty and/or for which the said person has not offered himself/herself voluntarily.<sup>108</sup> It includes also all forms of economic exploitation of children<sup>109</sup> and other members of vulnerable and disadvantaged groups.<sup>110</sup>
- b. Ensure the right to freedom of association, including the rights to collective bargaining, to strike and other related organisational and trade union rights.<sup>111</sup> These rights include the right to form and join a trade union of choice (including the right not to), the right of trade unions to join national and international federations and confederations, and the right of trade unions to function freely without undue interference.<sup>112</sup>
- c. Provide adequate protection against unfair or unjustified arbitrary and constructive dismissal, and other unfair labour practices.

### **National Plans, Policies and Systems**

- d. Adopt and implement a national employment strategy and plan of action based on and addressing the concerns of all workers (in both the formal and informal sectors) and the unemployed.
- e. Take appropriate steps to realise the right of everyone to gain their living by work which they freely choose and accept. Such steps include, for example, technical and vocational guidance and training programmes; policies to achieve steady economic; social and cultural development and full productive employment;<sup>113</sup> administration of services to assist and support individuals in order to enable them to identify and find available employment<sup>114</sup> including the facilitation of databanks on employment opportunities; and promotion of the rights

and opportunities of those in the informal sector, subsistence agriculture and in small scale enterprise activities.<sup>115</sup>

- f. Promote a social environment that is conducive to business creation,<sup>116</sup> opportunities for self-employment, entrepreneurship, and the development of cooperatives.
- g. Ensure that educational systems prepare young people with the skills necessary to obtain initial employment.<sup>117</sup>
- h. Ensure the right of everyone to equitable and satisfactory conditions of work, including safe and hygienic working conditions,<sup>118</sup> fair remuneration, rest, leisure and reasonable limitation of working hours, periodic holidays with pay, public holidays with pay and parental leave. This protection should also be specifically extended to and developed for persons working in the informal sector, including those employed in domestic work, agriculture and/or in family enterprises.<sup>119</sup>

### **Vulnerable Groups, Equality and Non-discrimination**

- i. Ensure equality and non-discrimination in access<sup>120</sup> to decent work, equal pay for work of equal value,<sup>121</sup> and promotion<sup>122</sup> without discrimination of any kind and ensuring conditions of work to members of vulnerable and disadvantaged groups that are not inferior to those enjoyed by other employees.<sup>123</sup>
- j. Take special steps to ensure that women have equal opportunities to accept employment; this may entail special education and training programmes to equip women, who often have less access to education, to seek decent work of their own choice<sup>124</sup>.
- k. Enact and enforce laws and introduce implementing measures, including means of redress and access to justice in cases of non-compliance, against workplace harassment. Harassment may amount to discrimination on account of race, colour, religion, national origin, age, sex/gender, sexual orientation, disability, or other status. While all types of harassment ought to be prohibited, sexual harassment requires particular attention. The experience of sexual harassment is an affront to a worker's dignity and prevents in particular women from making a contribution commensurate with their abilities.<sup>125</sup>
- l. Take the necessary measures to recognise the economic value of care giving and other household work, for example, subsistence and market gardening, cooking, and caring for children and the elderly.<sup>126</sup> In drawing up their national budgets, States should adopt systems that record the value of women's unpaid contributions to society.
- m. Educate and promote men and male children to take an equal share of household labour to ensure that the girl-child is not unduly disadvantaged in the provision of household labour.<sup>127</sup>
- n. Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, maintaining and returning to employment. People with disabilities should have effective access to general technical and vocational guidance programmes.

- o. Establish a system of social protection and insurance for workers in both the formal and informal sector,<sup>128</sup> including those performing home-based work, as well as for members of vulnerable and disadvantaged groups.<sup>129</sup>
- p. Prevent child labour through criminalisation of the worst forms. The State should undertake public education on the harmful effects of child labour. The State should introduce and enforce minimum age regulations for paid or unpaid employment and conditions of employment in line with international standards, including hours of work and rest, prohibition or restriction of night work and penalties imposed for violations of such provisions.<sup>130</sup> States must ensure, through the regulation of the conduct of employers and parents, that child employees, fully enjoy their right to education.

## **Right to Health (Article 16)**

60. Article 16 of the African Charter states: “(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”
61. The right to health is an inclusive right that encompasses both health care and the underlying determinants of health. The right to health does not mean the right to be healthy.<sup>131</sup>
62. The right to health care requires an effective and integrated health system which is responsive to national and local priorities, and accessible to all.<sup>132</sup>
63. The determinants of health include access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions.
64. The right to health includes effective access to health-related education and information, including on sexual and reproductive health.<sup>133</sup> It also includes freedoms such as control over one’s own body and health, including sexual and reproductive freedom.
65. The individual has the right to be free from unwarranted interference, including non-consensual medical treatment, experimentation, forced sterilisation and inhuman and degrading treatment.<sup>134</sup>
66. The right of the individual to best attainable state of physical and mental health includes the following State obligations to:

### **Minimum Core Obligations**

67. The minimum core obligations of the right to health include at least the following:
- a. Ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalised groups;<sup>135</sup>
  - b. Ensure the provision of essential drugs to all those who need them, as periodically defined under the WHO Action Programme on Essential Drugs, and particularly anti-retroviral drugs;<sup>136</sup>
  - c. Ensure universal immunisation against major infectious diseases;<sup>137</sup>
  - d. Take measures to prevent, treat and control epidemic and endemic diseases;<sup>138</sup>
  - e. Provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them.<sup>139</sup>

### **National Plans, Policies and Systems**

- f. Adopt and implement a comprehensive national public health strategy and plan of action.<sup>140</sup> This plan should include special



attention to basic and primary health care, and specific measures to ensure coverage of all age groups including in particular in marginalised urban and rural areas.

- g. Set a target of allocating at least 15% of their annual budget to the improvement of the health sector.<sup>141</sup> An appropriate and adequate portion of this amount must be put at the disposal of the national authorities responsible for the fight against malaria, HIV/AIDS, tuberculosis and other related diseases.<sup>142</sup>
- h. Ensure that plans aim to ensure access for all to adequate medical care and treatment in the event of sickness or accident.<sup>143</sup>
- i. Ensure that national plans and policies are designed to ensure that health systems are able to deal with an individual's health holistically by addressing all aspects that may affect his/her health.<sup>144</sup>
- j. Ensure that National Poverty Reduction Strategies, where applicable, include specific plans to realise the right to health.<sup>145</sup> The right to health should be incorporated into development plans,<sup>146</sup> which be based on health, social and environment impact assessments.<sup>147</sup>
- k. Ensure that accountability is a central feature of the right to health and requires the incorporation and implementation of appropriate processes and mechanisms into all health policies.<sup>148</sup>
- l. Ensure that all plans and policies, including particularly the local level, are developed and implemented in a transparent and participatory manner without discrimination to maximise community input.<sup>149</sup> Consequently, plans should be aimed at improving the ability of health services to meet the needs of the population, through improvement of delivery of medicines, and other materials used in the prevention or treatment of diseases as well as improving laboratory facilities.<sup>150</sup>
- m. Ensure education and access to information through mass media in local languages concerning the main health problems in the community, including methods of preventing and controlling them.
- n. Ensure that national plans should be designed to reflect a human rights approach to health indicators.<sup>151</sup> They should also include an effective and accessible monitoring and accountability system.<sup>152</sup>
- o. Ensure that the implementation of national health plans delivers continual improvement in the conditions of service for medical staff to ensure adequately staffed health facilities, to prevent brain drain and the improvement of national health infrastructure.<sup>153</sup>
- p. Ensure that privatisation of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services.<sup>154</sup>
- q. Ensure that national development plans and programmes are designed towards the realisation of a healthy environment that is conducive to the right to health, for example in matters relating to water resources management and sanitation.<sup>155</sup>

- r. Ensure that national health policies guarantee that the determinants of the right to health are achieved through the development and promotion of the income generating capacity of families, particularly those affected by epidemic diseases.

### **Cross-cutting Obligations**

- s. Protect individuals and peoples against environmental, industrial and occupational hazards, preventing air, land and water pollution and alleviating the adverse effects of urban development, industrialisation, and global warming on ecosystems, livelihood and food security.<sup>156</sup>
- t. Ensure the right not to be subjected to medical or scientific experimentation without free and informed consent.<sup>157</sup> In this regard, vulnerable and disadvantaged groups should be given special attention and protection.
- u. Ensure adequate supervision and regulation of research facilities on embryos especially those produced as a result of medical procedures offering assistance towards procreation and the attendant application of such procedures, in order to prevent the fostering of selective gender-biased eugenics.<sup>158</sup>
- v. Ensure the right to benefit from scientific progress and application thereof without any discrimination whatsoever.<sup>159</sup> In this regard states are further bound to ensure the right of everyone, especially children, to protection from all forms of trade in organs and medical exploitation.<sup>160</sup>
- w. Ensure the recognition, acceptance, development, efficacy, modernisation and integration of traditional medicine into the public health care system.<sup>161</sup> This will include legislation on traditional medicine and the creation of an oversight authority, with the objectives to:
  - 1. Sensitise the society to the benefits of traditional medicine;
  - 2. Protect individuals from abuse and misuse of traditional medicines, and to ensure that individuals are not subjected to false medicines;
  - 3. Cultivate and conserve medicinal plants;
  - 4. Produce locally standardised African traditional medicines;
  - 5. Protect traditional medical knowledge.

### **Vulnerable Groups, Equality and Non-Discrimination**

- x. Ensure that national plans prioritise members of vulnerable and disadvantaged groups in access to health care.<sup>162</sup>
- y. Ensure access to affordable health facilities, infrastructure, goods and services to all without discrimination of any kind. States parties should ensure equitable distribution of all health facilities, goods and services, and measures to ensure physical access by all including particularly members of vulnerable and disadvantaged groups.<sup>163</sup> To this end states should ensure that all health indicators (including for example maternal mortality rates) are disaggregated according to a variety of factors, such as rural/urban, sex,

and race, to ensure that there is no discrimination in access to and use of the health system.<sup>164</sup>

- z. Include a gender perspective in National plans and policies in order to promote better health for both men and women.<sup>165</sup>
- aa. Ensure that health systems respect cultural differences, and ethnic diversity, while encouraging members of vulnerable and disadvantaged groups to study medicine and public health and to join health systems as service providers.<sup>166</sup>
- bb. Introduce, where necessary, national health insurance to ensure that individuals, especially those belonging to vulnerable and disadvantaged groups, are not prevented from accessing health care services and goods.<sup>167</sup>
- cc. Adopt and implement policies that ensure that members of vulnerable and disadvantaged groups have access to medicines. Appropriate legislation and international trade regulation and cooperation should be utilised towards the establishment of scientifically sound pharmaceutical industries in Africa with particular emphasis on local African production for self-reliance in drug industries.<sup>168</sup> This should include utilising parallel importation and compulsory licensing for medicines where available and applicable<sup>169</sup>, to ensure the availability of drugs and technologies at affordable prices for treatment, care, and prevention of epidemic, endemic, occupational and other diseases including malaria, HIV/AIDS tuberculosis and other infectious diseases. States parties shall also take immediate action to use tax exemption and other incentives to reduce the prices of drugs and all other inputs in health care services for accelerated improvement of the health of individuals and peoples.<sup>170</sup>
- dd. Intensify all efforts including criminalisation, social mobilisation, information and education to discourage harmful traditional practices, including particularly female genital mutilation, that interfere with the right to health;<sup>171</sup>
- ee. Ensure provision of those specific health services needed by persons with psychosocial, intellectual and physical disabilities, including early diagnosis and access to humane and dignified care and treatment to enable their full enjoyment of life;<sup>172</sup>
- ff. Integrate mental health care as far as possible into community health care systems and support persons with disabilities to live independently in the community, rather than in institutions.<sup>173</sup> To this end special efforts should be taken to make appropriate services available, especially to persons living in rural areas and slums, and survivors of conflict<sup>174</sup>.
- gg. Ensure the human rights of residents within existing institutions for people with psychosocial, intellectual and physical disabilities. Particular efforts must be made to prevent abuses through comprehensive regulation and monitoring of all care providers.<sup>175</sup>
- hh. Ensure that persons with psychosocial or intellectual disabilities are not imprisoned in the general prison population, but rather should be housed in such a way that they are provided with appropriate support and, treatment. Where imprisonment has occurred all steps must be taken to ensure that

prisoners with psychosocial and intellectual disabilities receive the necessary medical care and treatment.<sup>176</sup>

- ii. Take measures to prevent violence against women and mitigate its impact on the physical and mental health of survivors. Measures should include:
  - 1. criminalisation of rape, domestic violence and sexual assault;
  - 2. adequate punishment of offenders;
  - 3. community mobilisation and education;
  - 4. counselling and education of men;
  - 5. training of health and law enforcement personnel to ensure humane and sympathetic treatment of victims;
  - 6. counselling and rehabilitation of survivors of violence; and
  - 7. provision of alternative and safe housing programmes for women fleeing situations of domestic violence.<sup>177</sup>
- jj. Ensure that the health needs of the elderly are protected, through training for health personnel, and the strengthening of social support systems and health education for the elderly on nutrition and exercise/mobility.<sup>178</sup>
- kk. Ensure that prisoners and other persons deprived of their liberty, under any form of detention, have access to conditions of detention consistent with human dignity and the highest attainable standard of health. Measures taken must ensure adequate food, clothing, exercise, physical security, reading material, rehabilitation programmes and medical treatment. This should include access to trained medical personnel, essential drugs, and access to preventives measures against diseases.<sup>179</sup> Special emphasis should be given to the health needs of women in prisons and other places of detention.<sup>180</sup>

### **Disease Specific Obligations**

- ll. Establish a national mechanism for the response to epidemic, endemic, occupational and other diseases including in particular malaria, HIV/AIDS, tuberculosis, neglected tropical diseases and other infectious diseases that ensures a co-ordinated, participatory, transparent and accountable response.
- mm. Review and reform public health legislation and criminal laws and correctional systems to ensure they adequately address the public health issues raised by epidemic, endemic, occupational and other diseases including in particular malaria and HIV/AIDS, and tuberculosis, and that their provisions are consistent with international human rights obligations.<sup>181</sup>
- nn. Ensure the provision of appropriate training for health personnel, as well as continuing education on the treatment and prevention of epidemic, endemic, occupational and other diseases including HIV/AIDS, malaria,<sup>182</sup> and tuberculosis; and education on health and human rights.<sup>183</sup> Health professionals and communities should be trained on guidelines on home based care of patients.<sup>184</sup>

### *Malaria*

- oo. Ensure that the prevention and treatment of malaria are prioritised within national health plans<sup>185</sup> and that adequate resources to that end are made available<sup>186</sup> aiming at drastically reducing the mortality rate.<sup>187</sup> States parties should ensure that those suffering from malaria have prompt access to and are able to apply the appropriate and affordable treatment within twenty-four hours of the onset of symptoms.<sup>188</sup>
- pp. Ensure that the diagnosis and treatment of malaria is widely available including home treatment. Appropriate treatment and access to tools for the control of malaria should be available and accessible to the poorest groups in the community.<sup>189</sup>
- qq. Ensure that strategies taken to control malaria should include the reduction or waiving of taxes and tariffs for mosquito nets and materials, insecticides, anti-malarial drugs and other recommended goods and services that are needed for control strategies; and the allocation of resources required for sustained implementation of planned roll back malaria actions.<sup>190</sup>
- rr. Promote community participation in joint ownership and control<sup>191</sup> of roll back malaria actions to enhance their sustainability<sup>192</sup>.
- ss. Ensure public education on measures applicable to the prevention of malaria.<sup>193</sup>
- tt. Establish and maintain a national malaria control system for adequate transmission of information to ensure a rapid response to outbreaks.<sup>194</sup>
- uu. Ensure that pregnant women and children under five years of age receive the most suitable combination of personal and community protective measures such as insecticide treated mosquito nets and other materials to prevent infection and suffering. All pregnant women who are at risk of malaria, especially those in their first pregnancies, should have access to chemoprophylaxis or presumptive intermittent treatment.<sup>195</sup>
- vv. Make easily available affordable essential drugs, materials, supplies and transportation for personal protection and treatment of malaria.<sup>196</sup>
- ww. Promote and support basic and operational research to ensure that new tools, including vaccines, for malaria are made available without delay and existing ones are used in the most cost-effective and sustainable manner.<sup>197</sup>

### *HIV/AIDS, Tuberculosis, and other infectious diseases*

- xx. Ensure the respect and protection of the rights of individuals infected and affected by HIV/AIDS and tuberculosis and other related infectious diseases;<sup>198</sup>
- yy. Ensure access to a comprehensive package of prevention interventions for HIV/AIDS, tuberculosis and other infectious diseases:
  - 1. Quality voluntary confidential counselling and testing;
  - 2. blood safety;
  - 3. prevention of blood-related transmission;
  - 4. early and appropriate management of STIs and TB;

5. programmes for prevention of mother-to-child transmission and programmes for women after delivery;
  6. barrier methods;
  7. prevention of occupational hazards to health workers and others;
  8. improve access to information, education and communication at community level;<sup>199</sup> and
  9. develop a multi-sectoral national program for awareness of and sensitivity to the negative impact of the HIV/AIDS pandemic to people especially members of vulnerable and disadvantaged groups.<sup>200</sup>
- zz. Ensure the protection of the sexual and social rights of women and girls particularly against harmful traditional and cultural practices that predispose them to HIV/AIDS, Tuberculosis and other related infectious diseases.<sup>201</sup>
- aaa. Prevent infection with HIV and other Sexually Transmitted Diseases, through family life/sex education; access to facilities for detection and treatment, including the elimination of medical, social and cultural barriers to access; training of medical personnel on diagnosis and treatment, education and outreach throughout society, including education on harmful traditional practices that place women at risk, the role of society in supporting HIV positive women and the role of men in the prevention of STDs; creation of well-women clinics offering comprehensive reproductive health service; reduce the stigma of STD clinics; provision of barrier methods of contraception; access to rehabilitative surgery, medical research on particular problems facing the continent, and by promoting delivery in health institutions.<sup>202</sup>
- bbb. Elaborate a “national policy framework” to guide and support appropriate responses to the needs of children affected by HIV/ AIDS covering social, legal, ethical, medical and human rights issues. An effective response to the needs of AIDS-affected children requires a multidisciplinary, multi-sectoral response effectively coordinated to avoid duplication of effort and encourage the rational use of resources.
- ccc. Ensure that immediate policy responses should address issues related to food and nutrition, education, nurture of parentless children, medical care for the sick as well as addressing the psychosocial problems resulting from the loss of loved ones and security. States must ensure, through education and information, that communities do not reject or stigmatize children infected and affected by HIV and AIDS but instead play a major role in protecting their rights.<sup>203</sup>
- ddd. Encourage and develop strong HIV prevention strategies and interventions based on, among other things, appropriate sex education in schools. As a matter of urgency plans must be drawn up to reach out-of-school youth. Furthermore, young people must be given access to reproductive health care and the knowledge and skills to avoid sexual exploitation and unprotected sex. Particular attention should be given to the prevention of transmission of infection by adults to children, through legislation designed

to regulate the age of consent and by the introduction of measures to improve the economic status of families.

- eee. Refrain from limiting access to contraceptives and other means of maintaining sexual and reproductive health, from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, as well as from preventing people's participation in health-related matters.<sup>204</sup> Sexual and reproductive health includes the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth, and provide couples with the best chance of having a healthy infant.<sup>205</sup>
- fff. Promote research efforts on HIV/AIDS based on the African experience and tradition, and to support institutes of research in Africa working mainly in the field of determining the magnitude and extent of HIV infection and the underlying factors relating to HIV infection in order to direct responses aimed at preventing the spread of infection and alleviating its consequences specially on children and women.
- ggg. Ensure the inclusion of life skills programmes in curricula at all levels of formal education as part of preventive strategies for HIV/AIDS.<sup>206</sup> This should include creation of information centres on HIV/AIDS, tuberculosis and other related infectious diseases and access by all sectors of the population, including people living with disabilities, to these centres.<sup>207</sup>
- hhh. Institute measures to prevent transmission through transfusion of infected blood or use of contaminated needles and syringes or traditional surgical manipulation made with inadequately sterilised equipment.
- iii. Promote concessionary credit facilities to families, especially women in rural areas, and to promote food security and good nutritional practices as part of the response to HIV/AIDS, Tuberculosis and other infectious diseases.<sup>208</sup>

### **Other Significant Diseases**

- jjj. Eradicate poliomyelitis in Africa as an urgent priority and to make Africa free of the disease, through the allocation of adequate human, financial and material resources, including from non-governmental and the private sector.<sup>209</sup>
- kkk. Raise awareness about cancer screening and prevention and to make available appropriate screening facilities.<sup>210</sup>

### **Sexual and Reproductive Health**

- III. Ensure reproductive, maternal and child health care based on the life cycle approach to health.<sup>211</sup> This includes the rights of women to:
  - 1. control their fertility and to freely choose when, whether and with whom they will have sex;

2. decide whether to have children, the number and the spacing of children;
  3. choose any method of contraception;
  4. engage in self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;
  5. receive and benefit from family planning education, particularly in the rural areas.<sup>212</sup> In this regard the state should identify and remove all barriers affecting women's access to family planning services.
- mmm. Encourage partners to share information on their health status regarding sexually transmitted infections, including HIV/AIDS;
- nnn. Educate women on the health-related aspects of menopause.<sup>213</sup>
- ooo. Protect adolescents against sexual exploitation and practices that endanger their health, including early marriage.<sup>214</sup> This includes educational measures aimed at discouraging early sexual activity and unwanted or early pregnancies. Special emphasis should be given to effective sex education which should start before sexual activity has begun. Health delivery programmes should include a focus on the needs of adolescents and this must include confidentiality.<sup>215</sup> States should encourage the establishment and expansion of peer support and counselling programmes.
- ppp. Prevent child sexual abuse through strict enforcement of legislation criminalising such abuse and adequate punishment of offenders, through community education and mobilisation, education of medical personnel to identify signs of abuse, and through public education.<sup>216</sup>
- qqq. Take appropriate measures to:
1. establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while breast-feeding;
  2. decriminalise abortion in all cases, and particularly legalise medical abortion in case 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. This should include educating health personnel on the circumstances when abortions are legally permissible.<sup>217</sup>
  3. provide post-abortion health-care services in appropriate locations.<sup>218</sup>
- rrr. Reduce the maternal mortality rate<sup>219</sup>, the stillbirth, infant and child mortality rate and to take measures to ensure the healthy development of the newborn and the child<sup>220</sup>, which include:
1. Medical assistance and health care to all children with emphasis on the development of primary health care;
  2. The provision of adequate nutrition and safe drinking water;<sup>221</sup>



3. The combating of disease and malnutrition within the framework of primary health care through the application of appropriate technology;<sup>222</sup>
4. Provision of comprehensive, high-quality maternal health services, including adequate equipment and supplies for preventive, diagnostic and curative service, the training of medical staff and the development of treatment guidelines or protocols for the management of maternal complications.<sup>223</sup> The state must ensure that these services are physically accessible to women across the country, and especially in rural areas. Education for pregnant women on potential problems, and especially on the increased chances of infection with malaria and the negative effects of such infection.
5. Conduct extensive public education, including through the media and community-based initiatives, as well as the education of medical personnel, on safe-motherhood and appropriate health practices.<sup>224</sup>

## Right to Education (Article 17)

68. Article 17.1 of the African Charter states: "Every individual shall have the right to education."
69. Education is a fundamental right that affects the growth, development and welfare of human beings, particularly children and youth. As a human right, education is the primary vehicle by which economically and socially marginalised children and adults can lift themselves out of poverty and obtain the means to participate fully in their community. It has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth.<sup>225</sup>
70. The right to education encompasses pre-school, primary, secondary, tertiary, adult education and vocational training.<sup>226</sup>
71. The rights in article 17 impose, amongst others, the following obligations on States parties:

### Minimum Core Obligations

- a. To ensure that all children enjoy their right to free and compulsory primary education.<sup>227</sup> No children should be denied this right because of school fees or related costs of education. Special measures may be required to ensure that children belonging to disadvantaged or vulnerable groups receive free primary education.<sup>228</sup> To achieve this objective states are bound to progressively increase the amount of national resources allocated to education.<sup>229</sup>
- b. To implement policies to eliminate or reduce the costs of attending primary school which include the provision of stipends, providing free or subsidised uniforms (or lifting of uniform requirements), provision of free textbooks, provision of free or subsidised transportation or free school meals to encourage the attendance of poor children at school.<sup>230</sup>

### National Plans, Policies and Systems

- c. To develop a system at all levels that ensures that education is physically and economically accessible to everyone<sup>231</sup> (including the provision of finance, the building of schools and the provision of educational materials),<sup>232</sup> establishing an adequate scholarship and/or fellowship system,<sup>233</sup> ensuring continued education for teachers and instructors including education on human rights,<sup>234</sup> and continuously improving the conditions of service and level of training of teaching staff.<sup>235</sup>
- d. To ensure that secondary education is made generally available and accessible to all by all appropriate means, and in particular by the progressive introduction of free education. States shall ensure that secondary education is not dependent on a student's

apparent capacity or ability and that secondary education will be distributed throughout the State in such a way that it is available on the same basis to all.<sup>236</sup>

- e. To ensure that higher education is made generally available and accessible to all, on the basis of capacity, by all appropriate means, and in particular by the progressive introduction of free education.<sup>237</sup>
- f. To ensure that education systems are directed towards:
  - 1. the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential, without discrimination;<sup>238</sup>
  - 2. fostering respect for human rights and fundamental freedoms with reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions;<sup>239</sup>
  - 3. the preservation and strengthening of positive African morals, traditional values and cultures;<sup>240</sup>
  - 4. the preparation of the child for responsible life in a free society, in the spirit of understanding, equality, tolerance, dialogue, mutual respect and friendship among all peoples;<sup>241</sup>
  - 5. the promotion and achievements of African unity and solidarity;<sup>242</sup>
  - 6. the development of respect for the environment and natural resources;<sup>243</sup> and
  - 7. the promotion of the child's understanding of primary health care.<sup>244</sup>
- g. The teaching of African national languages should be introduced at primary school level. States should ensure that radio, television, audio-visual aids, and locally produced materials should be used in this education.<sup>245</sup>
- h. To respect the liberty of parents and guardians to establish and 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.<sup>246</sup>
- i. To ensure that all educational programmes are of a high quality and appropriate to the needs of society. Education must equip learners with the requisite skills and values to participate in and contribute to national and international development and employment opportunities.<sup>247</sup> Education and training must be targeted at development based on African realities, and particularly towards the development of science and

technology.<sup>248</sup> School curricula should be linked to the labour market and society's demands for technology and self-reliance.<sup>249</sup>

- j. To ensure academic freedom and institutional autonomy in all institutions of higher learning.<sup>250</sup>
- k. To direct university and higher education towards the training and research needed to ensure Africa's scientific and technological independence.<sup>251</sup> States should encourage institutions of higher education to conduct their research and training in a socially responsible manner.
- l. To ensure that higher and tertiary institutions should have a role in economic, social and cultural development and the promotion and protection of freedom and dignity.<sup>252</sup> Higher education institutions and universities should be enabled to contribute to social, economic, cultural, scientific and human development through the training of high-level specialists and the intensification of research<sup>253</sup> and engagement with policymakers and the public.
- m. To ensure accessible and affordable higher educational, vocational training and adult education and adult literacy as fundamental aspects of the right to education.<sup>254</sup>
- n. To ensure that adult education programmes are aimed at reducing inequalities within societies and enabling African peoples to better understand the problems of the modern world. These programmes should also take into consideration national priorities and realities. States should further ensure the establishment of institutions for the training of staff for adult education. The use of African national languages is highly recommended in adult education without necessarily abandoning the use of a foreign language. Adult education should be a continuing process
- o. To facilitate the free movement of persons essential for the exchange of ideas and economic integration. To give priority to cooperation in the exchange of professional manpower, especially in education and training, and to adopt measures to reduce brain drain and to encourage qualified Africans living abroad to return.<sup>255</sup>

### **Vulnerable Groups, Equality and Non-discrimination**

- p. To ensure that all children, including those belonging to vulnerable and disadvantaged groups, enjoy equal access to and progress in the educational system, including addressing the social, economic and cultural barriers that impede girl children's equal enjoyment of the right to education.<sup>256</sup> Where necessary States should introduce special measures to ensure that vulnerable and disadvantaged children attend school.<sup>257</sup>
- q. To ensure the safety of schoolchildren by taking effective measures to address physical and sexual abuse by other students, teachers, staff or principals; ensuring the safety of schoolchildren on their way to and from school; In adopting and

implementing a prohibition on the use of corporal punishment, States should ensure that a child who is subjected to school or parental discipline shall be treated with humanity and with respect for their inherent dignity.<sup>258</sup>

- r. To ensure the provision of a programme in psycho-social education for orphans and other vulnerable and disadvantaged children.<sup>259</sup>
- s. To ensure that all children that have dropped out receive the opportunity to finish their education.<sup>260</sup> In particular, States should ensure that girls who become pregnant before completing their education have an opportunity to continue.<sup>261</sup>
- t. To ensure that all children with disabilities are provided with inclusive quality and free primary education and access to inclusive quality secondary and tertiary education on an equal basis with other members of their communities.<sup>262</sup> States should ensure that effective individualised support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.<sup>263</sup>
- u. To prohibit and prevent all discrimination in education against children based on their real or perceived HIV status and to take steps to strengthen the ability of extended families to care for HIV/AIDS-affected children and provide them with formal schooling.
- v. To address the interrelationship between education and child labour by simultaneously providing incentives to keep children in school, expanding educational opportunities for working children and making stronger efforts to remove children from the worst forms of child labour and to ensure their placement in appropriate educational programmes.<sup>264</sup>
- w. To ameliorate the effect of household labour on the education of the child, and to ensure that the girl child is not prevented from acquiring a decent education as a result<sup>265</sup> of such labour.
- x. To ensure that prisoners and other persons in detention, especially juveniles, are provided with formal and vocational education to increase their skills and capacities when they are reintegrated into society.<sup>266</sup>
- y. Facilitate integration of children of migrant workers into the local school system, particularly in respect of teaching them the local language whilst respecting their own mother tongue and culture.<sup>267</sup>

## Right to Culture

72. Article 17.2: Every individual may freely, take part in the cultural life of his community. 3. The promotion and protection of morals and traditional values recognised by the community shall be the duty of the State.
73. The right to take part in cultural life vests in the individual and should be protected as such by states parties. It is integral to the way of life of individuals and communities, including promotion and preservation of their culture, heritage and institutions.<sup>268</sup> It refers not only to the enjoyment of cultural activities and access to materials but to participation, policy-making and artistic freedom.<sup>269</sup>
74. It includes freedom from interference with the enjoyment of cultural life, the freedom to create and contribute to culture, the freedom to choose in what culture(s) and cultural life to participate and the freedom to manifest one's own culture. It also encompasses the freedom to disseminate one's own culture and cultural values, the freedom to cooperate internationally, the right to participate in the definition, preparation and implementation of policies on culture and the enjoyment of other rights necessary for the enjoyment of the right to participate in cultural life. It is inherently linked to the right to freedom of expression, and states must ensure the right to freedom of expression as a condition for the realization of the right to culture.
75. The right to culture protects positive African values consistent with international human rights standards, and implies an obligation on the State to ensure the eradication of harmful traditional practices that negatively affect human rights<sup>270</sup>.
76. The right of the individual to take part in cultural life includes the following state obligations to:

### National Plans, Policies and Systems

- a. Ensure participation at all levels in the determination of cultural policies and in cultural and artistic activities;<sup>271</sup>
- b. Implement measures for safeguarding, protecting and building awareness of tangible and intangible cultural heritage, including traditional knowledge systems;<sup>272</sup>
- c. Ensure recognition of and respect for the diverse cultures existing in Africa;<sup>273</sup>
- d. Implement policies generally aimed at the conservation, development and diffusion of culture and the promotion of cultural identity. These policies should be implemented through:
  1. Making funds available for the promotion of cultural development and popular participation in cultural life, including public support for private initiative;
  2. Creation of institutional infrastructure established for the implementation of policies to promote popular participation

in culture, such as cultural centres, museums, libraries, theatres and cinemas;

3. Measures and programmes aimed at promoting awareness and enjoyment of the cultural heritage of national ethnic groups, minorities and indigenous populations/communities;
4. Protection of the freedom of artistic creation and performance and professional education in the field of culture and art.<sup>274</sup>

### **Vulnerable Groups, Equality and Non-discrimination**

- e. Ensure that minority and indigenous languages are protected and promoted. States should recognize that language is an integral part of the structure of culture and that the usage of language enriches the individual and enables him/her to take an active part in the community and in its activities;
- f. Respect and promote the right of the child to fully participate in cultural and artistic life and to encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.<sup>275</sup>
- g. Eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:
  1. those customs and practices prejudicial to the health or life of the child; and
  2. those customs and practices discriminatory to the child on the grounds of sex/gender or other status<sup>276</sup>
- h. Prohibit child marriage and the betrothal of girls and boys.<sup>277</sup>

## **Right to Housing (Articles 14, 16 and 18(1))**

77. In *SERAC & CESR v Nigeria*, the Commission held that, although the right to housing or shelter is not explicitly provided for under the African Charter, housing rights are protected through the combination of provisions protecting the right to property (art 14), the right to enjoy the best attainable standard of mental and physical health (art 16), and the protection accorded to the family (art 18(1)).<sup>278</sup>
78. The human right to adequate housing is the right of every person to gain and sustain a safe and secure home and community in which to live in peace and dignity.<sup>279</sup> It includes access to natural and common resources, safe drinking water,<sup>280</sup> energy for cooking, heating, cooling and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.<sup>281</sup>
79. The right to housing imposes, amongst others, the following obligations on States parties to:

### **Minimum Core Obligations**

- a. Refrain from and protect against forced evictions from home(s) and land, including through legislation.<sup>282</sup> All evictions must be carried out lawfully and in full accordance with relevant provisions of national and international human rights and humanitarian law.<sup>283</sup> States should apply appropriate civil or criminal penalties against any public or private person or entity within its jurisdiction that carries out evictions in a manner inconsistent with applicable national and international law, including due process.<sup>284</sup>
- b. Guarantee to all persons a degree of security of tenure which confers legal protection upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land,<sup>285</sup> against forced evictions,<sup>286</sup> harassment and other threats.<sup>287</sup>
- c. Ensure at the very least basic shelter for everybody<sup>288</sup>

### **National Plans, Policies and Systems**

- d. Carry out comprehensive reviews of relevant national legislations and policies with a view to ensuring their conformity with international human rights provisions. Such reviews should also ensure that existing legislation, regulation and policy address the privatization of public services, inheritance and cultural practices, so as not to lead to, or facilitate forced evictions.<sup>289</sup>
- e. Implement housing programmes, including subsidies and tax incentives, to expand housing construction to meet the needs of all categories of the population, particularly low-income families,<sup>290</sup>
- f. Prioritise in national plans and policies the provision of shelter for all persons in desperate need of emergency housing;<sup>291</sup>



- g. Protect the tenure of tenants including by the use of rent control and legal guarantees;<sup>292</sup>
- h. Implement programmes designed to address the special problems of housing, water supply and sanitary conditions in rural areas;<sup>293</sup>
- i. Ensure that housing is affordable and that the attainment and satisfaction of other basic needs are not threatened or compromised by the costs of housing;<sup>294</sup>
- j. Ensure the habitability of housing, including providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, including violence, structural hazards and disease vectors;<sup>295</sup>
- k. Ensure that housing developments allow access to employment, health care services, schools, child-care centres and other social facilities. Housing should not be built on either polluted sites or in proximity to pollution sources;<sup>296</sup>
- l. Ensure that the construction of housing, including the materials used, are culturally acceptable and appropriately enable the expression of cultural identity and diversity;<sup>297</sup>
- m. Entrust an independent national body, such as a national human rights institution, to monitor State compliance with these guidelines and international human rights law, including investigation of forced evictions and other violations<sup>298</sup> and ensuring prosecution of perpetrators;

### **Vulnerable Groups, Equality and Non-discrimination**

- n. Ensure that priority in housing and land allocation should be given to members of vulnerable and disadvantaged groups;<sup>299</sup>
- o. Ensure that the provision of housing, particularly regarding construction and the building materials used is culturally appropriate<sup>300</sup> for vulnerable and disadvantaged groups, including indigenous communities/populations;
- p. Take measures to ensure that women (whatever their marital status),<sup>301</sup> internally displaced persons,<sup>302</sup> refugees, indigenous communities/populations and other members of vulnerable and disadvantaged groups are guaranteed equal access to land, adequate housing or shelter and to acceptable living conditions in a healthy environment. Special attention should be given to ensuring fair and equitable inheritance of land and rights in housing regardless of sex;<sup>303</sup>
- q. Ensure the equal rights of women and men to protection from forced evictions and the equal enjoyment of the human right to adequate housing and security of tenure.<sup>304</sup> Implement measures to ensure that titles to housing and land are conferred on women, and that they are able to access housing and land independently,<sup>305</sup>

- r. Ensure that women enjoy equal rights to compensation for violation of their housing rights as men. Single women and widows should be entitled to their own adequate level of compensation;<sup>306</sup>

## Evictions

- s. Ensure that evictions only occur in exceptional circumstances. Any eviction must be (a) authorised by law; (b) carried out in accordance with international human rights law; (c) undertaken solely in the public interest; (d) reasonable and proportionate; (e) regulated so as to ensure full and fair compensation and rehabilitation;<sup>307</sup>
- t. Ensure that evictions are not carried out in a manner that violates the dignity and human rights to life and security of those affected;<sup>308</sup>
- u. Ensure that evictions do not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Alternative housing should be situated as close as possible to the original place of residence;
- v. Ensure that where planning and development processes include evictions all those likely to be affected should be actively consulted;
- w. The eviction process should include the following elements: (a) appropriate individual notice to all potentially affected persons; (b) effective dissemination by the authorities of relevant information in advance; (c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan; (d) opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and (e) holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities. Prior to any decision to initiate an eviction, authorities must demonstrate that the eviction is unavoidable and consistent with international human rights commitments protective of the general welfare;<sup>309</sup>
- x. Ensure that eviction notices allow and enable those subject to eviction to conduct an inventory in order to assess the value of their properties, investments and other material goods that may be damaged. Those subject to eviction should also be given the opportunity to assess and document non-monetary losses to be compensated;<sup>310</sup>
- y. Ensure the mandatory presence of governmental officials or their representatives on site during evictions, especially where they involve a large number of people. Neutral observers, including regional and international observers, should be allowed access, upon request, to ensure transparency and compliance with

international human rights principles during the carrying out of any eviction;<sup>311</sup>

- z. Take steps to ensure that no one is subject to violence, especially women and children, or arbitrarily deprived of property or possessions as a result of forced evictions;<sup>312</sup>
- aa. Ensure that all evicted persons who are wounded and sick, as well as those with disabilities, receive the medical care and attention they require to the fullest extent practicable and with the least possible delay. When necessary, evicted persons should have access to psychological and social services. Special attention should be paid to:
  - 1. the health needs of women and children;
  - 2. ensuring that ongoing medical treatment is not disrupted as a result of eviction or relocation; and
  - 3. the prevention of contagious and infectious diseases, including HIV/AIDS, at relocation sites;<sup>313</sup>
- bb. Ensure that any legal use of force must respect the principles of necessity and proportionality, as well as the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*;<sup>314</sup>
- cc. Ensure that members of the same extended family or community are not separated as a result of evictions;<sup>315</sup>
- dd. Ensure that evictions do not take place in inclement weather, at night, during festivals or religious holidays, prior to elections, or during or just prior to school examinations;<sup>316</sup>
- ee. Ensure that those being evicted are not forced to demolish their own dwellings or other structures. However, the option to do so must be provided to affected persons as this would facilitate salvaging of possessions and building material;<sup>317</sup>
- ff. Ensure sufficient alternative accommodation, or restitution when feasible, immediately upon the eviction. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to:
  - 1. essential food, potable water and sanitation;
  - 2. basic shelter and housing;
  - 3. appropriate clothing;
  - 4. essential medical services;
  - 5. livelihood sources;
  - 6. fodder for livestock and access to common property resources previously depended upon; and
  - 7. education for children and childcare facilities;

- gg. Ensure the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education.<sup>318</sup> This includes the obligation to ensure that resettled persons, groups and communities are not placed in conflict with their host communities;
- hh. Ensure that all resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads and allocation of land and sites, are consistent with internationally recognised human rights principles, and completed before those who are to be evicted are moved from their original areas of dwelling;<sup>319</sup>
- ii. Ensure that adequate and effective legal or other appropriate remedies are available to any persons who are threatened with, undergo, remain vulnerable to, or defend against forced evictions.<sup>320</sup> These include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation, and protection from eviction during the period that their case is being examined before a national, regional or international legal body;<sup>321</sup>
- jj. Ensure that all those evicted, irrespective of whether they hold title to the property, should be entitled to adequate compensation including pecuniary and non pecuniary damages, within a reasonable time. This may cover the loss, salvage and transport of their properties affected, together with the loss of any rents already paid.

## **Right to Social Security (Articles 4, 5, 6, 15; 16; 18(1), (2) and (4))**

80. The right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realise their rights. Social security, through its redistributive character, plays an important role in poverty reduction and alleviation and preventing social exclusion and promoting social inclusion. The right to social security includes the right not to be subject to arbitrary and unreasonable restrictions on existing social security coverage, whether obtained publicly or privately, as well as the right to equal enjoyment of adequate protection from social risks and contingencies.<sup>322</sup>
81. Therefore, although the right to social security is not explicitly protected in the African Charter, it can be derived from a joint reading of a number of rights guaranteed under the Charter including (but not limited to) the rights to life, dignity, liberty, work, health, food, protection of the family and the right to the protection of the aged and the disabled.<sup>323</sup> In addition it is strongly affirmed in international law.<sup>324</sup>
82. The right to social security imposes, amongst others, the following obligations on States parties to:

### **Minimum Core Obligations**

- a. Ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education consistent with human life, security and dignity.<sup>325</sup>

### **National Plans, Policies and Systems**

- b. Take effective measures to fully realise the right of all persons to social security, including social insurance. These measures include:
  1. Contributory or insurance-based schemes
  2. Non-contributory schemes such as universal or targeted social assistance (where benefits are received based solely on need);
  3. Privately run schemes, and (d) self-help or other measures, such as community-based or mutual schemes.<sup>326</sup>
- c. Ensure that a system, whether composed of a single or variety of schemes, is available and in place to ensure that benefits are provided for the relevant social risks and contingencies. The system should be established under domestic law, and public authorities must take responsibility for its effective administration or supervision.<sup>327</sup>
- d. Ensure that the social security system provides for the coverage of the following nine principal branches of social security.<sup>328</sup>

1. **Health care:** guarantee that health systems are established to provide adequate access to health services for all.
  2. **Sickness:** Cash benefits should be provided to those incapable of working due to ill-health to cover periods of loss of earnings. Persons suffering from long periods of sickness should qualify for disability benefits.
  3. **Old age:** appropriate measures should be taken to establish social security schemes that provide benefits to older persons, starting at a specific age, to be prescribed by national law.
  4. **Unemployment:** benefits to cover the loss or lack of earnings due to the inability to obtain or maintain suitable employment.
  5. **Employment injury:** the protection of workers who are injured in the course of employment or other productive work.
  6. **Family and child support:** the provision of adequate family support, particularly for children, the aged and people living with disabilities.<sup>329</sup>
  7. **Maternity:** Paid maternity leave should be granted to all women, and benefits should be provided for an adequate period.
  8. **Disability:** the provision of adequate income support to persons with disabilities who, owing to disability or disability-related factors, have temporarily lost, or received a reduction in, their income, have been denied employment opportunities or have a permanent disability.
- e. Survivors and orphans: States should guarantee to widows and orphans adequate benefits and assistance under social security schemes, including ensuring that they are entitled to inherit property from their husbands, parents or other relatives.<sup>330</sup>
- f. Ensure that qualifying conditions for benefits are reasonable, proportionate and transparent. The withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law.<sup>331</sup>
- g. Ensure that where a social security scheme requires contributions, these are stipulated in advance. The direct and indirect costs and charges associated with making contributions must be affordable for all, and must not compromise the realisation of other Charter rights.<sup>332</sup>

### **Vulnerable Groups, Equality and Non-discrimination**

- h. Establish social safety nets to ensure that members of vulnerable and disadvantaged groups are able to survive even in times of severe resource constraints, including in periods of economic recession.<sup>333</sup>
- i. Ensure no direct or indirect discrimination in social security schemes on any of the prohibited grounds of discrimination<sup>334</sup> particularly through the imposition of unreasonable eligibility conditions or lack of adequate access to information.<sup>335</sup>

- j. Ensure that all persons, especially individuals belonging to vulnerable and disadvantaged groups, are covered by the social security system, In order to ensure universal coverage, non-contributory schemes will be necessary.<sup>336</sup>
- k. Ensure that benefits are provided in a timely manner and that beneficiaries have physical access to the social security services in order to receive benefits and information, and make contributions where relevant. Particular attention should be paid in this regard to persons with disabilities, migrants, and persons living in remote or disaster-prone areas, as well as areas experiencing armed conflict.<sup>337</sup>
- l. Take steps to ensure that the social security systems cover those persons working in the informal economy.<sup>338</sup>

### **Right to Food (articles 4, 16 and 22)**

83. Although the African Charter does not expressly protect the right to food the African Commission held, in *SERAC & CESR v Nigeria*, that the right to food is inherent in the Charter's protection of the rights to life, health and the right to economic, social and cultural development.<sup>339</sup>
84. The right to adequate food is an individual right that is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights<sup>340</sup> that are also enshrined in the African Charter, including, in particular, the rights to health, education and political participation. Enjoyment of this right will particularly depend on the enjoyment of the right to water and access to affordable energy for cooking.
85. The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right shall therefore not be interpreted in a narrow or restrictive sense which equates it with merely a minimum package of calories, proteins and other specific nutrients.
86. The State has the following, among other, obligations to:

#### **Minimum Core Obligations**

- a. Take the necessary action to guarantee the right of everyone to be free from hunger and to mitigate and alleviate hunger even in times of natural or other disasters;<sup>341</sup>
- b. Refrain from and protect against destruction and/or contamination of food sources;<sup>342</sup>
- c. Refrain from using access to food as a political tool to reward supporters, punish opponents or recruit militias.

#### **National Plans, Policies and Systems**

- d. Develop national plans and policies to ensure food security,<sup>343</sup> which includes constantly accessible and quality food that meets the requirements of nutrition and cultural acceptability;<sup>344</sup>
- e. The plans and policies should address critical issues and measures in regard to all aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food, as well as parallel measures in the fields of nutrition, health, education, employment and social security.<sup>345</sup> Care should be taken to ensure the most sustainable management and use of natural and other resources for food at the national, regional, local and household levels;<sup>346</sup>
- f. Ensure that national policies are designed and implemented so that food consumed is culturally acceptable;
- g. Ensure that all persons are able to feed themselves directly through environmentally, economically and socially sustainable methods from



productive land or other natural resources, or from well functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand;<sup>347</sup>

- h. Ensure the economic accessibility of food, which implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised;
- i. Take measures to improve food distribution, such as the improvement of communications between areas of production and food-marketing centres, the facilitation of access to markets especially for small producers, the introduction of price support and stabilisation measures where necessary to improve national production of food, the control of abusive practices, and the assurance of minimum supplies to needy groups;<sup>348</sup>
- j. Take measures to develop or reform existing agrarian systems, in order to achieve the most sustainable and efficient development and utilisation of natural resources,<sup>349</sup> including eradicating impediments to agriculture such as infestations of the Tsetse fly.<sup>350</sup> Agriculture should be primarily targeted towards the growth of food for internal consumption.<sup>351</sup> Emphasis should be placed on the promotion and development of sustainable, decentralised small-scale agriculture, including livestock and fishery industries, to ensure nutrition;<sup>352</sup>
- k. Take measures to ensure that surplus food production is safely stored against famine, drought and other hardships.<sup>353</sup> In this regard states should put in place adequate and functioning mechanisms of early warning to prevent or mitigate the effects of natural or human-made disasters. States should take appropriate emergency preparedness measures, such as keeping food stocks, and establishing adequate systems for distribution;<sup>354</sup>
- l. Ensure that food aid does not adversely affect local producers and local markets, and is organised in ways that privilege local and regional sources for food and facilitate the return to food self-reliance of the beneficiaries;<sup>355</sup>
- m. Ensure that the production of crops for agro-fuels<sup>356</sup> and food for export does not disproportionately impact on domestic access to food;
- n. Participation in international cooperation efforts and projects aimed at ensuring the right of everyone to be free from hunger, in particular through and equitable distribution of world food supplies in relation to need, account being taken of the related problems of both food-importing and food exporting countries;<sup>357</sup>
- o. Take measures to improve and disseminate knowledge regarding methods of food conservation, in particular to reduce crop and post-harvest losses and waste and to prevent degradation of resources;<sup>358</sup>

- p. Implement reforestation programmes as a means of checking the rate of desertification of arable lands and preserving their fertility;<sup>359</sup>
- q. Prevent the destruction of natural resources of the country, in order to protect the right to food and health of future generations;
- r. Assist individuals to meet their duty to feed their dependent family members, according to available means;<sup>360</sup>
- s. Ensure that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to sex and occupation;<sup>361</sup>
- t. Ensure that food is free from adverse substances through establishing requirements for food safety and for a range of protective measures by both public and private means;<sup>362</sup>
- u. Take measures (including the adoption of food standards and transparent labelling) to reduce food adulteration and contamination and to improve the quality and safety of food, at market and storage levels, as well as food hygiene at all levels;<sup>363</sup>
- v. Take measures to disseminate knowledge of the principles of nutrition;<sup>364</sup>
- w. Take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to adequate food;<sup>365</sup>

### **Vulnerable Groups, Equality and Non Discrimination**

- x. Ensure the accessibility of food to members of vulnerable and disadvantaged groups through, if necessary, special programmes,<sup>366</sup> including land reform schemes.<sup>367</sup> The comparative poverty of vulnerable and disadvantaged groups must be taken into consideration;<sup>368</sup>
- y. Set up concrete programmes to assist members of vulnerable and disadvantaged groups by directly supplying them where necessary with quality food in sufficient quantity;
- z. Ensure that all persons imprisoned or detained in any manner receive adequate and acceptable food that meets daily standard nutritional requirements. Further, authorities should ensure that imprisoned and detained persons are allowed food brought to them by their relatives and friends.<sup>369</sup>

## **Right to Water and Sanitation (Articles 4, 5, 15, 16, 22 and 24)**

87. While the African Charter does not directly protect the right to water and sanitation, it is implied in the protections of a number of rights, including but not, limited to the rights to life, dignity, work, food, health, economic, social and cultural development and to a satisfactory environment.<sup>370</sup>
88. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal, domestic, and agricultural uses. Water should be treated as a social and cultural good, and not primarily as an economic good.<sup>371</sup>
89. Sufficient water means an adequate and continuous water supply for each person's personal and domestic use. This normally includes drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene.<sup>372</sup> A sufficient amount of water is necessary to prevent death from dehydration.
90. Safe water is water that, in particular, is free from hazardous substances (micro-organisms, chemical substances and radiological hazards) that could endanger human health, and whose colour, odour and taste are acceptable to users.<sup>373</sup>
91. Everyone has the right to have access to adequate and safe sanitation that is conducive to the protection of public health and the environment.<sup>374</sup> Sanitation comprises at least, a clean toilet or latrine, together with collection, disposal and treatment of human excreta, wastewater, solid waste and storm water removal and hygiene education.<sup>375</sup>
92. The right to water and sanitation imposes the following obligations, among others, on States parties to:

### **Minimum Core Obligations**

- a. Ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic use, including preventing disease<sup>376</sup>, together with access to adequate sanitation.
- b. Ensure safe physical access to water facilities or services that provide sufficient, safe and regular water; that have an adequate number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household; educational institution, workplace or health institution.<sup>377</sup>
- c. Refrain from using access to water as a political tool.

### **National Plans, Policies and Systems**

- d. Adopt a national strategy or plan of action to realize the right to water and sanitation,<sup>378</sup>
- e. Take appropriate measures for the national management of water resources and the preservation of water against pollution,<sup>379</sup>

- f. Promote sustainable use of water resources.<sup>380</sup> Ensure that there is appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage.<sup>381</sup>
- g. Adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations. Such strategies may include:
  - 1. reducing depletion of water resources by halting unsustainable extraction, diversion and damming;
  - 2. reducing and eliminating contamination of watersheds and water-related eco-systems;
  - 3. monitoring water reserves;
  - 4. ensuring that proposed developments do not interfere with access to adequate water;
  - 5. assessing the impacts of actions that may impinge upon water availability and natural ecosystem watersheds;
  - 6. reducing water wastage in its distribution;
  - 7. response mechanisms for emergency situations; and
  - 8. establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes;<sup>382</sup>
- h. Formulate and implement national water and sanitation strategies and plans of action that should respect, *inter alia*, the principles of non-discrimination and ensure the right of everyone to participate in decision-making affecting their right to water and sanitation,<sup>383</sup>
- i. Take steps to ensure that local government authorities and other governance entities not part of central government manage water and sanitation services in their own areas, and under their authority so as to facilitate universal access to water and sanitation in sufficient quantity, quality and continuity, and at an affordable and equitable price.<sup>384</sup> States should promote pro active citizen involvement in defining water and sanitation policies at the local level in a democratic and inclusive manner.<sup>385</sup> In this regard states parties should increase financing for local water and sanitation infrastructure to address the needs of poor persons and peoples lacking access to water and sanitation;<sup>386</sup> and contribute to developing local government capacity to improve effective water supply and sanitation services.<sup>387</sup>
- j. Ensure that the private ownership of water and sanitation services, or any privatisation of water and sanitation services, does not take place in the absence of a clear and efficient regulatory framework that ensures sustainable access to safe, sufficient, physically accessible and affordable water and sanitation. States are obligated to regulate and monitor private water and sanitation providers to ensure that they do not violate the right to access to water and sanitation.<sup>388</sup>

- k. Ensure that procedures for the disconnection of water and sanitation services are reasonable and only occur after timely and full disclosure of information and include legal recourse and remedies as well as legal assistance. Ensure that procedures take into account the individual's ability to pay and therefore disconnections for non-payment should not result in a person being denied access to a minimum amount of safe drinking water where that person proves that he or she is unable to pay for these basic services.<sup>389</sup> The quantity of safe drinking water a person can access may be reduced, but full disconnection may only be permissible if there is access to an alternative source.
- l. Ensure that the export of water resources does not limit the full enjoyment of the right to water within the country;
- m. Take steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions.<sup>390</sup>
- n. Ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes.<sup>391</sup> This includes strict controls of the use and pollution of water resources for industrial purposes, and especially of extractive industries in rural areas.
- o. Monitor and combat situations where aquatic eco-systems serve as a habitat for vectors of diseases wherever they pose a risk to human living environments.<sup>392</sup>

### **Vulnerable Groups, Equality and Non Discrimination**

- p. Ensure that all water and sanitation facilities and services are of sufficient quality, affordable, culturally appropriate and meet the needs of members of vulnerable and disadvantaged groups.<sup>393</sup> To this end relatively low-cost targeted water programmes to protect these groups should be adopted.
- q. Ensure appropriate water and sanitation pricing policies, including through flexible payment schemes and cross-subsidies from high-income users to low-income users. Subsidize water and sanitation services for low-income households and poor areas that lack the means to secure access to such services. Subsidies should normally be used for connection to distribution networks or for the construction and maintenance of small-scale water supply and sanitation facilities, such as wells, boreholes and latrines.<sup>394</sup>
- r. No one should be denied access to water and sanitation because of their housing or land status. Informal human settlements should be upgraded through the provision of water and sanitation services and through assistance with the construction of their own water and sanitation facilities.<sup>395</sup>
- s. Progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.<sup>396</sup>
- t. Ensure that disadvantaged and marginalised farmers, including women farmers, have equitable access to water and water

management systems, including sustainable rain harvesting and irrigation technology.<sup>397</sup>

- u. Ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of peoples, including indigenous communities/populations.<sup>398</sup>
- v. Ensure that imprisoned and detained persons have access to sufficient, safe and acceptable water and sanitation. In addition to sufficient water prisoners and detainees should be allowed to bath every day and should be provided with soap, sheets, and detergents for clothes.<sup>399</sup>

## Right to Protection of the Family

93. 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 recognised by the community.
94. The right to protection of the family implies also the right to marry. Family or marital status may differ between individuals because, *inter alia*, they are married or unmarried, married under a particular legal regime, in a *de facto* relationship or one not recognised by law, divorced or widowed, live in an extended family or kinship group or have differing kinds of responsibility for children and dependents or a particular number of children.<sup>400</sup> States parties should ensure protection of the rights of individuals within families. Further, states must ensure equality between partners in marriages.<sup>401</sup>
95. The right to family protected under the African Charter includes obligations on the State to:

### Minimum Core Obligations

- a. Guarantee in law and practice the rights of all persons to enter into marriage with their full and free and personal consent<sup>402</sup>
- b. Abolish such customs, customary laws and practices as may affect the freedom of choice of a spouse.<sup>403</sup>
- c. Ensure that no marriage is entered into by parties less than 18 years old.<sup>404</sup>

### National Plans, Policies and Systems

- d. Ensure that social welfare programmes introduced by the state promote the protection and development of family life. Measures may include social security benefits, tax-exemption, housing support and child-care assistance.<sup>405</sup>
- e. Take steps to ensure that every marriage shall be registered in accordance with national laws.<sup>406</sup>

### Vulnerable Groups, Equality and Non Discrimination

#### *Equality of Spouses*

- f. Ensure the equal rights and responsibilities of spouses during marriage and at its dissolution.<sup>407</sup> The equality of spouses shall include the obligations and rights of the two parties with regard to any children, subject to the best interests of the child.<sup>408</sup> It shall include equal rights of women regarding adoption, guardianship and custody of children.<sup>409</sup>
- g. Women shall have the same rights as men to hold and acquire nationality, to choose a family name, a profession and occupation.<sup>410</sup>

- h. Ensure that all spouses enjoy the same rights in case of separation, divorce or annulment of marriage or other form of family partnership. In this regard, States shall ensure that:
  - 1. separation, divorce or annulment of a marriage or other form of family partnership shall be effected by judicial order;
  - 2. all partners shall have the same rights to seek separation, divorce or annulment of a marriage or other form of family partnership;
  - 3. in case of separation, divorce or annulment of marriage or other form of family partnership, all spouses shall have reciprocal rights and responsibilities towards their children, placing the best interests of the children at the centre of any decision made;
  - 4. in case of separation, divorce or annulment of marriage or other form of family partnership, all spouses shall have the right to an equitable sharing of the joint property deriving from the marriage or family partnership;<sup>411</sup>
- i. Ensure that 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.<sup>412</sup>
- j. Ensure that both spouses have equal rights in respect of the ownership, acquisition, management, administration, enjoyment and disposal of property, whether free of charge or for a valuable consideration.<sup>413</sup>
- k. Ensure that the spouses shall, by mutual agreement, choose their matrimonial regime and place of residence.<sup>414</sup>
- l. Ensure that individuals are able to freely determine the number and spacing of their children.<sup>415</sup>
- m. Ensure that spouses shall jointly contribute to safeguarding the interests of the family, protecting and educating their children.<sup>416</sup>
- n. Ensure the rights of pregnant mothers to paid maternity leave or social security.<sup>417</sup> Specific measures should be taken in favour of working mothers who are self-employed or participating in a family enterprise, especially in agriculture or in small crafts and trades, including adequate guarantees against loss of income;

### *Children*

- o. Provide assistance to spouses to care for and maintain their children in the case of their partner's death or absence;
- p. Ensure, save where the welfare of the children or any member of the family is threatened, protection from undue interference in the life of the family. Children should be cared for and protected by their parents,<sup>418</sup> with support from the state,<sup>419</sup> and should not be separated from their parents unless it is in their best interests<sup>420</sup> Decisions affecting the



family should only be made by public authorities after an investigation conducted in accordance with the rules of natural justice;<sup>421</sup>

- q. Where children have been removed from the care of their parents, the state must take steps in order to make it possible for the children to be ultimately returned unless this is not in their best interests.<sup>422</sup> Children separated from one or both parents shall be allowed access to that parent, unless this is not in their best interests;<sup>423</sup>
- r. Ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the event of its dissolution. States should further ensure that parents make provision for children at the dissolution of a marriage;<sup>424</sup>
- s. Ensure that all children have their rights protected in all spheres of life regardless of whether they were born in or outside wedlock,<sup>425</sup> including rights to maintenance;<sup>426</sup>
- t. Ensure that children who have lost their parents are protected, receive care either directly from the state or through other institutions regulated and supervised by the State, or through adoption and fostering procedures implemented in accordance with the best interests of the child, and to guard against the exploitation and abuse of children who do not have parents or only have one parent.<sup>427</sup> Inter-country adoption may be applied as a last option, in the interests of the child, through the implementation of a regulated adoption process and only to residents of countries that are party to the Convention on the Rights of the Child or the African Charter on the Rights and Welfare of the Child;<sup>428</sup>
- u. Ensure that, where parents and children are living in different countries, or in different areas within one country, states facilitate contacts and deal with requests to enter or leave a state party for the purpose of reunification in a humane and expeditious manner;<sup>429</sup>
- v. Institute, in post conflict situations, tracing and reunification programmes in cooperation with international and intergovernmental groups;
- w. Favourably consider granting equal treatment to family members of migrant workers regarding settlement rights.<sup>430</sup> Members of the families of migrant workers shall enjoy equality of treatment with nationals with regard to access to education, social and health services and participation in cultural life;<sup>431</sup>
- x. Ensure that children of migrant workers have the right to name, registration of birth and to a nationality;<sup>432</sup>
- y. Favourably consider, in the case of the death of a migrant worker or dissolution of marriage, granting family members of that migrant worker residing in that state an authorization to stay;<sup>433</sup>
- z. Ensure that women and girls are not denied enjoyment of their rights because of a disproportional share of child care and other domestic responsibilities within the family;<sup>434</sup>
- aa. Protect children and young persons through the following:

1. Measures designed to give children and young persons opportunities and facilities for their healthy physical and psychological development without distinction or discrimination on account of birth, parentage, social origin or other conditions;
  2. Special measures for the care and education of children separated from their mothers or deprived of a family; children with disabilities; and children who have been detained or otherwise restricted within the criminal justice system;
  3. Measures to protect children and young persons against economic, social and all other forms of exploitation, neglect or cruelty and from being subject to trafficking;
  4. Measures governing work by children and young persons, within the family, to ensure that such work is not dangerous to them, harmful to their moral or physical well-being or likely to hamper their normal physical, intellectual and psycho-social development.
- bb. Ensure that where a mother faces imprisonment all efforts shall be made to avoid imprisoning her, through non-custodial punishments and such other mechanisms, or, alternatively, that the child should not be imprisoned with its mother.<sup>435</sup> Where women are detained with their children, this should not violate the latter's rights and only be done if it is in the best interests of the children. Women detained with their children should be detained in institutions specially built for such purpose.<sup>436</sup>

## Endnotes

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<sup>1</sup> Basic Principles and Guidelines on Development-Based Evictions and Displacement: Annex 1 of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (2006), para. 4.

<sup>2</sup> Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, adopted by The African Commission on Human and Peoples' Rights at its 28th ordinary session p.89.

<sup>3</sup> Kiwanuka, R.N., 'The Meaning of "People" in the African Charter on Human and Peoples' Rights' (1988) 82 *AJIL* 80.

<sup>4</sup> Brownlie, I. 'The Rights of Peoples in Modern International Law' (1985) 9 *Bull. Aust. Soc. Legal Phil.* 104, 107.

<sup>5</sup> *Reference re Secession of Quebec* [1998] 2 SCR. 217 (Can.).

<sup>6</sup> See UN Human Rights Committee, *General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (2004) para. 4.

<sup>7</sup> *Soering v. The United Kingdom*, app. no. 14038/88 (1989) ECHR judgment, para. 89.

<sup>8</sup> *Hirst v. The United Kingdom (No 2)*, app. no. 74025/01 (2005) ECHR GC judgment.

<sup>9</sup> World Health Organization, 'Control of Neglected Tropical Diseases' (2009) at <[http://www.who.int/neglected\\_diseases/en/](http://www.who.int/neglected_diseases/en/)> (accessed on 15 October 2009). A list of the diseases covered by the WHO's NTD Department is available at <[http://www.who.int/neglected\\_diseases/diseases/en/](http://www.who.int/neglected_diseases/diseases/en/)> (accessed on 15 October 2009).

<sup>10</sup> Food and Agriculture Organisation, *The State of Food Insecurity in the World 2009: Economic crises – impacts and lessons learned* (2009), p.8.

<sup>11</sup> See the first para. 11(c) (iii) of the Declaration of the Pretoria Seminar on Economic, Social and Cultural Rights in Africa (hereinafter the "Pretoria Declaration"), as adopted by Res.73(XXXVI) 04 of the African Commission on Human and Peoples' Rights: *Resolution On Economic, Social And Cultural Rights In Africa*.

<sup>12</sup> For example, legislation to ensure the protection of health, housing, education, food and social security rights on a comprehensive and co-ordinated basis, and to prevent any form of discrimination in the enjoyment of the various rights. See the Pretoria Declaration, para. 11(c)(ii).

<sup>13</sup> See in this regard art. 25 of the African Charter on Human and Peoples' Rights (hereinafter the "African Charter").

<sup>14</sup> See in this regard art. 26 of the African Charter.

<sup>15</sup> See also the UN Committee on Economic, Social and Cultural Rights (hereinafter the "UN CESCR"), *General Comment 3: The nature of States parties obligations (Art. 2, para.1 of the ICESCR)* (Fifth session, 1990), para. 7.

<sup>16</sup> See, for example: UN CESCR, *General Comment 4: The right to adequate housing (Art. 11(1) of the ICESCR)* (Sixth session, 1991) and UN CESCR, *General Comment 12: The right to adequate food (Art. 11 of the ICESCR)* UN doc. E/C.12/1999/5.

<sup>17</sup> UN CESCR, *General Comment 15: The right to water (Arts. 11-12 of the ICESCR)* UN doc. E/C.12/2002/11, para. 12(a).

<sup>18</sup> See, for example: UN CESCR, *General Comment 15*, *ibid*.

<sup>19</sup> See, for example, UN CESCR, *General Comment 12*, above n.16 .

<sup>20</sup> UN CESCR, *General Comment 4*, above n.16, para. 8(g).

<sup>21</sup> African Commission, *SERAC & CESR v Nigeria*, Com. No. 155/96 (2001), para. 44.

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<sup>22</sup> This framework is used by the UN CESCR in analysing the obligations imposed on States Parties by the International Covenant on Economic, Social and Cultural Rights (hereinafter, the “ICESCR”). See, for example, *General Comment 12*, above n.16, para. 15; *General Comment 14: The right to the highest attainable standard of health (Art. 12 of the ICESCR)* UN doc. E/C.12/2000/4, paras. 33-37; *General Comment 15*, above n.17, paras. 21-29. See also The Maastricht Guidelines on Violation of Economic, Social and Cultural Rights (1998) 20 *Human Rights Quarterly*, 691–705 (hereinafter, the “Maastricht Guidelines”), para. 6. The framework was expressly utilised by the Commission in *SERAC & CESR v. Nigeria*, above n.21, para. 44-48.

<sup>23</sup> *SERAC & CESR v. Nigeria*, above n.21, para. 45. For example, the State should refrain from evicting people from their land and housing contrary to the provisions of the African Charter and international law, arbitrarily interfering with people’s food supply or polluting their water resources.

<sup>24</sup> The Pretoria Declaration, above n.11, para. 11(c)(xii).

<sup>25</sup> *SERAC & CESR v. Nigeria*, above n.21, para. 46; The Maastricht Guidelines, above n.22, para. 18. See further the jurisprudence of the African Commission on Human and Peoples’ Rights on general State responsibility for the actions of non-state actors: *Commission Nationale des Droits d l’Homme et de Libertes v. Chad*, Com. No. 74/92 (1995); *Amnesty International and Others v. Sudan*, Com. Nos. 48/90, 50/91, 52/91, 89/93 (1999); *Malawi African Association and Others v. Mauritania*, Com. Nos. 54/91, 61/91, 98/93, 164/97, 196/97 and 210/98 (2000); *Mouvement Burkinabe des Droits de l’Homme et des Peuples v. Burkina Faso*, Com. No. 204/97 (2001).

<sup>26</sup> The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN doc. E/CN.4/1987/17 (hereinafter, the “Limburg Principles”, Annex, paras. 19 and 51; and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, para 22.

<sup>27</sup> *SERAC & CESR v. Nigeria*, above n.21, para. 46.

<sup>28</sup> African Charter, art. 25.

<sup>29</sup> See UN CESCR, *General Comment 9: The domestic application of the Covenant* (3 December 1998) UN doc. E/C.12/1998/24.

<sup>30</sup> *Ibid*, para. 11.

<sup>31</sup> UN CESCR, *General Comment 4*, above n.16, para. 12-13; UN CESCR, *General Comment 12*, above n.16, paras. 29 - 30; UN CESCR, *General Comment 14*, above n.22, para. 53-58; UN CESCR, *General Comment 15*, above n.17, para. 46-54.

<sup>32</sup> *SERAC & CESR v Nigeria*, above n.21, para. 47.

<sup>33</sup> See ICJ, ‘Issues Relevant to the Discussions of the United Nations Working Group Considering Options Regarding the Elaboration of an Optional Protocol to the ICESCR’ (2005) at <<http://www.icj.org/IMG/pdf/ESCRFactSheets.pdf>> (accessed on 15 October 2009). See also *SERAC & CESR v. Nigeria*, above n.21, para. 47.

<sup>34</sup> See: African Charter, arts. 18(3) and (4); The African Charter on the Rights and Welfare of the Child (1990); The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (hereinafter, the “Protocol on the Rights of Women”). See also UN CESCR, *General Comment 4*, above n.16, para. 8(e); UN CESCR, *General Comment 5: Persons with disabilities* (Eleventh session, 1994); UN CESCR, *General Comment 6: The economic, social and cultural rights of older persons* (Thirteenth session, 1995); UN CESCR, *General Comment 16: the equal right of men and women to the enjoyment of all economic, social and cultural rights (Art. 3 of the ICESCR)* (11 August 2005).

<sup>35</sup> Authority for the concept of progressive realisation may be found in: the ICESCR; the Limburg Principles, above n.26; the General Comments of the UN CESCR; and state practice in South Africa. The limitation of resources was confirmed by the Commission in *Purohit and Moore v. the Gambia*, Com. No. 241 (2001) para. 84, where art. 16 was read to imply the obligation “take

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concrete and targeted steps, while taking full advantage of its available resources, to ensure that the right to health is fully realised in all its aspects without discrimination of any kind.” State practice has demonstrated the necessity of understanding economic, social and cultural rights as imposing an obligation to implement a “reasonable plan” towards the full realisation of the economic social and cultural rights. See particularly *Government of the Republic of South Africa and Ors v. Grootboom and Ors* 2000 (11) BCLR 1169 (CC) and *Minister of Health and Ors v. Treatment Action Campaign and Ors* (No 2) 2002 (10) BCLR 1033 (5 July 2002). The concept of a reasonable plan implies progressive realisation. See also the Pretoria Declaration, above n.11, para. 11(c)(iv).

<sup>36</sup> See for example UN CESCR, *General Comment 15*, above n.17, para. 18 with reference to the right to water.

<sup>37</sup> The Pretoria Declaration, above n.11, para. 11(c)(iv).

<sup>38</sup> *Purohit and Moore v. the Gambia*, above n.35, para. 84.

<sup>39</sup> UN CESCR, *General Comment 3*, above n.15, para. 12; UN CESCR *General Comment 14*, above n.22, para. 43-47; UN CESCR *General Comment 15*, above n.17, para. 37-38; The Maastricht Guidelines, above n.22, para. 9-10.

<sup>40</sup> African Charter, art. 29(6).

<sup>41</sup> UN CESCR, *General comment 3*, above n.15. See also: The Maastricht Guidelines, above n.22, para. 9; the Pretoria Declaration, above n.11, para. 2; AHG/Res.236 (XXXI) Annex 1995 – Relaunching Africa’s Economic and Social Development: The Cairo Agenda For Action (hereinafter, the “Cairo Agenda for Action”), which reads: “*Member States should give priority in their development programmes to the basic needs of the people by developing appropriate infrastructure (such as rural roads, potable water supply ...), meeting basic food requirements, providing primary health services, education and skills and generating productive and remunerative employment opportunities as a means of eradicating poverty.*”

<sup>42</sup> UN CESCR, *General Comment 3*, above n.15, para. 10.

<sup>43</sup> The Maastricht Guidelines, above n.22, para. 9 and 10.

<sup>44</sup> As the African Charter does not provide for derogation provisions, the rights and duties thus remain applicable at all times, even during times of states of emergency.

<sup>45</sup> The Maastricht Guidelines, above n.22, para. 13 and 15(e).

<sup>46</sup> UN CESCR, *General Comment 3*, above n.15, para. 10-12.

<sup>47</sup> *Ibid*, para. 11.

<sup>48</sup> *Ibid*.

<sup>49</sup> This Commission described art. 2 as laying down a principle “*that is essential to the spirit of the African Charter*” and held that arts. 2 and 3 “*are non-derogable and therefore must be respected in all circumstances in order for anyone to enjoy all the other rights provided for under the African Charter*” in *Purohit and Moore v. the Gambia*, above n.35, para. 49. These rights to equality and non-discrimination are also enshrined in a range of regional and international human rights. See, for example: African Charter on the Rights and Welfare of the Child, art. 3; Protocol on the Rights of Women, above n.34; ICESCR, arts. 2(2) - (3); International Convention on the Elimination of all Forms of Racial Discrimination (1966); Convention on the Elimination of All Forms of Discrimination against Women (1999) (hereinafter, “CEDAW”).

<sup>50</sup> See the above instruments, and UN CESCR, *General Comment 15*, above n.17, para. 13-16.

<sup>51</sup> UN CESCR, *General Comment 3*, above n.15, para. 9; *General Comment 14*, above n.22, para. 19; the Limburg Principles, above n.26, para. 72; The Maastricht Guidelines, above n.22, para. 14(e).

<sup>52</sup> UN CESCR, *General Comment 14*, above n.22, para. 28-29.

<sup>53</sup> UN CESCR, *General Comment 19: The right to social security (Art. 9 of the ICESCR)*, UN doc. E/C.12/GC/19, para. 42.

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<sup>54</sup> In 1989, the Commission adopted the Resolution on the Integration of the Provisions of the African Charter on Human and Peoples' Rights into National Laws of States, which stressed the importance of the integration of the provision of the African Charter into the national laws of states, and recommended member states to introduce articles 1 to 29 "in their constitutions, law and regulations and other acts relating to human rights."

<sup>55</sup> UN CESCR, *General Comment 9*, above n.29, para. 10.

<sup>56</sup> *Ibid*, para. 4.

<sup>57</sup> As the UN CESCR has commented: "The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the most vulnerable and disadvantaged groups in society." (*General Comment 9*, above n.29, para. 10).

<sup>58</sup> *Ibid*, para. 11.

<sup>59</sup> The Commission has observed that access to legal services is a critical aspect of the effective protection of economic, social and cultural rights - see in this regard: *Purohit and Moore v. the Gambia*, above n.35, paras. 34 - 38, 54; Protocol on the Rights of Women, above n.34, art. 9. Appropriate legal assistance and legal aid for vulnerable groups should be made available in all African countries in cases involving violations of economic, social and cultural rights. See African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, section H.

<sup>60</sup> See for example the Indian cases of: *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Ors*, (1981) 2 SCR 516 at 529; *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545.

<sup>61</sup> Human Rights Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari* (5 February 2007) UN doc. A/HRC/4/18 (hereinafter the "Special Rapporteur Housing Report").

<sup>62</sup> The Pretoria Declaration, above n.11, para. 11(c)(v).

<sup>63</sup> Special Rapporteur Housing Report, above n.61.

<sup>64</sup> Limburg Principles, above n. 26, para. 11.

<sup>65</sup> UN CESCR, *General Comment 3*, above n. 15, para. 13-14.

<sup>66</sup> UN CESCR, *General Comment 9*, above n.29, para. 15.

<sup>67</sup> The Pretoria Declaration, above n.11, para. 4.

<sup>68</sup> *Ibid*, para. 11(c)(xi). See also: UN CESCR *General Comment 16*, above n.34, para. 15. Special measures include, for example, employment equity programmes and legislation that aims to increase representation by vulnerable and disadvantaged groups in the workforce or special educational bursary programmes reserved for girls or members of groups who have been victims of previous racial and other forms of discrimination.

<sup>69</sup> UN CESCR, *General Comment 16*, above n.34, para. 15. See also: International Federation for Human Rights, *Montréal Principles on Women's Economic, Social and Cultural Rights* (2002), para. 16.

<sup>70</sup> UN CESCR, *General Comment 16*, above n.34, para. 15; CEDAW General recommendation No. 25, on art. 4, para. 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures.

<sup>71</sup> International Convention on the Elimination of All Forms of Racial Discrimination (1966), art. 1(4); CEDAW, art. 4; Protocol on the Rights of Women, above n.34; UN CESCR, *General Comment 16*, above n.34, para. 15; the Limburg Principles, above n.26, para. 39.

<sup>72</sup> UN CESCR, *General Comment 16*, above n.34, para. 5.

<sup>73</sup> UN Sub-Commission on the Promotion and Protection of Human Rights, *Final Report Submitted by José Bengoa, Coordinator of the Ad Hoc Group of Experts: Implementation of*

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*Existing Human Rights Norms and Standards in the Context of the Fight against Extreme Poverty* (2006) UN doc. A/HRC/Sub.1/58/16, para. 25. See also the concept of the Development Compact, implying the obligation on developing countries to seek assistance from developed countries, set out in the reports of Arjun Sengupta, the former independent expert on the right to development's five reports in the following UN documents: E/CN.4/1999/WG.18/2, A/55/306, E/CN.4/2001/WG.18/2, E/CN.4/2002/WG.18/2, E/CN.4/2002/WG.18/6 and E/CN.4/2004/WG.18/2.

<sup>74</sup> UN CESCR, *General Comment 3*, above n.15, para. 14; UN CESCR, 'Poverty and the International Covenant on Economic, Social and Cultural Rights' (2001) UN doc. E/C.12/2001/10, para. 16.

<sup>75</sup> The Pretoria Declaration, above n.11, para. 11(c)(xixi).

<sup>76</sup> African Charter, art. 21.

<sup>77</sup> UN General Assembly, *Report of the Human Rights Committee* (2000) UN doc. A/55/40 Vol. I 43, concluding observations on Congo, para. 291-292. See also: *Katangese Peoples' Congress v. Zaire*, Com. No. 75/92 (1995) ACHPR decision.

<sup>78</sup> UN General Assembly, *Report of the Human Rights Committee* (1998) UN doc. A/53/40 Vol. I 40, concluding observations on Finland, para. 255.

<sup>79</sup> Committee on the Elimination of all Forms of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples* (Fifty-first session, 1997). See also: UN General Assembly, *Report of the Committee on the Elimination of Racial Discrimination* (1996) UN doc. A/51/18, concluding observations on Colombia, para. 45; UN General Assembly, *Report of the Committee on the Elimination of Racial Discrimination* (1999) UN doc. A/54/18, concluding observations on Costa Rica, para. 202; UN General Assembly, *Report of the Human Rights Committee* (1994) UN doc. A/49/40 vol. I, concluding observations on Mexico, para. 182.

<sup>80</sup> UN General Assembly, *Report of the Committee on the Elimination of Racial Discrimination* (2003) UN doc. A/58/18, concluding observations on Ecuador, para. 59 and 62.

<sup>81</sup> See concluding observations on Finland, above n.78, para. 255.

<sup>82</sup> See concluding observations on Ecuador, above n.80, para. 59 and 62.

<sup>83</sup> UN General Assembly, *Report of the Committee on the Elimination of Racial Discrimination* (2005) UN doc. A/60/18, concluding observations on Nigeria, para. 294.

<sup>84</sup> UN General Assembly, *Report of the Committee on the Elimination of Racial Discrimination* (1991) UN doc. A/46/18, concluding observations on Sweden, para. 222

<sup>85</sup> UN General Assembly, *Report of the Committee on the Elimination of Racial Discrimination* (1993) UN doc. A/48/18, concluding observations on Croatia, para. 505; UN General Assembly, *Report of the Committee on the Elimination of Racial Discrimination* (1999) UN doc. A/54/40 vol. I, concluding observations on Mexico, para. 331.

<sup>86</sup> UN General Assembly, *Report of the Committee on the Elimination of Racial Discrimination* (1993) UN doc. A/48/18, concluding observations on Yugoslavia (Serbia and Montenegro), para. 542.

<sup>87</sup> See generally the Pretoria Declaration, above n.11.

<sup>88</sup> UN General Assembly, Principles relating to the Status of National Institutions (The Paris Principles) (1994) UN doc. A/RES/48/134.

<sup>89</sup> UN CESCR, *General Comment 10: The role of national human rights institutions in the protection of economic, social and cultural rights*, UN doc. E/C.12/1998/25, para. 3, which lists a number of activities that can be undertaken by NHRIs.

<sup>90</sup> *The Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001, Inter-Am. Ct. H.R., para. 144.

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<sup>91</sup> **Case of the “Five Pensioners” v. Peru, Judgment of February 28, 2003, Inter-Am. Ct. H.R.**

<sup>92</sup> The Pretoria Declaration, above n.11, para. 5.

<sup>93</sup> Inter-American Court of Human Rights Case of the *Ituango Massacres v. Colombia* Judgment of July 1, 2006 (Preliminary Objections, Merits, Reparations and Costs).

<sup>94</sup> *Scordino v. Italy (No. 1)*, app. no. 36813/97 (2006) ECHR GC judgment.

<sup>95</sup> The Pretoria Declaration, above n.11, para. 5.

<sup>96</sup> See the jurisprudence of the European Court, especially: *James and Ors v. the United Kingdom*, app. no. 8793/79 (1986) ECHR judgment, para. 50; *Jahn and Ors v. Germany*, app. nos. 46720/99, 72203/01 and 72552/01 (2004) ECHR judgment.

<sup>97</sup> *The Holy Monasteries v. Greece*, app. nos. 13092/87; 13984/88 (1994) ECHR judgment, para. 71; *The Former King of Greece and Ors v. Greece*, app. no. 25701/94 (2000) ECHR GC judgment; *Jahn and Ors v. Germany*, *ibid.*

<sup>98</sup> See, for example: Assembly of Heads of State and Government, *Addis Ababa Declaration on the Dakar African Platform for Action On Women* AHG/Dec.2 (XXXI) (hereinafter, the “Addis Ababa Declaration”), para. 3(e).

<sup>99</sup> Inter-American Court of Human Rights *Case of the Saramaka People v. Suriname* Judgment of November 28, 2007.

<sup>100</sup> The Pretoria Declaration, above n.11, para. 5. See also *Cal (on his own and on behalf of the Maya Village of Santa Cruz) and Ors & Coy (on his own and on behalf of the Maya Village of Conejo) and Ors v. Attorney-General of Belize and Minister of Natural Resources and Environment* Claims Nos. 171 and 172 of 2007, Supreme Court of Belize, Judgment of 18 October 2007, unreported. See also: General Assembly, *UN Declaration on the Rights of Indigenous Peoples*, UN doc. A/61/L.67 (7 September 2007), art. 28.

<sup>101</sup> See para. III 6 of the African Commission’s Reporting Guidelines, Second Activity Report, Annex XII (Reporting Guidelines), and Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities, above n.2. See also the African Charter, art. 21.

<sup>102</sup> The Pretoria Declaration, above n.11, para. 5.

<sup>103</sup> See, for example: Protocol to on the Rights of Women, above n.34, arts. 19(c), 21(1), 21(2), 6(j); 7(d), as read with art. 2.

<sup>104</sup> UN CESCR, *General Comment 18: The right to work* (2006) UN doc. E/C.12/GC/18.

<sup>105</sup> *Ibid.*, particularly para. 6.

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*, particularly para. 6.

<sup>108</sup> *Ibid.* See also: ILO Convention concerning Forced or Compulsory Labour (1930) (C29), art. 2(1); ILO Convention concerning the Abolition of Forced Labour (1957) (C105), art. 2.

<sup>109</sup> African Charter on the Rights and Welfare of the Child, art. 15(1).

<sup>110</sup> The Pretoria Declaration, above n.11, para. 6. See also: *Malawi African Association and Ors v. Mauritania*, above n.25, para. 134-135; African Charter on the Rights and Welfare of the Child, art. 15; Convention on the Rights of the Child, art. 32. See also the various conventions adopted under the auspices of the ILO on forced labour and child labour, for example: the Abolition of Forced Labour Convention (1957) (C105); the Worst Forms of Child Labour Convention (1999) (C182).

<sup>111</sup> African Charter, art. 10; the Pretoria Declaration, above n.11, para. 6; ICESCR, art. 8; ILO Convention concerning Freedom of Association and Protection of the Right to Organise (1948) (C87); ILO Convention Right to Organize and Collective Bargaining Convention (1949) (C98).



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- <sup>112</sup> The Reporting Guidelines, Part II, para. 11-13.
- <sup>113</sup> *Ibid*, para. 4(b).
- <sup>114</sup> UN CESCR, *General Comment 18*, above n.104, para. 12.
- <sup>115</sup> See, for example: the Pretoria Declaration, above n.11, para. 6; ICESCR, art. 6; ILO Employment Promotion and Protection against Unemployment Convention (1988) (C168).
- <sup>116</sup> The Pretoria Declaration, above n.11, para. 6.
- <sup>117</sup> UN CESCR, *General Comment 18*, above n.104, para. 14.
- <sup>118</sup> UN CESCR, *General Comment 14*, above n.22, para. 15.
- <sup>119</sup> UN CESCR, *General Comment 18*, above n.104, para. 10.
- <sup>120</sup> The Reporting Guidelines, above n.112, Part II, para. 4(a). Also see the Cairo Agenda for Action, above n.41, para. 13.
- <sup>121</sup> The Reporting Guidelines, above n.112, Part II, para. 6(e).
- <sup>122</sup> *Ibid*, Part II, para. 8.
- <sup>123</sup> *Ibid*, Part II, para. 6(e); the Pretoria Declaration, above n.11, para. 6; Protocol on the Rights of Women, above n.34, art. 13; CEDAW, art. 11(d); ILO Equal Remuneration Convention (1951) (C100); ILO Discrimination (Employment and Occupation) Convention (1958) (C111); ILO Discrimination (Employment and Occupation) Recommendation (1958) (R111).
- <sup>124</sup> UN CESCR, *General Comment 18*, above n.104.
- <sup>125</sup> Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), para. 161 and 163.
- <sup>126</sup> The Pretoria Declaration, above n.11, para. 6. The burden of this work is still performed disproportionately by women in society. States parties must therefore adopt measures to encourage shared responsibility between men and women for this type of work. See, for example: CEDAW, arts. 11(2)(c) and 16; Protocol on the Rights of Women, above n.34, art. 13(h) and (l).
- <sup>127</sup> Declaration on the African Plan of Action Concerning the Situation of Women in Africa in the context of Family Health (1995) AHG/Dec.1 (XXXI) (hereinafter, the "Declaration on the African Plan of Action").
- <sup>128</sup> UN CESCR, *General Comment 18*, above n.104. Protocol on the Rights of Women, above n.34, art. 13(f)
- <sup>129</sup> ICESCR, art. 9; ILO Home Work Convention (1966) (C177) and ILO Home Work Recommendation (1996) (R184); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (hereinafter, the "Migrant Workers Convention").
- <sup>130</sup> African Charter on the Rights and Welfare of the Child, art. 15(2); Declaration on the African Plan of Action, above n.127. See Decision on the Report of the Secretary-General on the Twenty-second Ordinary Session of the OAU Labour and Social Affairs Commission *CM/Dec. 465 (LXX) 1999, for approval by the African Union of the ILO Convention on the Banning and Immediate Elimination of the Worst Forms of Child Labour*.
- <sup>131</sup> UN CESCR, *General Comment 14*, above n.22.
- <sup>132</sup> Commission on Human Rights, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt (3 March 2006)* UN doc. E/CN.4/2006/48 (hereinafter, the "Special Rapporteur Health Report 2006").
- <sup>133</sup> UN CESCR, *General Comment 14*, above n.22, para. 9 and 11.
- <sup>134</sup> *Ibid*, para. 8.

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- <sup>135</sup> Ibid.
- <sup>136</sup> Ibid, para. 43(d). See also Harare Declaration on Malaria Prevention and Control in the Context of African Economic Recovery and Development (1997) (hereinafter, the “Harare Declaration”), with special reference to malarial drugs.
- <sup>137</sup> The Pretoria Declaration, above n.11, para. 7.
- <sup>138</sup> UN CESCR, *General Comment 14*, above n.22, para. 16.
- <sup>139</sup> Ibid, especially para. 44(d).
- <sup>140</sup> Ibid, para. 36.
- <sup>141</sup> Framework Plan of Action for the Implementation of the Abuja Declaration on the Control of HIV/AIDS, Tuberculosis, and other related Infectious Diseases in Africa, AHG/228 (XXXVII) Annex III (hereinafter, the “Framework Plan of Action”), p.6.
- <sup>142</sup> See, for example: Lome Declaration on HIV/AIDS in Africa *AHG/Decl.3 (XXXVI) 2000*; Tunis Declaration on AIDS and the Child in Africa *AHG/Decl. 1 (XXX) 1994* (hereinafter, the “Tunis Declaration”).
- <sup>143</sup> The Reporting Guidelines, above n.112, Part II, para. 36(e).
- <sup>144</sup> World Health Organisation, *Everybody’s Business: Strengthening Health Systems to Improve Health Outcomes: WHO’s Framework for Action (2007)* (available at <[http://who.int/healthsystems/strategy/everybodys\\_business.pdf](http://who.int/healthsystems/strategy/everybodys_business.pdf) > (accessed on 19 October 2009). See also Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt* (31 January 2008) UN doc. A/HRC/7/11 (hereinafter, the “Special Rapporteur Health Report 2008”), para. 38.
- <sup>145</sup> Commission on Human Rights, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health Report of the Special Rapporteur, Paul Hunt* (16 February 2004) E/CN.4/2004/49 (hereinafter, the “Special Rapporteur Health Report 2004”).
- <sup>146</sup> Framework Plan of Action, above n.141.
- <sup>147</sup> Harare Declaration, above n.136, para. 2(b).
- <sup>148</sup> Potts, H. and G. Blackman, ‘Accountability and the right to the Highest Attainable Standard of Health’ (2008) 10(1) *Health & Human Rights* at <<http://www.hhrjournal.org/index.php/hhr/article/viewArticle/22/69>> (accessed on 20 October 2009).
- <sup>149</sup> Harare Declaration, above n.136. See also: Framework Plan of Action, above n.141; Special Rapporteur Health Report 2006, above n.132.
- <sup>150</sup> Harare Declaration, above n.136.
- <sup>151</sup> Special Rapporteur Health Report 2006, above n.132, para. 48-50.
- <sup>152</sup> Ibid, para. 49.
- <sup>153</sup> Framework Plan of Action, above n.141, p.6.
- <sup>154</sup> UN CESCR, *General Comment 14*, above n.22, para. 35.
- <sup>155</sup> Harare Declaration, above n.136.
- <sup>156</sup> *SERAC & CESR v. Nigeria*, above n.21, para. 52-53; the Pretoria Declaration, above n.11, para. 11(c)(xii).

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<sup>157</sup> ICCPR, art. 7; Resolution on Bioethics AHG/Res. 254 (XXXII) 1996, para. 2. See also the World Medical Association, *Declaration of Helsinki: Ethical Principles for Medical Research Involving Human Subjects* (1964) at <<http://www.wma.net/en/30publications/10policies/b3/index.html>> (accessed on 20 October 2009).

<sup>158</sup> Resolution on Bioethics, *ibid*, para. 3(f).

<sup>159</sup> *Ibid*, para. 3(g).

<sup>160</sup> *Ibid*, para. 3(h).

<sup>161</sup> See generally the Council of Ministers of the Organization of African Unity, *Resolution on Health and Development Policies* (1994) CM/Res.1549 (LX), para. 3. See also: UN CESCR, *General Comment 14*, above n.22, para. 27.

<sup>162</sup> Council of Ministers, *ibid*, para. 4. See also: the Cairo Agenda for Action, above n.41, para. 13; the Framework Plan of Action, above n.141; also UN CESCR, *General Comment 14*, above n.22.

<sup>163</sup> The Pretoria Declaration, above n.11, para. 7; *Purohit and Moore v. The Gambia*, above n.35, para. 80. See also: UN CESCR, *General Comment 14*, above n.22, para. 18-19.

<sup>164</sup> Special Rapporteur Health Report 2006, above n.132, para. 26.

<sup>165</sup> UN CESCR, *General Comment 14*, above n.22, para. 20.

<sup>166</sup> Special Rapporteur Health Report 2008, above n.144, para. 44; Special Rapporteur Health Report 2006, above n.132.

<sup>167</sup> UN CESCR, *General Comment 14*, above n.22, para. 19.

<sup>168</sup> Council of Ministers of the Organisation of African Unity, *Resolution on Health as a Component of Development* (1987) CM/Res.1104 (XLVI), art. 5.3.

<sup>169</sup> The Pretoria Declaration, above n.11, para. 11(c)(ix); Framework Plan of Action, above n.141, p.10-11.

<sup>170</sup> The Pretoria Declaration, above n.11, para. 11(c)(ix). See also: the Harare Declaration, above n.136, with special reference to malarial drugs.

<sup>171</sup> The Tunis Declaration, above n.142; Declaration on the African Plan of Action, above n.127.

<sup>172</sup> The Pretoria Declaration, above n.11, para. 7; African Charter, art. 18(4); Convention on the Rights of the Child (1989), art. 23; UN CESCR, *General Comment 5*, above n.34, para. 34; UN CESCR, *General Comment 6*, above n.34, para. 34. According to the Commission in *Purohit and Moore v. The Gambia*, above n.35, para. 81-82: "...mental health patients should be accorded special treatment which would enable them not only attain but also sustain their optimum level of independence and performance in keeping with Article 18(4) of the African Charter and the standards applicable to the treatment of mentally ill persons as defined in the Principles for the Protection of Persons with Mental Illness and Improvement of Mental Health Care." Under the Principles, "mental health care" includes analysis and diagnosis of a person's mental condition and treatment, care and rehabilitation for a mental illness or suspected mental illness."

<sup>173</sup> Commission on Human Rights, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt* UN doc. E/CN.4/2005/51 (11 February 2005) (hereinafter, the "Special Rapporteur Health Report 2005").

<sup>174</sup> Declaration of Cooperation in Mental Health of Refugees, Displaced and Other Populations Affected by Conflict and Post-Conflict Situations, at <[http://www.who.int/hac/techguidance/pht/mental\\_health\\_refugees/en/](http://www.who.int/hac/techguidance/pht/mental_health_refugees/en/)> (undated) (accessed on 19 October 2009).

<sup>175</sup> Special Rapporteur Health Report 2005, above n.173.

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<sup>176</sup> Ibid.

<sup>177</sup> See Article 4 (2) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and para 39 of Special Rapporteur Health Report 2004, above n.145, and the Declaration on the African Plan of Action.

<sup>178</sup> Declaration on the African Plan of Action, above n.127. See also: UN CESCR, *General Comment 14*, above n.22, para. 25.

<sup>179</sup> The Reporting Guidelines, above n.112. See *Malawi African Association and Ors v. Mauritania*, above n.25, para. 21-23. See also ACHPR, *Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa, Mission to the Republic of South Africa 14 – 30 June 2004*; and particularly ACHPR, *Report to the Government of the Republic of Cameroon on the visit of the Special Rapporteur on Prisons and Conditions of Detention in Africa from 2 to 15 September 2002*; ACHPR, *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia 15 – 29 March, 2004*.

<sup>180</sup> See *Malawi African Association and Ors v. Mauritania*, above n.25; ACHPR, *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia 15-29 March, 2004*.

<sup>181</sup> OHCHR and UNAIDS, *Handbook on HIV and Human Rights for National Human Rights Institutions* (2007) UN Publication HR/PUB/07/3.

<sup>182</sup> Harare Declaration, above n.136.

<sup>183</sup> The Pretoria Declaration, above n.11, para. 7.

<sup>184</sup> Framework Plan of Action, above n.141, p.9.

<sup>185</sup> Harare Declaration, above n.136.

<sup>186</sup> Ibid.

<sup>187</sup> The Abuja Declaration and Plan of Action on Roll-Back Malaria, adopted in Decision on the Report of African Summit on Roll-Back Malaria AHG/Dec.155 (XXXVI) (hereinafter, the "Abuja Declaration on Roll-Back Malaria").

<sup>188</sup> Ibid, para. 3.

<sup>189</sup> Ibid, para. 4. See also the Harare Declaration, above n.136, para. 1-2.

<sup>190</sup> Abuja Declaration on Roll-Back Malaria, above n.187, para. 5. See also: the Harare Declaration, above n.136, para. 1-2.

<sup>191</sup> Harare Declaration, above n.136.

<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

<sup>194</sup> Ibid.

<sup>195</sup> Abuja Declaration on Roll-Back Malaria, above n.187, para. 3 (ii) and (iii).

<sup>196</sup> Harare Declaration, above n.136.

<sup>197</sup> Ibid, para. 2(f).

<sup>198</sup> Framework Plan of Action, above n.141, p.4.

<sup>199</sup> Ibid, p.8 - 9.

<sup>200</sup> Ibid, p.4.

<sup>201</sup> Ibid, p.5.

<sup>202</sup> Declaration on the African Plan of Action, above n.127.

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- <sup>203</sup> The Tunis Declaration, above n.142.
- <sup>204</sup> UN CESCR, *General Comment 14*, above n.22, para. 34.
- <sup>205</sup> UN Population Information Network, *Report of the International Conference on Population and Development*, UN doc. A/CONF.171/13 (18 October 1994) (hereinafter, the “Cairo Population Conference”), annex 1, para. 7.2.
- <sup>206</sup> Framework Plan of Action, above n.142, p.8.
- <sup>207</sup> *Ibid*, p.8 - 9.
- <sup>208</sup> *Ibid*, p.5.
- <sup>209</sup> Heads of State and Government of the Organization of African Unity, *Yaoundé Declaration on Polio Eradication in Africa* (1996) AHG/Decl.1 (XXXII).
- <sup>210</sup> Declaration on the African Plan of Action, above n.127.
- <sup>211</sup> Declaration on the African Plan of Action, above n.127; the Pretoria Declaration, above n.11, para. 7; CEDAW, arts. 12 and 14(2)(b); Protocol on the Rights of the Women, above n.34, art. 14. See also: the Addis Ababa Declaration, above n.98; UN CESCR, *General Comment 14*, above n.22, para. 14 and 22.
- <sup>212</sup> Declaration on the African Plan of Action, above n.127.
- <sup>213</sup> *Ibid*.
- <sup>214</sup> *Ibid*.
- <sup>215</sup> UN CESCR, *General Comment 14*, above n.22, para. 23.
- <sup>216</sup> Declaration on the African Plan of Action, above n.127.
- <sup>217</sup> *Ibid*.
- <sup>218</sup> *Ibid*.
- <sup>219</sup> *Ibid*.
- <sup>220</sup> African Charter on the Rights and Welfare of the Child, art. 14; Convention on the Rights of the Child (1989), art. 24; ICESCR, art. 12(2)(a).
- <sup>221</sup> African Charter on the Rights and Welfare of the Child, art. 14(2)(c).
- <sup>222</sup> *Ibid*, art. 14(2)(d).
- <sup>223</sup> Declaration on the African Plan of Action, above n.127.
- <sup>224</sup> *Ibid*. See also: African Charter on the Rights and Welfare of the Child, art.14(2).
- <sup>225</sup> UN CESCR, *General Comment 13: The right to education (Art. 13 of the ICESCR)*. See also, for example: UNESCO, *The Right to Education* (2008) at <<http://unesdoc.unesco.org/images/0016/001612/161200e.pdf>> (accessed on 20 October 2009).
- <sup>226</sup> UN CESCR, *General Comment 13*, above n.225.
- <sup>227</sup> The Reporting Guidelines, above n.112, Part II, para. 48.
- <sup>228</sup> *Ibid*, Part II, para. 48(a). See also: Declaration on the African Plan of Action, above n.127, with reference to the girl child.
- <sup>229</sup> Decision on the Progress Report on the implementation of the programme of action of the decade of Education in Africa *CM/Dec. 533 (LXXII) Rev 1 2000*.
- <sup>230</sup> African Charter on Rights and Welfare of the Child, art. 11(3)(b), (c) and (e); UN Convention on the Rights of the Child, art. 28(a), ICESCR, art. 13(2)(a) and art. 14; UN CESCR, *General Comment 11: Plans of action for primary education (Art. 14 of the ICESCR)*; UN CESCR, *General Comment 13*, above n.225, para. 8-10.
- <sup>231</sup> The Pretoria Declaration, above n.11, para. 8.

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- <sup>232</sup> The Reporting Guidelines, above n.112, Part II, para. 52.
- <sup>233</sup> *Ibid*, Part II, para. 53.
- <sup>234</sup> The Pretoria Declaration, above n.11, para. 8.
- <sup>235</sup> The Reporting Guidelines, above n.112, Part II, para. 54; ICESCR, art. 13(2)(e).
- <sup>236</sup> UN CESCR, *General Comment 13*, above n.225, para 13.
- <sup>237</sup> *Ibid*, para. 18, 19 and 20.
- <sup>238</sup> Convention on the Rights of the Child, art. 29(1)(a); African Charter on the Rights and Welfare of the Child, art. 11(2)(a).
- <sup>239</sup> African Charter on the Rights and Welfare of the Child, art. 11(2)(b).
- <sup>240</sup> *Ibid*, art. 11(2)(c).
- <sup>241</sup> *Ibid*, art. 11(2)(d).
- <sup>242</sup> *Ibid*, art. 11(2)(f).
- <sup>243</sup> *Ibid*, art. 11(2)(g).
- <sup>244</sup> *Ibid*, art. 11(2)(h).
- <sup>245</sup> Resolution on Adult/Continuing Education in Africa CM/Res.800 (XXXV).
- <sup>246</sup> The Pretoria Declaration, above n.11, para. 8; the Reporting Guidelines, above n.112, Part II, para. 55-56; ICESCR, art. 13(3) and (4); African Charter on the Rights and Welfare of the Child, art. 11(4) and (7); UN CESCR, *General Comment 13*, above n.225, para. 28-30.
- <sup>247</sup> African Charter on the Rights and Welfare of the Child, art. 11(2).
- <sup>248</sup> See: Cairo Agenda for Action, above n.41, para. 15; South African Development Community, *Protocol on Education and Training* (1997), art. 3(e). Council of Ministers of the Organization of African Unity, *African Declaration on Cooperation, Development and Economic Independence* (1973) CM/St.12(XXI) (hereinafter, the "African Declaration on Cooperation").
- <sup>249</sup> The Pretoria Declaration, above n.11, para. 8. See also Cairo Agenda for Action, above n.41, art. 13.
- <sup>250</sup> South African Development Community, *Protocol on Education and Training* (1997), art. 2(g). See also UNESCO, *Recommendation concerning the Status of Higher-Education Teaching Personnel* (1997).
- <sup>251</sup> African Declaration on Cooperation, above n.248.
- <sup>252</sup> Council of Ministers of the Organization of African Unity, *Resolution on the Role of African Universities and Institutions of Higher Learning in Development of the Continent*, CM/Res.1601 (LXII) (1995); Council of Ministers of the Organization of African Unity, *Resolution on Strengthening the Role of African Higher Educational Institutions and Universities in the Development of Africa*, AHG/Res.215 (XXVIII) (1992).
- <sup>253</sup> Council of Ministers of the Organization of African Unity, *Resolution on Strengthening the Role of African Higher Educational Institutions and Universities in the Development of Africa*, AHG/Res.215 (XXVIII) (1992).
- <sup>254</sup> The Pretoria Declaration, above n.11, para. 8; the Reporting Guidelines, above n.112, Part II, para. 51; Resolution on the International Literacy Year CM/Res.1295 (LII). See also: ICESCR, art. 13(2)(d); UN CESCR, *General Comment 13*, above n.225, para. 15-16.
- <sup>255</sup> African Declaration on Cooperation, above n.248.
- <sup>256</sup> See the Cairo Agenda for Action, above n.41, art. 13.
- <sup>257</sup> African Charter on the Rights and Welfare of the Child, art. 11(3)(e); Protocol on the Rights of Women, above n.34, art. 12.
- <sup>258</sup> African Charter on the Rights and Welfare of the Child, art. 11(5).

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- <sup>259</sup> The Tunis Declaration, above n.142.
- <sup>260</sup> Declaration on the African Plan of Action, above n.127.
- <sup>261</sup> African Charter on the Rights and Welfare of the Child, art. 11(6).
- <sup>262</sup> The Pretoria Declaration, above n.11, para. 8; Convention on the Rights of Persons with Disabilities, arts. 24 (1) and (2).
- <sup>263</sup> Convention on the Rights of People with Disabilities, art. 24(2).
- <sup>264</sup> See, for example, UN CESCR, *General Comment 13*, above n.225, para. 55; ILO Convention on the Worst Forms of Child Labour Convention (1999) (C182).
- <sup>265</sup> Declaration on the African Plan of Action, above n.127.
- <sup>266</sup> See, for example, the comments by the Special Rapporteur on prisons that fail to provide educational opportunities in ACHPR, *Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa, Mission to the Republic of South Africa 14-30 June 2004*, and her recommendations to the Government of Cameroon in ACHPR, *Report to the Government of the Republic of Cameroon on the visit of the Special Rapporteur on Prisons and Conditions of Detention in Africa From 2 to 15 September 2002*. See also: ACHPR, *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia 15 – 29 March, 2004*.
- <sup>267</sup> International Convention on the Protection of the Rights of all Migrants Workers and Members of Their Families (1990), art. 45.
- <sup>268</sup> UN CESCR, 'Cultural Life in the context of Human Rights' - Background paper submitted by Ms. Yvonne Donders (9 May 2008) UN doc. E/C.12/40/13.
- <sup>269</sup> *Ibid.*
- <sup>270</sup> The Pretoria Declaration, above n.11, para. 9. See also First OAU Ministerial Conference on Human Rights in Africa, *Grand Bay (Mauritius) Declaration and Plan of Action* (1999), arts. 6 and 10.
- <sup>271</sup> The Pretoria Declaration, para. 9.
- <sup>272</sup> *Ibid.*
- <sup>273</sup> *Ibid.*
- <sup>274</sup> The Reporting Guidelines, above n.112, Part III para. 14(b)(vii).
- <sup>275</sup> African Charter on the Rights and Welfare of the Child, art. 12(2).
- <sup>276</sup> *Ibid.*, art. 21.
- <sup>277</sup> *Ibid.*, art. 21.
- <sup>278</sup> *SERAC & CESR v. Nigeria*, above n.21, para. 60; ICESCR, art. 11(1).
- <sup>279</sup> Human Rights Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Miloon Kothari* UN doc. A/HRC/7/16 (13 February 2008), para. 4. See also UN CESCR, *General Comment 4*, above n.16, para. 7.
- <sup>280</sup> See, for example, Council of Ministers, above n.168, para. 5.1.
- <sup>281</sup> UN CESCR, *General Comment 4*, above n.16, para. 8(b).
- <sup>282</sup> UN CESCR, *General Comment 7: The right to adequate housing (Art.11.1): forced evictions* (1997), para. 8.
- <sup>283</sup> Special Rapporteur Housing Report, above n.61, Annex 1: Basic Principles and Guidelines on Development-Based Evictions and Displacement, para. 1, 4 and 6.
- <sup>284</sup> *Ibid.*, Annex 1 para. 22.
- <sup>285</sup> *Ibid.*, Annex 1, para. 25.

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<sup>286</sup> *SERAC & CESR v. Nigeria*, above n.21. Individuals should not be evicted from their homes nor have their homes demolished by public or private parties without judicial oversight. Such protection should include providing for adequate procedural safeguards as well as a proper consideration by the courts of whether the eviction or demolition is just and equitable in the light of all relevant circumstances. Among the factors a court should consider before authorising forced evictions or demolitions is the impact on vulnerable and disadvantaged groups. A court should be reluctant to grant an eviction or demolition order against relatively settled occupiers without proper consideration of the possibility of alternative accommodation being provided. Forced evictions and demolitions of people's homes should always be measures of last resort with all other reasonable alternatives being explored, including mediation between the affected community, the landowners and the relevant housing authorities. See UN CESCR, *General Comments 4 and 7*, above n.281 and n.282.

<sup>287</sup> *SERAC & CESR v. Nigeria*, above n.21. See also UN CESCR, *General Comment 4*, para. 8(a).

<sup>288</sup> UN CESCR, *General Comment 3*, above n.15, para. 10.

<sup>289</sup> Special Rapporteur Housing Report, above n.61, Annex 1, para. 24.

<sup>290</sup> The Reporting Guidelines, above n.112, Part II para. 34(b).

<sup>291</sup> *Government of Republic of South Africa and Ors v. Grootboom and Ors* 2000 (11) BCLR 1169 (CC).

<sup>292</sup> The Reporting Guidelines, above n.112, Part II para. 34(e).

<sup>293</sup> *Ibid*, Part II para. 34(d).

<sup>294</sup> UN CESCR, *General Comment 4*, above n.16, para. 8(c).

<sup>295</sup> *Ibid*, para. 8(d).

<sup>296</sup> *Ibid*, para. 8(f).

<sup>297</sup> *Ibid*, para. 8(g).

<sup>298</sup> Special Rapporteur Housing Report, above n.61, Annex 1, para. 70.

<sup>299</sup> *Ibid*, Annex 1, para. 31.

<sup>300</sup> UN CESCR, *General Comment 4*, above n.16, para. 8(g).

<sup>301</sup> Protocol on the Rights of Women, above n.34, art 16; UN CESCR, *General Comment 4*, above n.16, para. 8(e).

<sup>302</sup> See for example Articles 7 (5) (C) and 9 (2) (b) of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.

<sup>303</sup> Special Rapporteur Housing Report, above n.61.

<sup>304</sup> *Ibid*, Annex, para. 14-15. See also UN CESCR, *General Comment 7*, above n.282, para. 10.

<sup>305</sup> Special Rapporteur Housing Report, above n.61, Annex 1, para. 26.

<sup>306</sup> *Ibid*, Annex 1, para. 61-62.

<sup>307</sup> *Ibid*, Annex 1, para. 21.

<sup>308</sup> *Ibid*, Annex 1, para. 47.

<sup>309</sup> *Ibid*, Annex 1, para. 37 and 40. See also UN CESCR, *General Comment 7*, above n.280, para. 15.

<sup>310</sup> Special Rapporteur Housing Report, above n. 61, Annex 1, para. 42.

<sup>311</sup> *Ibid*, Annex 1, para. 45-46.

<sup>312</sup> *Ibid*, Annex 1, para. 50.

<sup>313</sup> *Ibid*, Annex 1, para. 54.



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- <sup>314</sup> Ibid, Annex 1, para. 48.
- <sup>315</sup> Ibid, Annex 1, para. 52.
- <sup>316</sup> Ibid, Annex 1, para. 49. See also UN CESCR, *General Comment 7*, above n.282, para. 14-15.
- <sup>317</sup> Special Rapporteur Housing Report, above n.61, Annex 1, para. 51.
- <sup>318</sup> Ibid, Annex 1, para. 16.
- <sup>319</sup> Ibid, Annex 1, para. 44.
- <sup>320</sup> Ibid, Annex 1, para. 17 and 22.
- <sup>321</sup> Ibid, Annex 1, para. 36 and 59.
- <sup>322</sup> UN CESCR, *General Comment 19*, above n.53, para. 1, 3 and 9.
- <sup>323</sup> See *SERAC & CESR v. Nigeria*, above n.21, in which the Commission held that certain rights can be implicitly derived from rights that are expressly protected.
- <sup>324</sup> Universal Declaration of Human Rights, art. 22; ICESCR, art. 9.
- <sup>325</sup> UN CESCR, *General Comment 19*, above n.53, para. 59.
- <sup>326</sup> Ibid, para. 4
- <sup>327</sup> Ibid, para. 11.
- <sup>328</sup> Ibid, para. 12-20. See also generally the following a range of international instruments: *Universal Declaration of Human Rights*, 1948, art. 25; ICESCR, arts. 9 - 11; Convention on the Rights of the Child, 1989, art. 23, 24, 26 and 27; Convention on the Elimination of All Forms of Racial Discrimination, 1966, art. 5(e)(iv); CEDAW, arts. 11(1)(e) and (f), 11(2) and (3), 12, 14(c); Migrant Workers Convention, above n.129, arts. 27-28; The African Charter on the Rights and Welfare of the Child, art. 5, 14, 18(1), and 20(2); Protocol on the Rights of Women, above n.34, arts. 13 -15, 22 - 23; American Declaration of the Rights and Duties of Man, 1948, art XVI; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988, art 9; European Social Charter, 1961, art. 12 - 14; European Social Charter (Revised), 1996, art. 12-14; ILO Convention on Social Security (Minimum Standards) (1952) (C102); ILO Convention on Maternity Protection Convention (revised) (1952) (C103); ILO Convention on Equality of Treatment (Social Security) Convention (1962) (C118); ILO Convention on Employment Injury Benefits Convention, (1964) (C121); ILO Convention on Invalidity, Old-Age and Survivors' Benefits Convention (1967) (C128); ILO Convention on Medical Care and Sickness Benefits Convention (1969) (C130); ILO Convention on Maintenance of Social Security Rights Convention (1982) (C157); ILO Convention Employment Promotion and Protection against Unemployment Convention (1988) (C168).
- <sup>329</sup> African Charter, art. 18; Protocol on the Rights of Women, above n.34, art. 22-23; African Charter on the Rights and Welfare of the Child, arts. 18-20; UN CESCR, *General Comment 5*, above n.34, para. 28-33; UN CESCR, *General Comment 6*, above n.34, para. 26-33.
- <sup>330</sup> Protocol on the Rights of Women, above n.34, art. 21.
- <sup>331</sup> UN CESCR, *General Comment 19*, above n.53, para. 24.
- <sup>332</sup> Ibid, para. 25.
- <sup>333</sup> UN CESCR, *General Comment 3*, above n.15, para. 11-12.
- <sup>334</sup> UN CESCR, *General Comment 16*, above n.34, para. 26.
- <sup>335</sup> UN CESCR, *General Comment 19*, above n.53.
- <sup>336</sup> Ibid, para. 23.
- <sup>337</sup> Ibid, para. 27.
- <sup>338</sup> Ibid, especially para. 34.

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- <sup>339</sup> *SERAC & CESR v. Nigeria*, above n.21, para. 64.
- <sup>340</sup> UN CESCR, *General Comment 12*, above n.16, para. 4.
- <sup>341</sup> *Ibid.*
- <sup>342</sup> *SERAC & CESR v. Nigeria*, above n.21, para. 65.
- <sup>343</sup> UN CESCR, *General Comment 12*, above n.16, para.15.
- <sup>344</sup> Food and Agriculture Organisation, *The State of Food Insecurity in the World 2009: Economic crises – impacts and lessons learned* (2009), p.8.
- <sup>345</sup> See generally the Food and Agriculture Organisation, *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security* (2005) (hereinafter, the “FAO Voluntary Guidelines”), at <<http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.htm>> (accessed on 19 October 2009).
- <sup>346</sup> UN CESCR, *General Comment 12*, above n.16, para. 25.
- <sup>347</sup> *Ibid.*, especially para. 12.
- <sup>348</sup> The Reporting Guidelines, above n.112, Part II para. 32(e). See also generally Guideline 4 of the FAO Voluntary Guidelines, above n.345.
- <sup>349</sup> The Reporting Guidelines, above n.112, Part II para. 32(b). See generally Guideline 2 of the FAO Voluntary Guidelines, above n.345.
- <sup>350</sup> Assembly of Heads of State and Government Thirty-sixth Ordinary Session/Fourth Ordinary Session of the AEC, *AHG/Dec.156 (XXXVI) Decision on Proposal for Eradication of Tsetse Flies on the African Continent - (CM/2152 (LXXII) ADD.2*.
- <sup>351</sup> The Cairo Agenda for Action, above n.41, para. 12(i).
- <sup>352</sup> *Ibid.*, para. 12(ii).
- <sup>353</sup> *Ibid.*, para. 12(iii).
- <sup>354</sup> FAO Voluntary Guidelines, above n. 345, Guideline 16.7.
- <sup>355</sup> UN CESCR, *General Comment 12*, above n.16, especially para.39.
- <sup>356</sup> Asbjørn Eide, *The Right to Food and the Impact of Liquid Biofuels (Agrofuels)* (2008) FAO; Food and Agriculture Organization, *The State of Food and Agriculture* (2008), chap. 6.
- <sup>357</sup> The Reporting Guidelines, above n.112, Part II para. 32(i).
- <sup>358</sup> *Ibid.*, Part II para. 32(d).
- <sup>359</sup> Cairo Agenda for Action, above n.41, para. 12(v).
- <sup>360</sup> African Charter, arts. 27 and 29.
- <sup>361</sup> UN CESCR, *General Comment 12*, above n.16, para. 9.
- <sup>362</sup> *Ibid.*, para. 10.
- <sup>363</sup> The Reporting Guidelines, above n.112, Part II, para. 32(g).
- <sup>364</sup> *Ibid.*, Part II, para. 32(h).
- <sup>365</sup> UN CESCR, *General Comment 12*, above n.16, para. 20 and 27.
- <sup>366</sup> *Ibid.*, para. 13.
- <sup>367</sup> FAO Voluntary Guidelines, above n.345, Guideline 2.5.
- <sup>368</sup> The Reporting Guidelines, above n.112, Part II, para. 32(f); Addis Ababa Declaration, para. 3(a), which relates to the special conditions facing women in their enjoyment of the right to food.

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<sup>369</sup> ACHPR, *Report to the Government of the Republic of Cameroon on the visit of the Special Rapporteur on Prisons and Conditions of Detention in Africa From 2 to 15 September 2002*, ACHPR/37/OS/11/437, p.26.

<sup>370</sup> See *SERAC & CESR v. Nigeria*, above n.21, in which the Commission held that certain rights can be implicitly derived from rights that are expressly protected. It further held that pollution of water constituted a violation of the rights to health and a satisfactory environment as protected under art. 16 and 24 of the Charter. See further African Commission on Human and Peoples' Rights *Free Legal Assistance Group and Others v. Zaire*, Comm. No. 25/89, 47/90, 56/91, 100/93 (1995), which held that a failure to provide safe drinking water constituted a violation of the right to health protected under article 16 of the Charter. See also the UN CESCR, *General Comment 15*, above n.17, especially para. 3; CEDAW, art. 14(2)(h), which stipulates that States parties shall ensure to women the right to “enjoy adequate living conditions, particularly in relation to [...] water supply”; Convention on the Rights of the Child, art. 24(2), which requires States parties to combat disease and malnutrition “...through the provision of adequate nutritious foods and clean drinking-water;”; Geneva Convention relative to the Treatment of Prisoners of War (1949), arts. 20, 26, 29 and 46; Geneva Convention relative to the Treatment of Civilian Persons in Time of War (1949), arts. 85, 89 and 127; Additional Protocol I thereto of 1977, arts 54 - 55; Additional Protocol II of 1977, arts. 5 and 14; Mar Del Plata Action Plan of the United Nations Water Conference (1971), preamble; Agenda 21, *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, chap. 18; The Dublin Statement on Water and Sustainable Development, International Conference on Water and the Environment (1992) (A/CONF.151/PC/112), Principle No. 3; Guidelines for the realisation of the right to drinking water and sanitation, below n.374.. See also: Commission on Human Rights, *Relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation*, *Final report of the Special Rapporteur, El Hadji Guissé* (2004) UN doc. E/CN.4/Sub.2/2004/20. See also, for example: *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi 1981* (2) SCR 516; *Narmada Bachao Andolan v. Union of India* (2000) 10 SCC 664; *Residents of Bon Vista Mansions v. Southern Metropolitan Local Council* 2002 (6) BCLR 625 (W); Bill of Review, 0208625-3, Special Jurisdiction Appellate Court of Parana (Brazil) (August 2002).

<sup>371</sup> UN CESCR, *General Comment 15*, above n.17, para. 2 and 11.

<sup>372</sup> *Ibid*, para. 12(a).

<sup>373</sup> *Ibid*, para. 12(b), referring to WHO, *Guidelines for drinking-water quality*, 2<sup>nd</sup> edition, vols. 1-3 (Geneva, 1993). Clean drinking water is also referred to in the Convention on the Rights of the Child (art. 24(2)(c) and the Protocol on the Rights of Women, above n.34(art. 15(a)), while the African Charter on the Rights and Welfare of the Child refers to safe drinking water (art. 14(2)(c)).

<sup>374</sup> United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation, 24 August 2006, UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25 (hereinafter, the “Guidelines for the realization of the right to drinking water and sanitation”), para. 1.2.

<sup>375</sup> COHRE, Water Aid, SDC and UN-HABITAT, *Sanitation: A Human Rights Imperative* (Geneva, 2008).

<sup>376</sup> UN CESCR, *General Comment 15*, above n.17, para. 37(a).

<sup>377</sup> *Ibid*, para. 12(c)(i), 29; Guidelines for the realization of the right to drinking water and sanitation, above n.374, para. 1.3(a).

<sup>378</sup> Guidelines for the realisation of the right to drinking water and sanitation, above n.374, para. 2.3(b).

<sup>379</sup> Cairo Agenda for Action, above n.41, para. 12(iv).

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<sup>380</sup> FAO Voluntary Guidelines, above n.345, para. 8.11. Organisation of African Unity, *The African Convention on the Conservation of Nature and Natural Resources (Revised Version 2003)* includes in art. 5: “*The Parties shall establish and implement policies for the planning, conservation, management, utilization and development of underground and surface water, as well as the harvesting and use of rain water, and shall endeavour to guarantee for their populations a sufficient and continuous supply of suitable water, ...*”

<sup>381</sup> UN CESCR, *General Comment 15*, above n.17, para. 25.

<sup>382</sup> *Ibid*, para. 28.

<sup>383</sup> *Ibid*, para. 48, See also: Guidelines for the realization of the right to drinking water and sanitation, above n.374, para. 8.1. See also the African Union Assembly, ‘Sharm-el-Sheikh Commitments for Accelerating the Achievement of Water and Sanitation Goals in Africa’, 1 July 2008, promoting public participation in water and sanitation activities, para. (l).

<sup>384</sup> Declaration on Water by Mayors and Local Elected Representatives At the *Fourth World Water Forum*, Mexico, 21 March 2006, para. 3.2.

<sup>385</sup> *Ibid*, para. 3.4.

<sup>386</sup> *Ibid*, para. 4.3.

<sup>387</sup> *Ibid*, para. 4.5.

<sup>388</sup> Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, UN doc. A/HRC/6/3 (16 August 2007), para. 52-53. See also para. 576 of the CESCR Concluding observations on the initial report of Nepal, CESCR E/2002/22 (2001).

<sup>389</sup> Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, UN doc. A/HRC/6/3 (16 August 2007), para. 57.

<sup>390</sup> UN CESCR, *General Comment 15*, above n.17, para. 8.

<sup>391</sup> *Ibid*.

<sup>392</sup> *Ibid*.

<sup>393</sup> Art. 15 of the Protocol on the Rights of Women, above n.34, states as follows: “*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 ...*” Arts. 14(1) and 14(2)(c) of the African Charter on the Rights and Welfare of the Child states as follows: “*1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health. 2. State Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures: ... (c) to ensure the provision of adequate nutrition and safe drinking water.*”

<sup>394</sup> Guidelines for the realization of the right to drinking water and sanitation, above n.374, para. 6.

<sup>395</sup> *Ibid*, para. 5.1; UN CESCR, *General Comment 15*, above n.17, para. 16(c).

<sup>396</sup> UN CESCR, *General Comment 15*, above n.17, para. 29.

<sup>397</sup> *Ibid*, para. 7.

<sup>398</sup> *Ibid*.

<sup>399</sup> See ACHPR, *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia 15-29 March, 2004*; ACHPR, *Report to the Government of the Republic of Cameroon on the visit of the Special Rapporteur on Prisons and Conditions of Detention in Africa From 2 to 15 September 2002*, above n.369; ACHPR, *Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa*

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*Mission to the Republic of South Africa 14-30 June 2004*. See also UN CESCR, *General Comment 15*, above n.17.

<sup>400</sup> UN CESCR, *General comment 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, para. 2 of the ICESCR)*, UN doc. E/C.12/GC/20 (10 June 2009), para. 31.

<sup>401</sup> Universal Declaration of Human Rights, art. 16.

<sup>402</sup> *Ibid.* See also: American Convention on Human Rights, art.17; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, art. 1; ICCPR, art. 23.

<sup>403</sup> The Reporting Guidelines, above n.112, Part II, para. 28(b). See also: European Convention on Human Rights, art. 12; the Cairo Declaration on Human Rights in Islam, art. 5.

<sup>404</sup> African Charter on the Rights and Welfare of the Child, art. 21(2); Protocol on the Rights of Women, above n.34, art. 6.

<sup>405</sup> The Reporting Guidelines, above n.112, Part II, para. 28(d).

<sup>406</sup> Protocol on the Rights of Women, above n.34, art. 6; CEDAW, art. 16; Convention on consent to Marriage, Minimum age for Marriage and registration of Marriages, art. 3.

<sup>407</sup> See: ICCPR, art. 23; CEDAW, art. 16; American Convention on Human Rights, art. 17.

<sup>408</sup> African Charter on the Rights and Welfare of Child, art. 18(2).

<sup>409</sup> African Charter on the Rights and Welfare of the Child, art. 18.

<sup>410</sup> CEDAW, arts. 9 and 16.

<sup>411</sup> Protocol on the Rights of Women, above n.34, art. 7.

<sup>412</sup> *Ibid.*, art. 6.

<sup>413</sup> CEDAW, art. 16.

<sup>414</sup> Protocol on the Rights of Women, above n.34, art. 6.

<sup>415</sup> CEDAW, art. 16; the Cairo Population Conference, above n.205, para. 7.3; Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, UN doc. A/CONF.32/41 at 3 (1968), art. 16.

<sup>416</sup> Protocol on the Rights of Women, above n.34, art. 6.

<sup>417</sup> ICESCR, art. 10.

<sup>418</sup> African Charter on the Rights and Welfare of the Child, art. 19; *Olsson v. Sweden (No. 1)*, app. no. 10465/83 (1988) ECHR judgment.

<sup>419</sup> African Charter on the Rights and Welfare of the Child, art. 25.

<sup>420</sup> Convention on the Rights of the Child, art. 9.

<sup>421</sup> *W. v. the United Kingdom*, (Application no. 9749/82 (1987)).

<sup>422</sup> See for example: *Johansen v. Norway*, app. no. 17383/90, (1996) ECHR judgment; *Olsson v. Sweden*, above n.418.

<sup>423</sup> Convention on the Rights of the Child, art. 9. See also *Margareta and Roger Andersson v. Sweden*, app. no. 12963/87 (1992) ECHR judgment.

<sup>424</sup> ICCPR, art. 23.

<sup>425</sup> American Convention on Human Rights, art. 17; African Charter on the Rights and Welfare of the Child, art. 18(3). See also: *Johnston & Ors v. Ireland*, app. no. 9697/82 (1986) ECHR judgment.

<sup>426</sup> American Convention on Human Rights, art. 17; African Charter on the Rights and Welfare of the Child, art. 18(3).

<sup>427</sup> Convention on the Rights of the Child, arts. 20 - 21. See also UN General Assembly, *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children*,

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*with Special Reference to Foster Placement and Adoption Nationally and Internationally*, UN doc. A/RES/41/85 (3 December 1986) (hereinafter, “UN General Assembly Declaration”).

<sup>428</sup> African Charter on the Rights and Welfare of the Child, art. 24(b). See also UN General Assembly Declaration, *ibid.*

<sup>429</sup> Convention on the Rights of the Child, arts. 10 and 22; African Charter on the Rights and Welfare of Child, art. 25.

<sup>430</sup> Migrant Workers Convention, above n.129, art. 44.

<sup>431</sup> *Ibid.*, para. 30 and 45.

<sup>432</sup> African Charter on the Rights and Welfare of the Child, art. 6.

<sup>433</sup> Migrants Workers Convention, above n.129, art. 50.

<sup>434</sup> UN CESCR, *General Comment 16*, above n.34, para. 5.

<sup>435</sup> African Charter on the Rights and Welfare of the Child, art. 30. See also ACHPR, *Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa Mission to the Republic of South Africa 14 – 30 June 2004*.

<sup>436</sup> African Charter on the Rights and Welfare of the Child, art. 30.

# Principles and guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights

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