



Submission No 94

**Review of Australia's Relationship with the  
Countries of Africa**

**Organisation:** Department of Foreign Affairs and Trade – Answers  
to Questions on Notice



**Australian Government**

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**Department of Foreign Affairs and Trade**

**Joint Standing Committee on  
Foreign Affairs, Defence and Trade**

**Inquiry into Australia's Relationship with the  
Countries of Africa**

**Supplementary Submission Responding to Additional  
Questions**

*15 November 2010*

**NOTE**

*The following information has been submitted in response to additional questions provided to the Department of Foreign Affairs and Trade, and questions on notice following the Department's appearance on 20 April 2010 before the Joint Standing Committee of Foreign Affairs, Defence and Trade's Inquiry into Australia's Relationship with the Countries of Africa.*

*AusAID provided significant input for some of the responses and has also answered separate additional questions.*

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## DIPLOMATIC REPRESENTATION

*Question 1. Would you provide a list of the Honorary Consuls for Australia based in Africa, together with the countries in which they serve?*

### Australian Honorary Consuls in Africa<sup>1</sup>

<u>Country</u>	<u>City</u>	<u>Honorary Consul</u>	<u>Supervising Post</u>	<u>Status</u>
Angola	Luanda		Pretoria	Temporarily vacant
Botswana	Gabarone		Pretoria	Appointment Pending
Cameroon	Yaounde		Abuja	Appointment Pending
Mozambique	Maputo	Ms Michelle Smith	Pretoria	Operating
Namibia	Windhoek		Pretoria	Appointment Pending
Nigeria	Lagos		Abuja	Temporarily vacant
South Africa	Cape Town		Pretoria	Temporarily vacant
Tanzania	Dodoma		Nairobi	Appointment Pending
Uganda	Kampala		Nairobi	Appointment Pending

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<sup>1</sup> The information provided in this table is correct as at 18 October 2010.

## **DEBT RELIEF IN AFRICA**

***Question 2. Your submission notes (at page 16) that India has written off the debt owed by African countries under the Heavily Indebted Poor Countries Paris Initiative.***

- ***Has Australia been involved in writing off the debt of African countries?***

Australia is a strong supporter of multilateral debt relief initiatives. We have contributed around \$350 million to these initiatives to date, including the Highly Indebted Poor Countries (HIPC) Initiative and the Multilateral Debt Relief Initiative (MDRI). Twenty nine out of the 35 eligible countries for these initiatives are in Africa.

The HIPC Initiative reduces eligible countries' debt burdens to sustainable levels. It provides countries with a way out of the almost continuous need for debt rescheduling and/or relief. The MDRI deepens the extent of debt relief offered under HIPC. Under MDRI, countries that have graduated from HIPC can receive 100 per cent multilateral debt cancellation from the IMF, the Inter-American Development Bank and the concessionary lending arms of the World Bank and the African Development Bank.

Under these initiatives, the World Bank and the IMF have delivered around \$US70 billion in debt stock forgiveness to 21 African countries that have completed HIPC. The World Bank and the IMF have provided an additional \$US22 billion in debt stock forgiveness to a further eight African countries that are on track to complete the initiative. In total, this means that the 29 African countries have received around \$US92 billion in debt stock forgiveness as a result of HIPC and MDRI. This represents around 80% of total debt stock forgiven under these initiatives.

In addition to supporting the HIPC and MDRI, Australia has provided 100 per cent debt forgiveness to those HIPC qualified countries that owe money directly to Australia. Under this commitment, Australia forgave debts owed by Ethiopia in 2004.

For countries not covered by the HIPC Initiative, but identified as having a genuine financial need for debt rescheduling or forgiveness, Australia contributes through its membership of the Paris Club of bilateral creditors. Through this mechanism, Australia has participated in debt rescheduling for Egypt.

- ***How successful has the Paris Initiative been in reducing the debts owed by African countries?***

Australia has provided debt relief to Ethiopia and Egypt.

### *Ethiopia and HIPC Initiative*

The Australian Government is committed to providing 100 per cent bilateral debt forgiveness to countries that have qualified for debt relief under the Highly Indebted Poor Countries (HIPC) initiative. In November 2004, Australia agreed to forgive 100 per cent of the debts owed to it by Ethiopia (US\$11.5 million) after Ethiopia had successfully completed its HIPC program. The total Ethiopian debt treated in the Paris Club was US\$1,487 million, of which US\$1,296 million was cancelled and US\$191 million was rescheduled.

### *Egypt*

As at 31 December 2009, Egypt owed approximately A\$103.3 million on the National Interest Account (NIA). The outstanding debt relates to credit insurance claims paid by EFIC on wheat exports to Egypt in the mid-1980s; the wheat export contracts were guaranteed on the NIA which EFIC administers on behalf of the Commonwealth.

Egypt's debts were rescheduled through the Paris Club in 1987 and 1991. The 1991 Paris Club rescheduling involved a 50 per cent forgiveness of Egypt's debt owed to Paris Club creditors, including Australia. The 50 per cent reduction was effected by a reduction of the interest rate Egypt pays on its outstanding debt, that is, Egypt is charged a concessional (below market rate) rate of interest over the life of the debt which will result in a 50 per cent reduction in the debt paid to Australia. To date, Egypt has made all payments due to EFIC in time and in full. The final repayment is due in July 2016.

Australia currently does not have sovereign debt exposure to other African countries.

### *Paris Club*

Of the Paris Club agreements concluded over the last five years, 27 involved African countries and 12 involved non-African countries. Paris Club debt relief to African countries over the last five years is as follows:

<b>Country</b>	<b>Date</b>	<b>Amount treated (USD)</b>	<b>Details</b>
Congo	18 March 2010	\$2,474 million	\$981 million cancelled \$1,493 million rescheduled
Democratic Republic of Congo	25 February 2010	\$2,957 million	\$1,310 million cancelled \$1,647 million rescheduled
Comoros	19 November 2009	\$13 million	\$1 million cancelled \$12 million rescheduled
Central African Republic	15 September 2009	\$49 million	\$49 million cancelled
Côte d'Ivoire	15 May 2009	\$4,690 million	\$845 million cancelled \$3,845 million rescheduled
Seychelles	16 April 2009	\$163 million	
Burundi	11 March 2009	\$134 million	\$129 million cancelled \$5 million rescheduled
Togo	22 January 2009	\$22 million	\$22 million cancelled
Congo	11 December 2008	\$961 million	\$806 million cancelled \$155 million rescheduled

Djibouti	16 October 2008	\$76 million	
Togo	12 June 2008	\$740 million	\$347 million cancelled \$393 million rescheduled
Liberia	17 April 2008	\$1,043 million	\$254 million cancelled \$789 million rescheduled
Gambia	24 January 2008	\$15 million	\$12 million cancelled \$3 million rescheduled
Guinea	23 January 2008	\$298 million	\$182 million cancelled \$116 million rescheduled
Central African Republic	24 December 2007	\$6 million	\$4 million cancelled \$2 million rescheduled
Gambia	22 June 2007	\$3 million	Fully repaid
Sao Tomé and Príncipe	24 May 2007	\$24 million	\$23 million cancelled \$1 million rescheduled - Fully repaid
Central African Republic	20 April 2007	\$36 million	\$10 million cancelled \$26 million rescheduled
Sierra Leone	24 January 2007	\$363 million	\$320 million cancelled \$43 million rescheduled - Fully repaid
Malawi	19 October 2006	\$355 million	\$137 million cancelled \$218 million rescheduled
Cameroon	17 June 2006	\$1,829 million	\$1,090 million cancelled \$739 million rescheduled
Congo	9 March 2006	Maturities due between 9 March 2006 and 30 September 2007	90 per cent cancellation
Nigeria	20 October 2005	\$30,066 million	1) Payment of arrears due as of 14/09/2005 and prepayment at par of senior "levelling up" debt. Cancellation of 33% of pre cut off date debt and deferral of the debt remaining due. 2) Payment of post cut off



			date debt upon entry into force of phase 2. Cancellation of 34% of pre cut off date debt. Buy back by Nigeria of the debt remaining due after cancellation and repayment. - Fully repaid
Burundi	15 September 2005	Maturities falling due from 29 July 2005 up to 30 June 2009	90 per cent cancellation - Fully repaid
Sao Tomé and Príncipe	13 September 2005	Maturities falling due from 1 May 2001 up to 31 December 2007	90 per cent cancellation - Fully repaid Repayment of ODA credits over 40 years with 16 years of grace.
Zambia	11 May 2005	\$1,763 million	\$1,403 million cancelled \$360 million rescheduled
Rwanda	10 May 2005	\$90 million	\$82 million cancelled \$7 million rescheduled - Fully repaid

## **GOVERNANCE: NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT**

***Question 3. Your submission noted (at page 2) that 29 African countries had voluntarily acceded to the New Partnership for Africa's Development (NEPAD) Peer Review Mechanism.***

- ***Would you provide further information on this initiative?***

### NEPAD

The NEPAD program was established by African leaders in 2001 under the auspices of the Organisation for African Unity (OAU). The program is now an integral part of the work of the African Union (AU), successor to the OAU. Its professed aim is to foster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration.

NEPAD is an integrated plan of action that aims to address key social, economic and political priorities in a coherent and balanced manner. While NEPAD welcomes the support of the international community, it is considered a mechanism to develop and implement African solutions to a broad range of African concerns.

The stated aims of the NEPAD program are to:

- eradicate widespread and severe poverty;
- promote accelerated growth and sustainable development;
- halt the marginalization of Africa in the globalization process.

### The African Peer Review Mechanism

The African Peer Review Mechanism (APRM) is a mutually agreed instrument voluntarily acceded to by the member states of the African Union as a self-monitoring mechanism. Established in 2003, the APRM's mandate is to assist participating member states to ensure that their policies and practices conform to agreed political, economic and corporate governance values, codes and standards, and that mutually agreed objectives in socio-economic development contained in the NEPAD process are achieved.

Participation in the APRM is open to all member states of the AU. By the end of 2009, 30 member countries had acceded to the APRM: Algeria, Angola, Benin, Burkina Faso, Cameroon, Cape Verde, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Malawi, Mali, Mauritania, Mauritius, Mozambique, Nigeria, Republic of Congo, Rwanda, Sao Tome & Principe, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Uganda and Zambia. To date, 12 countries have undergone peer-review.

APRM Performance and progress is measured in four key areas:

- Democracy and Political Governance (DPG);
- Economic Governance and Management (EGM);
- Corporate Governance (CG); and
- Socio-Economic Development (SED).

There are five stages in the APRM review process:

- Stage One: information gathering through national processes on the political, economic and corporate governance and developmental environment of the relevant country based on current documentation prepared by the APRM Secretariat. Also a self-assessment by the country being reviewed and the provision of material by national, regional and international institutions. The preparation of a draft Plan of Action by the country concerned;
- Stage Two: a country review visit consisting of wide consultations with government officials, political parties, parliamentarians and representatives of civil society (including the mass media, academia, trade unions, business and professional bodies);
- Stage Three: the preparation of the APRM Team's report based on the findings of the first two stages. The report is measured against the applicable political, economic, corporate governance and socio-economic development commitment made in the country's Plan of Action;
- Stage Four: the Report is submitted to the APRM Forum through the APRM Secretariat. Consideration and adoption of the Report with decisions being taken, by the APRM Forum;
- Stage Five is the public release of the APRM Report, with tabling in the Pan African Parliament, the African Commission on Human and People's Rights, the Peace and Security Council, and the envisaged Economic, Social and Cultural Council (ECSOCC) of the AU.

There are four types of review: a base review; subsequent periodic reviews, reviews requested by member countries although not part of the mandated periodic review process; and reviews instituted because of pending political and economic crisis in the member country concerned.

### APRM Structure

The APRM is composed of four structures:

- The Committee of Participating Heads of State and Government (APRM Forum) is the highest decision making authority;
- The Panel of Eminent Persons (APRM Panel) oversees the review process to ensure integrity, consider reports and make recommendations to the APRM Forum;
- The APRM Secretariat (APRM Secretariat) provides secretarial, technical, coordinating and administrative support for the APRM; and
- The Country Review Team (APRM Team) visits the country to review progress with the Country's Programme of Action and produces the APRM Report on the country.

### Implementation

Country Support Missions (CSMs) have as their primary purpose to:

- ensure a common understanding of the philosophy, rules and processes of the APRM by relevant Participating Countries, and

- on the basis of the self-assessed needs of the Participating Country, plan and provide support to the Participating Countries in aspects of the national processes where they signal a need for such support.

Activities in Participating Countries to strengthen implementation of the APRM include the establishment of National Commissions and Governing Councils.

All Participating Countries are supposed to:

- establish a national Focal Point for the APRM which will be responsible for managing the national process;
- develop a National Programme of Action;
- ensure that the APRM becomes integrated into existing policy processes, like the Poverty Reduction Strategy Papers (PRSP) processes, or other national poverty reduction strategies, Medium Term Expenditure Frameworks (MTEF), and ongoing institutional reforms, etc to allow synergies and avoid duplications;
- promote an outcome-orientated process that focuses on formulating a national Programme of Action;
- promote full participation of relevant stakeholders in the development as well as in the implementation of the Programme of Action;
- place capacity building at the centre of the country's preparation and participation in the APRM;
- ensure that Terms-of-Reference of the Technical Assessments conducted by the Partner Institutions are consistent with and supportive of national processes and priorities and take account of national circumstances;
- promote donor coordination and alignment with the priorities identified in the Programme of Action, in particular, regarding capacity constraints and required feasibility studies, and programme and project appraisals;
- participate in workshops and for a to share best practice and promote peer learning;
- promote the integration of identified best practice into the strategies, programmes and projects of the RECs and the African Union (AU); and
- submit annual reports on implementation of their National Programme of Action to the APRM Secretariat.

## GOVERNANCE: CORRUPTION

*Question 4. Your submission notes (at page 4) that corruption remains a significant challenge in Sub-Saharan Africa.*

- *What advice do you give to businesses and NGOs which are contemplating engagement with countries that are high on Transparency International's Corruption Perception Index?*

Effective anti-corruption policies must address the specific details of each country context. For this reason, it is not possible to provide comprehensive advice to NGOs undertaking work in all of the countries where there is a high perceived or real incidence of corruption and where AusAID provides funding. AusAID's approach to working with Australian NGOs puts a positive obligation on NGOs to seek out and engage in good practice anti-corruption approaches in any context. NGOs supported by AusAID are obliged to have strong anti-corruption mechanisms.

- *In providing [development] assistance to countries high on the corruption index, how can you be sure that assistance is delivered appropriately?*

The expansion of the aid program in Africa means that AusAID will be engaging with many more African countries than we have previously, including those that are relatively high on the corruption index. AusAID recognises that this will pose risks. As we scale up we will take into account each country context and operational risks, including risks around corruption. AusAID and DFAT are in ongoing consultation on these issues and new program designs take this into account.

AusAID works with trusted Australian and international partners, which in consultation with donors such as Australia, have put in place international standards for monitoring, accounting and auditing.

AusAID participates in governance structures, such as Board meetings, where UN agencies report on management and accountability policies and practices (e.g. compliance, or progress toward compliance, with International Public Sector Accounting Standards). AusAID also participates in annual high-level consultations with key international partners, for example the World Bank, where Australia can raise issues related to the Partner's operations and discuss strategic priorities

AusAID officers are often members of joint donor review missions to assess the performance of a particular program and its impact. For example, AusAID and DFID complete annual joint reviews of the UNICEF Children and AIDS regional initiative, which aims to support orphaned and vulnerable children in Malawi, Mozambique and Tanzania. The 2009 review found that the program, which has supported over 300,000 children, was making solid progress against its objectives and identified that promoting learning opportunities between countries in the program could further strengthen outcomes.

All Australian NGOs currently funded by AusAID to work in Africa are accredited with AusAID. The accreditation process aims to provide AusAID, and the Australian public, with confidence that the Australian Government is funding professional, well managed, community based organisations that are capable of delivering quality development outcomes. Accreditation acts as a front-end risk management process and ensures accountable use of funding with minimal activity overview by AusAID.

Humanitarian assistance is delivered in often complex and difficult circumstances including in Africa. AusAID has built strong partnerships over many years with key multilateral partners, principally the United Nations and the International Committee of the Red Cross and also with Australian Non Government Organisation (NGO) partners. AusAID is satisfied that they have the fiduciary, accountability and risk management systems in place to monitor and report that the assistance has been delivered to its intended beneficiaries.

Australia monitors the use of its aid funds through regular financial and performance reports, field visits, contractual obligations, and independent reviews.

AusAID also measures the results of its aid to Africa through annual activity-level quality reporting and annual program performance reporting that aggregates results across the program. Objectives and indicators of success are defined at the activity level and measured through the implementing partner's systems, with additional monitoring and evaluation by AusAID as required.

## LEAST DEVELOPED COUNTRIES

*Question 5. Your submission notes (at pages 14-15) that African countries qualify for trade benefits with the United States and that Europe is negotiating economic partnership agreements with Sub-Saharan and African countries that will replace longstanding preference agreements. You also note (at page 39) that goods from least developed countries (LDCs), of which there are 33 in Africa, enter Australia duty free and quota free. Nigeria is not recognised as a 'LDC'.*

*The submission from the Nigerian High Commissioner suggests (sub 18 at page 3) that concessions and other opportunities granted to Nigeria from Australia should be similar to those granted by EU countries under the Lome Convention and by the United States, under the African Growth and Opportunities Act (AGOA).*

- *How do you respond?*
- *What factors are considered when compiling or reviewing the list of LDCs?*
- *How often is the list reviewed?*

The status of a least developed country (LDC) is determined by the UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing Status. LDC status is subject to triennial review and determined by criteria related to income and other social indicators.

While Nigeria does not qualify under Australia's duty-free/quota-free scheme (as it is not a recognised LDC), it does benefit from preferential access under Australia's wider Generalised System of Preference (GSP) scheme known as the Australian System of Tariff Preferences (ASTP). For example, 99.96 per cent of all imports to Australia from Nigeria, in 2009, attract zero per cent tariffs.

## **AFRICAN DEVELOPMENT BANK**

***Question 6. It has been suggested that Australia join the African Development Bank as membership would facilitate Australian business activity in Africa (Transcript 6 May at page 26).***

- ***Would you respond to this proposal?***

The Australian Government is increasing its engagement with multilateral development banks, including the African Development Bank (AfDB), which can play an important role in contributing to the sustainable economic development and social progress of African countries.

Consideration of membership of the AfDB is an ongoing process within Australia's aid program. It is not a decision to be taken lightly, given the costs associated with membership. The cost to Australia of joining the AfDB would include an expectation of ongoing contributions to the AfDB's concessional lending arm (the African Development Fund).

Australia is in the final stages of formalising a broad partnership agreement with the Bank through a Memorandum of Understanding that would set out common objectives without raising any expectations of shareholder membership at this stage. AusAID is also currently partnering with the AfDB in areas of mutual interest, such as in water and sanitation in support for Malawi's National Water Development Program.



## AUSTRALIAN RESOURCE SECTOR INTERESTS IN AFRICA

*Question 7. Your submission notes (at page 37) that Australia has supported the Extractive Industries Transparency Initiative (EITI), a coalition of governments, companies, civil society groups and international organisations that supports improved governance and transparency in resource rich countries. You add that 46 of the world's largest mining, gas and petroleum companies participate in supporting companies of the Initiative.*

- *Would you provide further information on the achievements of the Initiative?*

EITI is a global standard that promotes revenue transparency. It has established a robust flexible methodology for monitoring and reconciling company payments and government revenues at the country level. To become an EITI candidate, countries must meet certain indicators including the development of a work plan, agreed by all key stakeholders, which outlines how the country intends to achieve EITI Compliance.

To achieve EITI Compliant status, countries must complete the standard quality assurance process, EITI validation. This provides an independent assessment of progress achieved and identifies measures needed to strengthen the EITI process. Once all indicators are met, the country is recognised as EITI compliant.

As of May 2010, EITI reports that two countries have achieved EITI Compliant status (Azerbaijan and Liberia), 29 other countries have achieved EITI candidate status. (From Africa, this includes Burkina Faso, Cameroon, Central African Republic, Chad, Democratic Republic of Congo, Republic of Congo, Cote D'Ivoire, Gabon, Ghana, Guinea, Mali, Mauritania, Madagascar, Mozambique, Niger, Nigeria, Sierra Leone, Tanzania, and Zambia).

- *How many of the 46 world's companies involved in the Initiative are Australian?*

According to the EITI Secretariat, 50 of the world's largest mining, gas and petroleum companies are supporting company members of the Initiative. Five Australian mining companies have already endorsed EITI including BHP Billiton, Rio Tinto, Santos, Woodside and Newmont.

In addition, 80 of the world's largest investment institutions are supporting investor members of the initiative. The largest manager of Australian sourced funds, Colonial First State Asset Management, has also endorsed EITI.

- *What efforts do you make to encourage some of the 150 Australian companies active in African mining to join the Initiative?*

The Australian Government, primarily through the Department of Resources, Energy and Tourism, promotes EITI and encourages Australian mining interests working overseas to adhere to EITI regulations. Further detail on EITI should be sought from the responsible agency; the Department of Resources, Energy and Tourism.

## TRANSNATIONAL CRIME, PEACE AND SECURITY

*Question 8. Your submission advises (at page 2) that Australia will be contributing \$6 million to peacebuilding efforts in the UN system, \$4 million to support the UN Peacebuilding Fund and \$2 million to support specific peacebuilding initiatives, focusing on Burundi and Sierra Leone.*

- *What is the nature and level of consultation regarding how this money is used?*

In January 2010 the then Minister for Foreign Affairs announced the Australian Government would commit \$6 million to peacebuilding efforts in the UN system, including:

- \$4 million (over three years: 2010-12) to the UN Peace Building Fund (PBF); and
- \$2 million (in 2010-11) to support peacebuilding initiatives identified as priorities by the UN Peacebuilding Commission (PBC), focusing on Sierra Leone and Burundi

The \$4 million contribution to the UN PBF is provided in two tranches of \$2 million, in February 2010 and in July 2011 (representing consecutive financial years for the PBF). This follows Australia's previous contribution of \$3 million over 3 years to the PBF (comprising \$1m each year in 2006-07, 2007-08 and 2008-09).

Countries on the agenda of the PBC (currently Sierra Leone, Burundi, Central African Republic and Guinea-Bissau) receive funding allocated against agreed priorities by country-level steering committees involving the Government, UN and other stakeholders. Countries that are not on the PBC agenda may also receive funding following a declaration of eligibility by the UN Secretary-General.

The PBF supports work in the countries on the PBC agenda, as well as other eligible countries. The UN Peacebuilding Support Office (PBSO) provides the Secretariat for the PBF. The PBF allocates money through two funding facilities: the Immediate Response Facility (IRF) and the Peacebuilding Recovery Facility (PRF). Both facilities fund initiatives that respond to one or more of the following four criteria:

- respond to imminent threats to the peace process and initiatives that support peace agreements and political dialogue;
- build or strengthen national capacities to promote co-existence and peaceful resolution of conflict;
- stimulate economic revitalisation to generate peace dividends;
- re-establish essential administrative services.

The process for allocating funds to projects through the PRF involves a joint review at the country level by the Government, the UN and other stakeholders, with funds disbursed against agreed priorities. The IRF responds to requests for urgent assistance channelled through the senior UN representative in country to the PBSO, with decisions made by the head of the PBSO based on advice from PBSO and other key UN agencies.

Australia became a member of the Organisational Committee of the UN PBC on 1 January 2010. The 31-member Organisational Committee consists of members chosen from the Security Council, General Assembly, the Economic and Social Council, the major troop- and police-contributing states, and the major financial contributors to the UN.

Australia is on the Peace Building Commission for 2010 and is currently on the country steering committees for Sierra Leone and Burundi.

### **Further information on Australia's participation in the UN Peacebuilding Commission**

In December 2009, Australia was elected by acclamation by the UN Economic and Social Council (ECOSOC) to one of the seats allocated to ECOSOC on the Organisational Committee of the Peacebuilding Commission (PBC) for 2010. The Organisational Committee comprises representatives of the UN Security Council, General Assembly, ECOSOC, five of the ten largest troop contributing countries and five of the ten largest providers of assessed and voluntary contributions to the UN.

No specific individual has carriage of Australia's participation in the PBC Organisational Committee. Australia is represented at PBC meetings by officers from the Permanent Mission of Australia to the United Nations in New York, including at head of mission level, as appropriate.

The Peacebuilding Commission was established by the United Nations in 2005 to assist countries emerging from conflict. The Peacebuilding Commission plays a unique role in (1) bringing together all of the relevant actors, including international donors, the international financial institutions, national governments, troop contributing countries; (2) marshalling resources and (3) advising on and proposing integrated strategies for post-conflict peacebuilding and recovery and where appropriate, highlighting any gaps that threaten to undermine peace.

Four countries are currently on the PBC's agenda: Burundi, Central African Republic, Guinea-Bissau and Sierra Leone. Australia is engaged in the work of the Country Specific Meetings for each country.

Since its establishment in 2005, the Peacebuilding Fund has played an important role in providing financial support to countries emerging from conflict, particularly in Africa.

## HUMAN RIGHTS

*Question 23. DFAT's submission (at page 5) notes Australia's strong statements on human rights in Africa. AusAID's submission (at page 25) advises that Australia will provide nearly \$3 million through the Human Rights Small Grant Scheme which supports NGOs and human rights institutions in developing countries to undertake practical activities that promote and protect human rights.*

- *Would you provide further information on the African projects that have been supported through this Grant Scheme?*

The Human Rights Small Grants Scheme (HRSGS) expanded its geographical scope in 2009-10 to include all Australian ODA eligible countries in Africa. In total 12 African projects were selected for funding under the HRSGS in 2009-10. Details of African organisations and projects being funded follow:

Country	Organisation	Title	Project Description	Funding Amount (AUD)
Burkina Faso	Handicap Solidaire Burkina	Promoting the rights of disabled people in Burkina Faso	The project will raise awareness of the UN Convention on the Rights People with Disabilities, recently ratified by Burkina Faso. This will be done through training of people with disability, civil society organisations and local government in 45 provinces.	\$42,694 over 1 year
Cameroon	InterFaith Vision Foundation Cameroon	Lobbying and Advocating for the Revision of Obnoxious Traditional Laws and Practices that Marginalise Young Widows and Orphans	Widows and orphans will be educated on their rights to land ownership, micro finance, gender equality, protection from violence and forced marriage. Traditional councils will be trained in how to meet their obligations to ensure these rights.	\$75,000 over 1 year
Egypt	Maat for Peace, Development and Human Rights Association	The Empowerment of Women for Governance in the Egyptian Village	The project will promote the political empowerment of women to participate in local council elections by running capacity-building workshops for women and establishing support centres for women in local councils.	\$66,951 over 1 year
Ghana	Women in Law and	Women's Access to	Empowering women to have access to justice in the	\$98,135 over 1

<b>Country</b>	<b>Organisation</b>	<b>Title</b>	<b>Project Description</b>	<b>Funding Amount (AUD)</b>
	Development	Justice Through Legal Literacy	Ahanta West District of Western Region, through public education, capacity-building of paralegals, Community Reconciliation Committees, and engagement with state agencies and traditional leaders. Over 2000 people will be reached through radio discussions, posters and community outreach seminars. 25 community members will be trained as legal literacy volunteers.	year
Kenya	Kenya Human Rights Commission	Human Rights Accountability Project	This project will provide support to the Commission to increase its interventions to prevent human rights violations and integrate human rights and accountability within legal, policy and institutional reforms, through research, monitoring, reporting, and international advocacy at the United Nations.	\$100,000 over 1 year
Liberia	National Human Rights Centre of Liberia	Consolidating Human Rights and Rule of Law Culture in Rural Committees	To educate rural populations in six political sub-divisions on their human rights and undertake judicial advocacy and monitoring campaigns to ensure the rights and fair treatment of defendants and prisoners.	\$88,625 over 1 year
Nigeria	Centre for the Right to Health	Building the capacities of civil society groups and media organisations on issues relating to sexual and reproductive rights in Nigeria	Capacity building of civil society groups and media organizations through a series of workshops on issues relating to sexual and reproductive rights in Nigeria.	\$104,690 over 2 years

<b>Country</b>	<b>Organisation</b>	<b>Title</b>	<b>Project Description</b>	<b>Funding Amount (AUD)</b>
Nigeria	Human Assistance Initiative	Judicial and Human Rights Training of Sharia and Customary Court Judges on Integrating Human Rights in the System of Administration of Criminal Justice in Nigeria	This project will enhance the understanding of judicial officers in Nigeria, especially Sharia and customary court judges, of the principles of human rights within the system of administration of criminal justice. This will be done through a series of training workshops.	\$83,030 over 1 year
Somalia	Disability Action Network	Promotion of Equal Human Rights and Elimination of All Forms of Barriers against People with Disabilities in Somaliland	Raising public awareness of the Convention on the Rights of People with Disabilities through media, publications and events; building advocacy capacities and sensitisation of government officials, teachers, community leaders, police and other change agents on disability rights.	\$55,155 over 1 year
South Africa	Centre for Conflict Resolution	Human Rights and Conflict Management Project	Training of officials from national human rights commissions in West and Central Africa, representatives from the African Union human rights mechanisms, and civil society organisations on human rights and conflict management to enhance human rights protection in post-conflict contexts.	\$94,987 over 2 years
Sudan	Sudanese Human Rights Monitor	Supporting Rights and Democracy for Effective Participation in Elections	Promoting democratisation in Sudan through awareness raising of human rights including the rights of citizenship and building the capacity of civil society to play a role in election monitoring.	\$42,292 over 18 months
Togo	Handicap International	The International	Building the capacity of institutions to incorporate the	\$99,741 over 1

Country	Organisation	Title	Project Description	Funding Amount (AUD)
		Convention on the Rights of Persons with Disabilities – Making it work in Togo	Convention on the Rights of Persons with Disabilities into legislation in the education, health and employment sectors.	year

- ***Other than through the Grant Scheme, how does Australia actively promote human rights institutions in African countries?***

Aside from the HRSGS, Australia provides annual core funding to the office of the High Commissioner for Human Rights (OHCHR) to support its global activities, including in Africa. In 2008-09, Australia contributed \$1.9 million to the OHCHR, representing an increase of \$700,000 from 2007-08.

Australia also promotes the role of national human rights institutions and the Paris Principles and Commitments in United Nations fora, including at the Human Rights Council.

Australia has encouraged Algeria, Burundi and Nigeria to establish national human rights institutions that are compliant with Paris Principles, in its Human Rights Council Universal Periodic Review statements.

- **What is the African Union’s position on human rights and the death penalty?**

The African Union (AU) lists among its objectives: “to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments”; and “to encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights”.

The AU’s predecessor, the Organisation of African Unity (OAU), adopted a number of instruments to promote human rights, most notably the attached “African Charter on Human and People’s Rights” (Nairobi 1981). The adoption of the African Charter led to the establishment by the OAU of the African Commission on Human and People’s Rights (ACHPR) in 1986. The ACHPR, whose Secretariat is located in Banjul, The Gambia, is the premier African human rights body, with responsibility for monitoring and promoting compliance with the African Charter. The ACHPR meets twice yearly, and reports to the Assembly of Heads of State and Government of the AU.

The African Court on Human and Peoples' Rights was established in 2006 to supplement the work of the ACHPR, following the entry into force of a protocol to the African Charter providing for its creation.

The ACHPR has six Special Mechanisms, or Special Rapporteurs, that address specific human rights issues:

- Extra-judicial, Summary or Arbitrary Executions
- Freedom of Expression
- Human Rights Defenders
- Prisons and Conditions of Detention
- Refugees and Internally Displaced Persons
- Rights of Women

In addition, there are five Working Groups that monitor and investigate various issues under the purview of the Commission:

- Working Group Specific Issues Related to the Work of the ACHPR
- Working Group on Indigenous Populations/ Communities in Africa
- Working Group on Economic, Social and Cultural Rights
- Working Group on the Robben Island Guidelines
- Working Group on the Death Penalty

At its 44<sup>th</sup> Ordinary Session in Abuja, Nigeria, in December 2008, the ACHPR adopted a resolution calling on AU member states to observe a moratorium on the death penalty. The resolution expressed concern about the failure of some African states “to give effect to the UN resolutions and ACHPR’s own 1999 resolution calling for a moratorium on executions”, and about “the application of the death penalty in conditions not respectful of the right to a fair trial guaranteed under the African Charter on Human and People’s Rights and other relevant international norms.”

The ACHPR noted that 27 states parties to the African Charter have abolished the death penalty in law or de facto, while only six have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.

16 AU member states retain the death penalty: Botswana; Burundi; Cameroon; Chad; Comoros; Democratic Republic of the Congo; Egypt; Equatorial Guinea; Ethiopia; Guinea; Lesotho; Libya; Nigeria; Sierra Leone; Somalia; Sudan; Uganda; and Zimbabwe.

Please also refer to the African Union Charter on Human and Peoples Rights at Attachment A.



## **AUSTRALIAN RESOURCES SECTOR IN AFRICA: PUBLIC-PRIVATE PARTNERSHIPS**

***24. The submission from the Australia-Africa Mining Industry Group (sub 50 at page 6) suggests that Australian mining and service companies could facilitate re-engagement with Africa via public-private partnerships to deliver social development assistance to ensure relatively limited government aid funding is applied to maximum social, financial, political and strategic advantage. The submission added:***

*A mining operation or mining development project provides an immediate commercial focus for the delivery and management of social development programmes that could be branded as 'AusAID' or 'Australian' projects. Government agencies and/or the independent consultants could ensure that the programmes are appropriately implemented and managed, and are consistent with UN regional objectives. It is important to stress that companies do not see this concept as an opportunity to abrogate responsibility, but rather a mechanism to increase the scope of these programmes, and implement and manage them in a more strategic way.*

- ***How do you respond?***
- ***How might such close links be facilitated?***
- ***A perception could arise that Government had become associated with the private mining project. How could this be overcome?***

Australia's development focus for Africa's resource sector is on capacity building of institutions and individuals so that African countries can maximise the benefit of their natural resources. AusAID efforts are directed towards strengthening governance frameworks and increasing transparency and accountability in areas such as fiscal, legal, tax, and environmental regulation, technical assistance (including geological research and geoscience training) as well as ensuring more effective use of revenues from mining.

AusAID targets these key areas through our mining fellowships program and participation in international efforts to enhance regulatory frameworks, such as the Extract Industry Transparency Initiative. This encourages commitment to internationally accepted principles for sustainable mining, for example, development and adherence to policies that clarify the roles of government as a resource owner and the investment role of the mining industry. In this way, the main beneficiaries of Australian support will be the people of Africa.

- AusAID's view is that corporate social responsibility programs are of high importance, however they should remain the primary responsibility of mining corporations.
- AusAID considers that there is merit in holding discussions with key stakeholders in the African mining sector that will draw on the experience and expertise of NGOs, industry and Government to explore possible areas of cooperation and help ensure that any future development assistance provided to Africa's extractive industries sector is best targeted.

AusAID notes the recent joint Australian Strategic Policy Institute - Foundation for Development Cooperation (FDC) Report on "A case for collaboration: enhancing the

development outcomes of Australian resource companies' operations overseas".  
While this contains recommendations of interest, these would require further whole of government consideration.

## ATTACHMENT A

### ANSWERS TO QUESTIONS TAKEN ON NOTICE AT JSCFADT HEARING ON 20 APRIL 2010

#### AUSTRALIA-CANADA CONSULAR SHARING ARRANGEMENT

The Australia-Canada Consular Sharing Arrangement provides consular services under certain conditions to the other's nationals in areas where only one of the countries is represented. It is the only formal consular sharing arrangement that Australia has with a partner country. It provides Australians with consular assistance in regions where Australia does not have extensive representation, for example Africa and South America. The arrangement is reviewed annually and was last reviewed in February 2010.

*Consular assistance provided by Canada to Australian citizens under the Sharing Arrangement (Africa only) as at 5 July*

CANADIAN RESPONSIBLE MISSION	CONSULAR AREA	AUSTRALIAN SUPERVISING MISSION
Abidjan	Cote d'Ivoire	Accra
Addis Ababa <sup>2</sup>	Ethiopia	Nairobi
Algiers	Algeria	Paris Embassy
Bamako	Mali	Accra
Dakar	The Gambia	Abuja
Dakar	Guinea, Senegal	Accra
Damascus	Syria	Cairo
Dar-es-Salaam	Tanzania	Nairobi
Kinshasa	Democratic Republic of Congo	Harare
Ouagadougou	Burkina Faso	Accra
Niamey	Niger	Abuja
Libreville	Gabon	Abuja
Rabat	Morocco	Paris Embassy
Tunis	Tunisia	Cairo
Yaounde	Cameroon, Gabon	Abuja

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<sup>2</sup> Australia recently opened a mission in Addis Ababa, Ethiopia, however the mission is yet to establish full services. Therefore, it is envisaged that the Canadian Embassy will continue to provide consular services on Australia's behalf until a suitable locally engaged consular officer can be employed and fully trained.

## **HISTORY OF DIPLOMATIC REPRESENTATION IN AFRICA**

### **Algeria** 1976-1991

The Australian Embassy in Algiers was opened primarily for commercial reasons and headed by Austrade for several years. It was closed owing to budgetary pressures, the declining significance of those commercial interests and civil conflict in Algeria.

### **Egypt** 1950- present

At the time of the opening of the Australian Embassy in Cairo, Egypt was the leading and most populous Arab country in North Africa, and one of only a handful of independent states on the African continent. The mission was closed between 1956 and 1959 owing to the rupture of diplomatic relations over the Suez Canal.

### **Ethiopia** 1985-1987; reopened in 2010

The establishment of an Australian Embassy in Addis Ababa was in keeping with the Government's commitment to accord greater attention to the Horn, East and southern Africa. It was closed in 1987 as part of the Government's measure to reduce outlays. NOTE: Australia has established a new mission in Addis Ababa. The interim Chancery opened in July 2010. The new Embassy should be fully operational by early to mid-2012. The Ambassador will also be accredited Djibouti and as Australia's Permanent Representative to the African Union.

### **Ghana** 1958-1985; reopened in 2004

Australia's High Commission in Ghana was originally opened in 1958, after Ghana became the first sub-Saharan African country to gain independence. Ghana remained at the forefront of African diplomacy for the next decade, but lost much of its relevance by the early 1980s following four military coups and severe economic decline.

The re-opening of a resident High Commission in Accra in 2004 reflected a number of factors: growing mining interests in Ghana and West Africa; Ghana's recent record of stability and democratic development; and the fact that Australia had only one mission (in Abuja) covering 20 countries in West and Central Africa.

### **Kenya, Nairobi** 1965 – present

The Australian High Commission in Kenya opened in 1965 at a time when Kenya was becoming the most prosperous and prominent Commonwealth nation in East Africa. Nairobi has become an important hub for our (and other countries') diplomatic representation in East Africa. Nairobi is also an important United Nations hub as it hosts the headquarters of the UN Environment Program (UNEP) and UN-Habitat.

### **Libya, Tripoli** 2005 – present

The Australian Consulate-General in Tripoli is run by Austrade to service Australia's growing commercial interests in Libya; it was opened following the re-establishment of diplomatic relations in [insert date].

### **Mauritius, Port Louis** 1984 – present

The Australian High Commission in Port Louis was opened in 1984 in recognition of Australia's broad Indian Ocean links, including strong trade relations and people-to-

people links between Australia and Mauritius and other Indian Ocean island states. Prior to 1984, diplomatic representation to the Indian Ocean region had been resident in Tanzania.

**Nigeria, Abuja** 1960 – present

Australian diplomatic representation in Nigeria dates back to 1960 (see entry for Lagos below) following Nigeria's independence and reflecting the country's status as Africa's most populous nation and an important English-speaking Commonwealth member. The mission in Abuja opened in 2003.

**Nigeria, Lagos** 1960-2003

The first Australian High Commission in Nigeria was based in Lagos. The mission moved to the new capital, Abuja in 2003.

**South Africa, Cape Town** 1961 – 1984

In addition to the High Commission in Pretoria, Australia had a separate consulate in Cape Town from 1961 – 1984. Following its closure for political reasons, the Government maintained a small embassy office in Cape Town, until 1999. Australia's presence was consolidated in Pretoria because of its position as the centre of government and activity. An Honorary Consul was appointed in Cape Town in December 2009 to assist in managing Australia's consular interests.

**South Africa, Pretoria** 1946 – present

The Australian High Commission in Pretoria dates back to 1946.

**South Africa, Johannesburg**

Australia also has a Trade Commission office in Johannesburg.

**Tanzania** 1962-1987

The Australian High Commission in Dar es Salaam opened in 1962, shortly after Tanzania became the first East African country to gain independence. Tanzania was also, at that time, a leader in Africa and the Non-Aligned Movement under founding President Julius Nyerere.

The high commission was closed in 1987 as part of a broader package of budget cuts. Responsibility for the Indian Ocean island countries and territories had been moved to Mauritius in 1984.

**Zambia** 1980-1991

The Australian High Commission in Lusaka was opened in 1980 as part of the Government's Africa outreach policy in southern Africa. Due to financial pressures at that time, it was closed in 1991, once the transition from apartheid was well under way in South Africa.

**Zimbabwe, Harare** 1980 – present

The establishment of an Australian mission in Harare in 1980 reflected Australia's strong role and interest in Zimbabwe's transition to independence and majority rule.

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

**Preamble**

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

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

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

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

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

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

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

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

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

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

Have agreed as follows:

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

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

#### **Article 1**

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

#### **Article 2**

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

#### **Article 3**

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

#### **Article 4**

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

#### **Article 5**

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

#### **Article 6**

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

#### **Article 7**

1. Every individual shall have the right to have his cause heard. This comprises:
  - (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
  - (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
  - (c) the right to defence, including the right to be defended by counsel of his choice;

- (d) the right to be tried within a reasonable time by an impartial court or tribunal
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

### **Article 8**

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

### **Article 9**

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

### **Article 10**

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

### **Article 11**

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

### **Article 12**

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



### **Article 13**

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

### **Article 14**

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

### **Article 15**

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

### **Article 16**

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

### **Article 17**

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

### **Article 18**

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral
2. The State shall have the duty to assist the family which is the custodian or morals and traditional values recognized by the community
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

### **Article 19**

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

### **Article 20**

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self- determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community
3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

#### **Article 21**

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law
4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity
5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

#### **Article 22**

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

#### **Article 23**

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

- (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

#### **Article 24**

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

#### **Article 25**

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

#### **Article 26**

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

### **Chapter II -- Duties**

#### **Article 27**

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

#### **Article 28**

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

#### **Article 29**

The individual shall also have the duty:

1. to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need
2. To serve his national community by placing his physical and intellectual abilities at its service
3. Not to compromise the security of the State whose national or resident he is
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law

6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society
7. to preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

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

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

#### **Article 30**

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

#### **Article 31**

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

#### **Article 32**

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

#### **Article 33**

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

#### **Article 34**

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

#### **Article 35**

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

### **Article 36**

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

### **Article 37**

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

### **Article 38**

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

### **Article 39**

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

### **Article 40**

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

### **Article 41**

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

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

### **Article 45**

The functions of the Commission shall be:

1. To promote Human and Peoples' Rights and in particular:
  - a. to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples'

- rights, and should the case arise, give its views or make recommendations to Governments;
- b. to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations;
  - c. co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights
2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter
  3. Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African Organization recognized by the OAU
  4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

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

#### **Article 46**

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

#### **Communication From States**

#### **Article 47**

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

#### **Article 48**

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

#### **Article 49**

Notwithstanding the provisions of 47, if a State party to the present Charter considers that another State party has violated the provisions of the Charter, it may refer the

matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organization of African Unity and the State concerned.

#### **Article 50**

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

#### **Article 51**

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

#### **Article 52**

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

#### **Article 53**

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

#### **Article 54**

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

### **Other Communications**

#### **Article 55**

1. Before each Session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications should be considered by the Commission
2. A communication shall be considered by the Commission if a simple majority of its members so decide.

#### **Article 56**

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

1. Indicate their authors even if the latter request anonymity,
2. Are compatible with the Charter of the Organization of African Unity or with the present Charter,

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

#### **Article 57**

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

#### **Article 58**

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

#### **Article 59**

1. All measures taken within the provisions of the present Chapter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide
2. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

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

#### **Article 60**

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



Specialized Agencies of the United Nations of which the parties to the present Charter are members.

#### **Article 61**

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

#### **Article 62**

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

#### **Article 63**

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

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

#### **Article 64**

1. After the coming into force of the present Charter, members of the Commission shall be elected in accordance with the relevant Articles of the present Charter
2. The Secretary General of the Organization of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organization within three months of the constitution of the Commission. Thereafter, the Commission shall be convened by its Chairman whenever necessary but at least once a year.

#### **Article 65**

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

#### **Article 66**

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

**Article 67**

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

**Article 68**

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

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