Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR

3

REGIONAL INSTRUMENTS

Africa
Middle East
Asia
Americas

UNHCR
The UN Refugee Agency

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Foreword

The first edition of the *Collection of International Instruments Concerning Refugees* was published in 1979. Thereafter, the compilation was updated regularly as new developments took place in the international law relating to refugees and other persons of concern to UNHCR.

The 2007 edition takes account of the increasingly apparent inter-relationship and complimentarity between, on one hand, international refugee law and, on the other, human rights, humanitarian, criminal and other bodies of law. The *Collection* features over 260 instruments and legal texts drawn from across this broad spectrum. Compared to the earlier edition of the *Collection*, this edition includes many international instruments and legal texts relating to issues such as statelessness, the internally displaced and the asylum-migration debate (such as trafficking, smuggling, maritime and aviation law and migrants) as well as matters such as torture, discrimination, detention and the protection of women and children. The range of relevant regional instruments and legal texts have also been enhanced, not least to ensure that they are used more effectively while advocating for refugees and others of concern to UNHCR.

Today, users can access veritable reference resources by electronic means. The *Collection* itself is accessible on-line. For users not able to access electronic facilities, it provides, in hard copy, the most important instruments in a manner easy to use in daily work. Indeed, even for those otherwise able to take advantage of electronic facilities, the availability of these instruments systematically in a single source offers unique facility and benefits.

In this spirit, the *Collection* is strongly commended for the most frequent, wide, and extensive use. Government officials, academics, lawyers, humanitarian workers, non-governmental organizations and members of civil society at large will find their respective activities on behalf of refugees and other victims of forced displacement greatly enhanced by the *Collection*. In particular, it should facilitate the most complete view possible of the international rights and obligations undergirding the protection and welfare of those groups and finding solutions for their problems.

George Okoth-Obbo
Director
Division of International Protection Services
Office of the United Nations High Commissioner for Refugees

Geneva, 1 June 2007

Preface

This *Collection of International Instruments and Legal Texts* spans four volumes and contains over 260 documents that have been compiled after extensive consultations to support those working on issues relating to forced displacement, statelessness and related matters.

Every attempt has been made to ensure that the structure and format of this publication allows the user to easily access the international instruments and legal texts. In particular:

- A **table of contents** has been provided at the beginning of each volume. **Page numbering** continues in sequence through the four volumes.

- **International** instruments are placed at the beginning of this *Collection* followed by **regional** instruments.

- The instruments and legal texts have been compiled under specific **thematic headings** such as Nationality and Statelessness, Human Rights, etc. Thematic issues relating to asylum, refugees, nationality and statelessness and the internally displaced have been placed ahead of human rights, migration and miscellaneous issues.

- Within each thematic heading, instruments that are binding on States (such as Conventions) are placed ahead of legal texts (such as declarations) that are often less binding in nature. **Protocols always follow the parent instrument** in order (for instance, the *Palermo Protocols* on Smuggling and Trafficking follow the parent Convention on Transnational Crime in the International Criminal Law section). **Chronology** has been maintained within this structure only (i.e.: all declarations under a sub-heading are chronological). Instruments that have not entered into force have still been included ahead of legal texts.

- In Volume 1 and 2 only, where an instrument or declaration under one thematic area may be relevant to another thematic area, **a cross reference** has been provided in the Table of Contents (for instance, the *Palermo Protocols* on Smuggling and Trafficking are situated in the International Criminal Law section but are also relevant to the sections relating to torture, slavery, slavery-like practices and forced labour, women and children).

- **Short names** of Conventions are mentioned where possible for ease of reference (for instance, the *Palermo Protocols, SOLAS, SAR,* etc*)*. International Labour Conventions have been marked accordingly.

- The **language** used in the original version or translation of an instruments or legal text has been replicated without any alteration. As such, readers will notice that both American and British English are used in this Collection.

- The **date of adoption and date of entry into force** feature under the title of international and regional instruments. The date of entry into force is absent in cases where the instrument had not come into force at the time of this publication.

- For reasons of space, State **ratification or reservations** to international and regional instruments have not been included. As well, this information would need to be updated regularly by the reader.

- For reasons of space, only relevant **excerpts** of certain instruments have been published (this is the case of the *Geneva Convention*).

- An **index** has been provided at the end of every volume.

- A short list of **electronic resources** has also been provided at the end of each volume for those who wish to access other international and regional instruments and legal texts as well as national legislation.

Please write to UNHCR's Division of International Protection Services (DIPS) in Geneva for any questions, comments or clarifications you may have in relation to this *Collection* at **HQPR10@unhcr.org**.

Division of International Protection Services
Office of the United Nations High Commissioner for Refugees

Geneva, 1 June 2007

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Section 2.1

Africa

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CONVENTION GOVERNING THE SPECIFIC ASPECTS OF REFUGEE PROBLEMS IN AFRICA

Adopted on 10 September 1969 by the Assembly of Heads of State and Government

Entry into force: 20 June 1974, in accordance with Article XI
Text: United Nations, *Treaty Series*, no. 14, vol. 691

PREAMBLE

We, the Heads of State and Government assembled in the city of Addis Ababa, Ethiopia,

1. *Noting with concern* the constantly increasing numbers of refugees in Africa and desirous of finding ways and means of alleviating their misery and suffering as well as providing them with a better life and future;

2. *Recognizing* the need for an essentially humanitarian approach towards solving the problems of refugees;

3. *Aware*, however, that refugee problems are a source of friction among many Member States, and desirous of eliminating the source of such discord;

4. *Anxious* to make a distinction between a refugee who seeks a peaceful and normal life and a person fleeing his country for the sole purpose of fomenting subversion from outside;

5. *Determined* that the activities of such subversive elements should be discouraged, in accordance with the Declaration on the Problems of Subversion and Resolution on the Problem of Refugees adopted at Accra in 1965;

6. *Bearing in mind* that the Charter of the United Nations and the Universal Declaration of Human Rights have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination;

7. *Recalling* Resolution 2312 (XXII) of 14 December 1967 of the United Nations General Assembly, relating to the Declaration on Territorial Asylum;

8. *Convinced* that all the problems of our continent must be solved in the spirit of the Charter of the Organization of African Unity and in the African context;

9. *Recognising* that the United Nations Convention of 28 July 1951, as modified by the Protocol of 31 January 1967, constitutes the basic and universal instrument relating to the status of refugees and reflects the deep concern of States for refugees and their desire to establish common standards for their treatment;

10. *Recalling* Resolutions 26 and 104 of the OAU Assemblies of Heads of State and Government, calling upon Member States of the Organization who had not already done so to accede to the United Nations Convention of 1951 and to the Protocol of 1967 relating to the Status of Refugees, and meanwhile to apply their provisions to refugees in Africa;

11. *Convinced* that the efficiency of the measures recommended by the present Convention to solve the problem of refugees in Africa necessitates close and continuous collaboration between the Organization of African Unity and the Office of the United Nations High Commissioner for Refugees;

Have agreed as follows:

Article I

Definition of the term “Refugee”

1. For the purposes of this Convention, the term “refugee” shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and

being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

2. The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

3. In the case of a person who has several nationalities, the term "a country of which he is a national" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of which he is a national if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

4. This Convention shall cease to apply to any refugee if:

   (*a*) He has voluntarily re-availed himself of the protection of the country of his nationality, or

   (*b*) Having lost his nationality, he has voluntarily reacquired it, or

   (*c*) He has acquired a new nationality, and enjoys the protection of the country of his new nationality, or

   (*d*) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution, or

   (*e*) He can no longer, because the circumstances in connection with which he was recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality, or

   (*f*) He has committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee, or

   (*g*) He has seriously infringed the purposes and objectives of this Convention.

5. The provisions of this Convention shall not apply to any person with respect to whom the country of asylum has serious reasons for considering that:

   (*a*) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

   (*b*) He committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

   (*c*) He has been guilty of acts contrary to the purposes and principles of the Organization of African Unity;

   (*d*) He has been guilty of acts contrary to the purposes and principles of the United Nations.

6. For the purposes of this Convention, the Contracting State of Asylum shall determine whether an applicant is a refugee.

Article II

Asylum

1. Member States of the OAU shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.

2. The grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State.

3. No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2.

4. Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the

spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum.

5. Where a refugee has not received the right to reside in any country of asylum, he may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his resettlement in accordance with the preceding paragraph.

6. For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.

Article III

Prohibition of Subversive Activities

1. Every refugee has duties to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member State of the OAU.

2. Signatory States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.

Article IV

Non-Discrimination

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

Article V

Voluntary Repatriation

1. The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.

2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.

3. The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.

4. Refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the Administrative Secretary-General of the OAU, inviting refugees to return home and giving assurance that the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished, and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum.

5. Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental Organizations, to facilitate their return.

Article VI

Travel Documents

1. Subject to Article III, Member States shall issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of

national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory.

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

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

Article VII

Co-operation of the National Authorities with the Organization of African Unity

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

(*a*) The condition of refugees,

(*b*) The implementation of this Convention, and

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

Article VIII

Co-operation with the Office of the United Nations High Commissioner for Refugees

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

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

Article IX

Settlement of Disputes

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

Article X

Signature and Ratification

1. This Convention is open for signature and accession by all Member States of the Organization of African Unity and shall be ratified by signatory States in accordance with their respective constitutional processes. The instruments of ratification shall be deposited with the Administrative Secretary-General of the Organization of African Unity.

2. The original instrument, done if possible in African languages, and in English and French, all texts being equally authentic, shall be deposited with the Administrative Secretary-General of the Organization of African Unity.

3. Any independent African State, Member of the Organization of African Unity, may at any time notify the Administrative Secretary-General of the Organization of African Unity of its accession to this Convention.

Article XI

Entry into force

This Convention shall come into force upon deposit of instruments of ratification by one-third of the Member States of the Organization of African Unity.

Article XII

Amendment

This Convention may be amended or revised if any Member State makes a written request to the Administrative Secretary-General to that effect, provided however, that the proposed amendment shall not be submitted to the Assembly of Heads of State and Government for consideration until all Member States have been duly notified of it and a period of one year has elapsed. Such an amendment shall not be effective unless approved by at least two-thirds of the Member States Parties to the present Convention.

Article XIII

Denunciation

1. Any Member State Party to this Convention may denounce its provisions by a written notification to the Administrative Secretary-General.
2. At the end of one year from the date of such notification, if not withdrawn, the Convention shall cease to apply with respect to the denouncing State.

Article XIV

Registration with the United Nations

Upon entry into force of this Convention, the Administrative Secretary-General of the OAU shall register it with the Secretary-General of the United Nations, in accordance with Article 102 of the Charter of the United Nations.

Article XV

Notifications by the Administrative Secretary-General of the Organization of African Unity

The Administrative Secretary-General of the Organization of African Unity shall inform all Members of the Organization:

(*a*) Of signatures, ratifications and accessions in accordance with Article X;

(*b*) Of entry into force, in accordance with Article XI;

(*c*) Of requests for amendments submitted under the terms of Article XII;

(*d*) Of denunciations, in accordance with Article XIII.

IN WITNESS WHEREOF WE, the Heads of African State and Government, have signed this Convention.

DONE in the City of Addis Ababa this 10th day of September 1969.

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ADDIS ABABA DOCUMENT ON REFUGEES AND FORCED POPULATION DISPLACEMENTS IN AFRICA

Declaration by a symposium on refugee issues in Africa, held jointly by the OAU and the UN High Commissioner for Refugees in Addis Ababa, Ethiopia, on 10 September 1994

FOREWORD

Today, twenty five years since the adoption in 1969 of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, and twenty years after it entered into force in 1974, Africa is witnessing its most dramatic crisis of forced population displacement. While there have been positive political developments in some regions of the continent, others continue to be ravaged by armed conflicts, political violence and massive human rights abuses. Many of these disruptions are rooted in ethnic tensions or are exacerbated by poverty, social inequities and environmental degradation. As the institutions of law and order are destroyed and civic stability is threatened by political anarchy, millions of people are forced to flee their homes and to seek safety in other parts of their countries or in foreign lands.

There are now over 7 million refugees in Africa, about one third of the world total. In addition, there are over 16 million internally displaced persons, some of whom are in very dire conditions. The recent crisis in Rwanda alone has produced some two million refugees and resulted in a high percentage of the population being displaced internally. The very causes of displacement may also hinder the delivery of protection and humanitarian assistance, prevent the return of refugees to their homes, prolong exile and even jeopardise regional peace and security.

To commemorate the adoption of the 1969 OAU Convention and its coming into force, the Organization of African Unity (OAU) Secretariat and the United Nations High Commissioner for Refugees (UNHCR) jointly organised a Symposium which was held in Addis Ababa, Ethiopia, from 8 to 10 September 1994. The Symposium particularly focussed its deliberations on the magnitude, gravity and challenges of the crises of displacement in Africa and adopted the Addis Ababa Document on Refugees and Forced Population Displacements in Africa. As reflected in this document, the Symposium concluded that the OAU Convention continues to be "a strong pillar for refugee protection and solutions in Africa". At the same time, it emphasized the urgent need to decisively address the root causes of the displacement of people in Africa, and called for energetic efforts to find solutions for those who have been or continue to be forcibly displaced.

We believe that the recommendations in this document are an important contribution to the international community's policy and operational framework for tackling the root causes of forced displacement in Africa, providing protection and humanitarian assistance to refugees and other displaced persons, and finding solutions to their problems. We commend the Addis Ababa Document to the Member States of the Organization of African Unity, other States, and the relevant international and non-governmental Organizations for reflection and, more importantly, implementation of its recommendations.

Salim A. Salim	*Sadako Ogata*
Secretary-General	*United Nations*
Organization of African Unity	*High Commissioner for Refugees*

PART 1

INTRODUCTION

1. The OAU/UNHCR Commemorative Symposium on Refugees and Forced Population Displacements in Africa took place in Addis Ababa, Ethiopia, from 8 to 10 September 1994. The Symposium was held to commemorate the twenty-fifth anniversary of the adoption of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (the "1969 OAU Convention") and the twentieth year of its entry into force on 20 June 1974.

2. The Symposium brought together representatives of almost all the Member States of the Organization of African Unity (OAU) and a number of the Member States of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees. Also represented were relevant Organizations of the United Nations system, other inter-governmental Organizations, non-governmental Organizations, and academics from various parts of the world.

3. The participants in the Symposium have noted with satisfaction the important contribution that the 1969 OAU Convention has made to refugee protection and solutions in Africa. It has also inspired other regions of the world. While acknowledging the challenges facing the Convention, the Symposium reaffirmed its belief in the continued validity of the Convention as the regional foundation for providing protection and finding solutions for refugees in Africa. The Symposium also believed that the Convention provided a good basis for further developing the legal tools and mechanisms for solving the problems of refugees and forced population displacements as a whole in Africa.

4. There have been positive developments in finding solutions for refugees in Africa, such as the successfully completed repatriation of South African refugees in 1993 and the continuing return home of over one million Mozambican refugees. However, new refugee emergencies have also occurred in many parts of the continent. In fact, the refugee population in Africa has grown more than 10 times, from 700,000 to over 7,000,000, in the twenty-five years since the Convention came into existence in 1969. Moreover, in addition to the 7,000,000 refugees, one third of the world total, there are an over 16 million internally displaced persons on the African continent. But while the displacement crisis is growing, the political, financial and material support towards protecting and assisting refugees can no longer be taken for granted, as a result of various global developments.

5. The refugee flows impose intolerable security, social and economic burdens on the countries that have generously provided and continue to provide asylum. More seriously, they are symptomatic of the tragedy of the ethnic conflicts, social disintegration and political anarchy prevailing in some countries in Africa.

6. Thus, the anniversaries of the 1969 OAU Convention provide an opportunity not only to review the achievements of and challenges facing the Convention, but also to draw attention to the continuing urgency of the refugee and displacement crisis in Africa.

7. The recommendations contained in this document do not lose sight of many important initiatives, recommendations, decisions, declarations and plans of action which have preceded this Symposium, in Africa and elsewhere, and which have an important bearing on the refugee issue. Thus, in formulating its recommendations, the Symposium has drawn inspiration from, among others, the following documents:

   – Recommendations of the Pan-African Conference on the Situation of Refugees in Africa, (Arusha, Tanzania, 7-17 May 1979, “The Arusha Recommendations”);

   – The African Charter on Human and Peoples’ Rights of 1981;

   – The Second International Conference on Assistance to Refugees in Africa (1984, “ICARA II Recommendations”);

   – The Oslo Declaration and Plan of Action on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa (“SARRED”, August 1988);

   – The Khartoum Declaration on Africa’s Refugee Crisis Adopted by the Seventeenth Extra-Ordinary Session of the OAU Commission of Fifteen on Refugees (Khartoum, Sudan, 20 – 24 September 1990);

   – The Declaration, Framework of Cooperation and Action Programme of the Horn of Africa Summit on Humanitarian Issues (Addis Ababa, Ethiopia, April 1992);

   – The African Humanitarian Initiative for Sustainable Development (1993);

   – The Cairo Declaration on the Establishment within the OAU of a Mechanism for Conflict Prevention, Management and Resolution (Cairo, June 1993);

   – The Addis Ababa PARINAC Conclusions and Recommendations, (Addis Ababa, March 1994); the Oslo PARINAC Declaration and Plan of Action (Oslo, June 1994);

   – And the Tunis Declaration on the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (Tunis, June 1994).

PART 2

RECOMMENDATIONS

I. ROOT CAUSES OF REFUGEE FLOWS AND OTHER FORCED POPULATION DISPLACEMENTS

8. Refugee flows are a symbol of the crises which afflict many societies in Africa. In particular, most of the refugee flows are the result of armed conflicts and civil strife. Ethnic intolerance; the abuse of human rights on a massive scale; the monopolisation of political and economic power; refusal to respect democracy or the results of free and fair elections; resistance to popular participation in governance; and poor management of public affairs, all play a part in forcing people to flee their normal places of residence.

9. External factors have also played a part in at least contributing to forced population displacements. Historically, the main cause of coerced population displacements has been colonialism. Today, there is no question that international economic forces have contributed to the widespread poverty in Africa and to the widening gap between the poor and the rich. In many African countries, there is competition over scarce resources, and the human and physical environment has suffered degradation. Some States can no longer carry out the critical functions of government, including the control of national territory; oversight over the nation's resources; extraction of revenue; maintenance of an adequate national infrastructure; rendering of basic services such as sanitation, education and housing; and governance and maintenance of law and order. All these factors contribute in one or another way to the root causes of displacement.

10. The Symposium has focused much of its discussions on the root causes of displacement and the imperative need to carry out preventive measures. Recognising that conflicts are the major cause of displacement in Africa today, the participants echoed many times over the urgency of taking energetic measures to prevent conflicts or resolve them expeditiously after they have started. They called for decisive national and international measures to create stable, viable and progressive societies. Otherwise, refugee displacements would continue unabated, and prospects for the return of refugees to their countries of origin would also remain elusive.

Recommendation One

The Member States of the Organization of African Unity (OAU) and the OAU Secretariat, in collaboration with the relevant inter-governmental and non-governmental Organizations, should examine all the factors which cause or contribute to civil conflicts, with a view to elaborating a Comprehensive Plan of Action for tackling the root causes of refugee flows and other displacements. Among others, the following issues should be examined: ethnic strife and conflict; the role of the arms trade in causing or exacerbating conflicts in Africa; the establishment of a firm foundation for democratic institutions and governance; the respect of human rights; the promotion of economic development and social progress; the obstacles to providing protection and humanitarian assistance to displaced persons; and the inter-relationship between humanitarian, political and military actions at an international level.

Recommendation Two

The political leadership of Africa should rise up to the challenges of practicing politics of inclusion and popular participation in national affairs; creating a firm foundation for responsible and accountable governance; and promoting social progress, economic development and a just and fair society.

Recommendation Three

In this context, the Symposium notes with satisfaction the activities of the OAU in conflict prevention and resolution. Bearing in mind the beneficial effects of such activities in preventing or reducing displacement, the Symposium:

(i) Recommends that the linkage between the activities of the OAU in conflict prevention, management and resolution and those on behalf of refugees and internally displaced persons should be strengthened.

(ii) Urges Organizations involved in refugee and other displacement issues, and the international community at large, to support the activities of the OAU in conflict prevention, management and resolution.

(iii) In particular, encourages those Organizations, and the international community at large, to contribute generously to the OAU Peace Fund and to provide human resources, technical support advisory services and equipment to support the above-mentioned activities, in conformity with the relevant OAU guidelines.

(iv) Further encourages them to support the OAU in elaborating and expanding its activities in the fields of human rights monitoring, the promotion of human rights and humanitarian law, election monitoring, the management of political transitions, and the development of early warning systems at national, sub-regional and continental levels.

Recommendation Four

The Symposium urges all parties involved in armed conflicts to respect the principles and norms of humanitarian law, particularly those aimed at protecting civilians from the effects of war, preventing their being subjected to attacks, reprisals or starvation, or being displaced in conditions contrary to the provisions of Additional Protocol II to the 1949 Geneva Conventions on the laws of war.

II. The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

11. As a regional complement of the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol, the 1969 OAU Convention has been a strong pillar for refugee protection and solutions in Africa. It has enabled the provision of asylum to refugees and the implementation of voluntary repatriation in a way that has consolidated brotherhood and comity among African States. It has also inspired the development of favourable refugee laws, policies and practices in Africa and indeed in other regions of the world, most notably in the Latin American region. The Convention remains the only international legal instrument which contains elaborate principles on the voluntary repatriation of refugees.

Recommendation Five

The Symposium reaffirms its belief in the continuing validity of the 1969 OAU Convention as the cornerstone of refugee protection and solutions in Africa. In this regard, and in order to implement the Convention more effectively, it is recommended that States:

(i) Which have not already done so should ratify the Convention.

(ii) Should uphold the principles of the Convention on the humanitarian nature of asylum; prohibit activities inconsistent with refugee status; safeguard refugees against *refoulement* or expulsion; actively promote voluntary repatriation; respect the principle of voluntariness in repatriation; and practice burden-sharing and solidarity among States.

(iii) Should enact the necessary legislation and regulations so as to give effect nationally to the Convention and its principles.

(iv) With the support of the OAU, UNHCR, and other relevant Organizations, provide training to government officials on the provisions of the 1969 OAU Convention and the principles of refugee protection in general, as well as promote those standards among the refugee and national populations as a whole.

(v) Should courageously resist temptations to whittle down, through national policies, laws or practices, the obligations and standards contained in the Convention.

Recommendation Six

Those regions of the world in which international or regional legal systems for refugee protection do not exist, or where the applicable regimes are under review, should consider the relevance of the 1969 OAU Convention. In this regard, the Symposium highlights the Convention's broad definition of a refugee, its

provisions on the non-rejection of refugees at borders and the prohibition of *refoulement* of refugees, and the respect of the voluntariness of refugee repatriation.

III. Refugee Protection in Africa

12. Most of the African States have acceded to the three major international instruments on refugees. 45 States have acceded to the 1951 Convention; 46 to the 1967 Protocol and 42 to the 1969 OAU Convention. Only 4 States in Africa have not yet acceded to at least one of these instruments. Throughout the continent, countries are generous towards refugees and many practice liberal asylum policies.

13. Nevertheless, the institution of asylum and the system of refugee protection are under tremendous stress in Africa. The large number of refugees seeking asylum in countries already themselves experiencing tremendous social and economic hardships, has brought into question the very capacity of nations to cope with refugees. In a number of countries, the basic principles of refugee protection are not being upheld. Refugees have been arrested and detained without charge. Others have been returned against their will to places where their lives may be in danger. Yet others have been restricted to refugee camps or to remote, inaccessible locations where they are sometimes exposed to banditry, rape and other forms of criminality. Many have not been able to enjoy social, economic and civil rights.

14. This is partly the result of a combination of political, security, social and economic constraints whereby States are able to abide by their international legal obligations only under the most difficult and burdensome circumstances. Unfortunately, because of a global recession and the increased number of persons seeking asylum and humanitarian assistance world-wide, the international community's financial and material support to lighten the burden on African host countries has diminished.

Recommendation Seven

African States should abide by the letter and spirit of the 1969 OAU Convention and continue to uphold their traditional hospitality towards refugees and their liberal asylum policies. In particular:

(i) Refugees seeking admission into the territory of another State should not be rejected at the border or returned to territories where their lives may be endangered. Accordingly, Governments should not close their borders in order to refuse refugees admission.

(ii) Governments should use their best endeavours to treat refugees according to the standards established under refugee law. In particular, they should ensure the personal safety of refugees, locate them in areas which are accessible, safe and where basic services and amenities can be provided, and enable them to regain a normal way of life.

Recommendation Eight

The international community, the United Nations, the United Nations High Commissioner for Refugees, and other relevant Organizations, should support and assist host Governments in fulfilling their responsibilities towards refugees in a manner consistent with the principles of refugee law on the one hand, and legitimate national security, social and economic interests on the other hand. In particular, financial, material and technical assistance should be made available to:

(i) Ensure that the social and economic structures, community services, and the environment of host countries or communities are not unduly stretched as a result of having to host massive numbers of refugees.

(ii) Provide food, water, shelter, sanitation and medical services on a timely basis so that refugees and local populations alike are not put in a life-endangering situation.

(iii) Determine the refugee status of persons seeking asylum, and to ensure that those who do not need or deserve international protection do not abuse the humanitarian institution of asylum.

(iv) Enable Governments to respond effectively to situations which may contribute to a deterioration in security, law and order in the refugee-hosting areas. In this regard, priority should be placed on isolating and disarming individuals or groups among the refugee populations who may be armed and

threatening the lives of innocent refugees, local citizens, and humanitarian personnel, or engaging in other criminal acts.

(v) Further to the preceding recommendation, to trace and impound for safe custody or destruction, dangerous weapons illegally circulating or hidden in refugee-hosting areas.

(vi) Create or strengthen national institutions to manage and deal with refugee matters at central, provincial and district levels; build adequate and well-trained human resources capacity; and to have such technical and logistic resources as will enable Governments to respond to and administer all aspects of refugee problems.

IV. Material Assistance to Refugees

15. The principles of international solidarity and burden-sharing have traditionally provided the foundation for the response by the international community to refugee problems. It is now evident that African countries cannot sustain the burdens of hosting refugees on their own. Yet, because of "compassion fatigue" or "donor fatigue", financial and material resources for refugee programmes in Africa from the developed countries are declining. In recent emergency situations, the response of the international community has been hesitant and characterised by poor preparedness and limited resources.

16. Moreover, in all parts of the world, measures taken to meet diverse national interests have not always conformed to the objectives of refugee protection in all cases. To avoid illegal migration and reduce the abuse of asylum procedures, measures such as interdiction on the high seas, visa restrictions and carrier sanctions have been instituted. Likewise, new refugee categorisations have been devised along with a more restrictive interpretation of the refugee definition in the 1951 Convention. In addition, concepts such as "safe countries of origin", "temporary protection", "safety zones", "in-country processing" and "safe return" have been developed.

17. These measures, while taken to safeguard various national interests, have had the effect of imposing restrictive migratory controls and raised concerns that genuine refugees are being deterred from being able to seek and enjoy asylum. On the other hand, in some countries, such measures have the effect of denying entry to refugees.

Recommendation Nine

Donor countries, and relevant intergovernmental and non-governmental Organizations, should provide financial, material and technical assistance to the African asylum countries hosting refugee populations. In cases of large-scale influxes, such assistance should necessarily be provided on a timely basis in order that lives are not lost.

Recommendation Ten

The refugee crisis cannot be addressed effectively through rigid and regionalised approaches. The Symposium recommends that this problem be addressed in a global and comprehensive manner, as it will ultimately affect every region of the world. Likewise, countries should strive for effective cooperation and mutual assistance on refugee, displacement and migratory issues, in the same way they collaborate on security, economic and environmental matters.

Recommendation Eleven

The Symposium appeals for genuine international solidarity and burden-sharing to be brought back to the centre of the refugee problem, the international system of protection and of solutions for refugees. In particular, a truly international system embracing global standards and principles on prevention, refugee protection, assistance and solutions should be reinvigorated. The steady slide towards restrictive, deterrent, laws, policies and practices at a global level must be halted and reversed.

Recommendation Twelve

In order to reinforce the measures proposed in the above-mentioned recommendations, the Africa region should elaborate, with dedication and determination, modalities for an effective response to the refugee

problem on a regional basis. In situations where a sub-region or group of countries are affected by a common refugee problem, such an approach is particularly appropriate. In other cases where emergencies are beyond humanitarian action alone, the necessary political initiatives may also require a regional approach. Therefore, arrangements to ensure prevention of refugee displacements, guarantee protection within the region and actively promote solutions are considered to be essential elements of this approach.

V. Internally Displaced Persons

18. The situation of internally displaced persons typifies vividly the crisis of displacement in Africa today. They are estimated at almost 20 million. Notwithstanding the magnitude of the problem, no single organization has a specific and comprehensive mandate to respond to the protection and assistance needs of internally displaced persons as a whole. In certain circumstances, their needs have been catered for by given organizations. Nevertheless, the international community remains inadequately equipped to respond effectively to all aspects of their problems. Indeed, the problem of internally displaced persons represents one of the most tragic humanitarian and human rights crises in Africa today.

Recommendation Thirteen

The primary responsibility to ensure the protection of all its nationals belongs to the State as a duty and responsibility flowing from sovereignty. States should uphold the rights provided for under international and national law in favour of internally displaced persons. In particular, their right to life; not to be arbitrarily relocated; and to be able to return to their habitual places of residence, must be respected at all times. In addition, both States and non-state entities involved in armed conflicts are bound to abide by the human rights and humanitarian law principles and norms, the observance of which would ensure the protection of internally displaced persons.

Recommendation Fourteen

All parties to a conflict, or who control areas where internally displaced persons are located, should cooperate with the relevant organizations involved in humanitarian activities in enabling them to gain access to the displaced so as to cater to their needs. This type of access for humanitarian purposes should not be considered as impinging on the sovereignty of States. On the contrary, the consent of States to such access, to ensure saving the lives of the internally displaced persons, is an exercise of a primordial function of sovereignty.

Recommendation Fifteen

The Symposium strongly supports the efforts of the Special Representative of the United Nations Secretary-General on Internally Displaced Persons, and initiatives taken in other national, regional and international fora, to promote appropriate legal, institutional and operational mechanisms for the better protection and assistance of internally displaced persons.

VI. Solutions for Refugees

(*a*) Refugee Repatriation

19. The voluntary return of refugees to their countries of origin, whenever feasible, remains the best solution. In this connection, the Symposium notes with satisfaction that the conclusion of a Peace Accord in Mozambique in October 1992 has opened the way for the return home of more than one million Mozambican refugees. Moreover, in other regions, the potential for refugee solutions through repatriation looks promising.

20. However, in some other regions of the continent, a large number of refugees are unable to return to their countries. The main constraint to voluntary repatriation is continuing insecurity, violence or strife in the countries of origin. Moreover, many areas of potential repatriation have suffered years of destruction, stagnation and decay. In other areas, there is a high prevalence of land mines and other abandoned or concealed munitions. In yet others, the repatriation of refugees is impeded either by policies deliberately

intended to deter return, or because of a shortage of resources, such as land, for the settlement of the returnees and their reintegration.

21. Most refugees return spontaneously with little or no assistance given to them or to the areas into which they are returning. Some voluntary repatriation programmes are not properly coordinated between participating organizations. Thus, adequate assessment of the needs of the returnees and the areas of return are often neglected.

22. The Symposium deplores attempts, which have been made by some Governments both in and outside Africa, to return refugees to their countries of origin against their will, including in situations where danger to their safety still exists.

Recommendation Sixteen

Every opportunity for the voluntary repatriation of refugees should be seized upon. In keeping with the provisions of the 1969 OAU Convention, Governments of asylum and Governments of origin should create conducive conditions for the return home of refugees in safety and dignity. The OAU and UNHCR should support these initiatives and measures and also carry out such activities, consistent with their respective mandates, to promote and facilitate voluntary repatriation.

Recommendation Seventeen

In promoting refugee repatriation, the principle of voluntariness elaborated in the 1969 OAU Convention and in general refugee law should be respected at all times. Governments should not resort to the forcible repatriation of refugees for any reason. Furthermore, refugees should not be returned to conditions where they may be endangered. The withdrawal of food distribution in refugee camps so as to force refugees to return to their country, whereas they may still be in need of protection, is a flagrant contravention of refugee law and the well-accepted principle of voluntariness of repatriation.

Recommendation Eighteen

Refugee repatriation programmes should be designed in such a manner as to ensure that refugees who return spontaneously are not excluded from the relevant monitoring activities and assistance programmes.

Recommendation Nineteen

Refugees should be allowed to participate in decisions concerning their repatriation. In this connection, they should be provided with all the relevant information necessary for informed judgments. The Government of the country of origin, the Government of the country of asylum, and the United Nations High Commissioner for Refugees should cooperate in providing refugees with the necessary information.

Recommendation Twenty

In planning and implementing repatriation programmes, the protection and assistance needs of the most vulnerable, particularly women, children and the elderly, must be provided for at every stage of the return and reintegration operation.

Recommendation Twenty One

The international community should provide assistance for the rehabilitation or reconstruction of the social and economic infrastructures, services and distribution systems in the areas of return in order that the conditions for successful repatriation are thereby created.

Recommendation Twenty Two

The Organization of African Unity and the United Nations High Commissioner for Refugees should collaborate in clarifying:

(i) which organizations or authorities have responsibility to remove land mines and other munitions imbedded in areas of return.

(ii) the extent of the obligation upon the international community to provide humanitarian assistance for the rehabilitation and recovery of areas of return and the implications of this obligation.

(iii) what legal principles apply and what actions may be taken by refugees, countries of asylum and the international community at large to achieve a solution where, as a result of the policies or other developments in the country of origin, refugees are in effect condemned to permanent exile and for all practical purposes lose their nationality.

(*b*) Inter-African Resettlement of Refugees

23. While voluntary repatriation remains the best solution to refugee problems, resettlement to another country is sometimes the only way to guarantee the protection of refugees. Resettlement in the traditional resettlement countries is increasingly becoming more restricted and limited. While UNHCR continues its efforts for the resettlement of refugees from Africa in those countries, there is a need for African countries to reinvigorate inter-African resettlement of refugees.

24. Indeed, many African countries have in the past accepted refugees from other countries of asylum for permanent settlement. Recently, some others have offered to resettle small numbers of refugees and have provided quotas for this purpose. For its part, UNHCR has provided funds to ensure the successful integration of refugees accepted for resettlement under these arrangements.

Recommendation Twenty Three

The Symposium appeals to African States to offer additional places for the resettlement in their territories of refugees from other African countries.

Recommendation Twenty Four

Where refugees are accepted for resettlement under these inter-African arrangements, UNHCR should provide the necessary resources to facilitate their reintegration into their new societies. In cooperation with the OAU, it should also help in developing resettlement criteria to ensure that inter-African resettlement is implemented in a way which is compatible with the integration capacity of the accepting countries.

Recommendation Twenty Five

Modalities for further encouraging and implementing inter-African resettlement of refugees should be elaborated jointly by UNHCR, the OAU and interested African states. For this purpose, a consultative meeting could be envisaged.

VII. Other Populations in Need of Protection and Humanitarian Assistance

25. Alongside refugees, returnees and internally displaced persons, there are other populations, including victims of poverty, drought or famine, as well as unaccompanied minors and demobilized soldiers who usually have some need for protection and for material assistance similar to those of refugees or returnees. Their needs are not recognized in a systematic way in the mandates of the organizations of the international humanitarian system.

Recommendation Twenty Six

Organizations whose mandates are limited to only specific groups of persons should carry out their humanitarian and assistance activities in a flexible and imaginative manner. They should strive to ensure that the needs of the community in which refugees and returnees are located are also met, without limiting themselves strictly to only those persons falling within their respective mandates.

VIII. Emergency Preparedness and Response

26. The Symposium took note of recent initiatives aimed at improving the international community's emergency preparedness and response capabilities. Along with the establishment in 1991 of the United

Nations Department of Humanitarian Affairs, several early warning mechanisms have been established. Most organizations involved in humanitarian action have established standing emergency response capabilities.

27. Yet, in almost all major refugee emergencies which have occurred in Africa, the response has been late and generally poor. Among many other reasons, the system depends almost entirely on external inter-governmental and non-governmental organizations and external finance and material resources. Secondly, there is no international relief system *per se* – there are several actors who do not always display structural interdependence and are sometimes divided by different mandates and institutional goals. Thirdly, the system is characterized by a lot of competition, overlap and wastage. Finally, emergency response measures cannot be fully effective if not linked to the complex interplay of political and other factors that cause the emergency in the first place.

Recommendation Twenty Seven

The Symposium supports the ongoing efforts aimed at strengthening the international emergency response system, including those measures for the development of effective early-warning systems; to improve coordination, cooperation and communication among agencies involved in humanitarian action; to pre-position emergency stocks and resources; improve emergency planning; and to establish emergency response capabilities within individual organizations.

Recommendation Twenty Eight

The Symposium reiterates that these actions should be linked to institutional and capacity building at the indigenous level. In particular, they should contribute to the establishment or improvement of the national (government) disaster response and management capacity and enable grass-roots and community-based organizations to participate effectively in all aspects of emergency response.

IX. From Relief and Humanitarian Assistance to Socio-economic Sustainability

28. The Symposium observed that in many parts of Africa, the situation in both the country of origin and the country of asylum is characterized by extreme poverty and serious dislocations in the social and economic structures. Whereas relief assistance is needed to save lives in an emergency situation, the long-term objectives of rehabilitation, reconstruction and development cannot be achieved by such assistance alone. Moreover, as long as those objectives are not achieved, relief assistance itself may reinforce the situation of want and need.

Recommendation Twenty Nine

Emergency relief and humanitarian assistance should, as far as possible, be conceived and delivered within the context of the long-term development goals of the concerned countries and with a view to preventing the recurrence of conflict and/or displacement. Relief and humanitarian assistance should therefore be designed in such a way that their short term nature paves the way for medium to long-term solutions, namely rehabilitation, reconstruction and development with transformation as the ultimate and most durable goal.

Recommendation Thirty

The interventions of the relevant organizations, in the framework of inter-agency coordination, should be organized in such a way that measures designed to cope with emergency situations are linked to well-thought out policies and programmes for development. This approach is particularly crucial for those societies where war and massive displacements have left economic decline, shattered infrastructures, destroyed food production systems and caused chronic food shortages, widespread malnutrition and rampant death. In relation to repatriation, particularly of refugees of an agricultural background, they should be provided land for settlement and use, seeds, tools, other agriculture implements, and livestock so that they may be able to regain a normal way of life. There should also be major investments in health, education, shelter and sanitation and in the recovery and rehabilitation of the social and economic infrastructures.

X. INSTITUTIONAL ASPECTS

28. The implementation of the recommendations contained in this document will necessitate an interplay of political, social and economic questions. All these issues will have to be integrated into a rational and comprehensive system in which the respective governments and the international and non-governmental organizations complement each other in an efficient and effective manner.

Recommendation Thirty One

The Symposium calls upon Governments and the relevant inter-governmental and non-governmental organizations to take concerted actions to implement the proposals contained in this document. Where necessary, the mandates, structures, capacities or competencies of the respective institutions should be reviewed so as to enable them to address a much wider range of humanitarian, social and political matters. Furthermore, cooperation and coordination between and among organizations and authorities should be consolidated. New or unprecedented challenges should be boldly and innovatively tackled.

PART 3

FOLLOW-UP

Recommendation Thirty Two

The Symposium requests its organizers to present the recommendations herein to the appropriate organs, respectively, of the Organization of African Unity, the United Nations, the United Nations High Commissioner for Refugees and other relevant inter-governmental and non-governmental bodies for their consideration and approval.

Recommendation Thirty Three

The recommendations should also be presented to the Member States of the Organization of African Unity and the Member States of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, for their separate consideration and implementation as may be considered appropriate.

Recommendation Thirty Four

Those States and the organizations specifically mentioned in this document are requested to follow up and take practical measures to implement the relevant recommendations.

ANNEX

Conclusion on the Recommendations of the OAU/UNHCR Commemorative Symposium on Refugees and Forced Population Displacements in Africa

The Executive Committee,

Recalling its Conclusion on International Protection of 1993, in which it, *inter alia*, looked forward to events commemorating the twenty-fifth anniversary of the adoption by the Organization of African Unity of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and encouraged UNHCR to participate actively in its commemoration [A/AC.96/821, para. 19 (o)],

(*a*) *Takes note* with satisfaction of the activities which have been carried out in commemoration of the twenty-fifth anniversary of the adoption, and the twentieth year of the entry into force, of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa;

(*b*) *Congratulates* the High Commissioner and the Organization of African Unity upon having successfully organized jointly the OAU/UNHCR Symposium on Refugees and Forced Populations Displacements in Africa, which was held in Addis Ababa, Ethiopia, from 8 to 10 September 1994, as one of the commemorative activities;

(*c*) *Welcomes* the recommendations adopted by the above-mentioned Symposium as an important contribution to the framework for tackling the problems and challenges of forced population displacements in Africa in general; providing asylum, protection and assistance to refugees and other victims of forced displacements; as well as for finding the necessary solutions for these problems;

(*d*) *Commends* the recommendations to the relevant States, and intergovernmental and non-governmental organizations for consideration and implementation as necessary;

(*e*) *Requests* the High Commissioner, in close collaboration with the relevant States and intergovernmental and non-governmental organizations, most particularly the Organization of African Unity, to disseminate the recommendations widely, promote as necessary their implementation, and keep the Executive Committee informed of progress in this regard.

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COTONOU DECLARATION AND PROGRAMME OF ACTION

UNHCR – African Parliamentary Union – Inter-Parliamentary Union
African Parliamentary Conference

"Refugees in Africa: The Challenges of Protection and Solutions"
(Cotonou, Benin, 1-3 June 2004)

Declaration

We, Speakers and Members of National Parliamentary Assemblies of Algeria, Angola, Benin, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Egypt, Eritrea, Ethiopia, Gabon, Ghana, Gambia, Guinea, Liberia, Mali, Morocco, Niger, Nigeria, Senegal, Sierra Leone, Sudan, Swaziland, Togo, and Uganda,

Having met upon the invitation of the National Assembly of Benin, from 1 to 3 June 2004 in Cotonou, during the Conference on "Refugees in Africa: The Challenges of Protection and Solutions", organized by the African Parliamentary Union (APU) with the support of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Inter-Parliamentary Union (IPU), and in association with the International Committee of the Red Cross (ICRC), and presided over by the Speaker of the National Assembly of Benin, the Honourable Kolawolé A. Idji,

Recognizing that no country is immune from the risk of generating and receiving refugee flows, and that therefore protecting refugees is a shared duty of all States and is a matter of respect for basic human rights,

Deeply concerned about the number of protracted refugee situations and the continuing presence of large populations of internally displaced persons in Africa, as well as the presence of armed elements in some refugee camps and forced recruitment, the serious violations of the universally recognized principle of *non-refoulement,* the growing xenophobia and intolerance against refugees, and threats to the physical safety of refugees, especially women and children who are vulnerable to sexual and gender-based violence, but also the elderly,

Paying tribute to African countries which have provided protection and solutions to refugees over the decades in spite of limited resources,

Committed to doing everything in our power to maintain the generous tradition of asylum on the African Continent, and to ensure that refugees receive effective protection and have access to durable solutions as early as possible,

Heartened that, as a result of numerous ongoing peace processes in Africa firmly supported by the African Union and its Member States, there is today an enormous potential for durable solutions to refugee problems, especially voluntary repatriation and sustainable reintegration,

Aware of the dilemmas posed by mixed movements of refugees fleeing persecution or war and persons migrating for economic reasons,

Welcoming the substantial contribution which the New Partnership for Africa's Development (NEPAD), the African Union's Peace and Security Council, as well as the G8 Africa Action Plan, can make to spurring economic development and maintaining peace in Africa,

Recognizing that the 1951 Geneva Refugee Convention, together with its Protocol of 1967, as complemented by the 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa, remain the foundation of the international refugee protection regime in Africa, and have provided a resilient framework within which millions of refugees have been able to find safety from armed conflicts and persecution,

Stressing the continuing relevance and importance of the expanded refugee definition set out in the 1969 OAU Refugee Convention,

Acknowledging that an understanding of the plight of refugees fosters acceptance whereas ignorance breeds hostility; that refugee protection includes not only legal and physical protection, but also the ability to lead a meaningful and dignified life while in exile; and that this requires the empowerment of refugees to be

self-reliant, so that they may make a positive contribution to the life of their host communities and prepare for durable solutions,

Convinced of the need for more effective preventive measures at national, regional and international levels to address the root causes of refugee flows and other forms of forced displacement, and prevent the eruption or continuation of armed conflict,

Recognizing that good governance, observance of the rule of law and respect for human rights are the best form of prevention, while also contributing to peace, stability and economic development,

Welcoming the fundamental role played by UNHCR and ICRC, in pursuance of their respective mandates, to protect and assist refugees and find durable solutions to their problems, and to protect and assist civilians in times of conflict,

Desirous that the Regional Parliamentary Conference on "Refugees in Africa: The Challenges of Protection and Solutions", and its predecessor, the 2002 African Parliamentary Conference on International Humanitarian Law for the Protection of Civilians during Armed Conflict, initiate a process aimed at strengthening observance of the rules of international refugee, human rights and humanitarian law in our States,

Determined to find durable solutions to the plight of refugees, while continuing to provide effective protection,

Hereby adopt the annexed Programme of Action, outlining various courses of action for Parliaments, and accordingly:

Honouring and strengthening international refugee, human rights and humanitarian law principles

1. *Pledge* our continuing commitment to strengthening observance of humanitarian principles and to build on the undertakings contained in the Niamey Final Declaration of 2002[1], and *reaffirm* our determination to ensure that our States and all parties to an armed conflict honour their obligations under international refugee, human rights and humanitarian law.

Finding durable solutions

2. *Recognize* that as a first step, self reliance of refugees be promoted as an important means to decrease dependency, maximise the initiative and potential contributions of refugees, and prepare them for durable solutions.
3. *Undertake* to foster conditions conducive to the implementation of durable solutions for refugees, notably, their voluntary repatriation to the country of origin or, where appropriate, their local integration in the country of asylum, or resettlement to a third country, recognizing that the success of durable solutions depends in large measure on the availability of adequate resources provided in a spirit of international solidarity and shared responsibility.
4. *Call on UNHCR*, development partners and international and regional financial institutions, to redouble their efforts to support countries of asylum to facilitate refugees' self-reliance, and countries of origin to ensure sustainable reintegration following the return of refugees.

Ensuring physical and legal protection

5. *Pledge* to protect refugees and asylum-seekers, especially women and children, from all forms of abuse, neglect, exploitation and violence, recognizing that the States hosting refugees bear responsibility for their physical protection.

Maintaining the civilian and humanitarian character of asylum

6. *Undertake* to ensure that the competent authorities safeguard the civilian nature and humanitarian character of the institution of asylum and of refugee camps and settlements, without which the basic tenets of refugee protection would be compromised.

[1] Adopted at the African Parliamentary Conference on International Humanitarian Law for the Protection of Civilians during Armed Conflict, held in Niamey from 18 to 20 February 2002.

Strengthening the role of Parliament

7. *Resolve* to ensure that our parliaments fulfil their role in the process of acceding to the instruments of international refugee, human rights and humanitarian law, the adoption or amendment of national legislation in line with international standards, ensuring that adequate funds are allocated to implement such legislation, and overseeing the work of the Executive.

8. *Undertake* to encourage a wide-ranging debate on the state of national legislation to implement international refugee, human rights and humanitarian law, and on relevant practices and situations which require our attention.

9. *Encourage* our national parliaments to establish a standing committee, or sub-committee, dealing with all matters related to refugees and international humanitarian law.

Promoting a change in attitudes towards refugees

10. *Undertake*, as men and women elected by the people, to do all in our power to foster a positive attitude towards refugees and displaced persons, so as to improve their protection and ensure their contribution to the socio-economic development of their host communities.

11. *Commit* ourselves to refrain from perpetuating negative stereotypes about refugees and to ensure that they are not exploited politically, including during electoral campaigns.

Implementing follow-up actions

12. *Undertake* to forward this Declaration and Programme of Action to the attention of our Governments, and to urge the competent authorities to take every measure necessary to heed and address the concerns reflected therein.

13. *Resolve* to reinforce our cooperation on refugee and returnee matters with UNHCR.

14. *Commit ourselves* to reporting to the African Parliamentary Union on progress in implementing this Programme of Action in our countries, as well as on progress on the objectives stated in the Niamey Final Declaration.

15. *Request* the organizers of the Conference to forward this Declaration and Programme of Action to the African Union for information and distribution at the Assembly of Heads of State and Government, the Executive Council and to the Pan-African Parliament. *We also request* them to forward this Declaration and Programme of Action to the competent organs of the African Parliamentary Union, the Inter-Parliamentary Union, UNHCR and the ICRC, as well as other relevant actors, UN organizations and development partners.

16. *Request* the African Parliamentary Union, IPU, UNHCR and ICRC to widely disseminate the Declaration and Programme of Action of this Conference with a view to facilitating the follow-up.

17. *Request* the African Parliamentary Union to ensure that the Follow-Up Committee on the Niamey Conference also follows up on the Cotonou Conference, convenes at each statutory APU meeting to examine progress in the implementation of the Niamey Final Declaration and the Cotonou Declaration and Programme of Action, and reports on its findings to the IPU's Committee to Promote Respect for International Humanitarian Law.

18. *Request* the African Parliamentary Union to explore with the Inter-Parliamentary Union, UNHCR and ICRC, the possibility of convening a conference in 2006 to review progress made on the follow-up to the Niamey and Cotonou conferences.

Programme of Action

This Programme of Action describes concrete objectives and strategies to support African Parliaments in their work in favour of protecting refugees and finding durable solutions to their situation. It aims at implementing the commitments contained in the Cotonou Declaration.

Objective 1: Ensuring accession to, or lifting reservations on, international treaties relating to refugees and stateless persons

Specific strategies:

- Engage in an active national debate in Parliament and with Governments, with a view to ensuring that, where they have not yet done so, States accede to the following treaties or lift reservations lodged at the time of accession:

  (i) *Treaties protecting refugees and stateless persons*

  - Convention relating to the Status of Refugees of 28 July 1951,
  - Protocol relating to the Status of Refugees of 31 January 1967,
  - Convention governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969,
  - Convention relating to the Status of Stateless Persons of 28 September 1954, and
  - Convention on the Reduction of Statelessness of 30 August 1961.

  (ii) *International humanitarian law*

  - Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977,
  - Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977,
  - The Convention on Certain Conventional Weapons of 1980 and its Additional Protocols,
  - The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction of 13 January 1993,
  - The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and on their Destruction of 3-4 December 1997, and
  - The Statute of the International Criminal Court of 17 July 1998.

  (iii) *International human rights law*

  - International Covenant on Civil and Political Rights, 1966,
  - International Covenant on Economic, Social and Cultural Rights, 1966,
  - Convention on the Elimination of all forms of Discrimination against Women of 1979 and its Optional Protocol of 1999,
  - African Charter on Human and People's Rights of 1981 and its Additional Protocol relating to the Creation of an African Court for Human Rights of 1998,
  - African Charter on the Rights and Welfare of the Child of 1999, and
  - Convention on the Rights of the Child of 1990 and its Optional Protocols on the involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography of 2000.

Objective 2: Ensuring full and effective implementation of international norms relating to refugees

Specific strategies:

- Ensure that, beyond formal accession to the international and regional treaties, such treaties are effectively implemented through the enactment of national legislation and policies, including provisions penalizing violations of international humanitarian law.
- Observe and implement the suggestions and recommendations contained in the Handbooks for Parliamentarians titled "Protection of Refugees: Handbook on International Refugee Law" published by UNHCR and the IPU, and "Respect for International Humanitarian Law", published by the ICRC and the IPU.
- Consider initiating a review of national legislation, with a view to amending, where necessary, such legislation so as to ensure consistency with applicable international standards.
- In this regard, support the analysis of national legislation being undertaken by the African Union and UNHCR, pursuant to the Comprehensive Implementation Plan (CIP), as well as that the analysis being undertaken by UNHCR in cooperation with the European Commission, and ensure that the relevant recommendations are implemented.
- Make use of all parliamentary mechanisms available, including public hearings, questions to government and visits to refugee camps and hosting areas, to seek information on the situation of refugees, displaced persons and returnees, so as to take informed action regarding their welfare and rights.
- Ensure that national parliaments mandate one of their standing committees to supervise parliamentary action in relation to refugees and international humanitarian law, or establish a sub-committee to this effect.

Objective 3: Increasing awareness of international refugee, human rights and humanitarian law

Specific strategies:

- Promote knowledge of international refugee, human rights and humanitarian law among parliamentarians at national and regional levels, and cooperate in this effort by sponsoring or attending seminars and workshops organized in conjunction with relevant organizations, such as the African Parliamentary Union, the Pan-African Parliament, the IPU, UNHCR and ICRC.
- Encourage the inclusion of international refugee, human rights and humanitarian law in the curricula of academic institutions, including military and police academies and institutions.

Objective 4: Improving responses to mass influxes of refugees

Specific strategies:

- Encourage the competent authorities to work with UNHCR to ensure a more effective emergency response to mass influx situations, based on more predictable and reliable burden-sharing arrangements.
- Encourage the competent authorities to draw up and regularly update contingency plans, working in close cooperation with UNHCR, UN agencies and, where appropriate, the relevant regional and sub-regional organizations.
- Request that national and regional contingency plans make provisions for community-based activities not only addressing the specific needs of refugees but also of their host communities.

Objective 5: Diminishing dependence on humanitarian assistance by promoting self-reliance

Specific strategies:

- Explore the ways and means to enhance the productive capacities and self-reliance of refugees and their host communities, as a means of decreasing dependency on humanitarian assistance and empowering them to contribute to the development of the host country while in exile, and the reconstruction and

economic development of the country of origin upon return. In this regard, recognize the central role of women in any efforts aimed at self-reliance and promoting durable solutions.

- Welcome the focus of UNHCR's Framework for Durable Solutions on attracting additional development assistance for refugees and their host communities, and recognize its potential to promote better quality of life and self-reliance for refugees and host communities pending the implementation of other durable solutions.
- Ensure that refugees fully enjoy their social and economic rights, to empower them to become self-reliant, giving particular attention to overcoming all forms of discrimination, including that based on gender, age or disability.
- Encourage the relevant authorities to establish a database of the skills and professional profiles available within the refugee community, with a view to facilitating their employment and economic empowerment.
- Include refugee-hosting areas in national development plans, and encourage development partners to provide additional funding targeted to host communities as well as refugees.
- Ensure the availability and access to primary, secondary, tertiary and vocational education for refugees, recognizing that education is key to self reliance and all durable solutions.
- Consider allocating a proportion of national scholarships for secondary and tertiary education to deserving refugee children.

Objective 6: Pursuing durable solutions: voluntary repatriation, resettlement and local integration

Specific strategies:

- Contribute to the development of a more coherent approach to durable solutions by integrating voluntary repatriation, local integration and resettlement, whenever feasible, into one comprehensive approach for resolving refugee situations, implemented in cooperation with countries of origin, host States, UNHCR and its humanitarian and development partners, as well as refugees themselves.
- In developing such comprehensive approaches, make use of the Convention Plus initiative and the related Framework for Durable Solutions, as well as the Agenda for Protection.

Voluntary repatriation

- Respect the right of return and the principle of voluntary repatriation of refugees in safety and dignity.
- Ensure respect for the voluntary nature of the decision to return to the country of origin of refugees, taking into account the specific situation of separated and unaccompanied children.
- Ensure that national authorities in countries of asylum, countries of origin and UNHCR cooperate so that repatriation takes place in safety and dignity, including through the adoption of confidence-building measures such as tripartite agreements spelling out guarantees, conditions and modalities for the voluntary repatriation operations, and go-and-see visits.
- Take all measures to enable returnees to enjoy the same rights as their fellow citizens.
- Promote reconciliation through the implementation of initiatives and projects benefiting returnees, internally displaced persons and all members of the community on an equal footing.
- Call on the competent authorities to cooperate with UNHCR, other United Nations agencies and development actors, to gain support for the effective reintegration of returnees by implementing the Framework for Durable Solutions.
- Encourage UNHCR and development partners to provide for the environmental, infrastructure and other rehabilitation of refugee-impacted areas.

Resettlement

- Cooperate with resettlement countries and UNHCR in implementing refugee resettlement both as an instrument of protection and as a durable solution, and use resettlement as a meaningful instrument of international solidarity and responsibility sharing.
- Encourage UNHCR and resettlement countries to make more strategic use of resettlement, including through the adoption of more flexible criteria and group processing, as a means to increase the number of resettlement opportunities.

Local integration

- Acknowledge that, where refugees have developed strong family, social and economic links with host communities, it may be in the interest of the host country to facilitate their local integration, through granting of permanent residence and ultimately, naturalization.
- Encourage competent authorities to consider adopting the "DLI" approach (Development through Local Integration), to ensure that the international community provides adequate support for the socio-economic development of communities hosting refugees.

Objective 7: Ensuring the physical safety of refugees

Specific strategies:

- Ensure that the competent authorities assume their responsibility to maintain law and order in refugee camps and refugee-hosting areas, with the support of the international community when necessary.
- Recognize that registering and documenting refugees contributes to improving their physical protection and the enjoyment of their rights, and invite UNHCR to continue providing support to African States to this end.
- Encourage the competent authorities to cooperate with the ICRC, UNHCR and UNICEF in the tracing and reunification of family members separated so as to preserve family unity.
- Request the competent authorities to set in place appropriate systems to prevent, monitor, report on, and respond, to gender- and age-based violence, including through the prosecution of perpetrators, and to combat the spread of HIV/AIDS within refugee and host communities.
- Encourage the continued development and implementation of training programmes and other practical measures aimed at promoting respect for the right of every refugee to dignity and personal security, and at promoting protection from sexual abuse and exploitation.
- Consider allocating budgets to provide treatment and counselling to victims of sexual and gender-based violence.

Objective 8: Maintaining the civilian and humanitarian character of asylum

Specific strategies:

- Encourage the competent authorities to ensure respect for the civilian nature and humanitarian character of the institution of asylum and of refugee camps and settlements.
- Strengthen efforts aimed at preventing all forms of recruitment of refugees for military purposes, especially children under 18 years of age.
- Encourage UNHCR and ICRC to disseminate to the APU and African Parliaments, the outcome of the June 2004 Experts Meeting on Maintaining the Civilian and Humanitarian Character of Asylum, aimed at elaborating measures for the disarmament of armed elements and the identification, separation and internment of combatants.
- Encourage the competent authorities in countries facing mixed movements of refugees and armed elements to adopt programmes for the disarmament of these armed elements and the identification, separation and internment of combatants, seeking technical assistance and additional resources from the international community, where required.

- Encourage the United Nations and sub-regional organizations to ensure that programs aimed at integrating former armed elements in post-conflict situations are adequately funded, so as to contribute to sustainable peace and security.
- Call on the competent authorities to minimize the risk that combatants move from one country to another, and thereby perpetuate the cycle of violence and instability, by ensuring that national processes for the disarmament, demobilization, reintegration and rehabilitation of combatants (DDRR) have a regional dimension.

Objective 9: Combating intolerance and promoting respect for refugees

Specific strategies:

- Sensitize citizens to the plight and rights of refugees, with a view to fostering understanding and acceptance of their presence, and raising awareness of the positive contribution that refugees can make to their host communities and societies.
- Work with the media in national campaigns to combat intolerance and xenophobia and promote peaceful coexistence.

Objective 10: Protecting and assisting internally displaced persons

Specific strategies:

- Acknowledge that internally displaced persons, as part of the civilian population, are protected by human rights and international humanitarian law.
- Reiterate the commitment to ensure that internally displaced persons are effectively protected against violations of their rights, and that the Guiding Principles on Internal Displacement are fully respected by the relevant authorities.

Objective 11: Promoting partnerships for protection

Specific strategies:

- Strengthen cooperation between Parliaments and UNHCR in ensuring adequate protection of refugees and the implementation of durable solutions including, for example, the enactment of refugee-related legislation, bringing to light concerns about protection and durable solutions, and sharing information about the situation of refugees in countries and their respective sub-regions.
- Encourage the participation of civil society, including non-governmental organizations, in matters related to the protection and welfare of refugees.
- Encourage regional and sub-regional parliamentary organizations to analyze and debate refugee problems with regional ramifications, on a regular basis, and to promote coordinated action to address root causes and find durable solutions.
- Encourage African governments and relevant regional and sub-regional organizations to explore the creation of an African Fund for Refugees to mobilize additional international resources to assist, protect and find durable solutions for refugees, with international support.

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AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS (BANJUL CHARTER)

Adopted on 27 June 1981

Entry into force: 21 October 1986, in accordance with Article 63
Text: OAU Document CAB/LEG/67/3 rev. 5

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 co-ordinate and intensify their co-operation and efforts to achieve a better life for the peoples of Africa and to promote international co-operation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

Taking into consideration the virtues of their historical tradition and the values of African 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 particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

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

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

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

Have agreed as follows:

PART I

RIGHTS AND DUTIES

CHAPTER I

HUMAN AND PEOPLES' RIGHTS

Article 1

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

Article 2

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

Article 3

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

Article 4

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

Article 5

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

Article 6

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

Article 7

1. Every individual shall have the right to have his cause heard. This comprises:
   (*a*) The right to an appeal to competent national organs against acts 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 Article 29, no one may be compelled to join an association.

Article 11

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

Article 12

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

Article 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of the 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 morals.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

Article 19

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

Article 20

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

Article 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoilation, 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 practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

Article 22

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

Article 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.

2. For the purpose of strengthening peace, solidarity and friendly relations, States Parties to the present Charter shall ensure that:

   (*a*) Any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State Party to the present Charter;

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

Article 24

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

Article 25

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

Article 28

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

Article 29

The individual shall also have the duty:

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

PART II

MEASURES OF SAFEGUARD

CHAPTER 1

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 Parties to the present Charter. When two candidates are nominated by a State, one of them may not be a national of that State.

Article 35

1. The Secretary-General of the Organization of African Unity shall invite 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 provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organization of African Unity shall bear cost of the staff and services.

Article 42

1. The Commission shall elect its Chairman and Vice-Chairman for a two-year period. They shall be eligible for re-election.
2. The Commission shall lay down its rules of procedure.
3. Seven members shall form the quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The Secretary-General may attend the meetings of the Commission. He shall neither participate in deliberations nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.

Article 43

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

Article 44

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

CHAPTER II

MANDATE OF THE COMMISSION

Article 45

The functions of the Commission shall be:

1. To promote human and peoples' rights and in particular:
   (*a*) To collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organise seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights and, should the case arise, give its views or make recommendations to Governments.

(*b*) To formulae 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*) Cooperate 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 recognised 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.

Communications 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 in as much as possible, relevant information relating to the laws and rules of procedure applied and applicable and the redress already given or course of action available.

Article 48

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

Article 49

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

Article 50

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

Article 51

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

Article 52

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

Article 53

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

Article 54

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

Other Communications

Article 55

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

Article 56

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

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

Article 57

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

Article 58

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

3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.

Article 59

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

CHAPTER IV

APPLICABLE PRINCIPLES

Article 60

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

Article 61

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

Article 62

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

Article 63

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

PART III

GENERAL PROVISIONS

Article 64

1. After the coming into force of the present Charter, members of the Commission shall be elected in accordance with the relevant Articles of the present Charter.

2. The Secretary-General of the Organization of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organization within three months of the constitution of the Commission. Thereafter, the Commission shall be convened by its Chairman whenever necessary but at least once a year.

Article 65

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

Article 66

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

Article 67

The Secretary-General of the Organization of African Unity shall inform Member States of the Organization of the deposit of each instrument of ratification or adherence.

Article 68

The present Charter may be amended if a State Party makes a written request to that effect to the Secretary-General of the Organization of African Unity. The Assembly of Heads of State and Government may only consider the draft amendment after all the 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.

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PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE ESTABLISHMENT OF AN AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Concluded on 10 June 1998

Text: OAU/LEG/MIN/AFCHPR/PROT.1 rev.2 (1997)

The Member States of the Organization of African Unity hereinafter referred to as the OAU, States Parties to the African Charter on Human and Peoples' Rights,

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

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

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

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

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

Noting the first and second Government legal experts' meetings held respectively in Cape Town, South Africa (September, 1995) and Nouakchott, Mauritania (April, 1997), and the third Government legal experts meeting held in Addis Ababa, Ethiopia (December, 1997), which was enlarged to include Diplomats;

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

Have agreed as follows:

Article 1

Establishment of the court

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

Article 2

Relationship between the court and the commission

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

Article 3

Jurisdiction

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

Article 4

Advisory opinions

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

Article 5

Access to the court

The following are entitled to submit cases to the Court:

- The Commission;
- The State Party, which had lodged a complaint to the Commission;
- The State Party against which the complaint has been lodged at the Commission;
- The State Party whose citizen is a victim of human rights violation;
- African Intergovernmental Organizations;
- When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join.

The Court may entitle relevant Non Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34 (6) of this Protocol.

Article 6

Admissibility of cases

The Court, when deciding on the admissibility of a case instituted under article 5 (3) of this Protocol, may request the opinion of the Commission which shall give it as soon as possible.

The Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter.

The Court may consider cases or transfer them to the Commission.

Article 7

Sources of law

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

Article 8

Consideration of cases

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

Article 9

Amicable settlement

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

Article 10

Hearings and representation

The Court shall conduct its proceedings in public. The Court may, however, conduct proceedings in camera as may be provided for in the Rules of Procedure.

Any party to a case shall be entitled to be represented by a legal representative of the party's choice. Free legal representation may be provided where the interests of justice so require.

Any person, witness or representative of the parties, who appears before the Court, shall enjoy protection and all facilities, in accordance with international law, necessary for the discharging of their functions, tasks and duties in relation to the Court.

Article 11

Composition

The Court shall consist of eleven judges, nationals of Member States of the OAU, elected in an individual capacity from among jurists of high moral character and of recognized practical, judicial or academic competence and experience in the field of human and peoples' rights.

No two judges shall be nationals of the same State.

Article 12

Nominations

States Parties to the Protocol may each propose up to three candidates, at least two of whom shall be nationals of that State.

Due consideration shall be given to adequate gender representation in the nomination process.

Article 13

List of candidates

Upon entry into force of this Protocol, the Secretary-General of the OAU shall request each State Party to the Protocol to present, within ninety (90) days of such a request, its nominees for the office of judge of the Court.

The Secretary-General of the OAU shall prepare a list in alphabetical order of the candidates nominated and transmit it to the Member States of the OAU at least thirty days prior to the next session of the Assembly of Heads of State and Government of the OAU hereinafter referred to as "the Assembly".

Article 14

Elections

The judges of the Court shall be elected by secret ballot by the Assembly from the list referred to in Article 13 (2) of the present Protocol.

The Assembly shall ensure that in the Court as a whole there is representation of the main regions of Africa and of their principal legal traditions.

In the election of the judges, the Assembly shall ensure that there is adequate gender representation.

Article 15

Term of office

The judges of the Court shall be elected for a period of six years and may be re-elected only once. The terms of four judges elected at the first election shall expire at the end of two years, and the terms of four more judges shall expire at the end of four years.

The judges whose terms are to expire at the end of the initial periods of two and four years shall be chosen by lot to be drawn by the Secretary-General of the OAU immediately after the first election has been completed.

A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of the predecessor's term.

All judges except the President shall perform their functions on a part-time basis. However, the Assembly may change this arrangement as it deems appropriate.

Article 16

Oath of office

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

Article 17

Independence

The independence of the judges shall be fully ensured in accordance with international law.

No judge may hear any case in which the same judge has previously taken part as agent, counsel or advocate for one of the parties or as a member of a national or international court or a commission of enquiry or in any other capacity. Any doubt on this point shall be settled by decision of the Court.

The judges of the Court shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law.

At no time shall the judges of the Court be held liable for any decision or opinion issued in the exercise of their functions.

Article 18

Incompatibility

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

Article 19

Cessation of office

A judge shall not be suspended or removed from office unless, by the unanimous decision of the other judges of the Court, the judge concerned has been found to be no longer fulfilling the required conditions to be a judge of the Court.

Such a decision of the Court shall become final unless it is set aside by the Assembly at its next session.

Article 20

Vacancies

In case of death or resignation of a judge of the Court, the President of the Court shall immediately inform the Secretary-General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.

The Assembly shall replace the judge whose office became vacant unless the remaining period of the term is less than one hundred and eighty (180) days.

The same procedure and considerations as set out in Articles 12, 13 and 14 shall be followed for the filling of vacancies.

Article 21

Presidency of the court

The Court shall elect its President and one Vice-President for a period of two years. They may be re-elected only once.

The President shall perform judicial functions on a full-time basis and shall reside at the seat of the Court.

The functions of the President and the Vice-President shall be set out in the Rules of Procedure of the Court.

Article 22

Exclusion

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

Article 23

Quorum

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

Article 24

Registry of the court

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

Article 25

Seat of the court

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

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

Article 26

Evidence

The Court shall hear submissions by all parties and if deemed necessary, hold an enquiry. The States concerned shall assist by providing relevant facilities for the efficient handling of the case.

The Court may receive written and oral evidence including expert testimony and shall make its decision on the basis of such evidence.

Article 27

Findings

If the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.

Article 28

Judgment

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

Article 29

Notification of judgment

The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the Member States of the OAU and the Commission.

The Council of Ministers shall also be notified of the judgment and shall monitor its execution on behalf of the Assembly.

Article 30

Execution of judgment

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

Article 31

Report

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

Article 32

Budget

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

Article 33

Rules of procedure

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

Article 34

Ratification

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

Article 35

Amendments

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

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PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA

Adopted by the 2nd Ordinary Session of the Assembly of the Union
Concluded in Maputo on 11 July 2003

Text: CAB/LEG/66.6 (Sept. 13, 2000)

The States Parties to this Protocol,

Considering that Article 66 of the African Charter on Human and Peoples' Rights provides for special protocols or agreements, if necessary, to supplement the provisions of the African Charter, and that the Assembly of Heads of State and Government of the Organization of African Unity meeting in its Thirty-first Ordinary Session in Addis Ababa, Ethiopia, in June 1995, endorsed by resolution AHG/Res.240 (XXXI) the recommendation of the African Commission on Human and Peoples' Rights to elaborate a Protocol on the Rights of Women in Africa;

Considering that Article 2 of the African Charter on Human and Peoples' Rights enshrines the principle of non-discrimination on the grounds of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status;

Further considering that Article 18 of the African Charter on Human and Peoples' Rights calls on all States Parties to eliminate every discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions;

Noting that Articles 60 and 61 of the African Charter on Human and Peoples' Rights recognise regional and international human rights instruments and African practices consistent with international norms on human and peoples' rights as being important reference points for the application and interpretation of the African Charter;

Recalling that women's rights have been recognised and guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, the African Charter on the Rights and Welfare of the Child, and all other international and regional conventions and covenants relating to the rights of women as being inalienable, interdependent and indivisible human rights;

Noting that women's rights and women's essential role in development, have been reaffirmed in the United Nations Plans of Action on the Environment and Development in 1992, on Human Rights in 1993, on Population and Development in 1994 and on Social Development in 1995;

Recalling also United Nations Security Council's Resolution 1325 (2000) on the role of Women in promoting peace and security;

Reaffirming the principle of promoting gender equality as enshrined in the Constitutive Act of the African Union as well as the New Partnership for Africa's Development, relevant Declarations, Resolutions and Decisions, which underline the commitment of the African States to ensure the full participation of African women as equal partners in Africa's development;

Further noting that the African Platform for Action and the Dakar Declaration of 1994 and the Beijing Platform for Action of 1995 call on all Member States of the United Nations, which have made a solemn commitment to implement them, to take concrete steps to give greater attention to the human rights of women in order to eliminate all forms of discrimination and of gender-based violence against women;

Recognising the crucial role of women in the preservation of African values based on the principles of equality, peace, freedom, dignity, justice, solidarity and democracy;

Bearing in mind related Resolutions, Declarations, Recommendations, Decisions, Conventions and other Regional and Sub-Regional Instruments aimed at eliminating all forms of discrimination and at promoting equality between women and men;

Concerned that despite the ratification of the African Charter on Human and Peoples' Rights and other international human rights instruments by the majority of States Parties, and their solemn commitment to eliminate all forms of discrimination and harmful practices against women, women in Africa still continue to be victims of discrimination and harmful practices;

Firmly convinced that any practice that hinders or endangers the normal growth and affects the physical and psychological development of women and girls should be condemned and eliminated;

Determined to ensure that the rights of women are promoted, realised and protected in order to enable them to enjoy fully all their human rights;

Have agreed as follows:

Article 1

Definitions

For the purpose of the present Protocol:

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

(*b*) "African Commission" means the African Commission on Human and Peoples' Rights;

(*c*) "Assembly" means the Assembly of Heads of State and Government of the African Union;

(*d*) "AU" means the African Union;

(*e*) "Constitutive Act" means the Constitutive Act of the African Union;

(*f*) "Discrimination against women" means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life;

(*g*) "Harmful Practices" means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity;

(*h*) "NEPAD" means the New Partnership for Africa's Development established by the Assembly;

(*i*) "States Parties" means the States Parties to this Protocol;

(*j*) "Violence against women" means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war;

(*k*) "Women" means persons of female gender, including girls.

Article 2

Elimination of Discrimination Against Women

1. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:

   (*a*) Include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;

   (*b*) Enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women;

   (*c*) Integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;

   (*d*) Take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;

(*e*) Support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.

2. States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

Article 3

Right to Dignity

1. Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.
2. Every woman shall have the right to respect as a person and to the free development of her personality.
3. States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women.
4. States Parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

Article 4

The Rights to Life, Integrity and Security of the Person

1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.
2. States Parties shall take appropriate and effective measures to:

(*a*) Enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;

(*b*) Adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;

(*c*) Identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;

(*d*) Actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;

(e) Punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;

(*f*) Establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women;

(*g*) Prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;

(*h*) Prohibit all medical or scientific experiments on women without their informed consent;

(*i*) Provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;

(*j*) Ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women;

(*k*) Ensure that women and men enjoy equal rights in terms of access to refugee status determination procedures and that women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents.

Article 5

Elimination of Harmful Practices

States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

(*a*) Creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;

(*b*) Prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;

(*c*) Provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;

(*d*) Protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

Article 6

Marriage

States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that:

(*a*) No marriage shall take place without the free and full consent of both parties;

(*b*) The minimum age of marriage for women shall be 18 years;

(*c*) Monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected;

(*d*) Every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognised;

(*e*) The husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;

(*f*) A married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband’s surname;

(*g*) A woman shall have the right to retain her nationality or to acquire the nationality of her husband;

(*h*) A woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;

(*i*) A woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;

(*j*) During her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

Article 7

Separation, Divorce and Annulment of Marriage

States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. In this regard, they shall ensure that:

(*a*) Separation, divorce or annulment of a marriage shall be effected by judicial order;

(*b*) Women and men shall have the same rights to seek separation, divorce or annulment of a marriage;

(*c*) In case of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children. In any case, the interests of the children shall be given paramount importance;

(*d*) In case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.

Article 8

Access to Justice and Equal Protection before the Law

Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure:

(*a*) Effective access by women to judicial and legal services, including legal aid;

(*b*) Support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid;

(*c*) The establishment of adequate educational and other appropriate structures with particular attention to women and to sensitise everyone to the rights of women;

(*d*) That law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights;

(*e*) That women are represented equally in the judiciary and law enforcement organs;

(*f*) Reform of existing discriminatory laws and practices in order to promote and protect the rights of women.

Article 9

Right to Participation in the Political and Decision-Making Process

1. States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:

   (*a*) Women participate without any discrimination in all elections;

   (*b*) Women are represented equally at all levels with men in all electoral processes;

   (*c*) Women are equal partners with men at all levels of development and implementation of State policies and development programmes.

2. States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making.

Article 10

Right to Peace

1. Women have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace.

2. States Parties shall take all appropriate measures to ensure the increased participation of women:

(*a*) In programmes of education for peace and a culture of peace;

(*b*) In the structures and processes for conflict prevention, management and resolution at local, national, regional, continental and international levels;

(*c*) In the local, national, regional, continental and international decision making structures to ensure physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women;

(*d*) In all levels of the structures established for the management of camps and settlements for asylum seekers, refugees, returnees and displaced persons, in particular, women;

(*e*) In all aspects of planning, formulation and implementation of post conflict reconstruction and rehabilitation.

3. States Parties shall take the necessary measures to reduce military expenditure significantly in favour of spending on social development in general, and the promotion of women in particular.

Article 11

Protection of Women in Armed Conflicts

1. States Parties undertake to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations, which affect the population, particularly women.
2. States Parties shall, in accordance with the obligations incumbent upon them under the international humanitarian law, protect civilians including women, irrespective of the population to which they belong, in the event of armed conflict.
3. States Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.
4. States Parties shall take all necessary measures to ensure that no child, especially girls under 18 years of age, take a direct part in hostilities and that no child is recruited as a soldier.

Article 12

Right to Education and Training

1. States Parties shall take all appropriate measures to:

   (*a*) Eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training;

   (*b*) Eliminate all stereotypes in textbooks, syllabuses and the media, that perpetuate such discrimination;

   (*c*) Protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices;

   (*d*) Provide access to counselling and rehabilitation services to women who suffer abuses and sexual harassment;

   (*e*) Integrate gender sensitisation and human rights education at all levels of education curricula including teacher training.

2. States Parties shall take specific positive action to:

   (*a*) Promote literacy among women;

   (*b*) Promote education and training for women at all levels and in all disciplines, particularly in the fields of science and technology;

(*c*) Promote the enrolment and retention of girls in schools and other training institutions and the Organization of programmes for women who leave school prematurely.

Article 13

Economic and Social Welfare Rights

States Parties shall adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities. In this respect, they shall:

(*a*) Promote equality of access to employment;

(*b*) Promote the right to equal remuneration for jobs of equal value for women and men;

(*c*) Ensure transparency in recruitment, promotion and dismissal of women and combat and punish sexual harassment in the workplace;

(*d*) Guarantee women the freedom to choose their occupation, and protect them from exploitation by their employers violating and exploiting their fundamental rights as recognised and guaranteed by conventions, laws and regulations in force;

(*e*) Create conditions to promote and support the occupations and economic activities of women, in particular, within the informal sector;

(*f*) Establish a system of protection and social insurance for women working in the informal sector and sensitise them to adhere to it;

(*g*) Introduce a minimum age for work and prohibit the employment of children below that age, and prohibit, combat and punish all forms of exploitation of children, especially the girl-child;

(*h*) Take the necessary measures to recognise the economic value of the work of women in the home;

(*i*) Guarantee adequate and paid pre and post-natal maternity leave in both the private and public sectors;

(*j*) Ensure the equal application of taxation laws to women and men;

(*k*) Recognise and enforce the right of salaried women to the same allowances and entitlements as those granted to salaried men for their spouses and children;

(*l*) Recognise that both parents bear the primary responsibility for the upbringing and development of children and that this is a social function for which the State and the private sector have secondary responsibility;

(*m*) Take effective legislative and administrative measures to prevent the exploitation and abuse of women in advertising and pornography.

Article 14

Health and Reproductive Rights

1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:

(*a*) The right to control their fertility;

(*b*) The right to decide whether to have children, the number of children and the spacing of children;

(*c*) The right to choose any method of contraception;

(*d*) The right to self protection and to be protected against sexually transmitted infections, including HIV/AIDS;

(*e*) The right to be informed on one’s health status and on the health status of one’s partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices;

(*f*) The right to have family planning education.

2. States Parties shall take all appropriate measures to:

   (*a*) Provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;

   (*b*) Establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;

   (*c*) Protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

Article 15

Right to Food Security

1. States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to:

   (*a*) Provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food;

   (*b*) Establish adequate systems of supply and storage to ensure food security.

Article 16

Right to Adequate Housing

Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, States Parties shall grant to women, whatever their marital status, access to adequate housing.

Article 17

Right to Positive Cultural Context

1. Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.
2. States Parties shall take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels.

Article 18

Right to a Healthy and Sustainable Environment

1. Women shall have the right to live in a healthy and sustainable environment.
2. States Parties shall take all appropriate measures to:

   (*a*) Ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels;

   (*b*) Promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women’s access to, and participation in their control;

   (*c*) Protect and enable the development of women’s indigenous knowledge systems;

   (*d*) Regulate the management, processing, storage and disposal of domestic waste;

   (*e*) Ensure that proper standards are followed for the storage, transportation and disposal of toxic waste.

Article 19

Right to Sustainable Development

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

(*a*) Introduce the gender perspective in the national development planning procedures;

(*b*) Ensure participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes;

(*c*) Promote women's access to and control over productive resources such as land and guarantee their right to property;

(*d*) Promote women's access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among women;

(*e*) Take into account indicators of human development specifically relating to women in the elaboration of development policies and programmes; and

(*f*) Ensure that the negative effects of globalisation and any adverse effects of the implementation of trade and economic policies and programmes are reduced to the minimum for women.

Article 20

Widows' Rights

1. States Parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions:

   (*a*) That widows are not subjected to inhuman, humiliating or degrading treatment;

   (*b*) That a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children;

   (*c*) That a widow shall have the right to remarry, and in that event, to marry the person of her choice.

Article 21

Right to Inheritance

1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.
2. Women and men shall have the right to inherit, in equitable shares, their parents' properties.

Article 22

Special Protection of Elderly Women

The States Parties undertake to:

(*a*) Provide protection to elderly women and take specific measures commensurate with their physical, economic and social needs as well as their access to employment and professional training;

(*b*) Ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.

Article 23

Special Protection of Women with Disabilities

The States Parties undertake to:

(*a*) Ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access to employment, professional and vocational training as well as their participation in decision-making;

(*b*) Ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.

Article 24

Special Protection of Women in Distress

The States Parties undertake to:

(*a*) Ensure the protection of poor women and women heads of families including women from marginalized population groups and provide an environment suitable to their condition and their special physical, economic and social needs;

(*b*) Ensure the right of pregnant or nursing women or women in detention by providing them with an environment which is suitable to their condition and the right to be treated with dignity.

Article 25

Remedies

States Parties shall undertake to:

(*a*) Provide for appropriate remedies to any woman whose rights or freedoms, as herein recognised, have been violated;

(*b*) Ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.

Article 26

Implementation and Monitoring

1. States Parties shall ensure the implementation of this Protocol at national level, and in their periodic reports submitted in accordance with Article 62 of the African Charter, indicate the legislative and other measures undertaken for the full realisation of the rights herein recognised.
2. States Parties undertake to adopt all necessary measures and in particular shall provide budgetary and other resources for the full and effective implementation of the rights herein recognised.

Article 27

Interpretation

The African Court on Human and Peoples' Rights shall be seized with matters of interpretation arising from the application or implementation of this Protocol.

Article 28

Signature, Ratification and Accession

1. This Protocol shall be open for signature, ratification and accession by the States Parties, in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the AU.

Article 29

Entry into Force

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15) instrument of ratification.
2. For each State Party that accedes to this Protocol after its coming into force, the Protocol shall come into force on the date of deposit of the instrument of accession.
3. The Chairperson of the Commission of the AU shall notify all Member States of the coming into force of this Protocol.

Article 30

Amendment and Revision

1. Any State Party may submit proposals for the amendment or revision of this Protocol.
2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission of the AU who shall transmit the same to the States Parties within thirty (30) days of receipt thereof.
3. The Assembly, upon advice of the African Commission, shall examine these proposals within a period of one (1) year following notification of States Parties, in accordance with the provisions of paragraph 2 of this article.
4. Amendments or revision shall be adopted by the Assembly by a simple majority.
5. The amendment shall come into force for each State Party, which has accepted it thirty (30) days after the Chairperson of the Commission of the AU has received notice of the acceptance.

Article 31

Status of the Present Protocol

None of the provisions of the present Protocol shall affect more favourable provisions for the realisation of the rights of women contained in the national legislation of States Parties or in any other regional, continental or international conventions, treaties or agreements applicable in these States Parties.

Article 32

Transitional Provisions

Pending the establishment of the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights shall be the seized with matters of interpretation arising from the application and implementation of this Protocol.

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AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

Adopted on 11 July 1990

Entry into force: 29 November 1999, in accordance with Article 47
Text: OAU Document CAB/LEG/153/rev.2

PREAMBLE

The African Member States of the Organization of African Unity, Parties to the present Charter entitled "African Charter on the Rights and Welfare of the Child",

Considering that the Charter of the Organization of African Unity recognizes the paramountcy of Human Rights and the African Charter on Human and People's Rights proclaimed and agreed that everyone is entitled to all the rights and freedoms recognized and guaranteed therein, without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status,

Recalling the Declaration on the Rights and Welfare of the African Child (AHG/ST.4 Rev.l) adopted by the Assembly of Heads of State and Government of the Organization of African Unity, at its Sixteenth Ordinary Session in Monrovia, Liberia, from 17 to 20 July 1979, recognized the need to take appropriate measures to promote and protect the rights and welfare of the African Child,

Noting with concern that the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he/she needs special safeguards and care,

Recognizing that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality, the child should grow up in a family environment in an atmosphere of happiness, love and understanding,

Recognizing that the child, due to the needs of his physical and mental development requires particular care with regard to health, physical, mental, moral and social development and requires legal protection in conditions of freedom, dignity and security,

Taking into consideration the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child,

Considering that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone,

Reaffirming adherence to the principles of the rights and welfare of the child contained in the declaration, conventions and other instruments of the Organization of African Unity and in the United Nations and in particular the United Nations Convention on the Rights of the Child; and the OAU Heads of State and Government's Declaration on the Rights and Welfare of the African Child.

Have agreed as follows:

PART I

RIGHTS AND DUTIES

CHAPTER I

RIGHTS AND WELFARE OF THE CHILD

Article 1

Obligation of States Parties

1. Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.
2. Nothing in this Charter shall affect any provisions that are more conductive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.
3. Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.

Article 2

Definition of a Child

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

Article 3

Non-Discrimination

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

Article 4

Best Interests of the Child

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

Article 5

Survival and Development

1. Every child has an inherent right to life. This right shall be protected by law.
2. States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.
3. Death sentence shall not be pronounced for crimes committed by children.

Article 6

Name and Nationality

1. Every child shall have the right from his birth to a name.
2. Every child shall be registered immediately after birth.
3. Every child has the right to acquire a nationality.
4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

Article 7

Freedom of Expression

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

Article 8

Freedom of Association

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

Article 9

Freedom of Thought, Conscience and Religion

1. Every child shall have the right to freedom of thought, conscience and religion.
2. Parents, and where applicable, legal guardians shall have a duty to provide guidance and direction in the exercise of these rights having regard to the evolving capacities, and best interests of the child.
3. States Parties shall respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.

Article 10

Protection of Privacy

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

Article 11

Education

1. Every child shall have the right to an education.
2. The education of the child shall be directed to:

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

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

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

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

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

(*f*) The promotion and achievements of African unity and solidarity;

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

(*h*) The promotion of the child's understanding of primary health care.

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

(*a*) Provide free and compulsory basic education;

(*b*) Encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;

(*c*) Make the higher education accessible to all on the basis of capacity and ability by every appropriate means;

(*d*) Take measures to encourage regular attendance at schools and the reduction of drop-out rates;

(*e*) Take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

4. States Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children's schools, other than those established by public authorities, which conform to such minimum standards may be approved by the State, to ensure the religious and moral education of the child in a manner with the evolving capacities of the child.

5. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.

6. States Parties to the present Charter shall have all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.

7. No part of this Article shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject to the observance of the principles set out in paragraph 1 of this Article and the requirement teal the education given in such institutions shall conform to such minimum standards as may be laid down by the States.

Article 12

Leisure, Recreation and Cultural Activities

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 13

Handicapped Children

1. Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.
2. States Parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development.
3. The States Parties to the present Charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access to.

Article 14

Health and Health Services

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:
   (*a*) To reduce infant and child mortality rate;
   (*b*) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
   (*c*) To ensure the provision of adequate nutrition and safe drinking water;
   (*d*) To combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;
   (*e*) To ensure appropriate health care for expectant and nursing mothers;
   (*f*) To develop preventive health care and family life education and provision of service;
   (*g*) To integrate basic health service programmes in national development plans;
   (*h*) To ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;
   (*i*) To ensure the meaningful participation of non-governmental organizations, local communities and the beneficiary population in the planning and management of a basic service programme for children;
   (*j*) To support through technical and financial means, the mobilization of local community resources in the development of primary health care for children.

Article 15

Child Labour

1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.
2. States Parties to the present Charter take all appropriate legislative and administrative measures to ensure the full implementation of this Article, which covers both the formal and informal sectors of employment

and having regard to the relevant provisions of the International Labour Organization's instruments relating to children, States Parties shall in particular:

(*a*) Provide through legislation, minimum wages for admission to every employment;

(*b*) Provide for appropriate regulation of hours and conditions of employment;

(*c*) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;

(*d*) Promote the dissemination of information on the hazards of child labour to all sectors of the community.

Article 16

Protection against Child Abuse and Torture

1. States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.
2. Protective measures under this Article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect.

Article 17

Administration of Juvenile Justice

1. Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.
2. States Parties to the present Charter shall in particular:

   (*a*) Ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;

   (*b*) Ensure that children are separated from adults in their place of detention or imprisonment;

   (*c*) Ensure that every child accused in infringing the penal law:

      (i) Shall be presumed innocent until duly recognized guilty;

      (ii) Shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;

      (iii) Shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;

      (iv) Shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;

   (*d*) Prohibit the press and the public from trial.
3. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.
4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

Article 18

Protection of the Family

1. The family shall be the natural unit and basis of society. It shall enjoy the protection and support of the State for its establishment and development.
2. States Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the even of its dissolution. In case of the dissolution, provision shall be made for the necessary protection of the child.
3. No child shall be deprived of maintenance by reference to the parents' marital status.

Article 19

Parental Care and Protection

1. Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child.
2. Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.
3. Where separation results from the action of a State Party, the State Party shall provide the child, or if appropriate, another member of the family with essential information concerning the whereabouts of the absent member or members of the family. States Parties shall also ensure that the submission of such a request shall not entail any adverse consequences for the person or persons in whose respect it is made.
4. Where a child is apprehended by a State Party, his parents or guardians shall, as soon as possible, be notified of such apprehension by that State Party.

Article 20

Parental Responsibilities

1. Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development the child and shall have the duty:

   (*a*) To ensure that the best interests of the child are their basic concern at all times;

   (*b*) To secure, within their abilities and financial capacities, conditions of living necessary to the child's development; and

   (*c*) To ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.

2. States Parties to the present Charter shall in accordance with their means and national conditions the all-appropriate measures:

   (*a*) To assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing;

   (*b*) To assist parents and others responsible for the child in the performance of child-rearing and ensure the development of institutions responsible for providing care of children; and

   (*c*) To ensure that the children of working parents are provided with care services and facilities.

Article 21

Protection against Harmful Social and Cultural Practices

1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

   (*a*) Those customs and practices prejudicial to the health or life of the child; and

   (*b*) Those customs and practices discriminatory to the child on the grounds of sex or other status.

2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

Article 22

Armed Conflicts

1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.

2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.

3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

Article 23

Refugee Children

1. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties.

2. States Parties shall undertake to cooperate with existing international organizations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives or an unaccompanied refugee child in order to obtain information necessary for reunification with the family.

3. Where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.

4. The provisions of this Article apply *mutatis mutandis* to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.

Article 24

Adoption

States Parties which recognize the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and they shall:

(*a*) Establish competent authorities to determine matters of adoption and ensure that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if necessary, the appropriate persons concerned have given their informed consent to the adoption on the basis of appropriate counselling;

(*b*) Recognize that inter-country adoption in those States who have ratified or adhered to the International Convention on the Rights of the Child or this Charter, may, as the last resort, be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(*c*) Ensure that the child affected by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(*d*) Take all appropriate measures to ensure that in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child;

(*e*) Promote, where appropriate, the objectives of this Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs;

(*f*) Establish a machinery to monitor the well-being of the adopted child.

Article 25

Separation from Parents

1. Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance;
2. States Parties to the present Charter:

   (*a*) Shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children;

   (*b*) Shall take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.
3. When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's up-bringing and to the child's ethnic, religious or linguistic background.

Article 26

Protection against Apartheid and Discrimination

1. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under *Apartheid* and in States subject to military destabilization by the *Apartheid* regime.
2. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under regimes practising racial, ethnic, religious or other forms of discrimination as well as in States subject to military destabilization.
3. States Parties shall undertake to provide whenever possible, material assistance to such children and to direct their efforts towards the elimination of all forms of discrimination and *Apartheid* on the African Continent.

Article 27

Sexual Exploitation

1. States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:

   (*a*) The inducement, coercion or encouragement of a child to engage in any sexual activity;

   (*b*) The use of children in prostitution or other sexual practices;

   (*c*) The use of children in pornographic activities, performances and materials.

Article 28

Drug Abuse

States Parties to the present Charter shall take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.

Article 29

Sale, Trafficking and Abduction

States Parties to the present Charter shall take appropriate measures to prevent:

(*a*) The abduction, the sale of, or traffic in children for any purpose or in any form, by any person including parents or legal guardians of the child;

(*b*) The use of children in all forms of begging.

Article 30

Children of Imprisoned Mothers

1. States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:

(*a*) Ensure that a non-custodial sentence will always be first considered when sentencing such mothers;

(*b*) Establish and promote measures alternative to institutional confinement for the treatment of such mothers;

(*c*) Establish special alternative institutions for holding such mothers;

(*d*) Ensure that a mother shall not be imprisoned with her child;

(*e*) Ensure that a death sentence shall not be imposed on such mothers;

(*f*) The essential aim of the penitentiary system will be the reformation, the integration of the mother into the family and social rehabilitation.

Article 31

Responsibility of the Child

Every child shall have responsibilities towards his family and society, the State and other legally recognized communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty;

(*a*) To work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;

(*b*) To serve his national community by placing his physical and intellectual abilities at its service;

(*c*) To preserve and strengthen social and national solidarity;

(*d*) To preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society;

(*e*) To preserve and strengthen the independence and the integrity of his country;

(*f*) To contribute to the best of his abilities at all times and at all levels, to the promotion and achievement of African Unity.

PART II

CHAPTER II

ESTABLISHMENT AND ORGANIZATION OF THE COMMITTEE ON THE RIGHTS AND WELFARE OF THE CHILD

Article 32

The Committee

An African Committee of Experts on the Rights and Welfare of the Child hereinafter called 'the Committee' shall be established within the Organization of African Unity to promote and protect the rights and welfare of the child.

Article 33

Composition

1. The Committee shall consist of 11 members of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child.
2. The members of the Committee shall serve in their personal capacity.
3. The Committee shall not include more than one national of the same State.

Article 34

Election

As soon as this Charter shall enter into force the members of the Committee shall be elected by secret ballot by the Assembly of Heads of State and Government from a list of persons nominated by the States Parties to the present Charter.

Article 35

Candidates

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

Article 36

1. The Secretary-General of the Organization of African Unity shall invite States Parties to the present Charter to nominate candidates at least six months before the elections.
2. The Secretary-General of the Organization of African Unity shall draw up in alphabetical order, a list of persons nominated and communicate it to the Heads of State and Government at least two months before the elections.

Article 37

Term of Office

1. The members of the Committee shall be elected for a tenure of five years and may not be re-elected, however the term of four of the members elected at the first election shall expire after two years and the term of six others, after four years.
2. Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity shall draw lots to determine the names of those members referred to in sub-paragraph 1 of this Article.

3. The Secretary-General of the Organization of African Unity shall convene the first meeting of the Committee at the Headquarters of the Organization within six months of the election of the members of the Committee, and thereafter the Committee shall be convened by its Chairman whenever necessary, at least once a year.

Article 38

Bureau

1. The Committee shall establish its own Rules of Procedure.
2. The Committee shall elect its officers for a period of two years.
3. Seven Committee members shall form the quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The working languages of the Committee shall be the official languages of the OAU.

Article 39

Vacancy

If a member of the Committee vacates his office for any reason other than the normal expiration of a term, the State which nominated that member shall appoint another member from among its nationals to serve for the remainder of the term – subject to the approval of the Assembly.

Article 40

Secretariat

The Secretary-General of the Organization of African Unity shall appoint a Secretary for the Committee.

Article 41

Privileges and Immunities

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

CHAPTER III

MANDATE AND PROCEDURE OF THE COMMITTEE

Article 42

Mandate

The functions of the Committee shall be:

(*a*) To promote and protect the rights enshrined in this Charter and in particular to:

- Collect and document information, commission inter-disciplinary assessment of situations on African problems in the fields of the rights and welfare of the child, organize meetings, encourage national and local institutions concerned with the rights and welfare of the child, and where necessary give its views and make recommendations to Governments;
- Formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa;
- Cooperate with other African, international and regional institutions and organizations concerned with the promotion and protection of the rights and welfare of the child.

(*b*) To monitor the implementation and ensure protection of the rights enshrined in this Charter.

(*c*) To interpret the provisions of the present Charter at the request of a State Party, an Institution of the Organization of African Unity or any other person or institution recognized by the Organization of African Unity, or any State Party.

(*d*) Perform such other task as may be entrusted to it by the Assembly of Heads of State and Government, Secretary-General of the OAU and any other organs of the OAU or the United Nations.

Article 43

Reporting Procedure

1. Every State Party to the present Charter shall undertake to submit to the Committee through the Secretary-General of the Organization of African Unity, reports on the measures they have adopted which give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights:

   (*a*) Within two years of the entry into force of the Charter for the State Party concerned; and

   (*b*) Thereafter, every three years.

2. Every report made under this Article shall:

   (*a*) Contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country; and

   (*b*) Shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter.

3. A State Party which has submitted a comprehensive first report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (a) of this Article, repeat the basic information previously provided.

Article 44

Communications

1. The Committee may receive communication, from any person, group or non-governmental organization recognized by the Organization of African Unity, by a Member State, or the United Nations relating to any matter covered by this Charter.

2. Every communication to the Committee shall contain the name and address of the author and shall be treated in confidence.

Article 45

Investigations by the Committee

1. The Committee may, resort to any appropriate method of investigating any matter falling within the ambit of the present Charter, request from the States Parties any information relevant to the implementation of the Charter and may also resort to any appropriate method of investigating the measures the State Party has adopted to implement the Charter.

2. The Committee shall submit to each Ordinary Session of the Assembly of Heads of State and Government every two years, a report on its activities and on any communication made under Article 44 of this Charter.

3. The Committee shall publish its report after it has been considered by the Assembly of Heads of State and Government.

4. States Parties shall make the Committee’s reports widely available to the public in their own countries.

CHAPTER IV

MISCELLANEOUS PROVISIONS

Article 46

Sources of Inspiration

The Committee shall draw inspiration from International Law on Human Rights, particularly from the provisions of the African Charter on Human and Peoples' Rights, the Charter of the Organization of African Unity, the Universal Declaration on Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights, and from African values and traditions.

Article 47

Signature, Ratification or Adherence

1. The present Charter shall be open to signature by all the Member States of the Organization of African Unity.
2. The present Charter shall be subject to ratification or adherence by Member States of the Organization of African Unity. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary-General of the Organization of African Unity.
3. The present Charter shall come into force 30 days after the reception by the Secretary-General of the Organization of African Unity of the instruments of ratification or adherence of 15 Member States of the Organization of African Unity.

Article 48

Amendment and Revision of the Charter

1. The present Charter may be amended or revised if any State Party makes a written request to that effect to the Secretary-General of the Organization of African Unity, provided that the proposed amendment is not submitted to the Assembly of Heads of State and Government for consideration until all the States Parties have been duly notified of it and the Committee has given its opinion on the amendment.
2. An amendment shall be approved by a simple majority of the States Parties.

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AFRICAN YOUTH CHARTER

Adopted by the seventh ordinary session of the Assembly, held
in Banjul, the Gambia on 2 July 2006

Preamble

Guided by the Constitutive Act of the African Union, the States Parties of the African Union, Parties to African Youth Charter,

Guided by the vision, hopes and aspirations of the African Union, inclusive of Africa's integration, the inherent dignity and inalienable rights afforded to all members of the human family as set out in the United Nations Universal Declaration of Human Rights (1948), the International Covenant of Civil and Political Rights (1976) and the International Covenant on Economic, Social and Cultural Rights (1976), and articulated for the African peoples through the African Charter on Human and People's Rights (1986),

Recalling the resolution of the Heads of State and government during the 1999 Algiers Summit for the development of the Pan-African Charter,

Fully attached to the virtues and values of African historical tradition and civilization which form the foundation for our concept of people's rights,

Recalling the historic injustices imposed on Africa such as slavery, colonization, depletion of natural resources and taking into account the firm will of African peoples for self-determination and the economic integration of Africa,

Convinced that Africa's greatest resource is its youthful population and that through their active and full participation, Africans can surmount the difficulties that lie ahead,

Bearing in mind the international Convention on the Elimination of All Forms of Discrimination Against Women (1979) and the Protocol to the African Charter on Human and Peoples' Rights relating to the Rights of Women in Africa (2003) and the progress achieved in eliminating gender discrimination, but ever cognisant of the obstacles that still prevent girls and women from fully participating in African society,

Reaffirming the need to take appropriate measures to promote and protect the rights and welfare of children as outlined in the Convention of the Rights of the Child (1989) and through the African Charter on the Rights and Welfare of the Child (1999),

Acknowledging the commitments already made towards the United Nations Millennium Development Goals (MDGs) and inviting the partners to reaffirm their support to advance the wellbeing of youth,

Recognising the efforts made by States Parties and civil societies to address the economic, social, educational, cultural and spiritual needs of youth,

Noting with concern the situation of African youth, many of whom are marginalized from mainstream society through inequalities in income, wealth and power, unemployment and underemployment, infected and affected by the HIV/AIDS pandemic, living in situations of poverty and hunger, experiencing illiteracy and poor quality educational systems, restricted access to health services and to information, exposure to violence including gender violence, engaging in armed conflicts and experiencing various forms of discrimination,

Recalling the United Nations World Programme of Action for Youth to the Year 2000 and beyond and the ten priority areas identified for youth (education, employment, hunger and poverty, health, environment, drug abuse, juvenile delinquency, leisure-time activities, girls and young women and youth participating in decision-making), and the five additional areas (HIV/AIDS, ICT, Inter-generational dialogue, ...) adopted at the 2005 UN General Assembly,

Recognising that youth are partners, assets and a prerequisite for sustainable development and for the peace and prosperity of Africa with a unique contribution to make to the present and to future development,

Considering the role that youth have played in the process of decolonisation, the struggle against apartheid and more recently in its efforts to encourage the development and to promote the democratic processes on the African Continent,

Reaffirming that the continuous cultural development of Africa rests with its youth and therefore requires their active and enlightened participation as espoused in the Cultural Charter for Africa,

Guided by the New Partnership for Africa's Development Strategic Framework for Youth Programme of 2004 that is working towards youth empowerment and development,

Acknowledging the increasing calls and the enthusiasm of youth to actively participate at local, national, regional and international levels to determine their own development and the advancement of society at large,

Acknowledging also the call in Bamako (2005) by the youth organisations across Africa to empower youth by building their capacity, leadership, responsibilities and provide access to information such that they can take up their rightful place as active agents in decision-making and governance,

Taking into consideration the inter-relatedness of the challenges facing youth and the need for cross-sectoral policies and programmes that attend to the needs of youth in a holistic manner,

Considering that the promotion and protection of the rights of youth also implies the performance of duties by youth as by all other actors in society,

Taking into consideration the needs and aspirations of young displaced persons, refugees and youth with special needs,

Have agreed as follows:

Definitions

"Chairperson" shall mean the Chairperson of the African Union Commission;

"**Charter**" shall mean the African Youth Charter;

"**Commission"** shall mean the Commission of African Union;

"Diaspora" shall mean peoples of African descent and heritage living outside the continent, irrespective of their citizenship and who remain committed to contribute to the development of the continent and the building of the African Union (DOC.EX.CL/164(VII));

"Member States" shall mean Member States of the African Union;

"Minors" shall mean young people aged 15 to 17 years subject to each country's laws;

"States Parties" shall mean Member States, which have ratified or acceded to the present Charter;

"Union" shall mean the African Union;

"**Youth**" for the purposes of this Charter, *youth or young people* shall refer to every person between the ages of 15 and 35 years.

Part 1: Rights and Duties

Article 1
Obligation of States Parties

1. States Parties of the African Union to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter.
2. States Parties shall undertake the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures that may be necessary to give effect to the provisions of the Charter.

Article 2
Non-discrimination

1. Every young person shall be entitled to the enjoyments of the rights and freedoms recognized and guaranteed in this Charter irrespective of their race, ethnic group, colour, sex, language, religion, political

or other opinion, national and social origin, fortune, birth or other status.

2. States Parties shall take appropriate measures to ensure that youth are protected against all forms of discrimination on the basis of status, activities, expressed opinions or beliefs.

3. States Parties shall recognize the rights of young people from ethnic, religious and linguistic marginalized groups or youth of indigenous origin, to enjoy their own culture, freely practice their own religion or to use their own language in community with other members of their group.

Article 3
Freedom of Movement

Every young person has the right to leave any country, including his/her own, and to return to his/her country.

Article 4
Freedom of Expression

1. Every young person shall be assured the right to express his or her ideas and opinions freely in all matters and to disseminate his or her ideas and opinions subject to the restrictions as are prescribed by laws.

2. Every young person shall have the freedom to seek, receive and disseminate information and ideas of all kinds, either orally, in writing, in print, in the form of art or through any media of the young person's choice subject to the restrictions as are prescribed by laws.

Article 5
Freedom of Association

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

2. Young people shall not be compelled to belong to an association.

Article 6
Freedom of Thought, Conscience and Religion

Every young person shall have the right to freedom of thought, conscience and religion.

Article 7
Protection of Private Life

No young person shall be subject to the arbitrary or unlawful interference with his/her privacy, residence or correspondence, or to attacks upon his/her honour or reputation.

Article 8
Protection of the Family

1. The family, as the most basic social institution, shall enjoy the full protection and support of States Parties for its establishment and development noting that the structure and form of families varies in different social and cultural contexts.

2. Young men and women of full age who enter into marriage shall do so based on their free consent and shall enjoy equal rights and responsibilities.

Article 9
Property

1. Every young person shall have the right to own and to inherit property.

2. States Parties shall ensure that young men and young women enjoy equal rights to own property.

3. States Parties shall ensure that youth are not arbitrarily deprived of their property including inherited property.

Article 10
Development

1. Every young person shall have the right to social, economic, political and cultural development with due regard to their freedom and identity and in equal enjoyment of the common heritage of mankind.

2. States Parties shall encourage youth organizations to lead youth programmes and to ensure the exercise of the right to development.

3. States Parties shall:

   (*a*) Encourage the media to disseminate information that will be of economic, political, social and cultural benefit to youth;

   (*b*) Promote the development of youth media for the dissemination of information to young people;

   (*c*) Encourage international co-operation in the production, exchange and dissemination of information from both national and international sources that are of economic, social and cultural value to youth;

   (*d*) Provide access to information and education and training for young people to learn their rights and responsibilities, to be schooled in democratic processes, citizenship, decision-making, governance and leadership such that they develop the technical skills and confidence to participate in these processes.

Article 11
Youth Participation

1. Every young person shall have the right to participate in all spheres of society.

2. States Parties shall take the following measures to promote active youth participation in society.

   They shall:

   (*a*) Guarantee the participation of youth in parliament and other decision-making bodies in accordance with the prescribed laws;

   (*b*) Facilitate the creation or strengthening of platforms for youth participation in decision-making at local, national, regional, and continental levels of governance;

   (*c*) Ensure equal access to young men and young women to participate in decision-making and in fulfilling civic duties;

   (*d*) Give priority to policies and programmes including youth advocacy and peer-to-peer programmes for marginalised youth, such as out-of-school and out-of-work youth, to offer them the opportunity and motivation to reintegrate into mainstream society;

   (*e*) Provide access to information such that young people become aware of their rights and of opportunities to participate in decision-making and civic life;

   (*f*) Institute measures to professionalize youth work and introduce relevant training programmes in higher education and other such training institutions;

   (*g*) Provide technical and financial support to build the institutional capacity of youth organisations;

   (*h*) Institute policy and programmes of youth voluntarism at local, national, regional and international levels as an important form of youth participation and as a means of peer-to-peer training;

   (*i*) Provide access to information and services that will empower youth to become aware of their rights and responsibilities;

   (*j*) Include youth representatives as part of delegations to ordinary sessions and other relevant meetings to broaden channels of communication and enhance the discussion of youth related issues.

Article 12
National Youth Policy

Each State Party shall develop a comprehensive and coherent national youth policy.

(*a*) The policy shall be cross-sectoral in nature considering the interrelatedness of the challenges facing young people;

(*b*) The development of a national youth policy shall be informed by extensive consultation with young people and cater for their active participation in decision-making at all levels of governance in issues concerning youth and society as a whole;

(*c*) A youth perspective shall be integrated and mainstreamed into all planning and decision-making as well as programme development. The appointment of youth focal points in government structures shall enable this process;

(*d*) Mechanisms to address these youth challenges shall be framed within the national development framework of the country;

(*e*) The policy shall provide guidelines on the definition of youth adopted and specify subgroups that shall be targeted for development;

(*f*) The policy shall advocate equal opportunities for young men and for young women;

(*g*) A baseline evaluation or situation analysis shall inform the policy on the priority issues for youth development;

(*h*) The policy shall be adopted by parliament and enacted into law;

(*i*) A national youth coordinating mechanism shall be set up and shall provide a platform as well as serve as a linking agent for youth organisations to participate in youth policy development as well as the implementation, monitoring and evaluation of related programmes;

(*j*) National programmes of action shall be developed that are time bound and that are connected to an implementation and evaluation strategy for which indicators shall be outlined;

(*k*) Such a programme of action shall be accompanied by adequate and sustained budgetary allocation.

Article 13
Education and Skills Development

1. Every young person shall have the right to education of good quality.
2. The value of multiple forms of education, including formal, non-formal, informal, distance learning and life-long learning, to meet the diverse needs of young people shall be embraced.
3. The education of young people shall be directed to:
   (*a*) The promotion and holistic development of the young person’s cognitive and creative and emotional abilities to their full potential;
   (*b*) Fostering respect for human rights and fundamental freedoms as set out in the provisions of the various African human and people’s rights and international human rights declarations and conventions;
   (*c*) Preparing young people for responsible lives in free societies that promote peace, understanding, tolerance, dialogue, mutual respect and friendship among all nations and across all groupings of people;
   (*d*) The preservation and strengthening of positive African morals, traditional values and cultures and the development of national and African identity and pride;
   (*e*) The development of respect for the environment and natural resources;
   (*f*) The development of life skills to function effectively in society and include issues such as HIV/AIDS, reproductive health, substance abuse prevention and cultural practices that are harmful to the health of young girls and women as part of the education curricula.

4. States Parties shall take all appropriate measures with a view to achieving full realisation of this right and shall, in particular:

   (*a*) Provide free and compulsory basic education and take steps to minimise the indirect costs of education;

   (*b*) Make all forms of secondary education more readily available and accessible by all possible means including progressively free;

   (*c*) Take steps to encourage regular school attendance and reduce dropout rates;

   (*d*) Strengthen participation in and the quality of training in science and technology;

   (*e*) Revitalise vocational education and training relevant to current and prospective employment opportunities and expand access by developing centres in rural and remote areas;

   (*f*) Make higher education equally accessible to all including establishing distance learning centres of excellence;

   (*g*) Avail multiple access points for education and skills development including opportunities outside of mainstream educational institutions e.g., workplace skills development, distance learning, adult literacy and national youth service programmes;

   (*h*) Ensure, where applicable, that girls and young women who become pregnant or married before completing their education shall have the opportunity to continue their education;

   (*i*) Allocate resources to upgrade the quality of education delivered and ensure that it is relevant to the needs of contemporary society and engenders critical thinking rather than rote learning;

   (*j*) Adopt pedagogy that incorporates the benefits of and trains young people in the use of modern information and communication technology such that youth are better prepared for the world of work;

   (*k*) Encourage youth participation in community work as part of education to build a sense of civic duty;

   (*l*) Introduce scholarship and bursary programmes to encourage entry into post-primary school education and into higher education outstanding youth from disadvantaged communities, especially young girls;

   (*m*) Establish and encourage participation of all young men and young women in sport, cultural and recreational activities as part of holistic development;

   (*n*) Promote culturally appropriate, age specific sexuality and responsible parenthood education;

   (*o*) Promote the equivalence of degrees between African educational institutions to enable the youth to study and work in States Parties;

   (*p*) Adopt preferential recruitment policies for African youth with specialised skills amongst States Parties.

5. Youth are determined to transform the continent in the fields of science and technology. Therefore they are committed to:

   (*a*) Promoting and using science and technology in Africa;

   (*b*) Conducting research towards science and technology.

6. States Parties should encourage youth to conduct research. In this regard, an African discoveries day should be established along with mechanism of awarding prizes at the continental level.

7. Enterprises that are located in Africa should establish partnerships with training institutions to contribute to technology transfer for the benefit of African students and researchers.

Article 14
Poverty Eradication and Socio-economic Integration of Youth

1. States Parties shall: Recognise the right of young people to a standard of living adequate for their holistic development.

2. Recognise the right of young people to be free from hunger and shall take individual or collective measures to:

   (*a*) Enhance the attractiveness of rural areas to young people by improving access to services and facilities such as educational and cultural services;

   (*b*) Train young people to take up agricultural, mineral, commercial and industrial production using contemporary systems and promote the benefits of modern information and communication technology to gain access to existing and new markets;

   (*c*) Provide grants of land to youth and youth organisations for socioeconomic development purposes;

   (*d*) Facilitate access to credit to promote youth participation in agricultural and other sustainable livelihood projects;

   (*e*) Facilitate the participation of young people in the design, implementation, monitoring and evaluation of national development plans, policies and poverty reduction strategies.

3. Recognise the right of every young person to benefit from social security, including social insurance.

   In this regard, States Parties shall take the necessary measures to achieve the full realisation of these rights in accordance with their national law especially when the security of food tenure, clothing, housing and other basic needs are compromised.

Article 15
Sustainable Livelihoods and Youth Employment

1. Every young person shall have the right to gainful employment.

2. Every young person shall have the right to be protected from economic exploitation and from performing work that is likely to be hazardous to or interfere with the young person's education, or to be harmful to the young person's health or holistic development.

3. States Parties shall address and ensure the availability of accurate data on youth employment, unemployment and underemployment so as to facilitate the prioritisation of the issue in national development programmes complemented by clear programmes to address unemployment.

4. States Parties shall take all appropriate measures with a view to achieving full realisation of this right to gainful employment and shall in particular:

   (*a*) Ensure equal access to employment and equal pay for equal work or equal value of work and offer protection against discrimination regardless of ethnicity, race, gender, disability, religion, political, social, cultural or economic background;

   (*b*) Develop macroeconomic policies that focus on job creation particularly for youth and for young women;

   (*c*) Develop measures to regulate the informal economy to prevent unfair labour practices where the majority of youth work;

   (*d*) Foster greater linkages between the labour market and the education and training system to ensure that curricula are aligned to the needs of the labour market and that youth are being trained in fields where employment opportunities are available or are growing;

   (*e*) Implement appropriately-timed career guidance for youth as part of the schooling and post-schooling education system;

   (*f*) Promote youth entrepreneurship by including entrepreneurship training in the school curricula, providing access to credit, business development skills training, mentorship opportunities and better information on market opportunities;

(*g*) Institute incentive schemes for employers to invest in the skills development of employed and unemployed youth;

(*h*) Institute national youth service programmes to engender community participation and skills development for entry into the labour market.

Article 16
Health

1. Every young person shall have the right to enjoy the best attainable state of physical, mental and spiritual health.

2. States Parties shall undertake to pursue the full implementation of this right and in particular shall take measures to:

(*a*) Make available equitable and ready access to medical assistance and health care especially in rural and poor urban areas with an emphasis on the development of primary health care;

(*b*) Secure the full involvement of youth in identifying their reproductive and health needs and designing programmes that respond to these needs with special attention to vulnerable and disadvantaged youth;

(*c*) Provide access to youth friendly reproductive health services including contraceptives, antenatal and post natal services;

(*d*) Institute programmes to address health pandemics in Africa such as HIV/AIDS, tuberculosis and malaria;

(*e*) Institute comprehensive programmes to prevent the transmission of sexually transmitted infections and HIV/AIDS by providing education, information, communication and awareness creation as well as making protective measures and reproductive health services available;

(*f*) Expand the availability and encourage the uptake of voluntary counselling and confidential testing for HIV/AIDS;

(*g*) Provide timely access to treatment for young people infected with HIV/AIDS including prevention of mother to child transmission, post rape prophylaxis, and anti-retroviral therapy and creation of health services specific for young people;

(*h*) Provide food security for people living with HIV/AIDS;

(*i*) Institute comprehensive programmes including legislative steps to prevent unsafe abortions;

(*j*) Take legislative steps such as banning advertising and increasing price in addition to instituting comprehensive preventative and curative programmes to control the consumption of tobacco, exposure to environmental tobacco smoke and alcohol abuse;

(*k*) Raise awareness amongst youth on the dangers of drug abuse through partnerships with youth, youth organisations and the community;

(*l*) Strengthen local, national, regional and international partnerships to eradicate the demand, supply and trafficking of drugs including using youth to traffic drugs;

(*m*) Provide rehabilitation for young people abusing drugs such that they can be re-integrated into social and economic life;

(*n*) Provide technical and financial support to build the institutional capacity of youth organisations to address public health concerns including issues concerning youth with disabilities and young people married at an early age.

Article 17
Peace and Security

1. In view of the important role of youth in promoting peace and non-violence and the lasting physical and psychological scars that result from involvement in violence, armed conflict and war, States Parties shall:

(*a*) Strengthen the capacity of young people and youth organisations in peace building, conflict prevention and conflict resolution through the promotion of intercultural learning, civic education, tolerance, human rights education and democracy, mutual respect for cultural, ethnic and religious diversity, the importance of dialogue and cooperation, responsibility, solidarity and international cooperation;

(*b*) Institute mechanisms to promote a culture of peace and tolerance amongst young people that discourages their participation in acts of violence, terrorism, xenophobia, racial discrimination, gender-based discrimination, foreign occupation and trafficking in arms and drugs;

(*c*) Institute education to promote a culture of peace and dialogue in all schools and training centres at all levels;

(*d*) Condemn armed conflict and prevent the participation, involvement, recruitment and sexual slavery of young people in armed conflict;

(*e*) Take all feasible measures to protect the civilian population, including youth, who are affected and displaced by armed conflict;

(*f*) Mobilise youth for the reconstruction of areas devastated by war, bringing help to refugees and war victims and promoting peace, reconciliation and rehabilitation activities;

(*g*) Take appropriate measures to promote physical and psychological recovery and social reintegration of young victims of armed conflict and war by providing access to education and skills development such as vocational training to resume social and economic life.

2. States parties shall ensure the protection of the youth against the ideology of genocide.

Article 18
Law Enforcement

1. Every young person accused or found guilty of having infringed the penal law shall have the right to be treated with humanity and with respect for the inherent dignity of the human person.

2. States Parties shall in particular:

(*a*) Ensure that youth who are detained or imprisoned or in rehabilitation centres are not subjected to torture, inhumane or degrading treatment or punishment;

(*b*) Ensure that accused minors shall be segregated from convicted persons and shall be subject to separate treatment appropriate to their status;

(*c*) Build rehabilitation facilities for accused and imprisoned youth who are still minors and house them separately from adults;

(*d*) Provide induction programmes for imprisoned youth that are based on reformation, social rehabilitation and re-integration into family life;

(*e*) Make provisions for the continued education and skills development of imprisoned young people as part of the restorative justice process;

(*f*) Ensure that accused and convicted young people are entitled to a lawyer.

Article 19
Sustainable Development and Protection of the Environment

1. States Parties shall ensure the use of sustainable methods to improve the lives of young people such that measures instituted do not jeopardise opportunities for future generations.

2. States Parties shall recognise the vested interest of young people in protecting the natural environment as the inheritors of the environment. In this regard, they shall:

(*a*) Encourage the media, youth organisations, in partnership with national and international organisations, to produce, exchange and disseminate information on environmental preservation and best practices to protect the environment;

(*b*) Train youth in the use of technologies that protect and conserve the environment;

(*c*) Support youth organisations in instituting programmes that encourage environmental preservation such as waste reduction, recycling and tree planting programmes;

(*d*) Facilitate youth participation in the design, implementation and evaluation of environmental policies including the conservation of African natural resources at local, national, regional and international levels;

(*e*) Develop realistic and flexible strategies for the regeneration of forests;

(*f*) Initiate intensive actions to prevent the expansion of deserts.

Article 20
Youth and Culture

1. States Parties shall take the following steps to promote and protect the morals and traditional values recognised by the community:

(*a*) Eliminate all traditional practices that undermine the physical integrity and dignity of women;

(*b*) Recognise and value beliefs and traditional practices that contribute to development;

(*c*) Establish institutions and programmes for the development, documentation, preservation and dissemination of culture;

(*d*) Work with educational institutions, youth organisations, the media and other partners to raise awareness of and teach and inform young people about African culture, values and indigenous knowledge;

(*e*) Harness the creativity of youth to promote local cultural values and traditions by representing them in a format acceptable to youth and in a language and in forms to which youth are able to relate;

(*f*) Introduce and intensify teaching in African languages in all forms of education as a means to accelerate economic, social, political and cultural development;

(*g*) Promote inter-cultural awareness by organising exchange programmes between young people and youth organisations within and across States Parties.

2. States Parties recognise that the shift towards a knowledge-based economy is dependent on information and communication technology, which in turn has contributed towards a dynamic youth culture and global consciousness. In this regard, they shall:

(*a*) Promote widespread access to information and communication technology as a means for education, employment creation, interacting effectively with the world and building understanding, tolerance and appreciation of other youth cultures;

(*b*) Encourage the local production of and access to information and communication technology content;

(*c*) Engage young people and youth organisations to understand the nexus between contemporary youth culture and traditional African culture, and enable them to express this fusion through drama, art, writing, music and other cultural and artistic forms;

(*d*) Help young people to use positive elements of globalisation such as science and technology and information and communication technology to promote new cultural forms that link the past to the future.

Article 21
Youth in the Diaspora

States Parties shall recognise the right of young people to live anywhere in the world. In this regard, they shall**:**

(*a*) Promote the equivalence of degrees between African educational institutions to enable the youth to study and work in States Parties;

(*b*) Promote the recruitment of African youth with specialized skills, in the spirit of African solutions for African problems, according to national policies and priorities;

(*c*) Facilitate youth organisations to liaise and collaborate with the African youth Diaspora;

(*d*) Establish structures that encourage and assist the youth in the Diaspora to return to and fully re-integrate into the social and economic life in Africa;

(*e*) Promote and protect the rights of young people living in the Diaspora;

(*f*) Encourage young people in the Diaspora to engage themselves in development activities in their country of origin.

Article 22
Leisure, Recreation, Sportive and Cultural Activities

1. Young people shall have the right to rest and leisure and to engage in play and recreational activities that are part of a health lifestyle as well as to participate freely in sport, physical education, drama, the arts, music and other forms of cultural life. In this regard, States Parties shall:

(*a*) Make provision for equal access for young men and young women to sport, physical education, cultural, artistic, recreational and leisure activities;

(*b*) Put in place adequate infrastructure and services in rural and urban areas for youth to participate in sport, physical education, cultural, artistic, recreational and leisure activities.

Article 23
Girls and Young Women

States Parties acknowledge the need to eliminate discrimination against girls and young women according to obligations stipulated in various international, regional and national human rights conventions and instruments designed to protect and promote women's rights. In this regard, they shall:

(*a*) Introduce legislative measures that eliminate all forms of discrimination against girls and young women and ensure their human rights and fundamental freedoms;

(*b*) Ensure that girls and young women are able to participate actively, equally and effectively with boys at all levels of social, educational, economic, political, cultural, civic life and leadership as well as scientific endeavours;

(*c*) Institute programmes to make girls and young women aware of their rights and of opportunities to participate as equal members of society;

(*d*) Guarantee universal and equal access to and completion of a minimum of nine years of formal education;

(*e*) Guarantee equal access to and completion of vocational, secondary and higher education in order to effectively address the existing imbalance between young men and women in certain professions;

(*f*) Ensure that education material and teaching practices are gender sensitive and encourage girls and young women to undertake studies in the sciences;

(*g*) Provide educational systems that do not impede girls and young women, including married and/or pregnant young women, from attending;

(*h*) Take steps to provide equal access to health care services and nutrition for girls and young women;

(*i*) Protect girls and young women from economic exploitation and from performing work that is hazardous, takes them away from education or that is harmful to their mental or physical health;

(*j*) Offer equal access to young women to employment and promote their participation in all sectors of employment;

(*k*) Introduce special legislation and programmes of action that make available opportunities to girls and young women including access to education as a prerequisite and a priority for rapid social and economic development;

(*l*) Enact and enforce legislation that protect girls and young women from all forms of violence, genital mutilation, incest, rape, sexual abuse, sexual exploitation, trafficking, prostitution and pornography;

(*m*) Develop programmes of action that provide legal, physical and psychological support to girls and young women who have been subjected to violence and abuse such that they can fully re-integrate into social and economic life;

(*n*) Secure the right for young women to maternity leave.

Article 24
Mentally and Physically Challenged Youth

1. States Parties recognise the right of mentally and physically challenged youth to special care and shall ensure that they have equal and effective access to education, training, health care services, employment, sport, physical education and cultural and recreational activities.

2. States Parties shall work towards eliminating any obstacles that may have negative implications for the full integration of mentally and physically challenged youth into society including the provision of appropriate infrastructure and services to facilitate easy mobility.

Article 25
Elimination of Harmful Social and Cultural Practices

States Parties shall take all appropriate steps to eliminate harmful social and cultural practices that affect the welfare and dignity of youth, in particular:

(*a*) Customs and practices that harm the health, life or dignity of the youth;

(*b*) Customs and practices discriminatory to youth on the basis of gender, age or other status.

Article 26
Responsibilities of Youth

Every young person shall have responsibilities towards his family and society, the State, and the international community. Youth shall have the duty to:

(*a*) Become the custodians of their own development;

(*b*) Protect and work for family life and cohesion;

(*c*) Have full respect for parents and elders and assist them anytime in cases of need in the context of positive African values;

(*d*) Partake fully in citizenship duties including voting, decision making and governance;

(*e*) Engage in peer-to-peer education to promote youth development in areas such as literacy, use of information and communication technology, HIV/AIDS prevention, violence prevention and peace building;

(*f*) Contribute to the promotion of the economic development of States Parties and Africa by placing their physical and intellectual abilities at its service;

(*g*) Espouse an honest work ethic and reject and expose corruption;

(*h*) Work towards a society free from substance abuse, violence, coercion, crime, degradation, exploitation and intimidation;

(*i*) Promote tolerance, understanding, dialogue, consultation and respect for others regardless of age, race, ethnicity, colour, gender, ability, religion, status or political affiliation;

(*j*) Defend democracy, the rule of law and all human rights and fundamental freedoms;

(*k*) Encourage a culture of voluntarism and human rights protection as well as participation in civil society activities;

(*l*) Promote patriotism towards and unity and cohesion of Africa;

(*m*) Promote, preserve and respect African traditions and cultural heritage and pass on this legacy to future generations;

(*n*) Become the vanguard of re-presenting cultural heritage in languages and in forms to which youth are able to relate;

(*o*) Protect the environment and conserve nature.

Article 27
Popularization of the Charter

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

Article 28
Duties of the African Union Commission

The African Union Commission shall ensure that States Parties respect the commitments made and fulfil the duties outlined in the present Charter by:

(*a*) Collaborating with governmental, non-governmental institutions and developmental partners to identify best practices on youth policy formulation and implementation and encouraging the adaptation of principles and experiences among States Parties;

(*b*) Inviting States Parties to include youth representatives as part of their delegations to the ordinary sessions of the African Union and other relevant meetings of the policy organs to broaden the channels of communication and enhance the discussion of youth-related issues;

(*c*) Instituting measures to create awareness of its activities and make information on its activities more readily available and accessible to youth;

(*d*) Facilitating exchange and co-operation between youth organisations across national borders in order to develop regional youth solidarity, political consciousness and democratic participation in collaboration with development partners.

PART 2: FINAL PROVISIONS

Article 29
Savings clause

Nothing in this Charter shall be taken as minimising higher standards and values contained in other relevant human rights instruments ratified by States concerned or rational law or policies.

Article 30
Signature, Ratification or Adherence

1. The present Charter shall be open to signature by all the Member States. The present Charter shall be subject to ratification or accession by Member States. The instrument of ratification or accession to the present Charter shall be deposited with the Chairperson of the Commission.

2. The present Charter shall come into force thirty (30) days after the deposit with the Chairperson of the Commission of the instruments of ratification of fifteen (15) Member States.

Article 31
Amendment and Revision of the Charter

1. The present Charter may be amended or revised if any Member State makes a written request to that effect to the Chairperson of the Commission, provided that the proposed amendment is not submitted to the Assembly of the Union for consideration until all Member States have been duly notified of it.

2. An amendment shall be approved by a simple majority of the Member States. Such amendment shall come into force for each Member States that has ratified or acceded to it on the date of the deposit of its instrument of ratification.

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ECONOMIC COMMUNITY OF WEST AFRICAN STATES CONVENTION ON EXTRADITION

Signed at Abuja on 6 August 1994

Text: ECOWAS Convention A/P1/8/94

PREAMBLE

The Governments of the Member States of the Economic Community of West African States,

Considering that speedy integration between Member States in every area of activity can best be achieved by seeking to create and sustain within the Community, such conditions as shall eliminate any threat to the security of their peoples;

Convinced that security can best be maintained if offenders are denied shelter from legal proceedings or penalties;

Desirous of working together to curb crime throughout the territory of the Community;

Determined thereof to endow national courts of law with an effective instrument for the arrest, judgment and enforcement of penalties against offenders fleeing the territory of one Member State to seek shelter in the territory of another;

Hereby agree as follows:

Article 1

Definitions

For the purpose of this Convention, the following definitions shall apply:

(*a*) "Community" means the Economic Community of West African States, referred to under Article 2 of the Treaty;

(*b*) "Executive Secretary" means the Executive Secretary of the Community, appointed under Article 18 paragraph 1 of the Treaty;

(*c*) "Member State" or "Member States" means a Member State or Member States of the Community;

(*d*) "Non-Member State" or "Non-Member States" means a State or States not a member of the Community which has acceded to this Convention;

(*e*) "Offence" or "Offences" means the fact or facts which constitute a criminal offence or criminal offences under the laws of the Member States;

(*f*) "Requested State" means a State to which a request for extradition under this Convention has been made;

(*g*) "Requesting State" means a State which has made a request for extradition under this Convention;

(*h*) "Sentence" means all penalties or measures incurred or pronounced as a result of a criminal offence and includes a sentence of imprisonment;

(*i*) "Treaty" means the Revised Treaty of the Economic Community of West African States signed in Cotonou on 24 July 1993.

Article 2

Principles of Extradition

1. States undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons within the territory of the requested State who are wanted for prosecution for an offence or who are wanted by the legal authorities of the requesting State for the carrying out of a sentence.

2. In the case of a minor aged under 18 at the time of the request for extradition, the competent authorities of the requesting and requested States shall take into consideration the interests of the minor and, where they think that extradition is likely to impair social rehabilitation, shall endeavour to reach an agreement on the most appropriate measures.

Article 3

Conditions for Extradition

1. Extradition shall be granted under certain circumstances in respect of offences punishable under the laws of the requesting State and of the requested State by deprivation of liberty for a minimum period of two years. Where there has been a conviction and a prison sentence has been imposed in the territory of the requesting State, extradition shall be granted only if a period of at least 6 months remains to be served.
2. If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting State and the requested State by deprivation of liberty but of which some do not meet the penalty requirements set out in paragraph 1 of this Article, the requested State shall have the right to grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.

Article 4

Political Offences

1. Extradition shall not be granted if the offence in respect of which it is requested is regarded as a political offence or as an offence connected with a political offence.
2. The same rule shall apply if there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of race, tribe, religion, nationality, political opinion, sex or status.
3. Implementation of this Article shall not affect any prior or future obligations assumed by States under the provisions of the Geneva Convention of 12 August 1949 and its additional Protocols and other multilateral international conventions.

Article 5

Inhuman or Degrading Treatment or Punishment

Extradition shall not be grated if the person whose extradition is requested has been, or would be, subjected to torture or cruel, inhuman or degrading treatment or punishment in the requesting State or if that person has not received, or would not receive the minimum guarantees in criminal proceedings, as contained in Article 7 of the African Charter on Human and People's Rights.

Article 6

Humanitarian Consideration

The requested State may refuse to extradite a person if extradition would be incompatible with humanitarian considerations in view of age or health.

Article 7

Military Offences

Extradition for offences under military law which are not offences under ordinary criminal law shall not be granted under this Convention.

Article 8

Ad Hoc Court or Tribunal

Extradition may be refused if the person whose extradition is requested has been sentenced, or would be liable to be tried, in the requesting State by an extraordinary or *Ad Hoc* Court or Tribunal.

Article 9

Fiscal Offences

For offences in connection with taxes, duties and customs; extradition shall take place between the States in accordance with the provisions of this Convention if the offence under the law of the requested State, corresponds to an offence of the same type of tax, duty or custom regulation.

Article 10

Nationals

1. Extradition of a national of the Requested State shall be a matter of discretion for that State. Nationality shall be determined at the time of the offence for which extradition is being requested.
2. The Requested State which does not extradite its nationals, shall at the request of the requesting State submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted, without charge, through the diplomatic channel or by such other means as shall be agreed upon by the States concerned. The requesting State shall be informed of the result of its request.

Article 11

Place of Commission

1. The requested State may refuse to extradite a person claimed for an offence which is regarded by its law as having been committed in whole or in part in its territory or in a place treated as its territory.
2. When the offence for which extradition is requested has been committed outside the territory of the requesting State, extradition may only be refused if the law of the requested State does not allow prosecution for the same category of offence when committed outside the territory of the latter or does not allow extradition for the offence concerned.

Article 12

Pending Proceedings for the Same Offences

The requested State may refuse to extradite the person claimed if the competent authorities of such State are proceeding against that person in respect of the offence or offences for which extradition if requested.

Article 13

Double Jeopardy

1. Extradition shall not be grated if final judgment has been passed by the competent authorities of the requested State upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the requested State have decided either not to institute or to terminate proceedings in respect of the same offence or offences.
2. If new proceedings are instituted by the requesting State against the person in respect of whom the requested State has terminated proceedings for the offence for which extradition was granted, any period passed in remand or in custody in the requested State shall be taken into consideration when deciding the penalty involving deprivation of liberty in the requesting State.

Article 14

Judgement in Absentia

1. When a request is made for the extradition of a person for the purpose of carrying out a sentence imposed by a decision rendered in absentia, the requested State may refuse to extradite if, in its opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defence recognized as due to everyone charged with criminal offence. However, extradition shall be granted if the requesting state gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which

safeguards the rights of defence. This decision will authorize the requesting State either to enforce the judgment in question if the convicted person does not make an opposition or, if he does, to take proceedings against the person extradited.

2. When the requested State informs the person whose extradition has been requested of the judgment rendered against him in absentia the requesting State shall not regard this communication as a formal notification for the purposes of the criminal procedure in that State.

Article 15

Lapse of Time

1. Extradition shall not be granted when the person claimed has, according to the law of either the requesting or the requested State become immune by reason of lapse of time from prosecution or punishment, at the time of receipt of the request for extradition by the requested State.

2. When determining whether, according to the law of the requested State, the person claimed has become immune by reason of lapse of time from prosecution or punishment, the competent authorities of the said State shall take into consideration any acts of interruption and any events suspending time-limitation occurring in the requesting State in so far as acts or events of the same nature have an identical effect in the requested State.

Article 16

Amnesty

Extradition shall not be granted for an offence in respect of which an amnesty has been declared in the requested State and which that State had competence to prosecute under its own criminal law.

Article 17

Capital Punishment

If the offence for which extradition is requested is punishable by death under the law of the requesting State, and if in respect of such offence the death penalty is not provided for by the law of the requested State, extradition may not be granted.

Article 18

The Request and Supporting Documents

1. The request shall be in writing and shall be addressed by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State. However, use of the diplomatic channel is not excluded. Other means of communication may be arranged by direct agreement between two or more States.

2. The request shall be supported by:

   (*a*) The original or an authenticated copy of the conviction and sentence immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting State;

   (*b*) A statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and

   (*c*) An authenticated copy of the relevant law, indicating the sentence which may be or has been imposed for the offence, and as accurate a description as possible of the person claimed together with any other information which will help to establish his identity, nationality and whereabouts.

Article 19

Supplementary Information

If the information communicated by the requesting State is found to be insufficient to allow the requested State to make a decision in pursuance of this Convention, the latter State shall request the necessary supplementary information and may fix a reasonable time-limit for the receipt thereof.

Article 20

Rule of Speciality

1. A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom, except in the following cases:

   (*a*) When the State which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 18 and a legal record of any statements made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provision of this Convention;

   (*b*) When that person, having had an opportunity to leave the territory of the State to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.

2. When the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

Article 21

Re-Extradition to a Third State

Except as provided for in Article 20, paragraph 1(b), the requesting State shall not, without the consent of the requested State surrender to another State or to a third State a person surrendered to the requesting State and sought by the said other State or third State in respect of offences committed before his surrender. The requested State may request this production of the documents mentioned in Article 18.

Article 22

Provisional Arrest

1. In case of urgency the competent authorities of the requesting State may request the provisional arrest of the person sought. The competent authorities of the requested State shall decide the matter in accordance with its law pending the request for extradition.

2. The request for provisional arrest shall state that one of the documents mentioned in Article 18 paragraph 2(a), exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested, when and where such offence was committed, the penalty incurred or provided for, or the sentence pronounced. The request shall also, if possible, indicate the whereabouts of the person sought, and as far as possible provide a description of the person.

3. A request for provisional arrest shall be sent to the competent authorities of the requested State either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organization (Interpol) or by any other means affording evidence in writing or accepted by the requested State. The requesting State shall be informed without delay of the result of its request.

4. Provisional arrest may be terminated if, within a period of twenty (20) days after arrest, the requested State has not received the request for extradition and the documents mentioned in Article 18. The possibility of provisional release at any time is not excluded but the requested State shall take any measures which it considers necessary to prevent the escape of the person sought.

5. Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.

6. The time spent in detention by an individual solely for the purpose of extradition in the territory of the requested State or of a State of transit shall be taken into consideration when deciding the penalty involving deprivation of liberty or detention which he has to serve for the offence for which he was extradited.

Article 23

Conflicting Requests

If extradition is requested concurrently by more than one State, either for the same offence of for different offences, the requested State shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another State.

Article 24

Surrender of the Person to be Extradited

1. The requested State shall inform the requesting State by the means mentioned in Article 18 paragraph 1 of its decision with regard to the extradition.
2. Reasons shall be given for any complete or partial rejection.
3. If the request is agreed to, the requesting State shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.
4. Subject to the provisions of paragraph 5 of this Article, if the person claimed has not been removed on the appointed date, he may be released after the expiry of 15 days and shall in any case be released after the expiry of 30 days. The requested State may refuse to extradite him for the same offence.
5. If circumstances beyond its control prevent a State from surrendering or taking over the person to be extradited, it shall notify the other State. The two States shall agree on a new date for surrender and the provisions of paragraph 4 of this Article shall apply.

Article 25

Postponed or Conditional Surrender

1. The requested State may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against or, if he has already been convicted, in order that he may serve his sentence in the territory of that State for an offence other than that for which extradition is requested.
2. The requested State may, instead of postponing surrender, temporarily surrender the person claimed to the requesting State in accordance with conditions to be determined by mutual agreement between the States.

Article 26

Handing Over of Property

1. The requested State shall, in so far as its law permits and at the request of the requesting State, seize and hand over property:
   (*a*) Which may be required as evidence; or
   (*b*) Which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.
2. The property mentioned in paragraph 1 of this Article shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.
3. When the said property is liable to seizure or confiscation in the territory of the requested State, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.

4. Any rights which the requested State or *bona fide* third parties may have acquired in the said property shall be preserved. Where these rights exist the property shall be returned without charge to the requested State as soon as possible after the trial.

Article 27

Transit

1. Transit through the territory of one of the States shall be granted on submission of a request by the means mentioned in Article 18 paragraph 1, provided that the offence concerned is not considered by the State requested to grant transit as an offence of a political or military character having regard to Articles 4 and 7 of this Convention.
2. Transit of a national of the country requested to grant transit may be refused.
3. Subject to the provisions of paragraph 4 of this Article, it shall be necessary to produce the documents mentioned in Article 18 paragraph 2.
4. If air transport is used, the following provisions shall apply:
   (*a*) When it is not intended to land, the requesting State shall notify the State over whose territory the flight is to be made and shall certify that one of the documents mentioned in Article 18 paragraph 2(a) exists. In the case of an unscheduled landing, such notification shall have the effect of a request for provisional arrest as provided for in Article 22 and the requesting State shall submit a formal request for transit;
   (*b*) When it is intended to land, the requesting State shall submit a formal request for transit.
5. A State may, however, at the time of signature or of the deposit of its instrument of ratification of this Convention, declare that it will only grant transit of persons on some or all of the conditions on which it grants extradition. In that event, reciprocity may be applied.
6. The transit of the extradited person shall not be carried out through any territory where there is a reason to believe that his life or his freedom may be threatened by reason of his race, tribe, religion, nationality, political opinion or sex.

Article 28

Procedure

1. Except where this Convention otherwise provides, the procedure with regard to extradition and provisional arrest shall be governed solely by the law of the requested State.
2. States, whilst providing for a speedy extradition procedure, shall ensure that the person whose extradition has been requested has the right to be heard by a judicial authority and to be assisted by the lawyer of his own choice and shall submit to a judicial authority the control of his custody for the purpose of extradition as well as the conditions of his extradition.

Article 29

Language to be Used

The documents to be produced shall be in the language of the requesting or requested States. The requested State may require a translation into one of the official languages of ECOWAS to be chosen by it.

Article 30

Expenses

1. Expenses incurred in the territory of the requested State by reason of extradition shall be borne by that State.
2. Expenses incurred in conveying the person from the territory of the requested State shall be borne by the requesting State.

3. Expenses incurred by reason of transit through the territory of a State requested to grant transit shall be borne by the requesting State.

Article 31

Reservations

1. Any State may, when signing this Convention or when depositing its instrument or ratification, make a reservation in respect of any provision or provisions of the Convention.
2. Any State which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Executive Secretary of ECOWAS.
3. A State which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another State save in so far as it has itself accepted the provision.

Article 32

Relations between this Convention and Other Bilateral Agreements

1. This Convention shall supersede the provisions of any Treaties, Conventions or Agreements on extradition concluded between two or several States except as provided under paragraph 3, Article 4 of this Convention.
2. States may conclude between themselves bilateral or multilateral agreements with one another only on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

Article 33

Accession

1. After entry into force of this Convention, the Council of Ministers may invite, by unanimous decision, non-Member States of the Community to accede to this Convention.
2. When a non-Member State of the Community requests to be invited to accede to this Convention, it shall submit this request to the Executive Secretary, who shall immediately notify all other Member States.
3. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Executive Secretariat.

Article 34

Amendment and Review

1. Any State may submit proposals for the amendment or review of this Convention.
2. All proposals shall be submitted to the Executive Secretary, who shall forward them to Member States within thirty (30) days of receipt. Proposed amendments or reviews shall be considered by the Authority upon expiry of the thirty (30) days notice period given to Member States.

Article 35

Denunciation

Any State may denounce this Convention in so far as it is concerned, by giving notice to the Executive Secretary of the Community. Denunciation shall take effect six months after the date when the Executive Secretary received such notification.

Article 36

Entry into Force and Deposit

1. This Convention shall enter into force upon ratification by at least nine (9) signatory States, in conformity with the constitutional provisions of each signatory State.
2. This Convention and all the instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies to all Member States, notify them of the dates of deposit of the instruments of ratification and register this Convention with the Organization of African Unity, the United Nations and any other organization as may be determined by the Council of Ministers of the Community.

IN WITNESS WHEREOF, We, the Heads of State and Government of the Economic Community of West African States have signed this Convention.

DONE at Abuja, this 6th day of August 1994 in a single original in the English, French and Portuguese languages all texts being equally authentic.

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SOUTH AFRICAN DEVELOPMENT COMMUNITY PROTOCOL ON EXTRADITION

Signed at Luanda on 3 October 2002

PREAMBLE

We, the Heads of State or Government of:

The Republic of Angola
The Republic of Botswana
The Democratic Republic of the Congo
The Kingdom of Lesotho
The Republic of Malawi
The Republic of Mauritius
The Republic of Mozambique
The Republic of Namibia
The Republic of Seychelles
The Republic of South Africa
The Kingdom of Swaziland
The United Republic of Tanzania
The Republic of Zambia
The Republic of Zimbabwe

Noting with concern the escalation of crime at both national and transnational levels, and that the increased easy access to free cross border movement enables offenders to escape arrest, prosecution, conviction and punishment;

Convinced that the speedy integration amongst State Parties in every area of activity can best be achieved by seeking to create and sustain within the Southern African Development Community, such conditions as shall eliminate any threat to the security of our people;

Desiring to make our co-operation in the prevention and suppression of crime more effective by concluding an agreement on extradition;

Bearing in mind that the establishment of a multilateral agreement on extradition will greatly enhance the control of crime in the Community;

Hereby agree as follows*:*

Article 1

Definitions

1. In this Protocol, terms and expressions defined in Article 1 of the Treaty shall bear the same meaning unless the context otherwise requires.

2. In this Protocol, unless the context otherwise requires:

   (*a*) "Confiscation" means, a permanent deprivation of property by order of a court or other competent authority and includes forfeiture where applicable;

   (*b*) "Offence" means a fact or facts which constitute a crime under the laws of State Parties;

   (*c*) "Property" means assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible and any document or legal instrument evidencing title to, or interest in such assets;

   (*d*) "Requested State" means a State being requested to extradite or to provide assistance in terms of this Protocol;

   (*e*) "Requesting State" means a State making a request for extradition or assistance in terms of this Protocol;

(*f*) "Sentence" means any penalty or measure imposed or pronounced by a court of competent jurisdiction as a result of a criminal conviction;

(*g*) "State Party" means a Member State which has ratified or acceded to this Protocol;

(*h*) "Third State" means any State other than the Requested State or Requesting State.

Article 2

Obligation to extradite

Each State Party agrees to extradite to the other, in accordance with the provisions of this Protocol and their respective domestic law, any person within its jurisdiction who is wanted for prosecution or the imposition or enforcement of a sentence in the Requesting State for an extraditable offence.

Article 3

Extraditable offences

1. For the purpose of this Protocol, extraditable offence are offences that are punishable under the laws of both State Parties by imprisonment or other deprivation of liberty for a period of at least one year, or by a more severe penalty. Where the request for extradition relates to a person wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition may be refused if a period of less than six months of such sentence remains to be served.
2. For the purposes of this Article, in determining what constitutes an offence against the laws of the Requested State it shall not matter whether:
   (*a*) The laws of the State Parties place the conduct constituting the offence within the same category of offence or describe the offence by the same terminology; and
   (*b*) The totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the State Party, the constituent elements of the offence differ.
3. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control or other revenue matters, extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, customs duty or exchange regulation of the same kind as the law of the Requesting State.
4. An offence is extraditable whether or not the conduct on which the Requesting State bases its request occurred in the territory over which it has jurisdiction. However, where the law of the Requested State does not provide for jurisdiction over an offence in similar circumstances, the Requested State may, in its discretion, refuse extradition on this basis.
5. Extradition may be granted pursuant to the provisions of this Protocol in respect of any offence provided that:
   (*a*) It was an offence in the Requesting State at the time of the conduct constituting the offence; and
   (*b*) The conduct alleged would, if it had taken place in the Requested State at the time of making the request for extradition, have constituted an offence against the law of the Requested State.
6. If the request for extradition relates to several separate offences, each of which is punishable under the laws of both State Parties, but some of which do not meet the other requirements of paragraph 1, the Requested State may grant extradition for such offences provided that the person is to be extradited for at least one extraditable offence.

Article 4

Mandatory grounds for refusal to extradite

Extradition shall be refused in any of the following circumstances:

(*a*) If the offence for which extradition is requested is of a political nature. An offence of a political nature shall not include any offence in respect of which the State Parties have assumed an obligation, pursuant to any multilateral convention, to take prosecutorial action where they do not extradite, or any other offence that the State Parties have agreed is not an offence of a political character for the purposes of extradition;

(*b*) If the Requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion, sex or status or that the person's position may be prejudiced for any of those reasons;

(*c*) If the offence for which extradition is requested constitutes an offence under military law, which is not an offence under ordinary criminal law;

(*d*) If there has been a final judgment rendered against the person in the Requested State or a Third State in respect of the offence for which the person's extradition is requested;

(*e*) If the person whose extradition is requested has, under the law of either State Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;

(*f*) If the person whose extradition is requested has been, or would be subjected in the Requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in Article 7 of the African Charter on Human and Peoples Rights; and

(*g*) If the judgment of the Requesting State has been rendered in absentia and the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and he or she has not had or will not have the opportunity to have the case retried in his or her presence.

Article 5

Optional grounds for refusal

Extradition may be refused in any of the following circumstances:

(*a*) If the person whose extradition is requested is a national of the Requested State. Where extradition is refused on this ground, the Requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person in respect of the offence for which extradition had been requested;

(*b*) If a prosecution in respect of the offence for which extradition is requested is pending in the Requested State against the person whose extradition is requested;

(*c*) If the offence for which extradition is requested carries a death penalty under the law of the Requesting State, unless that State gives such assurance, as the Requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out. Where extradition is refused on this ground, the Requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested;

(*d*) If the offence for which extradition is requested has been committed outside the territory of either State Party and the law of the Requested State does not provide for jurisdiction over such an offence committed outside its territory in comparable circumstances;

(*e*) If the offence for which extradition is requested is regarded under the laws of the Requested State as having been committed in whole or in part within that State. Where extradition is refused on this ground, the Requested State shall, if the other State Party so requests submit the case to its competent

authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested; and

(*f*) If the Requested State, while also taking into account the nature of the offence and the interest of the Requesting State, considers that, in the circumstances of the case, the extradition of that person would be incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

Article 6

Channels of communication and required documents

1. A request for extradition shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through the diplomatic channel, directly between the Ministries of Justice or any other authority designated by the State Parties.

2. A request for extradition shall be accompanied by the following:

(*a*) In all cases,

(*b*) As accurate as possible, a description of the person sought, together with any other information that may help to establish that person's identity, nationality and location;

(*c*) The text of the relevant provision of the law creating the offence and, where necessary, a statement of the law relevant to the offence and a statement of the penalty that can be imposed for the offence;

(*d*) If the person is accused of an offence, by a warrant issued by a court or other competent judicial authority for the arrest of the person or a certified copy of that warrant, a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the alleged offence, including an indication of the time and place of its commission;

(*e*) If the person has been convicted of an offence, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by the original or certified copy of the judgment or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable, and the extent to which the sentence remains to be served;

(*f*) If the person has been convicted of an offence in his or her absence, in addition to the documents set out in paragraph 2 (c) of this Article, by a statement as to the legal means available to the person to prepare his or her defence or to have the case retried in his or her presence;

(*g*) If the person has been convicted of an offence but no sentence has been imposed, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by a document setting out the conviction and a statement affirming that there is an intention to impose a sentence; and

(*h*) The documents submitted in support of a request for extradition shall be accompanied by a translation into the language of the Requested State or in another language acceptable to that State.

Article 7

Authentication of documents

1. Where the laws of the Requested State require authentication, documents shall be authenticated in accordance with the domestic laws of the Requesting State.

2. Authentication procedures of State Parties shall be communicated to the Secretariat.

Article 8

Additional information

If the Requested State considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Protocol to enable extradition to be granted, that State may request that additional information be furnished within such time as it specifies.

Article 9

Simplified extradition procedure

The Requested State, if not precluded by its laws, may grant extradition after receipt of a request for provisional arrest, provided that the person sought explicitly consents, before a competent authority, to be extradited.

Article 10

Provisional arrest

1. In all cases, the competent authority of the Requesting State may apply by any means which allows for a written record for the provisional arrest of the person sought.
2. A request for provisional arrest shall be sent to the competent authority of the Requested State either through the diplomatic channel or directly by post or telegraph or through the International Criminal Police Organization (INTERPOL) or by any other means affording evidence in writing or accepted by the Requested State.
3. An application for provisional arrest shall include the following:
   (*a*) Such information, as may be available, about the description, identity, location and nationality of the person sought;
   (*b*) A statement that a request for extradition will follow;
   (*c*) A description of the nature of the offence and applicable penalty, with a brief summary of the facts of the case, including the date and place the offence was committed;
   (*d*) A statement attesting to the existence of a warrant of arrest or a statement of the punishment that can be or has been imposed for the offence to which this Protocol applies; and
   (*e*) Any other information which would justify provisional arrest in the Requested State.
4. The Requested State shall decide on the application in accordance with its laws and communicate its decision to the Requesting State without delay.
5. Provisional arrest shall be terminated if the Requested State has not received the request for extradition and supporting documents through the channel provided for in Article 6 within thirty (30) days after the arrest. The competent authorities of the Requested State, insofar as it is permitted by the law of that State, may extend that delay with regard to the receipt of the documents. However, the person sought may be granted bail at any time subject to the conditions considered necessary to ensure that the person does not leave the country; and
6. The provisions of paragraph (a) shall be without prejudice to the right of the person so arrested to be released in accordance with the domestic law of the Requested State.
7. The release of the person pursuant to paragraph 5 of this Article shall not prevent re-arrest and institution of proceedings with a view to extraditing the person sought if the request and supporting documents are subsequently received.

Article 11

Concurrent requests

1. Where requests are received from two or more States for the extradition of the same person either for the same offence or for different offences, the Requested State shall determine to which of those States the person is to be extradited and shall notify those States of its decision.
2. In determining to which State a person is to be extradited, the Requested State shall have regard to all the relevant circumstances, and, in particular, to:
   (*a*) If the requests relate to different offences, the relative seriousness of those offences;
   (*b*) The time and place of commission of each offence;

(*c*) The respective dates of the requests;

(*d*) The nationality of the person to be extradited;

(e) The ordinary place of residence of the person to be extradited;

(*f*) Whether the requests were made pursuant to this Protocol;

(*g*) The interests of the respective States; and

(*h*) The nationality of the victim.

Article 12

Decision on a request

The Requested State shall deal with the request for extradition pursuant to procedures provided by its own laws, and shall promptly communicate its decision to the Requesting State.

Article 13

Surrender of a person

1. Upon being informed that extradition has been granted, the State Parties shall, without undue delay, arrange for the surrender of the person sought and the Requested State shall inform the Requesting State of the length of time for which the person sought was detained with a view to surrender.
2. The person shall be removed from the territory of the Requested State within such reasonable period as the Requested State specifies and, if the person is not removed within that period, the Requested State may release the person and may refuse to extradite that person for the same offence.
3. If circumstances beyond its control prevent either State Party from surrendering or removing the person to be extradited, it shall notify the other State Party. The two State Parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 2 of this Article shall apply.

Article 14

Postponed or conditional surrender

1. The Requested State may, after making a decision on the request for extradition, postpone the surrender of a person sought, in order to proceed against that person, or, if that person has already been convicted, in order to enforce a sentence imposed for an offence other than that for which extradition is sought. In such a case, the Requested State shall advise the Requesting State accordingly.
2. The Requested State may, instead of postponing surrender, temporarily surrender the person sought to the Requesting State in accordance with conditions to be determined between the State Parties.

Article 15

Surrender of property

1. To the extent permitted under the laws of the Requested State and subject to the rights of third parties, which shall be duly respected, all property found in the Requested State that has been acquired as a result of the offence and that may be required as evidence shall, if the Requesting State so requests, be surrendered if extradition is granted.
2. The said property may, if the Requesting State so requests, be surrendered to the Requesting State even if the extradition agreed to cannot be carried out.
3. When the said property is liable to seizure or confiscation in the Requested State, it may retain it or temporarily hand it over.
4. Where the laws of the Requested State or the protection of the rights of third parties so require, any property so surrendered shall be returned to the Requested State after the completion of the proceedings, if that State so requests.

Article 16

Rule of specialty

1. A person extradited under this Protocol shall not be proceeded against, sentenced, detained, re-extradited to a Third State, or subjected to any other restriction of personal liberty in the territory of the Requesting State for any offence committed before surrender other than:

   (*a*) An offence for which extradition was granted;

   (*b*) Any other offence in respect of which the Requested State and the person extradited consents to. Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance with the present Protocol.

2. A request for the consent of the Requested State under this Article shall be accompanied by the documents mentioned in Article 6 of this Protocol and a legal record of any statement made by the extradited person with respect to the offence.

3. Paragraph 1 of this Article shall not apply if the person has had an opportunity to leave the Requesting State and has not done so within thirty (30) days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the Requesting State after leaving it.

Article 17

Transit

1. Where a person is to be extradited to a State Party from a Third State through the territory of the other State Party, the State Party to which the person is to be extradited shall request the other State Party to permit the transit of that person through its territory. This does not apply where air transport is used and no landing in the territory of the other State Party is scheduled.

2. Upon receipt of such a request, which shall contain relevant information, the Requested State shall deal with this request pursuant to procedures provided by its own laws. The Requested State shall grant the request expeditiously unless its essential interest would be prejudiced thereby.

3. The State of transit shall ensure that legal provisions exist that would enable the detention of the person in custody during transit.

4. In the event of an unscheduled landing, the State Party to be requested to permit transit may, at the request of the escorting officer, hold the person for such reasonable period as may be permitted by its laws, pending receipt of the transit request to be made in accordance with paragraph 1 of this Article.

Article 18

Expenses

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition.

2. The Requested State shall bear the expenses incurred in its territory or jurisdiction in the arrest and detention of the person whose extradition is sought, and the maintenance in custody of the person until that person is surrendered to the Requesting State.

3. If during the execution of a request, it becomes apparent that fulfilment of the request will entail expenses of an extraordinary nature, the Requested State and Requesting State shall consult to determine the terms and conditions under which execution may continue.

4. The Requesting State shall bear the expenses incurred in translation of extradition documents and conveying the person extradited from the territory of the Requested State.

5. Consultations may be held between the Requesting State and the Requested State for the payment by the Requesting State of extraordinary expenses.

Article 19

Relationship with other treaties

The provisions of any treaty or bilateral agreement governing extradition between any two State Parties shall be complementary to the provisions of this Protocol and shall be construed and applied in harmony with this Protocol. In the event of any inconsistency, the provisions of this Protocol shall prevail.

Article 20

Settlement of disputes

Any dispute arising from the interpretation or application of this Protocol which cannot be settled amicably shall be referred to the Tribunal for determination.

Article 21

Withdrawal

1. Any State Party may withdraw from this Protocol upon the expiry of twelve (12) months from the date of giving the Executive Secretary a written notice to that effect.
2. Any State Party that has withdrawn pursuant to paragraph 1 of this Article shall cease to enjoy all rights and benefits under this Protocol upon the withdrawal becoming effective but shall remain bound by the obligations under this Protocol for a period of twelve (12) months, from the date of giving notice to the date the withdrawal becomes effective.

Article 22

Amendment

1. Any State Party may propose amendments to this Protocol.
2. Proposals for amendments to this Protocol may be made to the Executive Secretary who shall duly notify all Member States of the proposed amendments at least thirty (30) days in advance of consideration of the amendments by State Parties. Such period of notice may be waived by the Member States.
3. Amendments to this Protocol shall be adopted by a decision of three quarters of all the State Parties, and shall become effective thirty (30) days after such adoption.

Article 23

Signature

This Protocol shall be signed by the duly authorised representatives of the Member States.

Article 24

Ratification

This Protocol shall be subject to ratification by the signatory States in accordance with their respective constitutional procedures.

Article 25

Entry into force

This Protocol shall enter into force thirty (30) days after the deposit of instruments of ratification by two-thirds of the Member States.

Article 26

Accession

This Protocol shall remain open for accession by any Member State.

Article 27

Depositary

1. The original texts of this Protocol and all instruments of ratification and accession shall be deposited with the Executive Secretary who shall transmit certified copies to all Member States.

2. The Executive Secretary shall register this Protocol with the Secretariat of the United Nations and the Commission of the African Union (AU).

IN WITNESS WHEREOF, WE, the Heads of State or Government or our duly authorised Representatives, have signed this Protocol.

DONE at Luanda this 3rd day of October, 2002 in three (3) original texts in the English, French and Portuguese languages, all texts being equally authentic.

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CONSTITUTIVE ACT OF THE AFRICAN UNION

Adopted by the thirty-sixth ordinary session of the Assembly of Heads of State and Government on 11 July 2000

Entry into force: 26 May 2001, in accordance with Article 28
Text: OAU Document CAB/LEG/23.15 (2001)

We, Heads of State and Government of the Member States of the Organization of African Unity (OAU):

[Here follows the list of Heads of State and Government]

Inspired by the noble ideals which guided the founding fathers of our Continental Organization and generations of Pan-Africanists in their determination to promote unity, solidarity, cohesion and cooperation among the peoples of Africa and African States;

Considering the principles and objectives stated in the Charter of the Organization of African Unity and the Treaty establishing the African Economic Community;

Recalling the heroic struggles waged by our peoples and our countries for political independence, human dignity and economic emancipation;

Considering that since its inception, the Organization of African Unity has played a determining and invaluable role in the liberation of the continent, the affirmation of a common identity and the process of attainment of the unity of our continent and has provided a unique framework for our collective action in Africa and in our relations with the rest of the world;

Determined to take up the multifaceted challenges that confront our continent and peoples in the light of the social, economic and political changes taking place in the world;

Convinced of the need to accelerate the process of implementing the Treaty establishing the African Economic Community in order to promote the socio-economic development of Africa and to face more effectively the challenges posed by globalization;

Guided by our common vision of a united and strong Africa and by the need to build a partnership between governments and all segments of civil society, in particular women, youth and the private sector, in order to strengthen solidarity and cohesion among our peoples;

Conscious of the fact that the scourge of conflicts in Africa constitutes a major impediment to the socio-economic development of the continent and of the need to promote peace, security and stability as a prerequisite for the implementation of our development and integration agenda;

Determined to promote and protect human and peoples' rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law;

Further determined to take all necessary measures to strengthen our common institutions and provide them with the necessary powers and resources to enable them discharge their respective mandates effectively;

Recalling the Declaration which we adopted at the Fourth Extraordinary Session of our Assembly in Sirte, the Great Socialist People's Libyan Arab Jamahiriya, on 9. 9. 99, in which we decided to establish an African Union, in conformity with the ultimate objectives of the Charter of our Continental Organization and the Treaty establishing the African Economic Community;

Have agreed as follows:

Article 1

Definitions

In this Constitutive Act:

(*a*) "Act" means the present Constitutive Act;

(*b*) "AEC" means the African Economic Community;

(*c*) "Assembly" means the Assembly of Heads of State and Government of the Union;

(*d*) "Charter" means the Charter of the OAU;

(*e*) "Committee" means a Specialized Technical Committee of the Union;

(*f*) "Council" means the Economic, Social and Cultural Council of the Union;

(*g*) "Court" means the Court of Justice of the Union;

(*h*) "Executive Council" means the Executive Council of Ministers of the Union;

(*i*) "Member State" means a Member State of the Union;

(*j*) "OAU" means the Organization of African Unity;

(*k*) "Parliament" means the Pan-African Parliament of the Union;

(*h*) "Union" means the African Union established by the present Constitutive Act.

Article 2

Establishment

The African Union is hereby established in accordance with the provisions of this Act.

Article 3

Objectives

The objectives of the Union shall be to:

(*a*) Achieve greater unity and solidarity between the African counties and the peoples of Africa;

(*b*) Defend the sovereignty, territorial integrity and independence of its Member States;

(*c*) Accelerate the political and socio-economic integration of the continent;

(*d*) Promote and defend African common positions on issues of interest to the continent and its peoples;

(*e*) Encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;

(*f*) Promote peace, security, and stability on the continent;

(*g*) Promote democratic principles and institutions, popular participation and good governance;

(*h*) Promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;

(*i*) Establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;

(*j*) Promote sustainable development at the economic, social and cultural levels as well as the integration of African economies;

(*k*) Promote co-operation in all fields of human activity to raise the living standards of African peoples;

(*l*) Coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;

(*m*) Advance the development of the continent by promoting research in all fields, in particular in science and technology;

(*n*) Work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.

Article 4

Principles

The Union shall function in accordance with the following principles:

(*a*) Sovereign equality and interdependence among Member States of the Union;

(*b*) Respect of borders existing on achievement of independence;

(*c*) Participation of the African peoples in the activities of the Union;

(*d*) Establishment of a common defence policy for the African Continent;

(*e*) Peaceful resolution of conflicts among Member States of the Union through such appropriate means as may be decided upon by the Assembly;

(*f*) Prohibition of the use of force or threat to use force among Member States of the Union;

(*g*) Non-interference by any Member State in the internal affairs of another;

(*h*) The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity;

(*i*) Peaceful co-existence of Member States and their right to live in peace and security;

(*j*) The right of Member States to request intervention from the Union in order to restore peace and security;

(*k*) Promotion of self-reliance within the framework of the Union;

(*l*) Promotion of gender equality;

(*m*) Respect for democratic principles, human rights, the rule of law and good governance;

(*n*) Promotion of social justice to ensure balanced economic development;

(*o*) Respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities;

(*p*) Condemnation and rejection of unconstitutional changes of governments.

Article 5

Organs of the Union

1. The organs of the Union shall be:

   (*a*) The Assembly of the Union;

   (*b*) The Executive Council;

   (*c*) The Pan-African Parliament;

   (*d*) The Court of Justice;

   (*e*) The Commission;

   (*f*) The Permanent Representatives Committee;

   (*g*) The Specialized Technical Committees;

   (*h*) The Economic, Social and Cultural Council;

   (*i*) The Financial Institutions.

2. Other organs that the Assembly may decide to establish.

Article 6

The Assembly

1. The Assembly shall be composed of Heads of States and Government or their duly accredited representatives.
2. The Assembly shall be the supreme organ of the Union.
3. The Assembly shall meet at least once a year in ordinary session. At the request of any Member State and on approval by a two-thirds majority of the Member States, the Assembly shall meet in extraordinary session.
4. The Office of the Chairman of the Assembly shall be held for a period of one year by a Head of State or Government elected after consultations among the Member States.

Article 7

Decisions of the Assembly

1. The Assembly shall take its decisions by consensus or, failing which, by a two-thirds majority of the Member States of the Union. However, procedural matters, including the question of whether a matter is one of procedure or not, shall be decided by a simple majority.
2. Two-thirds of the total membership of the Union shall form a quorum at any meeting of the Assembly.

Article 8

Rules of Procedure of the Assembly

The Assembly shall adopt its own Rules of Procedure.

Article 9

Powers and Functions of the Assembly

1. The functions of the Assembly shall be to:
   (*a*) Determine the common policies of the Union;
   (*b*) Receive, consider and take decisions on reports and recommendations from the other organs of the Union;
   (*c*) Consider requests for Membership of the Union;
   (*d*) Establish any organ of the Union;
   (e) Monitor the implementation of policies and decisions of the Union as well as ensure compliance by all Member States;
   (*f*) Adopt the budget of the Union;
   (*g*) Give directives to the Executive Council on the management of conflicts, war and other emergency situations and the restoration of peace;
   (*h*) Appoint and terminate the appointment of the judges of the Court of Justice;
   (*i*) Appoint the Chairman of the Commission and his or her deputy or deputies and Commissioners of the Commission and determine their functions and terms of office.
2. The Assembly may delegate any of its powers and functions to any organ of the Union.

Article 10

The Executive Council

1. The Executive Council shall be composed of the Ministers of Foreign Affairs or such other Ministers or Authorities as are designated by the Governments of Member States.

2. Council shall meet at least twice a year in ordinary session. It shall also meet in an extraordinary session at the request of any Member State and upon approval by two-thirds of all Member States.

Article 11

Decisions of the Executive Council

1. The Executive Council shall take its decisions by consensus or, failing which, by a two-thirds majority of the Member States. However, procedural matters, including the question of whether a matter is one of procedure or not, shall be decided by a simple majority.
2. Two-thirds of the total membership of the Union shall form a quorum at any meeting of the Executive Council.

Article 12

Rules of Procedure of the Executive Council

The Executive Council shall adopt its own Rules of Procedure.

Article 13

Functions of the Executive Council

1. The Executive Council shall co-ordinate and take decisions on policies in areas of common interest to the Member States, including the following:
   (*a*) Foreign trade;
   (*b*) Energy, industry and mineral resources;
   (*c*) Food, agricultural and animal resources, livestock production and forestry;
   (*d*) Water resources and irrigation;
   (*e*) Environmental protection, humanitarian action and disaster response and relief;
   (*f*) Transport and communications;
   (*g*) Insurance;
   (*h*) Education, culture, health and human resources development;
   (*i*) Science and technology;
   (*j*) Nationality, residency and immigration matters;
   (*k*) Social security, including the formulation of mother and child care policies, as well as policies relating to the disabled and the handicapped;
   (*l*) Establishment of a system of African awards, medals and prizes.
2. The Executive Council shall be responsible to the Assembly. It shall consider issues referred to it and monitor the implementation of policies formulated by the Assembly.
3. The Executive Council may delegate any of its powers and functions mentioned in paragraph 1 of this Article to the Specialized Technical Committees established under Article 14 of this Act.

Article 14

The Specialized Technical Committees
Establishment and Composition

1. There is hereby established the following Specialized Technical Committees, which shall be responsible to the Executive Council:
   (*a*) The Committee on Rural Economy and Agricultural Matters;

(*b*) The Committee on Monetary and Financial Affairs;

(*c*) The Committee on Trade, Customs and Immigration Matters;

(*d*) The Committee on Industry, Science and Technology, Energy, Natural Resources and Environment;

(*e*) The Committee on Transport, Communications and Tourism;

(*f*) The Committee on Health, Labour and Social Affairs; and

(*g*) The Committee on Education, Culture and Human Resources.

2. The Assembly shall, whenever it deems appropriate, restructure the existing Committees or establish other Committees.

3. The Specialized Technical Committees shall be composed of Ministers or senior officials responsible for sectors falling within their respective areas of competence.

Article 15

Functions of the Specialized Technical Committees

Each Committee shall within its field of competence:

(*a*) Prepare projects and programmes of the Union and submit it to the Executive Council;

(*b*) Ensure the supervision, follow-up and the evaluation of the implementation of decisions taken by the organs of the Union;

(*c*) Ensure the coordination and harmonization of projects and programmes of the Union;

(*d*) Submit to the Executive Council either on its own initiative or at the request of the Executive Council, reports and recommendations on the implementation of the provisions of this Act; and

(*e*) Carry out any other functions assigned to it for the purpose of ensuring the implementation of the provisions of this Act.

Article 16

Meetings

1. Subject to any directives given by the Executive Council, each Committee shall meet as often as necessary and shall prepare its Rules of Procedure and submit them to the Executive Council for approval.

Article 17

The Pan-African Parliament

1. In order to ensure the full participation of African peoples in the development and economic integration of the continent, a Pan-African Parliament shall be established.

2. The composition, powers, functions and organization of the Pan-African Parliament shall be defined in a protocol relating thereto.

Article 18

The Court of Justice

1. A Court of Justice of the Union shall be established;

2. The statute, composition and functions of the Court of Justice shall be defined in a protocol relating thereto.

Article 19

The Financial Institutions

The Union shall have the following financial institutions, whose rules and regulations shall be defined in protocols relating thereto:

(*a*) The African Central Bank;

(*b*) The African Monetary Fund;

(*c*) The African Investment Bank.

Article 20

The Commission

1. There shall be established a Commission of the Union, which shall be the Secretariat of the Union.
2. The Commission shall be composed of the Chairman, his or her deputy or deputies and the Commissioners. They shall be assisted by the necessary staff for the smooth functioning of the Commission.
3. The structure, functions and regulations of the Commission shall be determined by the Assembly.

Article 21

The Permanent Representatives Committee

1. There shall be established a Permanent Representatives Committee. It shall be composed of Permanent Representatives to the Union and other Plenipotentiaries of Member States.
2. The Permanent Representatives Committee shall be charged with the responsibility of preparing the work of the Executive Council and acting on the Executive Council's instructions. It may set up such sub-committees or working groups as it may deem necessary.

Article 22

The Economic, Social and Cultural Council

1. The Economic, Social and Cultural Council shall be an advisory organ composed of different social and professional groups of the Member States of the Union.
2. The functions, powers, composition and organization of the Economic, Social and Cultural Council shall be determined by the Assembly.

Article 23

Imposition of Sanctions

1. The Assembly shall determine the appropriate sanctions to be imposed on any Member State that defaults in the payment of its contributions to the budget of the Union in the following manner: denial of the right to speak at meetings, to vote, to present candidates for any position or post within the Union or to benefit from any activity or commitments therefrom.
2. Furthermore, any Member State that fails to comply with the decisions and policies of the Union may be subjected to other sanctions, such as the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly.

Article 24

The Headquarters of the Union

1. The Headquarters of the Union shall be in Addis Ababa in the Federal Democratic Republic of Ethiopia.

2. There may be established such other offices of the Union as the Assembly may, on the recommendation of the Executive Council, determine.

Article 25

Working Languages

The working languages of the Union and all its institutions shall be, if possible, African languages, Arabic, English, French and Portuguese.

Article 26

Interpretation

The Court shall be seized with matters of interpretation arising from the application or implementation of this Act. Pending its establishment, such matters shall be submitted to the Assembly of the Union, which shall decide by a two-thirds majority.

Article 27

Signature, Ratification and Accession

1. This Act shall be open to signature, ratification and accession by the Member States of the OAU in accordance with their respective constitutional procedures.
2. The instruments of ratification shall be deposited with the Secretary-General of the OAU.
3. Any Member State of the OAU acceding to this Act after its entry into force shall deposit the instrument of accession with the Chairman of the Commission.

Article 28

Entry into Force

This Act shall enter into force thirty (30) days after the deposit of the instruments of ratification by two-thirds of the Member States of the OAU.

Article 29

Admission to Membership

1. Any African State may, at any time after the entry into force of this Act, notify the Chairman of the Commission of its intention to accede to this Act and to be admitted as a member of the Union.
2. The Chairman of the Commission shall, upon receipt of such notification, transmit copies thereof to all Member States. Admission shall be decided by a simple majority of the Member States. The decision of each Member State shall be transmitted to the Chairman of the Commission who shall, upon receipt of the required number of votes, communicate the decision to the State concerned.

Article 30

Suspension

Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union.

Article 31

Cessation of Membership

1. Any State which desires to renounce its membership shall forward a written notification to the Chairman of the Commission, who shall inform Member States thereof. At the end of one year from the date of such notification, if not withdrawn, the Act shall cease to apply with respect to the renouncing State, which shall thereby cease to belong to the Union.

2. During the period of one year referred to in paragraph 1 of this Article, any Member State wishing to withdraw from the Union shall comply with the provisions of this Act and shall be bound to discharge its obligations under this Act up to the date of its withdrawal.

Article 32

Amendment and Revision

1. Any Member State may submit proposals for the amendment or revision of this Act.
2. Proposals for amendment or revision shall be submitted to the Chairman of the Commission who shall transmit same to Member States within thirty (30) days of receipt thereof.
3. The Assembly, upon the advice of the Executive Council, shall examine these proposals within a period of one year following notification of Member States, in accordance with the provisions of paragraph 2 of this Article.
4. Amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority and submitted for ratification by all Member States in accordance with their respective constitutional procedures. They shall enter into force thirty (30) days after the deposit of the instruments of ratification with the Chairman of the Commission by a two-thirds majority of the Member States.

Article 33

Transitional Arrangements and Final Provisions

1. This Act shall replace the Charter of the Organization of African Unity. However, the Charter shall remain operative for a transitional period of one year or such further period as may be determined by the Assembly, following the entry into force of the Act, for the purpose of enabling the OAU/AEC to undertake the necessary measures regarding the devolution of its assets and liabilities to the Union and all matters relating thereto.
2. The provisions of this Act shall take precedence over and supersede any inconsistent or contrary provisions of the Treaty establishing the African Economic Community.
3. Upon the entry into force of this Act, all necessary measures shall be undertaken to implement its provisions and to ensure the establishment of the organs provided for under the Act in accordance with any directives or decisions which may be adopted in this regard by the Parties thereto within the transitional period stipulated above.
4. Pending the establishment of the Commission, the OAU General Secretariat shall be the interim Secretariat of the Union.
5. This Act, drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all four (4) being equally authentic, shall be deposited with the Secretary-General of the OAU and, after its entry into force, with the Chairman of the Commission who shall transmit a certified true copy of the Act to the Government of each signatory State. The Secretary-General of the OAU and the Chairman of the Commission shall notify all signatory States of the dates of the deposit of the instruments of ratification or accession and shall upon entry into force of this Act register the same with the Secretariat of the United Nations.

   IN WITNESS WHEREOF, WE have adopted this Act.

   DONE at Lomé, Togo, this 11th day of July, 2000.

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PROTOCOL ON AMENDMENTS TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION

Adopted by the 1st Extraordinary Session of the Assembly of the Union in Addis Ababa, Ethiopia on 3 February 2003
and
by the 2nd Ordinary Session of the Assembly of the Union in Maputo, Mozambique on 11 July 2003

Entry into force: In accordance with Article 13

The Member States of the African Union States Parties to the Constitutive Act of the African Union,

Have agreed to adopt amendments to the Constitutive Act as follows:

Article 1

Definitions

In this Protocol, the following expressions shall have the meanings assigned to them hereunder unless otherwise specified:

(*a*) "Act" means the Constitutive Act;

(*b*) "Assembly" means the Assembly of Heads of State and Government of the African Union;

(*c*) "Chairperson" means chairperson of the Assembly;

(*d*) "Court" means the Court of Justice of the Union and Court of Justice has the same meaning;

(*e*) "Union" means the African Union.

Article 2

Preamble

In the first paragraph of the Preamble to the Constitutive Act, the replacement of the words "founding fathers" with "founders".

Article 3

Objectives

In Article 3 of the Act (Objectives), the insertion of three new subparagraphs (i), (p) and (q) with consequential renumbering of subparagraphs:

The objectives of the Union shall be to:

(*i*) Ensure the effective participation of women in decision-making, particularly in the political, economic and socio-cultural areas;

(*p*) Develop and promote common policies on trade, defence and foreign relations to ensure the defence of the Continent and the strengthening of its negotiating positions;

(*q*) Invite and encourage the full participation of the African Diaspora as an important part of our Continent, in the building of the African Union.

Article 4

Principles

In Article 4 of the Act (Principles), the expansion of subparagraph (h) and the insertion of two new subparagraphs (q) and (r):

(*h*) The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity as well as a serious threat to legitimate order to restore peace and stability to the Member State of the Union upon the recommendation of the Peace and Security Council;

(*q*) Restraint by any Member State from entering into any treaty or alliance that is incompatible with the principles and objectives of the Union;

(*r*) Prohibition of any Member State from allowing the use of its territory as a base for subversion against another Member State.

Article 5

Organs of the Union

In Article 5 of the Act (Organs of the Union), the insertion of a new subparagraph (f) with consequential renumbering of subsequent subparagraphs:

(*f*) The Peace and Security Council.

Article 6

The Assembly

In Article 6 of the Act (The Assembly) and wherever else it occurs in the Act, the substitution of the word "Chairman" with "Chairperson"; the deletion of the second sentence of subparagraph 3 and the insertion of new paragraphs 4, 5, 6 and 7.

3. The Assembly shall meet at least once a year in ordinary session.

4. At the initiative of the Chairperson after due consultation with all Member States, or at the request of any Member State and upon approval by two-thirds majority of Member States, the Assembly shall meet in Extraordinary Session.

5. The Assembly shall elect its Chairperson from among the Heads of State or Government at the beginning of each ordinary session and on the basis of rotation for a period of one year renewable.

6. The Chairperson shall be assisted by a Bureau chosen by the Assembly on the basis of equitable geographical representation.

7. Where the Assembly meets at the Headquarters, an election of the Chairperson shall be held taking into account the principle of rotation.

Article 7

Functions of the Chairperson of the Assembly

The insertion in the Act of a new Article 7 (bis):

1. The Chairperson shall represent the Union, during his/her tenure with a view to promoting the objectives and principles of the African Union as stipulated in Articles 3 and 4 of the Act. He/She shall also, with the collaboration of the Chairperson of the Commission, carry out the functions of the Assembly set out in Article 9(e) and (g) of the Act.

2. The Chairperson may convene the meeting of the other organs through their Chairpersons or Chief Executives and in accordance with their respective Rules of Procedure.

Article 8

The Executive Council

In Article 10 of the Act (The Executive Council), the insertion of a new paragraph 3:

3. The Chairperson of the Executive Council shall be assisted by a Bureau chosen by the Executive Council on the basis of equitable geographical representation.

Article 9

Peace and Security Council

The insertion in the Act of a new Article 20(bis):

1. There is hereby established, a Peace and Security Council (PSC) of the Union, which shall be the standing decision-making organ for the prevention, management and resolution of conflicts.
2. The functions, powers, composition and organization of the PSC shall be determined by the Assembly and set out in a protocol relating thereto.

Article 10

The Permanent Representatives Committee

In Article 21 of the Act (The Permanent Representatives Committee) the insertion of a new paragraph 3:

3. The Chairperson of the Permanent Representatives Committee shall be assisted by a Bureau chosen on the basis of equitable geographical representation.

Article 11

Official Languages

In Article 25 of the Act (Working Languages), replace the title “Working Languages” by “Official Languages” and substitute the existing provision with:

1. The official languages of the Union and all its institutions shall be Arabic, English, French, Portuguese, Spanish, Kiswahili and any other African language.
2. The Executive Council shall determine the process and practical modalities for the use of official languages as working languages.

Article 12

Cessation of Membership

Article 31 of the Act (Cessation of Membership) is deleted.

Article 13

Entry into Force

This Protocol shall enter into force thirty days after the deposit of the instruments of ratification by a two-thirds majority of the Member States.

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CONVENTION FOR THE ELIMINATION OF MERCENARISM IN AFRICA

Adopted on 3 July 1977

Entry into force: 22 April 1985, in accordance with Article 13
Text: OAU Document CM/433/Rev. L. Annex 1 (1972)

PREAMBLE

We, the Heads of State and Government of the Member States of the Organization of African Unity;

Considering the grave threat which the activities of mercenaries present to the independence, sovereignty, territorial integrity and harmonious development of Member States of the Organization of African Unity;

Concerned with the threat which the activities of mercenaries pose to the legitimate exercise of the right of African People under colonial and racist domination to their independence and freedom;

Convinced that total solidarity and co-operation between Member States are indispensable for putting an end to the subversive activities of mercenaries in Africa;

Considering that the resolutions of the UN and the OAU, the statements of attitude and the practice of a growing number of States are indicative of the development of new rules of international law making mercenarism an international crime;

Determined to take all necessary measures to eliminate from the African continent the scourge that mercenarism represents;

Have agreed as follows*:*

Article 1

Definition

1. A mercenary is any person who:

   (*a*) Is specially recruited locally or abroad in order to fight in an armed conflict;

   (*b*) Does in fact take a direct part in the hostilities;

   (*c*) Is motivated to take part in the hostilities essentially by the desire for private gain and in fact is promised by or on behalf of a party to the conflict material compensation;

   (*d*) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;

   (*e*) Is not a member of the armed forces of a party to the conflict; and

   (*f*) Is not sent by a state other than a party to the conflict on official mission as a member of the armed forces of the said state.

2. The crime of mercenarism is committed by the individual, group or association, representative of a State and the State itself who with the aim of opposing by armed violence a process of self-determination stability or the territorial integrity of another State, that practises any of the following acts:

   (*a*) Shelters, organises, finances, assists, equips, trains, promotes, supports or in any manner employs armed forces partially or wholly consisting of persons who are not nationals of the country where they are going to act, for personal gain, material or otherwise;

   (*b*) Enlists, enrols or tries to enrol in the said forces;

   (*c*) Allows the activities mentioned in paragraph (a) to be carried out in any territory under its jurisdiction or in any place under its control or affords facilities for transit, transport or other operations of the above mentioned forces.

2. Any person, natural or juridical who commits the crime of mercenarism as defined in paragraph 1 of this Article commits an offence considered as a crime against peace and security in Africa and shall be punished as such.

Article 2

Aggravating circumstances

The fact of assuming command over or giving orders to mercenaries shall be considered as an aggravating circumstance.

Article 3

Status of mercenaries

Mercenaries shall not enjoy the status of combatants and shall not be entitled to the prisoners of war status.

Article 4

Scope of criminal responsibility

A mercenary is responsible both for the crime of mercenarism and all related offences, without prejudice to any other offences for which he may be prosecuted.

Article 5

General responsibility of States and their representatives

1. When the representative of a State is responsible by the virtue of the provisions of Article 1 of this Convention for acts or omissions declared by the aforesaid article to be criminal, he shall be punished for such an act or omission.
2. When a State is responsible by virtue of the provisions of Article 1 of this Convention for acts or omissions declared by the aforesaid article to be criminal, any other party to the present Convention may invoke the provisions of this Convention in its relations with the offending State and before any competent OAU or International Organization tribunal or body.

Article 6

Obligations of States

The contracting parties shall take all necessary measures to eradicate all mercenary activities in Africa.

To this end, each contracting State shall undertake to:

(*a*) Prevent its nationals or foreigners on its territory from engaging in any of the acts mentioned in Article 1 of this Convention;

(*b*) Prevent entry into or passage through its territory of any mercenary or any equipment destined for mercenary use;

(*c*) Prohibit on its territory any activities by persons or Organizations who use mercenaries against any African State member of the Organization of African Unity or the people of Africa in their struggle for liberation;

(*d*) Communicate to the other Member States of the Organization of African Unity, either directly or through the Secretariat of the OAU, any information related to the activities of mercenaries as soon as it comes to its knowledge;

(*e*) Forbid on its territory the recruitment, training, financing and equipment of mercenaries and any other form of activities likely to promote mercenarism;

(*f*) Take all the necessary legislative and other measures to ensure the immediate entry into force of this Convention.

Article 7

Penalties

Each contracting State shall undertake to make the offence defined in Article 1 of this Convention punishable by the severest penalties under its laws including capital punishment.

Article 8

Jurisdiction

Each contracting State shall undertake to take such measures as may be necessary to punish, in accordance with the provisions of Article 7, any person who commits an offence under Article 1 of this Convention and who is found on its territory if it does not extradite him to the State against which the offence has been committed.

Article 9

Extradition

1. The crimes defined in Article 1 of this Convention, being deemed to be common crimes, are not covered by national legislation excluding extradition for political offences.
2. A request for extradition shall not be refused unless the requested State undertakes to exercise jurisdiction over the offender in accordance with the provisions of Article 8.
3. Where a national is involved in the request for extradition, the requested State shall take proceedings against him for the offence committed if extradition is refused.
4. Where proceedings have been initiated in accordance with paragraphs 2 and 3 of this Article, the requested State shall inform the requesting State or any other State member of the OAU interested in the proceedings, of the result thereof.
5. A State shall be deemed interested in the proceedings within the meaning of paragraph 4 of this Article if the offence is linked in any way with its territory or is directed against its interests.

Article 10

Mutual assistance

The contracting States shall afford one another the greatest measures of assistance in connection with the investigation and criminal proceedings brought in respect of the offence and other acts connected with the activities of the offender.

Article 11

Judicial guarantees

Any person or group of persons on trial for the crime defined in Article 1 of this Convention shall be entitled to all the guarantees normally granted to any ordinary person by the State on whose territory he is being tried.

Article 12

Settlement of disputes

Any dispute regarding the interpretation and application of the provisions of this Convention shall be settled by the interested parties in accordance with the principle of the Charter of the Organization of African Unity.

Article 13

Signature, ratification and entry into force

1. This Convention shall be open for signature by the Members of the Organization of African Unity. It shall be ratified. The instruments of ratification shall be deposited with the Administrative Secretary-General of the Organization.
2. This Convention shall come into force 30 days after the date of the deposit of the seventeenth instrument of ratification.
3. As regards any signatory subsequently ratifying the Convention, it shall come into force 30 days after the date of the deposit of its instrument of ratification.

Article 14

Accession

1. Any Member State of the Organization of African Unity may accede to this Convention.
2. Accession shall be by deposit with the Administrative Secretary-General of the Organization of an instrument of accession, which shall take effect 30 days after the date of its deposit.

Article 15

Notification and registration

1. The Administrative Secretary-General of the Organization of African Unity shall notify the Member States of the Organization of:

   (*a*) The deposit of any instrument of ratification or accession;

   (*b*) The date of entry into force of this Convention.
2. The Administrative Secretary-General of the Organization of African Unity shall transmit certified copies of the Convention to all Member States of the Organization.
3. The Administrative Secretary-General of the Organization of African Unity shall, as soon as this Convention comes into force, register it pursuant to Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, We, the Heads of State and Government of the Member States of the Organization of African Unity have appended our signatures to this Convention.

DONE at Libreville, Gabon this 3rd day of July, 1977 in the Arabic, English and French languages, all texts being equally authoritative, in a single original copy which shall be deposited in the archives of the Organization of African Unity.

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OAU CONVENTION ON THE PREVENTION AND COMBATING OF TERRORISM

Adopted at Algiers on 14 July 1999

Entry into force: 6 December 2002, in accordance with Article 20
Text: OAU Document AHG/Dec. 132 (XXXV)

The Member States of the Organization of African Unity:

Considering the purposes and principles enshrined in the Charter of the Organization of African Unity, in particular its clauses relating to the security, stability, development of friendly relations and cooperation among its Member States;

Recalling the provisions of the Declaration on the Code of Conduct for Inter-African Relations, adopted by the Thirtieth Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity, held in Tunis, Tunisia, from 13 to 15 June 1994;

Aware of the need to promote human and moral values based on tolerance and rejection of all forms of terrorism irrespective of their motivations;

Believing in the principles of international law, the provisions of the Charters of the Organization of African Unity and of the United Nations and the latter's relevant resolutions on measures aimed at combating international terrorism and, in particular, Resolution 49/60 of the General Assembly of 9 December 1994 together with the annexed Declaration on Measures to Eliminate International Terrorism as well as Resolution 51/210 of the General Assembly of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed thereto;

Deeply concerned over the scope and seriousness of the phenomenon of terrorism and the dangers it poses to the stability and security of States;

Desirous of strengthening cooperation among Member States in order to forestall and combat terrorism;

Reaffirming the legitimate right of peoples for self-determination and independence pursuant to the principles of international law and the provisions of the Charters of the Organization of African Unity and the United Nations as well as the African Charter on Human and Peoples' Rights;

Concerned that the lives of innocent women and children are most adversely affected by terrorism;

Convinced that terrorism constitutes a serious violation of human rights and, in particular, the rights to physical integrity, life, freedom and security, and impedes socio-economic development through destabilisation of States;

Convinced further that terrorism cannot be justified under any circumstances and, consequently, should be combated in all its forms and manifestations, including those in which States are involved directly or indirectly, without regard to its origin, causes and objectives;

Aware of the growing links between terrorism and organised crime, including the illicit traffic of arms, drugs and money laundering;

Determined to eliminate terrorism in all its forms and manifestations;

Have agreed as follows:

PART I

SCOPE OF APPLICATION

Article 1

For the purposes of this Convention:

1. "Convention" means the OAU Convention on the Prevention and Combating of Terrorism.

2. "State party" means any Member State of the Organization of African Unity which has ratified or acceded to this Convention and has deposited its instrument of ratification or accession with the Secretary-General of the Organization of African Unity.

3. "Terrorist act" means:

   (*a*) Any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

      (i) Intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or

      (ii) Disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or

      (iii) Create general insurrection in a State.

   (*b*) Any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i) to (iii).

Article 2

State Parties undertake to:

(*a*) Review their national laws and establish criminal offences for terrorist acts as defined in this Convention and make such acts punishable by appropriate penalties that take into account the grave nature of such offences;

(*b*) Consider, as a matter of priority, the signing or ratification of, or accession to, the international instruments listed in the Annexure, which they have not yet signed, ratified or acceded to;

(*c*) Implement the actions, including enactment of legislation and the establishment as criminal offences of certain acts as required in terms of the international instruments referred to in paragraph (b) and that States have ratified and acceded to and make such acts punishable by appropriate penalties which take into account the grave nature of those offences; and

(*d*) Notify the Secretary-General of the OAU of all the legislative measures it has taken and the penalties imposed on terrorist acts within one year of its ratification of, or accession to, the Convention.

Article 3

1. Notwithstanding the provisions of Article 1, the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts.

2. Political, philosophical, ideological, racial, ethnic, religious or other motives shall not be a justifiable defence against a terrorist act.

PART II

AREAS OF COOPERATION

Article 4

1. State Parties undertake to refrain from any acts aimed at organizing, supporting, financing, committing or inciting to commit terrorist acts, or providing havens for terrorists, directly or indirectly, including the provision of weapons and their stockpiling in their countries and the issuing of visas and travel documents.

2. State Parties shall adopt any legitimate measures aimed at preventing and combating terrorist acts in accordance with the provisions of this Convention and their respective national legislation. In particular, they shall do the following:

   (*a*) Prevent their territories from being used as a base for the planning, organization or execution of terrorist acts or for the participation or collaboration in these acts in any form whatsoever;

   (*b*) Develop and strengthen methods of monitoring and detecting plans or activities aimed at the illegal cross-border transportation, importation, export, stockpiling and use of arms, ammunition and explosives and other materials and means of committing terrorist acts;

   (*c*) Develop and strengthen methods of controlling and monitoring land, sea and air borders and customs and immigration check-points in order to pre-empt any infiltration by individuals or groups involved in the planning, organization and execution of terrorist acts;

   (*d*) Strengthen the protection and security of persons, diplomatic and consular missions, premises of regional and international organizations accredited to a State Party, in accordance with the relevant conventions and rules of international law;

   (*e*) Promote the exchange of information and expertise on terrorist acts and establish data bases for the collection and analysis of information and data on terrorist elements, groups, movements and organizations;

   (*f*) Take all necessary measures to prevent the establishment of terrorist support networks in any form whatsoever;

   (*g*) Ascertain, when granting asylum, that the asylum seeker is not involved in any terrorist act;

   (*h*) Arrest the perpetrators of terrorist acts and try them in accordance with national legislation, or extradite them in accordance with the provisions of this Convention or extradition treaties concluded between the requesting State and the requested State and, in the absence of a treaty, consider facilitating the extradition of persons suspected of having committed terrorist acts; and

   (*i*) Establish effective co-operation between relevant domestic security officials and services and the citizens of the State Parties in a bid to enhance public awareness of the scourge of terrorist acts and the need to combat such acts, by providing guarantees and incentives that will encourage the population to give information on terrorist acts or other acts which may help to uncover such acts and arrest their perpetrators.

Article 5

States Parties shall co-operate among themselves in preventing and combating terrorist acts in conformity with national legislation and procedures of each State in the following areas:

1. States Parties undertake to strengthen the exchange of information among them regarding:

   (*a*) Acts and crimes committed by terrorist groups, their leaders and elements, their headquarters and training camps, their means and sources of funding and acquisition of arms, the types of arms, ammunition and explosives used, and other means in their possession;

   (*b*) The communication and propaganda methods and techniques used by the terrorist groups, the behaviour of these groups, the movement of their leaders and elements, as well as their travel documents.

2. States Parties undertake to exchange any information that leads to:

   (*a*) The arrest of any person charged with a terrorist act against the interests of a State Party or against its nationals, or attempted to commit such an act or participated in it as an accomplice or an instigator;

   (*b*) The seizure and confiscation of any type of arms, ammunition, explosives, devices or funds or other instruments of crime used to commit a terrorist act or intended for that purpose.

3. States Parties undertake to respect the confidentiality of the information exchanged among them and not to provide such information to another State that is not party to this Convention, or to a third State Party, without the prior consent of the State from where such information originated.

4. States Parties undertake to promote co-operation among themselves and to help each other with regard to procedures relating to the investigation and arrest of persons suspected of, charged with or convicted of terrorist acts, in conformity with the national law of each State.

5. States Parties shall co-operate among themselves in conducting and exchanging studies and researches on how to combat terrorist acts and to exchange expertise relating to control of terrorist acts.

6. States Parties shall co-operate among themselves, where possible, in providing any available technical assistance in drawing up programmes or organizing, where necessary and for the benefit of their personnel, joint training courses involving one or several States Parties in the area of control of terrorist acts, in order to improve their scientific, technical and operational capacities to prevent and combat such acts.

PART III

STATE JURISDICTION

Article 6

1. Each State Party has jurisdiction over terrorist acts as defined in Article 1 when:

   (*a*) The act is committed in the territory of that State and the perpetrator of the act is arrested in its territory or outside it if this is punishable by its national law;

   (*b*) The act is committed on board a vessel or a ship flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

   (*c*) The act is committed by a national or a group of nationals of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

   (*a*) The act is committed against a national of that State; or

   (*b*) The act is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises, and any other property, of that State;

   (*c*) The act is committed by a stateless person who has his or her habitual residence in the territory of that State; or

   (*d*) The act is committed on board an aircraft which is operated by any carrier of that State; and

   (*e*) The act is committed against the security of the State Party.

3. Upon ratifying or acceding to this Convention, each State Party shall notify the Secretary-General of the Organization of African Unity of the jurisdiction it has established in accordance with paragraph 2 under its national law. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the acts set forth in Article 1 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 or 2.

Article 7

1. Upon receiving information that a person who has committed or who is alleged to have committed any terrorist act as defined in Article 1 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its national law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its national law so as to ensure that person’s presence for the purpose of prosecution.

3. Any person against whom the measures referred to in paragraph 2 are being taken shall be entitled to:

   (*a*) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in whose territory that person habitually resides;

   (*b*) Be visited by a representative of that State;

   (*c*) Be assisted by a lawyer of his or her choice;

   (*d*) Be informed of his or her rights under sub-paragraphs (a), (b) and (c).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the national law of the State in whose territory the offender or alleged offender is present, subject to the provision that the said laws must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

PART IV

EXTRADITION

Article 8

1. Subject to the provisions of paragraphs 2 and 3 of this article, the States Parties shall undertake to extradite any person charged with or convicted of any terrorist act carried out on the territory of another State Party and whose extradition is requested by one of the state parties in conformity with the rules and conditions provided for in this Convention or under extradition agreements between the States Parties and within the limits of their national laws.

2. Any State Party may, at the time of the deposit of its instrument of ratification or accession, transmit to the Secretary-General of the OAU the grounds on which extradition may not be granted and shall at the same time indicate the legal basis in its national legislation or international conventions to which it is a party which excludes such extradition. The Secretary-General shall forward these grounds to the States Parties.

3. Extradition shall not be granted if final judgment has been passed by a competent authority of the requested State upon the person in respect of the terrorist act or acts for which extradition is requested. Extradition may also be refused if the competent authority of the requested State has decided either not to institute or terminate proceedings in respect of the same act or acts.

4. A State Party in whose territory an alleged offender is present shall be obliged, whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution if it does not extradite that person.

Article 9

Each State Party undertakes to include as an extraditable offence any terrorist act as defined in Article 1, in any extradition treaty existing between any of the States Parties before or after the entry into force of this Convention.

Article 10

Exchange of extradition requests between the state parties to this Convention shall be effected directly either through diplomatic channels or other appropriate organs in the concerned states.

Article 11

Extradition requests shall be in writing, and shall be accompanied in particular by the following:

(*a*) An original or authenticated copy of the sentence, warrant of arrest or any order or other judicial decision made, in accordance with the procedures laid down in the laws of the requesting State;

(*b*) A statement describing the offences for which extradition is being requested, indicating the date and place of its commission, the offence committed, any convictions made and a copy of the provisions of the applicable law; and

(*c*) As comprehensive a description as possible of the wanted person together with any other information which may assist in establishing the person's identity and nationality.

Article 12

In urgent cases, the competent authority of the State making the extradition may, in writing, request that the State seized of the extradition request arrest the person in question provisionally. Such provisional arrest shall be for a reasonable period in accordance with the national law of the requested State.

Article 13

1. Where a State Party receives several extradition requests from different States Parties in respect of the same suspect and for the same or different terrorist acts, it shall decide on these requests having regard to all the prevailing circumstances, particularly the possibility of subsequent extradition, the respective dates of receipt of the requests, and the degree of seriousness of the crime.
2. Upon agreeing to extradite, States Parties shall seize and transmit all funds and related materials purportedly used in the commission of the terrorist act to the requesting State as well as relevant incriminating evidence.
3. Such funds, incriminating evidence and related materials, upon confirmation of their use in the terrorist act by the requested State, shall be transmitted to the requesting State even if, for reasons of death or escape of the accused, the extradition in question cannot take place.
4. The provisions in paragraphs 1, 2 and 3 of this Article shall not affect the rights of any of the States Parties or *bona fide* third Parties regarding the materials or revenues mentioned above.

PART V

EXTRA-TERRITORIAL INVESTIGATIONS (COMMISSION ROGATOIRE) AND MUTUAL LEGAL ASSISTANCE

Article 14

1. Any State Party may, while recognising the sovereign rights of States Parties in matters of criminal investigation, request any other State Party to carry out, with its assistance and cooperation, on the latter's territory, criminal investigations related to any judicial proceedings concerning alleged terrorist acts and, in particular:

   (*a*) The examination of witnesses and transcripts of statements made as evidence;

   (*b*) The opening of judicial information;

   (*c*) The initiation of investigation processes;

   (*d*) The collection of documents and recordings or, in their absence, authenticated copies thereof;

   (*e*) Conducting inspections and tracing of assets for evidentiary purposes;

   (*f*) Executing searches and seizures; and

   (*g*) Service of judicial documents.

Article 15

A commission rogatoire may be refused:

(*a*) Where each of the States Parties has to execute a commission rogatoire relating to the same terrorist acts;

(*b*) If that request may affect efforts to expose crimes, impede investigations or the indictment of the accused in the country requesting the commission rogatoire; or

(*c*) If the execution of the request would affect the sovereignty of the requested State, its security or public order.

Article 16

The extra-territorial investigation (commission rogatoire) shall be executed in compliance with the provisions of national laws of the requested State. The request for an extra-territorial investigation (commission rogatoire) relating to a terrorist act shall not be rejected on the grounds of the principle of confidentiality of bank operations or financial institutions, where applicable.

Article 17

The States Parties shall extend to each other the best possible mutual police and judicial assistance for any investigation, criminal prosecution or extradition proceedings relating to the terrorist acts as set forth in this Convention.

Article 18

The States Parties undertake to develop, if necessary, especially by concluding bilateral and multilateral agreements and arrangements, mutual legal assistance procedures aimed at facilitating and speeding up investigations and collecting evidence, as well as cooperation between law enforcement agencies in order to detect and prevent terrorist acts.

PART VI

FINAL PROVISIONS

Article 19

1. This Convention shall be open to signature, ratification or accession by the Member States of the Organization of African Unity.
2. The instruments of ratification or accession to the present Convention shall be deposited with the Secretary-General of the Organization of African Unity.
3. 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 accession.
4. No State Party may enter a reservation which is incompatible with the object and purposes of this Convention.
5. No State Party may withdraw from this Convention except on the basis of a written request addressed to the Secretary-General of the Organization of African Unity. The withdrawal shall take effect six months after the date of receipt of the written request by the Secretary-General of the Organization of African Unity.

Article 20

1. This Convention shall enter into force thirty days after the deposit of the fifteenth instrument of ratification with the Secretary-General of the Organization of African Unity.
2. For each of the States that shall ratify or accede to this Convention, it shall enter into force thirty days after the date of the deposit by that State Party of its instrument of ratification or accession.

Article 21

1. Special protocols or agreements may, if necessary, supplement the provisions of this Convention.
2. This Convention 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 proposed amendment after all the States Parties have been duly informed of it at least three months in advance.
3. 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 procedures three months after the Secretary-General has received notice of the acceptance.

Article 22

1. Nothing in this Convention shall be interpreted as derogating from the general principles of international law, in particular the principles of international humanitarian law, as well as the African Charter on Human and Peoples' Rights.
2. Any dispute that may arise between the States Parties regarding the interpretation or application of this Convention shall be amicably settled by direct agreement between them. Failing such settlement, any one of the States Parties may refer the dispute to the International Court of Justice in conformity with the Statute of the Court or by arbitration by other States Parties to this Convention.

Article 23

The original of this Convention, of which the Arabic, English, French and Portuguese texts are equally authentic, shall be deposited with the Secretary-General of the Organization of African Unity.

ANNEX

LIST OF INTERNATIONAL INSTRUMENTS

(*a*) Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft of 1963;

(*b*) Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971 and the Protocol thereto of 1984;

(*c*) New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 1973;

(*d*) International Convention against the Taking of Hostages of 1979;

(*e*) Convention on the Physical Protection of Nuclear Material of 1979;

(*f*) United Nations Convention on the Law of the Sea 1982;

(*g*) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1988;

(*h*) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf of 1988;

(*i*) Convention for the Suppression of Unlawful Acts against Maritime Navigation of 1988;

(*j*) Convention on the Marking of Plastic Explosives of 1991;

(*k*) International Convention for the Suppression of Terrorist Explosive Bombs of 1997;

(l) Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 1997.

Section 2.2

North Africa and the Middle East

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ARAB CONVENTION ON REGULATING STATUS OF REFUGEES IN THE ARAB COUNTRIES

Adopted by the League of Arab States, 1994

The Governments of the Member States of the League of Arab States,

Invoking their religious beliefs and principles deeply rooted in the Arab and Islamic history, which make man such a great value and a noble target that various systems and legislation cooperate to ensure his happiness, freedom and rights,

Recognizing that they represent a civilized nation that have kept pace with all stages of human history and have always played a significant role in directing, influencing and responding to events,

Confirming the provisions of the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights, the International Covenant of Economic, Social and Cultural Rights, the 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees and the 1992 Cairo Declaration on the Protection of Refugees and Displaced People,

And with a view to cementing bonds of fraternity amongst them,

The Member States have agreed as follows:

GENERAL PROVISIONS

Article 1

For the purposes of this present Convention, a refugee means:

1. Any person who is outside the country of his nationality or outside his habitual place of residence in case of not having a nationality and owing to well-grounded fear of being persecuted on account of his race, religion, nationality, membership of a particular social group or political opinion, unable or unwilling to avail himself of the protection of or return to such country.
2. Any person who unwillingly takes refuge in a country other than his country of origin or his habitual place of residence because of sustained aggression against, occupation and foreign domination of such country or because of the occurrence of natural disasters or grave events resulting in major disruption of public order in the whole country or any part thereof.

Article 2

The provisions hereof shall not apply to any person who:

1. Has been convicted of having committed a war crime, a crime against humanity or a terrorist crime as defined in the international conventions and covenants.
2. Has been convicted to a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee and has not been acquitted under a final peremptory verdict.

Article 3

The Contracting States of this Convention shall undertake to exert every possible effort, within the limits of their respective national legislation, to accept refugees defined in Article 1 hereof.

Article 4

The provisions hereof shall cease to apply to any refugee if:

1. He voluntarily re-avails himself to the protection of the country of his nationality; or
2. He has acquired a new nationality and enjoys the protection of the country of such new nationality; or

3. He has voluntarily re-established himself in the country, which he had earlier left owing to fear of persecution; or
4. Having lost his nationality, he has voluntarily re-acquired it; or
5. Because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, he can no longer continue to refuse to avail himself of the protection of the country of his nationality; or
6. Being a person of no nationality (stateless), and because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, he is able to return to his former habitual place of residence.

Article 5

The Contracting States to this Convention shall undertake to exert every possible effort, to ensure that refugees are accorded a level of treatment no less than that accorded to foreign residents on their territories.

Article 6

Granting asylum is a peaceful and humanitarian act and shall not be deemed by any state as a hostile act against it.

Article 7

The Contracting States of this Convention shall undertake to refrain from discriminating against refugees as to race, religion, gender and country of origin, political or social affiliation.

Article 8

1. A refugee lawfully residing on the territory of a Contracting State shall not be expelled save on grounds of national security or public order. A refugee may, however, appeal before the competent judicial authority against the expulsion decision. In such case, the Contracting State shall allow such refugee a reasonable period within which to seek legal admission into another country. The Contracting State reserves the right to apply during that period such internal measures as it may deem necessary.
2. A Contracting State shall temporarily accept a refugee should his expulsion or return (refoulement) threaten his life or freedom.

Article 9

Subject to the provisions of Article 4 hereof, the will for return to country of origin in all cases shall be respected and the refugee shall not be involuntarily repatriated to his country of origin.

The country of asylum, in cooperation with the country of origin, shall make appropriate arrangements for the safe return of refugees willing to return home.

Article 10

Contracting States shall issue to refugees lawfully residing in their territories identification cards and travel documents in conformity with the United Nations Convention relating to the Status of Refugees and its supplements, in order to enable them to travel from and return to such territories, except in cases where this is barred for reasons related to national security or public order.

Article 11

The refugee shall respect and abide by the provisions of laws and regulations of his host country.

Article 12

The refugee shall refrain from performing any terrorist or subversive activity levelled against any country including his country of origin.

Article 13

In practicing his freedom of opinion and expression, a refugee shall refrain from attacking any country including his country of origin, nor shall he/she convey, by any means whatsoever, any such opinions or news that may create tension between the host country and other countries.

Article 14

Should a Contracting State face difficulty in granting or continuing to grant right of asylum under this Convention because of sudden or mass influx or for any other compelling reasons, the rest of the Contracting States shall, at the request of such State, take such appropriate measures, severally or jointly as to alleviate the burden to the asylum-providing State.

Article 15

The Secretary-General of the League of Arab States shall monitor the implementation of this Convention. To this end, he may request the Governments of the Contracting States to furnish him with copies of laws, regulations and decisions issued thereby in connection with refugees. He may also request such Governments for all information and details related to their living and residence conditions.

Article 16

Any dispute arising between parties to this Convention around its interpretation or application shall be settled through negotiation, conciliation or arbitration. If settlement cannot be reached through this means, the dispute shall be submitted to the League of Arab States Council for settlement according to the League's Charter.

Article 17

This Convention shall be ratified by the signatory States in accordance with respective constitutional systems and ratification instruments shall be deposited with the General Secretariat of the League of Arab States. States that have not signed this Convention may accede to it by a notice to be sent to the Secretary-General of the League, who shall notify the Contracting States of such accession.

The Convention shall go into effect thirty days from depositing with the General Secretariat of the League of Arab States ratification or accession instruments by one third of the member-states of the League of Arab States.

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THE RIYADH ARAB AGREEMENT FOR JUDICIAL COOPERATION (EXCERPTS)

Adopted by the Council of Arab Ministers of Justice on 6 April 1983

Entry into force: According to Article 66
Text: CDR Database
Articles: 3, 17, 25, 30, 31, 38, 40 and 41

Article 3

Assurance of the right of litigation

Citizens of the contracting parties shall enjoy within the borders of each party the right of litigation before legal bodies to demand and defend their rights; and it is specifically prohibited to subject them to any form of security, personal or in kind, if they do not carry the nationality of the contracting party concerned or because they do not have a domicile or place of residence within the borders of the state where the litigation takes place. The provisions of the preceding paragraph shall apply to legal persons established or licensed in accordance with the laws of each of the contracting parties.

Article 17

Rejection of impracticability of carrying out requests for a rogatory commission

The party requested to conduct such a rogatory commission is obliged to do so in accordance with the provisions of the present agreement, and shall not refuse to carry out such requests except in the following cases:

(*a*) If such implementation is not within the competence of the judicial authority requested to do so.

(*b*) If such implementation would prejudice the sovereignty of the contracting party requested, or public order in its territory.

(*c*) If the request concerns a crime considered by the contracting party requested to be a crime of a political nature.

In the case of refusal to carry out the request or the impracticability thereof, the requested party shall promptly notify the requesting party to this effect, return the relevant papers, and set forth the reasons behind the refusal or impracticability of carrying out the request.

Article 25

Power or *res adjudicata*

(*a*) In the application of this Part, judgement means every decision – regardless of nomenclature – made in pursuance of judicial or jurisdictional procedures of the courts or any competent authority of any party.

(*b*) Subject to the provisions of Article 30 of this Agreement, each contracting party shall recognize the judgements made by the courts of any other contracting party in civil cases including judgements related to civil rights made by penal courts and in commercial, administrative and personal statute judgements having the force of *res adjudicata* and shall implement them in its territory in accordance with the procedures stipulated in this Part, if the courts of the contracting party which made the said judgements are competent under the provisions of the rules of jurisdiction in force in the requested party, and if the legal system of the requested party does not retain for its courts or the courts of another party the exclusive competence to make such judgements.

(*c*) The present Article shall not apply to:

- Judgements made against the government of the requested party or against any of its employees in respect of acts undertaken in the course of duty or exclusively on account thereof.
- Judgements the recognition or implementation of which would be inconsistent with international treaties and agreements applied by the requested party.
- Provisional and precautionary measures and judgements made in cases of bankruptcy, taxes and fees.

Article 30

Refusal to recognize judgements

Recognition of judgements shall be refused in the following cases:

(*a*) If recognition would be in contradiction with the stipulations of the Islamic Shari'a, the provisions of the constitution, public order, or the rules of conduct of the requested party.

(*b*) If the judgement was passed in absentia without notifying the convicted party of the proceedings in an appropriate fashion that would enable him to defend himself.

(*c*) If the law of the requested party applicable to legal representation of ineligible persons or persons of diminished eligibility were not taken into consideration.

(*d*) If the dispute has given rise to another final judgement in the requested state, or in a third state and if the requested party has already recognized such a final judgement.

(*e*) If the dispute is also the subject of a case being heard by the courts of the requested party and the action has been brought before the courts of the requested party on a date preceding the presentation of the dispute to the court of the requesting party.

The judicial body examining the request for recognition in accordance with the text of this Article may observe the rule of law in its own country.

Article 31

Execution of the judgement

(*a*) Judgements made by the courts of any contracting party and duly recognized by the other contracting parties in accordance with the provisions of this Agreement shall be executed in the territory of that contracting party so long as they are so in the territory of the contracting party whose courts had made the said judgements.

(*b*) Procedures pertaining to the recognition of a judgement or the execution thereof shall be subject to the laws of the requested party if not otherwise governed by the provisions of this Agreement.

Article 38

Persons charged with, or convicted of, having committed crimes

Each contracting party hereby undertakes to extradite persons found on its territory charged with having committed a crime by the competent authority or convicted of having done so by a judicial body of any other contracting parties, subject to the rules and conditions laid down in this Part.

Article 40

Obligation to extradite

Extradition shall be obligatory with respect to the following persons:

(*a*) Individuals charged with committing acts punishable by the laws of each of the two contracting parties – that requesting extradition and that requested to extradite – with a detentive penalty of one year or a more severe penalty in the laws of either party – whatever the maximum or minimum limits in the gradation of the stipulated penalty.

(*b*) Individuals charged with acts not punishable by the laws of the requested party or where the stipulated penalty for such acts in the laws of the requesting party has no equivalent in the laws of the requested party. The same penalty shall apply if the individuals prosecuted are nationals of the requesting party of another contracting party.

(*c*) Individuals convicted in presence or in absentia by the courts of the requesting party in case of a detentive penalty of one year or a more severe penalty in respect of acts punishable by the laws of the requested party.

(*d*) Individuals convicted in presence or in absentia by the courts of the requesting party who are not punishable by the laws of the requested party or who are subject to a penalty for which there is no equivalent in its laws, if such individuals are nationals of the requesting party or of another contracting party applying the same penalty.

Article 41

Crimes not subject to extradition

No extradition may be carried out in the following cases:

(*a*) If the crime for which extradition is requested is considered by the laws of the requested party as a crime of a political nature.

(*b*) If the crime for which extradition is requested is limited to a breach of military duties.

(*c*) If the crime for which extradition is requested was committed in the territory of the requested party, except when such crime has caused damage to the interests of the requesting party and its laws stipulate that perpetrators of such crime be prosecuted and punished.

(*d*) If the crime has been the subject of a final judgement in the requesting party.

(*e*) If the legal action, at the time of receipt of the request for extradition, had lapsed or had been revoked, or the penalty had lapsed by passage of time in accordance with the laws of the requesting party.

(*f*) If the crime had been committed outside the territories of the requesting party by a person not carrying its nationality, and the law of the requested party does not provide for prosecution of such person when this crime is committed outside its territory.

(*g*) If an amnesty has been issued by the requesting party.

(*h*) If charges relating to any crime have been made in the territory of the requested party, or if a judgement had been passed in respect of such crime in the territory of a third contracting party.

In the application of the provisions of this Agreement, the following crimes, even when they have a political purpose, shall not be considered crimes of a political nature in accordance with paragraph (a) of this Article:

1. Assault on kings and presidents of the contracting parties or their wives or their ascendants or descendants.
2. Assault on heirs apparent or vice-presidents of the contracting parties.
3. Murder and robbery committed against individuals, authorities, or means of transport and communications.

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FIRST SEMINAR OF ARAB EXPERTS ON ASYLUM AND REFUGEE LAW

Conclusions adopted by the Seminar organized by the International Institute of Humanitarian Law held in San Remo on 16-19 January 1984

Text: Conclusions published by the International Institute of Humanitarian Law

The group of Arab experts, having met in a Seminar on "Asylum and Refugee Law in the Arab Countries" in San Remo (Italy) from 16 to 19 January 1984, at the invitation of the International Institute of Humanitarian Law in collaboration with the United Nations High Commissioner for Refugees;

– *Having followed* with special care the speech of Mr. Poul Hartling, the United Nations High Commissioner for Refugees;

– *Having considered* the introductory report presented by Mr. Michel Moussalli, Director of the International Protection Division of the Office of the High Commissioner and Chairman of the Academic Committee on International Refugee Law of the Institute, as well as the contributions and studies presented by the Rapporteurs;

– *Underlining* the Arab-Islamic ancestral traditions of asylum and refuge;

– *Being aware* that the refugee problem must be considered in its entirety, without omitting the aspects which are related to causes, prevention and solutions;

– *Underlining* the fact that a great number of constitutions of Arab States advocate the respect of human rights, especially the right of asylum;

– *Noting* that a certain number of Arab States have already acceded to the international instruments relating to the status of refugees;

– *Recognizing* the importance of implementing international instruments to ensure a better protection for refugees who have found asylum in the Arab countries;

– *Desiring* to strengthen the dissemination on as wide a basis as possible of international refugee law in the Arab countries;

– *Considering* with satisfaction the co-operation existing between the Office of the High Commissioner and certain Arab governments and non-governmental institutions;

– *Having expressed* to the International Institute of Humanitarian Law and to the Office of the United Nations High Commissioner for Refugees its appreciation for the efficient way in which the Seminar was organized;

Calls for the strict observance and implementation, without any discrimination in all refugee situations, of the fundamental principles which form the basis of international refugee law, notably the principles of humanity, asylum, *non-refoulement*, respect for basic human rights, voluntary repatriation and international co-operation and solidarity;

Invites the Arab States which have not yet acceded to the 1951 United Nations Convention and to the 1967 Protocol relating to the Status of Refugees to do so without delay;

Recommends that the Arab States work towards the conclusion of a regional instrument relating to refugees which would usefully complement the 1951 United Nations Convention and the 1967 Protocol relating to the Status of Refugees and which would take into account the traditions, realities and needs prevailing in these States;

Underlines that, in line with the 1969 OAU Convention governing the specific aspects of refugee problems in Africa, Arab countries should adopt the broadest possible definition of "refugee";

Stresses the urgent necessity of elaborating at the national level laws and regulations which give effect and ensure the implementation of the international and regional instruments concerning refugees;

Proposes the drafting of model laws and regulations relating to refugee rights for use by Arab States in the elaboration of their own laws and regulations;

Invites the League of Arab States to intervene with Member States with a view to ensuring the issuance and/or the renewal of travel documents which would enable refugees to exercise their right to freedom of movement and in particular take the necessary measures to implement the resolutions of competent organs of the League concerning the right to freedom of movement, family reunification, residence and work of Palestinians;

Underlines the importance of the dissemination, research and teaching of International Refugee Law in Arab States, notably by utilizing means of mass communication, with a view to increasing awareness of the refugee problem by the public in general,

Expresses the desire that an Arab Institute of Human Rights, Humanitarian Law and Refugee Law be established;

Underlines the necessity of strengthening the co-operation among Arab States and between those States and the Office of the United Nations High Commissioner for Refugees on matters relating to the protection of all refugees in the Arab world;

Gives its full support to the strengthening of the co-operation between the League of Arab States and the Officer of the United Nations High Commissioner for Refugees;

Expresses its concern that the protection for Palestinian refugees be ensured as a matter of urgency without prejudicing in any way the inalienable rights of the Palestinian people including that of the self-determination;

Encourages the furtherance of dialogue between the Palestine Liberation Organization and the Office of the United Nations High Commissioner for Refugees on humanitarian issues of concern to them;

Recommends that, in order to follow up on the conclusions adopted by the Seminar, a working group of experts be set up by the President of the International Institute of Humanitarian Law, in consultation with the United Nations High Commissioner for Refugees, the League of Arab States, the Palestine Liberation Organization, and the non-governmental Arab organizations concerned with refugee problems.

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SECOND SEMINAR OF ARAB EXPERTS ON ASYLUM AND REFUGEE LAW

Tunisia, 15 – 18 May 1989

The group of Arab experts, gathered together in Tunisia from 15 to 18 May 1989 for a Second Seminar on Asylum and Refugee Law in the Arab Countries at the invitation of the International Institute of Humanitarian Law, in collaboration with the Study and Research Centre of the Faculty of Law of Tunis University and the Tunisian Red Crescent and under the auspices of the Office of the United Nations High Commissioner for Refugees:

Having followed with close attention the address by Mr. Sadok Chaabane, Tunisian Secretary of State for Higher Education and Scientific Research, Mr. Ghassan Arnaout, Director of the Division of Refugee Law and Doctrine, Office of the United Nations High Commission for Refugees, Mr. Habib Slim, Director of the Research Centre of the Faculty of Law of Tunis University, and Professor Jovica Patrnogic, President of the International Institute of Humanitarian Law;

Having taken note of the introductory report presented by Mr. Ghassan Arnaout and of the various contributions and studies presented by the rapporteurs;

Welcoming the favourable reception given to the work and conclusions of the First Seminar on Asylum and Refugee Law in the Arab Countries organised in San Remo from 16 to 19 January 1984 by the International Institute of Humanitarian Law under the auspices of the Office of the United Nations High Commissioner for Refugees;

Gravely concerned by the fact that refugees throughout the world are in large part natives of Muslim countries or are living in countries of asylum which are likewise Muslim;

Regretting, in that connection, that since the First Seminar only one Arab State has acceded to the 1951 Convention relating to the Status of Refugees;

Bearing in mind that universality of human rights and the fact that the rights of refugees form an integral part thereof;

Recalling the principles, teachings and ancestral traditions of Muslim countries with regard to asylum and to refugees;

Gravely concerned by the persistent inadequacies and shortcoming of the protection and assistance extended to Palestinian refugees;

Noting with satisfaction the progress achieved with regard to the dissemination of refugee law in certain Arab countries;

Convinced of the need to strengthen cooperation between the Arab States, the Office of the United Nations High Commissioner for Refugees and Arab governmental and non-governmental Organizations with a view to promoting refugee law in Arab countries, ensuring its observance and consolidating its development and dissemination;

Forcefully reiterates the need for the respect and implementation, without discrimination and in all refugee law, namely the principle of humanity, asylum, *non-refoulement*, respect of fundamental human rights, voluntary repatriation, and international cooperation and solidarity;

Again invites Arab States that have not yet done so to accede to the 1951 United Nations Convention and to the 1967 Protocol relating to the Status of Refugees;

Welcomes the efforts being made by the League of Arab States with a view to the elaboration and adoption of an Arab Convention relating to refugees, and expresses the wish that those efforts may yield the anticipated results within a reasonable period of time, in consultation with the specialised international bodies and, in particular, with the Office of the United Nations High Commissioner for Refugees;

Insistently recalls the importance of the wordings of standard legislative and regulatory texts relating to the rights and duties of refugees to which Arab States should refer when elaborating their own laws and regulations in the field;

Urgently appeals to the international community and to Arab States in particular to discharge their responsibilities and their humanitarian duty in assisting the Arab countries most seriously affected by the phenomenon of massive refugee inflows or of displacement of individuals;

Expresses once again its concern over the urgent need to ensure international protection of Palestinian refugees by competent international Organizations and, in particular, by the United Nations, without prejudice, however, to the inalienable national rights of the Palestinian people, including its right to self-determination;

Invites all countries to ensure that Palestinians may enjoy their rights to freedom of movement, family unification, residence and work;

Requests all Arab states to ensure the effective application of their national laws as well as of the decisions and resolutions of organs and bodies of the League of Arab States relating to Palestinians in Arab countries signed by the Arab Ministers for Foreign Affairs at Casablanca;

Addresses an urgent appeal to the international community as a whole, and in particular to the United Nations, urging the Israeli Government to implement in the occupied territories the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War;

Stresses the need to implement a programme aimed at developing the dissemination, study and teaching of human rights relating to refugees, and of international refugee law and welcomes the setting up of a laboratory of "Human Rights and International Humanitarian Law" within the Studies, Research and Publications Centre of the Faculty of Law of Tunis University;

Advocates the strengthening of cooperation among Arab States as well as between those States and the Office of the United Nations High Commissioner for Refugees, and also invited the League of Arab States to strengthen its cooperation with the Office of the United Nations High Commissioner for Refugees;

Welcomes the establishment, within the International Institute of Humanitarian Law, of a working group entrusted with the promotion of studies and research on refugee law in the Arab world and with watching over the continuing implementation of the present conclusions;

Expresses its support of efforts being made by the International Institute of Humanitarian Law in organising seminars for experts from Arab countries in the sphere of international refugee law; and

Extends cordially thanks to the joining organisers of the Second Seminar of Arab Experts on Asylum and Refugee Law.

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THIRD SEMINAR OF ARAB EXPERTS ON ASYLUM AND REFUGEE LAW

Conclusions adopted by the Seminar organized by the International Institute of Humanitarian Law held in Amman on 2-4 November 1991

Text: Conclusions published by the International Institute of Humanitarian Law

The group of Arab Experts gathered together in Amman from 2 to 4 November 1991 for the Third Seminar on Asylum and Refugee Law in the Arab Countries at the invitation of the International Institute of Humanitarian Law (San Remo, Italy) in collaboration with the Jordan National Red Crescent Society, under the patronage of His Royal Highness Crown Prince Hassan of Jordan and under the auspices of the United Nations High Commissioner for Refugees;

– *Having followed* with close attention the addresses of H.E. Dr. Ahmed Abu Goura, President of the Jordan National Red Crescent Society, of Mr. Michel Moussali, Director of International Protection and Representative of the United Nations High Commissioner for Refugees, and of Professor Jovica Patrnogic, Hon, President of the International Institute of Humanitarian Law;

– *Expressing* its thanks to the President of the Republic of Tunisia, His Excellency Zein El Abidine Ben Ali, for his friendly message and wishes for the success of the seminar;

– *Expressing* its cordial thanks and fully appreciating the statement of HRH Crown Prince Hassan of Jordan, and sharing his outlook;

– *Welcoming* the favourable reception and encouragements given to the work and conclusions of the Second Seminar on Asylum and Refugee Law in the Arab Countries organized in Tunis from 15 to 18 May 1989 by the International Institute of Humanitarian Law in collaboration with the Study and Research Centre of the Faculty of Law of Tunis University and the Tunisian Red Crescent Society under the auspices of the United Nations High Commissioner for Refugees;

– *Noting* with deep concern the increase in the number of refugees in the Arab World and particularly in certain countries of the Middle East;

– *Taking into consideration* that the persistence of the Arab-Israeli conflict and the other conflict situations prevailing in the Middle East are root causes of the increase in the number of refugees in this part of the world;

– *Noting* with deep regret that some Arab States have suffered in the past from mass flows of refugees and have recently been affected by other big flows of refugees and displaced persons;

– *Fully supporting* the humanitarian work of the United Nations High Commissioner for Refugees and his protection and assistance activities in favour of refugees and displaced persons in the Arab countries, as well as the humanitarian activities of the International Committee of the Red Cross, the International Organization for Migration, the League of Red Cross and Red Crescent Societies and of Arab national Red Crescent and Red Cross Societies in favour of those who are in need of assistance and protection in the Arab region;

– *Recalling* the deep root of the humanitarian principles of asylum and refuge in Islamic and Arab values and their glorious contributions which attest a veneration and constant respect for these principles;

– *Regretting* that many Arab countries have not yet acceded to the international instruments relating to refugee law, particularly the United Nations Convention of 1951 and the 1967 Protocol;

– *Regretting* also that some Arab States have not yet enacted national legislations concerning refugees;

– *Considering* that asylum law and refugee law are inherent parts of the human rights law, the respect of which should be fully assured in the Arab World;

– *Affirming* its attachment to the principles of solidarity and burden-sharing among States in the situations of mass movements of refugees and displaced persons;

– *Deeply concerned* that the Palestinians do not enjoy an adequate and appropriate international protection by competent international organizations, in particular by the United Nations;

– *Noting with satisfaction* the progress realized in the area of promotion and dissemination of refugee law in certain Arab countries;

– *Stressing* the need for strengthening co-operation between the Arab States, the Office of the United Nations High Commissioner for Refugees and Arab governmental and non-governmental organizations with a view to promoting refugee law in Arab countries, ensuring its respect and consolidating its progressive development and dissemination;

1. *Commends* the efforts undertaken by some Arab countries which have suffered from mass flows of refugees and displaced persons to receive, assist and protect them;
2. *Addresses* an urgent appeal to the international community and particularly to the Arab countries to lend its strong and effective support, by all means, including material and financial means, to the Arab states which have made and are making heavy sacrifices by granting asylum and refuge on a massive scale;
3. *Underlining* that international humanitarian assistance should be given effectively and indiscriminately to the Arab States facing mass flows of refugees and displaced persons;
4. *Strongly reiterates* the need for respect and implementation, without discrimination, in all refugee situations, of the fundamental principles of international refugee law, human rights and international humanitarian law;
5. *Reiterates its appeal* to the Arab States which have not yet acceded to the United Nations Refugee Convention of 1951 and to the 1967 Protocol to do so without further delay;
6. *Underlines* the necessity to enact national legislations on the protection of refugees in conformity with the precepts and teachings of Islam, the traditional Arab-Islamic practices with regard to asylum and refuge and other international instruments relating to refugees;
7. *Fully supports* the efforts being made by the League of Arab States to elaborate and adopt an Arab Convention relating to refugees;
8. *Expresses the wish,* meanwhile, for the adoption of an Arab Declaration on the protection of refugees establishing fundamental humanitarian rules for the protection of asylum seekers and refugees, until the Convention referred to in paragraph 7 above is adopted;
9. *Underlines* the imperative and urgent necessity to ensure an appropriate international protection to Palestinians by the international humanitarian organizations, in particular by the United Nations, without prejudice to the national and inalienable rights of the Palestinian people, including its right to self-determination;
10. *Calls upon* all countries concerned to ensure that the Palestinian refugees enjoy their rights to freedom of movement, family reunification, residence and work;
11. *Requests* all Arab States to ensure the effective application of their national legislations as well as of the decisions and resolutions of the various organs of the League of Arab States relating to Palestinians, and in particular the 1965 Protocol relating to the rights of the Palestinians in Arab countries adopted by the Arab Ministers for Foreign Affairs in Casablanca;
12. *Reiterates* its urgent appeal to the international community as a whole, and in particular to the United Nations, to persuade the Israeli Government to implement the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, in the Arab occupied territories;
13. *Invites* the League of Arab States, in collaboration with Arab Governments, concerned Arab governmental and non-governmental organizations, to call for a conference on human rights in the Arab World, with a view to adopting an Arab Charter on Human Rights;
14. *Urges* to further strengthen the cooperation between the Arab States, the League of Arab States, with the Office of the United Nations High Commissioner for Refugees;
15. *Advocates* the creation of a pan-Arab Research and Study Institute on Humanitarian Law and Refugee Law;

16. *Encourages* studies and research on the concepts and practices on asylum and refuge in Arab Islamic law with a view to promoting the practices and awareness of Arab States in this regard;
17. *Pays tribute* and gives its full support to the International Institute of Humanitarian Law for its efforts in organizing seminars under the auspices of the United Nations High Commissioner for Refugees and progressive development of refugee law in Arab countries;
18. *Expresses* its warm thanks to the organizers of the Third Seminar of Arab Experts on Asylum and Refugee Law.

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FOURTH SEMINAR OF ARAB EXPERTS ON ASYLUM AND REFUGEE LAW

Conclusions adopted by the Seminar organized by the International Institute of Humanitarian Law held in Cairo on 16-19 November 1992

Contains the "Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World"
Text: Conclusions published by the International Institute of Humanitarian Law

The Group of Arab Experts, meeting in Cairo, Arab Republic of Egypt, from 16 to 19 November 1992 at the Fourth Arab Seminar on "Asylum and Refugee Law in the Arab World" organized by the International Institute of Humanitarian Law in collaboration with the Faculty of Law of Cairo University, under the Sponsorship of the United Nations High Commissioner for Refugees,

1. *Noting* with deep regret the suffering which the Arab World has endured from large-scale flows of refugees and displaced persons, and also noting with deep concern the continuing outflow of refugees and displaced persons in the Arab World and the human tragedy encountered by them,
2. *Recalling* the humanitarian principles deeply rooted in Islamic Arab traditions and values and the principles and rules of Moslem law (Islamic Shari'a), particularly the principles of social solidarity and asylum, which are reflected in the universally recognized principles of international humanitarian law,
3. *Recognizing* the imperative need for a humanitarian approach in solving the problems or refugees and displaced persons, without prejudice to the political rights of the Palestinian people,
4. *Emphasizing* the need for the effective implementation of paragraph 11 of General Assembly Resolution 194 (111) of 11 December 1948, calling for the right of return or compensation for Palestinian refugees,
5. *Considering* that the required solution is the full implementation of the Resolutions of the Security Council and of the United Nations, including Resolutions 181 of 1947 and Resolution 3236 of 1973, which guarantee the right of the Palestinian people to establish its independent State on its national territory,
6. *Deeply concerned* that Palestinians are not receiving effective protection either from the competent international organizations or from the competent authorities of some Arab countries,
7. *Recognizing* that the refugees and displaced persons problems must be addressed in all their aspects, in particular those relating to their causes, means of prevention and appropriate solutions,
8. *Recalling* that the United Nations Charter and the international human rights instruments affirm the principle that human beings shall enjoy fundamental rights and freedoms without discrimination of whatever nature,
9. *Considering* that Asylum and Refugee Law constitute an integral part of Human Rights Law, respect for which should be fully ensured in the Arab World,
10. *Recognizing* that the United Nations Convention of 28 July 1951 and the Protocol of 31 January 1967 constitute the basic universal instruments governing the status of refugees,
11. *Recalling* the importance or regional legal instruments such as the 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees,
12. *Recognizing* that the fundamental principles of human rights, international humanitarian law and international refugee law represent a common standard to be attained by all peoples and nations; that they should provide constant guidance to all individuals and organs of society; and that competent national authorities should ensure respect for these principles and should endeavour to promote them by means of education and dissemination,
13. *Recalling* the historic role of Islam and its contribution to humanity, and the fact that universal respect for human rights and fundamental freedoms for all constitute an integral part of Arab values and of the principles and rules of Moslem law (Islamic Shari'a),
14. *Noting with appreciation* the humanitarian role of the Office of the United Nations High Commissioner for Refugees in providing protection and assistance to refugees and displaced persons,

15. *Recalling with particular gratitude* the efforts of the International Institute of Humanitarian Law for the developing of refugee law in the Arab World and for organizing the four Arab Seminars held for this purpose in San Remo (1984), Tunis (1989), Amman (1991) and Cairo (1992), and,

16. *Recalling with appreciation* the efforts or the International Committee or the Red Cross in protecting refugees and displaced persons in armed conflict situations,

Adopts the following Declaration:

Article 1

Reaffirms the fundamental right of every person to the free movement within his own country, or to leave it for another country and to return to his country of origin;

Article 2

Reaffirms the importance of the principle prohibiting the return or the expulsion of a refugee to a country where his life or his freedom will be in danger and considers this principle as an imperative rule of the international public law;

Article 3

Considers that the granting or asylum should not as such be regarded as an unfriendly act *vis-a-vis* any other State;

Article 4

Hopes that Arab States which have not yet acceded to the 1951 Convention and the 1967 Protocol relating to the status of refugees will do so;

Article 5

In situations which may not be covered by the 1951 Convention, the 1967 Protocol, or any other relevant instrument in force or United Nations General Assembly resolutions, refugees, asylum seekers and displaced persons shall nevertheless be protected by:

(*a*) The humanitarian principles of asylum in Islamic law and Arab values,

(*b*) The basic human rights rules, established by international and regional Organizations,

(*c*) Other relevant principles or international law;

Article 6

Recommends that, pending the elaboration of an Arab Convention relating to refugees, Arab States adopt a broad concept of “refugee” and “displaced person” as well as a minimum standard for their treatment, guided by the provisions of the United Nations instruments relating to human rights and refugees as well as relevant regional instruments;

Article 7

Calls the League of Arab States to reinforce its efforts with a view to adopting an Arab Convention relating to refugees. These efforts will hopefully be brought to fruition within a reasonable period of time;

Article 8

Calls upon Arab States to provide the Secretariat of the League with relevant information and statistical data, in particular concerning:

(*a*) The condition of refugees and displaced persons in their territories,

(*b*) The extent of their implementation of international instruments relating to the protection of refugees,

(*c*) National laws, regulations and decrees in force, relating to refugees and displaced persons;

This will help the League of Arab States in taking an active role in the protection of refugees and displaced persons in cooperation with the competent international organizations;

Article 9

(*a*) Strongly emphasizes the need to ensure international protection for Palestinian refugees by competent international organizations and, in particular, by the United Nations, without in any way prejudicing the inalienable national rights of the Palestinian people, especially their right to repatriation and self-determination,

(*b*) Requests the competent organs of the United Nations to extend with due speed the necessary protection to the Palestinian people, in application or Security Council Resolution 681 of 20 December 1990,

(*c*) Requests the Arab States to apply in its entirety the Protocol relating to the Treatment of Palestinians in Arab States, adopted at Casablanca on 11 September 1965.

Article 10

Emphasizes the need to provide special protection to women and children, as the largest category of refugees and displaced persons, and the most to suffer, as well as the importance of efforts to reunite the families of refugees and displaced persons;

Article 11

Calls for the necessary attention which should be given to the dissemination of refugee law and to the development of the public awareness thereof in the Arab World; and for the establishment of an Arab Institute of International Humanitarian Law, in cooperation with the United Nations High Commissioner for Refugees, the International Committee of the Red Cross and the League of Arab States.

DONE at Cairo, on Thursday, the 24th of Joumada al-oula A.H. 1413, the 19th of November A.D. 1992.

First Recommendation

The Arab experts, meeting in Cairo at their Fourth Seminar on Asylum and Refugee Law in the Arab World, wish to express their deep appreciation to the International Institute of Humanitarian Law and to the Faculty of Law of Cairo University for their valuable efforts, as well as to the Office of the United Nations High Commissioner for Refugees for its generous sponsorship, all of which led to the success of the Seminar and point to the need for periodically holding similar seminars in other parts of the Arab World in view of the benefits accruing therefrom.

The Arab experts address their special thanks to the International Institute of Humanitarian Law for publishing the proceedings and synopsis of previous seminars. They note with deep appreciation the intended publication and large-scale dissemination by the Institute of the proceedings and results of their Fourth Seminar, including the Cairo Declaration.

Second Recommendation

The Arab experts, meeting in Cairo at their Fourth Seminar on Asylum and Refugee Law in the Arab World, express their appreciation to the General Secretariat of the League of Arab States for its effective participation in the work of the Seminar and urge it to continue its constructive efforts with a view to reaching satisfactory solutions to the problems of refugees, including moral and material sponsorship of future meetings on the subject.

They also invite the League to study the feasibility of creating an Arab Organization for refugees in the Arab World, within the framework of the specialised agencies of the League, with a view to providing legal and humanitarian protection for the refugees.

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ASSISTANCE TO PALESTINE REFUGEES[1]

UN General Assembly Resolution 302 (IV) of 8 December 1949

The General Assembly,

Recalling its resolutions 212 (III)[2] of 19 November 1948 and 194 (III)[3] of 11 December 1948, affirming in particular the provisions of paragraph 11 of the latter resolutions,

Having examined with appreciation the first interim report[4] of the United Nations Economic Survey Mission for the Middle East and the report[5] of the Secretary-General on assistance to Palestine refugees,

1. *Expresses* its appreciation to the Governments which have generously responded to the appeal embodied in its resolution 212 (III), and to the appeal of the Secretary-General, to contribute in kind or in funds to the alleviation of the conditions of starvation and distress among the Palestine refugees;

2. *Expresses* also its gratitude to the International Committee of the Red Cross, to the League of Red Cross Societies and to the American Friends Service Committee for the contribution they have made to this humanitarian cause by discharging, in the face of great difficulties, the responsibility they voluntarily assumed for the distribution of relief supplies and the general care of the refugees; and welcomes the assurance they have given the Secretary-General that they will continue their co-operation with the United Nations until the end of March 1950 on a mutually acceptable basis;

3. *Commends* the United Nations International Children's Emergency Fund for the important contribution which it has made towards the United Nations programme of assistance; and commends those specialized agencies which have rendered assistance in their respective fields, in particular the World Health Organization, the United Nations Educational, Scientific and Cultural Organization and the International Refugee Organization;

4. *Expresses* its thanks to the numerous religious, charitable and humanitarian organizations which have materially assisted in bringing relief to Palestine refugees;

5. *Recognizes* that, without prejudice to the provisions of paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948, continued assistance for the relief of the Palestine refugees is necessary to prevent conditions of starvation and distress among them and to further conditions of peace and stability, and that constructive measures should be undertaken at an early date with a view to the termination of international assistance for relief;

6. *Considers* that, subject to the provisions of paragraph 9(d) of the present resolution, the equivalent of approximately $33,700,000 will be required for direct relief and works programmes for the period 1 January to 31 December 1950 of which the equivalent of $20,200,000 is required for direct relief and $13,500,000 for works programmes; that the equivalent of approximately $21,200,000 will be required for works programmes from 1 January to 30 June 1951, all inclusive of administrative expenses; and that direct relief should be terminated not later than 31 December 1950 unless otherwise determined by the General Assembly at its fifth regular session;

7. *Establishes* the United Nations Relief and Works Agency for Palestine Refugees in the Near East:

   (*a*) To carry out in collaboration with local governments the direct relief and works programmes as recommended by the Economic Survey Mission;

   (*b*) To consult with the interested Near Eastern Governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available;

8. *Establishes* an Advisory Commission consisting of representatives of France, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States of America, with power to add not

[1] See *Official Records of the third session of the General Assembly, Part II*, Resolutions, page 19.
[2] *Ibid.*, Part I, Resolutions, page 66.
[3] *Ibid.*, page 21.
[4] See *Official Records of the fourth session of the General Assembly, Annex to the Ad Hoc Political Committee*, document A/1106.
[5] *Ibid.*, documents A/1060 and A/1060/Add.1.

more than three additional members from contributing Governments, to advise and assist the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East in the execution of the programme; the Director and the Advisory Commission shall consult with each near Eastern Government concerned in the selection, planning and execution of projects;

9. *Requests* the Secretary-General to appoint the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East in consultation with the Governments represented on the Advisory Commission;

   (*a*) The Director shall be the chief executive officer of the United Nations Relief and Works Agency for Palestine Refugees in the Near East responsible to the General Assembly for the operation of the programme;

   (*b*) The Director shall select and appoint his staff in accordance with general arrangements made in agreement with the Secretary-General, including such of the staff rules and regulations of the United Nations as the Director and the Secretary-General shall agree are applicable, and to the extent possible utilize the facilities and assistance of the Secretary-General;

   (*c*) The Director shall, in consultation with the Secretary-General and the Advisory Committee on Administrative and Budgetary Questions, establish financial regulations for the United Nations Relief and Works Agency for Palestine Refugees in the Near East;

   (*d*) Subject to the financial regulations established pursuant to clause (c) of the present paragraph, the Director, in consultation with the Advisory Commission, shall apportion available funds between direct relief and works projects in their discretion, in the event that the estimates in paragraph 6 require revision;

10. *Requests* the Director to convene the Advisory Commission at the earliest practicable date for the purpose of developing plans for the organization and administration of the programme, and of adopting rules of procedure;

11. *Continues* the United Nations Relief for Palestine Refugees as established under General Assembly resolution 212 (III) until 1 April 1950, or until such date thereafter as the transfer referred to in paragraph 12 is affected, and requests the Secretary-General in consultation with the operating agencies to continue the endeavour to reduce the numbers of rations by progressive stages in the light of the findings and recommendations of the Economic Survey Mission;

12. *Instructs* the Secretary-General to transfer to the United Nations Relief and Works Agency for Palestine Refugees in the Near East the assets and liabilities of the United Nations Relief for Palestine Refugees by 1 April 1950, or at such date as may be agreed by him and the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East;

13. *Urges* all Members of the United Nations and non-members to make voluntary contributions in funds or in kind to ensure that the amount of supplies and funds required is obtained for each period of the programme as set out in paragraph 6; contributions in funds may be made in currencies other than the United States dollar in so far as the programme can be carried out in such currencies;

14. *Authorizes* the Secretary-General, in consultation with the Advisory Committee on Administrative and Budgetary Questions, to advance funds deemed to be available for this purpose and not exceeding $5,000,000 from the Working Capital Fund to finance operations pursuant to the present resolution, such sum to be repaid not later than 31 December 1950 from the voluntary governmental contributions requested under paragraph 13 above;

15. *Authorizes* the Secretary-General, in consultation with the Advisory Committee on Administrative and Budgetary Questions, to negotiate with the International Refugee Organization for an interest-free loan in an amount not to exceed the equivalent of $2,800,000 to finance the programme subject to mutually satisfactory conditions for repayment;

16. *Authorizes* the Secretary-General to continue the Special Fund established under General Assembly resolution 212 (III) and to make withdrawals therefrom for the operation of the United Nations Relief for Palestine Refugees and, upon the request of the Director, for the operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East;

17. *Calls upon* the Governments concerned to accord to the United Nations Relief and Works Agency for Palestine Refugees in the Near East the privileges, immunities, exemptions and facilities which have been granted to the United Nations Relief for Palestine Refugees, together with all other privileges, immunities, exemptions and facilities necessary for the fulfilment of its functions;

18. *Urges* the United Nations International Children's Emergency Fund, the International Refugee Organization, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the Food and Agriculture Organization and other appropriate agencies and private groups and organizations, in consultation with the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, to furnish assistance within the framework of the programme;

19. *Requests* the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East:

    (*a*) To appoint a representative to attend the meeting of the Technical Assistance Board as observer so that the technical assistance activities of the United Nations Relief and Works Agency for Palestine Refugees in the Near East may be co-ordinated with the technical assistance programmes of the United Nations and specialized agencies referred to in Economic and Social Council resolution 222 (IX) A[6] of 15 August 1949;

    (*b*) To place at the disposal of the Technical Assistance Board full information concerning any technical assistance work which may be done by the United Nations Relief and Works Agency for Palestine Refugees in the Near East, in order that it may be included in the reports submitted by the Technical Assistance Board to the Technical Assistance committee of the Economic and Social Council;

20. *Directs* the United Nations Relief and Works Agency for Palestine Refugees in the Near East to consult with the United Nations Conciliation Commission for Palestine in the best interests of their respective tasks, with particular reference to paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948;

21. *Requests* the Director to submit to the General Assembly of the United Nations an annual report on the work of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, including an audit of funds, and invites him to submit to the Secretary-General such other reports as the United Nations Relief and Works Agency for Palestine Refugees in the Near East may wish to bring to the attention of Members of the United Nations, or its appropriate organs;

22. *Instructs* the United Nations Conciliation Commission for Palestine to transmit the final report of the Economic Survey Mission, with such comments as it may wish to make, to the Secretary-General for transmission to the Members of the United Nations and to the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

[6] See *Official Records of the Economic and Social Council*, Fourth Year, Ninth Session, Resolutions, page 4.

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PROTOCOL ON THE TREATMENT OF PALESTINIAN REFUGEES (CASABLANCA PROTOCOL)

Adopted in Casablanca on 10 September 1965

On the basis of the Charter of the League of Arab States and its special annex pertaining to Palestine, and of the LAS Council resolution concerning the Palestinian issue, and, in particular, of the Special resolution pertaining to safeguarding Palestinian existence,

The Council of Foreign Ministers of Member States agreed, in its meeting in Casablanca on 10 September 1965, upon the following regulations, and called upon Member States to take the necessary measures to put them into the sphere of implementation:

1. Whilst retaining their Palestinian nationality, Palestinians currently residing in the land of _____ have the right of employment on part with its citizens.
2. Palestinians residing at the moment in _____ in accordance with the dictates of their interests, have the right to leave and return to this state.
3. Palestinians residing in other Arab states have the right to enter the land of _____ and to depart from it, in accordance with their interests. Their right of entry only gives them the right to stay for the permitted period and for the purpose they entered for, so long as the authorities do not agree to the contrary.
4. Palestinians who are at the moment in _____, as well as those who were residing and left to the Diaspora, are given, upon request, valid travel documents. The concerned authorities must, wherever they may be, issue these documents or renew them without delay.
5. Bearers of these travel documents residing in LAS states receive the same treatment as all other LAS state citizens, regarding visa, and residency applications.

On behalf of: The Secretary-General

Casablanca, 11 September 1965

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ARAB CHARTER ON HUMAN RIGHTS

Adopted on 15 September 1995 by the Council of the League of Arab States at its 102nd regular session

Text: Council of the League of Arab States Resolution 5437

PREAMBLE

Given the Arab nation's belief in human dignity since God honoured it by making the Arab World the cradle of religions and the birthplace of civilizations which confirmed its right to a life of dignity based on freedom, justice and peace,

Pursuant to the eternal principles of brotherhood and equality among all human beings which were firmly established by the Islamic Shari'a and the other divinely-revealed religions,

Being proud of the humanitarian values and principles which it firmly established in the course of its long history and which played a major role in disseminating centres of learning between the East and the West, thereby making it an international focal point for seekers of knowledge, culture and wisdom,

Conscious of the fact that the entire Arab World has always worked together to preserve its faith, believing in its unity, struggling to protect its freedom, defending the right of nations to self-determination and to safeguard their resources, believing in the rule of law and that every individual's enjoyment of freedom, justice and equality of opportunity is the yardstick by which the merits of any society are gauged,

Rejecting racism and zionism, which constitute a violation of human rights and pose a threat to world peace,

Acknowledging the close interrelationship between human rights and world peace,

Reaffirming the principles of the Charter of the United Nations and the Universal Declaration of Human Rights, as well as the provisions of the United Nations International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and the Cairo Declaration on Human Rights in Islam.

In confirmation of all the above, have agreed as follows:

PART I

Article 1

(*a*) All peoples have the right of self-determination and control over their natural wealth and resources and, accordingly, have the right to freely determine the form of their political structure and to freely pursue their economic, social and cultural development.

(*b*) Racism, zionism, occupation and foreign domination pose a challenge to human dignity and constitute a fundamental obstacle to the realization of the basic rights of peoples. There is a need to condemn and endeavour to eliminate all such practices.

PART II

Article 2

Each State Party to the present Charter undertakes to ensure to all individuals within its territory and subject to its Jurisdiction the right to enjoy all the rights and freedoms recognized herein, without any distinction on grounds of race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status and without any discrimination between men and women.

Article 3

(*a*) No restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Charter in virtue of law, conventions or custom shall be admitted on the pretext that the present Charter does not recognize such rights or that it recognizes them to a lesser extent.

(*b*) No State Party to the present Charter shall derogate from the fundamental freedoms recognized herein and which are enjoyed by the nationals of another State that shows less respect for those freedoms.

Article 4

(*a*) No restrictions shall be placed on the rights and freedoms recognized in the present Charter except where such is provided by law and deemed necessary to protect the national security and economy, public order, health or morals or the rights and freedoms of others.

(*b*) In time of public emergency which threatens the life of the nation, the States Parties may take measures derogating from their obligations under the present Charter to the extent strictly required by the exigencies of the situation.

(*c*) Such measures or derogations shall under no circumstances affect or apply to the rights and special guarantees concerning the prohibition of torture and degrading treatment, return to one's country, political asylum, trial, the inadmissibility of retrial for the same act, and the legal status of crime and punishment.

Article 5

Every individual has the right to life, liberty and security of person. These rights shall be protected by law.

Article 6

There shall be no crime or punishment except as provided by law and there shall be no punishment in respect of an act preceding the promulgation of that provision. The accused shall benefit from subsequent legislation if it is in his favour.

Article 7

The accused shall be presumed innocent until proved guilty at a lawful trial in which he has enjoyed the guarantees necessary for his defence.

Article 8

Everyone has the right to liberty and security of person and no one shall be arrested, held in custody or detained without a legal warrant and without being brought promptly before a judge.

Article 9

All persons are equal before the law and everyone within the territory of the State has a guaranteed right to legal remedy.

Article 10

The death penalty may be imposed only for the most serious crimes and anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.

Article 11

The death penalty shall under no circumstances be imposed for a political offence.

Article 12

The death penalty shall not be inflicted on a person under 18 years of age, on a pregnant woman prior to her delivery or on a nursing mother within two years from the date on which she gave birth.

Article 13

(*a*) The States parties shall protect every person in their territory from being subjected to physical or mental torture or cruel, inhuman or degrading treatment. They shall take effective measures to prevent such acts and shall regard the practice thereof, or participation therein, as a punishable offence.

(*b*) No medical or scientific experimentation shall be carried out on any person without his free consent.

Article 14

No one shall be imprisoned on the ground of his proven inability to meet a debt or fulfil any civil obligation.

Article 15

Persons sentenced to a penalty of deprivation of liberty shall be treated with humanity.

Article 16

1. No one shall be tried twice for the same offence.
2. Anyone against whom such proceedings are brought shall have the right to challenge their legality and to demand his release.
3. Anyone who is the victim of unlawful arrest or detention shall be entitled to compensation.

Article 17

Privacy shall be inviolable and any infringement thereof shall constitute an offence. This privacy includes private family affairs, the inviolability of the home and the confidentiality of correspondence and other private means of communication.

Article 18

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

Article 19

The people are the source of authority and every citizen of full legal age shall have the right of political participation, which he shall exercise in accordance with the law.

Article 20

Every individual residing within the territory of a State shall have the right to liberty of movement and freedom to choose his place of residence in any part of the said territory, within the limits of the law.

Article 21

No citizen shall be arbitrarily or unlawfully prevented from leaving any Arab country, including his own, nor prohibited from residing, or compelled to reside, in any part of his country.

Article 22

No citizen shall be expelled from his country or prevented from returning thereto.

Article 23

Every citizen shall have the right to seek political asylum in other countries in order to escape persecution. This right shall not be enjoyed by persons facing prosecution for an offence under the ordinary law. Political refugees shall not be extraditable.

Article 24

No citizen shall be arbitrarily deprived of his original nationality, nor shall his right to acquire another nationality be denied without a legally valid reason.

Article 25

Every citizen has a guaranteed right to own private property. No citizen shall under any circumstances be divested of all or any part of his property in an arbitrary or unlawful manner.

Article 26

Everyone has a guaranteed right to freedom of belief, thought and opinion.

Article 27

Adherents of every religion have the right to practise their religious observances and to manifest their views through expression, practice or teaching, without prejudice to the rights of others. No restrictions shall be imposed on the exercise of freedom of belief, thought and opinion except as provided by law.

Article 28

All citizens have the right to freedom of peaceful assembly and association. No restrictions shall be placed on the exercise of this right unless so required by the exigencies of national security, public safety or the need to protect the rights and freedoms of others.

Article 29

The State guarantees the right to form trade unions and the right to strike within the limits laid down by law.

Article 30

The State guarantees every citizen's right to work in order to secure for himself a standard of living that meets the basic requirements of life. The State also guarantees every citizen's right to comprehensive social security.

Article 31

Free choice of work is guaranteed and forced labour is prohibited. Compelling a person to perform work under the terms of a court judgement shall not be deemed to constitute forced labour.

Article 32

The State shall ensure that its citizens enjoy equality of opportunity in regard to work, as well as a fair wage and equal remuneration for work of equal value.

Article 33

Every citizen shall have the right of access to public office in his country.

Article 34

The eradication of illiteracy is a binding obligation and every citizen has a right to education. Primary education, at the very least, shall be compulsory and free and both secondary and university education shall be made easily accessible to all.

Article 35

Citizens have a right to live in an intellectual and cultural environment in which Arab nationalism is a source of pride, in which human rights are sanctified and in which racial, religious and other forms of discrimination are rejected and international cooperation and the cause of world peace are supported.

Article 36

Everyone has the right to participate in cultural life, as well as the right to enjoy literary and artistic works and to be given opportunities to develop his artistic, intellectual and creative talents.

Article 37

Minorities shall not be deprived of their right to enjoy their culture or to follow the teachings of their religions.

Article 38

(*a*) The family is the basic unit of society, whose protection it shall enjoy.

(*b*) The State undertakes to provide outstanding care and special protection for the family, mothers, children and the aged.

Article 39

Young persons have the right to be afforded the most ample opportunities for physical and mental development.

PART III

Article 40

(*a*) The States members of the League's Council which are parties to the Charter shall elect a Committee of Experts on Human Rights by secret ballot.

(*b*) The Committee shall consist of seven members nominated by the Member States Parties to the Charter. The initial elections to the Committee shall be held six months after the Charter's entry into force. The Committee shall not include more than one person from the same State.

(*c*) The Secretary-General shall request the Member States to submit their candidates two months before the scheduled date of the elections.

(*d*) The candidates, who must be highly experienced and competent in the Committee's field of work, shall serve in their personal capacity with full impartiality and integrity.

(*e*) The Committee's members shall be elected for a three-year term which, in the case of three of them, shall be renewable for one further term, their names being selected by lot. The principle of rotation shall be observed as far as possible.

(*f*) The Committee shall elect its chairman and shall draw up its rules of procedure specifying its method of operation.

(*g*) Meetings of the Committee shall be convened by the Secretary-General at the Headquarters of the League's Secretariat. With the Secretary-General's approval, the Committee may also meet in another Arab country if the exigencies of its work so require.

Article 41

1. The States Parties shall submit reports to the Committee of Experts on Human Rights in the following manner:

   (*a*) An initial report one year after the date of the Charter's entry into force.

   (*b*) Periodic reports every three years.

   (*c*) Reports containing the replies of States to the Committee's questions.

2. The Committee shall consider the reports submitted by the Member States Parties to the Charter in accordance with the provisions of paragraph 1 of this article.

3. The Committee shall submit a report, together with the views and comments of the States, to the Standing Committee on Human Rights at the Arab League.

PART IV

Article 42

(*a*) The Secretary-General of the League of Arab States shall submit the present Charter, after its approval by the Council of the League, to the Member States for signature and ratification or accession.

(*b*) The present Charter shall enter into effect two months after the date of deposit of the seventh instrument of ratification or accession with the Secretariat of the League of Arab States.

Article 43

Following its entry into force, the present Charter shall become binding on each State two months after the date of the deposit of its instrument of ratification or accession with the Secretariat. The Secretary-General shall notify the Member States of the deposit of each instrument of ratification or accession.

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UNIVERSAL ISLAMIC DECLARATION OF HUMAN RIGHTS

Adopted on *21 Dhul Qaidah 1401* (19 September 1981)

This is a declaration for mankind, a guidance and instruction to those who fear God. (Al Qur'an, Al-Imran 3:138)

FOREWORD

Islam gave to mankind an ideal code of human rights fourteen centuries ago. These rights aim at conferring honour and dignity on mankind and eliminating exploitation, oppression and injustice.

Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered.

Human rights in Islam are an integral part of the overall Islamic order and it is obligatory on all Muslim governments and organs of society to implement them in letter and in spirit within the framework of that order.

It is unfortunate that human rights are being trampled upon with impunity in many countries of the world, including some Muslim countries. Such violations are a matter of serious concern and are arousing the conscience of more and more people throughout the world.

I sincerely hope that this *Declaration of Human Rights* will give a powerful impetus to the Muslim peoples to stand firm and defend resolutely and courageously the rights conferred on them by God.

This *Declaration of Human Rights* is the second fundamental document proclaimed by the Islamic Council to mark the beginning of the 15th Century of the Islamic era, the first being the *Universal Islamic Declaration* announced at the International Conference on The Prophet Muhammad (peace and blessings be upon him) and his Message, held in London from 12 to 15 April 1980.

The *Universal Islamic Declaration of Human Rights* is based on the Qur'an and the Sunnah and has been compiled by eminent Muslim scholars, jurists and representatives of Islamic movements and thought. May God reward them all for their efforts and guide us along the right path.

Paris 21 Dhul Qaidah 1401 Salem Azzam
19th September 1981 *Secretary General*

O men! Behold, We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another. Verily, the noblest of you in the sight of God is the one who is most deeply conscious of Him. Behold, God is all-knowing, all aware.

(Al Qur'an, Al-Hujurat 49:13)

PREAMBLE

Whereas the age-old human aspiration for a just world order wherein people could live, develop and prosper in an environment free from fear, oppression, exploitation and deprivation, remains largely unfulfilled;

Whereas the Divine Mercy unto mankind reflected in its having been endowed with super-abundant economic sustenance is being wasted, or unfairly or unjustly withheld from the inhabitants of the earth;

Whereas Allah (God) has given mankind through His revelations in the Holy Qur'an and the Sunnah of His Blessed Prophet Muhammad an abiding legal and moral framework within which to establish and regulate human institutions and relationships;

Whereas the human rights decreed by the Divine Law aim at conferring dignity and honour on mankind and are designed to eliminate oppression and injustice;

Whereas by virtue of their Divine source and sanction these rights can neither be curtailed, abrogated or disregarded by authorities, assemblies or other institutions, nor can they be surrendered or alienated;

Therefore we, as Muslims, who believe

(*a*) In God, the Beneficent and Merciful, the Creator, the Sustainer, the Sovereign, the sole Guide of mankind and the Source of all Law;

(*b*) In the Vicegerency (Khilafah) of man who has been created to fulfil the Will of God on earth;

(*c*) In the wisdom of Divine guidance brought by the Prophets, whose mission found its culmination in the final Divine message that was conveyed by the Prophet Muhammad (Peace be upon him) to all mankind;

(*d*) That rationality by itself without the light of revelation from God can neither be a sure guide in the affairs of mankind nor provide spiritual nourishment to the human soul, and, knowing that the teachings of Islam represent the quintessence of Divine guidance in its final and perfect form, feel duty-bound to remind man of the high status and dignity bestowed on him by God;

(*e*) In inviting all mankind to the message of Islam;

(*f*) That by the terms of our primeval covenant with God our duties and obligations have priority over our rights, and that each one of us is under a bounden duty to spread the teachings of Islam by word, deed, and indeed in all gentle ways, and to make them effective not only in our individual lives but also in the society around us;

(*g*) In our obligation to establish an Islamic order:

(i) Wherein all human beings shall be equal and none shall enjoy a privilege or suffer a disadvantage or discrimination by reason of race, colour, sex, origin or language;

(ii) Wherein all human beings are born free;

(iii) Wherein slavery and forced labour are abhorred;

(iv) Wherein conditions shall be established such that the institution of family shall be preserved, protected and honoured as the basis of all social life;

(v) Wherein the rulers and the ruled alike are subject to, and equal before, the Law;

(vi) Wherein obedience shall be rendered only to those commands that are in consonance with the Law;

(vii) Wherein all worldly power shall be considered as a sacred trust, to be exercised within the limits prescribed by the Law and in a manner approved by it, and with due regard for the priorities fixed by it;

(viii) Wherein all economic resources shall be treated as Divine blessings bestowed upon mankind, to be enjoyed by all in accordance with the rules and the values set out in the Qur'an and the Sunnah;

(ix) Wherein all public affairs shall be determined and conducted, and the authority to administer them shall be exercised after mutual consultation (*Shura*) between the believers qualified to contribute to a decision which would accord well with the Law and the public good;

(x) Wherein everyone shall undertake obligations proportionate to his capacity and shall be held responsible *pro rata* for his deeds;

(xi) Wherein everyone shall, in case of an infringement of his rights, be assured of appropriate remedial measures in accordance with the Law;

(xii) Wherein no one shall be deprived of the rights assured to him by the Law except by its authority and to the extent permitted by it;

(xiii) Wherein every individual shall have the right to bring legal action against anyone who commits a crime against society as a whole or against any of its members;

(xiv) Wherein every effort shall be made to

(*a*) Secure unto mankind deliverance from every type of exploitation, injustice and oppression,

(*b*) Ensure to everyone security, dignity and liberty in terms set out and by methods approved and within the limits set by the Law;

Do hereby, as servants of Allah and as members of the Universal Brotherhood of Islam, at the beginning of the Fifteenth Century of the Islamic Era, affirm our commitment to uphold the following inviolable and inalienable human rights that we consider are enjoined by Islam.

I. Right to Life

(*a*) Human life is sacred and inviolable and every effort shall be made to protect it. In particular no one shall be exposed to injury or death, except under the authority of the Law.

(*b*) Just as in life, so also after death, the sanctity of a person's body shall be inviolable. It is the obligation of believers to see that a deceased person's body is handled with due solemnity.

II. Right to Freedom

(*a*) Man is born free. No inroads shall be made on his right to liberty except under the authority and in due process of the Law.

(*b*) Every individual and every people has the inalienable right to freedom in all its forms – physical, cultural, economic and political – and shall be entitled to struggle by all available means against any infringement or abrogation of this right; and every oppressed individual or people has a legitimate claim to the support of other individuals and/or peoples in such a struggle.

III. Right to Equality and Prohibition Against Impermissible Discrimination

(*a*) All persons are equal before the Law and are entitled to equal opportunities and protection of the Law.

(*b*) All persons shall be entitled to equal wage for equal work.

(*c*) No person shall be denied the opportunity to work or be discriminated against in any manner or exposed to greater physical risk by reason of religious belief, colour, race, origin, sex or language.

IV. Right to Justice

(*a*) Every person has the right to be treated in accordance with the Law, and only in accordance with the Law.

(*b*) Every person has not only the right but also the obligation to protest against injustice; to recourse to remedies provided by the Law in respect of any unwarranted personal injury or loss; to self-defence against any charges that are preferred against him and to obtain fair adjudication before an independent judicial tribunal in any dispute with public authorities or any other person.

(*c*) It is the right and duty of every person to defend the rights of any other person and the community in general (*Hisbah*).

(*d*) No person shall be discriminated against while seeking to defend private and public rights.

(*e*) It is the right and duty of every Muslim to refuse to obey any command which is contrary to the Law, no matter by whom it may be issued.

V. Right to Fair Trial

(*a*) No person shall be adjudged guilty of an offence and made liable to punishment except after proof of his guilt before an independent judicial tribunal.

(*b*) No person shall be adjudged guilty except after a fair trial and after reasonable opportunity for defence has been provided to him.

(*c*) Punishment shall be awarded in accordance with the Law, in proportion to the seriousness of the offence and with due consideration of the circumstances under which it was committed.

(*d*) No act shall be considered a crime unless it is stipulated as such in the clear wording of the Law.

(*e*) Every individual is responsible for his actions. Responsibility for a crime cannot be vicariously extended to other members of his family or group, who are not otherwise directly or indirectly involved in the commission of the crime in question.

VI. Right to Protection Against Abuse of Power

Every person has the right to protection against harassment by official agencies. He is not liable to account for himself except for making a defence to the charges made against him or where he is found in a situation wherein a question regarding suspicion of his involvement in a crime could be *reasonably* raised.

VII. Right to Protection Against Torture

No person shall be subjected to torture in mind or body, or degraded, or threatened with injury either to himself or to anyone related to or held dear by him, or forcibly made to confess to the commission of a crime, or forced to consent to an act which is injurious to his interests.

VIII. Right to Protection of Honour and Reputation

Every person has the right to protect his honour and reputation against calumnies, groundless charges or deliberate attempts at defamation and blackmail.

IX. Right to Asylum

(*a*) Every persecuted or oppressed person has the right to seek refuge and asylum. This right is guaranteed to every human being irrespective of race, religion, colour and sex.

(*b*) Al Masjid Al Haram (the sacred house of Allah) in Mecca is a sanctuary for all Muslims.

X. Rights of Minorities

(*a*) The Qur'anic principle "There is no compulsion in religion" shall govern the religious rights of non-Muslim minorities.

(*b*) In a Muslim country religious minorities shall have the choice to be governed in respect of their civil and personal matters by Islamic Law, or by their own laws.

XI. Right and Obligation to Participate in the Conduct and Management of Public Affairs

(*a*) Subject to the Law, every individual in the community *(Ummah)* is entitled to assume public office.

(*b*) Process of free consultation *(Shura)* is the basis of the administrative relationship between the government and the people. People also have the right to choose and remove their rulers in accordance with this principle.

XII. Right to Freedom of Belief, Thought and Speech

(*a*) Every person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the Law. No one, however, is entitled to disseminate falsehood or to circulate reports which may outrage public decency, or to indulge in slander, innuendo or to cast defamatory aspersions on other persons.

(*b*) Pursuit of knowledge and search after truth is not only a right but a duty of every Muslim.

(*c*) It is the right and duty of every Muslim to protest and strive (within the limits set out by the Law) against oppression even if it involves challenging the highest authority in the state.

(*d*) There shall be no bar on the dissemination of information provided it does not endanger the security of the society or the state and is confined within the limits imposed by the Law.

(*e*) No one shall hold in contempt or ridicule the religious beliefs of others or incite public hostility against them; respect for the religious feelings of others is obligatory on all Muslims.

XIII. Right to Freedom of Religion

Every person has the right to freedom of conscience and worship in accordance with his religious beliefs.

XIV. Right to Free Association

(*a*) Every person is entitled to participate individually and collectively in the religious, social, cultural and political life of his community and to establish institutions and agencies meant to enjoin what is right *(ma'roof)* and to prevent what is wrong *(munkar).*

(*b*) Every person is entitled to strive for the establishment of institutions whereunder an enjoyment of these rights would be made possible. Collectively, the community is obliged to establish conditions so as to allow its members full development of their personalities.

XV. The Economic Order and the Rights Evolving Therefrom

(*a*) In their economic pursuits, all persons are entitled to the full benefits of nature and all its resources. These are blessings bestowed by God for the benefit of mankind as a whole.

(*b*) All human beings are entitled to earn their living according to the Law.

(*c*) Every person is entitled to own property individually or in association with others. State ownership of certain economic resources in the public interest is legitimate.

(*d*) The poor have the right to a prescribed share in the wealth of the rich, as fixed by Zakah, levied and collected in accordance with the Law.

(*e*) All means of production shall be utilised in the interest of the community (*Ummah*) as a whole, and may not be neglected or misused.

(*f*) In order to promote the development of a balanced economy and to protect society from exploitation, Islamic Law forbids monopolies, unreasonable restrictive trade practices, usury, the use of coercion in the making of contracts and the publication of misleading advertisements.

(*g*) All economic activities are permitted provided they are not detrimental to the interests of the community *(Ummah)* and do not violate Islamic laws and values.

XVI. Right to Protection of Property

No property may be expropriated except in the public interest and on payment of fair and adequate compensation.

XVII. Status and Dignity of Workers

Islam honours work and the worker and enjoins Muslims not only to treat the worker justly but also generously. He is not only to be paid his earned wages promptly, but is also entitled to adequate rest and leisure.

XVIII. Right to Social Security

Every person has the right to food, shelter, clothing, education and medical care consistent with the resources of the community. This obligation of the community extends in particular to all individuals who cannot take care of themselves due to some temporary or permanent disability.

XIX. Right to Found a Family and Related Matters

(*a*) Every person is entitled to marry, to found a family and to bring up children in conformity with his religion, traditions and culture. Every spouse is entitled to such rights and privileges and carries such obligations as are stipulated by the Law.

(*b*) Each of the partners in a marriage is entitled to respect and consideration from the other.

(*c*) Every husband is obligated to maintain his wife and children according to his means.

(*d*) Every child has the right to be maintained and properly brought up by its parents, it being forbidden that children are made to work at an early age or that any burden is put on them which would arrest or harm their natural development.

(*e*) If parents are for some reason unable to discharge their obligations towards a child it becomes the responsibility of the community to fulfil these obligations at public expense.

(*f*) Every person is entitled to material support, as well as care and protection, from his family during his childhood, old age or incapacity. Parents are entitled to material support as well as care and protection from their children.

(*g*) Motherhood is entitled to special respect, care and assistance on the part of the family and the public organs of the community *(Ummah).*

(*h*) Within the family, men and women are to share in their obligations and responsibilities according to their sex, their natural endowments, talents and inclinations, bearing in mind their common responsibilities toward their progeny and their relatives.

(*i*) No person may be married against his or her will, or lose or suffer dimunition of legal personality on account of marriage.

XX. Rights of Married Women

Every married woman is entitled to:

(*a*) Live in the house in which her husband lives;

(*b*) Receive the means necessary for maintaining a standard of living which is not inferior to that of her spouse, and, in the event of divorce, receive during the statutory period of waiting (*iddah*) means of maintenance commensurate with her husband's resources, for herself as well as for the children she nurses or keeps, irrespective of her own financial status, earnings, or property that she may hold in her own rights;

(*c*) Seek and obtain dissolution of marriage (*Khul'a*) in accordance with the terms of the Law. This right is in addition to her right to seek divorce through the courts.

(*d*) Inherit from her husband, her parents, her children and other relatives according to the Law;

(*e*) Strict confidentiality from her spouse, or ex-spouse if divorced, with regard to any information that he may have obtained about her, the disclosure of which could prove detrimental to her interests. A similar responsibility rests upon her in respect of her spouse or ex-spouse.

XXI. Right to Education

(*a*) Every person is entitled to receive education in accordance with his natural capabilities.

(*b*) Every person is entitled to a free choice of profession and career and to the opportunity for the full development of his natural endowments.

XXII. Right of Privacy

Every person is entitled to the protection of his privacy.

XXIII. Right to Freedom of Movement and Residence

(*a*) In view of the fact that the World of Islam is veritably *Ummah Islamia*, every Muslim shall have the right to freely move in and out of any Muslim country.

(*b*) No one shall be forced to leave the country of his residence, or be arbitrarily deported therefrom without recourse to due process of Law.

Explanatory Notes

1. In the above formulation of Human Rights, unless the context provides otherwise:

   (*a*) The term 'person' refers to both the male and female sexes.

   (*b*) The term 'Law' denotes the Shari'ah, i.e. the totality of ordinances derived from the Qur'an and the Sunnah and any other laws that are deduced from these two sources by methods considered valid in Islamic jurisprudence.

2. Each one of the Human Rights enunciated in this declaration carries a corresponding duty.

3. In the exercise and enjoyment of the rights referred to above every person shall be subject only to such limitations as are enjoined by the Law for the purpose of securing the due recognition of, and respect for, the rights and the freedom of others and of meeting the just requirements of morality, public order and the general welfare of the Community (*Ummah*).

The Arabic text of this *Declaration* is the original.

GLOSSARY OF ARABIC TERMS

SUNNAH – The example or way of life of the Prophet (peace be upon him), embracing what he said, did or agreed to.

KHALIFAH – The vicegerency of man on earth or succession to the Prophet, transliterated into English as the Caliphate.

HISBAH – Public vigilance, an institution of the Islamic State enjoined to observe and facilitate the fulfilment of right norms of public behaviour. The "Hisbah" consists in public vigilance as well as an opportunity to private individuals to seek redress through it.

MA'ROOF – Good act.

MUNKAR – Reprehensible deed.

ZAKAH – The 'purifying' tax on wealth, one of the five pillars of Islam obligatory on Muslims.

'IDDAH – The waiting period of a widowed or divorced woman during which she is not to re-marry.

KHUL'A – Divorce a woman obtains at her own request.

UMMAH ISLAMIA – World Muslim community.

SHARI'AH – Islamic law.

REFERENCES

Note: The Roman numerals refer to the topics in the text. The Arabic numerals refer to the Chapter and the Verse of the Qur'an, i.e. 5:32 means Chapter 5, Verse 32.

I 1 Qur'an Al-Maidah 5:32

2 Hadith narrated by Muslim, Abu Daud, Tirmidhi, Nasai

3 Hadith narrated by Bukhari

II 4 Hadith narrated by Bukhari, Muslim

5 Sayings of Caliph Umar

6 Qur'an As-Shura *42:41*

7 Qur'an Al-Hajj *22:41*

III 8 From the Prophet's address

9 Hadith narrated by Bukhari, Muslim, Abu Daud, Tirmidhi, Nasai

10 From the address of Caliph Abu Bakr

11 From the Prophet's farewell address

12 Qur'an Al-Ahqaf *46:19*

13 Hadith narrated by Ahmad

14 Qur'an Al-Mulk *67:15*

15 Qur'an Al-Zalzalah 99:7-8

IV 16 Qur'an An-Nisa *4:59*

17 Qur'an Al-Maidah *5:49*

18 Qur'an An-Nisa *4:148*

19 Hadith narrated by Bukhari, Muslim, Tirmidhi

20 Hadith narrated by Bukhari, Muslim

2l Hadith narrated by Muslim, Abu Daud, Tirmdhi, Nasai

22 Hadith narrated by Bukhari, Muslim, Abu Daud, Tirmidhi, Nasai

23 Hadith narrated by Abu Daud, Tirmidhi

24 Hadith narrated by Bukhari, Muslim, Abu Daud, Tirmidhi, Nasai

25 Hadith narrated by Bukhari

V 26 Hadith narrated by Bukhari, Muslim

27 Qur'an Al-Isra *17:15*

28 Qur'an Al-Ahzab *33:5*

29 Qur'an Al-Hujurat *49:6*

30 Qur'an An-Najm *53:28*

31 Qur'an Al Baqarah *2:229*

32 Hadith narrated by Al Baihaki, Hakim

33 Qur'an Al-Isra *17:15*

34 Qur'an At-Tur *52:21*

35 Qur'an Yusuf *12:79*

VI *36 Qur'an Al Ahzab 33:58*

VII 37 Hadith narrated by Bukhari, Muslim, Abu Daud, Tirmidhi, Nasai

38 Hadith narrated by Ibn Majah

VIII 39 From the Prophet's farewell address

40 Qur'an Al-Hujurat *49:12*

41 Qur'an Al-Hujurat *49:11*

IX *42 Qur'an At-Tawba 9:6*

43 Qur'an Al-Imran *3:97*

44 Qur'an Al-Baqarah *2:125*

45 Qur'an Al-Hajj *22:25*

X *46 Qur'an Al Baqarah 2:256*

47 Qur'an Al-Maidah 5:42

48 Qur'an Al-Maidah 5:43

49 Qur'an Al-Maidah 5:47

XI *50 Qur'an As-Shura 42:38*

51 Hadith narated by Ahmad

52 From the address of Caliph Abu Bakr

XII 53 Qur'an Al-Ahzab *33:60-61*

54 Qur'an Saba *34:46*

55 Hadith narrated by Tirmidhi, Nasai

56 Qur'an An-Nisa *4:83*

57 Qur'an Al-Anam 6:108

XIII 58 Qur'an Al Kafirun *109:6*

XIV 59 Qur'an Yusuf *12:108*

60 Qur'an Al-Imran 3:104

61 Qur'an Al-Maidah 5:2

62 Hadith narrated by Abu Daud, Tirmidhi, Nasai, Ibn Majah

XV 63 Qur'an Al-Maidah *5:120*

64 Qur'an Al-Jathiyah 45:13

65 Qur'an Ash-Shuara 26:183

66 Qur'an Al-Isra 17:20

67 Qur'an Hud 11:6

68 Qur'an Al-Mulk 67:15

69 Qur'an An-Najm 53:48

70 Qur'an Al-Hashr 59:9

71 Qur'an Al-Maarij 70:24-25

72 Sayings of Caliph Abu Bakr

73 Hadith narrated by Bukhari, Muslim

74 Hadith narrated by Muslim

75 Hadith narrated by Muslim, Abu Daud, Tirmidhi, Nasai

76 Hadith narrated by Bukhari, Muslim, Abu Daud, Tirmidhi, Nasai

77 Qur'an Al-Mutaffifin 83:1-3

78 Hadith narrated by Muslim

79 Qur'an Al-Baqarah 2:275

80 Hadith narrated by Bukhari, Muslim, Abu Daud, Tirmidhi, Nasai

XVI 81 Qur'an Al Baqarah *2:188*

82 Hadith narrated by Bukhari

83 Hadith narrated by Muslim

84 Hadith narrated by Muslim, Tirmidhi

XVII 85 Qur'an At-Tawbah *9:105*

86 Hadith narrated by Abu Yala? Majma Al Zawaid

87 Hadith narrated by Ibn Majah

88 Qur'an Al-Ahqaf 46:19

89 Qur'an At-Tawbah 9:105

90 Hadith narrated by Tabarani? Majma Al Zawaid

91 Hadith narrated by Bukhari

XVIII 92 Qur'an Al-Ahzab *33:6*

XIX 93 Qur'an An-Nisa *4:1*

94 Qur'an Al-Baqarah 2:228

95 Hadith narrated by Bukhari, Muslim, Abu Daud, Tirmidhi, Nasai

96 Qur'an Ar-Rum 30:21

97 Qur'an At-Talaq 65:7

98 Qur'an Al-Isra 17:24

99 Hadith narrated by Bukhari, Muslim, Abu Daud, Tirmidhi

100 Hadith narrated by Abu Daud

101 Hadith narrated by Bukhari, Muslim

102 Hadith narrated by Abu Daud, Tirmidhi

103 Hadith narrated by Ahmad, Abu Daud

XX *104 Qur'an At-Talaq 65:6*

105 Qur'an An-Nisa *4:34*

106 Qur'an At-Talaq *65:6*

107 Qur'an At-Talaq *65:6*

108 Qur'an Al-Baqarah *2:229*

109 Qur'an An-Nisa *4:12*

110 Qur'an Al-Baqarah *2:237*

XXI 111 Qur'an Al-Isra *17:23-24*

112 Hadith narrated by Ibn Majah

113 Qur'an Al-Imran 3:187

114 From the Prophet's farewell address

115 Hadith narrated by Bukhari, Muslim

116 Hadith narrated by Bukhari, Muslim, Abu Daud, Tirmidhi

XXII 117 Hadith narrated by Muslim

118 Qur'an Al-Hujurat *49:12*

119 Hadith narrated by Abu Daud, Tirmidhi

XXIII 120 Qur'an Al-Mulk *67:15*

121 Qur'an Al-Anam *6:11*

122 Qur'an An-Nisa *4:97*

123 Qur'an Al-Baqarah *2:217*

124 Qur'an Al-Hashr *59:9*

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CAIRO DECLARATION ON HUMAN RIGHTS IN ISLAM

Adopted by the 19th Islamic Conference for Foreign Ministers held in Cairo on 31 July – 9 August 1990

Text: UN Document A/CONF.157/PC/62/Add.18 (1993)

The Member States of the Organization of the Islamic Conference,

Reaffirming the civilizing and historical role of the Islamic Ummah which God made the best nation that has given mankind a universal and well-balanced civilization in which harmony is established between this life and the hereafter and knowledge is combined with faith; and the role that this Ummah should play to guide a humanity confused by competing trends and ideologies and to provide solutions to the chronic problems of this materialistic civilization;

Wishing to contribute to the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Shari'ah;

Convinced that mankind which has reached an advanced stage in materialistic science is still, and shall remain, in dire need of faith to support its civilization and of a self-motivating force to guard its rights;

Believing that fundamental rights and universal freedoms in Islam are an integral part of the Islamic religion and that no one as a matter of principle has the right to suspend them in whole or in part or violate or ignore them in as much as they are binding divine commandments, which are contained in the Revealed Books of God and were sent through the last of His Prophets to complete the preceding divine messages thereby making their observance an act of worship and their neglect or violation an abominable sin, and accordingly every person is individually responsible – and the *Ummah* collectively responsible – for their safeguard.

Proceeding from the above-mentioned principles,

Declare the following:

Article 1

(*a*) All human beings form one family whose members are united by submission to God and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status or other considerations. True faith is the guarantee for enhancing such dignity along the path to human perfection.

(*b*) All human beings are God's subjects, and the most loved by Him are those who are most useful to the rest of His subjects, and no one has superiority over another except on the basis of piety and good deeds.

Article 2

(*a*) Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to protect this right from any violation, and it is prohibited to take away life except for a Shari'ah prescribed reason.

(*b*) It is forbidden to resort to such means as may result in the genocidal annihilation of mankind.

(*c*) The preservation of human life throughout the term of time willed by God is a duty prescribed by Shari'ah.

(*d*) Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari'ah prescribed reason.

Article 3

(*a*) In the event of the use of force and in case of armed conflict, it is not permissible to kill non-belligerents such as old men, women and children. The wounded and the sick shall have the right to medical treatment; and prisoners of war shall have the right to be fed, sheltered and clothed. It is prohibited to

mutilate dead bodies. It is a duty to exchange prisoners of war and to arrange visits or reunions of the families separated by the circumstances of war.

(*b*) It is prohibited to fell trees, to damage crops or livestock, and to destroy the enemy's civilian buildings and installations by shelling, blasting or any other means.

Article 4

Every human being is entitled to inviolability and the protection of his good name and honour during his life and after his death. The state and society shall protect his remains and burial place.

Article 5

(*a*) The family is the foundation of society, and marriage is the basis of its formation. Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from enjoying this right.

(*b*) Society and the State shall remove all obstacles to marriage and shall facilitate marital procedure. They shall ensure family protection and welfare.

Article 6

(*a*) Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage.

(*b*) The husband is responsible for the support and welfare of the family.

Article 7

(*a*) As of the moment of birth, every child has rights due from the parents, society and the state to be accorded proper nursing, education and material, hygienic and moral care. Both the fetus and the mother must be protected and accorded special care.

(*b*) Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of the Shari'ah.

(*c*) Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with the tenets of the Shari'ah.

Article 8

Every human being has the right to enjoy his legal capacity in terms of both obligation and commitment. Should this capacity be lost or impaired, he shall be represented by his guardian.

Article 9

(*a*) The quest for knowledge is an obligation, and the provision of education is a duty for society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee educational diversity in the interest of society so as to enable men to be acquainted with the religion of Islam and the facts of the Universe for the benefit of mankind.

(*b*) Every human being has the right to receive both religious and worldly education from the various institutions of education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner as to develop his personality, strengthen his faith in God and promote his respect for and defence of both rights and obligations.

Article 10

Islam is the religion of unspoiled nature. It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism.

Article 11

(*a*) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to God the Most-High.

(*b*) Colonialism of all types being one of the most evil forms of enslavement is totally prohibited. Peoples suffering from colonialism have the full right to freedom and self-determination. It is the duty of all States and peoples to support the struggle of colonized peoples for the liquidation of all forms of colonialism and occupation, and all States and peoples have the right to preserve their independent identity and exercise control over their wealth and natural resources.

Article 12

Every man shall have the right, within the framework of Shari'ah, to free movement and to select his place of residence whether inside or outside his country and, if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure his protection until he reaches safety, unless asylum is motivated by an act which Shari'ah regards as a crime.

Article 13

Work is a right guaranteed by the State and Society for each person able to work. Everyone shall be free to choose the work that suits him best and which serves his interests and those of society. The employee shall have the right to safety and security as well as to all other social guarantees. He may neither be assigned work beyond his capacity nor be subjected to compulsion or exploited or harmed in any way. He shall be entitled – without any discrimination between males and females – to fair wages for his work without delay, as well as to the holidays, allowances and promotions which he deserves. For his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.

Article 14

Everyone shall have the right to legitimate gains without monopolization, deceit or harm to oneself or to others. *Usury* (*riba*) is absolutely prohibited.

Article 15

(*a*) Everyone shall have the right to own property acquired in a legitimate way, and shall be entitled to the rights of ownership, without prejudice to oneself, others or to society in general. Expropriation is not permissible except for the requirements of public interest and upon payment of immediate and fair compensation.

(*b*) Confiscation and seizure of property is prohibited except for a necessity dictated by law.

Article 16

Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical production and the right to protect the moral and material interests stemming therefrom, provided that such production is not contrary to the principles of Shari'ah.

Article 17

(*a*) Everyone shall have the right to live in a clean environment, away from vice and moral corruption, an environment that would foster his self-development; and it is incumbent upon the State and society in general to afford that right.

(*b*) Everyone shall have the right to medical and social care, and to all public amenities provided by society and the State within the limits of their available resources.

(*c*) The State shall ensure the right of the individual to a decent living which will enable him to meet all his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs.

Article 18

(*a*) Everyone shall have the right to live in security for himself, his religion, his dependents, his honour and his property.

(*b*) Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference.

(*c*) A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.

Article 19

(*a*) All individuals are equal before the law, without distinction between the ruler and the ruled.

(*b*) The right to resort to justice is guaranteed to everyone.

(*c*) Liability is in essence personal.

(*d*) There shall be no crime or punishment except as provided for in the Shari'ah.

(*e*) A defendant is innocent until his guilt is proven in a fair trial in which he shall be given all the guarantees of defence.

Article 20

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of humiliation, cruelty or indignity. Nor is it permitted to subject an individual to medical or scientific experimentation without his consent or at the risk of his health or of his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.

Article 21

Taking hostages under any form or for any purpose is expressly forbidden.

Article 22

(*a*) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah.

(*b*) Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari'ah.

(*c*) Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical values or disintegrate, corrupt or harm society or weaken its faith.

(*d*) It is not permitted to arouse nationalistic or doctrinal hatred or to do anything that may be an incitement to any form of racial discrimination.

Article 23

(*a*) Authority is a trust; and abuse or malicious exploitation thereof is absolutely prohibited, so that fundamental human rights may be guaranteed.

(*b*) Everyone shall have the right to participate, directly or indirectly in the administration of his country's public affairs. He shall also have the right to assume public office in accordance with the provisions of Shari'ah.

Article 24

All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.

Article 25

The Islamic Shari'ah is the only source of reference for the explanation or classification of any of the articles of this Declaration.

Cairo, 14 Muharram 1411H, 5 August 1990

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COVENANT ON THE RIGHTS OF THE CHILD IN ISLAM

Opened for signature in June 2005 by the Organisation of Islamic Conference

Entry into force: In accordance with Article 23
Text: Document OIC/9-IGGE/HRI/2004/Rep.Final

The States Parties to this Covenant,

Believing that the values and principles constitute the patterns of behaviour of Muslim society in such a way as to realize security, stability, development and progress for the society within the family environment, which is the cornerstone of the social edifice,

Proceeding from Islamic efforts on issues of childhood, which contributed to the development of the 1989 United Nations Convention on the Rights of the Child,

Cognizant of the objectives of the Organization of the Islamic Conference enshrined in its Charter and its Summit and Ministerial Conferences resolutions and of international conventions signed by its Member States,

Affirming the principles contained in the Dhaka Declaration on Human Rights in Islam adopted by the 14th Islamic Conference of Foreign Ministers in December 1983 and the Cairo Declaration on Human Rights in Islam adopted by the 14th ICFM under resolution No. 49/19-P (1990) and in the Declaration on the Rights and Care of the Child in Islam adopted by the Seventh Islamic Summit Conference under resolution No. 16/7-C (1994),

Affirming the civilisational and historic role of the Islamic Ummah and *in contributing to* the international efforts on human rights,

Believing that basic rights and public freedoms in Islam are an integral part thereof that no one has a prerogative to interrupt, violate, or disregard,

Aware of the enormous responsibility towards the Child in particular as the vanguard and maker of the future of the Ummah,

Seeking to enhance Islamic performance in the Child sector so as to adapt frameworks and mechanisms to face the ever-accelerating changes and transformations and their repercussions on that sector,

Realizing that the first order of serious work is to gain a conscious insight into the accumulating and expected challenges facing the Ummah, particularly the adverse effects of economic and social transformations, the waning role of the family, the weakening feeling of belonging, the breaking-down of family-ties, the decline of values and ideals, the diminishing health and educational services, the growing illiteracy rate, as well as the effects of the accelerating advances in sciences and fields of knowledge and the information revolution in addition to the continuing persistence of negative and old-fashioned cultural models,

Considering that children, as part of the vulnerable sector of the society, bear the burden of the greater suffering as a result of natural and man-made disasters leading to tragic consequences, such as orphanage, homelessness, and exploitation of children in military, harsh, hazardous, or illegitimate labour, *and considering also* the suffering of refugee children and those living under the yoke of occupation or languishing or displaced as a result of armed conflicts and famines thus fostering the spread of violence among children and increasing the number of physically, mentally, and socially disabled children,

Believing that the situation requires a stand that establishes a commitment to the Rights of the Child and confirms the determination to continue the efforts to activate these rights and overcome the obstacles standing in the way of the Ummah,

Confident that the Ummah has sufficient capabilities and resources to ensure a victory over the hurdles facing it, building on the lofty religious and social values with the family enjoying pride of place on the basis of love and mercy as well as human and material resources which afford it a real opportunity for comprehensive and sustainable development,

Recognizing the Child's right to grow up within a family environment governed by established values, love, and understanding so as to enable him to exercise his rights without discrimination,

Supporting the plans, programs, and projects aimed at improving the conditions of childhood in the Islamic world, including the elaboration of national legislations or regimes ensuring the child's exercise of his full rights,

Considering that the present Covenant affirms the rights of the child in the provisions of the Islamic Shari'a, taking into account the domestic laws of states and the rights of children and minorities and non-Muslim communities, in affirmation of the human rights shared by the Muslim and non-Muslim child,

Have agreed as follows:

Article 1

Definition of the Child

For the purposes of the present Covenant, a child means every human being who, according to the law applicable to him/her, has not attained maturity.

Article 2

Objectives

This Covenant seeks to realize the following objectives:

1. To care for the family, strengthen its capabilities, and extend to it the necessary support to prevent the deterioration of its economic, social, or health conditions, and to habilitate the husband and wife to ensure their fulfilment of their role of raising children physically, psychologically, and behaviourally.
2. To ensure a balanced and safe childhood and ensure the raising of generations of Muslim children who believe in their creator, adhere to their faith, are loyal to their country, committed to the principles of truth and goodness in thoughts and in deeds, and to the sense of belonging to the Islamic civilization.
3. To generalize and deepen interest in the phases of childhood and adolescence and to provide full care for them so as to raise worthy generations for society.
4. To provide free, compulsory primary and secondary education for all children irrespective of gender, color, nationality, religion, birth, or any other consideration, to develop education through enhancement of school curricula, training of teachers, and providing opportunities for vocational training.
5. To provide opportunities for the child to discover his/her talents and to recognize his/her importance and place in the society through the family and relevant institutions, and to encourage children to participate in the cultural life of society.
6. To provide the necessary care for children with special needs and for those who live in difficult conditions as well as address the causes that lead to such conditions.
7. To provide all possible assistance and support for Muslim children in all parts of the world in coordination with governments or through international mechanisms.

Article 3

Principles

To achieve the objectives contained in Article 2 it is incumbent to:

1. Respect the provisions of the Islamic Shari'a, and observe the domestic legislations of the Member States.
2. Respect the objectives and principles of the Organization of the Islamic Conference.
3. Attach high priority to the rights, interests, protection, and development of children.
4. Ensure equality in care, rights, and duties for all children.
5. Observe non-interference in the internal affairs of any State.
6. Observe the cultural and civilizational constants of the Islamic Ummah.

Article 4

Obligations of States

States Parties to this Covenant shall observe the following:

1. Respect the rights stipulated in this Covenant, and take the necessary steps to enforce it in accordance with their domestic regulations.
2. Respect the responsibilities and duties of parents, legal guardians, or other persons that are legally responsible for the child in accordance with existing domestic regulations as required by the child's interest.
3. End action based on customs, traditions or practices that are in conflict with the rights and duties stipulated in this Covenant.

Article 5

Equality

States Parties shall guarantee equality of all children as required by law to enjoy their rights and freedoms stipulated in this Covenant regardless of sex, birth, race, religion, language, political affiliation, or any other consideration affecting the right of the child, the family, or his/her representative under the law or Shari'a.

Article 6

The Right to Life

1. The child shall have the right to life from when he is a fetus in his/her mother's womb or in the case of his/her mother's death; abortion should be prohibited except under necessity warranted by the interests of the mother, the fetus, or both of them. The child shall have the right to descent, ownership, inheritance, and child support.
2. States Parties to the Covenant shall guarantee the basics necessary for the survival and development of the child and for his/her protection from violence, abuse, exploitation, and deterioration of his/her living and health conditions.

Article 7

Identity

1. A child shall, from birth, have right to a good name, to be registered with authorities concerned, to have his nationality determined and to know his/her parents, all his/her relatives and foster mother.
2. States Parties to the Covenant shall safeguard the elements of the child's identity, including his/her name, nationality, and family relations in accordance with their domestic laws and shall make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory.
3. The child of unknown descent or who is legally assimilated to this status shall have the right to guardianship and care but without adoption. He shall have a right to a name, title and nationality.

Article 8

Family Cohesion

1. States Parties shall protect the family from causes of weakness and disintegration and shall work, within their available resources, to care for the family members and cause cohesion and balance among them.
2. No child shall be separated from his/her parents against their will and parents shall not have their guardianship revoked save under extreme necessity, in the interest of the child and with a legal justification, in accordance with domestic procedures, and subject to judicial rules where the opportunity is provided for both the child, one or both parents, or a family member to make their views known.
3. States Parties shall take into account in their social policies the child's best interests and if separation from his/her parents is necessary, no child shall be deprived of maintaining relations with them.

4. The child shall be permitted to leave his/her state to stay with his/her parents, or with either of them in another country provided he is not separated from them in accordance with Paragraph 2 of this Article, or his/her leaving does not violate the restrictions imposed by virtue of applicable procedures in the state concerned.

Article 9

Personal Freedoms

1. Every child capable of forming his/her own personal views, according to his/her age and maturity, shall have the right to express them freely in all matters affecting him/her either orally, in writing, or through any other lawful means in a manner not contradictory to the Shari'a and ethics.
2. Every child is entitled to the respect of his/her personal life. Nevertheless the parents or legal representative are entitled to exercise Islamic and humane supervision over the conduct of the child who shall not be subject to any restrictions other than those imposed in conformity with law and are necessary for the protection of public order, public security, public morals, public health, or the protection of the fundamental rights and freedoms of others.

Article 10

Freedom of Assembly

Every child shall have the right to form and join any peaceful, civilian gathering in accordance with legal and statutory provisions in his/her society and in a way that is compatible with his/her age and does not affect his/her behaviour, health or heritage.

Article 11

Upbringing

1. A sound upbringing is a right of the child and shall be the responsibility of his/her parents or legal guardian, as the case may be, and in which the institutions of the state, within their means, shall assist them.
2. The upbringing of the child shall aim at the following objectives:
   i. To develop the personality, religious and moral value, and sense of citizenship and Islamic and human solidarity of the child and to instill in him/her a spirit of understanding, dialogue, tolerance, and friendship among peoples.
   ii. To encourage the child to acquire skills and capabilities to face new situations and overcome negative customs, and to grow up grounded in scientific and objective reasoning.

Article 12

Education and Culture

1. Every child has a right to free compulsory basic education by learning the principles of Islamic education (as well as belief and Shari'a according to the situation) and to the provision of the necessary means to develop his/her mental, psychological and physical abilities, to allow him/her to be open to the common standards of human culture.
2. States Parties to the present Covenant shall provide:
   i. Compulsory, free primary education for all children on an equal footing.
   ii. Free and compulsory secondary education on a progressive basis so that, within ten years, it is made available to all children.
   iii. Higher education, while observing the capability and interest of each child, in accordance with the education system in each State.
   iv. The right of every child to wear clothes "compatible with her beliefs", while complying with Islamic Shari'a, public etiquette, and modesty.

v. Effective treatment of the problem of illiteracy, drop-outs and those who miss basic education.

vi. Taking care of outstanding and gifted students in all stages of education.

vii. Producing and publishing children's books, setting up children's libraries, and making use of the mass media in propagating cultural, social, and artistic materials relating to children and encouraging children education.

viii. For the right of the child approaching puberty to receive proper sex education distinguishing between the lawful and the unlawful.

3. The provisions of this Article and Article 11 immediately preceding it shall not be in conflict with the freedom of the Muslim child to join private educational institutions, provided that such institutions respect the provisions of the Islamic Shari'a and that the education given in such institutions observes the rules laid down by the State.

Article 13

Rest and Activity Times

1. The child is entitled to times for rest and play, and to exercise legitimate activities that are suitable to his/her age during his/her free time.
2. The child is entitled to participate in cultural, artistic and social spheres.
3. Parents or the one legally responsible for the child, have the right to oversee the child while exercising the activities he desires in accordance with this Article in the framework of the educational, religious and moral controls.

Article 14

Social Living Standard

1. Every child is entitled to custody and maintenance in order to save him/her from perishing due to his/her inability to preserve and maintain himself/herself.
2. States Parties shall recognize the right of every child to benefit from social security in accordance with their national laws.
3. States Parties shall be obliged to reduce the prices of services and exempt children from tariffs and taxes.
4. The States Parties shall guarantee for the child mandatory measures to compel his/her parents or legal guardian under Shari'a law to offer him/her support according to their abilities.

Article 15

Child Health

The child is entitled to physical and psychological care. This shall be realized through:

1. Providing care for the mother since the onset of pregnancy and during natural nursing either by the mother or someone else if the mother is unable to suckle the baby.
2. The right of the child to mitigate some Shari'a and judicial rules in favor of his/her legitimate wet-nurse under Shari'a law, and to postpone some punishments given against her as well as lessening work assignments of a nursing and pregnant woman and reduce their working hours.
3. His/her right to necessary measures to reduce infant and child mortality rates.
4. A compulsory medical examination for prospective couples in order to ensure the absence or causes of hereditary or contagious diseases which portend danger for the child.
5. The right of a male child to circumcision.
6. Non-interference of both parents or others in medically altering the colour, shape, features of sex of the fetus except for medical necessities.

7. Providing preventive medical care, disease and malnutrition control, as well as providing the necessary health care for him/her and for his/her mother.
8. The right of the child from the State and society to extend medical information and services for mothers in order to raise awareness and help them improve the health of their children.
9. Guaranteeing the right of the child to be protected from narcotics, intoxicants and other harmful substances as well as from infectious and endermic diseases.

Article 16

Disabled Children and Children with Special Needs

1. A disabled child, or one with special needs, is entitled to receive a special care that guarantees his/her full rights and is commensurate with his/her case and the conditions of his/her parents or of the one responsible for him/her, as well as with available capabilities; the services should, as much as possible, be provided free of charge or with nominal fees.
2. The objectives of care for a disabled child, or one with special needs are education, rehabilitation and training; providing appropriate mobility means (medical, psychological, social, educational, professional, and entertainment services); to enable him/her to be integrated into society.

Article 17

Child Protection

States Parties shall take necessary measures to protect the child from:

1. Illegal use of drugs, intoxicants and harmful substances, or participation in their production, promotion, or trafficking.
2. All forms of torture or inhumane or humiliating treatment in all circumstances and conditions, or his/her smuggling, kidnapping, or trafficking in him/her.
3. All forms of abuse, particularly sexual abuse.
4. Cultural, ideological, information and communication invasion which contradicts the Islamic Shari'a or the national interests of states parties.
5. To protect children by not involving them in armed conflicts or wars.

Article 18

Child Labour

1. No child shall exercise any risky work, or work which obstructs his/her education or which is at the expense of his/her health as well as physical or spiritual growth.
2. Domestic regulations of every State shall fix a minimum working age, as well as working conditions and hours. Sanctions shall be imposed against those who contravene these regulations.

Article 19

Justice

1. No child shall be deprived of his/her freedom, save in accordance with the law and for a reasonable and a specific period.
2. A child deprived of his/her freedom shall be treated in a way consistent with dignity, respect for human rights and basic freedoms. Needs of persons of his/her age shall be observed.
3. States Parties to the Covenant shall observe the following:

   (a) A child deprived of his/her freedom shall be separated from adults in special places for delinquent children.

(b) A child shall be informed immediately and directly about the charges against him/her upon his/her summoning or apprehension, and his/her parents, guardian or lawyer shall be invited to be present with him/her.

(c) The child shall be provided with legal and humanitarian assistance where needed including access to a lawyer and an interpreter if necessary.

(d) Expeditious consideration of the case by a specialized juvenile court, with the possibility of the judgement being contested by a higher court, once the child is convicted.

(e) No child shall be compelled to plead guilt or to offer testimony.

(f) Punishment shall be considered as a means of reform and care in order to rehabilitate the child and reintegrate him/her into the society.

(g) A minimum age under which the child may not be tried shall be determined.

(h) Respect for the child's privacy during all stages of the lawsuit shall be ensured.

Article 20

Parents' Responsibility and Protection from Detrimental Practices

1. Parents or the one legally responsible shall be obliged to provide good education and upbringing for the child.
2. Parents or the one legally responsible and States Parties to the Covenant shall protect the child from practices and traditions which are socially or culturally detrimental or harmful to the health, and from practices which have negative effects on his/her welfare, dignity or growth, as well as those leading to discrimination between children on basis of sex or other grounds in accordance with the regulations and without prejudice to Islamic Shari'a.

Article 21

Child Refugees

States Parties to this Covenant shall ensure, as much as possible, that refugee children, or those legally assimilated to this status, enjoy the rights provided for in this Covenant within their national legislation.

Article 22

Signing, Ratification and/or Accession to the Covenant

1. The present Covenant shall be open for signature by all Member States of the Organisation of the Islamic Conference.
2. The present Covenant shall be open for ratification and/or accession by all Member States.
3. The instruments of ratification shall be deposited with the Secretary General of the Organisation of the Islamic Conference.

Article 23

The Covenant's Entry in Force

1. The present Covenant shall enter into force on the thirtieth day following the date of deposit with the Secretary General of the Organization of the Islamic Conference of the twentieth instrument of ratification.
2. For each State acceding to this Covenant, the Covenant shall enter into force on the thirtieth day after the deposit by such State of its instrument of accession.

Article 24

Implementation Mechanism of the Covenant

1. States Parties to the present Covenant agree to establish an Islamic Committee on the Rights of the Child. The Committee shall be composed of the representatives of all the States Parties to the present Covenant and shall meet every two years, starting from the date of entry into force of this Covenant, at the headquarters of the Organisation of the Islamic Conference, to examine the progress made in the implementation of this Covenant.
2. The proceedings of the meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, shall be governed by the rules of procedure for the meeting of the conferences of the Organization of the Islamic Conference.

Article 25

Reservation, Withdrawal and Amendment

1. Member States shall have the right to make reservation on some sections of this Covenant or to withdraw their reservation after notifying the Secretary General.
2. Every Member State shall have the right to withdraw from this Covenant whenever they so wish. The withdrawal shall become effective on the thirtieth day following the Secretary General's receipt of the notice.
3. Any State Party may present a request to amend this Covenant through a written notice; the amendment will only enter into force with the approval of two-thirds of the OIC Member States.

Article 26

Official Languages

1. The present Covenant has been done in the Arabic, English, and French languages, all of which are equally authentic.

Section 2.3

Asia and Africa

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FINAL TEXT OF THE REVISED AALCO 1966 BANGKOK PRINCIPLES ON STATUS AND TREATMENT OF REFUGEES

Adopted on 24 June 2001 at the AALCO's 40th session, New Delhi

Article I

Definition of the term "refugee"

1. A refugee is a person who, owing to persecution or a well-founded fear of persecution for reasons of race, colour, religion, nationality, ethnic origin, gender, political opinion or membership of a particular social group:

   (*a*) Leaves the State of which he is a national, or the Country of his nationality, or, if he has no nationality, the State or Country of which he is a habitual resident; or,

   (*b*) Being outside of such a State or Country, is unable or unwilling to return to it or to avail himself of its protection;

2. The term "refugee" shall also apply to every person, who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

3. A person who was outside of the State of which he is a national or the Country of his nationality, or if he has no nationality, the State of which he is a habitual resident, at the time of the events mentioned above and is unable or unwilling due to well founded fear thereof to return or to avail himself of its protection shall be considered a refugee.

4. The lawful dependents of a refugee shall be deemed to be refugees.

5. A person having more than one nationality shall not be a refugee if he is in a position to avail himself of the protection of any State or Country of which he is a national.

6. A refugee shall lose his status as refugee if:

   (i) He voluntarily returns permanently, to the State of which he was a national, or the Country of which he was a habitual resident; or

   (ii) He has voluntarily re-availed himself of the protection of the State or Country of his nationality;

   (it being understood that the loss of status as a refugee under this sub-paragraph will take place only when the refugee has successfully re-availed himself of the protection of the State of his nationality;) or

   (iii) He voluntarily acquires the nationality of another State or Country and is entitled to the protection of that State or Country; or

   (iv) He does not return to the State of which he is a national, or to the Country of his nationality, or if he has no nationality, to the State or Country of which he was a habitual resident, or if he fails to avail himself of the protection of such State or Country after the circumstances in which he became a refugee have ceased to exist.

   (Provided that this paragraph shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality).

   (v) If it becomes evident to the country of refuge that the refugee acquired the refugee status on the basis of false information, incorrect documents or cheating which influenced the decision of national authority to grant him refugee status.

7. A person who, prior to his admission into the Country of refuge, has committed a crime against peace, a war crime, or a crime against humanity as defined in international instruments drawn up to make

provisions in respect of such crimes or a serious non-political crime outside his country of refuge prior to his admission to that country as a refugee, or has committed acts contrary to the purposes and principles of the United Nations, shall not be a refugee.

Article II

Asylum to a Refugee

1. Everyone without any distinction of any kind, is entitled to the right to seek and to enjoy in other countries asylum from persecution.
2. A State has the sovereign right to grant or to refuse asylum in its territory to a refugee in accordance with its international obligations and national legislation.
3. The grant of asylum to refugees is a humanitarian, peaceful and non-political act. It shall be respected by all other States and shall not be regarded as an unfriendly act so long as its humanitarian, peaceful and non-political nature is maintained.
4. States shall, bearing in mind provisions of Article X, use their best endeavours consistent with their respective legislation to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.

Article III

Non-refoulement

1. No one seeking asylum in accordance with these Principles shall be subjected to measures such as rejection at the frontier, return or expulsion which would result in his life or freedom being threatened on account of his race, religion, nationality, ethnic origin, membership of a particular social group or political opinion.

   The provision as outlined above may not however be claimed by a person when there are reasonable grounds to believe the person's presence is a danger to the national security or public order of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.
2. In cases where a State decides to apply any of the above-mentioned measures to a person seeking asylum, it should grant provisional asylum under such conditions as it may deem appropriate, to enable the person thus endangered to seek asylum in another country.

Article IV

Minimum standards of treatment

1. A State shall accord to refugees treatment no less favourable than that generally accorded to aliens in similar circumstances, with due regard to basic human rights as recognised in generally accepted international instruments.
2. The standard of treatment referred to in paragraph 1 shall include the rights relating to aliens contained in the Final Report of the Committee on the Status of Aliens, to the extent they are applicable to refugees.
3. A refugee shall not be denied any rights on the ground that he does not fulfil requirements which by their nature a refugee is incapable of fulfilling.
4. A refugee shall not be denied any rights on the ground that there is no reciprocity in regard to the grant of such rights between the receiving State and the State or Country of nationality of the refugee or, if he is stateless, the State or Country of his former habitual residence.
5. States undertake to apply these principles to all refugees without discrimination as to race, religion, nationality, ethnic origin, gender, membership of a particular social group or political opinion, in accordance with the principle of non-discrimination.

6. States shall adopt effective measures for improving the protection of refugee women and as appropriate, ensure that the needs and resources of refugee women are fully understood and integrated to the extent possible into their activities and programmes.

7. States shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Principles and in other international human rights instruments to which the said States are Parties.

8. States shall give special attention to the protection needs of elderly refugees to ensure not only their physical safety, and to the extent possible, the full exercise of their rights, including their right to family reunification. Special attention shall also be given to their assistance needs, including those relating to social welfare, health and housing.

Article V

Expulsion and deportation

1. Save in the national or public interest or in order to safeguard the population, the State shall not expel a refugee.

2. Before expelling a refugee, the State shall allow him a reasonable period within which to seek admission into another State. The State shall, however, have the right to apply during the period such internal measures as it may deem necessary and as applicable to aliens under such circumstances.

3. A refugee shall not be deported or returned to a State or Country where his life or liberty would be threatened for reasons of race, colour, nationality, ethnic origin, religion, political opinion, or membership of a particular social group.

4. The expulsion of a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before the competent authority or a person or persons specially designated by the competent authority.

Article VI

Right of return

1. A refugee shall have the right to return if he so chooses to the State of which he is a national or the country of his nationality or if he has no nationality to the State of which he is a habitual resident and in this event it shall be the duty of such a State or Country to receive him.

2. This principle should apply, *inter alia*, to any person who because of foreign domination, external aggression or occupation has left his habitual place of residence, or who being outside such place desires to return thereto.

3. It shall be the duty of the Government or authorities in control of such place of habitual residence to facilitate, by all means at their disposal, the return of all such persons as are referred to in the foregoing paragraph, and the restitution of their property to them.

4. This natural right of return shall also be enjoyed and facilitated to the same extent as stated above in respect of the dependants of all such persons as are referred to in paragraph 1 above.

Article VII

Voluntary repatriation

1. The essentially, voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.

2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.

3. The country of origin, shall provide all necessary documents to expedite their return on receiving back refugees, facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.
4. Refugees who voluntarily return to their country shall in no way be penalised for having left it or for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the relevant universal and regional Organizations inviting refugees to return home without risk and to take up a normal and peaceful life without fear of being disturbed and punished, and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum.
5. Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, country of transit, voluntary agencies and international and intergovernmental Organizations to facilitate their return.

Article VIII

International Co-operation on comprehensive solutions

1. Voluntary repatriation, local settlement or third country resettlement, that is, the traditional solutions, all remain viable and important responses to refugee situations, even while voluntary repatriation is the pre-eminent solution. To this effect, States may undertake, with the help of inter-governmental and non-governmental organizations, development measures which would underpin and broaden the acceptance of the three traditional durable solutions.
2. States shall promote comprehensive approaches, including a mix of solutions involving all concerned States and relevant international organizations in the search for and implementation of durable solutions to refugee problems.
3. The issue of root causes is crucial for solutions and international efforts should also be directed to addressing the causes of refugee movements and the creation of the political, economic, social, humanitarian and environmental conditions conducive to voluntary repatriation.

Article IX

Right to compensation

1. A refugee shall have the right to receive compensation from the State which he left or to which he was unable to return.
2. The compensation referred to in paragraph 1 shall be for such loss as bodily injury, deprivation of personal liberty in denial of human rights, death of the refugee or of the person whose dependant the refugee was, and destruction of or damage to property and assets, caused by the authority of the State or country, public officials or mob violence.
3. Where such person does not desire to return, he shall be entitled to prompt and full compensation by the Government or the authorities in control of such place of habitual residence as determined, in the absence of agreement by the parties concerned, by an international body designated or constituted for the purpose by the Secretary-General of the United Nations at the request of either party.
4. If the status of such a person is disputed by the Government or the authorities in control of such place of habitual residence, or if any other dispute arises, such matter shall also be determined, in the absence of agreement by the parties concerned, by an international body designated or constituted as specified in paragraph (3) above.

Article X

Burden Sharing

1. The refugee phenomenon continues to be a matter of global concern and needs the support of international community as a whole for its solution and as such the principle of burden sharing should be viewed in that context.

2. The principle of international solidarity and burden sharing needs to be applied progressively to facilitate the process of durable solutions for refugees, whether within or outside a particular region, keeping in perspective that durable solutions in certain situations may need to be found by allowing access to refugees in countries outside that region, due to political, social and economic considerations.
3. The principle of international solidarity and burden sharing should be seen as applying to all aspects of the refugee situation, including the development and strengthening of the standards of treatment of refugees, support to States in protecting and assisting refugees, the provision of durable solutions and the support of international bodies with responsibilities for the protection and assistance of refugees.
4. International solidarity and co-operation in burden sharing should be manifested whenever necessary, through effective concrete measures where major share be borne by developed countries in support of States requiring assistance, whether through financial or material aid (or) through resettlement opportunities.
5. In all circumstances, the respect for fundamental humanitarian principles is an obligation for all members of the international community. Giving practical effect to the principle of international solidarity and burden sharing considerably facilitates States fulfilment of their responsibilities in this regard.

Article XI

Obligations

A refugee shall not engage in subversive activities endangering the national security of the country of refuge, or any other country or in activities inconsistent with or against the principles and purposes of the United Nations.

Article XII

Rights granted apart from these Principles

Nothing in these Articles shall be deemed to impair any higher rights and benefits granted or which may hereafter be granted by a State to refugees.

Article XIII

Co-operation with international organizations

States shall co-operate with the office of the United Nations High Commissioner for Refugees and, in the region of its mandate, with the United Nations Relief and Works Agency for Palestine Refugees in the Near-East.

NOTES, COMMENTS AND RESERVATIONS MADE BY THE MEMBER STATES OF AALCO TO THE FINAL TEXT OF THE REVISED 1966 BANGKOK PRINCIPLES

Introductory Remarks

1. These notes, comments and reservations are an integral part of the main document of the Revised Bangkok Principles.
2. The Revised Bangkok Principles are declaratory and non-binding in character and aim *inter alia* at inspiring Member States for enacting national legislation for the Status and Treatment of Refugees and as a guide to deal with the refugee problems.
3. In all the Articles and paragraphs where it is referred to **"The unwillingness of the refugee to go back to his country of origin, nationality or habitual residence",** it is fully understood that this unwillingness is not a choice that the refugee can exercise on his own regardless of the consent of the country of asylum but means that the reasons of his well founded fears are still persistent and that his life or liberty if he is compelled to return would be threatened. Moreover the refugee can invoke convincing reasons out of previous persecution for refusing to return to one of the States mentioned above.
4. When the words "he" or "his" are used in the text, should be read to include "she" or "her".

Article I

1. The Government of **Bahrain** proposes the deletion of the phrase **"disturbing public order in either a part or in the whole of his country of origin or nationality"** in para 2 of Article I.
2. The Government of **UAE** proposes the addition of **"the country of his habitual residence"** in para 2 of Article I in order to make it consistent with para 3 of the same Article.
3. The Government of **Singapore** expressed its reservation to Article I(2) as it is too wide, and may result in undue pressures on receiving states in dealing with large number of refugees under this broader definition.
4. Referring to the present Article I(2) being similar to Article 1(2) of the 1969 OAU Convention governing the specific aspects of refugee problems in Africa:
5. The Government of **India** is not in favour of the expanded definition of refugees given in para 2 of Article I. The definition drawn from Human Rights and humanitarian law instruments is too broad in its scope. The universally accepted criteria of "**well-founded fear of persecution**" should remain the core of the definition. Any expansion of the definition of refugees will have an adverse effect on promoting the concept of 'durable solutions' and may result in the weakening of protection afforded to genuine refugees.
6. The Government of **Oman** in para 4 of Article I proposes to relate the concept of "**lawful dependents**" to the national legislation of the country of asylum, for this concept can change from one country to another.
7. The Governments of **Pakistan** and **Bahrain** propose the deletion of the word "**permanently**" in para 6(i) of Article I.
8. The Government of **Bahrain** proposes the deletion of the entire sentence "**it being understood that the loss of status as a refugee under this sub-paragraph will take place only when the refugee has successfully re-availed himself of the protection of the State of his nationality**" at the end of para 6 (ii) for it is difficult to make sure that the refugee will succeed in regaining the protection of his country unless he returns to it for a second time.
9. (*a*) The Government of **Arab Republic of Egypt** has reiterated its view that the crime of terrorism should have been included in the text of Article I(7) of the Principles, as a ground for refusal to grant the status of refugee due to the seriousness of such crimes as recognized by United Nations Resolutions and Declarations, particularly, General Assembly Resolution A/Res./49/60 of 1994 and the Declaration on Measures to Eliminate International Terrorism annexed thereto. Furthermore, in the view of the Government of Egypt, the failure to recognize crimes of terrorism as grounds for refusal of refugee status could subject the entire refugee regime to exploitation and misuse, and consequently have a negative impact on legitimate asylum seekers. The Government of Turkey also supports this view.

(*b*) The Government of **Bahrain** proposes to include the "**crime of terrorism**" to para 7 Article I according to the definition approved by the "**Arab Convention to Combat Terrorism**".

(*c*) The Government of **Republic of Korea** expressed its reservation to the inclusion of the "**crime of terrorism",** given the lack of consensus on the definition of terrorism, it is of the view that any reference to terrorism could be used as a pretext by states to refuse asylum to genuine refugees.

Article II

1. The Government of **Pakistan** proposes to substitute the word "**everyone**" with "**every refugee**" in para 1 of Article II.

2. The Government of **India** considers that the inclusion of the expression "**in accordance with its international obligations and national legislation"** in para 2 of Article II restricts the sovereign rights of states to grant or refuse asylum to a refugee.

3. The Government of **UAE** proposes the addition of "**or its habitual residence**" at the end of para 4 in order to be consistent with the entire text.

4. The Government of **Bahrain** proposes to delete the entire para 4 of Article II as it does not agree that a refugee should remain in the country of refuge because he is unable or unwilling to return to his country of origin or nationality after the circumstances of his refuge have ceased to exist.

Article III

1. (*a*) The Government of **Thailand** proposes deletion of the worlds "**seeking asylum**" and substitution with words "**after asylum is granted**" in para 1 of Article III.

   (*b*) The Government of **Oman** proposes to add the words "**after granting asylum**" after the words "**seeking asylum**" in para 1 Article III.

2. The Government of **Kuwait** proposes to redraft para 2 of Article III as follows "**A State may grant to a person seeking asylum provisional asylum, under conditions fixed by the granting State**".

Article IV

1. (*a*) The Government of **Pakistan** suggests deletion of the phrase "**aliens in similar circumstances**" in para 1 of Article IV as it is confusing and does not fit well with reference to the word "**refugees**".

   (*b*) The Government of **Kuwait** proposes the deletion of the last sentence of para 1 of Article IV "**with due regard to basic human rights as recognized in generally accepted international instruments**" as it is an unnecessary addition keeping in view that the first part gives to the refugee same treatment as any foreigner.

   (*c*) The Government of **Oman** proposes the addition of "**in accordance with national legislation**" at the end of the present para 1 of Article IV, as it feels that the concept of basic human rights varies from one country to another.

2. In Article IV para 2 please refer to the Final Report of the Organization adopted at the AALCC's Fourth Session held in Tokyo in 1961.

3. The Government of **Oman** is of the view that the word "**requirements**" in para 3 of Article IV should be further clarified and illustrated, for without specific clarification the term as it stands is very vague.

4. The Government of **Kuwait proposes the redrafting** of para 7 of Article IV for the sake of clarity and easier implementation to read as follows "**States shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee, shall receive appropriate protection and humanitarian assistance in accordance with international and national law**".

5. The Government of **UAE** proposes the addition of "**religious needs**" to the other needs of elderly refugees stipulated in para 8 of Article IV.

Article V

1. The Government of **Bahrain** proposes to use the word "**should**" instead of the word "**shall**" in para 1 of Article V.
2. In view of the Government of **UAE** the implementation of para 1 of Article V will not have a real effect because it relates the reason to expel a refugee to "**national interests or public interest or to protect people**" and all of these reasons have no precise definition or clear limits.
3. The Government of **Thailand** suggests deletion of the phrase "**the expulsion of a refugee shall be only in pursuance of a decision reached in accordance with due process of law**" in para 4 of Article V.

   The Government of **Pakistan** sought some more clarification regarding the phrase "**due process of law**", in its view it is to be understood in light of the contents of para 1 of this article.
4. Regarding para 4 of Article V the Government of **Sudan** expressed a similar view as the Government of **Pakistan**, according to it "**competent authority**" should mean the relevant national bodies and not as a reference only to courts or judicial bodies.

Article VI

1. The Government of **Turkey** proposes the deletion of the words "**foreign domination, external aggression or occupation**" in para 2 Article VI and replace them by the words "**international or internal armed conflict**". The Governments of **Pakistan** and **Kuwait** support the suggestion.
2. The Government of **Turkey** proposes the addition of the words "**taking into consideration the agreements reached with the Government or authorities of those persons and with a view to preventing further displacement of other already displaced persons as a result**" in para 2 of Article VI.

Article VII

1. Proposition of AALCO Secretariat and UNHCR to change earlier title "Other solutions" to "International Co-operation on Comprehensive Solutions".
2. The Government of **Pakistan** proposes the deletion of the word "**essentially**" in para 1 of Article VII as it seemed superfluous and could create problems. The Government of **Thailand** supports the suggestion.
3. The Government of **Kuwait** proposes the deletion of the entire paragraph 4 of Article VII as it tends to waive criminal responsibility of any person who committed criminal acts before seeking refuge in another country.

Article VIII

1. The Government of **India** expressed its reservation on including a separate Article VIII on "**International co-operation and comprehensive solutions**". It wants the emphasis to remain on 'voluntary repatriation'. The other solutions like 'local settlement' or 'third country resettlement', according to it, would have to be considered carefully in each case, given their political, economic or security implications, particularly in situations of mass-influx. In this connection, a distinction needs to be maintained between the 'individual refugees' and 'situations of mass-influx' as well as between 'convention refugees' and 'economic migrants'. Further, the implementation of these solutions and treatment of refugees is linked to the available resources and capacity of each State.
2. The Government of **Bahrain** proposes the deletion of the entire Article VIII.
3. In view of the Government of **Oman** the solutions contained in para 1 of this article are of a non-obligatory nature and do not bind the country of asylum. Nevertheless the country of asylum may fulfil these requirements in accordance with its national interests.

Article IX

1. In view of the financial and economic implications, reservations to paragraph 1 of Article IX were expressed by the Governments of **Sudan**, **Pakistan**, **Turkey**, **Jordan**, **Tanzania** and **Kuwait**.

2. (*a*) The Government of **Singapore** understands the phrase "**such place of habitual residence**" in para 3 Article IX as referring to the State or country which the refugee left or to which he is unable to return.

   (*b*) The Government of **Pakistan** felt that para 3 of this article should be in conformity with para 1 and suggested that "**such place of habitual residence**" should be replaced with "**State or country which he left**".

3. Regarding para 3 of this article, the Government of **Oman** wants to make sure that if the refugee is unwilling to return to his country of origin, it does not mean that the country of asylum is compelled to maintain his refugee status forever.

3. The Government of **Bahrain** proposes the deletion of the entire article IX as in their view, most of the refugee cases happen due to unforeseen circumstances. The Government of **UAE** also has reservations on the entire Article IX.

Article X

1. The Government of **Singapore** maintains that the responsibility of refugees rests ultimately on the countries which caused the refugees to flee and/or remain abroad. Assistance to refugees by other countries, international organizations and donors should not relieve such countries of their basic responsibility, including that of paying adequate compensation.

2. The Government of **UAE** has a reservation to para 2 of Article X as it refers to the possibility of a refugee residing in another country than the country of asylum.

Article XI

1. The addition of words "or any other country" after "country of refugee".

COMMENTS AND RESERVATIONS BY THE MEMBER GOVERNMENTS

1. The words "he" or "his" wherever used in the text should read to include "she" or "her", as suggested by the delegate of Pakistan.

Article I

2. The Government of India is not in favour of the expanded definition of refugees. This definition drawn from Human Rights and humanitarian law instruments is too broad in its scope. The universally accepted criteria of "well-founded fear of persecution" should remain the core of the definition. Any expansion of the definition of refugees will have an adverse effect on promoting the concept of 'durable solutions' and may result in the weakening of protection afforded to genuine refugees.

3. The Government of Egypt has reiterated its view that the crime of terrorism should have been included in the text of Article 1(7) of the Principles, as a ground for refusal to grant the status of refugee due to the seriousness of such crimes as recognized by United Nations Resolutions and Declarations, particularly, General Assembly Resolution A/Res./49/60 of 1994 and the Declaration on Measures to Eliminate International Terrorism annexed thereto. Furthermore, in the view of the Government of Egypt, the failure to recognize crimes of terrorism as grounds for refusal of refugee status could subject the entire refugee regime to exploitation and misuse, and consequently have a negative impact on legitimate asylum seekers. The Government of Turkey also supports this view.

4. The Government of India consider that the inclusion of the expression "in accordance with its international obligations and national legislation" restricts the sovereign rights of states to grant or refuse asylum to a refugee.

5. The Government of Thailand proposed deletion of the words "seeking asylum" and substitution with words "after asylum is granted".

6. Admission and Treatment of Aliens adopted at the AALCC's fourth Session held in Tokyo (1961).

7. The Government of Thailand suggested deletion of the phrase “The expulsion of a refugee shall be only in pursuance of a decision reached in accordance with due process of law”.
8. The Government of Turkey proposed substituting the words “international or internal armed conflict” for the words “foreign domination, external aggression or occupation”.
9. The Government of Turkey proposed the addition of the words “taking into consideration the agreements reached with the Government or authorities of those persons and with a view to preventing further displacement of other already displaced persons as a result.”
10. The Government of India expressed its reservation on including a separate Article VIII on “International co-operation and comprehensive solutions”. It wants the emphasis to remain on ‘voluntary repatriation’. The other solutions like ‘local settlement’ or ‘third country resettlement’, according to it, would have to be considered carefully in each case, given their political, economic or security implications, particularly in situations of mass-influx. In this connection, a distinction needs to be maintained between the ‘individual refugees’ and ‘situations of mass-influx’ as well as between ‘convention refugees’ and ‘economic migrants’. Further, the implementation of these solutions and treatment of refugees is linked to the available resources and capacity of each State.
11. In view of the financial and economic reservations to paragraph 1 were expressed by the Governments of Sudan, Pakistan, Turkey, Jordan and Tanzania.

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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION

RESOLUTION ON "LEGAL IDENTITY AND STATELESSNESS"

Adopted on 8 April 2006 by the Asian-African Legal Consultative Organisation (AALCO) at the Forty-Fifth Session of its General Assembly

Resolution on the Half-Day Special Meeting on "Legal Identity and Statelessness"

Text: Res/45/SP.1 (2006)

Noting the appreciation of the views expressed by the Secretary General of AALCO, the UNHCR Chief of Mission, New Delhi, the Chairperson, Panelists, as well as the deliberations reflecting the views of Member States on the need for the international community to collectively work towards identification of Stateless persons and amelioration of their conditions,

Acknowledging the role assigned to the United Nations High Commissioner for Refugees to provide technical and advisory services to States concerning the avoidance and reduction of statelessness, and the importance of UNHCR's efforts to disseminate information and to promote cooperation,

Recognizing the sovereign right of States to establish laws governing the acquisition, renunciation or loss of nationality,

Also recognizing the right of everyone to a nationality and the right not to be arbitrarily deprived of one's nationality,

Affirming the fact that the legal bond of nationality of an individual is inseparable from the legal identity of a person in any society,

Deeply concerned about the need to address the precarious situation of stateless persons, which include the deprivation of the enjoyment of their fundamental human rights,

Being fully conscious of the fact that loss of nationality entails harsh legal consequences for persons in general and women and children in particular,

Desiring to promote the progressive development of legal principles concerning nationality and of finding appropriate solutions to avoid as far as possible cases of statelessness,

Stressing in this regard that the prevention and reduction of statelessness and the protection of stateless persons are important in the prevention of potential refugee situations,

Being deeply concerned about the increasing number of stateless persons, and their vulnerable position in the country in which they reside,

Reiterating the importance of the international legal instruments, namely the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness which seek to give protection to stateless persons by conferring minimum rights and to identify and reduce the conditions which create statelessness, respectively,

1. *Commends* the Secretariat of AALCO and the UNHCR for their earnest efforts in organizing this half day Special Meeting on Legal Identity and Statelessness; as well as the upcoming release of the Special Study on "Statelessness: An Overview from the Asian, African and Middle East Perspective";

2. *Thanks* the Panelists who have given valuable insight on the different aspects of the topic as well as on the 'Regional Approaches and Comparative Analysis of the problem of statelessness' during this meeting;

3. *Encourages* the Member States to review nationality legislation with a view to reducing and avoiding statelessness, consistent with fundamental principles of international law;

4. *Also Encourages* the Member States to raise awareness about the problem of statelessness and to actively cooperate in the identification of problems of statelessness paying particular regard to establishing identity and acquiring relevant documentation for women, children and families in instances of displacement,

migration or trafficking;

5. *Urges* Member States in general and those Member States, which have the presence of stateless persons in particular, to take the necessary legal and institutional measures to ameliorate the precarious situation of stateless persons;
6. *Invites* Member States to consider the possibility of acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness to address the plight of stateless persons in an effective way;
7. *Requests* the Secretary General of AALCO and UNHCR to seek the possibility of organizing a follow-up meeting in relation with future activities on the subject in AALCO's Centre for Research and Training (CRT) with a view to enhancing the legal regime and legal expertise of Member States in this area; and
8. *Decides* to remain seized of the issue as part of ongoing deliberations concerning the "Status and Treatment of Refugees" and decides to place the item on the agenda of the Forty-Sixth Session.

Section 2.4

Americas

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CARTAGENA DECLARATION ON REFUGEES

Adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, held at Cartagena, Colombia from 19 – 22 November 1984

Text: OAS Document OEA/Ser.L/V/II.66/doc.10, rev. 1, pp. 190-93 (1984-85)

I

Recalling the conclusions and recommendations adopted by the Colloquium held in Mexico in 1981 on Asylum and International Protection of Refugees in Latin America, which established important landmarks for the analysis and consideration of this matter;

Recognizing that the refugee situation in Central America has evolved in recent years to the point at which it deserves special attention;

Appreciating the generous efforts which have been made by countries receiving Central American refugees, notwithstanding the great difficulties they have had to face, particularly in the current economic crisis;

Emphasizing the admirable humanitarian and non-political task which UNHCR has been called upon to carry out in the Central American countries, Mexico and Panama in accordance with the provisions of the 1951 United Nations Convention and the 1967 Protocol, as well as those of resolution 428 (V) of the United Nations General Assembly, by which the mandate of the United Nations High Commissioner for Refugees is applicable to all States whether or not parties to the said Convention and/or Protocol;

Bearing in mind also the function performed by the Inter-American Commission on Human Rights with regard to the protection of the rights of refugees in the continent;

Strongly supporting the efforts of the Contadora Group to find an effective and lasting solution to the problem of Central American refugees, which constitute a significant step in the negotiation of effective agreements in favour of peace in the region;

Expressing its conviction that many of the legal and humanitarian problems relating to refugees which have arisen in the Central American region, Mexico and Panama can only be tackled in the light of the necessary co-ordination and harmonization of universal and regional systems and national efforts;

II

Having acknowledged with appreciation the commitments with regard to refugees included in the Contadora Act on Peace and Co-operation in Central America, the bases of which the Colloquium fully shares and which are reproduced below:

(*a*) "To carry out, if they have not yet done so, the constitutional procedures for accession to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees."

(*b*) "To adopt the terminology established in the Convention and Protocol referred to in the foregoing paragraph with a view to distinguishing refugees from other categories of migrants."

(*c*) "To establish the internal machinery necessary for the implementation, upon accession, of the provisions of the Convention and Protocol referred to above."

(*d*) "To ensure the establishment of machinery for consultation between the Central American countries and representatives of the Government offices responsible for dealing with the problem of refugees in each State."

(*e*) "To support the work performed by the United Nations High Commissioner for Refugees (UNHCR) in Central America and to establish direct co-ordination machinery to facilitate the fulfilment of his mandate."

(*f*) "To ensure that any repatriation of refugees is voluntary, and is declared to be so on an individual basis, and is carried out with the co-operation of UNHCR."

(*g*) "To ensure the establishment of tripartite commissions, composed of representatives of the State of origin, of the receiving State and of UNHCR with a view to facilitating the repatriation of refugees."

(*h*) "To reinforce programmes for protection of and assistance to refugees, particularly in the areas of health, education, labour and safety."

(*i*) "To ensure that programmes and projects are set up with a view to ensuring the self-sufficiency of refugees."

(*j*) "To train the officials responsible in each State for protection of and assistance to refugees, with the co-operation of UNHCR and other international agencies."

(*k*) "To request immediate assistance from the international community for Central American refugees, to be provided either directly, through bilateral or multilateral agreements, or through UNHCR and other organizations and agencies."

(*l*) "To identify, with the co-operation of UNHCR, other countries which might receive Central American refugees. In no case shall a refugee be transferred to a third country against his will."

(*m*) "To ensure that the Governments of the area make the necessary efforts to eradicate the causes of the refugee problem."

(*n*) "To ensure that, once agreement has been reached on the bases for voluntary and individual repatriation, with full guarantees for the refugees, the receiving countries permit official delegations of the country of origin, accompanied by representatives of UNHCR and the receiving country, to visit the refugee camps."

(*o*) "To ensure that the receiving countries facilitate, in co-ordination with UNHCR, the departure procedure for refugees in instances of voluntary and individual repatriation."

(*p*) "To institute appropriate measures in the receiving countries to prevent the participation of refugees in activities directed against the country of origin, while at all times respecting the human rights of the refugees."

III

The Colloquium adopted the following conclusions:

1. To promote within the countries of the region the adoption of national laws and regulations facilitating the application of the Convention and the Protocol and, if necessary, establishing internal procedures and mechanisms for the protection of refugees. In addition, to ensure that the national laws and regulations adopted reflect the principles and criteria of the Convention and the Protocol, thus fostering the necessary process of systematic harmonization of national legislation on refugees.

2. To ensure that ratification of or accession to the 1951 Convention and the 1967 Protocol by States which have not yet taken these steps is unaccompanied by reservations limiting the scope of those instruments, and to invite countries having formulated such reservations to consider withdrawing them as soon as possible.

3. To reiterate that, in view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (article 1, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.

4. To confirm the peaceful, non-political and exclusively humanitarian nature of grant of asylum or recognition of the status of refugee and to underline the importance of the internationally accepted principle that nothing in either shall be interpreted as an unfriendly act towards the country of origin of refugees.

5. To reiterate the importance and meaning of the principle of *non-refoulement* (including the prohibition of rejection at the frontier) as a corner-stone of the international protection of refugees. This principle is imperative in regard to refugees and in the present state of international law should be acknowledged and observed as a rule of *jus cogens*.

6. To reiterate to countries of asylum that refugee camps and settlements located in frontier areas should be set up inland at a reasonable distance from the frontier with a view to improving the protection afforded to refugees, safeguarding their human rights and implementing projects aimed at their self-sufficiency and integration into the host society.

7. To express its concern at the problem raised by military attacks on refugee camps and settlements which have occurred in different parts of the world and to propose to the Governments of the Central American countries, Mexico and Panama that they lend their support to the measures on this matter which have been proposed by the High Commissioner to the UNHCR Executive Committee.

8. To ensure that the countries of the region establish a minimum standard of treatment for refugees, on the basis of the provisions of the 1951 Convention and 1967 Protocol and of the American Convention on Human Rights, taking into consideration the conclusions of the UNHCR Executive Committee, particularly No. 22 on the Protection of Asylum Seekers in Situations of Large-Scale Influx.

9. To express its concern at the situation of displaced persons within their own countries. In this connection, the Colloquium calls on national authorities and the competent international organizations to offer protection and assistance to those persons and to help relieve the hardship which many of them face.

10. To call on States parties to the 1969 American Convention on Human Rights to apply this instrument in dealing with *asilados* and refugees who are in their territories.

11. To make a study, in countries in the area which have a large number of refugees, of the possibilities of integrating them into the productive life of the country by allocating to the creation or generation of employment the resources made available by the international community through UNHCR, thus making it possible for refugees to enjoy their economic, social and cultural rights.

12. To reiterate the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin.

13. To acknowledge that reunification of families constitutes a fundamental principle in regard to refugees and one which should be the basis for the regime of humanitarian treatment in the country of asylum, as well as for facilities granted in cases of voluntary repatriation.

14. To urge non-governmental, international and national organizations to continue their worthy task, co-ordinating their activities with UNHCR and the national authorities of the country of asylum, in accordance with the guidelines laid down by the authorities in question.

15. To promote greater use of the competent organizations of the inter-American system, in particular the Inter-American Commission on Human Rights, with a view to enhancing the international protection of *asilados* and refugees. Accordingly, for the performance of this task, the Colloquium considers that the close co-ordination and co-operation existing between the Commission and UNHCR should be strengthened.

16. To acknowledge the importance of the OAS/UNHCR Programme of Co-operation and the activities so far carried out and to propose that the next stage should focus on the problem raised by massive refugee flows in Central America, Mexico and Panama.

17. To ensure that in the countries of Central America and the Contadora Group the international norms and national legislation relating to the protection of refugees, and of human rights in general, are disseminated at all possible levels. In particular, the Colloquium believes it especially important that such dissemination should be undertaken with the valuable co-operation of the appropriate universities and centres of higher education.

IV

The Cartagena Colloquium therefore,

Recommends:

- That the commitments with regard to refugees included in the Contadora Act should constitute norms for the 10 States participating in the Colloquium and be unfailingly and scrupulously observed in determining the conduct to be adopted in regard to refugees in the Central American area.
- That the conclusions reached by the Colloquium (III) should receive adequate attention in the search for solutions to the grave problems raised by the present massive flows of refugees in Central America, Mexico and Panama.
- That a volume should be published containing the working document and the proposals and reports, as well as the conclusions and recommendations of the Colloquium and other pertinent documents, and that the Colombian Government, UNHCR and the competent bodies of OAS should be requested to take the necessary steps to secure the widest possible circulation of the volume in question.
- That the present document should be proclaimed the "Cartagena Declaration on Refugees".
- That the United Nations High Commissioner for Refugees should be requested to transmit the contents of the present declaration officially to the heads of State of the Central American countries, of Belize and of the countries forming the Contadora Group.

Finally, the Colloquium expressed its deep appreciation to the Colombian authorities, and in particular to the President of the Republic, Mr. Belisario Betancur, the Minister for Foreign Affairs, Mr. Augusto Ramírez Ocampo, and the United Nations High Commissioner for Refugees, Mr. Poul Hartling, who honoured the Colloquium with their presence, as well as to the University of Cartagena de Indias and the Regional Centre for Third World Studies for their initiative and for the realization of this important event. The Colloquium expressed its special recognition of the support and hospitality offered by the authorities of the Department of Bolivar and the City of Cartagena. It also thanked the people of Cartagena, rightly known as the "Heroic City", for their warm welcome.

In conclusion, the Colloquium recorded its acknowledgement of the generous tradition of asylum and refuge practised by the Colombian people and authorities.

Cartagena de Indias,
22 November 1984

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CONVENTION ON ASYLUM

Signed in Havana on 20 February 1928 at the Sixth International Conference of American States

Entry into force: 21 May 1929
Text: OAS Official Records, OEA/Ser.X/I. *Treaty Series* 34

The governments of the States of America, being desirous of fixing the rules they must observe for the granting of asylum, in their mutual relations have agreed to establish them in a Convention and to that end have appointed as plenipotentiaries:

[Here follow the names of the plenipotentiaries.]

Who, after exchanging their respective full powers, found to be in good and due form, have agreed on the following:

Article 1

It is not permissible for States to grant asylum in legations, warships, military camps or military aircraft, to persons accused or condemned for common crimes, or to deserters from the army or navy.

Persons accused of or condemned for common crimes taking refuge in any of the places mentioned in the preceding paragraph, shall be surrendered upon request of the local government.

Should said persons take refuge in foreign territory, surrender shall be brought about through extradition, but only in such cases and in the form established by the respective treaties and conventions or by the constitution and laws of the country of refuge.

Article 2

Asylum granted to political offenders in legations, warships, military camps or military aircraft, shall be respected to the extent in which allowed, as a right or through humanitarian toleration, by the usages, the conventions or the laws of the country in which granted and in accordance with the following provisions:

First: Asylum may not be granted except in urgent cases and for the period of time strictly indispensable for the person who has sought asylum to ensure in some other way his safety.

Second: Immediately upon granting asylum, the diplomatic agent, commander of a warship, or military camp or aircraft, shall report the fact to the Minister of Foreign Relations of the State of the person who has secured asylum, or to the local administrative authority, if the act occurred outside the capital.

Third: The Government of the State may require that the refugee be sent out of the national territory within the shortest time possible; and the diplomatic agent of the country who has granted asylum may in turn require the guarantees necessary for the departure of the refugee with due regard to the inviolability of his person, from the country.

Fourth: Refugees shall not be landed in any point of the national territory nor in any place too near thereto.

Fifth: While enjoying asylum, refugees shall not be allowed to perform acts contrary to the public peace.

Sixth: States are under no obligation to defray expenses incurred by one granting asylum.

Article 3

The present Convention does not affect obligations previously undertaken by the contracting parties through international agreements.

Article 4

After being signed, the present Convention shall be submitted to the ratification of the signatory States. The Government of Cuba is charged with transmitting authentic certified copies to the Governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan American Union in Washington, the Union to notify the signatory governments of said deposit. Such notification shall be considered as an exchange of ratifications. This Convention shall remain open to the adherence of non-signatory States.

IN WITNESS WHEREOF, the aforenamed Plenipotentiaries sign the present Convention in Spanish, English, French and Portuguese, in the city of Havana, the 20th day of February, 1928.

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CONVENTION ON POLITICAL ASYLUM

Signed at Montevideo on 26 December 1933 at the Seventh International Conference of American States

Entry into force: 28 March 1935, in accordance with Article 7
Text: OAS Official Records, OEA/Ser.X/I. *Treaty Series* 34

The governments represented in the Seventh International Conference of American States:

Wishing to conclude a Convention on Political Asylum, to define the terms of the one signed at Havana, have appointed the following plenipotentiaries:

[Here follow the names of the plenipotentiaries.]

Who, after having exhibited their full powers, which were found in good and due form, have agreed upon the following:

Article 1

In place of Article 1 of the Convention of Havana on Right of Asylum, of February 20, 1928, the following is substituted: “It shall not be lawful for the States to grant asylum in legations, warships, military camps, or airships to those accused of common offenses who may have been duly prosecuted or who may have been sentenced by ordinary courts of justice, nor to deserters of land or sea forces.

The persons referred to in the preceding paragraph who find refuge in some of the above-mentioned places shall be surrendered as soon as requested by the local government.”

Article 2

The judgment of political delinquency concerns the State which offers asylum.

Article 3

Political asylum, as an institution of humanitarian character, is not subject to reciprocity. Any man may resort to its protection, whatever his nationality, without prejudice to the obligations accepted by the State to which he belongs; however, the States that do not recognize political asylum, except with limitations and peculiarities, can exercise it in foreign countries only in the manner and within the limits recognized by said countries.

Article 4

When the withdrawal of a diplomatic agent is requested because of the discussions that may have arisen in some case of political asylum, the diplomatic agent shall be replaced by his government, and his withdrawal shall not determine a breach of diplomatic relations between the two States.

Article 5

The present Convention shall not affect obligations previously entered into by the High Contracting Parties by virtue of international agreements.

Article 6

The present Convention shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures. The Minister of Foreign Affairs of the Republic of Uruguay shall transmit authentic certified copies to the governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan American Union in Washington, which shall notify the signatory governments of said deposit. Such notification shall be considered as an exchange of ratifications.

Article 7

The present Convention will enter into force between the High Contracting Parties in the order in which they deposit their respective ratification.

Article 8

The present Convention shall remain in force indefinitely but may be denounced by means of one year's notice given to the Pan American Union, which shall transmit it to the other signatory governments. After the expiration of this period the Convention shall cease in its effects as regards the party which denounces but shall remain in effect for the remaining High Contracting Parties.

Article 9

The present Convention shall be open for the adherence and accession of the States which are not signatories. The corresponding instruments shall be deposited in the archives of the Pan American Union which shall communicate them to the other High Contracting Parties.

IN WITNESS WHEREOF, the following Plenipotentiaries have signed this Convention in Spanish, English, Portuguese and French and hereunto affix their respective seals in the city of Montevideo, Republic of Uruguay, this 26th day of December, 1933.

Here follow the signatures of the Plenipotentiaries.

DECLARATION

Since the United States of America does not recognize or subscribe to, as part of international law, the doctrine of asylum, the delegation of the United States of America refrains from signing the present Convention on Political Asylum.

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TREATY ON POLITICAL ASYLUM AND REFUGE[1]

Signed at Montevideo, 4 August 1939

Entry into force: 29 December 1954, in accordance with Article 14
Text: OAS Official Records, OEA/Ser.X/I. *Treaty Series* 34

His Excellency the President of the Republic of Peru; His Excellency the President of the Argentine Republic; His Excellency the President of the Oriental Republic of Uruguay; His Excellency the President of the Republic of Bolivia; His Excellency the President of the Republic of Paraguay, and His Excellency the President of the Republic of Chile.

In view of the fact that the principles governing asylum which were established by the Treaty on International Penal Law signed at Montevideo on January 23, 1889, require amplification in order that they may cover the new situations which have arisen and may serve to confirm the doctrines already sanctioned in America, have agreed to conclude the present Treaty on Political Asylum and Refuge through the medium of their respective plenipotentiaries, assembled in congress in the City of Montevideo as a result of the initiative taken by the Governments of the Oriental Republic of Uruguay and the Argentine Republic.

For the execution of this purpose, His Excellency the President of the Republic of Peru has designated as his representatives:

[Here follow the names of the representatives.]

The aforesaid representatives, having presented their full powers, which were found to be in due form, and after holding the appropriate conferences and discussions, have agreed upon the following provisions:

Chapter I. On Political Asylum

Article 1

Asylum may be granted without distinction of nationality, and without prejudice to the rights and obligations of protection appertaining to the State to which the refugees belong.

The State which grants asylum does not thereby incur an obligation to admit the refugees into its territory, except in cases where they are not given admission by other States.

Article 2

Asylum may be granted only in embassies, legations, men-of-war, military camps or military airplanes, and exclusively to persons pursued for political reasons or offenses, or under circumstances involving concurrent political offenses, which do not legally permit of extradition.

The chiefs of mission may also receive refugees in their residences, in cases where the former do not live on the premises of the embassies or legations.

Article 3

Asylum shall not be granted to persons accused of political offenses, who shall have been indicted or condemned previously for common offenses, by the ordinary tribunals.

The determination of the causes which induce the asylum appertains to the State which grants it.

Asylum may not be granted to deserters from the sea-, land-, or air forces, except when the act is clearly of a political character.

Article 4

The diplomatic agent or military commander who grants asylum shall immediately communicate the names of the refugees to the Ministry for Foreign Affairs of the State where the act in question occurred, or to

[1] Translated from *Segundo Congreso Sudamericano de Derecho Internacional Privado, Acta Final, Segunda Edición,* Montevideo, 1940, pp. 11-16.

the administrative authorities of the locality, if the said act has taken place outside the seat of government, except when grave circumstances materially impede such communication or make it dangerous to the safety of the refugees.

Article 5

While the asylum continues, the refugees shall not be permitted to commit acts which may disturb the public tranquillity or may tend toward participation in, or influence upon, political activities. The diplomatic agents or military commanders shall require of the refugees information as to their personal history, and a promise not to enter into external communications without the express intervention of the former. This promise shall be in writing and signed; and if the refugees should refuse to accept, or should violate, any of these conditions, the diplomatic agent or commander shall immediately terminate the asylum. The refugees may be forbidden to carry with them articles other than those destined for personal use, the papers which belong to them, and the money necessary for their living expenses, the deposit of any other securities or articles in the place of asylum being prohibited.

Article 6

The Government of the State may demand that a given refugee be removed from the national territory within the shortest possible time; and the diplomatic agent or military commander who has granted the asylum may, for his part, demand the necessary guaranties before the refugee is permitted to leave the country, with due regard for the inviolability of the latter's person, and of the papers belonging to him and carried with him at the time when he received asylum, as well as for the funds necessary to support him for a reasonable time. In the absence of such guaranties, the departure may be postponed until the local authorities shall make them available.

Article 7

Once they have left the State, the refugees shall not be landed in any other part of it. In case an ex-refugee should return to the country in question, he shall not be accorded new asylum if the disturbance which led to the original grant subsists.

Article 8

When the number of refugees exceeds the normal capacity of the places of refuge specified in Article 2, the diplomatic agents or military commanders may provide other places, under the protection of their flag, for the safety and lodging of the said refugees. In such cases, the agents or commanders must communicate that fact to the authorities.

Article 9

Men-of-war or military airplanes tenlporarily located in dry-docks or workshops for repairs, shall not accord protection to persons who take refuge in them.

Article 10

If, in a case of severance of relations, the diplomatic representative who has granted asylum should have to leave the territory of the country where he is located, he shall depart from it accompanied by the refugees; or, if this should be impossible for some reason not dependent upon the choice of the refugees or of the diplomatic agent, he may deliver them to the agent of a third State, with the guaranties specified in this treaty. Such delivery shall be effected by the transfer of the said refugees to the premises of the diplomatic mission which shall have accepted the charge in question, or by leaving the refugees on the premises where the archives of the departing diplomatic mission are kept; and these premises shall remain under the direct protection of the diplomatic agent to whom that function has been intrusted. In either case, the local Ministry for Foreign Affairs shall be duly advised, in conformity with the provisions of Article 4.

Chapter II. On Asylum in Foreign Territory

Article 11

Asylum granted within the territory of the high contracting parties, in conformity with the present treaty, is an inviolable asylum for persons pursued under the conditions described in Article 2; but it is the duty of the State to prevent the refugees from committing within its territory, acts which may endanger the public peace of the State from which they come.

The determination of the causes that induce the asylum appertains to the State which grants it.

The grant of asylum does not entail for the State which makes that grant, any obligation to admit the refugees indefinitely into its territory.

Article 12

Political emigrants shall not be permitted to establish *juntas* or committees for the purpose of instigating or promoting disturbances of order in any of the contracting States. Such *juntas* or committees shall be disbanded, upon proof of their subversive character, by the authorities of the State where they are found to exist.

Discontinuance of the benefits of asylum does not imply authorization to place a refugee in the territory of the pursuing State.

Article 13

Upon the request of the interested State, the one which has granted asylum shall undertake to keep watch over or to intern political emigrants, within a reasonable distance from its frontiers. The State receiving the request shall determine the propriety of the petition and shall fix the distance in question.

Article 14

The State making the request shall be liable for all expenses incurred in the internment of political refugees and emigrants.

Prior to the internment of the refugees, the States involved shall come to an agreement concerning their maintenance.

Article 15

Political internees shall advise the Government of the State where they are located, when they decide to leave its territory. Their departure shall be permitted on condition that they do not go to the country of their origin, and notice of this permission shall be given to the interested State.

Chapter III. General Provisions

Article 16

Any difference which may arise concerning the application of this treaty shall be decided through diplomatic channels, or, in default thereof, shall be submitted to arbitration or judicial decision, provided that there is a tribunal whose jurisdiction both parties recognize.

Article 17

Any State which has not signed the present treaty may adhere to it by sending its instrument of adhesion to the Ministry for Foreign Affairs of the Oriental Republic of Uruguay, which shall notify the other high contracting parties, through diplomatic channels, of that adhesion.

Article 18

This treaty shall be ratified by the high contracting parties in accordance with their constitutional rules. The original treaty and the instruments of ratification shall be deposited with the Ministry for Foreign Affairs of the Oriental Republic of Uruguay, which shall communicate the ratifications, through diplomatic channels, to the other contracting States. The treaty shall go into effect among the high contracting parties in the order in

which they have deposited their ratifications. The corresponding notification shall be considered as an exchange of ratifications.

Article 19

This treaty shall remain in force indefinitely, but may be denounced through notice given two years in advance, after the lapse of which period it shall cease to bind the denouncing State, but shall continue to be binding upon the other signatory States. Denunciations must be addressed to the Ministry for Foreign Affairs of the Oriental Republic of Uruguay, which shall transmit them to the other contracting States.

IN WITNESS WHEREOF, the above-mentioned Plenipotentiaries sign the present treaty in the City of Montevideo, on the 4th day of August, 1939.

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CONVENTION ON TERRITORIAL ASYLUM

Signed in Caracas on 28 March 1954 at the Tenth Inter-American Conference

Entry into force: 29 December 1954, in accordance with Article 14
Text: OAS Official Records, OEA/Ser.X/I. *Treaty Series* 34

The Governments of the Member States of the Organization of American States, desirous of concluding a Convention regarding Territorial Asylum, have agreed to the following articles:

Article 1

Every State has the right, in the exercise of its sovereignty, to admit into its territory such persons as it deems advisable, without, through the exercise of this right, giving rise to complaint by any other State.

Article 2

The respect which, according to international law, is due the jurisdictional right of each State over the inhabitants in its territory, is equally due, without any restriction whatsoever, to that which it has over persons who enter it proceeding from a State in which they are persecuted for their beliefs, opinions, or political affiliations, or for acts which may be considered as political offenses.

Any violation of sovereignty that consists of acts committed by a government or its agents in another State against the life or security of an individual, carried out on the territory of another State, may not be considered attenuated because the persecution began outside its boundaries or is due to political considerations or reasons of state.

Article 3

No State is under the obligation to surrender to another State, or to expel from its own territory, persons persecuted for political reasons or offenses.

Article 4

The right of extradition is not applicable in connection with persons who, in accordance with the qualifications of the solicited State, are sought for political offenses, or for common offenses committed for political ends, or when extradition is solicited for predominantly political motives.

Article 5

The fact that a person has entered into the territorial jurisdiction of a State surreptitiously or irregularly does not affect the provisions of this Convention.

Article 6

Without prejudice to the provisions of the following articles, no State is under the obligation to establish any distinction in its legislation, or in its regulations or administrative acts applicable to aliens, solely because of the fact that they are political asylees or refugees.

Article 7

Freedom of expression of thought, recognized by domestic law for all inhabitants of a State, may not be ground of complaint by a third State on the basis of opinions expressed publicly against it or its government by asylees or refugees, except when these concepts constitute systematic propaganda through which they incite to the use of force or violence against the government of the complaining State.

Article 8

No State has the right to request that another State restrict for the political asylees or refugees the freedom of assembly or association which the latter State’s internal legislation grants to all aliens within its territory, unless such assembly or association has as its purpose fomenting the use of force or violence against the government of the soliciting State.

Article 9

At the request of the interested State, the State that has granted refuge or asylum shall take steps to keep watch over, or to intern at a reasonable distance from its border, those political refugees or asylees who are notorious leaders of a subversive movement, as well as those against whom there is evidence that they are disposed to join it.

Determination of the reasonable distance from the border, for the purpose of internment, shall depend upon the judgment of the authorities of the State of refuge.

All expenses incurred as a result of the internment of political asylees and refugees shall be chargeable to the State that makes the request.

Article 10

The political internees referred to in the preceding article shall advise the government of the host State whenever they wish to leave its territory. Departure therefrom will be granted, under the condition that they are not to go to the country from which they came; and the interested government is to be notified.

Article 11

In all cases in which a complaint or request is permissible in accordance with this Convention, the admissibility of evidence presented by the demanding State shall depend on the judgment of the solicited State.

Article 12

This Convention remains open to the signature of the Member States of the Organization of American States, and shall be ratified by the signatory States in accordance with their respective constitutional procedures.

Article 13

The original instrument, whose texts in the English, French, Portuguese, and Spanish languages are equally authentic, shall be deposited in the Pan American Union, which shall send certified copies to the governments for the purpose of ratification. The instruments of ratification shall be deposited in the Pan American Union; this organization shall notify the signatory governments of said deposit.

Article 14

This Convention shall take effect among the States that ratify it in the order in which their respective ratifications are deposited.

Article 15

This Convention shall remain effective indefinitely, but may be denounced by any of the signatory States by giving advance notice of one year, at the end of which period it shall cease to have effect for the denouncing State, remaining, however, in force among the remaining signatory States. The denunciation shall be forwarded to the Pan American Union which shall notify the other signatory States thereof.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having presented their plenary powers which have been found in good and satisfactory form, sign this Convention in the name of their respective Governments, in the city of Caracas, this twenty-eighth day of March, one thousand nine hundred and fifty-four.

Here follow the signatures of the Plenipotentiaries.

RESERVATIONS

Guatemala

We make express reservation to Article 3 (three) wherein it refers to the surrender of persons persecuted for political reasons or offenses; because according to the provisions of our Political Constitution, we maintain that such surrender of persons persecuted for political reasons may never be carried out.

We affirm, likewise, that the term "internment" in Article 9 means merely location at a distance from the border.

Dominican Republic

The Delegation of the Dominican Republic subscribes to the Convention on Territorial Asylum, with the following reservations:

Article 1. The Dominican Republic accepts the general principle embodied in that article in the sense that, "Every State has the right to admit into its territory such persons as it deems advisable", but it does not renounce the right to make diplomatic representation to any other State, if for considerations of national security it deems this advisable.

Article 2. It accepts the second paragraph of this article with the understanding that the latter does not affect the regulations of the frontier police.

Article 10. The Dominican Republic does not renounce the right to resort to the procedures for pacific settlement of international disputes that may arise from the exercise of territorial asylum.

Mexico

The delegation of Mexico makes express reservation to Articles 9 and 10 of the Convention regarding territorial asylum because they are contrary to the individual guarantees enjoyed by all the inhabitants of the Republic in accordance with the Political Constitution of Mexico.

Peru

The delegation of Peru makes reservation to the text of Article 13 of the Convention regarding Territorial Asylum, insofar as it differs from Article 6 of the draft proposal of the Inter-American Council of Jurists, with which the delegation concurs.

Honduras

The delegation of Honduras gives its approval to the Convention regarding Territorial Asylum with reservations with respect to those articles opposed to the Constitution and to the laws in force in the republic of Honduras.

Argentina

The delegation of Argentina has voted in favour of the Convention regarding Territorial Asylum, but makes express reservations in regard to Article 7, as it believes that the latter does not duly consider nor satisfactorily resolve the problem arising from the exercise, on the part of political asylees, of the right of freedom of expression of thought.

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CONVENTION ON DIPLOMATIC ASYLUM

Signed in Caracas on 28 March 1954 at the Tenth Inter-American Conference

Entry into force: 29 December 1954, in accordance with Article 23
Text: OAS Official Records, OEA/Ser.X/1. *Treaty Series* 34

The Governments of the Member States of the Organization of American States, desirous of concluding a Convention on Diplomatic Asylum, have agreed to the following articles:

Article 1

Asylum granted in legations, war vessels, and military camps or aircraft, to persons being sought for political reasons or for political offenses shall be respected by the territorial State in accordance with the provisions of this Convention.

For the purposes of this Convention, a legation is any seat of a regular diplomatic mission, the residence of chiefs of mission, and the premises provided by them for the dwelling places of asylees when the number of the latter exceeds the normal capacity of the buildings.

War vessels or military aircraft that may be temporarily in shipyards, arsenals, or shops for repair may not constitute a place of asylum.

Article 2

Every State has the right to grant asylum; but it is not obligated to do so or to state its reasons for refusing it.

Article 3

It is not lawful to grant asylum to persons who, at the time of requesting it, are under indictment or on trial for common offenses or have been convicted by competent regular courts and have not served the respective sentence, nor to deserters from land, sea, and air forces, save when the acts giving rise to the request for asylum, whatever the case may be, are clearly of a political nature.

Persons included in the foregoing paragraph who *de facto* enter a place that is suitable as an asylum shall be invited to leave or, as the case may be, shall be surrendered to the local authorities, who may not try them for political offenses committed prior to the time of the surrender.

Article 4

It shall rest with the State granting asylum to determine the nature of the offense or the motives for the persecution.

Article 5

Asylum may not be granted except in urgent cases and for the period of time strictly necessary for the asylee to depart from the country with the guarantees granted by the Government of the territorial State, to the end that his life, liberty, or personal integrity may not be endangered, or that the asylee’s safety is ensured in some other way.

Article 6

Urgent cases are understood to be those, among others, in which the individual is being sought by persons or mobs over whom the authorities have lost control, or by the authorities themselves, and is in danger of being deprived of his life or liberty because of political persecution and cannot, without risk, ensure his safety in any other way.

Article 7

If a case of urgency is involved, it shall rest with the State granting asylum to determine the degree of urgency of the case.

Article 8

The diplomatic representative, commander of a warship, military camp, or military airship, shall, as soon as possible after asylum has been granted, report the fact to the Minister of Foreign Affairs of the territorial State, or to the local administrative authority if the case arose outside the Capital.

Article 9

The official furnishing asylum shall take into account the information furnished to him by the territorial government in forming his judgment as to the nature of the offense or the existence of related common crimes; but this decision to continue the asylum or to demand a safe-conduct for the asylee shall be respected.

Article 10

The fact that the Government of the territorial State is not recognized by the State granting asylum shall not prejudice the application of the present Convention, and no act carried out by virtue of this Convention shall imply recognition.

Article 11

The Government of the territorial State may, at any time, demand that the asylee be withdrawn from the country, for which purpose the said State shall grant a safe-conduct and the guarantees stipulated in Article 5.

Article 12

Once asylum has been granted, the State granting asylum may request that the asylee be allowed to depart for foreign territory, and the territorial State is under obligation to grant immediately, except in case of *force majeure*, the necessary guarantees, referred to in Article 5, as well as the corresponding safe-conduct.

Article 13

In the cases referred to in the preceding articles the State granting asylum may require that the guarantees be given in writing, and may take into account, in determining the rapidity of the journey, the actual conditions of danger involved in the departure of the asylee.

The State granting asylum has the right to transfer the asylee out of the country. The territorial State may point out the preferable route for the departure of the asylee, but this does not imply determining the country of destination.

If the asylum is granted on board a warship or military airship, departure may be made therein, but complying with the previous requisite of obtaining the appropriate safe-conduct.

Article 14

The State granting asylum cannot be held responsible for the prolongation of asylum caused by the need for obtaining the information required to determine whether or not the said asylum is proper, or whether there are circumstances that might endanger the safety of the asylee during the journey to a foreign country.

Article 15

When, in order to transfer an asylee to another country it may be necessary to traverse the territory of a State that is a party to this Convention, transit shall be authorized by the latter, the only requisite being the presentation, through diplomatic channels, of a safe-conduct, duly countersigned and bearing a notation of his status as asylee by the diplomatic mission that granted asylum.

En route, the asylee shall be considered under the protection of the State granting asylum.

Article 16

Asylees may not be landed at any point in the territorial State or at any place near thereto, except for exigencies of transportation.

Article 17

Once the departure of the asylee has been carried out, the State granting asylum is not bound to settle him in its territory; but it may not return him to his country of origin, unless this is the express wish of the asylee.

If the territorial State informs the official granting asylum of its intention to request the subsequent extradition of the asylee, this shall not prejudice the application of any provision of the present Convention. In that event, the asylee shall remain in the territory of the State granting asylum until such time as the formal request for extradition is received, in accordance with the juridical principles governing that institution in the State granting asylum. Preventive surveillance over the asylee may not exceed thirty days.

Payment of the expenses incurred by such transfer and of preventive control shall devolve upon the requesting State.

Article 18

The official furnishing asylum may not allow the asylee to perform acts contrary to the public peace or to interfere in the internal politics of the territorial State.

Article 19

If as a consequence of a rupture of diplomatic relations the diplomatic representative who granted asylum must leave the territorial State, he shall abandon it with the asylees.

If this is not possible for reasons independent of the wish of the asylee or the diplomatic representative, he must surrender them to the diplomatic mission of a third State, which is a party to this Convention, under the guarantees established in the Convention.

If this is also not possible, he shall surrender them to a State that is not a party to this Convention and that agrees to maintain the asylum. The territorial State is to respect the said asylum.

Article 20

Diplomatic asylum shall not be subject to reciprocity. Every person is under its protection, whatever his nationality.

Article 21

The present Convention shall be open for signature by the Member States of the Organization of American States and shall be ratified by the signatory States in accordance with their respective constitutional procedures.

Article 22

The original instrument, whose texts in the English, French, Spanish, and Portuguese languages are equally authentic, shall be deposited in the Pan American Union, which shall send certified copies to the governments for the purpose of ratification. The instruments of ratification shall be deposited in the Pan American Union, and the said organization shall notify the signatory governments of the said deposit.

Article 23

The present Convention shall enter into force among the States that ratify it in the order in which their respective ratifications are deposited.

Article 24

The present Convention shall remain in force indefinitely, but may be denounced by any of the signatory States by giving advance notice of one year, at the end of which period it shall cease to have effect for the denouncing State, remaining in force, however, among the remaining signatory States. The denunciation shall be transmitted to the Pan American Union, which shall inform the other signatory States thereof.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having presented their plenary powers, which have been found in good and due form, sign this Convention, in the name of their respective

Governments, in the city of Caracas, this twenty-eighth day of March, one thousand nine hundred and fifty-four.

Here follow the signatures of the Plenipotentiaries.

RESERVATIONS

Guatemala

We make an express reservation to Article 2 wherein it declares that the States are not obligated to grant asylum; because we uphold a broad, firm concept of the right to asylum.

Likewise, we make an express reservation to the final paragraph of Article 20 (Twenty), because we maintain that any person, without any discrimination whatsoever, has the right to the protection of asylum.

Uruguay

The government of Uruguay makes a reservation to Article 2, in the part that stipulates that the authority granting asylum, is, in no case, obligated to grant asylum nor to state its reasons for refusing it. It likewise makes a reservation to that part of Article 15 that stipulates: “the only requisite being the presentation, through diplomatic channels, of a safe-conduct, duly countersigned and bearing a notation of his status as asylee by the diplomatic mission that granted asylum. En route, the asylee shall be considered under the protection of the State granting asylum”. Finally, it makes a reservation to the second paragraph of Article 20, since the government of Uruguay understands that all persons have the right to asylum, whatever their sex, nationality, belief, or religion.

Dominican Republic

The Dominican Republic subscribes to the above Convention with the following reservations:

First: The Dominican Republic does not agree to the provisions contained in Article 7 and those following with respect to the unilateral determination of the urgency by the State granting asylum; and

Second: The provisions of this Convention shall not be applicable, consequently, insofar as the Dominican Republic is concerned, to any controversies that may arise between the territorial State and the State granting asylum, that refer specifically to the absence of a serious situation or the non-existence of a true act of persecution against the asylee by the local authorities.

Honduras

The delegation of Honduras subscribes to the Convention on Diplomatic Asylum with reservations with respect to those articles that are in violation of the Constitution and laws in force in the Republic of Honduras.

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SAN JOSÉ DECLARATION ON REFUGEES AND DISPLACED PERSONS

Adopted on 5-7 December 1994 by the International Colloquium in Commemoration of the "Tenth Anniversary of the Cartagena Declaration on Refugees" at San José

INTRODUCTION

The 1984 "Cartagena Declaration on Refugees" was a key instrument in the search for durable solutions to the problems faced by thousands of Central Americans forced to leave their homes as a consequence of generalized violence that resulted from the serious conflicts in the region during the 1980s. At the same time, it has inspired the legal treatment of similar cases in several South American countries, and its expanded definition of "refugee" has been incorporated into the national legislation or administrative practices concerning refugees in various countries in the region.

Taking into account the positive impact of the Cartagena Declaration, the Executive Committee of the United Nations High Commissioner for Refugees, in its Conclusion No. 71 (o) (XLIV) of 1993, encouraged UNHCR to participate actively in the commemoration of its tenth anniversary. Similarly, the General Assembly of the Organization of American States adopted, in its 24th Session, a Resolution on Refugees, Returnees and Displaced in the American Hemisphere, expressing its support for such an initiative.

A Colloquium to commemorate the tenth anniversary of the Cartagena Declaration on Refugees was held in San José, Costa Rica, from 5 to 7 December 1994. The Colloquium was co-organized by UNHCR and the Inter-American Institute of Human Rights, under the auspices of the Government of Costa Rica. Government Officials and experts from more than 20 American and Caribbean countries attended the Colloquium. As a result, participants in the Colloquium adopted the "San José Declaration on Refugees and Displaced Persons", which in addition to reiterating the validity of the principles embodied in the Cartagena Declaration, deals with the current situation of refugees and other populations affected by violence, and proposes guidelines for the search of solutions to their plight. The San José Declaration provides an important input for the legal analysis and treatment of those persons who are forced to leave their homes because of persecution or generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order.

As the Cartagena Declaration of 1984, the San José Declaration is predestined to become an important precedent in the subject of refugees and displaced persons, and its influence will probably reach the whole American continent and the Caribbean. This publication is aimed at its widest dissemination and its application by the authorities of the countries affected. At the same time, we hope that the dissemination of instruments such as the Cartagena Declaration and the San José Declaration, as well as the application of the principles contained therein, will he accompanied by the necessary support of the International Community as a whole. This would be the only way to attain durable solutions to the acute problems faced by refugees and displaced persons in the American Hemisphere.

CONCLUSIONS AND RECOMMENDATIONS

I

Commemorating the Tenth Anniversary of the ***Cartagena Declaration on Refugees***, which has, for the past decade, proven its validity and usefulness in addressing the problems of human displacement in the region;

Recognizing that the said Declaration constitutes an efficient instrument of international protection by serving as a source of guidance for the humanitarian practices of States and by encouraging the adoption of legislative and administrative measures based on the principles contained therein;

Recognizing the importance of the Central American experience which has, amongst other achievements, enabled the mass return of thousands of refugees and the closing of the majority of camps in the region, thus providing opportunities for finding appropriate solutions to a regional crisis;

Stressing that, pursuant to the adoption of the Cartagena Declaration, a significant process in the search for durable solutions has been initiated, whereby such solutions have been integrated within the framework of

convergence between respect for human rights, peace-building and linkage with economic and social development;

Appreciating the generous efforts made, with the valuable support of the international community, during the past decade of economic and political crises, by countries of the region to provide protection and humanitarian treatment to persons forced to abandon their homes, while remaining determined to continue the concerted search for solutions to alleviate the human suffering of these persons and help them to resume normal life;

Confirming that the consolidation of democracy in the continent has laid the basis for finding solutions to the challenges of the past decade and for firmly addressing those of the present;

Underscoring the contribution made to this process by the ***Procedure for the Establishment of a Firm and Lasting Peace in Central America (Esquipulas II)***, as well as the Tripartite Commissions for Voluntary Repatriation, and the achievements made possible by the ***Declaration and Concerted Plan of Action in favour of Central American Refugees, Returnees and Displaced Persons*** adopted by the International Conference on Central American Refugees (CIREFCA), held in Guatemala City in May 1989; this experience being viewed as a guiding framework for dealing with similar situations in other regions of the world;

Appreciating the valuable contribution of the documents on ***Principles and Criteria for the Protection and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America*** **(1989)** and the ***Evaluation of the Practical Application of those Principles and Criteria*** **(1994)**, which elaborated on the Cartagena Declaration;

Taking into consideration the influence which the Cartagena Declaration and its aforementioned related elaboration have had beyond the Central American region, through the incorporation of some of its provisions into legal measures and administrative practices of other Latin American countries, as well as in its widespread dissemination in academic circles of the Continent;

Recognizing the admirable efforts which the Inter-American Institute of Human Rights has made in identifying and promoting areas of convergence between International Refugee Law, International Human Rights Law, and International Humanitarian Law;

Welcoming the incorporation of the United Nations Development Programme (UNDP) in the efforts to find solutions to the problems of refugees, returnees and displaced persons through their joint sponsorship of CIREFCA, other technical cooperation efforts and the initiation of human development programmes in favour of the affected populations;

Appreciating in particular the outstanding work of UNHCR in the region in fulfilment of its mandate, as well as the creative approach applied thereto, which has enabled the opening of a ‘humanitarian space’ which has favoured peace-building and the attainment of new horizons in the field of Refugee Law;

Noting with satisfaction the references made to the Cartagena Declaration and the accomplishments of CIREFCA by the General Assembly of the United Nations, the General Assembly of the Organization of American States, the Executive Committee of the High Commissioner’s Programme, and other international fora;

Also bearing in mind the conclusions of the First Regional Forum on Gender Focus in working with Refugee, Returnee and Displaced Women (FOREFEM), held in Guatemala City in February 1992, as well as those of the Partnership in Action Conference between UNHCR and the non-governmental organizations (PARINAC, Caracas, June 1993 and Oslo, June 1994) which, together with the CIREFCA follow-up mechanisms, in the spirit of the Cartagena Declaration, have strengthened cooperation with non-governmental organizations and the beneficiary populations;

Recognizing the challenges posed by the new situations of human displacement in Latin America and the Caribbean, including, in particular, the increase in internal displacement and forced migration due to causes other than those provided for in the Cartagena Declaration;

Considering that human rights violations constitute one of the causes of displacement and that, therefore, the safeguarding of those rights is an integral element for both the protection of the displaced and the search for durable solutions;

Also considering that the protection of human rights, and the strengthening of the democratic system are the best means of preventing conflict, refugee flows and serious humanitarian crises;

In compliance with the request to hold this Colloquium made in Conclusion No. 71 (XLIV) of the Executive Committee of the High Commissioner's Programme, as well as by the General Assembly of the Organization of American States at its 24th Session, and including the preparatory technical meetings of Caracas in March 1992, Montevideo in May 1993, and Cocoyoc in March 1994.

II

The participants in the Colloquium have reached the following ***conclusions***:

First. To recognize the overriding importance of the Cartagena Declaration in addressing refugee situations generated by the Central American conflicts of the past decade, and, consequently, to stress the appropriateness of resorting to the Declaration in order to find solutions both to pending problems and to the new challenges posed by uprootedness in Latin America and the Caribbean.

Second. To reaffirm the validity of the principles contained in the Declaration as elaborated in the documents ***Principles and Criteria for the Protection and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America*** **(1989)**, as well as in the ***Evaluation of the Practical Application of those Principles and Criteria*** **(1994)**, and to reiterate, in particular, the value of the refugee definition contained in the Cartagena Declaration, which, by being based upon objective criteria, has constituted an effective humanitarian instrument in support of State practice in extending international protection to persons in need thereof, beyond the scope of the 1951 Convention and the 1967 Protocol.

Third. To stress the complementary nature and convergence between the systems of protection to persons established in International Human Rights Law, International Humanitarian Law and International Refugee Law, and, with the aim of establishing a common legal framework, to reiterate the convenience for those States which have not yet done so to adhere to the pertinent international instruments. In this context, the Colloquium makes an appeal to the States party to the 1969 American Convention on Human Rights to adopt the domestic measures required to ensure the full application and promotion of its provisions, as well as supervision by the pertinent bodies provided for therein.

Fourth. To encourage the commitment of the governments, non-governmental organizations and the jurists of the region in favour of the promotion, development and harmonious application of international human rights law, humanitarian law, and refugee law.

Fifth. To urge governments to encourage, with the collaboration of UNHCR, a process of progressive harmonization of rules, criteria and procedures concerning refugees, based on the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, the American Convention on Human Rights, and the Cartagena Declaration.

Sixth. To encourage governments to seek humanitarian solutions, within a coordinated framework, to pending problems of refugees and persons displaced as a result of situations which have now been resolved, or which are in the course of being resolved, by reinforcing voluntary repatriation and reintegration programmes in their places of origin, and considering, whenever possible, programmes to facilitate local integration, the issuance of essential documentation and the normalization of their migratory status, with the aim of preventing such problems from becoming new sources of tension and instability.

Seventh. To call upon governments to increase their region-wide cooperation in admitting refugee groups, including those fleeing from situations foreseen in the Cartagena Declaration, as well as to encourage concerted efforts to find solutions to the problems which generate such forced displacement.

Eighth. To reiterate the responsibility of the States to eliminate, with the support of the international community, the causes of forced mass exodus and, in this way, ensure that refugee status is only granted for as long as required.

Ninth. To underscore the importance of fostering full observance of economic, social and cultural rights, in an effort to contribute to their development and to their legal protection.

Tenth. To reaffirm that refugees as well as those persons who migrate for other reasons, including economic ones, have human rights which should be respected at all times and in all circumstances and places. These inalienable rights should be respected before, during and after their flight or return to their places of origin, with a view to ensuring their well-being and human dignity.

Eleventh. To stress the advisability of improving the situation of refugee and displaced children, taking into account the specific provisions in this regard set forth in the 1989 Convention on the Rights of the Child.

Twelfth. To underline the importance of addressing the needs of refugee and displaced women and girls, particularly those in a vulnerable situation, in the field of health, security, employment and education, as well as to encourage the inclusion of gender-based criteria in the examination of claims for refugee status.

Thirteenth. To recommend the full participation of affected populations, especially women's groups and indigenous communities, by encouraging the development of mechanisms which facilitate concerted action in the design and implementation of programmes aimed at resolving situations affecting refugees, returnees and displaced persons.

Fourteenth. To encourage an integrated approach to the solution of problems of forced displacement, particularly as regards voluntary return and repatriation, within the framework of coordinated efforts in order to ensure, in addition to the security and dignity of the beneficiaries, the durability of solutions. In this sense, reintegration and rehabilitation efforts should be linked to medium and long-term sustainable development efforts intended to alleviate and eradicate extreme poverty, satisfy human needs, and strengthen respect for human rights, with due regard for civil, political, economic, social and cultural rights.

Fifteenth. To stress the contribution of the United Nations and the Organization of American States to the peace process in Central America and the Caribbean through peacekeeping operations and mechanisms for verification of compliance with specific agreements in the field of human rights. At the same time, to urge the organizations responsible for those operations to favourably consider requests made by concerned States that they continue to carry out their activities.

Sixteenth. To affirm that the problem of the internally displaced, albeit the fundamental responsibility of the States of their nationality, is nevertheless of concern to the international community because it is a human rights issue which can be linked to prevention of causes which generate refugee flows. In this regard, persons in this situation should be assured of the following:

(*a*) Application of human rights norms and, when applicable, International Humanitarian Law as well as, by analogy, certain relevant principles of Refugee Law, such as *non-refoulement*;

(*b*) Recognition of the civilian character of displaced populations and of the humanitarian and apolitical nature of the treatment afforded to them;

(*c*) Access to effective protection by the national authorities and to essential assistance, with the support of the international community;

(*d*) Attention to those rights which are crucial for their survival, security and dignity, as well as other rights such as adequate documentation, ownership of land and other assets, and freedom of movement, including the voluntary nature of return; and

(*e*) The possibility of attaining a dignified and safe solution to their displacement.

Seventeenth. To support the work of the Representative of the Secretary-General of the United Nations for the Internally Displaced; within this framework, to foster and contribute to the preparation of an international declaration founded on a set of principles and basic rules for the protection and humanitarian treatment of internally displaced persons whatever their situation or circumstances, without prejudice to the basic right to seek asylum in other countries.

Eighteenth. To note with particular interest the efforts initiated by the Permanent Consultative Group on Internally Displaced in the Americas, as a regional inter-agency forum dedicated to the study and consideration of the acute problems faced by the displaced within their own countries for reasons similar to those that result in refugee flows.

Nineteenth. To stress the positive contribution made by the churches, the non-governmental organizations and other sectors of civil society in providing assistance and protection to refugees, returnees and the displaced in Latin America and the Caribbean, through the coordination of their activities with those of the governments and the international organizations.

Twentieth. To call upon States to urge existing regional fora dealing with matters such as economic issues, security and protection of the environment to include in their agenda consideration of themes connected with refugees, other forced displaced populations and migrants.

Twenty-first. To urge governments and relevant international organizations to take account of the specific needs of indigenous populations affected by the situations of uprootedness, with due respect for their dignity, human rights, cultural identity and the links which they maintain with their ancestral lands. In situations of uprootedness, the affected population should be consulted directly and specialized approach and the full participation of indigenous populations in assistance programmes and in the planning of durable solutions in their favour, should be guaranteed.

Twenty-second. To support the efforts of the Latin American and Caribbean countries in the implementation of sustainable human development programmes, whose impact is crucial for both the prevention of and solution to the problems of uprootedness and forced migration; and to invite donor countries, financial institutions and the international community to collaborate in these efforts through technical and financial cooperation projects.

Twenty-third. To urge UNHCR to encourage the Latin American and Caribbean countries to disseminate and promote, at all possible levels, the norms relating to the protection of refugees, including those that emanate from the Cartagena Declaration, and their linkage with norms of International Humanitarian Law and, in general, to human rights; and to urge the Inter-American Institute of Human Rights to continue its dissemination and promotion efforts in this regard, in close collaboration with other competent organizations.

III

The participants in the Colloquium therefore,

Recommend:

- That the foregoing Conclusions be duly taken into account in the search for solutions to pending problems related to refugees, returnees and displaced persons, and in addressing new challenges currently being faced throughout the continent;
- That the present document be proclaimed as the San José Declaration on Refugees and Displaced Persons;
- That the working documents, presentations and reports, as well as the Conclusions and Recommendations adopted and other documents of the Colloquium, be published, and that the Inter-American Institute of Human Rights, the United Nations High Commissioner for Refugees, academic institutions and non-governmental organizations adopt the necessary measures for the widest distribution of this publication;
- That UNHCR and the Inter-American Institute of Human Rights, with the support of other pertinent organizations, be requested to sponsor a study of the scope of Article 22 (7) of the American Convention on Human Rights, as it relates the right to asylum, as integrating the right to seek and be granted asylum (Refugio) on the basis of those causes set forth in the refugee definition contained in the Cartagena Declaration, and that this study be subsequently submitted to the consideration of States;
- That the co-organizers be entrusted with officially forwarding the contents of the present Declaration to the Secretary-General of the United Nations, to the Secretary-General of the Organization of American States and to the Heads of State and Government of the American Continent, so that they in turn submit them to the competent organs;
- That the participants be requested to forward the contents of the present Declaration to their respective governments, so as to contribute to the application of its contents, to its dissemination as well as to its presentation to the Executive Committee of the UNHCR's Programme;
- That an extension of the mandate of the Representative of the Secretary-General for Internally Displaced Persons be promoted, and that he considers incorporating the relevant Conclusions of this

Colloquium in the reports he presents to the United Nations Human Rights Commission and the United Nations General Assembly;

- That the co-organizers and the Government of Costa Rica, with the support of UNDP, intercede before the World Bank, the International Monetary Fund and the Inter-American Development Bank, as well as before bilateral aid agencies, in order for them to include the specific needs of displaced populations within programmes aimed at the alleviation and eradication of extreme poverty;
- That the message sent to the Colloquium by the United Nations High Commissioner for Human Rights be acknowledged with thanks, and that the contents of the present Declaration be forwarded to him.

Finally, the participants in the Colloquium express their deep appreciation to the United Nations High Commissioner for Refugees and to the Inter-American Institute of Human Rights and, in addition, to the Government of Costa Rica for initiating and carrying out this important event. The participants express their gratitude for the personal interest shown by the President of Costa Rica, Mr. José María Figueres Olsen, and took the liberty to ask him, as he deems appropriate, to inform the participants of the Summit of the Americas, to be held in Miami from 9 to 11 December 1994, about the celebration of this Colloquium.

San José,
7 December 1994

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RIO DE JANEIRO DECLARATION ON THE INSTITUTION OF REFUGE

Adopted on 10 November 2000

The Ministries of Interior of Mercosur, Bolivia and Chile concerned that international protection should be given to individuals persecuted for reasons of race, nationality, religion, membership of a particular social group, political opinion or victims of serious and generalised violation of human rights, assembled under the framework of the "VIII Meeting of the Ministries of Interior of MERCOSUR":

- *Recognising* that problems of racism, xenophobia and political intolerance have created refugee flows in the world,
- *Recognising* that people escaping situations of persecution and conflict represent a different category from those that emigrate due to economic or personal reasons,
- *Considering* the universal right to seek refuge, consecrated in article 14 of the Universal Declaration of Human Rights,
- *Considering* that countries of Mercosur, Bolivia and Chile are signatories to the Convention relating to the Status of Refugees of 1951 and the additional Protocol of 1967,
- *Considering* that all the countries of the region assist refugees with the collaboration of and in cooperation with the United Nations High Commissioner for Refugees – UNHCR,
- *Taking into account* the need of the countries of Mercosur, Bolivia and Chile to have instruments establishing harmonised norms to control the reception, protection and rights of refugees, and
- *Considering* the Plan of Action presented in the Americas Summit signed by 34 Heads of State in attendance at Santiago de Chile on 19th April 1998, which mentions specifically the human rights of all immigrants including refugees.

Proclaim:

1. It is very advisable that the Contracting States of Mercosur, Bolivia and Chile, in their capacity as associate countries, have a precise legal norm on refuge, with arrangements likely to establish harmonised procedures on the matter.
2. Such regulation should consider the general principles on reception, protection and assistance of refugees consecrated in international instruments.
3. Contracting and associate States will study the possibility of including in the refuge definition the protection of victims of serious and generalised human rights violations.
4. Contracting and associate States will not apply refoulement measures to a refugee who has been recognised in another Contracting or associate State, to a country where his life, freedom or physical integrity are threatened by reasons of race, nationality, membership of a particular social group, political opinion or serious and generalised violation of human rights, according to the international norms governing this issue.
5. In so far as possible, Contracting and associate States should have a national body with the participation of the civil society, for implementing their policies on refugee issues.

Rio de Janeiro, Brazil,
10th November 2000

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MEXICO DECLARATION AND PLAN OF ACTION TO STRENGTHEN THE INTERNATIONAL PROTECTION OF REFUGEES IN LATIN AMERICA

Adopted in Mexico City on 16 November 2004

Declaration

The Governments of participating Latin American countries,

Gathered in Mexico City to celebrate the twentieth anniversary of the Cartagena Declaration on Refugees of 1984, that reinvigorated the generous tradition of asylum in Latin America,

Recognizing Latin America's contribution to the progressive development of international refugee law beginning in 1889 with the Treaty on International Penal Law and continuing with, among other instruments, the American Declaration of the Rights and Duties of Man of 1948, the American Convention on Human Rights of 1969, the Cartagena Declaration on Refugees of 1984, the document entitled "Principles and Criteria for the Protection of and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America" (CIREFCA-1989), the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" and the San Jose Declaration on Refugees and Displaced Persons of 1994, as well as the doctrine and jurisprudence in this field developed, respectively, by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights,

Reaffirming their solemn commitment towards persons entitled to international protection in Latin America,

Emphasizing that humanism and solidarity are fundamental principles that should continue to guide State policies on refugees in Latin America,

Reaffirming the fundamental human right to seek and receive asylum established in Article XXVII of the American Declaration of the Rights and Duties of Man of 1948, and Article 22(7) of the American Convention on Human Rights of 1969,

Reaffirming also the enduring validity of the principles and norms contained in the 1951 Convention relating to the Status of Refugees and its Protocol of 1967, as well as the complementary nature of international refugee law, international human rights law, and international humanitarian law and, hence, the importance of using, according to the principle of *pro homine*, the norms and principles of these three bodies of international law to strengthen the protection of refugees and other persons entitled to international protection,

Recognizing the *jus cogens* nature of the principle of *non-refoulement*, including non-rejection at the border, the cornerstone of international refugee law, which is contained in the 1951 Convention relating to the Status of Refugees and its Protocol of 1967, and also set out in Article 22 (8) of the American Convention on Human Rights and Article 3 of the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the commitment of Latin American countries to keep their borders open in order to guarantee the protection and security of those who have a right to enjoy international protection,

Reaffirming the obligation of States to respect the principle of non-discrimination and to take measures to prevent, combat and eliminate all forms of discrimination and xenophobia, guaranteeing the exercise of the rights of all persons under the jurisdiction of the State without any distinction on the grounds of race, colour, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social status, including refugee status or status of others in need of international protection,

Requesting the media to promote the values of solidarity, respect, tolerance and multiculturalism, underscoring the humanitarian plight of victims of forced displacement and their fundamental rights,

Reaffirming the principles of the indivisibility and interdependence of all human rights and the need to provide comprehensive protection to refugees that guarantees the full enjoyment of their rights, in particular, civil, economic, social and cultural rights,

Recognizing that family unity is a fundamental human right of refugees, and *recommending*, therefore, the adoption of mechanisms to guarantee its respect,

Recognizing the enduring relevance of the Cartagena Declaration on Refugees of 1984 and its importance in continuing to guide public policies for refugee protection and the search for durable solutions to refugee situations faced by Latin America at the present time,

Recognizing the importance of the principles contained in the Cartagena Declaration on Refugees to the provision of protection and finding durable solutions and the need to carry out a more detailed analysis of its recommendations,

Recommending, in the framework of the progressive harmonization of legislation relating to refugees within ongoing regional integration processes, the due incorporation of the principles and norms contained in the 1951 Convention relating to the Status of Refugees and its Protocol of 1967, the American Convention on Human Rights and other relevant international instruments,

Acknowledging the significant progress of some States in the Latin American region in establishing efficient mechanisms for determining refugee status and, likewise, *affirming* the importance of continuing to strengthen these mechanisms,

Encouraging States that have not yet adopted refugee legislation to promulgate such legislation as soon as possible and to request for this purpose UNHCR's technical advice; and States that are in the process of amending their legislation to align it with international and regional standards relating to refugees and human rights, so as to bridge any gaps that may exist between State practice and such standards,

Recognizing the responsibility of States to provide international protection to refugees, as well as the need for international technical and financial cooperation to find durable solutions within the framework of a commitment to consolidate the rule of law in Latin American countries, universal respect for human rights and the principles of international solidarity and responsibility sharing,

Affirming that national security policies and the fight against terrorism should be framed within respect for domestic law and international instruments for the protection of refugees and of human rights in general,

Noting with concern that in some parts of Latin America the internal displacement of persons as well as refugee flows persist,

Highlighting that, in view of the gravity of the problem of forced displacement in the region, it is necessary to address its causes and, at the same time, develop policies and pragmatic solutions to provide effective protection to those who need it,

Reiterating Conclusion 16 of the 1994 San Jose Declaration on Refugees and Displaced Persons which affirmed that "the problem of the internally displaced, albeit the fundamental responsibility of the States of their nationality, is nevertheless of concern to the international community because it is a human rights issue which can be linked to prevention of causes which generate refugee flows…"

Recognizing that persecution can be related to gender and age of refugees; and the need to provide protection and humanitarian assistance in keeping with the differentiated needs of men and women, boys and girls, adolescents and elderly persons, persons with disabilities, minorities and ethnic groups,

Recognizing the existence of mixed migratory movements, including persons who can qualify for refugee status and who require specific treatment, with due legal safeguards to guarantee their identification and access to refugee status determination procedures; and therefore *highlighting* the importance of continuing to take into account the issue of refugee protection in regional multilateral fora in the field of migration and, in particular, the Regional Conference on Migration (Puebla Process) and the South American Conference on Migration,

Highlighting the role in refugee protection of the Ombudsmen and Human Rights Commissioners, understood hereafter as national institutions for the promotion and protection of human rights, as independent state entities that monitor the proper functioning of public administration and the promotion and protection of fundamental human rights,

Highlighting, moreover, the decisive contribution of non-governmental organizations and other sectors of civil society to the protection and assistance of refugees and other persons in need of protection, including their work in providing advice for the development of policies regarding protection and durable solutions,

Recognizing the need to continue promoting international refugee law, international human rights law and international humanitarian law, as well as to disseminate good practices relating to protection and durable solutions in Latin America,

Underscoring the importance of strengthening cooperation between the organs of the Inter-American human rights system and UNHCR, aimed at more effective protection of refugees and other persons in need of protection and urging them to continue strengthening this collaboration,

Convinced that, despite the significant progress in the protection of refugees in Latin America, it is necessary for States to redouble their efforts to provide protection, assistance and find adequate solutions for refugees in the region, within a spirit of international solidarity and responsibility sharing with the support of the international community,

Underscoring that voluntary repatriation is the durable solution *par excellence* for refugees and the fundamental need for governments of countries of origin to take appropriate measures, with the support of the international community, to guarantee the protection of its nationals who have repatriated, in order to ensure that repatriation takes place in safety and dignity,

Reiterating to States, international organizations and civil society the importance of fully involving uprooted populations in the design and implementation of assistance and protection programmes, recognizing and valuing their human potential,

Appealing to the international community, represented by the United Nations, the Inter-American system and, especially, donor countries, to continue supporting this important effort for the protection of refugees by Latin American States with the cooperation of UNHCR and civil society,

Taking note of the conclusions adopted by consensus in the four sub-regional meetings held in Brasilia, Brazil; San Jose, Costa Rica; Cartagena de Indias and Bogota, Colombia, and *expressing the desire* to put into practice the valuable recommendations deriving from the preparatory process, whose implementation will contribute to Latin America's compliance with the Agenda for Protection, adopted by UNHCR's Executive Committee in 2002,

Resolve,

To approve this Declaration and of Plan of Action as "Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America".

To request the support of UNHCR and the international community for the implementation of the Plan of Action, including the programmes relating to durable solutions.

To welcome and to support the proposal made by Brazil for the establishment of a regional resettlement programme in Latin America.

To urge UNHCR to request of States, in the exercise of its supervisory responsibility, periodic reports on the situation of refugees in the Latin American countries and, in the signatory countries of Latin America, the status of implementation of the 1951 Convention relating to the Status of Refugees and its Protocol of 1967.

To request UNHCR to redouble its support to Latin American countries for the local integration of refugees.

To take due account of the present Declaration and Plan of Action in order to address the solution of the situation of refugees in Latin America.

To request the organizers and co-sponsors of this event to publish a book containing all of the background documents, reports of the preparatory meetings and the Mexico Declaration and Plan of Action, asking the Government of Mexico, UNHCR and the competent organs of the Organization of American States to adopt the measures required for its broad dissemination.

To request that UNHCR officially transmit the Mexico Declaration and Plan of Action to the Heads of State of the participating countries for its broad dissemination.

To request the President of the United Mexican States, Vicente Fox Quesada, should he consider it appropriate, to provide information regarding the holding of this event at the XIV Ibero-American Summit that will take place on 18 and 19 November of [2004] in San Jose, Costa Rica.

Finally, the participants expressed their deep gratitude to the Government and people of Mexico for having hosted this commemorative event on 15 and 16 November 2004 in Mexico City; to the Governments of Costa Rica, Brazil and Colombia for having co-sponsored the preparatory meetings; to UNHCR and the Norwegian Refugee Council for having organized the event; and to the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, and the Inter-American Institute of Human Rights for their sponsorship; as well as to civil society organizations, national institutions for the promotion and protection of human rights, and the experts who, through their advice and appropriate recommendations, have made a fundamental contribution in this process.

Mexico City, 16 November 2004

Mexico Plan of Action to Strengthen International Protection of Refugees in Latin America

PREAMBLE

On the occasion of the twentieth anniversary of the Cartagena Declaration on Refugees, the United Nations High Commissioner for Refugees (UNHCR), together with the Norwegian Refugee Council, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the Inter-American Institute of Human Rights and the governments of Brazil, Costa Rica and Mexico, brought together governments of Latin America countries, experts and different sectors of civil society to analyze jointly the main challenges to the protection of refugees and other persons in need of international protection today in Latin America, and to identify courses of action to assist countries of asylum in the search for appropriate solutions within the pragmatic and principled spirit of the Cartagena Declaration on Refugees.

To this end, four sub-regional preparatory meetings were held in San Jose, Costa Rica (12-13 August), Brasilia, Brazil (26-27 August), Cartagena de Indias, Colombia (16-17 September) and Bogota, Colombia (6-7 October), in which the refugee situation in each region was analyzed. As the outcome of each gathering, a report was adopted by consensus. Based on the conclusions and recommendations of these regional preparatory meetings, the participants have prepared the following Plan of Action aimed at continuing to strengthen mechanisms for protection and the search for solutions for refugees and other persons in need of protection in the region.

CHAPTER I

THE SITUATION OF REFUGEES IN LATIN AMERICA

Upon the commemoration of the twentieth Anniversary of the Cartagena Declaration on Refugees, there are still situations that generate forced displacement in Latin America, particularly in the Andean Region. In addition to a growing number of Latin American refugees, the region also provides protection and durable solutions to refugees from other continents.

With the exception of the Andean Region, where cross-border movements are driven by a humanitarian crisis characterized by forced displacement within Colombia's borders and which variously affects neighbouring countries and other countries of the region, at the present time asylum-seekers and refugees are caught up within migratory flows across the continent.

Furthermore, the magnitude of forced displacement in the Andean Region is made less visible in a context where many people in need of international protection opt for anonymity and dispersion, and therefore, do not formally request international protection.

At the same time, pilot resettlement programmes for refugees recognized in other parts of the world have been launched in the Southern Cone.

As a result, various situations co-exist in Latin America at present: 1) countries that continue to receive a small number of asylum-seekers and refugees immersed in regional and continental migratory flows; 2) countries hosting a significant number of recognized refugees and/or asylum-seekers; and 3) countries with emerging resettlement programmes. All three situations may converge in some countries of the region.

The normative and institutional framework for the protection of refugees has been strengthened in the last twenty years. A large number of Latin American countries have enshrined the right to asylum in their constitutions and the large majority of countries are party to the 1951 Convention relating to the Status of

Refugees and/or its Protocol of 1967. Likewise, the large majority have national bodies, norms and procedures for determining refugee status. Some countries recognize that persecution can be related to gender and age, and take into consideration the differentiated protection needs of men and women, boys and girls, adolescents and elderly persons. However, some of these national mechanisms are still at incipient stages of development and require greater human, technical and financial resources to be operative, including training on international refugee law so as to guarantee fair and efficient procedures.

The Cartagena Declaration's refugee definition has been included in the national legislation of a significant number of countries. Nevertheless, during the preparatory process it was observed that there is a need to clarify and specify the criteria for its interpretation, in particular, the restrictive interpretation of the exclusion clauses, the interpretation of the specific grounds and their application in individual cases, using the jurisprudence of human rights organs and tribunals and taking into account the legitimate security concerns of States, through a broad and open dialogue, with a view to systematizing doctrine and state practice.

The enjoyment by refugees of their fundamental rights determines the quality of asylum. The quality of asylum is likewise vital to finding durable solutions to the plight of refugees. To the extent that refugees find effective protection in a receiving country, they will not be obliged to seek protection in third countries through secondary and/or irregular movements. At the same time, it is necessary for refugees' countries of origin, with the cooperation of the international community, to continue to make efforts to create adequate conditions for the safe and dignified return of its nationals who are refugees.

Taking into account the socio-economic conditions prevailing in the countries of asylum, as well as the distinct profiles of refugees and other persons in need of protection in the region, it is necessary to design and implement creative new policies to facilitate the search for adequate solutions. This requires devising new strategies to achieve self-sufficiency and local integration, both in urban centres as well as border areas, as well as the strategic use of resettlement, in a framework of regional solidarity.

In parallel, it is important to strengthen humanitarian and social programmes in border areas, emphasizing a geographic approach instead of a population approach, so that receiving communities benefit on equal footing with refugees and other persons in need of protection.

CHAPTER II

THE INTERNATIONAL PROTECTION OF REFUGEES

1. **Research and Doctrinal Development:**

(*a*) The preparatory meetings considered it appropriate to acknowledge Latin America's contribution to the progressive development of international refugee law. In this respect, regional instruments such as the Cartagena Declaration on Refugees, the 1948 American Declaration of the Rights and Duties of Man and the 1969 American Convention on Human Rights, as well as the doctrine and jurisprudence developed, respectively, by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have contributed to improve the situation of refugees in Latin America.

(*b*) In this regard, note is taken of an additional recommendation reiterated in all of the preparatory meetings regarding the strengthening of cooperation among States in the region, as well as between the States and UNHCR, the human rights bodies of the Inter-American system and academic and research institutions in Latin America in the fields of interdisciplinary research, promotion and development of international refugee law.

(*c*) Within this cooperation framework, it was recommended to initiate a consultative process aimed at clarifying the content and scope of Conclusion III of the Cartagena Declaration on Refugees, in order to strengthen the international protection of refugees in Latin America. In this respect, the development of a Handbook on Procedures and Criteria for Application of the Refugee Definition of the Cartagena Declaration is foreseen.

(*d*) To deepen knowledge of international refugee law, it is proposed that UNHCR implement the following projects, in cooperation with the human rights bodies of the Inter-American System, as well as research and academic institutions:

- **Legal Research Series** on "*The International Protection of Refugees in Latin America*",

- **Handbook** on *"Procedures and Criteria for Application of the Cartagena Declaration's Refugee Definition"*, and
- **Glossary** on *"Concepts and Legal Terminology of International Refugee Law"*.

2. **Training and Institutional Capacity-building:**

(*a*) The noteworthy efforts of countries in Latin America over the past 20 years to establish an institutional framework to ensure the right to seek and enjoy asylum were acknowledged throughout the consultation process. However, deficiencies in the asylum systems, which make it more difficult for refugees and asylum-seekers to access effective protection, were also noted.

2.1. With the aim of contributing to a broader knowledge of the normative framework and its effective implementation, as well as facilitating the effective use of domestic legal remedies (administrative, judicial and constitutional) for the protection of the rights of asylum seekers and refugees, thus ensuring the right to seek and be granted asylum, it was agreed to request that UNHCR, in collaboration with the human rights bodies of the Inter-American System, the Inter-American Institute of Human Rights, universities and civil society organizations, and national institutions for the promotion and protection of human rights, develop and implement a **"Latin American Training Programme on International Refugee Protection"**. This Programme will be directed towards State officials and members of civil society "protection networks". The Programme will entail a rigorous selection of participants, and a teaching methodology combining on-the-job training, distance-learning, self- and on-campus study, along with the development of precise evaluation and impact indicators, and proper follow-up of participants, among other technical aspects.

The Programme would give priority to:

- Presidents, members, legal advisers and interviewers of National Eligibility Commissions;
- State officials at borders and airports (police, military and migration staff);
- Judges, public Attorneys and Prosecutors;
- Professional staff from the national institutions for the promotion and protection of human rights;
- Staff from non-governmental organizations and other civil society institutions participating in national and regional protection networks; and
- Legislators.

2.2. The difficulties faced by National Refugee Commissions or other institutions responsible for refugees in identifying specialized staff, setting up computerized registration systems, as well as the slow pace of refugee status determination procedures or the weaknesses of documentation processes owing, among other reasons, to lack of technical, human or financial resources were also noted. In this regard, States were urged to strengthen established refugee status determination mechanisms, allocating to them more financial resources, and UNHCR was requested to provide training and technical advice.

Recognizing the importance of National Refugee Commissions in guaranteeing effective protection, UNHCR is asked to cooperate with Latin American governments interested in drawing up regional or national projects within the framework and priorities of a **"Programme to Strengthen National Refugee Commissions".** In this regard, it is necessary to note that the Andean countries that met in Cartagena de Indias on 16-17 September 2004, in the course of the preparatory process, agreed to submit for the consideration of the Andean Council of Ministers of Foreign Affairs the creation of an Andean Committee of Authorities responsible for Refugees.

The consultation process determined that strengthening of the Commissions could aim, *inter alia*, at:

- Guaranteeing respect for due process standards by ensuring asylum-seekers' access to refugee status determination procedures, establishing effective remedies, taking decisions on claims within a reasonable timeframe and establishing procedures for appealing a decision to an independent body; and
- Simplifying procedures and facilitating the issuance of documentation.

2.3. The role of civil society organizations and national institutions for the promotion and protection of human rights in Latin American in the defence and protection of refugees is widely acknowledged by the governments. This important work is carried out by non-governmental organizations and churches, in a spirit of cooperation with State institutions, including national institutions for the promotion and protection of human rights, with UNHCR and other regional and international protection-oriented institutions. During the preparatory process, recommendations were made to further involve civil society in the design of public policies on refugees and to continue building their capacities.

It is therefore proposed to establish a "Programme to Strengthen National and Regional Protection Networks" to address the needs of non-governmental organizations, churches and national institutions for the promotion and protection of human rights. This Programme could cover the following priority areas:

- Reinforcing legal advice and assistance services for refugees and asylum-seekers with a focus on meeting the specific needs of those seeking such services, whether they be men, women, boys, girls, adolescents, elderly persons, persons with disabilities, indigenous persons or other categories of persons;
- Reinforcing awareness of international refugee law and human rights law;
- Systematizing and disseminating best practices and successful programmes developed by some protection networks; and
- Exchanging experiences among the various protection networks.

The following programmes are suggested within this area of Training and Institution-Building:

- Latin American Training Programme on International Protection of Refugees;
- Programme to Strengthen National Refugee Commissions;
- Programme to Strengthen National and Regional Protection Networks.

CHAPTER III

DURABLE SOLUTIONS

The preparatory meetings identified operational priorities in the different sub-regions and countries of the region. It was noted that Latin America has a broad tradition of protection and solidarity toward those who have been persecuted and has been able to find solutions for its own refugees within the sub-continent. It was acknowledged that voluntary repatriation is the ideal solution for refugees, as an individual right to be exercised in a voluntary manner in conditions of safety and dignity. Furthermore, the current need to facilitate self-sufficiency and local integration for an increasing number of refugees, and the challenge that this represents to States, was underlined.

The preparatory process reiterated the need for international cooperation, in keeping with the principles of solidarity and responsibility-sharing, as a means to achieve effective durable solutions, as well as to disseminate best practices in the area of durable solutions in the region, promoting south-south cooperation and the creative approach of the 1984 Cartagena Declaration on Refugees.

In view of the current regional context, two situations were highlighted as requiring urgent attention and international support: the situation of growing numbers of urban refugees living in large urban centres in Latin America; and the situation of a large number of Colombian citizens living in border areas between Colombia and its neighbours Ecuador, Panama and Venezuela, most of whom are undocumented and in need of urgent protection and humanitarian assistance, owing to their acute vulnerability.

1. *"Solidarity Cities"* Programme for Self-Sufficiency and Local Integration

Urban refugees hail from a wide range of nationalities, with a small, but growing, percentage of refugees coming from other continents and cultures. These refugees predominantly settle in urban centres and their self-sufficiency and socio-economic integration remain a challenge for the States and civil society, especially given the economic difficulties faced by the countries of asylum themselves. When designing integration projects, it is therefore necessary to bear in mind the difficult situation of host communities.

The preparatory process highlighted the following:

(*a*) The political will of governments to facilitate the economic self-sufficiency of refugees;

(*b*) The lack of resources and experience of state social welfare institutions to achieve this goal;

(*c*) Recognition of the work and experience of civil society;

(*d*) The need to create strategies appropriate to the reality of the asylum countries and to exchange best practices; and

(*e*) The need for international technical and financial cooperation.

The preparatory meetings suggested that, in designing this Programme, due consideration should be given to the region's socio-economic realities, in terms of unemployment levels, poverty, and social exclusion, as well as to the socio-economic profiles of the beneficiaries. In the same vein, the following broad goals were mentioned:

- Fostering the generation of sources of employment, in particular, the establishment of micro-credit systems;
- Setting up mechanisms for the expedited issuance of documents and simplifying procedures for authentification and recognition of certificates and diplomas issued abroad; and
- Contemplating mechanisms for the participation of civil society and UNHCR in designing, implementing, monitoring and improving integration projects.

The "Solidarity Cities" Programme for Self-Sufficiency and Local Integration seeks to mitigate, to the extent possible, so-called "irregular or secondary movements", but its main aim is to provide effective protection which encompasses enjoyment of social, economic and cultural rights and observance of the obligations of refugees. It would also aim at facilitating the implementation of public policies, within an integrated social strategy, with the technical cooperation of United Nations and civil society organizations, and the financial support of the international community, in order to integrate a number of refugees, to be determined, in a series of "pilot" urban centres in Latin America.

2. **Integrated "*Borders of Solidarity*" Programme**

In the third sub-regional preparatory meeting, held in Cartagena de Indias, Colombia (16-17 September 2004), representatives of the Governments of Ecuador, Panama and Venezuela indicated that the true magnitude of the refugee problem is not known. In this regard, the 10,000 refugees and 30,000 asylum-seekers in these three countries is likely to represent only a fraction of the total number of Colombian citizens who transit and/or reside in these countries, most of them irregularly, and they also underlined the special plight of provinces and States bordering Colombia.

In light of the situation prevailing in the country of origin, as well as the economic difficulties faced by the receiving countries, it is presumed that a considerable number of Colombians, whether undocumented or in an "irregular" migratory situation, are in need of protection and humanitarian assistance. However, the majority of them remains "invisible" and therefore, vulnerable and marginalized. The hosting countries expressed their will to comply with their international protection obligations but, at the same time, expressed concern about the magnitude of the humanitarian problem whose real dimensions are not yet known.

In order to foster a humanitarian response towards those who are in need of and deserve international protection, and to address basic infrastructure and community services needs, in particular in the areas of health and education, as well as to facilitate employment generation and productive projects, it is necessary to promote the development of border areas through the consolidation of the presence of the State institutions along with specific investments and projects sponsored by the international community.

Government representatives meeting in Cartagena de Indias also mentioned the difficulties faced by local authorities in maintaining basic services in the area of health, sanitation, education and others in view of the overwhelming, and unplanned for, demand. They underlined the compelling need to include local populations as recipients of development aid since these populations are bearing the brunt of solidarity, despite being populations as needy and poor as the refugees themselves.

The preparatory meetings proposed the following priorities in hosting communities in border areas of the mentioned countries:

- Support to implement a programme with the objective of determining in a reliable manner the magnitude and the characteristics of the refugee problem, with a view to identifying protection and assistance needs as well as to propose the most appropriate durable solutions;
- Reinforcement of institutional mechanisms for protection and refugee status determination;
- Implementation of public awareness programmes targeting local populations to prevent negative feelings and all forms of discrimination;
- Formulation of a Regional Strategic Plan to address the protection, basic assistance and integration needs of all of the populations in need, using a territorial and differentiated approach, whose main components could include:
  - Promoting social and economic development, benefiting persons who are in need of international protection and local hosting communities alike;
  - Taking into account the profile of the uprooted population and local hosting communities living in border areas, composed mainly of rural and agricultural populations, the majority of whom are women and children; and
  - Taking due account of the specific protection needs of women and men, ethnic minorities, elderly persons and persons with disabilities.

It was noted that solidarity can only be sustained through active cooperation between the State, civil society and UNHCR, with the financial contribution of the international community, within the framework of responsibility-sharing. The importance of ensuring the participation of civil society in existing and future mechanisms (bilateral, tripartite and international) to consolidate the protection framework for persons in affected border areas, and to analyze the problem of forced displacement in the region, was mentioned. In this regard, participants took note with satisfaction of the proposal made by Brazil to promote the creation of a regional resettlement programme (see paragraph below).

3. **Regional "*Solidarity Resettlement*" Programme**

In the preparatory meeting held in Brasilia (26-27 August 2004), the Government of Brazil proposed the creation of a regional resettlement programme for Latin American refugees, in the framework of international solidarity and responsibility-sharing. This initiative opens the possibility for any Latin American country, at the opportune time, to participate and to receive refugees who are in other Latin American countries. The announcement of this programme was well received by the countries of the region who currently host an important number of refugees, as a tool to help to mitigate the effects of the humanitarian situation these countries face.

Latin American countries agree upon the importance of establishing resettlement policies that include a framework of principles and eligibility criteria, with due regard for the principle of non-discrimination. Furthermore, based on the experience of Brazil and Chile as emerging resettlement countries, they appeal to the international community to support the strengthening and consolidation of these initiatives, in order to improve and replicate them in other countries of Latin America.

In any case, it is underlined that resettlement, as a durable solution in the region and for the region, should not be viewed as "burden-sharing" but, instead, as a duty deriving from international solidarity, and the need for technical and financial cooperation from the international community for its strengthening and consolidation was reiterated.

CHAPTER IV

PROMOTION, IMPLEMENTATION, FOLLOW-UP AND EVALUATION MECHANISMS

In order to implement this Plan of Action, a series of activities are foreseen at different levels:

At the national level (during the first semester of 2005)

To carry out an assessment of the number of persons who could benefit from this Plan of Action as a basis for the formulation of projects within the programmes herein contemplated. Preparation of national projects within the framework of the Plan of Action. Furthermore, countries interested in the *"Solidarity Borders"* programme should present a study on the impact of the presence of asylum-seekers, refugees and other

persons in need of international protection in the geographical areas covered by the programme. UNHCR shall provide all of its support and expertise in the formulation of these projects, which will be submitted for the consideration of the international community.

The national institutions for the promotion and protection of human rights will issue a regular evaluation and follow up report on the projects and programmes formulated within the framework of this Plan of Action.

At the regional and sub-regional level

To organize at least two meetings per year to facilitate the exchange of information and experiences, the design of regional projects and the supervision of the implementation of this Plan of Action, with the participation of governments, the United Nations High Commissioner for Refugees, other UN agencies, the Organization of American States, donors, representatives of civil society, national institutions for the promotion and protection of human rights and experts.

At the international level

Within the framework of the Executive Committee of the High Commissioner's Programme, organize an annual meeting with donor countries and financial institutions, with the participation of civil society, in order to present the Plan of Action programmes and projects and to provide information on their implementation and impact on the beneficiary populations.

Mexico City, 16 November 2004

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PRINCIPLES AND CRITERIA FOR THE PROTECTION OF AND ASSISTANCE TO CENTRAL AMERICAN REFUGEES, RETURNEES AND DISPLACED PERSONS IN LATIN AMERICA (1989)

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Abstract

In their capacity as representatives of Latin American human rights institutions, the authors were invited to prepare a document reviewing existing principles and criteria, to serve as a background paper for CIREFCA, the International Conference on Central American Refugees, held in Guatemala City in May 1989. The present paper is not so much an evaluation of the relevant principles, as a description and reference to principal sources; the latter, in particular, include not only an extensive series of regional treaties, but also important instruments, such as the Cartagena Declaration, and State practice on asylum. The paper looks in detail at the notion of 'refugee' in Latin America, at standards for asylum, and protection and durable solutions. It also examines protection and assistance issues relating to refugees who have returned to their country of origin – so-called returnees; and finally, it addresses the situation of internally displaced persons, who as a group have received relatively little international attention. In the view of the authors, existing sources of law in Latin America already provide a comprehensive and elaborate framework for the protection of refugees and displaced persons; the task remains, to translate those principles into concrete solutions. The authors consider various specific issues, including the duties of refugees; the right to repatriate (including the responsibilities of States and international organizations) local integration; resettlement; and the role of non-governmental organizations. They conclude with recommendations for more extensive dissemination and promotion of the basic principles of protection.

When the five Central American States and Mexico met in San Salvador in September 1988 to set the objectives for the planned International Conference on Central American Refugees (CIREFCA), they underscored the importance of assessing the progress achieved with respect to the principles underlying the protection of and assistance to refugees, including in relation to their voluntary repatriation. Moreover, these States encouraged the dissemination and application of these principles.

In order to facilitate the work of the Conference with regard to this specific objective, the authors were invited, as representatives of the Latin American human rights institutions (the Inter-American Court, Commission and Institute of Human Rights), to prepare a document reviewing existing principles and criteria. The Group did not set out to undertake an evaluation of the development of the principles (since this would be the task of the Conference), but rather to list them and make extensive reference to source documents. In other words, it remains for the reader to assess the development and current strength of refugee protection and assistance principles in Latin American.

The focus of the document is clearly on refugees. It deals extensively with the notion of 'refugee' in Latin America, with standards for asylum, and protection and durable solutions. With regard to the last-mentioned, the paper also examines the protection and assistance to, former refugees who have returned to their country of origin – so-called returnees. Finally, the document addresses the situation of internally displaced persons, given the magnitude and severity of their problems, and the fact that as a group they have received relatively little international attention.

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At the International Conference, the participating States took note of the importance of the document for the countries in the region, and recognized that it could constitute a source of guidance and orientation for all interested States.[1] As authors, we hope that it will stimulate debate on the current state of law and practice in Latin America. Two initial conclusions seem appropriate, however. First, the legal background to the development of principles and criteria relating to the categories of persons under review is particularly rich in Latin America; and secondly, these principles and criteria themselves flow not only from refugee law as traditionally conceived, but also from humanitarian law and the international law of human rights. The existing law in Latin America in fact provides an elaborate framework and set of standards and mechanisms for protecting individuals in need.

Finally, we wish to acknowledge the support given to us in producing this document by a wide variety of professional lawyers in the Office of the *United Nations High Commissioner for Refugees and elsewhere.* Needless to say, we remain responsible for the contents.

Preface

1. This document was prepared by the Group of Experts for the International Conference on Central American Refugees pursuant to specific objective (a) in paragraph 3 of the San Salvador Communiqué on Central American Refugees of 9 September 1988. According to this objective the conference is to 'assess the progress achieved in respect of the principles underlying the protection of and assistance to refugees and their voluntary repatriation with a view to encouraging their dissemination and application.'

2. In order to facilitate the work of the Conference in relation to the above-named objective, the Group has sought to identify the basic set of principles and criteria by which States are guided in their treatment of refugees, among which solutions to the problems of refugees may also be found. The Group has also referred extensively to the sources of the various principles and criteria, indicating by means of footnotes the documents in which they are contained. These are mainly treaties or conventions of international or regional scope, resolutions or decisions of international inter-governmental conferences or documents prepared by experts and organizations, to mention only a few examples. In the context of an assessment, these notes are of particular importance, as the character of these principles and criteria of international law varies according to the source from which they derive.

3. Account was taken of the comments on the first version of the document that were made by the Governments concerned which participated in the second meeting of the Preparatory Committee held in Antigua, Guatemala. It will, however, be noted that some of these comments have not been dealt with in the present document. These include references to the need further to clarify the scope of the definition of the term 'refugee' contained in the Cartagena Declaration and the guarantees and rights of returnees, as well as the desirability of assessing the manner in which countries apply, internally, international rules relating to refugees. The Group believes that these comments merit special attention which cannot be devoted to them in the framework of this study.

4. It will be noted that the document refers not only to principles and criteria for the protection of and assistance to refugees, but also to principles and criteria relating to the returnees and displaced persons, since the International Conference will also be concerned with solving the problems of these categories of persons. Even though considerable progress has been made in recent years in respect of these additional categories, much still remains to be done. In particular, the Group shares the view, reflected in some of the comments of Governments, that it is necessary to reach a clearer and more specific understanding of the concept of 'displaced person.'

5. The Group of Experts presents this document in the hope that it may be useful for the purposes of consultation and guidance. It hopes that the contents of the document may provide material for the dissemination action referred to in its final chapter.

[1] See Declaration and Concerted Plan of Action, adopted at the CIREFCA Conference on 31 May 1989; text in 1 *IJRL* 581-95 (1989). The CIREFCA Preparatory Committee took note of the document at its January 1989 meeting and expressed its appreciation to the authors. After analysis of the content, some Governments submitted comments, and these are annexed.

1. Introduction

6. The States which decided to convoke the Conference on the Central American Refugees have identified as one of its specific objectives to 'assess the progress achieved in respect of the principles underlying the protection of and assistance to refugees and their voluntary repatriation, with a view to encouraging their dissemination and application'.[2] These very principles are contained in the Cartagena Declaration on Refugees[3] and have been further complemented through the practice of the States concerned and of international organizations. Taken together, they not only give guidance to States for the treatment of refugees but also constitute a framework within which solutions to the problems of refugees can be identified. It is the purpose of the present document to describe this framework through the evolution of applicable legal norms and practices in order to permit its evaluation. In this manner, it is hoped that the document will be used for the purposes of consultation and orientation.

7. The development and diversification of conflicts in a number of Central American States in the late 1970s have led to the forced displacement of large segments of populations. As of that moment, the region witnessed a massive displacement of persons who, because of the violence, abandoned their homes and in many instances their countries of origin.[4] Hundreds of thousands of people fled to neighbouring countries in search of protection and assistance and some travelled onwards to other States. This unprecedented phenomenon of displacement of Central Americans constituted a serious challenge, primarily to the Central American States themselves, including Belize and Mexico.

8. Whether displaced externally as refugees, or internally, the persons concerned had mostly been forced to abandon their houses at a moment's notice and flee through areas of conflict. Consequently, their needs in terms of protection and assistance were acute. At the same time, their entry into and presence in neighbouring States had profound effects upon those societies particularly in the social, economic and political spheres. Although the refugees were assisted by the international community, the receiving States found their resources being stretched to meet the demands for subsistence of the additional populations.

9. Responding to the demands created by this unprecedented situation, the countries concerned initiated a process of identification and implementation of humanitarian measures for the protection and assistance of the refugees. This process was advanced further with the holding of a Colloquium[5] in Cartagena, Colombia in November 1984, where the Cartagena Declaration on Refugees,[6] which contains a set of principles and criteria for the protection of and assistance to refugees, was adopted.

10. Latin American States have, of course, a long tradition of providing humanitarian treatment to persons seeking protection and asylum. A century ago, the Treaty of International Penal Law[7] was signed in Montevideo on 23 January 1889 on the occasion of the first South American Congress on Private International Law. It contains the first provision on asylum in international treaty law, with a stipulation (Article 16) to the effect that 'asylum for persons persecuted for political crimes is inviolable'. Since then a number of additional treaties have been concluded in the region which deal with issues relating to the right to asylum.

11. These initiatives of Latin American States to regulate asylum matters at the international level were eventually followed by the adoption by States in 1951 of the Untied Nations Convention relating to the Status of Refugees[8] which, together with the 1967 Protocol relating to the Status of Refugees,[9] constitute

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[2] San Salvador Communiqué on the Central American Refugees of 9 September 1988, U.N. doc.A/AC.96/XXXIX/CRP.2.

[3] The Cartagena Declaration on Refugees, hereinafter referred to as *Cartagena Declaration*, published as pamphlet by UNHCR; also contained in *La Protección Internacional de los Refugiados en America Central, Mexico y Panama: Problems Juridicos y Humanitarios*, Universidad National de Colombia, pp. 332ff; part III, containing conclusions, is also reproduced in *Annual Report of Inter-American Commission on Human Rights 1984-1985*, OEA/Ser.L/V/II.66, doc. 10, rev. 1, pp. 190-193.

[4] *Annual Report of the Inter-American Commission on Human Rights of 1980-81*: OEA/Ser.L./V./II.54, doc. 9, p. 127; 1981-82: OEA/Ser.L./V./II. 57, doc. 6, rev. 1, pp. 134ff; 1982-83: OEA/Ser.L/V/II/X/63, doc. 10, pp. 136, 146; 1984-85: OEA/Ser.L/V/II. 66. doc. 10, rev. 1, pp. 177ff.

[5] *International Protection of Refugees in Central America, Mexico and Panama: Juridical and Humanitarian Problems.*

[6] Op. cit., above, note 2.

[7] OAS Official Records, OEA/Ser.X./1 Treaty Series 34.

[8] 189 UNTS 137 (No. 2545), hereinafter referred to as the 1951 Refugee Convention.

[9] 606 UNTS 267 (No. 8791), hereinafter referred to as the 1967 Protocol; this instrument extends the definition contained in the 1951 Convention to include persons who had sought refuge as a result of events which had occurred after 1 January 1951.

the only universal instruments on refugee protection. There are to date 105 State parties to one or both of these international instruments, 16 of which are Latin American States.

12. Whether regional or universal, all these instruments have as common denominator that of being geared primarily to the needs of individuals for protection. Although they remain of fundamental importance for refugee protection worldwide, the large-scale displacement of victims of armed conflicts or similar events points to the need to develop complementary norms for their protection and assistance.

13. The phenomenon of masses of people crossing international boundaries in search of protection was first witnessed on the African continent during the decolonization period. It led to the adoption by African States in 1969 of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.[10] This Convention represents the first effort by States to complement the universal refugee instruments with provisions for the protection and assistance of refugees in a particular region and, in that sense, serves as inspiration for the Cartagena Declaration. In particular, this Convention extends the refugee definition in the African context to include also a person who, 'owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of the country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.'[11]

14. A similar evolution in Central America led to the adoption of the Cartagena Declaration. Although not a legally binding instrument for States, it is nevertheless of fundamental importance as it reflects consensus on particular principles and criteria and has guided States in their treatment of refugees for the last five years. In fact, the Declaration revitalizes the tradition of asylum in Latin America while aiming at consolidating a regional custom for the treatment of refugees, returnees and displaced persons.[12] In addition, it has acquired added prestige through different pronouncements of recognition and support by the United Nations General Assembly,[13] the General Assembly of the Organization of American States,[14] the Inter-American Commission on Human Rights,[15] the Andean Parliament,[16] the European Parliament,[17] and the Executive Committee of the Programme of the United Nations High Commissioner for Refugees.[18]

15. The Central American refugee problem, whether viewed from the point of view of the individuals and their need for protection and assistance, or the receiving State, is inextricably linked to both the history of and the current situation in the region. Indeed, political, social and economic developments influence the phenomenon of displacement and vice versa. Similarly, the legal norms for the treatment of the refugees are inter-related with and dependent on social and economic realities. Massive flows of refugees might not only affect the domestic order and stability of receiving States, but may also have an impact on the political and social stability and development of entire regions, and thus endanger international peace and security.[19]

16. The solution to the problems of displacement constitutes therefore an important component of the peace process in the region, something which peace efforts in the region have always taken into account.[20] Hence, the Procedure for the Establishment of a Firm and Lasting Peace in Central America – Esquipulas

[10] 1001 UNTS 45 (No. 14691), hereinafter referred to as the OAU Convention.

[11] *Ibid*., article 1(2); this Convention also contains other complementary provisions, notably in the areas of asylum and voluntary repatriation.

[12] *Report of the Advisory Group on Possible Solutions to the Problems of the Central American Refugees*, (Geneva, 25-27 May 1987), p.2, para. 4.2.

[13] UNGA res. 42/110, A/42/808.

[14] OAS res. AG/Res.891 (XVII-87), AG/doc. 2370/88.

[15] *Annual Report of the Inter-American Commission on Human Rights 1984-85*: OEA/Ser.L/V/II.66, doc. 10, rev. 1, pp. 177ff.

[16] Decision No. 173/VI of 16 Mar. 1987.

[17] Council of Europe, Parliamentary Assembly 1987, *Report on Migration Flows concerning Latin America*, para. 18 C(ii): CE A/doc.5718.R.

[18] UNHCR Executive Committee Conclusion No.37 (XXXVI) on Central American Refugees and the Cartagena Declaration.

[19] UNGA res. 36/148; *International Co-operation to Avert New Flows of Refugees, Note by the UN Secretary General*: UN doc. A/41/324, para. 4.

[20] Sec, for example, the *Contadora Act on Peace and Co-operation in Central America*, hereinafter referred to as *Contadora Act*, and its chapter dealing with refugees which is reproduced in *La Protección Internacional de los Refugiados en America Central, Mexico y Panama: Problemas Juridicos y Humanitarios*, Universided Nacional de Colombia, pp. 333ff., part II, as well as the Acapulco Commitment for Peace, Development and Democracy.

II – dedicates one chapter to the need to protect and assist refugees and displaced persons as well as to their voluntary repatriation.[21]

2. Applicable legal norms and practice

17. Under international law, treaties constitute the principal sources of obligations which are binding upon the States which have adhered to them in accordance with their constitutional procedures. At the universal level, the 1951 Refugee Convention[22] and its 1967 Protocol[23] apply particularly to refugees. In addition, the principles and rules concerning the basic human rights of the individual benefit refugees and returnees, as well as displaced persons since these apply to all individuals on the territory of a State. Thus it is important in the refugee protection field to highlight the International Covenant on Civil and Political Rights,[24] and the International Covenant on Economic, Social and Cultural Rights.[25] Similarly, international humanitarian law relating to armed conflicts provides important guidance for the protection of refugees, returnees and displaced persons when these are located in areas of international or non-international armed conflicts. The relevant instruments include the four Geneva Conventions of 1949[26] and the two Additional Protocols of 1977.[27]

18. At the regional level, a large number of treaties are of direct importance to refugees, returnees and displaced persons. These include, first of all, the American Convention on Human Rights, [28] the so-called Pact of San José, and the Treaty on International Penal Law signed in Montevideo on 22 January 1889,[29] the Convention on Asylum signed in Havana on 20 February 1928,[30] the Convention on Political Asylum signed in Montevideo on 26 December 1933, [31] the Treaty on Asylum and Political Refuge signed in Montevideo on 4 August 1939,[32] the Treaty on International Penal Law signed in Montevideo on 19 March 1940,[33] the Convention on Territorial Asylum[34] and the Convention on Diplomatic Asylum,[35] both signed in Caracas on 28 March 1954 and the Inter-American Convention on Extradition signed in Caracas on 25 February 1981.[36]

19. While international treaties constitute the principal source of international law, many other bases exist which provide guidance to States and international organizations for identifying and interpreting legal principles and criteria. In the refugee context, and still at the universal level, these include the United Nations Universal Declaration of Human Rights,[37] the Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR),[38] the United Nations Declaration on Territorial Asylum[39] and the General Assembly Resolution on Assistance to Refugees, Returnees and Displaced Persons from Central America[40] to mention but some of the more salient examples. Furthermore, there exist similarly relevant resolutions of the United Nations General Assembly, the Economic and Social Council (ECOSOC) and decisions as well as conclusions of the Executive Committee (EXCOM) of the High Commissioner's Programme.

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[21] *Procedure for the Establishment of a Firm and Lasting Peace in Central America*, signed at Guatemala City, 7 Aug. 1987: UN doc. A/42/521-5/19085, Annex, para. 8.

[22] See above, note 7.

[23] See above, note 8.

[24] Hereinafter referred to as the 1966 Covenant on Civil and Political Rights; Annex to UNGA res. 2200A (XXI), 16 Dec. 1966.

[25] Hereinafter referred to as the 1966 Covenant on Economic and Social Rights: Annex to UNGA res. 2200A (XXI), 16 Dec. 1966.

[26] 75 UNTS 31, 85, 135, 287.

[27] 1125 UNTS 12 (No. 17512); 1125 UNTS 609 (No. 17513).

[28] OAS Official Records, OEA/Ser. K/XVI/1.1.

[29] See above, note 6.

[30] OAS Official Records, OEA/Ser.X/1. Treaty Series 34.

[31] *Ibid*.

[32] *Ibid*.

[33] *Ibid*.

[34] *Ibid*.

[35] *Ibid*.

[36] *Ibid*.

[37] UNGA res. 217 A(III), 10 Dec. 1948.

[38] Annex to UNGA res. 428(V), 14 Dec. 1950.

[39] UNGA res. 2312(XXII), 14 Dec. 1967.

[40] UNGA res. 42/110.

20. In Latin America, the American Declaration on the Rights and Duties of Man,[41] resolutions of the Organization of American States, reports of the Inter-American Commission on Human Rights and judgements and advisory opinions of the Inter-American Court of Human Rights[42] provide an additional set of principles and criteria on matters relating to human rights and refugees protection. For example, successive resolutions of the OAS General Assembly have dealt with the issue of refugees, returnees and displaced persons[43] as did, amongst others, the 1984-85 Annual Report of the Inter-American Commission on Human Rights.[44]

21. Moreover, the practice of the States in the region confirms many of the principles and criteria applied for the protection of and assistance to refugees, returnees and displaced persons. This is particularly true in the area of the voluntary return of refugees where several initiatives have been taken. Some of these have been formalized through especially constituted so-called tri-partite commissions, comprising representatives from the countries of origin and asylum and UNHCR. In another instance, the mechanism is bilateral with UNHCR participation in an advisory capacity. On the other hand, constitutional provisions, national laws and administrative regulations of the respective States confirm the efforts to provide protection and assistance to refugees, returnees and displaced persons.[45]

3. The refugee instruments and internal application

22. In accordance with international law, every treaty in force is binding upon the parties to it and must be performed in good faith,[46] and a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.[47] In addition, the principle that international legal norms, including refugee law, which are contained in universal and regional treaties, are directly applicable in national legal systems and part of the internal law is acknowledged as a general rule in Latin America. This principle is expressly reflected in the constitutions of the great majority of the countries most directly affected by the Central American refugees.[48]

23. The universal character and importance of the 1951 Refugee Convention and its Protocol and the need for further States to adhere to these instruments has repeatedly been recognized.[49] Similarly, the importance of establishing procedures for the determination of refugee status under the international instruments, has also been reiterated.[50] The call for accession to universal and regional treaties extends beyond the 1951 Refugee Convention and its 1967 Protocol and includes also the main human rights instruments which

[41] Reproduced in Brownlie, I., ed., *Basic Documents on Human Rights* (2nd ed., 1981), 381-387.

[42] See for example Inter-American Court on Human Rights, *Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6), American Convention on Human Rights)*, Advisory Opinion OC-8/87, 30 Jan. 1987; Series A, No. 8.

[43] OAS General Assembly resolutions AG/RES.774 (XV – 0/85), AG/Res.838 (XVI-0/86), AG/Res.891 (XVII-0/87); see also the 1988 resolution contained in document OEA/Ser. P AG/doc. 2370/88.

[44] OEA/Ser.L/V/II.66, doc. 10, rev. 1, pp. 190-193.

[45] Only the constitutions, national laws and regulations of Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Mexico are referred to.

[46] Art. 26, 1969 Vienna Convention on the Law of Treaties.

[47] *Ibid*., art. 27.

[48] Constitution of Costa Rica, art. 7; Constitution of Guatemala, art. 46; Constitution of Honduras, art. 16; Constitution of Mexico, art. 133; Constitution of El Salvador, art. 144.

[49] Statute of the Office of UNHCR, Chapter II, para. 8(a); Memorandum of the Secretary-General to the *Ad Hoc* Committee on Statelessness and Related Problems of Refugees and Stateless Persons, 3 Jan. 1950: UN doc. E/AC.32/2, p. 2; UNGA resolutions 428 (V), 1959 (XVIII), 2294 (XXII), 2594 (XXIV), 2650(XXV), 32/67, 33/26, 34/60, 37/195, 38/121, 39/140, 40/118, 41/124, 42/109; UNHCR Executive Committee Conclusions No.4 (XXVIII) on International Instruments; No. 8 (XXVIII) on Determination of Refugee Status; No.11 (XXIX) on International Protection; No. 14 (XXX) on International Protection; No.16 (XXXI) on International Protection; No.21 (XXXII) on International Protection; No.25 (XXXIII) on International Protection; No.29 (XXXIV) on International Protection; No. 33 (XXXV) on International Protection; No.36 (XXXVI) on International Protection; No.41 (XXXVII) on International Protection; No.42 (XXXVII) on Accession to International Instruments and their Implementation; No.43 (XXXVII), Geneva Declaration on the 1951 Refugee Convention and the 1967 Protocol; No.46 (XXXVIII) on International Protection; No.50 (XXXIX) on International Protection; UNHCR, *Note on Accession to International Instruments and the Detention of Refugees and Asylum-seekers:* UNHCR doc. EC/SCP/44, 19 Aug. 1986, pp. 1-6.

[50] UNHCR Executive Committee Conclusions No.8 (XXVIII) on Determination of Refugee Status; No. 28 (XXXIII) on Follow-up on Earlier Conclusions of the Sub-Committee of the Whole on International Protection on the Determination of Refugee Status, *inter alia*, with Reference to the Role of UNHCR in National Refugee Status Determination Procedures.

have a direct bearing upon the protection and assistance to refugees, returnees and displaced persons.[51] These principles and criteria have been recognized and reaffirmed in the Cartagena Declaration.[52]

4. The concept of refugee

4.1 Universal definition

24. The universal refugee definition is contained in Article 1 A(2) of the 1951 Refugee Convention, which includes as refugees persons who have a 'well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion'.[53] Detailed guidance as to how to interpret this definition is contained in the Handbook on Procedures and Criteria for Determining Refugee Status issued by UNHCR at the request of States.[54]

4.2 Regional definition

25. Recognizing the particular characteristics of the flow of displaced persons in the region, the Cartagena Declaration extends the notion of refugee to include, apart from those covered by the universal refugee concept, also other externally displaced persons who are in need of protection and assistance. Consequently, the Declaration also considers as refugees persons 'who have fled their country because their lives, security or liberty have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order'. [55]

26. The regional refugee concept contained in the Cartagena Declaration calls for examining the objective situation in the country of origin and the particular situation of the individual or group of persons who seek protection and assistance as refugees. This definition calls for the affected persons to fulfil two characteristics: on the one hand, that a threat to the life, security or liberty is in existence and, on the other hand, that this threat results from one of the five grounds listed in the text. These grounds were purposely written in a broad and encompassing manner to ensure that persons who are clearly in need of international protection can also be protected and assisted as refugees.

4.3 Protected rights

27. The Cartagena Declaration takes the individual's need for international protection and, in particular, the need to protect the physical integrity of the person as the starting point for developing the refugee definition; it is the right to life, security and liberty of a person including the right not to be subjected to arbitrary arrest or detention[56] or to torture[57] as defined in international law which are the protected rights. Consequently, the first of the two characteristics of the Cartagena Declaration's extended refugee definition is met when in a particular instant there is a threat to any one of these rights.

4.4 Humanitarian law grounds

28. Four of the five grounds included in the Cartagena Declaration's regional refugee concept, i.e. generalized violence, foreign aggression, internal conflicts and other circumstances which have seriously disturbed public order, reflect the fact that the conflicts faced by several of the Central American States are at the origin of much of the external displacement which has taken place in the region. These four grounds should better be understood in light of international humanitarian law provisions relating to armed conflicts which categorizes several situations involving different levels of violence.

29. First of all, international armed conflicts covered by the Geneva Conventions and Protocol I involve all cases of declared war or of any other armed conflict which may arise between two or more parties, even if

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[51] OAS General Assembly res. AG/Res. 110 (III-0/73).

[52] *Cartagena Declaration*, part III. 1 and 2.

[53] See above, note 7.

[54] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, UNHCR doc. HCR/IP/4/Eng., Geneva, 1979.

[55] *Cartagena Declaration*, part III.3. Cf. Memorandum of Understanding between the Government of Honduras and UNHCR Regulating the Treatment of Refugees, hereinafter, Memorandum of Understanding between Honduras and UNHCR, art. 2(1).

[56] Arts. 3 and 9, 1948 Universal Declaration of Human Rights; arts. I and XXV, 1948 American Declaration on the Rights and Duties of Man; arts. 6,9, 10 and 11, 1966 Covenant on Civil and Political Rights; arts. 4, 7, 1969 American Convention on Human Rights.

[57] *Report of the Inter-American Commission on Human Rights*, 1986-87, p.304; art.5, 1969 American Convention on Human Rights.

the state of war is not recognized by one of them.[58] An armed conflict includes any difference arising between two States which leads to the intervention of members of the armed forces of one or both of the States.[59]

30. Secondly, Article 3 common to the Geneva Conventions of 1949, and Additional Protocol II, deal with non-international armed conflicts. Additional Protocol II, without modifying the existing conditions and applications of Common Article 3, defines these as all armed conflicts, which are not covered by Article 1 of Additional Protocol I and 'which take place in the territory of "State party" between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol'.[60]

31. A third situation involves violence not of a nature to constitute an armed conflict. This includes situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.[61]

32. Turning to the four humanitarian law grounds enumerated in the Cartagena Declaration, it is clear that 'generalized violence' involves armed conflicts as defined in international humanitarian law, whether it takes place in an international or non-international conflict. To be generalized, the violence must be regular, general and sustained. In other words, internal disturbances and tensions, as defined in Additional Protocol II but excluded from its field of application, do not amount to generalized violence.[62] As regards 'foreign aggression', the United Nations General Assembly has defined this concept[63] as including the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition.[64] 'Internal conflicts' can be taken to correspond to non-international armed conflicts covered by Article 3, common to the Geneva Conventions and Additional Protocol II.

33. Finally, 'other circumstances which have seriously disturbed public order', must be man-made and cannot constitute natural disasters. They may, however, amount to no more than situations of internal disturbance

[58] Common art.2 to the Geneva Conventions of 1949. Article 1.4 of Protocol I also includes as international armed conflicts those armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination, as contained in the Charter of the United Nations and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

[59] ICRC, *Commentary on the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War*, ICRC Geneva, 1958, p. 20.

[60] Additional Protocol II to the Geneva Conventions, art. 1.1.

[61] *Ibid*, art. 1.2. The ICRC *Commentary* to Protocol II, ICRC Geneva, 1987, p. 1355, describes internal disturbances as 'situations in which there is no non-international armed conflict as such, but there exists a confrontation within the country, which is characterized by a certain seriousness or duration and which involves acts of violence. These latter can assume various forms, all the way from the spontaneous generation of acts of revolt to the struggle between more or less organized groups and the authorities in power. In these situations, which do not necessarily degenerate into open struggle, the authorities in power call upon extensive police forces, or even armed forces, to restore internal order. The high number of victims has made necessary the application of a minimum of humanitarian rules'. Internal tensions include 'in particular, situations of serious tension (political, religious, racial, social, economic, etc.), but also the sequels of armed conflict or of internal disturbances. Such situations have one or more of the following characteristics, if not all at the same time: large scale arrests; a large number of 'political' prisoners; the probable existence of ill-treatment or inhumane conditions of detention; the suspension of fundamental judicial guarantees, either as part of the promulgation of a state of emergency or simply as a matter of fact; allegations of disappearances. In short, as stated above, there are internal disturbances, without being an armed conflict, when the State uses armed force to maintain order; there are internal tensions, without being internal disturbances, when force is used as a preventive measure to maintain respect for law and order.'

[62] *Ibid*.

[63] UNGA res. 3314 (XXIX), 14 Dec. 1974.

[64] *Ibid*. annex. Article 3 enumerates the following acts, regardless of a declaration of war, as qualifying as aggression: 'the invasion or attack by the armed forces of a State of the territory of another State, military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof; bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State; the blockade of the ports or coasts of a State by the armed forces of another State; an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State; the use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement; the action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State; the sending by or on behalf of a State of armed bands, groups, irregular or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.'

and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature,[65] as long as they seriously disturb public order.[66]

4.5 Human rights ground

34. The fifth ground included in the Cartagena Declaration refers to massive violations of human rights. This ground can be considered fulfilled when violations are carried out on a large scale and affect the human rights and fundamental freedoms as defined in the Universal Declaration of Human Rights and other relevant instruments. In particular, the denial of civil, political, economic, social and cultural rights in a gross and consistent pattern[67] can be considered to constitute massive violations of human rights which include those which are subject to Resolution 1503.[68]

4.6 Civilian character of the refugee concept

35. The refugee concept contained in the Cartagena Declaration, like other definitions, is predicated on the assumption that the persons concerned are civilians. Refugees, both in the ordinary and legal sense, means persons not taking part in the hostilities. To be a refugee, it is a *sine qua non* that the persons concerned are civilians. In other words, combatants, whether members of regular armies or irregular forces, are not refugees.[69] Other persons, such as former combatants, may however be considered as refugees should they fulfil the criteria of the definition.

4.7 Special categories

36. A particular group of persons who may need international protection as refugees consists of draft evaders and deserters from mandatory military service. Normally, such persons do not qualify for refugee status in accordance with the 1951 Refugee Convention.[70] Nevertheless, they may qualify as refugees if they can show that the performance of military service would require them to participate in military action contrary to their genuine political, religious or moral convictions or to valid reasons of conscience,[71] or where the type of military action with which they do not wish to be associated is condemned by the international community as contrary to basic rules of human conduct.[72] This exception may, however, normally not be invoked when the country in question exempts such persons from mandatory military service or offers them an alternative activity.[73]

37. Persons who leave their country or their place of habitual residence for personal reasons, either to work or to improve their living conditions, known as economic migrants, [74] do not generally fulfil the criteria for refugee status. According to the definition of the Cartagena Declaration, adverse economic conditions are not normally of a nature to constitute a threat to the life, security and liberty of the individual. On the other hand, economic measures affecting a person's livelihood may, in a particular instance, be of such severity as to amount to persecution if they are motivated by political, racial, or religious aims or intentions directed against a particular group in which case the affected persons may well be refugees.[75]

38. Economic migrants should not be confused with victims of natural disasters. These victims do not qualify as refugees, unless special circumstances arise which are closely linked to the refugee definition.

39. Externally displaced persons constitute a fourth special category which is composed of individuals who are outside their country and have no legal status or documents authorizing them to stay. In general, they have

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[65] See above, note 60.

[66] For more extensive discussion on the concept of public order, see also the *travaux préparatoires* of the 1951 Refugee Convention: UN doc. A/CONF.2/Sr. 14, pp. 18ff.

[67] *International Cooperation to Avert New Flows of Refugees, Note by the UN Secretary General*: UN doc. A/41/324, para. 35.

[68] ECOSOC res. 1503 (XLVIII) establishes a special procedure for instances which reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.

[69] See also OAU Convention, preambular para. 4; UNHCR Executive Committee Conclusion No. 48 (XXXVIII) on Military and Armed Attacks on Refugee Camps and Settlements; Declaration by the Attorney General of Costa Rica on 5 June 1985.

[70] See above, note 53, para. 168.

[71] *Ibid*., para. 170.

[72] *Ibid*., para. 171.

[73] *Ibid*., para. 173.

[74] Cf. definition of 'economic migrant' contained in report of meeting in Guatemala of Advisory Group on Possible Solutions to Central American Refugee Problems, Annex I.

[75] See above, note 53, paras. 62-64.

been obliged to leave their country for reasons that are not clearly defined, among which reasons of an economic nature are mixed with the non-immediate consequences of conflicts and widespread violence.[76]

40 Finally, special mention should be made of those persons who, while meeting the criteria of the refugee concept, have not been identified and therefore not been formally granted refugee status. Such individuals are considered as refugees given the declaratory and *non-constitutive* nature of the decision to grant refugee status.[77] These persons find themselves in a particularly precarious situation and deserve special attention by the international community.

4.8 Persons not deserving international protection as refugees

41. Persons who have committed a crime against peace, a war crime, a crime against humanity, a serious non-political crime outside the country of refuge prior to admission or who are guilty of acts contrary to the purposes and principles of the United Nations[78] fall into this category and are therefore denied refugee status.[79] These dispositions are of particular importance when considering claims to refugee status by former combatants. In case they have committed atrocious acts or other grave violations of human rights, their request for refugee status will be denied.[80] As regards mercenaries,[81] they are also denied refugee status since their activities are 'contrary to fundamental principles of international law', as determined by the United Nations General Assembly.[82]

5. Asylum and protection standards

5.1 The nature of the grant of asylum

42. It is a universally-accepted principle that the grant of asylum as well as the recognition of refugee status have a peaceful, non-political and exclusively humanitarian nature. No aspect of these acts shall be interpreted as unfriendly towards the country of origin of the refugees. These same principles are reflected in several instruments and legal material, including the Cartagena Declaration.[83]

43. These principles are complemented by the criteria which call upon States to do everything within their power to prevent a refugee problem from becoming a source of tension between States.[84] Some instruments go further and call upon States to prohibit refugees from performing acts contrary to the public peace.[85]

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[76] Cf. definition of 'externally displaced persons' contained in report of meeting in Guatemala of Advisory Group on Possible Solutions to Central American Refugee Problems, Annex I.

[77] See above, note 11, para. 4.6 and 4.7; see also para. 47 below.

[78] Art. 1 F, 1951 Refugee Convention; Statute of the Office of the United Nations High Commissioner for Refugees, Chapter II, para. 7(d); see also art. I(5), 1969 OAU Convention.

[79] *Ibid*.

[80] See above, note 53, paras. 175-180.

[81] Defined as 'a person who is especially recruited locally or abroad in order to fight in an armed conflict, does in fact take a direct part in the hostilities, is motivated to take part in the hostilities essentially by the desire of private gain and, in fact, is promised by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party, is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict, is not a member of the armed forces of a party to the conflict and has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.' See art. 1, Second Revised Consolidated Negotiations Basis of a Convention Against the Recruitment, Use, Financing and Training of Mercenaries, *Report of the Ad Hoc Committee on the Drafting of an International Convention Against the Recruitment, Use, Financing and Training of Mercenaries:* UN doc. Supp. No. 43(A/43/43). See also Additional Protocol I to the Geneva Convention of 1949, art. 47.

[82] UNGA res. Res. 43/107. See also the Right of Peoples to Self-Determination and its Application to Peoples Under Colonial or Alien Domination or Foreign Occupation, *Report on the Question of the Use of Mercenaries as a Means of Impeding the Exercise of the Right of Peoples to Self-Determination*, submitted by the Special Rapporteur: UN doc. E/CN.4/1988/14.

[83] United Nations Declaration on Territorial Asylum, contained in UNGA res. 2312 (XXIII), 10 Dec. 1967, preambular para. 4 and art. 1.1; 1969 OAU Convention, art. II.2; UNHCR Executive Committee Conclusion No. 48 (XXXVII) on Military and Armed Attacks on Refugee Camps and Settlements; Cartagena Declaration, part III.4. Cf. Constitution of Costa Rica, art.31, General Law on Migration and Aliens (Costa Rica), art. 36; Constitution of El Salvador, art. 5; Law on Migrations (El Salvador), art. 8; Regulations relating to the Law on Migration (El Salvador), art. 27; Constitution of Guatemala art. 27; Law on Migration and Aliens (Guatemala), arts. 22 and 23; Constitution of Honduras, art. 101; Law on Population and Migratory Policy (Honduras), art. 73(4); Memorandum of Understanding between Honduras and UNHCR, preambular paras. 1, 2 and 5; Constitution of Nicaragua, art. 42; Law on Immigration (Nicaragua), art. 34; Constitution of Mexico, art. 15; General Law on Population (Mexico), art. 42, Regulation relating to the General Law on Population (Mexico), art. 101.

[84] 1951 Refugee Convention, preambular para. 5; art. III(1), 1969 OAU Convention.

[85] Art 2(5), 1928 Havana Convention on Asylum, 20 Feb, 1928; See also art. 11, 1939 Montevideo Treaty on Asylum and Political Refuge, 4 Aug. 1939 – to prevent refugees from committing within its territory acts which may endanger the public peace of the country of origin; art. 4, 1967 United Nations Declaration on Territorial Asylum – not to permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations; art. III(2), 1969 OAU Convention – to prohibit refugees from attacking Member States

44. It follows from the above principles that the work of the Office of the United Nations High Commissioner for Refugees shall be of an entirely non-political character and that it shall be humanitarian and social.[86] Similarly, these principles dictate that the treatment of refugees and the search for solutions to their problems should take place on a purely humanitarian and non-political basis.[87]

5.2. The principle of *non-refoulement*

45. The principle of *non-refoulement* constitutes the cornerstone of the international system for the protection of refugees and is the most fundamental of refugee rights. It signifies being protected from expulsion or return in any manner whatsoever to the frontiers of territories where the refugee's life or freedom would be threatened.[88] This principle, which is fully recognized in the Cartagena Declaration, extends beyond expulsion and return and also applies to measures such as rejection at the frontier.[89] Moreover, it applies not only to persons who have a well-founded fear of persecution in the sense of the 1951 Refugee Convention, but also to those who fall under the regional refugee concept contained in the Cartagena Declaration.[90]

46. The American Convention on Human Rights is of particular importance in the region for protecting refugees from refoulement. Going beyond the traditional statement of the *non-refoulement* principle, it holds that 'in no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions'.[91]

47. The application of the principle of *non-refoulement* is independent of any formal determination of refugee status by a State or an international organization[92] and is considered by many as a peremptory rule of international law.[93] In other words, *non-refoulement* as a fundamental principle of refugee protection is applicable as soon as certain objective conditions occur. Thus, also those persons who, while meeting the criteria of the refugee concept, have not been identified and therefore not formally granted refugee status, are also protected by the *non-refoulement* principle.

5.3 Minimum standards of treatment for refugees

48. The 1951 Refugee Convention and its 1967 Protocol provide standards of treatment for refugees as defined in these instruments, which are recommended for application also to other categories of refugees.[94] Moreover, there is a broader and direct relationship between the observance of human rights

of the OAU, by any activity likely to cause tension between Member States, and in particular by the use of arms, through the press, or by radio; art. 8, 1954 Caracas Convention on Territorial Asylum, 28 Mar. 1954 – to restrict the freedom of assembly or association of refugees when such assembly or association has as its purpose to foment the use of force or violence against the country of origin.

[86] Statute of the Office of the United Nations High Commissioner for Refugees, Chapter I, para. 2

[87] See above, note 1, para. 2.

[88] Art. 33, 1951 Refugee Convention; art. 22(8), 1969 American Convention on Human Rights; art II(3), 1969 OAU Convention; art. 3(1), 1967 United Nations Declaration on Territorial Asylum; UNGA resolutions 32/67, 33/26, 34/60, 35/41, 36/125, 37/195, 38/121, 39/140, 40/118, 41/124, 42/109; UNHCR Executive Committee Conclusions No. 6 (XXVIII) on Non-Refoulement; No. 17 (XXXI) on Problems of Extradition Affecting Refugees; No. 19 (XXXI) on Temporary Refuge; No. 22 (XXXII) on Protection of Asylum-Seekers in Situations of Large-Scale Influx; No. 25 (XXXIII) on International Protection; Constitution of Costa Rica, art. 31; Law on Migration and Aliens (Guatemala), art. 26; Constitution of Honduras, art. 101; Constitution of Nicaragua, art. 42; Law on Aliens (Nicaragua), art. 31. Cf. Constitution of Mexico, art. 15; Memorandum of Understanding between Honduras and UNHCR, art. 2(2).

[89] *Cartagena Declaration,* part III. 5; see also art. II(3), 1969 OAU Convention; art. 3(1), 1967 United Nations Declaration on Territorial Asylum; UNHCR Executive Committee Conclusions No. 6 (XXVIII) on Non-Refoulement; No. 21 (XXXII) on International Protection; No. 22 (XXXII) on Protection of Asylum-Seekers in Situations of Large-Scale Influx; Regulations on Migration of 1947 (Guatemala), art. 21; Law on Migration (Nicaragua), art. 31. Cf. Regulation relating to General Law on Population (Mexico), art. 101(1).

[90] *Cartagena Declaration,* part III. 3 and 5; art. II(5), 1969 OAU Convention; UNHCR Executive Committee Conclusion No. 22 (XXXII) on the Protection of Asylum-Seekers in Situations of Large Scale Influx.

[91] Art. 22(8), 1969 American Convention on Human Rights.

[92] *Report* of the United Nations High Commissioner for Refugees: UNGAOR, Fortieth Session, Supp. No. 12 (A/40/12), paras. 22-23; *Report* of the Twenty-eight Session of the High Commissioner's Programme, para. 53(4) (c): UN doc. A/AC.96/549 (1977).

[93] UNHCR Executive Committee Conclusion No. 25 (XXXII) on International Protection; UNHCR, *Note on International Protection:* UN doc. A/AC.96/713, para. 3.

[94] Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, recommendation E.

standards and protection problems.[95] States should therefore ensure that their treatment of refugees conforms to existing international law and humanitarian principles and practice.[96]

49. It is a fundamental principle of international law that the principles and rules concerning basic human rights of the individual, are obligations owed by States to the international community at large.[97] These are rights from which no derogation is permitted, even in times of exceptional circumstances. They benefit everyone as a result of which also refugees, returnees and displaced persons should benefit from such non-derogatory human rights as the right to protection from the arbitrary deprivation of life,[98] and against torture or cruel or inhuman treatment or punishment,[99] the rights not to be subjected to slavery or servitude,[100] or to retroactive criminal penalties,[101] the rights to recognition as a person before the law[102] and to freedom of thought, conscience and religion[103] and the right to be protected from discrimination.[104] Additional non-derogatory rights are included in the American Convention on Human Rights such as protection of the family, the rights of the child, the right to a nationality, political rights and the right to judicial guarantees.[105]

50. The Cartagena Declaration underlines the importance of the countries in the region establishing minimum standards of treatment for refugees, on the basis of the provisions of the 1951 Refugee Convention and its 1967 Protocol and of the American Convention on Human Rights.[106] It calls on the States parties to this latter instrument to apply it in dealing with *asilados* and refugees who are in their territories.[107] Furthermore, it recognizes the validity of the Conclusions of the Executive Committee of the High Commissioner's Programme, and in particular its Conclusion No. 22 on the Protection of Asylum-Seekers in Situations of Large Scale Influx.[108] Complementing the non-derogatory human rights, these Conclusions identify, *inter alia*, a set of minimum basic standards which should benefit refugees and asylum-seekers.

51. Amongst these minimum basic standards, the Conclusion identifies the principle that refugees should enjoy the fundamental civil rights internationally recognized, in particular those set out in the Universal

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[95] UNHCR Executive Committee Conclusion No. 50 (XXXIX) on International Protection, para. (b); see also 1951 Refugee Convention, prembular para. 1; 1969 OAU Convention, preambular para. 6.

[96] UNHCR Executive Committee Conclusion No. 50 (XXXIX) on International Protection, para. (c). Minimum humanitarian standards are also contained in art. 3 common to the Geneva Conventions of 1949, which states that persons taking no active part in the hostilities 'shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above mentioned persons: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.'

[97] *United States Diplomatic and Consular Staff in Tehran, Request for the Indication of Provisional Measures*, I.C.J. Rep., 1979, p. 7. Cf. UNGA resolutions 31/86 (XXXI), 32/66 (XXXII), 33/51 (XXXIII), 34/45 (XXXIV), 35/132 (XXXV), 36/58 (XXXVI), 37/191 (XXXVI), 38/116 (XXXVIII) and 36/136 (XXXIX).

[98] Art. 3, 1948 Universal Declaration of Human Rights; art. 1, 1948 American Declaration of the Rights and Duties of Man; art. 6, 1966 Covenant on Civil and Political Rights; art. 4, 1969 American Convention on Human Rights.

[99] Art. 3, 1948 Universal Declaration of Human Rights; arts. 25, 26, 1948 American Declaration of the Rights and Duties of Man; arts. 7, 10(1), 1966 Covenant on Civil and Political Rights; art. 5(2), 1969 American convention on Human Rights; art. 2, 1984 UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment; United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

[100] Art. 4, 1948 Universal Declaration of Human Rights; art. 34, 1948 American Declaration of the Rights and Duties of Man; art. 8, 1966 Covenant on Civil and Political Rights; art. 6, 1969 American Convention on Human Rights.

[101] Art. 11(2), 1948 Universal Declaration of Human Rights; art. 15, 1966 Covenant on Civil and Political Rights; art. 9, 1969 American Convention on Human Rights.

[102] Art. 6, 1948 Universal Declaration of Human Rights; art. 17, 1948 American Declaration of the Rights and Duties of Man; art. 16, 1966 Covenant on Civil and Political Rights; art. 3, 1969 American Convention on Human Rights.

[103] Art. 18, 1948 Universal Declaration of Human Rights; art. 3, 1948 American Declaration of the Rights and Duties of Man; art. 18, 1966 Covenant on Civil and Political Rights; art. 12, 1969 American Convention on Human Rights.

[104] Arts. 2, 7, 1948 Universal Declaration of Human Rights; art. 11, 1948 American Declaration of the Rights and Duties of Man; arts. 2, 3, 26, 1966 Covenant on Civil and Political Rights; arts. 2, 3, 1966 Covenant on Economic and Social Rights; art. 1, 1969 American Convention on Human Rights.

[105] Arts. 17, 20, 23, 1969 American Convention on Human Rights.

[106] *Cartagena Declaration*, part III. 8.

[107] *Ibid*., Part III. 10.

[108] *Ibid*., Part III. 8.

Declaration of Human Rights.[109] It also points out that they should not be discriminated against on the grounds of race, religion, political opinion, nationality, country of origin or physical incapacity,[110] and should not be penalized or exposed to any unfavourable treatment solely on the ground that their presence in the country is considered unlawful.[111] Furthermore, they should not be subjected to restrictions on their movements other than those which are necessary in the interest of public health and public order.[112]

52. Recognizing that the family deserves special protection in international law, the Conclusion furthermore holds that the family unit should be respected and refugees and asylum-seekers should benefit from the fundamental principle of family reunification.[113] Furthermore, they have a right to register births, deaths and marriages[114] and adequate provisions should be made for the protection of minors and unaccompanied children.[115]

5.4 Refugee camps

53. It follows from the principle that the grant of asylum is a peaceful, non-political and exclusively humanitarian act and that refugees by definition are civilians, that refugee camps or settlements also have an exclusively civilian and humanitarian character.[116] As a consequence they should also have a civilian administration. Such camps and settlements do not enjoy any status of extra-territoriality but are part of the territory of States and refugees living there, like others, have a duty to conform to the laws and regulations of the country of asylum, including lawful measures taken for the maintenance of public order.[117] Thus, refugees have a duty to abstain from any activity likely to detract from the exclusively civilian and humanitarian character of the camps and settlements.[118] Such activities do, however, not comprise the exercise for peaceful purposes of fundamental human rights, such as the right to freedom of thought, expression, association and assembly.[119]

54. In order to safeguard the human rights and the protection of refugees, their camps or settlements should, whenever possible, be set up at a reasonable distance from the border with the country of origin.[120] States

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[109] UNHCR Executive Committee Conclusion No. 22 (XXXII) on the Protection of Asylum-Seekers in Situations of Large-Scale Influx, chapter II, para. B 2(b).

[110] *Ibid*., chapter II, para. B 2(e); arts. 2, 7, 1948 Universal Declaration of Human Rights; art. 11, 1948 American Declaration on the Rights and Duties of Man; arts. 2(1), 3, 26, 1966 Covenant on Civil and Political Rights; arts. 2(2), (3), 3, 1966 Covenant on Economic and Social Rights; art. 1, 1969 American Convention on Human Rights; art. 3, 1951 Refugee Convention.

[111] UNHCR Executive Committee Conclusion No. 22 (XXXII) on the Protection of Asylum-Seekers in Situations of Large-Scale Influx, chapter II, para. B 2(a); art. 31, 1951 Refugee Convention.

[112] *Ibid*.

[113] *Cartagena Declaration*, part III. 13; art. 16(3), 1948 Universal Declaration of Human Rights; art. 6, 1948 American Declaration on the Rights and Duties of Man; art 23(1), 1966 Covenant on Civil and Political Rights; art. 10, 1966 Covenant on Economic and Social Rights; art. 17, 1969 American Convention on Human Rights; the Helsinki Final Act; *Report of the Ad Hoc Committee on Stateless Persons*, UN doc. E/AC 32/5 (E/1618), 40; Recommendation B, Final Act of the 1951 United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: UN doc. A/CONF. 2/108; 1959 United Nations Declaration of the Rights of the Child, principle 6; UNHCR Executive Committee Conclusions No. 9 (XXVIII) on Family Reunion; No. 15 (XXX) on Refugees Without an Asylum Country; No.22 (XXXII) on the Protection of Asylum-Seekers in Situations of Large-Scale Influx, Chapter II, para. B 2(h); No. 24 (XXXII) on Family Reunification; arts. 25-27, 49 and 82, Fourth Geneva Convention 1949; arts. 74, 75 and 78, Additional Protocol I to the Geneva Conventions; art. 4, Additional Protocol II to the Geneva Conventions.

[114] UNHCR Executive Committee Conclusion No. 22 (XXXII) on the Protection of Asylum-Seekers in Situations of Large-Scale Influx, Chapter II, para. B 2(m); *Report* of the Advisory Group on Possible Solutions to Central American Refugee Problems, (Geneva, 25-27 May 1987), p. 5, para. 6.4.

[115] UNHCR Executive Committee Conclusions No. 22 (XXXII) on the Protection of Asylum-Seekers in Situations of Large-Scale Influx, Chapter II, para. B 2(j); and No.47 (XXXVIII) on Refugee Children.

[116] UNHCR Executive Committee Conclusion No. 48 (XXXVIII) on Military and Armed Attacks on Refugee Camps and Settlements.

[117] Art. 2, 1951 Refugee Convention; UNHCR Executive Committee Conclusion No. 48 (XXXVIII) on Military and Armed Attacks on Refugee Camps and Settlements; General Law on Migration and Aliens (Costa Rica), art. 121; Law on Migration and Aliens (Guatemala), art. 25. Compare Constitution of Honduras, art. 30; General Law on Population (Mexico), art. 42(V); Law on Nationality and Naturalization (Mexico), art. 32.

[118] See above, note 115.

[119] Arts. 7, 8, 1954 Caracas Convention on Territorial Asylum.

[120] UNHCR Executive Committee Conclusions No. 22 (XXXII) on Protection of Asylum-Seekers in Situations of Large-Scale Influx, Chapter II, paras. B 2(g); No. 48 (XXXVIII) on Military and Armed Attacks on Refugee Camps and Settlements; *Cartagena Declaration*, part III. 6; art. 9, 1954 Caracas Convention of Territorial Asylum; art. II.6, OAU Convention.

should also refrain from attacking such camps and settlements; acts which should be condemned as they are against the principles of international law and, therefore, cannot be justified.[121]

55. Refugee camps are by their very nature temporary in character. The establishment of makeshift or closed camps is sometimes unavoidable at the beginning of a massive influx of refugees, as they make it easier to provide effective emergency assistance and ensure the protection of refugees during the initial stage. Nevertheless, such camps may, in time, have a series of harmful effects, such as: restrictions on freedom, internal control leading to human rights abuses, mental health problems, internal violence and disturbances of public order, artificial means of support and dependency on external aid. Furthermore, such camps lead to an urbanization of rural refugees resulting in difficulties in becoming integrated, whether in the context of voluntary repatriation, local integration or resettlement.[122] As a result, it is necessary eventually to gradually open closed camps[123] or relocate the refugees so that they can become part of another more appropriate scheme.[124]

6. Durable solutions

6.1 Voluntary repatriation

56. Voluntary repatriation is the preferred solution to the problems of refugees since it achieves the ultimate goal of international protection, namely the re-establishment of refugees in a community, in this case their own.[125] It is a purely humanitarian and non-political act[126] which gives substance to the right of refugees, and others, to return voluntarily to their country of origin, and re-avail themselves of its protection. Their right to voluntary repatriation is fully recognized in the region in both law and in practice.[127] Similarly, refugees have a right to be protected in a manner that they can effectively exercise their right to return voluntarily to their country.[128]

57. They have also the right to receive objective and complete information on the prevailing situation in their country of origin so as to be able to take a fully informed decision.[129] One manner in which this right may be exercised is through the arrangement of visits of groups of refugees to their country of origin to allow them to inform themselves on the spot of the current situation there.[130]

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[121] See also UNGA resolutions 40/118, 41/124, 42/109.

[122] *Report* of the Advisory Group (above, note 113), paras. 6.1 and 6.2.

[123] *Ibid*.

[124] *Ibid*. See also *Cartagena Declaration*, part III. 6.

[125] UNGA resolutions 30/71, 31/35, 32/67, 33/26, 34/60, 35/41, 36/125, 37/195, 38/121, 39/140, 40/118, 41/124, 42/109, UNHCR Executive Committee Conclusions No. 18 (XXXI) on Voluntary Repatriation; No. 40 (XXXVI) on Voluntary Repatriation; UNHCR, *Notes on International Protection:* UN doc. A/AC.96/680 (1987), UN doc. A/AC.96/700 (1988), UN doc. A/AC.96/713 (1989). Communiqués from the seven meetings held in 1986-1988 of the Tripartite Commission on Voluntary Repatriation composed of El Salvador, Honduras and UNHCR, hereafter refereed to as the Communiqué of El Salvador, Honduras and UNHCR. Voluntary Repatriation Support Programme COMAR/CEAR of 17 February 1987, hereinafter referred to as the COMAR/CEAR Voluntary Repatriation Programme; Declaration by the Government of Nicaragua on the Voluntary Repatriation of Nicaraguans of December 1987, hereinafter referred to as the Declaration of Nicaragua on Voluntary Repatriation; Declaration by the Government of Costa Rica on the Voluntary Repatriation of Nicaraguans of December 1987, hereinafter referred to as the Declaration of Costa Rica on Voluntary Repatriation.

[126] See OAS General Assembly resolutions AG/RES.838 (XVI-0/86); OEA/Ser. P, AG/doc.2370/88.

[127] Art. 13(2), 1948 Universal Declaration of Human Rights; art. 8, 1948 American Declaration on the Rights and Duties of Man; art. 12(4), 1966 Covenant on Civil and Political Rights Covenant; art. 22(5), 1969 American Convention on Human Rights; art. 5(d) (ii), 1965 International Convention on the Elimination of All Forms of Racial Discrimination; Analysis of the current trends and developments regarding the right to leave any country, including one's own, and to return to one's own country, and some other rights or consideration arising therefrom, *Final Report* prepared by the Special Rapporteur: UN doc. E/CN.4/Sub.2/1988/35; Draft Declaration on Freedom and Non-Discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country: UN doc. E/CN.4/Sub.2/1988/35. Add.1; OAS res. AG/Res.89/(XVII-0/87); Constitution of El Salvador, art.5; Constitution of Guatemala, art.26; Constitution of Nicaragua, art. 31. Communiqués of El Salvador, Honduras and UNHCR. COMAR/CEAR Voluntary Repatriation Programmes Declaration of Nicaragua on Voluntary Repatriation; Declaration of Costa Rica on Voluntary Repatriation.

[128] *Report* of the Advisory Group (above, note 113), para. 7.3(e); UNHCR Executive Committee Conclusion No. 18 (XXXI) on voluntary Repatriation.

[129] *Report* of the Advisory Group (above, note 113). para, 7.3(d); UNHCR Executive Committee Conclusion No. 18 (XXXI) on Voluntary Repatriation; COMAR/CEAR Voluntary Repatriation Programme; Declaration of Nicaragua on Voluntary Repatriation; Declaration of Costa Rica on Voluntary Repatriation.

[130] *Report* of the Advisory Group (above, note 113), para. 7.9; UNHCR Executive Committee Conclusion No. 18 (XXXI) on Voluntary Repatriation.

58. Voluntary repatriation may be facilitated and provided through various forms of repatriation mechanisms, sometimes formally constituted as tri-partite commissions involving representatives from the refugees' country of origin, the country of asylum and UNHCR.[131] Such mechanisms can concern themselves with both the joint planning and implementation of a repatriation programme while providing an effective means of securing consultations between the main parties concerned.[132] It is of fundamental importance that all aspects of a repatriation movement be clarified with all the parties concerned, including the returning refugees, prior to any movement.[133]

59. A foremost principle of refugee protection in the context of voluntary repatriation is the one which proclaims that the repatriation of refugees must take place at the individually and freely-expressed wish of the refugees themselves.[134] Voluntary repatriation must take place under conditions of safety and dignity, preferably to the refugees' place of origin or previous residence in their country if they so wish.[135] This core element in refugee protection flows from the fundamental human rights of security and liberty and from the right to freedom of movement and free choice of residence.[136] In the regional context in which a great majority of the refugees are of peasant origin, it is particularly important that they can return to their previous economic activities and recuperate their former land and possessions.[137]

60. Returnees should also benefit, at the time of their return, from adequate guarantees of non-discrimination and full respect for their human rights under the same conditions to those of their compatriots.[138] Under no circumstances should they be disadvantaged or penalized for having sought asylum and protection as refugees in another country.

61. Both former countries of asylum[139] and UNHCR as the agent of the international community, have a recognized interest in the development of the return. [140] In that respect they have a right to be informed of the results of any voluntary repatriation operation.[141] For this reason, the High Commissioner's Office should follow closely the situation of the returnees not only during the return movement but also subsequent thereto.[142] Such action is of an exclusively humanitarian nature in order to witness the fulfilment of the agreements which formed the basis for the return. It does not imply special privileges or immunities for the returnees and is carried out in close consultation with the State concerned which provides direct access to the returnees to the High Commissioner's staff.[143]

62. In order to facilitate the reintegration process and also ensure that the returnees can effectively benefit from the protection of the national authorities, it is important that they be provided with the same identity

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[131] *Report* of the Advisory Group (above, note 113), para. 7.1; UNHCR Executive Committee Conclusion No. 18 (XXXI) on Voluntary Repatriation; No. 40 (XXXVI) on Voluntary Repatriation; UNHCR, *Note on International Protection:* UN doc. A/AC.96/680 (1987); UN doc. A/AC.96/700 (1988); OAS res. AG/Res.891 (XVII-0/87) and in 1988, OEA/Ser. P, AG/doc. 2370/88. COMAR/CEAR Voluntary Repatriation Programme; Declaration by Nicaragua on Voluntary Repatriation; Declaration of Costa Rica on Voluntary Repatriation.

[132] UNHCR Executive Committee Conclusion No. 40 (XXXVI) on Voluntary Repatriation; Communiqués of El Salvador, Honduras and UNHCR.

[133] Statement by the High Commissioner on 30 August 1988.

[134] UNGA res. 40/118; UNHCR Executive Committee Conclusion No. 18 (XXX) on Voluntary Repatriation; No. 40 (XXXVI) on Voluntary Repatriation; Communiqués of El Salvador, Honduras and UNHCR; COMAR/CEAR Voluntary Repatriation Programme; Declaration of Nicaragua on Voluntary Repatriation; Declaration of Costa Rica on Voluntary Repatriation.

[135] UNHCR Executive Committee Conclusion No. 18(XXX) on Voluntary Repatriation; No.40(XXXVI) on Voluntary Repatriation; UNHCR, *Note on International Protection,* UN doc. A/AC.96/680 (1987), paras. 23-25; A/AC.96/694 (1988), paras. 47-61; A/AC.96/713 (1989), paras. 37-45; *Report* of Advisory Group on Possible Solutions to Central American Refugee Problems, (Geneva, 25-27 May 1987), para. 7.3(f) and (g); COMAR/CEAR Voluntary Repatriation Programme; Declaration of Nicaragua on Voluntary Repatriation.

[136] See above, note 55.

[137] COMAR/CEAR Voluntary Repatriation Programme.

[138] *Report* of the Advisory Group (above, note 134), 11. para. 7.3(g); see also UNHCR Executive Committee Conclusion No. 18 (XXXI) on Voluntary Repatriation. COMAR/CEAR Voluntary Repatriation Programme, Declaration of Nicaragua on Voluntary Repatriation.

[139] *Report* of the Advisory Group (above, note 134), 11. para 7.3(g); see also UNHCR Executive Committee Conclusion No. 18 (XXXI) on Voluntary Repatriation. COMAR/CEAR Voluntary Repatriation Programme, Declaration of Nicaragua on Voluntary Repatriation.

[140] *Report* of the Advisory Group (above, note 134), 11. para 7.3(g); see also UNHCR Executive Committee Conclusion No. 18 (XXXI) on Voluntary Repatriation. COMAR/CEAR Voluntary Repatriation Programme, Declaration of Nicaragua on Voluntary Repatriation.

[141] *Ibid.*

[142] *Ibid.*

[143] *Report* of the Advisory Group (above, note 134), para. 7.6-7; UNHCR Executive Committee Conclusion No. 40 (XXXVI) on Voluntary Repatriation.

documents as their compatriots.[144] The registration of refugees who have been born abroad should also be regularized to ensure that they obtain their nationality and provision should be made so that they get full and formal credit for studies undertaken while abroad.[145] Whenever the circumstances permit, the documentation and registration process should be carried out prior to the actual return.[146]

63. The success of a voluntary repatriation programme will very often depend upon adequate assistance being made available to the returnees. Such assistance should include transportation and assistance during the movement back to their country of origin as well as assistance upon return during the reintegration process.[147] The latter type of assistance should be compatible with development plans and projects of the community to which the refugees are returning.[148] Such assistance programmes could usefully benefit the community as a whole, including displaced persons,[149] and might also help to improve conditions generally in the places of return and thus stimulate future repatriation movements.[150]

6.2 Local integration

64. It is of fundamental importance for refugees to be able to enjoy their economic, social and cultural rights so that they may lead a productive and dignified life without, for that reason, being privileged vis-à-vis national groups. To this end, the 1951 Refugee Convention stipulates that contracting States shall, for example, in the context of wage-earning employment, accord to refugees lawfully staying in their territory 'the most favourable treatment accorded to nationals of a foreign country in the same circumstances'.[151] In this regard, the Cartagena Declaration recommends that countries in the region study the possibility of integrating the refugees into the productive life of the country by allocating the resources made available by the international community to UNHCR for the creation or generation of employment.[152] Such activities have been initiated in several of the countries concerned, benefiting both rural and urban refugees.[153]

65. In particular, countries in the region have designed projects which provide for integration in the rural sector as well as for the creation of employment opportunities for urban refugees, while attempting to ensure that national workers are not therefore displaced[154] and that the cultural identity of the ethnic groups which may be found amongst the refugee populations is maintained. These projects should be harmonized with local, national and regional development plans as a guarantee of viability and so as to contribute to the welfare of the refugees themselves and the community which is receiving them. In this context, it is also recommended that nationals are included amongst the participants and direct beneficiaries of the projects.[155] At the same time, it is important that States consider assimilating the rights of refugees with regard to wage-earning employment to those of nationals, to ensure that successful employment insertion schemes do not fail because of restrictive national laws and regulations.[156]

Resettlement

66. Resettlement of Central American refugees has not constituted a durable solution on par with voluntary repatriation, but has been reserved for particular cases involving persons who, for protection or family reunification reasons, need to be resettled elsewhere. In view of the situation prevailing in some of the refugee camps, and in line with practices established elsewhere,[157] the need has been felt to offer resettlement in third countries to some of the refugees. There is therefore a recognized need to identify

[144] Report of the Advisory Group (above, note 134), para. 7.8.

[145] *Ibid.*

[146] *Ibid.*

[147] *Report* of the Advisor Group (above, note 134), para. 7.10; UNGA res. 41/124, COMAR/CEAR Voluntary Repatriation Programme.

[148] *Report* of the Advisory Group (above, note 134), para. 7.11.

[149] *Ibid.*

[150] *Ibid.*

[151] Art. 17(1), 1951 Refugee Convention; cf. Law on Migration (El Salvador), art. 21.

[152] *Cartagena Declaration,* part III.11

[153] *Report* of the Advisory Group (above, note 134), Chapter III.

[154] *Ibid.*

[155] *Ibid.*

[156] Cf. art. 17(3), 1951 Refugee Convention.

[157] See also UNGA resolution 42/110, 7 Dec. 1987.

other countries which might receive Central American refugees.[158] Such resettlement should, of course, only take place on a voluntary basis.[159]

7. Displaced persons

67. The problem of displaced persons has long been a serious concern of the countries in the region and the need for extending both protection and assistance to them has repeatedly been stressed.[160] Although there is no generally accepted definition, displaced persons have been considered as those who have been obliged to abandon their homes or usual economic activities, while remaining within their countries, because their lives, security or liberty have been threatened by widespread violence or prevailing conflict.[161] Their need for protection and assistance is at times as great, if not greater, than that of the refugees who have left the country.

68. Displaced persons have a right to be protected by their national authorities and, in particular, to benefit from fundamental human rights such as the right to life, security and liberty, freedom from torture, etc.[162] Furthermore, in situations involving armed conflicts they benefit from the minimum standards contained in common Article 3 of the four Geneva Conventions since they are persons taking no active part in hostilities.[163]

69. The primary responsibility for aiding displaced persons falls on the State, since these persons are citizens of the State and are also situated within its territory. The possibilities of the States in the region to meet the needs of the displaced persons are, however, severely hampered as their resources are limited and assistance from the international community has not been directed to this category of the population. It is for this reason that the States who decided to convene the international conference included displaced persons as a category in need of special attention by the international community.[164]

8. Non-governmental organizations

70. Non-governmental organizations, both international and national, generally play an important role in the assistance to refugees, returnees and displaced persons. In particular, they co-ordinate and implement a wide variety of assistance programmes and projects.

71. The role of these organizations, which is based on humanitarian principles and on national and international solidarity, has repeatedly been recognized by the international community.[165] Similarly, it has underlined the need for continued and increased co-operation between concerned Governments, UNHCR and other bodies of the United Nations system and non-governmental organizations.[166] Finally, there is a clear need of close co-ordination between UNHCR and non-governmental organizations of their different activities in accordance with directives provided by the concerned Governments.[167]

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[158] Cartagena Declaration, part II.1.

[159] See above, note I.

[160] *Ibid*.; Cartagena Declaration, part III.9; Report of meeting in Geneva of Advisory Group on Possible Solutions to central American Refugee Problems, chapter II.4; and Report of the Advisory Group on Possible Solutions to Central American Refugee Problem Meeting for the International Conference on Central American Refugees, Guatemala, City, 27-28 Apr. 1988, Chapter VI; Press Communiqué of San Salvador on Central American Refugees, para.V; UNGA res. 42/110, 7 Dec. 1987.

[161] Definition of 'displaced persons' included in Annex I of the Report of the Advisory Group on Possible Solutions to Central American Refugee Problems, Preparatory Meeting for the International Conference on Central American Refugees, Guatemala City, 27-28 April 1988.

[162] See also para. 48 above.

[163] See above, note 95.

[164] See above, notes 1 and 20.

[165] UNGA resolutions 2789 (XXVI), 2956 (XXVII), 3143 (XXVIII), 33/26, 38/121, 40/118, 41/124, 42/109, 42/110; OAS General Assembly res., AG/Res.774(XV-0/85), AG/Res. 774 (SV-0/85), AG/Res. 838 (XVI-0/86); UNHCR Executive Committee Conclusion No. 21 (XXII) on International Protection; No. 29 (XXXIV) on International Protection; No. 41 (XXXVII) on International Protection; No. 46 (XXXVIII) on International Protection; No. 50 (XXXIX) on International Protection.

[166] UNGA resolutions 31/35, 3271 (XXIX), 3454 (XXX), 34/60, 38/121, 40/118, 41/124, 42/109, 42/110; OAS General Assembly res. in 1988, OEA/Ser. P, AG/doc. 2370/88, Cartagena Declaration, part III.14.

[167] *Cartagena Declaration,* part III.14.

9. Human rights mechanisms

72. There is a direct and multiple relationship between the observance of human rights standards, refugee movements and problems of protection.[168] Gross violations of human rights give rise to refugee movements, sometimes on a massive scale, and may impede the attainment of durable solutions to their problems. At the same time, human rights principles and practices provide standards to States and international organizations for their treatment of refugees, returnees and displaced persons.[169]

73. It is this reality, which in Latin America has led to a call for better use to be made of the competent organisms of the inter-American system and, in particular, of the Inter-American Commission on Human Rights, with a view to complementing the international protection of refugees in the region.[170] This also requires closer co-operation between the Office of the United Nations High Commissioner for Refugees on the one hand, and on the other hand, the Organization of American States,[171] the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights and the Inter-American Institute of Human Rights.

10. Dissemination

74. The last ten years have seen a growing public awareness of the problem of Central American refugees, returnees and displaced persons. In large sectors in the region there is a clear interest and necessity to know in more detail the principles and criteria which make up the legal framework within which adequate solutions are being sought. For this reason, both the Cartagena Declaration and the Preparatory Committee of the International Conference on the Central American Refugees through its San Salvador Communiqué identified the need to promote the dissemination, and consequent compliance, of the relevant principles and criteria.[172] This task requires the support of the governments concerned, UNHCR, non-governmental organizations and the other members of the International Community.

Annex

Comments of the Government of Costa Rica

1. A point to be noted first of all is the importance of this type of document for reference purposes. It contains important information on various international instruments relating to refugees, such as United Nations resolutions, international conventions on asylum, etc. The document also provides a legal and historical analysis of refugee protection in Latin America and a legal assessment of the situation of refugees in Central America.

2. The following comments on the document may nevertheless be made:

   The application of the Geneva Convention and the recommendations proposed at the Cartagena Colloquium with regard to the determination of refugee status give rise to certain doubts. The Geneva Convention is obviously restricted in its scope and is not applicable in the case of massive flows of refugees. The Cartagena Colloquium has broadened the notion of refugee but it did not deal with other cases, such as that of externally displaced persons, cases whose direct cause is the economic situation but whose indirect cause is a political situation which, according to the Cartagena Declaration, may give rise to recognition of refugee status. An effort should therefore be made at the Conference to clarify and define more precisely when a refugee situation corresponds to the Convention's traditional definition, when it corresponds to the 'Cartagena' notion and when it is one of the other non-typical situations where – depending on the broadness of the Government's view – the person concerned may or may not be deemed a refugee.

[168] Cartagena Declaration, part III.14.

[169] See above, notes 94, 95. See also UNHCR, *Note on International Protection*: UN doc. A/AC.96/713 (1989), paras. 1-8.

[170] *Cartagena Declaration*, part III.15.

[171] OAS General Assembly resolutions AG/Res. 739 (XIV-0/84), 749 (XV-0/85), 774 (XV-0/85), 838 (XVI-0/86), 891 (XVII-0/87); and OAS resolutions of 1988, OEA/Ser. P, AG/doc. 2370/88; resolution of the OAS Permanent Council, CP/Res. 3777 (510/82); *Cartagena Declaration*, part III. 15 and 16.

[172] See above, note 1; *Cartagena Declaration*, part III.17.

3. The document outlines the elements that are included in the definition as factors or grounds for the grant or recognition of refugee status and it explains them clearly. However, it does not distinguish these from the situation of other categories of persons who leave their country for reasons that are different from, but are nevertheless linked with, the above-mentioned grounds. While not direct causes, they are factors which foster the condition of socio-economic despair. This is the case of the socio-economic refugees who have to abandon their country because the political situation described in the Cartagena Declaration prevents them from working or producing or, worse still, prevents their survival. The document should explain whether this aspect comes under the heading 'human rights ground', where reference is made to '… a consistent pattern of gross denial of civil, political, economic, social and cultural rights … '. This aspect, too, should be clarified.

4. The document indicates the precedence of international law over internal law, stating: '… every treaty in force is binding on the parties to it and must be performed in good faith, and a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'. It should be noted, however, that the document makes no reference to the case of constitutional provisions which, in certain of their aspects, conflict with the Convention. It should in fact be pointed out that the jurisprudence often does not apply with full rigour the principle of the precedence of international law over ordinary internal law. This is a particularly serious matter in countries such as Costa Rica where the courts have great autonomy and independence and where the remedy does not exist of claiming the unconstitutionality of a law because it violates an international treaty. Although this is a technical point, it is most important that it should be examined since whether a treaty will have full effect in the internal legal system will depend on it.

5. As for the requirement that a person must be a civilian to be a refugee – a point made clear in the Cartagena and other definitions, this principle has been adopted by Costa Rica and was the subject of a pronouncement by the Attorney General's Office on 5 June 1985.

6. A subject closely linked with the question of camps for temporary refugees is that of finding durable solutions to refugee problems. We share the view expressed in the document that a period longer than is necessary spent in such camps produces very harmful effects both for the refugees and for the country of asylum. It should be noted, however, that durable solutions aimed at repatriation or resettlement in third countries result in a situation of insecurity and instability for the refugee programmes. If, therefore, neither of these options is sound or viable, the logical course is to place emphasis on integration of the refugees in the community of asylum and to compensate the receiving country so that the impact of the refugees on the population will not be so harmful as to affect the country's social stability, 'with unfavourable consequences for both the refugees and the local population'. In this connection, the document looks at refugees independently of the host country and, in particular, the host country which has limited resources. The correct approach must necessarily take account of the country's asylum own socially-marginalized or vulnerable position. For the government concerned and the international organizations to apply international norms to the detriment of vulnerable local populations would be an irresponsible act with highly dangerous consequences that might prove disastrous.

7. In this connection it is pointed out that repatriation must provide guarantees and rights for the returnees. The Conference should establish principles leading to a declaration and, at a later stage, a convention on returnees. This should include a substantive part relating to the local bodies which receive the returning refugees and it should provide for suitable procedures and fundamental guarantees, as well as control measures designed to avoid irreparable situations. In this process there must be a willingness of both States and international aid agencies to act together. From the legal standpoint, too, there must be an agreement between the country of asylum, the country of origin of the returnees and the international community.

Conclusion

8. While the document is to be commended for the features mentioned earlier: a substantial fund of information, an appropriate historical and legal analysis of the refugee problem and a call for information to be made available on a systematic basis, it does not make any effort to identify the legal principles and institutions for dealing with refugee problems at the level of internal law. The text is obviously entirely satisfactory from the standpoint of international refugee law, but there also exists an internal standpoint from which refugee law must be viewed. This involves all domestic legislation on such matters as asylum, migration, labour, commerce and health that is applicable to refugees. This document naturally does not

aim to provide a comparative study of the domestic law of each country but it ignores the fact that the application of international law requires the enactment of complementary legislation, the appropriateness and viability of which may be open to question but the need for which cannot be denied. Apart from the proposed specific refugee legislation, harmonized with and complementing the international legislation on this subject, there already exists a whole internal system of law arising from the regulations and guidelines that are needed for putting the international law into effect. Refugee law had its origin in international law, although the causes of refugee movements are often internal. It is clear, however, that the application of refugee law calls for the development of a complementary law, having several dimensions: as a value, as a practical reality and as a normative factor. In this context, the main legal challenge for Central America is perhaps to develop a refugee law – both international and domestic, both regional and local – which does not conflict with international refugee law but rather complements and enriches it.

(signed) Guillermo Flores Gamboa
Director-General
DIGEPARE

2. Comments of the Government of El Salvador

1. In the interest of consistent interpretation of the international instruments concerning the protection of and assistance to refugees, returnees and displaced persons, it appears desirable, not only to promote knowledge of these instruments but also to throw more light on, and seek solutions to, refugee problems, because it is precisely these international instruments, combined with national legislation, that define the basic rights of refugees and the scope of their protection.

2. Refugee law applicable to persons, States and international governmental organizations, incorporating essential principles and norms is already of considerable scope.

3. The 1951 Convention relating to the Status of Refugees and the 1967 Protocol are applicable to the situation of refugees and have served as the basis for combining the elements which they contain with the introduction of new elements applicable to the specific circumstances of the Latin American region and of Central America in particular, where the refugee problem is most acute and large mass flows have taken place.

4. In order to deal with the situations occurring in Central America and on the basis of a broader concept of refugee protection, the Cartagena Declaration was adopted in 1984. This instrument incorporates not only the basic principles of international protection, such as asylum and *non-refoulement* but also elements applicable to the socio-political context of the Central American region.

5. Thus, efforts are already being made to develop a more effective system for the protection of refugees by combining the basic international instruments with Latin American law, with the aim of further developing refugee law in Latin America.

6. As far as the international instruments relating to refugees are concerned, El Salvador is party to the 1951 Convention relating to the Status of Refugees and to the 1967 Protocol, as well as to the American conventions on asylum.

7. El Salvador was present at the Cartagena Colloquium in 1984 and, as a country of origin of refugee movements, expressed, through its delegation, its confidence in the progressive development of machinery and practical means for solving refugee problems, and therefore its supports for international instruments relating to the protection of refugees. It also placed emphasis on observance of the principle of *non-refoulement*, the institution of asylum and the security and physical integrity of refugees, as well as on the need to ensure the practical effectiveness of solutions to refugee problems in Central America, such as voluntary repatriation and integration of refugees.

8. In the ‘Procedure for the establishment of a firm and lasting peace in Central America’ (Esquipulas II), the Central American countries undertook to seek solutions to the problem of refugees and displaced persons, recognizing that this formed part of the overall efforts to be made in order to achieve peace.

9. Since 1986, El Salvador has been pursuing a policy that is aimed at finding an appropriate, honourable and comprehensive solution to this problem. In April 1986, a ‘Tripartite Commission for the Voluntary Repatriation of Salvadorian Refugees in Honduras’, composed of representatives of the Governments of

El Salvador and Honduras and of the United Nations High Commissioner for Refugees (UNHCR), was set up to consider methods and machinery for repatriation.

10. The Guatemala Agreement (Esquipulas II) gave further impetus to the application of solutions to refugee problems at the national level and encouraged the establishment, despite problems and constraints of machinery and measures for offering practical alternatives to meet the needs of refugees, as well as taking other important action on their behalf.

11. The setting up of responsible national bodies such as the Salvadorian Commission for Refugees and Displaced Persons has furthered the efforts that are being made to develop appropriate machinery and find viable solutions for the problem of Salvadorian refugees, such as voluntary repatriation or integration.

12. The voluntary repatriation process was started in October 1987 and continued in 1988. It has enabled several thousands of Salvadorians who were in Honduran territory to return to their home country.

13. The situation of displaced persons also calls for urgent attention. The Government of El Salvador has been carrying out a policy of assisting displaced population groups through public and private inter-agency co-ordination of programmes aimed at meeting their most urgent and specific needs, so that they may become integrated in the country's economy and society.

14. In 1986, with the 'National Plan of Aid to Displaced Persons', the Government of El Salvador re-oriented its policy in favour of displaced persons and concentrated on the implementation of programmes in the following areas: (1) identification and registration of displaced persons; (2) social welfare; (3) literacy and health; (4) work training; (5) employment and production; (6) settlement; (7) food distribution; (8) administration.

15. These are the objectives aimed at by the National Commission for Aid to Displaced Persons (CONADES).

16. The situation of the Central American refugees is the result of the current political, economic and social conditions in the region. In this connection the Cartagena Declaration makes reference to factors connected with the situation in Central America that need to be taken into account in order to meet humanitarian needs and it proposes a more direct approach in dealing with questions of humanitarian law, asylum and protection.

17. Among the particular or special categories of persons who may need international protection are those whose well-founded fear entitles them to refugee status.

18. Regarding asylum and standards of protection, it is emphasized that, in the search for solutions, there should be co-operation based on the principles of solidarity and humanitarian feeling. There must be observance, not only of the rules concerning treatment of refugees in accordance with the international law in force and humanitarian principles and practices but also of rules of a socio-economic nature, including the right to education and health.

19. Camps in which there are refugees must be used for civilian and humanitarian refugee purposes. They must therefore not be used for the purpose of political or ideological activities and the introduction of elements or activities conflicting with the civilian and humanitarian character of a refugee camp must not be allowed.

20. It is pointed out that, in those cases where refugees are displaced or relocated, this must be done in a planned fashion so as to ensure the safety of the refugees and give them a better opportunity for survival.

21. Adopting one of the durable solutions proposed, El Salvador has arranged, on a voluntary, gradual and planned basis, the repatriation of Salvadorian refugees who were on Honduran territory, allowing them to resettle in their various places of origin, enabling them to obtain papers and furnishing them with assistance, through development plans and programmes established for their benefit.

22. The case of internally displaced persons requires special attention if the main problems of these persons are to be solved. In this connection a call should be made for the aid that is necessary in order to provide them with relief and improve their living conditions. Aid provided by the international community is vital for meeting the specific needs of internally displaced persons.

23. The international organizations, both governmental and non-governmental, through their activities to protect and assist refugees, returnees and displaced persons, obviously constitute the framework of the main humanitarian efforts in this area.

24. The Office of the United Nations High Commissioner for Refugees (UNHCR) should receive effective and continuing co-operation in the performance of its valuable role and there should be joint support for new approaches to relations with that body. Greater international co-operation is needed to enable UNHCR to develop its services for refugees.

25. Consideration should be given to the special needs of the most vulnerable group among refugees and displaced persons, namely the women and children. Protection efforts should include special programmes to deal with the special needs of these categories of persons.

26. In order to increase the effectiveness of activities for the benefit of women and children, efforts should be made by UNHCR to recruit more female officers.

27. In order to increase support for activities in favour of refugees and displaced persons and to publicise them more effectively at the world level, it will be necessary to ensure the implementation and dissemination of the latest United Nations resolution and programme on assistance to refugees, returnees and displaced persons and of the resolution on Central American refugees and regional efforts for the solution of their problems that was adopted by the OAS General Assembly at its eighteenth session, held in San Salvador in November 1988.

3. Comments of the Government of Mexico

1. Considering the importance of the work developed by the Group of Experts and Jurists who undertook the investigation and analysis of the national and international documentation required for the preparation of the document under review, it is indispensable that its official presentation contains the names of the three experts who were convoked by UNHCR. It would also be convenient that the document itself identifies the foundations and agreements which gave rise to the convocation of the Group of Experts such as the San Salvador Communiqué of September 1988.

2. As a recommendation of general character, it would be necessary for the document to be re-arranged so that its contents would be in the following order.

   – Principles emanating from provisions of international agreements, treaties and multilateral conventions.

   – Principles, norms and criteria derived from other international instruments adopted at international and/or regional intergovernmental meetings (declarations, resolutions etc.).

   – Criteria or decisions included in other international documents adopted in or issued by international forums (non-governmental and/or governmental), such as seminars, colloquiums and meetings of experts.

3. Lastly, the paragraph which corresponds to chapter 10 on Dissemination would have to be the subject of a decision by the Conference. Additionally, it is important to underline that the principles and criteria developed in the document do not constitute, in their totality, the legal framework in which adequate solutions can be identified to the problems of refugees, returnees and displaced persons. The document is an excellent basis for consultation and guidance and of great significance for the protection of and assistance to the groups of persons referred to above. Only with this purpose in mind should it be extensively disseminated, for which reason it would be better understood if the words ‘for subsequent application’ could be eliminated.

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RECOMMENDATION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON ASYLUM AND INTERNATIONAL CRIMES

Adopted on 20 October 2000

Asylum is an institution that provides for the protection of individuals whose life or liberty is threatened or endangered by acts of persecution or violence stemming from the acts or omissions of a State. One form, political asylum, has been especially well-developed in Latin America. States have accepted that there are limits to asylum, based on several sources of international law, including that asylum cannot be granted to persons with respect to whom there are serious indicia that they may have committed international crimes, such as crimes against humanity (which include the forced disappearance of persons, torture, and summary executions), war crimes, and crimes against peace.

According to article 1(1) of the American Convention on Human Rights, the States have an obligation to prevent, investigate, and punish any violation of the rights recognized therein. The IACHR has stated previously that the evolution of the standards in public international law has consolidated the notion of universal jurisdiction, whereby any State has the authority to "prosecute and sanction individuals responsible for such international crimes, even those committed outside of a State's territorial jurisdiction, or which do not relate to the nationality of the accused or of the victims, inasmuch as such crimes affect all of humanity and are in conflict with public order in the world community."[1] The Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on Forced Disappearance of Persons expressly provide that a State party should take the measures necessary to establish its jurisdiction over the crimes provided for in those instruments when the alleged offender is within its jurisdiction and it does not extradite him/her.

Based on the foregoing considerations, the Inter-American Commission should note that the institution of asylum is totally subverted by granting such protection to persons who leave their country to elude a determination of their liability as the material or intellectual author of international crimes. The institution of asylum presupposes that the person seeking protection is persecuted in his or her state of origin, and is not supported by it in applying for asylum.

In view of the foregoing considerations, the Inter-American Commission on Human Rights, in the exercise of the power conferred on it by Article 41(b) of the American Convention, hereby recommends to the Member States of the OAS that they refrain from granting asylum to any person alleged to be the material or intellectual author of international crimes.

October 20, 2000

[1] IACHR, Recommendations on Universal Jurisdiction and the International Criminal Court, Annual Report 1998, Ch. VII.

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INTERNATIONAL CONFERENCE ON CENTRAL AMERICAN REFUGEES

Adopted by the UN General Assembly at its 74th plenary meeting

UN General Assembly Resolution 46/107 of 16 December 1991

The General Assembly,

Recalling its resolutions 42/1 of 7 October 1987, 42/110 of 7 December 1987, 42/204 of 11 December 1987, 42/231 of 12 May 1988, 43/118 of 8 December 1988, 44/139 of 15 December 1989 and 45/141 of 14 December 1990,

Recalling also that the International Conference on Central American Refugees is related to the initiative of the Central American Presidents expressed in the procedures for the establishment of a firm and lasting peace in Central America concluded at the Esquipulas II summit meeting in August 1987, as indicated in the San Salvador communiqué on the Central American refugees, of 9 September 1988,

Recognizing the importance and validity of the Declaration and the Concerted Plan of Action in favour of Central American Refugees, Returnees and Displaced Persons, adopted at the International Conference on Central American Refugees held at Guatemala City from 29 to 31 May 1989 and the Declaration of the First International Meeting of the Follow-Up Committee of the Conference, especially the framework contained in the Concerted Plan of Action,

Noting with satisfaction the concerted efforts being made by the Central American countries, Belize and Mexico to find lasting solutions to the problems of the refugees, returnees and displaced persons in implementing the aims and objectives of the Concerted Plan of Action as an integral part of efforts to achieve a stable and lasting peace and democratization of the region,

Welcoming the substantial progress in the peace process in El Salvador, whereby efforts are being made to consult with all national sectors, the peace dialogue in Guatemala and the progress being made in Nicaragua in the implementation of its national reconciliation policy and in assistance to the uprooted populations, which continues to encourage movements of voluntary repatriation and settlement of internally displaced persons,

Recognizing the substantial support that, *inter alia*, the Secretary-General, the Office of the United Nations High Commissioner for Refugees, the United Nations Development Programme, the donor community and national and international non-governmental organizations have given the Conference since its inception,

Convinced that peace, liberty, development and democracy are essential in order to solve the problems of uprooted populations in the region,

1. *Takes note* of the report of the Secretary-General, and the relevant sections of the report of the United Nations High Commissioner for Refugees;

2. *Welcomes with satisfaction* the outcome of the meetings of the Follow-Up Committee of the International Conference on Central American Refugees, held at San Jose on 2 and 3 April 1991, at San Pedro Sula, Honduras, from 17 to 19 June 1991, at Tegucigalpa on 13 and 14 August 1991 and at Managua on 25 and 26 October 1991;

3. *Urges* the Central American countries, Belize and Mexico to continue to implement and follow up the programmes benefiting refugees, returnees and displaced persons in accordance with their national development plans;

4. *Reaffirms its conviction* that the voluntary repatriation of refugees and the return of displaced persons to their countries or communities of origin is one of the most positive signs of the progress of peace in the region;

5. *Expresses its conviction* that the processes of return to and reintegration in the countries and communities of origin should take place in conditions of dignity and security and with the necessary guarantees to ensure that the affected populations are included in the respective national development plans;

6. *Requests* the Secretary-General, the Office of the United Nations High Commissioner for Refugees, the United Nations Development Programme and other organs of the United Nations system to continue their support for and involvement in the planning, implementation, evaluation and follow-up of the programmes generated through the Conference process;

7. *Welcomes with satisfaction* the progress made in the implementation of the Development Programme for Displaced Persons, Refugees and Repatriated Persons, and urges the Central American countries to continue their determined support to ensure that the Programme achieves its aims;

8. *Appeals* to the international community, particularly to the donor community, to continue and to strengthen their support for the Conference and to continue complying with the financing offered so as to be able effectively to achieve the goals and objectives of the Concerted Plan of Action, and to consolidate the progress made thus far in humanitarian assistance to refugees and repatriated and displaced persons of the region;

9. *Supports* the special attention that the Central American countries, Belize and Mexico are giving to the particular needs of refugee, repatriated and displaced women and children and to the measures being adopted to protect and improve the environment and to preserve ethnic and cultural values;

10. *Also supports* the decision of the Central American countries, Belize and Mexico to convene the second international meeting of the Follow-Up Committee of the Conference at San Salvador in March 1992, for the purpose of evaluating the progress made thus far in the implementation of the Concerted Plan of Action and to define ways of improving its application;

11. *Supports* the initiative of the Governments of the countries of Central America, Belize and Mexico to extend the duration of the Conference process as long as may be necessary, in the light of the new needs that have emerged following the changes in the region;

12. *Requests* the Secretary-General to submit to the General Assembly at its forty-seventh session a report on the implementation of the present resolution.

74th plenary meeting
16 December 1991

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INTERNATIONAL CONFERENCE ON CENTRAL AMERICAN REFUGEES

Adopted by the UN General Assembly at its 89th plenary meeting

UN General Assembly Resolution 47/103 of 16 December 1992

The General Assembly,

Recalling its resolutions 42/1 of 7 October 1987, 42/110 of 7 December 1987, 42/204 of 11 December 1987, 42/231 of 12 May 1988, 43/118 of 8 December 1988, 44/139 of 15 December 1989, 45/141 of 14 December 1990 and 46/107 of 16 December 1991,

Recalling also that the International Conference on Central American Refugees is related to the initiative of the Central American Presidents expressed in the procedures for the establishment of a firm and lasting peace in Central America concluded at the Esquipulas II summit meeting in August 1987, as indicated in the San Salvador communiqué on the Central American refugees, of 9 September 1988,

Recognizing the importance and validity of the Declaration and the Concerted Plan of Action in favour of Central American Refugees, Returnees and Displaced Persons, adopted at the International Conference on Central American Refugees held at Guatemala City from 29 to 31 May 1989 and the Declaration of the First International Meeting of the Follow-Up Committee of the Conference, especially the framework contained in the Concerted Plan of Action,

Noting with satisfaction the concerted efforts being made by the Central American countries, Belize and Mexico to find lasting solutions to the problems of the refugees, returnees and displaced persons in implementing the aims and objectives of the Concerted Plan of Action as an integral part of efforts to achieve a stable and lasting peace and democratization of the region,

Welcoming the peace agreements achieved in the peace process in El Salvador, whereby efforts are being made to consult with all national sectors, the peace dialogue in Guatemala and the progress being made in Nicaragua in the implementation of its national reconciliation policy and in assistance to the uprooted populations, which continues to encourage movements of voluntary repatriation and settlement of internally displaced persons,

Recognizing the substantial support that, *inter alia*, the Secretary-General, the Office of the United Nations High Commissioner for Refugees, the United Nations Development Programme, the donor community and national and international non-governmental organizations have given the Conference since its inception,

Taking note of the Declaration of the Second International Meeting of the Follow-up Committee of the Conference, held at San Salvador, on 7 and 8 April 1992,

Convinced that peace, liberty, development and democracy are essential in order to solve the problems of uprooted populations in the region,

1. *Takes note* of the reports submitted by the Secretary-General and the United Nations High Commissioner for Refugees and of the second status report on the implementation of the Concerted Plan of Action of the International Conference on Central American Refugees;

2. *Welcomes with satisfaction* the outcome of the meetings of the Follow-Up Committee of the International Conference on Central American Refugees, held at San Jose on 2 and 3 April 1991, at San Pedro Sula, Honduras, from 17 to 19 June 1991, at Tegucigalpa on 13 and 14 August 1991, at Managua on 25 and 26 October 1991, at San Salvador on 7 and 9 April 1992 and at Managua on 29 September and 28 October 1992;

3. *Urges* the Central American countries, Belize and Mexico to continue to implement and follow up the programmes benefiting refugees, returnees and displaced persons in accordance with their national development plans;

4. *Reaffirms its conviction* that the voluntary repatriation of refugees and the return of displaced persons to their countries or communities of origin is one of the most positive signs of the progress of peace in the region;

5. *Expresses its conviction* that the processes of return to and reintegration in the countries and communities of origin should take place in conditions of dignity and security and with the necessary guarantees to ensure that the affected populations are included in the respective national development plans;

6. *Requests* the Secretary-General, the Office of the United Nations High Commissioner for Refugees, the United Nations Development Programme and other organs of the United Nations system to continue their support for and involvement in the planning, implementation, evaluation and follow-up of the programmes generated through the Conference process;

7. *Supports* the governments of the Central American countries, Belize and Mexico in urgently seeking more precise details about the support to be provided by the United Nations Development Programme in the immediate future, once the emergency stage has been completed with the assistance of the United Nations High Commissioner for Refugees and once the transition towards a process of sustained development of the target population has been initiated within the framework of the Conference;

8. *Welcomes with satisfaction* the progress made in the implementation of the Development Programme for Displaced Persons, Refugees and Repatriated Persons, and urges the Central American countries to continue their determined support to ensure that the Programme achieves its aims;

9. *Appeals* to the international community, particularly to the donor community, to continue and to strengthen their support for the Conference and to continue complying with the financing offered so as to be able effectively to achieve the goals and objectives of the Concerted Plan of Action, and to consolidate the progress made thus far in humanitarian assistance to refugees and repatriated and displaced persons of the region;

10. *Supports* the special attention that the Central American countries, Belize and Mexico are giving to the particular needs of refugee, repatriated and displaced women and children and to the measures being adopted to protect and improve the environment and to preserve ethnic and cultural values;

11. *Resolves* to give its full support to the Declaration of the Second International Meeting of the Follow-Up Committee of the International Conference on Central American Refugees, held at San Salvador on 7 and 8 April 1992, and the communiqués of the meetings of the Follow-up Committee held at Managua on 28 September and 29 October 1992;

12. *Supports* the initiative of the Governments of the countries of Central America, Belize and Mexico to extend the duration of the Conference process until May 1994, in the light of the new needs that have emerged following the changes in the region;

13. *Requests* the Secretary-General to submit to the General Assembly at its forty-eighth session a report on the implementation of the present resolution.

89th plenary meeting
16 December 1992

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AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

Approved by the Ninth International Conference of American States, Bogotá, Colombia on 1 January 1948

Text: "Ninth Pan-American Conference, Bogotá, 1948", Acta y Documentos, p. 297

Whereas:

The American peoples have acknowledged the dignity of the individual, and their national constitutions recognize that juridical and political institutions, which regulate life in human society, have as their principal aim the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness;

The American States have on repeated occasions recognized that the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality;

The international protection of the rights of man should be the principal guide of an evolving American law;

The affirmation of essential human rights by the American States together with the guarantees given by the internal regimes of the states establish the initial system of protection considered by the American States as being suited to the present social and juridical conditions, not without a recognition on their part that they should increasingly strengthen that system in the international field as conditions become more favourable,

The Ninth International Conference of American States

Agrees:

To adopt the following

AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

PREAMBLE

All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.

The fulfilment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty.

Duties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis.

Inasmuch as spiritual development is the supreme end of human existence and the highest expression thereof, it is the duty of man to serve that end with all his strength and resources.

Since culture is the highest social and historical expression of that spiritual development, it is the duty of man to preserve, practice and foster culture by every means within his power.

And, since moral conduct constitutes the noblest flowering of culture, it is the duty of every man always to hold it in high respect.

CHAPTER I

RIGHTS

Article I

Right to life, liberty and personal security

Every human being has the right to life, liberty and the security of his person.

Article II

Right to equality before law

All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

Article III

Right to religious freedom and worship

Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private.

Article IV

Right to freedom of investigation, opinion, expression and dissemination

Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

Article V

Right to protection of honour, personal reputation, and private and family life

Every person has the right to the protection of the law against abusive attacks upon his honour, his reputation, and his private and family life.

Article VI

Right to a family and to protection thereof

Every person has the right to establish a family, the basic element of society, and to receive protection thereof.

Article VII

Right to protection for mothers and children

All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.

Article VIII

Right to residence and movement

Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

Article IX

Right to inviolability of the home

Every person has the right to the inviolability of his home.

Article X

Right to the inviolability and transmission of correspondence

Every person has the right to the inviolability and transmission of his correspondence.

Article XI

Right to the preservation of health and to well-being

Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

Article XII

Right to education

Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity.

Likewise every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society.

The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide.

Every person has the right to receive, free, at least a primary education.

Article XIII

Right to the benefits of culture

Every person has the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially scientific discoveries.

He likewise has the right to the protection of his moral and material interests as regards his inventions or any literary, scientific or artistic works of which he is the author.

Article XIV

Right to work and to fair remuneration

Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit.

Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.

Article XV

Right to leisure time and to the use thereof

Every person has the right to leisure time, to wholesome recreation, and to the opportunity for advantageous use of his free time to his spiritual, cultural and physical benefit.

Article XVI

Right to social security

Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living.

Article XVII

Right to recognition of juridical personality and civil rights

Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights.

Article XVIII

Right to a fair trial

Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

Article XIX

Right to nationality

Every person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him.

Article XX

Right to vote and to participate in government

Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

Article XXI

Right of assembly

Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.

Article XXII

Right of association

Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labour union or other nature.

Article XXIII

Right to property

Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.

Article XXIV

Right of petition

Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.

Article XXV

Right of protection from arbitrary arrest

No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.

No person may be deprived of liberty for non-fulfilment of obligations of a purely civil character.

Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.

Article XXVI

Right to due process of law

Every accused person is presumed to be innocent until proved guilty.

Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

Article XXVII

Right of asylum

Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements.

Article XXVIII

Scope of the rights of man

The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy.

CHAPTER II

DUTIES

Article XXIX

Duties to society

It is the duty of the individual so to conduct himself in relation to others that each and every one may fully form and develop his personality.

Article XXX

Duties toward children and parents

It is the duty of every person to aid, support, educate and protect his minor children, and it is the duty of children to honour their parents always and to aid, support and protect them when they need it.

Article XXXI

Duty to receive instruction

It is the duty of every person to acquire at least an elementary education.

Article XXXII

Duty to vote

It is the duty of every person to vote in the popular elections of the country of which he is a national, when he is legally capable of doing so.

Article XXXIII

Duty to obey the law

It is the duty of every person to obey the law and other legitimate commands of the authorities of his country and those of the country in which he may be.

Article XXXIV

Duty to serve the community and the nation

It is the duty of every able-bodied person to render whatever civil and military service his country may require for its defence and preservation, and, in case of public disaster, to render such services as may be in his power.

It is likewise his duty to hold any public office to which he may be elected by popular vote in the state of which he is a national.

Article XXXV

Duties with respect to social security and welfare

It is the duty of every person to cooperate with the state and the community with respect to social security and welfare, in accordance with his ability and with existing circumstances.

Article XXXVI

Duty to pay taxes

It is the duty of every person to pay the taxes established by law for the support of public services.

Article XXXVII

Duty to work

It is the duty of every person to work, as far as his capacity and possibilities permit, in order to obtain the means of livelihood or to benefit his community.

Article XXXVIII

Duty to refrain from political activities in a foreign country

It is the duty of every person to refrain from taking part in political activities that, according to law, are reserved exclusively to the citizens of the state in which he is an alien.

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AMERICAN CONVENTION ON HUMAN RIGHTS (PACT OF SAN JOSÉ)

Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969

Entry into force: 18 July 1978, in accordance with Article 74
Text: United Nations, *Treaty Series*, vol. 1144, p. 123

PREAMBLE

The American states signatory to the present Convention,

Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states;

Considering that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope;

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

Considering that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself of broader standards with respect to economic, social, and educational rights and resolved that an inter-American convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters,

Have agreed upon the following:

PART I

STATE OBLIGATIONS AND RIGHTS PROTECTED

CHAPTER I

GENERAL OBLIGATIONS

Article 1

Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.
2. For the purposes of this Convention, “person” means every human being.

Article 2

Domestic Legal Effects

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

CHAPTER II

CIVIL AND POLITICAL RIGHTS

Article 3

Right to Juridical Personality

Every person has the right to recognition as a person before the law.

Article 4

Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be re-established in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offenses or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

Article 5

Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
3. Punishment shall not be extended to any person other than the criminal.
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social re-adaptation of the prisoners.

Article 6

Freedom from Slavery

1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.
2. No one shall be required to perform forced or compulsory labour. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labour, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labour shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.
3. For the purposes of this article, the following do not constitute forced or compulsory labour:
   (*a*) Work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;
   (*b*) Military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;
   (*c*) Service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or
   (*d*) Work or service that forms part of normal civic obligations.

Article 7

Right to Personal Liberty

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person on his behalf is entitled to seek these remedies.
7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for non-fulfilment of duties of support.

Article 8

Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation

of a criminal nature made against him or for the determination of his rights and obligations of a civil, labour, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
   (*a*) The right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
   (*b*) Prior notification in detail to the accused of the charges against him;
   (*c*) Adequate time and means for the preparation of his defence;
   (*d*) The right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
   (*e*) The inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
   (*f*) The right of the defence to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
   (*g*) The right not to be compelled to be a witness against himself or to plead guilty; and
   (*h*) The right to appeal the judgment to a higher court.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
4. An accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the same cause.
5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

Article 9

Freedom from *Ex Post Facto* Laws

No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

Article 10

Right to Compensation

Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.

Article 11

Right to Privacy

1. Everyone has the right to have his honour respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honour or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

Article 12

Freedom of Conscience and Religion

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Article 13

Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
   (*a*) Respect for the rights or reputations of others; or
   (*b*) The protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offenses punishable by law.

Article 14

Right of Reply

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.
2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.
3. For the effective protection of honour and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.

Article 15

Right of Assembly

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.

Article 16

Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labour, social, cultural, sports, or other purposes.

2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

Article 17

Rights of the Family

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.
2. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of non-discrimination established in this Convention.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.
5. The law shall recognize equal rights for children born out of wedlock and those born in wedlock.

Article 18

Right to a Name

Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.

Article 19

Rights of the Child

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

Article 20

Right to Nationality

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

Article 21

Right to Property

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. Usury and any other form of exploitation of man by man shall be prohibited by law.

Article 22

Freedom of Movement and Residence

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
2. Every person has the right lo leave any country freely, including his own.
3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.
4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.
5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.
6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.
7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.
8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.
9. The collective expulsion of aliens is prohibited.

Article 23

Right to Participate in Government

1. Every citizen shall enjoy the following rights and opportunities:

   (*a*) To take part in the conduct of public affairs, directly or through freely chosen representatives;

   (*b*) To vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and

   (*c*) To have access, under general conditions of equality, to the public service of his country.

2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

Article 24

Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

Article 25

Right to Judicial Protection

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

   (*a*) To ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

   (*b*) To develop the possibilities of judicial remedy; and

   (*c*) To ensure that the competent authorities shall enforce such remedies when granted.

CHAPTER III

ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

Article 26

Progressive Development

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

CHAPTER IV

SUSPENSION OF GUARANTEES, INTERPRETATION, AND APPLICATION

Article 27

Suspension of Guarantees

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, colour, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from *Ex Post Facto* Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

Article 28

Federal Clause

1. Where a State Party is constituted as a federal state, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction.

2. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfilment of this Convention.

3. Whenever two or more States Parties agree to form a federation or other type of association, they shall take care that the resulting federal or other compact contains the provisions necessary for continuing and rendering effective the standards of this Convention in the new state that is organized.

Article 29

Restrictions Regarding Interpretation

No provision of this Convention shall be interpreted as:

(*a*) Permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;

(*b*) Restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;

(*c*) Precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or

(*d*) Excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

Article 30

Scope of Restrictions

The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

Article 31

Recognition of Other Rights

Other rights and freedoms recognized in accordance with the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention.

CHAPTER V

PERSONAL RESPONSIBILITIES

Article 32

Relationship between Duties and Rights

1. Every person has responsibilities to his family, his community, and mankind.
2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

PART II

MEANS OF PROTECTION

CHAPTER VI

COMPETENT ORGANS

Article 33

The following organs shall have competence with respect to matters relating to the fulfilment of the commitments made by the States Parties to this Convention:

(*a*) The Inter-American Commission on Human Rights, referred to as “The Commission;” and

(*b*) The Inter-American Court of Human Rights, referred to as “The Court.”

CHAPTER VII

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

SECTION 1

ORGANIZATION

Article 34

The Inter-American Commission on Human Rights shall be composed of seven members, who shall be persons of high moral character and recognized competence in the field of human rights.

Article 35

The Commission shall represent all the member countries of the Organization of American States.

Article 36

1. The members of the Commission shall be elected in a personal capacity by the General Assembly of the Organization from a list of candidates proposed by the governments of the Member States.
2. Each of those governments may propose up to three candidates, who may be nationals of the states proposing them or of any other Member State of the Organization of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the slate.

Article 37

1. The members of the Commission shall be elected for a term of four years and may be re-elected only once, but the terms of three of the members chosen in the first election shall expire at the end of two years. Immediately following that election the General Assembly shall determine the names of those three members by lot.
2. No two nationals of the same state may be members of the Commission.

Article 38

Vacancies that may occur on the Commission for reasons other than the normal expiration of a term shall be filled by the Permanent Council of the Organization in accordance with the provisions of the Statute of the Commission.

Article 39

The Commission shall prepare its Statute, which it shall submit to the General Assembly for approval. It shall establish its own Regulations.

Article 40

Secretariat services for the Commission shall be furnished by the appropriate specialized unit of the General Secretariat of the Organization. This unit shall be provided with the resources required to accomplish the tasks assigned to it by the Commission.

SECTION 2

FUNCTIONS

Article 41

The main function of the Commission shall be to promote respect for and defence of human rights. In the exercise of its mandate, it shall have the following functions and powers:

(*a*) To develop an awareness of human rights among the peoples of America;

(*b*) To make recommendations to the governments of the Member States, when it considers such action advisable, for the adoption of progressive measures in favour of human rights within the framework

of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;

(*c*) To prepare such studies or reports as it considers advisable in the performance of its duties;

(*d*) To request the governments of the Member States to supply it with information on the measures adopted by them in matters of human rights;

(*e*) To respond, through the General Secretariat of the Organization of American States, to inquiries made by the Member States on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;

(*f*) To take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and

(*g*) To submit an annual report to the General Assembly of the Organization of American States.

Article 42

The States Parties shall transmit to the Commission a copy of each of the reports and studies that they submit annually to the Executive Committees of the Inter-American Economic and Social Council and the Inter-American Council for Education, Science, and Culture, in their respective fields, so that the Commission may watch over the promotion of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

Article 43

The States Parties undertake to provide the Commission with such information as it may request of them as to the manner in which their domestic law ensures the effective application of any provisions of this Convention.

SECTION 3

COMPETENCE

Article 44

Any person or group of persons, or any nongovernmental entity legally recognized in one or more Member States of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

Article 45

1. Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.
2. Communications presented by virtue of this article may be admitted and examined only if they are presented by a State Party that has made a declaration recognizing the aforementioned competence of the Commission. The Commission shall not admit any communication against a State Party that has not made such a declaration.
3. A declaration concerning recognition of competence may be made to be valid for an indefinite time, for a specified period, or for a specific case.
4. Declarations shall be deposited with the General Secretariat of the Organization of American States, which shall transmit copies thereof to the Member States of that Organization.

Article 46

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

   (*a*) That the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;

   (*b*) That the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;

   (*c*) That the subject of the petition or communication is not pending in another international proceeding for settlement; and

   (*d*) That, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.

2. The provisions of paragraphs 1.(a) and 1.(b) of this article shall not be applicable when:

   (*a*) The domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

   (*b*) The party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or

   (*c*) There has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

Article 47

The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

(*a*) Any of the requirements indicated in Article 46 has not been met;

(*b*) The petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention;

(*c*) The statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order; or

(*d*) The petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

SECTION 4

PROCEDURE

Article 48

1. When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows:

   (*a*) If it considers the petition or communication admissible, it shall request information from the government of the state indicated as being responsible for the alleged violations and shall furnish that government a transcript of the pertinent portions of the petition or communication. This information shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case.

   (*b*) After the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the Commission shall order the record to be closed.

   (*c*) The Commission may also declare the petition or communication inadmissible or out of order on the basis of information or evidence subsequently received.

(*d*) If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the facts. If necessary and advisable, the Commission shall carry out an investigation, for the effective conduct of which it shall request, and the states concerned shall furnish to it, all necessary facilities.

(*e*) The Commission may request the states concerned to furnish any pertinent information and, if so requested, shall hear oral statements or receive written statements from the parties concerned.

(*f*) The Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.

2. However, in serious and urgent cases, only the presentation of a petition or communication that fulfils all the formal requirements of admissibility shall be necessary in order for the Commission to conduct an investigation with the prior consent of the state in whose territory a violation has allegedly been committed.

Article 49

If a friendly settlement has been reached in accordance with paragraph 1.(f) of Article 48, the Commission shall draw up a report, which shall be transmitted to the petitioner and to the States Parties to this Convention, and shall then be communicated to the Secretary General of the Organization of American States for publication. This report shall contain a brief statement of the facts and of the solution reached. If any party in the case so requests, the fullest possible information shall be provided to it.

Article 50

1. If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.(e) of Article 48 shall also be attached to the report.
2. The report shall be transmitted to the states concerned, which shall not be at liberty to publish it.
3. In transmitting the report, the Commission may make such proposals and recommendations as it sees fit.

Article 51

1. If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.
2. Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the state is to take the measures that are incumbent upon it to remedy the situation examined.
3. When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report.

CHAPTER VIII

INTER-AMERICAN COURT OF HUMAN RIGHTS

SECTION 1

ORGANIZATION

Article 52

1. The Court shall consist of seven judges, nationals of the Member States of the Organization, elected in an individual capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial

functions in conformity with the law of the state of which they are nationals or of the state that proposes them as candidates.

2. No two judges may be nationals of the same state.

Article 53

1. The judges of the Court shall be elected by secret ballot by an absolute majority vote of the States Parties to the Convention, in the General Assembly of the Organization, from a panel of candidates proposed by those states.
2. Each of the States Parties may propose up to three candidates, nationals of the state that proposes them or of any other Member State of the Organization of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the slate.

Article 54

1. The judges of the Court shall be elected for a term of six years and may be re-elected only once. The term of three of the judges chosen in the first election shall expire at the end of three years. Immediately after the election, the names of the three judges shall be determined by lot in the General Assembly.
2. A judge elected to replace a judge whose term has not expired shall complete the term of the latter.
3. The judges shall continue in office until the expiration of their term. However, they shall continue to serve with regard to cases that they have begun to hear and that are still pending, for which purposes they shall not be replaced by the newly elected judges.

Article 55

1. If a judge is a national of any of the States Parties to a case submitted to the Court, he shall retain his right to hear that case.
2. If one of the judges called upon to hear a case should be a national of one of the States Parties to the case, any other State Party in the case may appoint a person of its choice to serve on the Court as an *ad hoc* judge.
3. If among the judges called upon to hear a case none is a national of any of the States Parties to the case, each of the latter may appoint an *ad hoc* judge.
4. An *ad hoc* judge shall possess the qualifications indicated in Article 52.
5. If several States Parties to the Convention should have the same interest in a case, they shall be considered as a single party for purposes of the above provisions. In case of doubt, the Court shall decide.

Article 56

Five judges shall constitute a quorum for the transaction of business by the Court.

Article 57

The Commission shall appear in all cases before the Court.

Article 58

1. The Court shall have its seat at the place determined by the States Parties to the Convention in the General Assembly of the Organization; however, it may convene in the territory of any Member State of the Organization of American States when a majority of the Court considers it desirable, and with the prior consent of the state concerned. The seat of the Court may be changed by the States Parties to the Convention in the General Assembly by a two-thirds vote.
2. The Court shall appoint its own Secretary.
3. The Secretary shall have his office at the place where the Court has its seat and shall attend the meetings that the Court may hold away from its seat.

Article 59

The Court shall establish its Secretariat, which shall function under the direction of the Secretary of the Court, in accordance with the administrative standards of the General Secretariat of the Organization in all respects not incompatible with the independence of the Court. The staff of the Court's Secretariat shall be appointed by the Secretary General of the Organization, in consultation with the Secretary of the Court.

Article 60

The Court shall draw up its Statute which it shall submit to the General Assembly for approval. It shall adopt its own Rules of Procedure.

SECTION 2

JURISDICTION AND FUNCTIONS

Article 61

1. Only the States Parties and the Commission shall have the right to submit a case to the Court.
2. In order for the Court to hear a case, it is necessary that the procedures set forth in Articles 48 and 50 shall have been completed.

Article 62

1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.
2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other Member States of the Organization and to the Secretary of the Court.
3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

Article 63

1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.
2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

Article 64

1. The Member States of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.
2. The Court, at the request of a Member State of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

Article 65

To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

SECTION 3

PROCEDURE

Article 66

1. Reasons shall be given for the judgment of the Court.
2. If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment.

Article 67

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

Article 68

1. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.
2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state.

Article 69

The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the States Parties to the Convention.

CHAPTER IX

COMMON PROVISIONS

Article 70

1. The judges of the Court and the members of the Commission shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law. During the exercise of their official function they shall, in addition, enjoy the diplomatic privileges necessary for the performance of their duties.
2. At no time shall the judges of the Court or the members of the Commission be held liable for any decisions or opinions issued in the exercise of their functions.

Article 71

The position of judge of the Court or member of the Commission is incompatible with any other activity that might affect the independence or impartiality of such judge or member, as determined in the respective statutes.

Article 72

The judges of the Court and the members of the Commission shall receive emoluments and travel allowances in the form and under the conditions set forth in their statutes, with due regard for the importance and independence of their office. Such emoluments and travel allowances shall be determined in the budget of the Organization of American States, which shall also include the expenses of the Court and its Secretariat. To

this end, the Court shall draw up its own budget and submit it for approval to the General Assembly through the General Secretariat. The latter may not introduce any changes in it.

Article 73

The General Assembly may, only at the request of the Commission or the Court, as the case may be, determine sanctions to be applied against members of the Commission or judges of the Court when there are justifiable grounds for such action as set forth in the respective statutes. A vote of a two-thirds majority of the Member States of the Organization shall be required for a decision in the case of members of the Commission and, in the case of judges of the Court, a two-thirds majority vote of the States Parties to the Convention shall also be required.

PART III

GENERAL AND TRANSITORY PROVISIONS

CHAPTER X

SIGNATURE, RATIFICATION, RESERVATIONS, AMENDMENTS, PROTOCOLS, AND DENUNCIATION

Article 74

1. This Convention shall be open for signature and ratification by or adherence of any Member State of the Organization of American States.
2. Ratification of or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States. As soon as eleven states have deposited their instruments of ratification or adherence, the Convention shall enter into force. With respect to any state that ratifies or adheres thereafter, the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence.
3. The Secretary General shall inform all Member States of the Organization of the entry into force of the Convention.

Article 75

This Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969.

Article 76

1. Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General.
2. Amendments shall enter into force for the States ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification.

Article 77

1. In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection.
2. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.

Article 78

1. The States Parties may denounce this Convention at the expiration of a five-year period from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties.
2. Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation.

CHAPTER XI

TRANSITORY PROVISIONS

SECTION 1

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Article 79

Upon the entry into force of this Convention, the Secretary General shall, in writing, request each Member State of the Organization to present, within ninety days, its candidates for membership on the Inter-American Commission on Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented, and transmit it to the Member States of the Organization at least thirty days prior to the next session of the General Assembly.

Article 80

The members of the Commission shall be elected by secret ballot of the General Assembly from the list of candidates referred to in Article 79. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the Member States shall be declared elected. Should it become necessary to have several ballots in order to elect all the members of the Commission, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the General Assembly.

SECTION 2

INTER-AMERICAN COURT OF HUMAN RIGHTS

Article 81

Upon the entry into force of this Convention, the Secretary General shall, in writing, request each State Party to present, within ninety days, its candidates for membership on the Inter-American Court of Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented and transmit it to the States Parties at least thirty days prior to the next session of the General Assembly.

Article 82

The judges of the Court shall be elected from the list of candidates referred to in Article 81, by secret ballot of the States Parties to the Convention in the General Assembly. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties shall be declared elected. Should it become necessary to have several ballots in order to elect all the judges of the Court, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the States Parties.

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ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (PROTOCOL OF SAN SALVADOR)

Adopted at San Salvador on 17 November 1988

Entry into force: 16 November 1999, in accordance with Article 21
Text: OAS, *Treaty Series*, No. 69

PREAMBLE

The States Parties to the American Convention on Human Rights "Pact of San José, Costa Rica,"

Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognizing that the essential rights of man are not derived from one's being a national of a certain State, but are based upon attributes of the human person, for which reason they merit international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American States;

Considering the close relationship that exists between economic, social and cultural rights, and civil and political rights, in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized, and the violation of some rights in favour of the realization of others can never be justified;

Recognizing the benefits that stem from the promotion and development of cooperation among States and international relations;

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

Bearing in mind that, although fundamental economic, social and cultural rights have been recognized in earlier international instruments of both world and regional scope, it is essential that those rights be reaffirmed, developed, perfected and protected in order to consolidate in America, on the basis of full respect for the rights of the individual, the democratic representative form of government as well as the right of its peoples to development, self-determination, and the free disposal of their wealth and natural resources; and

Considering that the American Convention on Human Rights provides that draft additional protocols to that Convention may be submitted for consideration to the States Parties, meeting together on the occasion of the General Assembly of the Organization of American States, for the purpose of gradually incorporating other rights and freedoms into the protective system thereof,

Have agreed upon the following Additional Protocol to the American Convention on Human Rights "Protocol of San Salvador:"

Article 1

Obligation to Adopt Measures

The States Parties to this Additional Protocol to the American Convention on Human Rights undertake to adopt the necessary measures, both domestically and through international cooperation, especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol.

Article 2

Obligation to Enact Domestic Legislation

If the exercise of the rights set forth in this Protocol is not already guaranteed by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Protocol, such legislative or other measures as may be necessary for making those rights a reality.

Article 3

Obligation of Non-discrimination

The State Parties to this Protocol undertake to guarantee the exercise of the rights set forth herein without discrimination of any kind for reasons related to race, colour, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

Article 4

Inadmissibility of Restrictions

A right which is recognized or in effect in a State by virtue of its internal legislation or international conventions may not be restricted or curtailed on the pretext that this Protocol does not recognize the right or recognizes it to a lesser degree.

Article 5

Scope of Restrictions and Limitations

The State Parties may establish restrictions and limitations on the enjoyment and exercise of the rights established herein by means of laws promulgated for the purpose of preserving the general welfare in a democratic society only to the extent that they are not incompatible with the purpose and reason underlying those rights.

Article 6

Right to Work

1. Everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity.
2. The State Parties undertake to adopt measures that will make the right to work fully effective, especially with regard to the achievement of full employment, vocational guidance, and the development of technical and vocational training projects, in particular those directed to the disabled. The States Parties also undertake to implement and strengthen programs that help to ensure suitable family care, so that women may enjoy a real opportunity to exercise the right to work.

Article 7

Just, Equitable, and Satisfactory Conditions of Work

The States Parties to this Protocol recognize that the right to work to which the foregoing article refers presupposes that everyone shall enjoy that right under just, equitable, and satisfactory conditions, which the States Parties undertake to guarantee in their internal legislation, particularly with respect to:

(*a*) Remuneration which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work, without distinction;

(*b*) The right of every worker to follow his vocation and to devote himself to the activity that best fulfils his expectations and to change employment in accordance with the pertinent national regulations;

(*c*) The right of every worker to promotion or upward mobility in his employment, for which purpose account shall be taken of his qualifications, competence, integrity and seniority;

(*d*) Stability of employment, subject to the nature of each industry and occupation and the causes for just separation. In cases of unjustified dismissal, the worker shall have the right to indemnity or to reinstatement on the job or any other benefits provided by domestic legislation;

(*e*) Safety and hygiene at work;

(*f*) The prohibition of night work or unhealthy or dangerous working conditions and, in general, of all work which jeopardizes health, safety, or morals, for persons under 18 years of age. As regards minors under the age of 16, the work day shall be subordinated to the provisions regarding compulsory education and in no case shall work constitute an impediment to school attendance or a limitation on benefiting from education received;

(*g*) A reasonable limitation of working hours, both daily and weekly. The days shall be shorter in the case of dangerous or unhealthy work or of night work;

(*h*) Rest, leisure and paid vacations as well as remuneration for national holidays.

Article 8

Trade Union Rights

1. The States Parties shall ensure:

   (*a*) The right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interests. As an extension of that right, the States Parties shall permit trade unions to establish national federations or confederations, or to affiliate with those that already exist, as well as to form international trade union organizations and to affiliate with that of their choice. The States Parties shall also permit trade unions, federations and confederations to function freely;

   (*b*) The right to strike.

2. The exercise of the rights set forth above may be subject only to restrictions established by law, provided that such restrictions are characteristic of a democratic society and necessary for safeguarding public order or for protecting public health or morals or the rights and freedoms of others. Members of the armed forces and the police and of other essential public services shall be subject to limitations and restrictions established by law.

3. No one may be compelled to belong to a trade union.

Article 9

Right to Social Security

1. Everyone shall have the right to social security protecting him from the consequences of old age and of disability which prevents him, physically or mentally, from securing the means for a dignified and decent existence. In the event of the death of a beneficiary, social security benefits shall be applied to his dependents.

2. In the case of persons who are employed, the right to social security shall cover at least medical care and an allowance or retirement benefit in the case of work accidents or occupational disease and, in the case of women, paid maternity leave before and after childbirth.

Article 10

Right to Health

1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.

2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:

   (*a*) Primary health care, that is, essential health care made available to all individuals and families in the community;

   (*b*) Extension of the benefits of health services to all individuals subject to the State's jurisdiction;

   (*c*) Universal immunization against the principal infectious diseases;

   (*d*) Prevention and treatment of endemic, occupational and other diseases;

   (*e*) Education of the population on the prevention and treatment of health problems, and

   (*f*) Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

Article 11

Right to a Healthy Environment

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
2. The States Parties shall promote the protection, preservation, and improvement of the environment.

Article 12

Right to Food

1. Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.
2. In order to promote the exercise of this right and eradicate malnutrition, the States Parties undertake to improve methods of production, supply and distribution of food, and to this end, agree to promote greater international cooperation in support of the relevant national policies.

Article 13

Right to Education

1. Everyone has the right to education.
2. The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.
3. The States Parties to this Protocol recognize that in order to achieve the full exercise of the right to education:

   (*a*) Primary education should be compulsory and accessible to all without cost;

   (*b*) Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education;

   (*c*) Higher education should be made equally accessible to all, on the basis of individual capacity, by every appropriate means, and in particular, by the progressive introduction of free education;

   (*d*) Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction;

   (*e*) Programs of special education should be established for the handicapped, so as to provide special instruction and training to persons with physical disabilities or mental deficiencies.

4. In conformity with the domestic legislation of the States Parties, parents should have the right to select the type of education to be given to their children, provided that it conforms to the principles set forth above.
5. Nothing in this Protocol shall be interpreted as a restriction of the freedom of individuals and entities to establish and direct educational institutions in accordance with the domestic legislation of the States Parties.

Article 14

Right to the Benefits of Culture

1. The States Parties to this Protocol recognize the right of everyone:
   (*a*) To take part in the cultural and artistic life of the community;
   (*b*) To enjoy the benefits of scientific and technological progress;
   (*c*) To benefit from the protection of moral and material interests deriving from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to this Protocol to ensure the full exercise of this right shall include those necessary for the conservation, development and dissemination of science, culture and art.
3. The States Parties to this Protocol undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to this Protocol recognize the benefits to be derived from the encouragement and development of international cooperation and relations in the fields of science, arts and culture, and accordingly agree to foster greater international cooperation in these fields.

Article 15

Right to the Formation and the Protection of Families

1. The family is the natural and fundamental element of society and ought to be protected by the State, which should see to the improvement of its spiritual and material conditions.
2. Everyone has the right to form a family, which shall be exercised in accordance with the provisions of the pertinent domestic legislation.
3. The States Parties hereby undertake to accord adequate protection to the family unit and in particular:
   (*a*) To provide special care and assistance to mothers during a reasonable period before and after childbirth;
   (*b*) To guarantee adequate nutrition for children at the nursing stage and during school attendance years;
   (*c*) To adopt special measures for the protection of adolescents in order to ensure the full development of their physical, intellectual and moral capacities;
   (*d*) To undertake special programs of family training so as to help create a stable and positive environment in which children will receive and develop the values of understanding, solidarity, respect and responsibility.

Article 16

Rights of Children

Every child, whatever his parentage, has the right to the protection that his status as a minor requires from his family, society and the State. Every child has the right to grow under the protection and responsibility of his parents; save in exceptional, judicially-recognized circumstances, a child of young age ought not to be separated from his mother. Every child has the right to free and compulsory education, at least in the elementary phase, and to continue his training at higher levels of the educational system.

Article 17

Protection of the Elderly

Everyone has the right to special protection in old age. With this in view the States Parties agree to take progressively the necessary steps to make this right a reality and, particularly, to:

(*a*) Provide suitable facilities, as well as food and specialized medical care, for elderly individuals who lack them and are unable to provide them for themselves;

(*b*) Undertake work programs specifically designed to give the elderly the opportunity to engage in a productive activity suited to their abilities and consistent with their vocations or desires;

(*c*) Foster the establishment of social organizations aimed at improving the quality of life for the elderly.

Article 18

Protection of the Handicapped

Everyone affected by a diminution of his physical or mental capacities is entitled to receive special attention designed to help him achieve the greatest possible development of his personality. The States Parties agree to adopt such measures as may be necessary for this purpose and, especially, to:

(*a*) Undertake programs specifically aimed at providing the handicapped with the resources and environment needed for attaining this goal, including work programs consistent with their possibilities and freely accepted by them or their legal representatives, as the case may be;

(*b*) Provide special training to the families of the handicapped in order to help them solve the problems of coexistence and convert them into active agents in the physical, mental and emotional development of the latter;

(*c*) Include the consideration of solutions to specific requirements arising from needs of this group as a priority component of their urban development plans;

(*d*) Encourage the establishment of social groups in which the handicapped can be helped to enjoy a fuller life.

Article 19

Means of Protection

1. Pursuant to the provisions of this article and the corresponding rules to be formulated for this purpose by the General Assembly of the Organization of American States, the States Parties to this Protocol undertake to submit periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in this Protocol.
2. All reports shall be submitted to the Secretary General of the OAS, who shall transmit them to the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture so that they may examine them in accordance with the provisions of this article. The Secretary General shall send a copy of such reports to the Inter-American Commission on Human Rights.
3. The Secretary General of the Organization of American States shall also transmit to the specialized organizations of the inter-American system of which the States Parties to the present Protocol are members, copies or pertinent portions of the reports submitted, insofar as they relate to matters within the purview of those organizations, as established by their constituent instruments.
4. The specialized organizations of the inter-American system may submit reports to the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture relative to compliance with the provisions of the present Protocol in their fields of activity.
5. The annual reports submitted to the General Assembly by the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture shall contain a summary of the information received from the States Parties to the present Protocol and the specialized organizations concerning the progressive measures adopted in order to ensure respect for the rights acknowledged in the Protocol itself and the general recommendations they consider to be appropriate in this respect.

6. Any instance in which the rights established in paragraph (a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights.
7. Without prejudice to the provisions of the preceding paragraph, the Inter-American Commission on Human Rights may formulate such observations and recommendations as it deems pertinent concerning the status of the economic, social and cultural rights established in the present Protocol in all or some of the States Parties, which it may include in its Annual Report to the General Assembly or in a special report, whichever it considers more appropriate.
8. The Councils and the Inter-American Commission on Human Rights, in discharging the functions conferred upon them in this article, shall take into account the progressive nature of the observance of the rights subject to protection by this Protocol.

Article 20

Reservations

The States Parties may, at the time of approval, signature, ratification or accession, make reservations to one or more specific provisions of this Protocol, provided that such reservations are not incompatible with the object and purpose of the Protocol.

Article 21

Signature, Ratification or Accession

Entry into Effect

1. This Protocol shall remain open to signature and ratification or accession by any State Party to the American Convention on Human Rights.
2. Ratification of or accession to this Protocol shall be effected by depositing an instrument of ratification or accession with the General Secretariat of the Organization of American States.
3. The Protocol shall enter into effect when eleven States have deposited their respective instruments of ratification or accession.
4. The Secretary General shall notify all the Member States of the Organization of American States of the entry of the Protocol into effect.

Article 22

Inclusion of other Rights and Expansion of those Recognized

1. Any State Party and the Inter-American Commission on Human Rights may submit for the consideration of the States Parties meeting on the occasion of the General Assembly proposed amendments to include the recognition of other rights or freedoms or to extend or expand rights or freedoms recognized in this Protocol.
2. Such amendments shall enter into effect for the States that ratify them on the date of deposit of the instrument of ratification corresponding to the number representing two thirds of the States Parties to this Protocol. For all other States Parties they shall enter into effect on the date on which they deposit their respective instrument of ratification.

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PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS TO ABOLISH THE DEATH PENALTY

Adopted at Asuncion, Paraguay, on 8 June 1990

Approved by the OAS General Assembly Resolution 1042 of 8 June 1990

Entry into force: In accordance with Article 4
Text: OAS, *Treaty Series*, No. 73

PREAMBLE

The States Parties to this Protocol,

Considering:

That Article 4 of the American Convention on Human Rights recognizes the right to life and restricts the application of the death penalty;

That everyone has the inalienable right to respect for his life, a right that cannot be suspended for any reason;

That the tendency among the American States is to be in favour of abolition of the death penalty;

That application of the death penalty has irrevocable consequences, forecloses the correction of judicial error, and precludes any possibility of changing or rehabilitating those convicted;

That the abolition of the death penalty helps to ensure more effective protection of the right to life;

That an international agreement must be arrived at that will entail a progressive development of the American Convention on Human Rights, and

That States Parties to the American Convention on Human Rights have expressed their intention to adopt an international agreement with a view to consolidating the practice of not applying the death penalty in the Americas,

HAVE AGREED TO SIGN THE FOLLOWING PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS TO ABOLISH THE DEATH PENALTY

Article 1

The States Parties to this Protocol shall not apply the death penalty in their territory to any person subject to their jurisdiction.

Article 2

1. No reservations may be made to this Protocol. However, at the time of ratification or accession, the States Parties to this instrument may declare that they reserve the right to apply the death penalty in wartime in accordance with international law, for extremely serious crimes of a military nature.
2. The State Party making this reservation shall, upon ratification or accession, inform the Secretary General of the Organization of American States of the pertinent provisions of its national legislation applicable in wartime, as referred to in the preceding paragraph.
3. Said State Party shall notify the Secretary General of the Organization of American States of the beginning or end of any state of war in effect in its territory.

Article 3

1. This Protocol shall be open for signature and ratification or accession by any State Party to the American Convention on Human Rights.

2. Ratification of this Protocol or accession thereto shall be made through the deposit of an instrument of ratification or accession with the General Secretariat of the Organization of American States.

Article 4

This Protocol shall enter into force among the States that ratify or accede to it when they deposit their respective instruments of ratification or accession with the General Secretariat of the Organization of American States.

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INTER-AMERICAN DEMOCRATIC CHARTER (DECLARATION OF LIMA)

Adopted by the OAS General Assembly at its special session held in Lima, Peru, on September 11, 2001

Text: OAS Document OEA/SerP/AG/Res.1 (2001)

The General Assembly,

Considering that the Charter of the Organization of American States recognizes that representative democracy is indispensable for the stability, peace, and development of the region, and that one of the purposes of the OAS is to promote and consolidate representative democracy, with due respect for the principle of non-intervention;

Recognizing the contributions of the OAS and other regional and sub-regional mechanisms to the promotion and consolidation of democracy in the Americas;

Recalling that the Heads of State and Government of the Americas, gathered at the Third Summit of the Americas, held from April 20 to 22, 2001 in Quebec City, adopted a democracy clause which establishes that any unconstitutional alteration or interruption of the democratic order in a state of the Hemisphere constitutes an insurmountable obstacle to the participation of that state's government in the Summits of the Americas process;

Bearing in mind that existing democratic provisions in regional and subregional mechanisms express the same objectives as the democracy clause adopted by the Heads of State and Government in Quebec City;

Reaffirming that the participatory nature of democracy in our countries in different aspects of public life contributes to the consolidation of democratic values and to freedom and solidarity in the Hemisphere;

Considering that solidarity among and cooperation between American states require the political organization of those states based on the effective exercise of representative democracy, and that economic growth and social development based on justice and equity, and democracy are interdependent and mutually reinforcing;

Reaffirming that the fight against poverty, and especially the elimination of extreme poverty, is essential to the promotion and consolidation of democracy and constitutes a common and shared responsibility of the American states;

Bearing in mind that the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights contain the values and principles of liberty, equality, and social justice that are intrinsic to democracy;

Reaffirming that the promotion and protection of human rights is a basic pre-requisite for the existence of a democratic society, and recognizing the importance of the continuous development and strengthening of the inter-American human rights system for the consolidation of democracy;

Considering that education is an effective way to promote citizens' awareness concerning their own countries and thereby achieve meaningful participation in the decision-making process, and reaffirming the importance of human resource development for a sound democratic system;

Recognizing that a safe environment is essential to the integral development of the human being, which contributes to democracy and political stability;

Bearing in mind that the Protocol of San Salvador on Economic, Social, and Cultural Rights emphasizes the great importance of the reaffirmation, development, improvement, and protection of those rights in order to consolidate the system of representative democratic government;

Recognizing that the right of workers to associate themselves freely for the defence and promotion of their interests is fundamental to the fulfilment of democratic ideals;

Taking into account that, in the Santiago Commitment to Democracy and the Renewal of the Inter-American System, the ministers of foreign affairs expressed their determination to adopt a series of effective, timely, and expeditious procedures to ensure the promotion and defence of representative democracy, with due respect for the principle of non-intervention; and that resolution AG/RES. 1080 (XXI-O/91) therefore

established a mechanism for collective action in the case of a sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically-elected government in any of the Organization's Member States, thereby fulfilling a long-standing aspiration of the Hemisphere to be able to respond rapidly and collectively in defence of democracy;

Recalling that, in the Declaration of Nassau [AG/DEC. 1 (XXII-O/92)], it was agreed to develop mechanisms to provide assistance, when requested by a Member State, to promote, preserve, and strengthen representative democracy, in order to complement and give effect to the provisions of resolution AG/RES. 1080 (XXI-O/91);

Bearing in mind that, in the Declaration of Managua for the Promotion of Democracy and Development [AG/DEC. 4 (XXIII-O/93)], the Member States expressed their firm belief that democracy, peace, and development are inseparable and indivisible parts of a renewed and integral vision of solidarity in the Americas; and that the ability of the Organization to help preserve and strengthen democratic structures in the region will depend on the implementation of a strategy based on the interdependence and complementarity of those values;

Considering that, in the Declaration of Managua for the Promotion of Democracy and Development, the Member States expressed their conviction that the Organization's mission is not limited to the defence of democracy wherever its fundamental values and principles have collapsed, but also calls for ongoing and creative work to consolidate democracy as well as a continuing effort to prevent and anticipate the very causes of the problems that affect the democratic system of government;

Bearing in mind that the Ministers of Foreign Affairs of the Americas, at the thirty-first regular session of the General Assembly, held in San Jose, Costa Rica, in keeping with express instructions from the Heads of State and Government gathered at the Third Summit of the Americas, in Quebec City, accepted the base document of the Inter-American Democratic Charter and entrusted the Permanent Council of the Organization with strengthening and expanding the document, in accordance with the OAS Charter, for final adoption at a special session of the General Assembly in Lima, Peru;

Recognizing that all the rights and obligations of Member States under the OAS Charter represent the foundation on which democratic principles in the Hemisphere are built; and

Bearing in mind the progressive development of international law and the advisability of clarifying the provisions set forth in the OAS Charter and related basic instruments on the preservation and defence of democratic institutions, according to established practice,

Resolves

To adopt the following:

INTER-AMERICAN DEMOCRATIC CHARTER

I. Democracy and the Inter-American System

Article 1

The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.

Democracy is essential for the social, political, and economic development of the peoples of the Americas.

Article 2

The effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the Member States of the Organization of American States. Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order.

Article 3

Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.

Article 4

Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy.

The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy.

Article 5

The strengthening of political parties and other political organizations is a priority for democracy. Special attention will be paid to the problems associated with the high cost of election campaigns and the establishment of a balanced and transparent system for their financing.

Article 6

It is the right and responsibility of all citizens to participate in decisions relating to their own development. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy.

II. Democracy and human rights

Article 7

Democracy is indispensable for the effective exercise of fundamental freedoms and human rights in their universality, indivisibility and interdependence, embodied in the respective constitutions of states and in inter-American and international human rights instruments.

Article 8

Any person or group of persons who consider that their human rights have been violated may present claims or petitions to the inter-American system for the promotion and protection of human rights in accordance with its established procedures.

Member states reaffirm their intention to strengthen the inter-American system for the protection of human rights for the consolidation of democracy in the Hemisphere.

Article 9

The elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance, the promotion and protection of human rights of indigenous peoples and migrants, and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation.

Article 10

The promotion and strengthening of democracy requires the full and effective exercise of workers' rights and the application of core labour standards, as recognized in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, and its Follow-up, adopted in 1998, as well as other related fundamental ILO conventions. Democracy is strengthened by improving standards in the workplace and enhancing the quality of life for workers in the Hemisphere.

III. Democracy, integral development, and Combating poverty

Article 11

Democracy and social and economic development are interdependent and are mutually reinforcing.

Article 12

Poverty, illiteracy, and low levels of human development are factors that adversely affect the consolidation of democracy. The OAS Member States are committed to adopting and implementing all those actions required to generate productive employment, reduce poverty, and eradicate extreme poverty, taking into account the different economic realities and conditions of the countries of the Hemisphere. This shared commitment regarding the problems associated with development and poverty also underscores the importance of maintaining macroeconomic equilibria and the obligation to strengthen social cohesion and democracy.

Article 13

The promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy in the states of the Hemisphere.

Article 14

Member states agree to review periodically the actions adopted and carried out by the Organization to promote dialogue, cooperation for integral development, and the fight against poverty in the Hemisphere, and to take the appropriate measures to further these objectives.

Article 15

The exercise of democracy promotes the preservation and good stewardship of the environment. It is essential that the states of the Hemisphere implement policies and strategies to protect the environment, including application of various treaties and conventions, to achieve sustainable development for the benefit of future generations.

Article 16

Education is key to strengthening democratic institutions, promoting the development of human potential, and alleviating poverty and fostering greater understanding among our peoples. To achieve these ends, it is essential that a quality education be available to all, including girls and women, rural inhabitants, and minorities.

IV. Strengthening and preservation of democratic institutions

Article 17

When the government of a Member State considers that its democratic political institutional process or its legitimate exercise of power is at risk, it may request assistance from the Secretary General or the Permanent Council for the strengthening and preservation of its democratic system.

Article 18

When situations arise in a Member State that may affect the development of its democratic political institutional process or the legitimate exercise of power, the Secretary General or the Permanent Council may, with prior consent of the government concerned, arrange for visits or other actions in order to analyze the situation. The Secretary General will submit a report to the Permanent Council, which will undertake a collective assessment of the situation and, where necessary, may adopt decisions for the preservation of the democratic system and its strengthening.

Article 19

Based on the principles of the Charter of the OAS and subject to its norms, and in accordance with the democracy clause contained in the Declaration of Quebec City, an unconstitutional interruption of the democratic order or an unconstitutional alteration of the constitutional regime that seriously impairs the

democratic order in a Member State, constitutes, while it persists, an insurmountable obstacle to its government's participation in sessions of the General Assembly, the Meeting of Consultation, the Councils of the Organization, the specialized conferences, the commissions, working groups, and other bodies of the Organization.

Article 20

In the event of an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a Member State, any Member State or the Secretary General may request the immediate convocation of the Permanent Council to undertake a collective assessment of the situation and to take such decisions as it deems appropriate.

The Permanent Council, depending on the situation, may undertake the necessary diplomatic initiatives, including good offices, to foster the restoration of democracy.

If such diplomatic initiatives prove unsuccessful, or if the urgency of the situation so warrants, the Permanent Council shall immediately convene a special session of the General Assembly. The General Assembly will adopt the decisions it deems appropriate, including the undertaking of diplomatic initiatives, in accordance with the Charter of the Organization, international law, and the provisions of this Democratic Charter.

The necessary diplomatic initiatives, including good offices, to foster the restoration of democracy, will continue during the process.

Article 21

When the special session of the General Assembly determines that there has been an unconstitutional interruption of the democratic order of a Member State, and that diplomatic initiatives have failed, the special session shall take the decision to suspend said Member State from the exercise of its right to participate in the OAS by an affirmative vote of two thirds of the Member States in accordance with the Charter of the OAS. The suspension shall take effect immediately.

The suspended Member State shall continue to fulfil its obligations to the Organization, in particular its human rights obligations.

Notwithstanding the suspension of the Member State, the Organization will maintain diplomatic initiatives to restore democracy in that state.

Article 22

Once the situation that led to suspension has been resolved, any Member State or the Secretary General may propose to the General Assembly that suspension be lifted. This decision shall require the vote of two thirds of the Member States in accordance with the OAS Charter.

V. Democracy and electoral observation missions

Article 23

Member States are responsible for organizing, conducting, and ensuring free and fair electoral processes.

Member States, in the exercise of their sovereignty, may request that the Organization of American States provide advisory services or assistance for strengthening and developing their electoral institutions and processes, including sending preliminary missions for that purpose.

Article 24

The electoral observation missions shall be carried out at the request of the Member State concerned. To that end, the government of that state and the Secretary General shall enter into an agreement establishing the scope and coverage of the electoral observation mission in question. The Member State shall guarantee conditions of security, free access to information, and full cooperation with the electoral observation mission.

Electoral observation missions shall be carried out in accordance with the principles and norms of the OAS. The Organization shall ensure that these missions are effective and independent and shall provide them with the necessary resources for that purpose. They shall be conducted in an objective, impartial, and transparent manner and with the appropriate technical expertise.

Electoral observation missions shall present a report on their activities in a timely manner to the Permanent Council, through the General Secretariat.

Article 25

The electoral observation missions shall advise the Permanent Council, through the General Secretariat, if the necessary conditions for free and fair elections do not exist.

The Organization may, with the consent of the state concerned, send special missions with a view to creating or improving said conditions.

VI. PROMOTION OF A DEMOCRATIC CULTURE

Article 26

The OAS will continue to carry out programs and activities designed to promote democratic principles and practices and strengthen a democratic culture in the Hemisphere, bearing in mind that democracy is a way of life based on liberty and enhancement of economic, social, and cultural conditions for the peoples of the Americas. The OAS will consult and cooperate on an ongoing basis with Member States and take into account the contributions of civil society organizations working in those fields.

Article 27

The objectives of the programs and activities will be to promote good governance, sound administration, democratic values, and the strengthening of political institutions and civil society organizations. Special attention shall be given to the development of programs and activities for the education of children and youth as a means of ensuring the continuance of democratic values, including liberty and social justice.

Article 28

States shall promote the full and equal participation of women in the political structures of their countries as a fundamental element in the promotion and exercise of a democratic culture.

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ANDEAN CHARTER FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Adopted by the Presidents of Bolivia, Colombia, Ecuador, Peru and Venezuela at Guayaquil, Ecuador, on 26 July 2002

The Presidents of Bolivia, Colombia, Ecuador, Peru and Venezuela, meeting as the Andean Presidential Council and on behalf of the peoples of the Andean Community,

Drawing inspiration from the thought of The Liberator Simón Bolívar, who in his Address to the Constituent Congress of Bolivia proclaimed that it is the prime desire of all peoples to attain possession of their rights, exercise political virtues and facilitate to each person the acquisition of the luminous talents and enjoyment that belonging to the human race essentially entails;

Convinced that human rights are inherent to all human beings, who are all free and equal in dignity and rights;

Considering that the internal legal order of the States and International Law on Human Rights must protect human rights permanently and complementarily;

Committed to the respect and application of the Charter of the United Nations, the Charter of the Organization of American States, the American Convention on Human Rights – Pact of San José – the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights – Protocol of San Salvador – the Inter-American Democratic Charter and other international instruments on human rights to which the Andean nations are State Parties;

Engaged in the defence of the objectives and principles set forth in the Universal Declaration of Human Rights, the American Declaration on the Rights and Duties of Man and the United Nations Declaration on the Right to the Development;

Recognizing the contribution of the Andean Parliament and, in particular, the principles set forth in the Andean Social Charter adopted on September 30, 1994;

Committed to the development of the increasingly dynamic role played in today's world by the Andean Community, a conglomerate of peoples united by the conscience of a common past and geography and as a brotherhood in search of historical targets that affirm and project the roots and traditions characteristic of their identity;

Decided to consolidate and promote Andean unity based on the recognition of the diversity of their territories, peoples, ethnic groups and cultures, and with the firm belief that democracy, development and the respect of human rights and fundamental freedoms are interdependent and mutually reinforcing;

Bearing in mind the recommendations of the Andean Subregional Seminar "Democracy and Human Rights", held in Quito in August 2000, related to the drafting of an Andean Charter for the Promotion and Protection of Human Rights and cooperation to strengthen the observance of human rights in the Andean region;

Taking note of the valuable contributions derived from the consultation process carried out to prepare this Charter with Andean Community bodies – in particular those received from the Court of Justice of the Andean Community and the Andean Labour Council – and representatives of civil society in the five Andean countries;

Determined to contribute towards advancing world solidarity and respect for human diversity based on the promotion and protection of human rights, and to promote the political, economic and social development of their countries, having as a focus and ultimate goal the welfare of the human being;

In compliance with the mandates of the Act of Carabobo, of June 24, 2001 and of the Declaration of Machu Picchu on democracy, the rights of indigenous peoples and the fight against poverty, of July 29, 2001, through which the Presidents of the Andean countries entrusted the Andean Council of Ministers of Foreign Affairs the preparation of a draft Andean Charter for the Protection and Promotion of Human Rights containing the principles and substantive issues of community policy on the subject;

Decided to jointly proclaim the principles, objectives and commitments of the Andean Community regarding the promotion and protection of human rights;

Sign this

ANDEAN CHARTER FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

SECTION I

GENERAL PRINCIPLES

Article 1

The Member States of the Andean Community recognize that human rights are inherent to the nature and dignity of everyone.

Article 2

They recognize that all human rights must be enforceable and reaffirm their commitment to respect and command respect for human rights and the fundamental freedoms set forth in international instruments and in national legislations, and to adopt the necessary legal and administrative measures to prevent and investigate actions that may constitute violations of human rights, to ensure the effectiveness of constitutional and legal remedies, to try and punish those responsible for the violations and to grant full relief to the victims, according to law.

Article 3

They affirm the principle that all human rights and fundamental freedoms are universal, indivisible, interdependent and interconnected and that, consequently, the application, promotion and protection of civil and political rights as well as economic, social and cultural rights and the right to development must receive equal and decisive attention.

Article 4

Within the framework of respect for Human Rights, they reiterate the obligation and commitment of subregional states towards the preservation, protection and defence of democracy, as established among other instruments in the Riobamba Charter of Conduct, the Additional Protocol to the Cartagena Agreement "Commitment of the Andean Community to Democracy" and the Inter-American Democratic Charter.

Article 5

They reiterate the will of the Andean Community Member States to accept the decisions of the Inter-American Human Rights Court. Furthermore, to take a constructive attitude to favourably accept the decisions and recommendations of regional and global non-jurisdictional mechanisms, when applicable, pursuant to relevant human rights treaties and constitutional provisions.

Article 6

They ratify their commitment to promote conditions favourable to universal observance and strengthening of systems for the protection of human rights, through signature, ratification and/or accession to international human rights instruments, and harmonization between national legislations and international rules on the subject of human rights.

Article 7

They emphasize the need to promote the participation of civil society in the preparation and execution of Member States' national action plans and programs in favour of the observance of human rights.

Article 8

They declare that every person, whether a national or a foreigner, found within the territory of the Andean Community Member States is entitled to all human rights and fundamental freedoms set forth in International Law on Human Rights and in pertinent national legislation.

Article 9

They recognize the right of everyone to file accusations, complaints or petitions concerning violations of human rights and fundamental freedoms before judicial organs, Ombudsmen and/or pertinent administrative echelons, and to be heard under the terms provided for in national legislations; furthermore, they reaffirm their commitment to support judicial organs and Ombudsmen within the sphere of their jurisdiction.

SECTION II

DISCRIMINATION AND INTOLERANCE

Article 10

They reaffirm their decision to combat all forms of racism, discrimination, xenophobia and any kind of intolerance or exclusion against individuals or communities on account of race, colour, sex, age, language, religion, public opinion, nationality, sexual orientation, immigration status or any other condition, and, decide to promote national legislations that punish racial discrimination.

Article 11

They shall strengthen educational plans and programs on human rights in order to promote a social culture based on tolerance, the respect of differences and non-discrimination.

Article 12

They agree to undertake the necessary actions to ensure the protection of the human rights of minorities and to combat all acts of discrimination, exclusion or xenophobia directed against, and affecting, them.

SECTION III

DEMOCRACY AND HUMAN RIGHTS

Article 13

The Andean peoples have a right to democracy and their governments have the obligation to promote and defend it, in order to achieve full exercise of all civil and political rights, economic, social and cultural rights, and the right to development.

Article 14

They reiterate their commitment to the contents of the Inter-American Democratic Charter and of Resolution 2002/46 of the United Nations Commission on Human Rights on “New measures to promote and consolidate democracy”, especially regarding the essential elements of democracy: respect for human rights and fundamental freedoms, freedom of association, freedom of expression, of opinion, of access to and the exercise of power in accordance with the rule of law; the holding of periodic free, fair and impartial elections based on universal suffrage and secret balloting as an expression of the will of the population; a pluralistic system of political organizations and parties; the permanent, ethical and responsible participation of citizens in the political life of their countries; the separation and independence of powers; the transparency and accountability of public administration, and a free, independent and pluralistic press.

Article 15

They confirm their accession to the Commitment of the Andean Community to Democracy, signed in Porto in 1998, which is meant to become the Andean democratic clause.

Article 16

They commit themselves to uphold democratic order in the Andean region, convinced that the observance of democratic values ensures the interdependency and mutual reinforcement between democracy, development and the respect for human rights and fundamental freedoms.

Article 17

They reiterate their commitment to the Inter-American Democratic Charter (2001), affirm that the observance of democratic order is an indispensable guarantee for the effective exercise of human rights and fundamental freedoms and, consequently, undertake to adopt all possible measures to strengthen it.

Article 18

They recognize the right of every citizen, man or woman, of the Andean Community Member States to elect and participate in the elections of the Andean Parliament, which shall be held through free, direct and secret universal suffrage.

SECTION IV

CIVIL AND POLITICAL RIGHTS

Article 19

They reaffirm their commitment to respect and safeguard civil and political rights, in particular the right to life and personal integrity, as set forth in the Covenant on Civil and Political Rights and international instruments on the subject as well as constitutional norms of Member States.

Article 20

They shall promote and protect the freedom of thought and of opinion and expression, in particular free operation of the media without public political interference or meddling of private pressure groups; the access to electronic information media; and the access of individuals to information that public administration and private corporations might have on them, as prescribed by law.

Article 21

They shall protect the right of everyone to seek asylum, pursuant to national and regional regulations in effect, and to enjoy its benefits in the event it is granted.

Article 22

They renew the commitment of the Andean Community Member States to apply the provisions of the International Covenant on Civil and Political Rights and of the American Convention on Human Rights concerning the safeguarding of human rights during periods officially declared “state of emergency”, due to exceptional situations.

Article 23

They shall launch action plans with the participation of competent public entities and civil society, designed to prevent and eliminate, as well as investigate, try and punish, crimes against humanity, including the practice of torture and other cruel, inhuman or degrading treatment or punishment, the forced disappearance of persons and extrajudicial executions.

SECTION V

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 24

They reaffirm their commitment to comply with, and enforce compliance of, the rights and obligations set forth in the International Covenant on Economic, Social and Cultural Rights and, in particular, to take measures, either separately or through international assistance and cooperation, to the full extent of their resources, to progressively attain, through the appropriate means, the full exercise of the human rights recognized in the Covenant, including the right:

1. To have the opportunity to make a living through freely chosen or accepted work.

2. To enjoy just and satisfactory working conditions.
3. To form and join trade unions and to enjoy other labour rights.
4. To social security.
5. To protection and assistance for the family.
6. To an adequate standard of living for the individual and the families, including the rights to adequate food, clothing, and housing, and to the continued improvement of their living conditions.
7. To the highest attainable standard of physical and mental health.
8. To education.
9. To culture and to enjoy the benefits of scientific advances and intellectual production.

Article 25

They shall promote and protect the rights and guarantees of workers, in accordance with national legislations, International Law on Human Rights and labour standards issued by the International Labour Organization.

Article 26

They highlight the relevance of the provisions of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights – Protocol of San Salvador – for the exercise of these rights in the Andean region and reiterate their commitment to perform the provisions of the Protocol in conjunction with those of other international instruments on the subject, and of their national legislations.

Article 27

They endorse the drafting of an optional protocol to the International Covenant on Economic, Social and Cultural Rights to enable the Economic, Social and Cultural Rights Committee to receive individual or collective complaints for possible violations of any of the rights set forth in the Covenant.

SECTION VI

RIGHT TO DEVELOPMENT

Article 28

They undertake to comply and enforce compliance with the principles set forth in the Declaration on the Right to Development (1986) of the United Nations General Assembly and in the international instruments containing provisions on this matter.

Article 29

In order to promote the right to development in the Andean sphere, they shall give priority to the attention of the following issues:

1. Creation of favourable conditions and the design of national and regional development policies with the purpose of progressively improving the social welfare of the Andean population, on the basis of its active, free and significant participation in development, with a view to the equitable sharing of its benefits.
2. National action and regional cooperation to eliminate the obstacles to development and the fight against poverty, extreme poverty and inequity; the promotion of an international economic order that addresses individual rights and the needs, conditions and aspirations of Andean countries and their access to the benefits of the global society.
3. Promotion of subregional, regional and international cooperation so that the impacts of scientific and technological progress are directed at the economic and social development of the nations and the strengthening of international peace and security, pursuant to the principles of the Charter of the United Nations.
4. Concerted action of Andean countries, in cooperation with other countries and groups of countries, to counterbalance the effects of the volatility of financial markets, ensure free access of our goods and

services to international markets, and promote the elimination of dumping or subsidizing practices and policies and other hindrances to free trade.

5. Promotion of participation of the population in the decision-making process aimed at its sustainable human development.

6. Representation before international financial entities so that the design of structural adjustment policies and other measures related to foreign debt, takes into account their impact on the promotion and protection of human rights, in particular economic, social and cultural rights and the right to development, keeping in mind the conditions and social needs of the countries.

7. National and regional governance of Andean countries so that:

   (*a*) International financial bodies and debtor countries consider effective relief mechanisms for foreign debt servicing, when required by the situation of the country concerned; and

   (*b*) Creditor and debtor countries agree upon understandings to deal with the negative impacts that under given circumstances may arise from foreign debt servicing on the right to development.

8. Importance of conservation and protection of the environment and its appropriate use as a factor of sustainable development, particularly in relation to linking foreign debt and the environment.

SECTION VII

RIGHT TO A SAFE AND PROTECTED ENVIRONMENT

Article 30

They recognize the right of everyone and of societies to a safe and protected environment.

Article 31

They declare that the promotion and defence of the right to a safe and protected environment within the human rights regulatory framework requires taking into account the instruments of International Law on the environment, *inter alia*, the Convention on Biological Diversity, the Convention on Climate Change, the Convention to Combat Desertification, and in particular, the Regional Biodiversity Strategy for Countries in the Andean Tropics adopted by the Ministers of Foreign Affairs.

SECTION VIII

RIGHTS OF INDIGENOUS PEOPLES AND COMMUNITIES OF AFRICAN DESCENT

Article 32

They affirm that the Andean Community Member States are multiethnic and multicultural. The diversity of their societies is one of their cornerstones, wealth and basic characteristics; consequently, they reaffirm the right of all the peoples and communities in the Andean countries to the preservation and development of their own identities and the consolidation of each country's national unity based on the diversity of their societies.

Article 33

They particularly undertake to promote programs in favour of intercultural exchange, understood as the preservation and development of the ancestral identities of indigenous peoples and communities of African descent, through the fostering of social spaces for contact, dialog and interaction between such peoples and communities and the rest of societies in Andean countries, based on the reaffirmation and observance of their own identities and cultures.

Article 34

They shall adopt effective measures so that educational systems, in all their levels and modalities, reflect the values inherent to the cultural and ethnic diversity of Andean countries and incorporate into their programs

of study notions and practices that foster an attitude of respect for diversity and advance the purposes of intercultural exchange.

Article 35

They shall encourage educational systems to foster intercultural exchange through the development of specific programs for indigenous peoples – such as bilingual intercultural education – and promote the establishment of study programs on indigenous and Afro-descendant cultures.

Article 36

They reiterate their commitment to fulfil and enforce fulfilment of the rights and obligations set forth in international instruments aimed at the promotion and protection of human rights of indigenous peoples and of communities of African descent, in particular the Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries of the International Labour Organization.

Article 37

They recognize that indigenous peoples and communities of African descent, in addition to the human rights their members are entitled to as individual citizens, are also entitled as human groups of ancestral roots, to collective rights, the common exercise of which promotes their historical continuity, the preservation of their identity and their future development.

Article 38

They also recognize that indigenous peoples and communities of African descent, within the framework of national legislations and regulations on human rights, are entitled to maintain and develop their identities and customs in the cultural, spiritual, political, economic and legal spheres; to ownership and possession of the lands or territories they traditionally occupy; to not being displaced from them and to return to them in the event that they are; to preserve their own forms of social organization, exercise of authority and administration of justice; to develop and maintain their tangible and intangible cultural heritage; and to the protection of their ancestral collective knowledge and the exercise of their traditional practices.

Article 39

They further recognize the right of indigenous peoples and communities of African descent, within the framework of national constitutional order and legislations and international regulations on human rights, to preserve and promote their traditional practices for the conservation and sustainable use of biological diversity; to participate in the sustainable use, management and enjoyment of natural resources found within their lands or territories; to be consulted about decisions made concerning the exploitation of non-renewable natural resources found within their lands or territories and on any activity affecting the environment and their life styles; to share, whenever possible, the benefits derived from activities related to the management of natural resources within their lands and territories; to get equitable compensation for any damages sustained as a result of such activities; to be consulted and to participate in the drafting, application and evaluation of development plans concerning them; and to formulate their own sustainable development plans and take steps to obtain from the States resources for their funding and international assistance.

Article 40

They undertake to adopt the International Declaration on the Rights of Indigenous Peoples currently being drafted within the framework of the United Nations, and the Inter-American Declaration on the Rights of Indigenous Peoples, currently being drafted by the OAS, and express their support to the work of the Permanent Forum on Indigenous Issues of the United Nations Economic and Social Council.

Article 41

Recalling that the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, 2001) pointed out that indigenous peoples and communities of African descent have been the victims of discrimination, slavery and poverty, they express their commitment to design, promote and execute at the national, regional and international levels, strategies, programs and policies to promote an equitable social development and the full exercise of their human rights.

SECTION IX

RIGHTS OF GROUPS OBJECT OF SPECIAL PROTECTION

A. Rights of Women

Article 42

They reiterate their commitment to fulfil and enforce fulfilment of the rights and obligations set forth in the International Convention on the Elimination of all forms of Discrimination against Women (1981) and its Optional Protocol (1999), the Convention on the Political Rights of Women (1954) and other international and regional instruments on the subject.

Article 43

They shall address the following main themes with a view to improving the promotion and protection of the human rights of women in their respective jurisdictions and in the Andean sphere:

1. Protection of women against discrimination – in the public and private spheres – with a view to safeguarding their human rights and in particular their right to life, integrity and personal safety, personal freedom, political participation, work, health and the exercise of sexual and reproductive rights, social security, adequate housing, education, ownership and participation in the economic life of society, and the access to effective legal and administrative remedies for violation of their rights.
2. Adoption of programs to actively promote the participation of women in the public and private spheres of society, and the incorporation of the gender perspective in public policies and the promotion of this perspective in the private sector.
3. Actions to eradicate all forms of violence against women; to fight against impunity of those that commit it, in the public and private spheres; and to develop mechanisms to offer an effective compensation to the victims of gender-related violence.
4. Protection against sexual harassment and all forms of sexual and labour exploitation; slavery, trafficking of women and girls – particularly for sexual exploitation purposes – and the incitement and forcing to engage in prostitution, forced pregnancies and sterilization.
5. Actions against all forms of discrimination against women in connection with marriage, consensual unions and family relations, especially with regard to the rights of women during marriage, consensual unions and after their dissolution, and with respect to housework, child rearing, the exercise of sexual and reproductive rights and the community property system.

B. Rights of Children and Adolescents

Article 44

They reiterate their commitment to fulfil and enforce fulfilment of the rights and obligations set forth in the International Convention on the Rights of the Child (1989), its optional Protocols on the involvement of children in armed conflict (2000) and the sale of children, child prostitution and child pornography (2000), and other international instruments agreed to promote and protect the human rights of children and adolescents.

Article 45

They shall address the following main themes with a view to improving the promotion and protection of the human rights of children and adolescents in their respective jurisdictions and in the Andean sphere:

1. Attainment of equality of the rights of children and adolescents with respect to other members of society, in accordance with pertinent legislation, and the fight against all forms of discrimination against children on account of race, colour, sex, language, religion, political opinion, nationality, age, economic and social condition, their immigration status or that of their parents, and any other condition.
2. Effective realization of the higher interest of children set forth in the Convention on the Rights of the Child, in the legal and institutional spheres.

3. Protection of the rights of children and adolescents to an identity and to keep such identity in confidence in those cases contemplated by the legislation; to have a name and a nationality; to have a legal representative; to know, to the extent possible, the identity of their parents and to be taken care of by them; and to be heard on subjects that concern them.
4. Protection of the fundamental rights of children and adolescents deprived of liberty, in accordance with national and international regulations on the subject.
5. Protection against slavery, trafficking, illicit moving and holding of children and adolescents abroad; and against the illegal or arbitrary deprivation of their liberty.
6. Eradication of child work following the elimination of all forms of labour exploitation based on the agreements of the International Labour Organization and applicable national legislations.
7. Protection against all forms of exploitation, sexual abuse and violence, including domestic violence, to which children may be subject, and implementation of the provisions of the optional Protocol to the Convention on the Rights of the Child related to the sale of children, child prostitution and child pornography (2000).
8. Combating impunity of those who affect the rights of children, in public and private spheres; and the development of programs to offer effective compensation to the victims of exploitation and violence.
9. Prevention of, and punishment of those responsible for, the recruiting and involvement of children and adolescents in any armed conflict; respect for the minimum recruiting age of 18 years pursuant to the provisions of the optional Protocol to the Convention on the Rights of the Child related to the involvement of children in armed conflict (2000).
10. Adoption of a comprehensive social protection system aiming at addressing the economic, social and cultural rights of children and adolescents, the design and execution of which shall include the participation of civil society organizations involved in the promotion and protection of the rights of children.
11. The right of adolescents to receive adequate education and information for a responsible sexuality.

C. Rights of Older Adults

Article 46

They reiterate their commitment to fulfil and enforce fulfilment of the rights and obligations designed to promote and protect the human rights of older adults.

Article 47

They shall address the following main themes with a view to improving the promotion and protection of the human rights of older adults in their respective jurisdictions and in the Andean sphere:

1. Protection of older adults against all forms of discrimination and violence, including domestic violence.
2. Facilitation of opportune attention to older adults in public and private entities and services.
3. Participation of older adults and their organizations in decision-making on public issues concerning them.
4. Effective protection of the right of older adults to social security, particularly in connection with the rights and guarantees related to retirement.
5. Promotion of the participation and integration of older adults in society.

D. Rights of Persons with Disabilities

Article 48

They reiterate their commitment to fulfil and enforce fulfilment of the rights and obligations set forth in the United Nations Declaration on the Rights of Disabled Persons (1975); in international instruments designed to promote and protect the human rights of persons with disabilities, such as the Inter-American Convention in favour of Persons with Disabilities (1999); and in other declarations, resolutions and

agreements on social protection adopted within the framework of the United Nations, the International Labour Organization, the World Health Organization and the Pan American Health Organization.

Article 49

They shall address the following main themes with a view to improving the promotion and protection of the human rights of persons with disabilities in their respective jurisdictions and in the Andean sphere:

1. Protection against all forms of discrimination and violence against persons with disabilities.
2. Prevention of causes originating disabilities, through education, safety in the workplace and public information.
3. Realization of the right to social security and health of persons with disabilities.
4. Fostering of personal development through programs that address the particular needs of persons with disabilities.
5. Social integration of persons with disabilities through work, education and full participation in their respective national communities.
6. Facilitation of early assistance, medical treatment, rehabilitation, education, professional training and personal attention of persons with disabilities, with a view to their insertion in the working world under dignified and equitable conditions with respect to the rest of workers.
7. Information to the population on the rights of persons with disabilities in order to eliminate prejudice, stereotypes and discrimination, to which they are susceptible.
8. Drafting of architectural design programs in urban, rural and remote areas to enable better mobility and use of public spaces by disabled persons.

E. Rights of Migrants and Their Families

Article 50

They reiterate their commitment to fulfil and enforce fulfilment of the rights and obligations set forth in international instruments designed to promote and protect the human rights of migrants and their families; and affirm their intention to continue their efforts so that their national legislations enable the adoption of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), and shall give priority to examining the possibility of signing, ratifying or accessing to it.

Article 51

They shall address the following main themes with a view to improving the promotion and protection of the human rights of migrants and their families in their respective jurisdictions and in the Andean sphere:

1. Respect for the right to migrate, to work, to free transit and circulation of migrants and their families, and the freedom to choose a residence, in accordance with national legislations and Community regulations.
2. Prevention and elimination of discrimination against Andean migrants and their families in access to public education and health services, housing and lodging, social security and employment; and creation of information and assistance centres for migrants.
3. Provision of identity papers to migrants and their families, without discrimination on account of race, colour, sex, age, language, religion, nationality, political opinion, sexual orientation and immigration status.
4. Reunification of migrants and their families in the country of destination and regularization of their immigration status through the corresponding legal and administrative means.
5. Protection of the family members of migrants, especially children, adolescents and older adults, who continue living in their countries of origin and have become separated from their family members as a result of the migration.

6. Joint action of Andean Community countries to promote and protect the rights of migrants and their families before other countries and groups of countries, as well as in international and regional forums.

F. Rights of People with Different Sexual Orientation

Article 52

They recognize that all persons, regardless of their sexual orientation or preference, have equal human rights.

Article 53

They shall combat all forms of discrimination against individuals on account of their sexual orientation or preference, in accordance with national legislations, and to this end, shall pay special attention to the prevention and punishment of violence and discrimination against persons with different sexual orientation or preference, and to guarantee legal remedies for effective compensation for damages derived from such offenses.

G. Rights of Internally Displaced Persons

Article 54

They reiterate their commitment to fulfil and enforce fulfilment of relevant norms set forth in human rights instruments, International Humanitarian Law and International Law on Refugees designed to protect persons that are forced or compelled to leave their homes or their habitual place of residence, in particular to avoid the effects of armed conflict, situations of generalized violence, mass violations of human rights or natural or man-induced catastrophes, and who have not crossed over an internationally recognized state border.

Article 55

With a view to protecting the human rights of internally displaced persons in their respective jurisdictions and in the Andean sphere, they shall address the following priorities:

1. They shall monitor the application by public authorities of the United Nations “Guiding Principles on Internal Displacement” (1998), and promote their incorporation into the legislation of each country.
2. They shall guarantee the equality of rights between internally displaced persons and the rest of their countries’ population, and investigate, try and punish those that violate the rights and fundamental freedoms of displaced persons.
3. They shall provide protection and humanitarian aid to internally displaced persons and/or facilitate the delivery of humanitarian aid by international or non-governmental organizations, in accordance with applicable international and national regulations.
4. They shall endeavour to establish the conditions and provide the means for the voluntary return of internally displaced persons, in safety and dignity, to their habitual place of residence, or their voluntary resettlement in other parts of the country.

H. Rights of Persons Deprived of Liberty

Article 56

They reiterate their commitment to fulfil and enforce fulfilment of the rights and obligations set forth in international instruments with respect to persons deprived of liberty.

Article 57

They shall address the following main themes, with a view to safeguarding the human rights of persons deprived of their liberty:

1. Implementation of programs designed to significantly improve living conditions in detention and penitentiary centres in each Member State, so that they conform to United Nations principles and regulations applicable to persons subject to any form of imprisonment or detention, in particular with regard to physical separation between indicted and convicted prisoners.

2. Adoption of measures aimed at avoiding violations of the human rights of detainees, *inter alia*, education and training of penitentiary personnel on the subject, and investigation, trial and punishment of those that commit such violations.
3. Creation of programs on rehabilitation and social reinsertion of persons deprived of their liberty, attached to penitentiary centres, and consideration of establishing in their legislations sentences alternative to confinement, such as the provision of community work and services.
4. Application of the principle of procedural celerity as a priority in the administration of justice, and trial and sentencing respecting the terms established in national legislations.

I. Human Rights and the Rights of Refugees and Stateless Persons

Article 58

They reiterate their commitment to fulfil and enforce fulfilment of the rights and obligations set forth in international instruments designed to promote and protect the rights of refugees and stateless persons, to which Andean Community Member States are a Party, in accordance with national legislations.

Article 59

They shall address the following main themes, with a view to improving the promotion and protection of the human rights of refugees and stateless persons:

1. Protection of refugees and stateless persons against all forms of discrimination and violence on account of their race, colour, sex, language, religion, political opinion, nationality, sexual orientation, immigration status, age or any other condition.
2. Access to education, social and health services, housing and work, and the right to free circulation, freedom of expression and religion and to the provision of proper documentation without any distinction whatsoever in the receiving country.
3. Effective enjoyment of their rights, in accordance with national legislations, in particular the right to life, security, ownership, to rely on effective remedies in front of the violation of their rights, respect of the standards of due process before the courts of the receiving country, to not being expelled – save in accordance with the law, but never to the country where their lives, security or liberty are threatened.

SECTION X

OTHER SPHERES OF PROTECTION OF HUMAN RIGHTS

Article 60

They recognize that the development of International Law on Human Rights leads to the consideration of other subjects related to the promotion and protection of such rights, and that Andean Community Member States should encourage this legal dynamic in the national and international spheres and work jointly to advance the regulatory development of human rights.

SECTION XI

HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

Article 61

They reaffirm their strong support for the rules of International Humanitarian Law set forth, *inter alia*, in the Geneva Conventions of 1949 and their 1977 Additional Protocols; reiterate their belief that these are the applicable international instruments to ensure a better protection of victims of international and non-international armed conflicts, and particularly of the civil population. They urge the parties in international and non-international armed conflicts to abide by the applicable rules of international humanitarian law.

Article 62

Within the context of legal development of International Law on Human Rights, they recognize the importance of its connection with International Humanitarian Law, in that the latter may be an instrument for its interpretation; and endorse the rules set forth in international conventions on these matters.

SECTION XII

HUMAN RIGHTS PROMOTION AND PROTECTION MECHANISMS

Article 63

They declare that the Andean Charter for the Promotion and Protection of Human Rights is the first comprehensive manifestation of the Andean Community on the subject of human rights in the Community sphere, and that it complements national, international and universal regulations thereon. Any program prepared within the framework of the provisions set forth in the Charter shall be coordinated with national activities, or those performed through international cooperation by Member States in the Andean region.

NATIONAL MECHANISMS

A. Administration of Justice

Article 64

For the promotion and protection of human rights in general, and the right to due process in particular, they shall encourage Andean Community Member States to rely on the efficient, independent, impartial and autonomous administration of justice.

Article 65

They shall endorse directly and, as appropriate, in coordination with each nation's Judicial Service, the execution of programs designed to improve their justice administration systems, so as to, *inter alia*, promote the efficiency and transparency of legal procedures; combat acts of judicial corruption, unjustified delays in the administration of justice and abuse of preventive imprisonment; and offer solutions to the situation of non-convicted prisoners.

Article 66

They highlight the important role of the Administration of Justice in each Andean Community Member State for the protection of human rights through the application of national laws and international instruments.

Article 67

They support, in accordance with national legislations, the independent and autonomous performance of the Administration of Justice to investigate, try and punish those responsible for violations of human rights and to order the compensation of damages to victims of such violations.

Article 68

They decide to promote legislative initiatives in order to harmonize national legislation with international regulations on human rights and to offer legal remedies at the national level for the protection of such rights.

Article 69

They recognize the right of every person to resort to international mechanisms for the protection of human rights, respecting the subsidiary nature of such mechanisms.

B. Ombudsmen's Offices

Article 70

They recognize the role of Ombudsmen's Offices as institutional guarantees for the protection of human rights, and commit themselves to respect the constitutive statutes and legal prerogatives of Ombudsmen's Offices.

Article 71

They recommend the exchange of information and experiences among Andean Community Ombudsmen's Offices, in order to foster more effective management and coordination of their offices.

Article 72

They invite Ombudsmen's Offices to promote mechanisms that enable the realization of the right of the people to information on the activities of public institutions, in accordance to legal provisions and with the participation of organized civil society.

C. Advocates of Human Rights

Article 73

They reiterate the commitment of Andean Community Member States to the protection of the human rights of human rights advocates and the legitimacy of their work, in accordance with the provisions of the "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" (1999), and their will to cooperate with civil society in the promotion and protection of human rights within each country and at the regional level.

Article 74

They declare their commitment to respect the autonomy and independence of human rights advocates, to facilitate access to information they are legally entitled to, to provide full protection for the performance of their activities when required, and to firmly and effectively investigate, try and punish all acts that threaten the fundamental freedoms and guarantees that protect human rights advocates and their organizations.

D. Human Rights Plans and Programs

Article 75

They welcome the recommendation of the World Conference on Human Rights, held in Vienna (1993), and of other international meetings and forums, that each country should have a National Human Rights Plan.

Article 76

They declare their commitment to encourage the participation of the people and of organizations of human rights advocates in the drafting, implementation and follow-up of National Human Rights Plans, and to make their reports on the implementation of such National Plans known to public monitoring institutions, civil society and the Andean Community Member States, through the General Secretariat.

Article 77

They encourage steps by Member States to obtain bilateral cooperation and the cooperation of multilateral bodies related to human rights, among them, the United Nations Office of the High Commissioner for Human Rights, in order to prepare national plans and programs on human rights or update existing ones.

E. Human Rights and Law Enforcement Agencies

Article 78

They affirm that the full observance of human rights requires the necessary action of law enforcement agencies to ensure that citizen security and public order are implemented under the principle of legality and respect for human rights.

Article 79

They shall establish cooperation channels among national law enforcement agencies of Member countries, in order to develop activities aimed at the promotion of human rights values in such institutions and the training of their personnel in due respect for the principle of legality, and, in the event of internal conflicts, in the rules of international humanitarian law.

INTERNATIONAL MECHANISMS

A. Cooperation with Human Rights Treaty Monitoring Bodies

Article 80

They reaffirm their will to submit in due time the periodic reports that Andean Community Member Countries must present to bodies monitoring the implementation international human rights treaties. Participation of civil society in the report preparation and follow-up process shall be encouraged.

Article 81

They shall evaluate and, wherever pertinent, give consideration to the final observations of international human rights treaty monitoring bodies following examination of periodic reports of Member countries, and shall give periodic reports and final observations the widest possible dissemination.

B. Cooperation with the United Nations and Inter-American Systems for the Promotion and Protection of Human Rights

Article 82

They shall cooperate actively with the United Nations and Inter-American systems for the protection and promotion of human rights, and foster cooperation between both systems.

Article 83

They highlight the importance of the recommendations of the Inter-American Commission on Human Rights and reiterate their commitment to comply with the decisions and resolutions of the Inter-American Court of Human Rights.

C. International Criminal Court

Article 84

In view of its significance for International Law on Human Rights, they highlight the entry into force of the Rome Statute that creates the International Criminal Court, which, bearing in mind its supplementary and subsidiary nature with respect to national jurisdictions, shall contribute towards the fight against impunity of those responsible for genocide, crimes against humanity, war crimes and aggression.

Article 85

They undertake to consider, fifty-three and promptly, the ratification of the Statute of the International Criminal Court, for which they shall adjust their national legislations.

SECTION XIII

FOLLOW-UP OF THE ANDEAN CHARTER FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Article 86

They agree to promote the principles and objectives of the Andean Charter for the Promotion and Protection of Human Rights through the mechanisms mentioned in this section, without prejudice to the future incorporation of other follow-up ways and means through the pertinent Community channels.

Article 87

The Andean Council of Ministers of Foreign Affairs shall be the top community body in charge of the follow-up of subregional initiatives provided for in the Charter.

Article 88

The General Secretariat of the Andean Community shall provide the assistance required by the Andean Council of Ministers of Foreign Affairs to enable compliance with the provisions of the preceding Article.

Article 89

The Andean Council of Ministers of Foreign Affairs shall agree with the Andean Parliament on consultation mechanisms related to the contribution of this body to the implementation and follow-up of the Andean Charter for the Promotion and Protection of Human Rights.

Article 90

They invite the Ombudsmen from Andean Community Member States to follow-up and monitor the application of Andean Charter provisions that concern their powers and to meet in order to agree on the opinions and recommendations that they shall present to the Andean Council of Ministers of Foreign Affairs on the subject, through the General Secretariat.

Article 91

They invite civil society in Andean countries, and in particular human rights advocacy organizations, to take part in follow-up activities of the Andean Charter for the Promotion and Protection of Human Rights, in coordination with the General Secretariat and the Ministers of Foreign Affairs of Member States.

Article 92

For the follow-up of the Andean Charter for the Promotion and Protection of Human Rights and in addition to the activities set forth therein, the Andean Community countries shall organize regional programs to disseminate the principles of the Andean Charter, foster an Andean culture of respect for human rights, in particular the rights of individuals and groups of individuals requiring special protection, and to encourage the development of International Law on Human Rights in new spheres, as provided for in SECTION X of the Andean Charter.

Article 93

They recommend that National Human Rights Plans and other programs established for the protection of human rights take into consideration the contents and provisions of the Andean Charter for the Promotion and Protection of Human Rights, and that they coordinate, as possible, national activities with those derived from the application and follow-up of the Andean Charter.

SECTION XIV

GENERAL PROVISIONS

Article 94

Nothing in the provisions of this Charter may be construed to limit the enjoyment and exercise of any right or freedom that may be recognized in accordance with the laws of any of the Member States or with international human rights instruments in effect in them.

Article 95

They agree to adopt the Andean Charter for the Promotion and Protection of Human Rights in the Spanish language and to translate it into the main ancestral languages of indigenous peoples in the Andean countries.

SECTION XV

FINAL PROVISION

Article 96

They instruct their Ministers of Foreign Affairs, given the dynamics of the evolution of International Law on Human Rights, to review every four years the contents of this Charter to the effect of updating and improving it.

The Andean Council of Ministers of Foreign Affairs shall decide in due time upon the binding nature of this Charter.

DONE and signed in Guayaquil, on the twenty-sixth day of July, two thousand and two.

JORGE QUIROGA RAMIREZ President of the Republic of Bolivia

ANDRES PASTRANA ARANGO President of the Republic of Colombia

GUSTAVO NOBOA BEJARANO President of the Republic of Ecuador

ALEJANDRO TOLEDO MANRIQUE President of the Republic of Peru

HUGO CHAVEZ FRIAS President of the Bolivarian Republic of Venezuela

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INTER-AMERICAN CONVENTION ON CONFLICT OF LAWS CONCERNING THE ADOPTION OF MINORS

Adopted on 24 May 1984

Entry into force: 26 May 1988, in accordance with Article 26
Text: OAS, *Treaty Series*, No. 62

The Governments of the Member States of the Organization of American States, desirous of concluding a convention on conflict of laws concerning the adoption of minors, have agreed as follows:

Article 1

This Convention shall apply to the adoption of minors in the form of full adoption, adoptive legitimation and other similar institutions that confer on the adoptee a legally established filiation, when the domicile of the adopter (or of the adopters) is in one State Party and the habitual residence of the adoptee is in another State Party.

Article 2

When signing, ratifying or acceding to this Convention, any State Party may declare that it applies to any other form of international adoption of minors.

Article 3

The law of the habitual residence of the minor shall govern capacity, consent, and other requirements for adoption, as well as those procedures and formalities that are necessary for creating the relationship.

Article 4

The law of the domicile of the adopter (or adopters) shall govern:

1. The capacity to be an adopter;
2. The age and marital status requirement to be met by an adopter;
3. The consent of an adopter's spouse, if required, and
4. The other requirements for being an adopter.

If, however, the requirements of the law of the adopter (or adopters) are manifestly less strict than those of the law of the adoptees habitual residence, the law of the adoptee shall govern.

Article 5

Adoptions that are in conformity with this Convention shall produce their effects unconditionally in the States Parties, and the exception of the unknown institution may not be invoked.

Article 6

The requirements of publication and registration of adoption shall be subject to the law of the State in which they are to be satisfied.

The particular features and type of adoption shall be stated in the registration.

Article 7

Where called for, the secrecy of the adoption shall be guaranteed. However, whenever possible, medical background information on the minor and on the birth parents, if it is known, shall be communicated to the legally appropriate person, without mention of their names or of other data whereby they may be identified.

Article 8

In adoptions governed by this Convention, the authorities granting the adoption may require the adopter (or adopters) to provide evidence of his physical, moral, psychological and economic capacity, through public

or private institutions, the specific purpose is to protect minors. These institutions must be specifically authorized by some State or by some international organization.

The institutions that certify the capacity referred to above shall undertake to report to the authority granting the adoption on the conditions under which the adoption has developed over a period of one year. To this end, the authority granting the adoption shall inform the certifying institution that the adoption has been granted.

Article 9

In case of full adoption, adoptive legitimation, and similar institutions:

1. The relations between the adopter (or adopters) and the adoptee, including support relations, and the relations between the adoptee and the family of the adopter (or adopters), shall be governed by the same law as would govern the relations between the adopter (or adopters) and his legitimate family.
2. Ties between the adoptee and his family of origin shall be considered dissolved. However, impediments to marriage shall continue.

Article 10

In the case of adoptions other than full adoption, adoptive legitimation, and similar institutions, relations between the adopter (or adopters) and the adoptee shall be governed by the law of the domicile of the adopter (or adopters).

The relations between the adoptee and his family of origin shall be governed by the law of his habitual residence at the time of adoption.

Article 11

The rights of succession of the adoptee or the adopter (or adopters) shall be governed by the rules applicable to the respective successions.

In case of full adoption, adoptive legitimation, and similar institutions, the adoptee, and the adopter (or adopters) and the family thereof, shall have the same rights of succession as those of legitimate family members.

Article 12

Adoptions referred to in Article 1 are irrevocable. Revocation of adoptions referred to in Article 2 shall be governed by the law of the habitual residence of the adoptee at the time of adoption.

Article 13

Where it is permitted, conversion of simple adoption into full adoption, adoptive legitimation, or similar institutions shall be governed, at the choice of the petitioner, by the law of the habitual residence of the adoptee at the time of the adoption, or by that of the State in which the adopter (or adopters) has his domicile at the time the conversion is requested.

If the adoptee is more than 14 years of age, his consent shall be required.

Article 14

Annulment of the adoption shall be governed by the law under which it was granted. An annulment shall be decreed only by judicial authorities, and the interests of the minor shall be protected in accordance with Article 19 of this Convention.

Article 15

The authorities of the State of the habitual residence of the adoptee shall be competent to grant the adoptions referred to in this Convention.

Article 16

The judges of the State where the adoptee was habitually resident at the time the adoption was granted shall be competent to decide on annulment or revocation of the adoption.

The authorities of the State of habitual residence of the adoptee at the time of the adoption; those of the State of domicile of the adopter (or adopters); or those of the State of domicile of the adoptee, if he has a domicile of his own at the time the conversion is requested, shall be competent, at the option of the petitioner, to decide on the conversion, where it is permitted, of simple adoption into full adoption, adoptive legitimation, or similar institutions.

Article 17

The judges of the State of the domicile of the adopter (or adopters) shall be competent to rule on matters concerning the relations between the adoptee and the adopter (or adopters) and the family thereof until the adoptee has a domicile of his own.

As soon as the adoptee has his own domicile, the judge of the domicile of the adoptee or that of the adopter (or adopters) shall, at the option of the petitioner, have jurisdiction.

Article 18

The authorities of a State Party may refuse to apply the law declared applicable under this Convention when the law is manifestly contrary to its public policy (*ordre public*).

Article 19

The terms of this Convention and the laws applicable under it shall be interpreted consistently and in favour of the validity of the adoption and the best interests of the adoptee.

Article 20

A State Party may at any time declare that this Convention applies to adoptions of minors habitually resident in it by persons also habitually resident in it when, in the opinion of the authority concerned, the circumstances of a given case indicate that the adopter (or adopters) plans to establish his domicile in another State Party after the adoption has been granted.

Article 21

This Convention shall be open for signature by the Member States of the Organization of American States.

Article 22

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 23

This Convention shall remain open for accession by any other State. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 24

Each State may, at the time of signature, ratification or accession, make reservations to this Convention, provided that each reservation concerns one or more specific provisions.

Article 25

Adoptions granted according to domestic law when the adoptee and the adopter (or adopters) have their domicile or habitual residence in the same State Party shall produce their effects unconditionally in the other States Parties, without prejudice to their being governed by the law of the new domicile of the adopter (or adopters).

Article 26

This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 27

If a State Party has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or to only one or more of them.

Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective thirty days after the date of their receipt.

Article 28

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in effect for the denouncing State, but shall remain in effect for the other States Parties.

Article 29

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall forward an authenticated copy of its text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of its Charter. The General Secretariat of the Organization of American States shall notify the Member States of that Organization and the States that have acceded to the Convention of the signatures, deposits of instruments of ratification, accession and denunciation as well as of reservations, if any. It shall also transmit the declarations provided for in Articles 2, 20, and 27 of this Convention.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE AT LA PAZ, Republic of Bolivia, this twenty-fourth day of May, one thousand nine hundred and eighty-four.

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INTER-AMERICAN CONVENTION ON THE INTERNATIONAL RETURN OF CHILDREN

Adopted on 15 July 1989 at the Fourth Inter-American Specialized Conference on Private International Law (CIDIP-IV)

Entry into force: 4 November 1994, in accordance with Article 36
Text: OAS, *Treaty Series*, No. 70

Article 1

The purpose of this Convention is to secure the prompt return of children habitually resident in one State Party who have been wrongfully removed from any State to a State Party or who, having been lawfully removed, have been wrongfully retained. This Convention further seeks to secure enforcement of visitation and custody rights of parties entitled to them.

Article 2

For the purposes of this Convention, a child shall be any person below the age of sixteen years.

Article 3

For the purposes of this Convention:

(*a*) Rights of custody include rights relating to the care of the child and, in particular, the right to determine the child's place of residence;

(*b*) Rights of visitation include the right to take a child for a limited period of time to a place other than the child's habitual residence.

Article 4

The removal or retention of a child shall be considered wrongful whenever it is in breach of the custody rights that parents, institutions or others having such rights individually or jointly exercise over the child under the law of the child's habitual residence immediately prior to the removal or retention.

Article 5

Any party designated by Article 4 may, in the exercise of custody or similar rights, bring an action for the child's return.

Article 6

Judicial or administrative authorities of the State Party in which the child habitually resided immediately before the removal or retention shall have jurisdiction to consider a petition for the child's return.

In urgent cases, the applicant may choose, instead, to file a request for the child's return directly with authorities of the State Party in whose territory the wrongfully removed or retained child is or is thought to be when the request is made, or with the authorities of the State Party in which the wrongful act giving rise to the request took place.

Making a request in the manner described in the preceding paragraph shall in no way alter the jurisdiction authorized by the first paragraph of this article.

THE CENTRAL AUTHORITY

Article 7

For the purposes of this Convention, each State Party shall designate a central authority to ensure fulfilment of the obligations established under this Convention and shall inform the General Secretariat of the Organization of American States of that designation.

Specifically the Central Authority shall assist the applicant and competent authorities of the respective States in locating and returning the child. It shall also facilitate the prompt return and delivery of the child to the applicant and assist the parties in obtaining the necessary documents for proceedings under this Convention.

The Central Authorities of the States Parties shall cooperate with one another and exchange information on the operation of the Convention in order to secure the prompt return of children and to achieve the other purposes of this Convention.

RETURN PROCEEDINGS

Article 8

A party seeking a child's return may file an application or petition with the competent authorities in accordance with Article 6:

(*a*) By a letter rogatory;

(*b*) By filing a request with a central authority; or

(*c*) Directly, or through diplomatic or consular channels.

Article 9

1. The application or petition referred to in Article 8 shall contain:

   (*a*) An account of the removal or retention and sufficient information to identify the applicant, the removed or retained child and, where possible, the person alleged to have removed or retained the child;

   (*b*) Information on the presumed location of the child and on the circumstances and dates of the removal to a foreign country or of the expiration of the authorized length of stay; and

   (*c*) The legal grounds for the child's return.

2. The application or petition shall be accompanied by:

   (*a*) A full and certified copy of a judicial or administrative opinion, if any, or of a determination on which the request is based; concise evidence of the existing situation or, if appropriate, a statement of the pertinent applicable law;

   (*b*) Certified documents establishing the standing of the applicant;

   (*c*) Certification of or information on the applicable law of the State of the child's habitual residence issued by the Central Authority of, or by any other competent source in, that State;

   (*d*) Where necessary, translations into the official language of the requested State of all documents referred to in this article; and

   (*e*) A statement of the measures required to effect the return of the child.

3. A competent authority may dispense with any of the requirements on the presentation of documents called for by this article if, in its opinion, the child's return is justified.

4. Letters rogatory or requests, and the documents attached thereto, shall not require certification if they are transmitted through diplomatic or consular channels or through the Central Authority.

Article 10

The requested court, Central Authority, or other competent authorities of the State where the child is found shall, where appropriate, take all measures conducive to the voluntary return of the child.

Should a voluntary return not take place, the judicial, or administrative authorities, after verifying compliance with Article 9, shall forthwith meet with the child and take such measures to provide for its temporary custody or care as the circumstances may dictate, and shal1, where appropriate, immediately order its return. Further, the agency charged by domestic law with protecting the child's welfare shall be notified.

In addition, while the application for return is pending, the competent authorities shall take the necessary steps to prevent the child from leaving their jurisdiction.

Article 11

A judicial or administrative authority of the requested State is not required to order the child's return if the party raising objections to the return establishes that:

(*a*) The party seeking the child's return was not actually exercising its rights at the time of the removal or retention, or had consented to or subsequently acquiesced in such removal or retention; or

(*b*) There is a grave risk that the child's return would expose the child to physical or psychological danger.

The requested authority may also refuse to order the child's return if it finds that the child is opposed to it and if, in the judgment of the requested authority, the child's age and maturity warrant taking its views into account.

Article 12

The objections mentioned in Article 11 shall be raised within a period of eight working days from the time the authorities meet with the child and bring such period to the attention of the person retaining the child.

The judicial or administrative authorities shall assess the circumstances and the evidence furnished by the opposing party to support its objections to the child's return, shall ascertain the applicable law and judicial or administrative precedents of the State of the child's habitual residence, and, if necessary, shall request assistance from Central Authorities, diplomatic agents or consular officers of the States Parties.

The judicial or administrative authority shall issue its decision within sixty calendar days after receipt of the objection.

Article 13

If within forty-five calendar days after the requesting authority has received notice of a decision to return the child, the steps necessary for the child's return have not been taken, the return order shall become inoperative and any measures taken shall be lifted.

Costs of the return shall be borne by the claimant; should the claimant lack the means, the authorities of a requesting State may defray the costs, which may be recovered from the person responsible for the wrongful removal or retention.

Article 14

Proceedings under this Convention shall be commenced within one calendar year of the wrongful removal or retention.

As to children whose location is unknown, the period shall run from the time they are located.

Nevertheless, expiration of the one-year period shall not bar the child's return if, in the opinion of the requested authority, the circumstances so warrant, unless it is demonstrated that the child is settled in its new environment.

Article 15

The fact of a child's return shall not prejudge the ultimate custody decision.

Article 16

After receiving notice of a child's wrongful removal or retention as defined in Article 4, the judicial or administrative authorities of the State Party to which the child has been removed or where it is retained shall refrain from deciding on the merits of custody claims until it is determined either that the child is not to be returned under this Convention or that no request pursuant to this Convention has been lodged within a reasonable time following receipt of such notice.

Article 17

The foregoing provisions shall not limit the power of a judicial or administrative authority to order the child's return at any time.

LOCATING MINORS

Article 18

Any person mentioned in Article 5 may directly, through the Central Authority, or through the judicial or administrative authorities of one State Party request the competent authorities of another State Party to locate children whose habitual residence is in the State of the requesting authority and who are thought to be wrongfully in the requested State.

The request shall be accompanied by any information supplied by the person making the request or gathered by the requesting authority relevant to the locating of the child and the identity of the person with whom the child is presumed to be.

Article 19

The Central Authority or judicial or administrative authorities of one State Party which, upon learning from a request pursuant to Article 18 that a child wrongfully outside its habitual residence is located within their jurisdiction, shall immediately take all appropriate measures to safeguard its health and prevent its concealment or removal to another jurisdiction.

The location of the child shall be reported to the authorities of the requesting State.

Article 20

The measures adopted pursuant to Article 19 may be lifted if the child's return is not requested within sixty calendar days after the authorities of the requesting State have been informed of the location of the child.

A lifting of such measures shall not preclude exercise of the right to request the child's return in accordance with the procedures and time limits specified in this Convention.

VISITATION RIGHTS

Article 21

Any person with visitation rights may, pursuant to Article 6, address a request for their enforcement to the competent authorities of any State Party. The same procedures shall be followed as those governing a request for a child's return under this Convention.

GENERAL PROVISIONS

Article 22

Letters rogatory and requests for the return or the locating of children may be transmitted, as appropriate, to the requested authority by the parties themselves, or through judicial, diplomatic, or consular channels, or through the Central Authority of the requesting or the requested State.

Article 23

The processing of letters rogatory or requests under this Convention and the measures arising therefrom shall be free of charge and exempt from any tax, deposit or bond, however named.

The parties initiating a letter rogatory or request that have appointed a person to represent them in the requested forum shall bear any expenses incurred in connection with such representation.

Nevertheless, upon ordering a child's return under this Convention, the competent authorities may, where appropriate, direct the person who wrongfully removed or retained the child to pay the necessary expenses incurred by the applicant, those incurred in locating the minor, and the costs of return.

Article 24

The arrangements and measures necessary to give effect to letters rogatory shall not require the intervention of the petitioner, and shall be implemented directly by the requested authority. This procedure, however, shall not bar any party from intervening either personally or through a duly appointed representative.

Article 25

A child's return under this Convention may be refused where it would be manifestly in violation of the fundamental principles of the requested State recognized by universal and regional instruments on human rights or on the rights of children.

Article 26

This Convention shall not bar the competent authorities from ordering the child's immediate return when its removal or retention is a criminal offense.

Article 27

As a Specialized Organization of the Organization of American States, the Inter-American Children's Institute shall be responsible for coordinating the activities of the Central Authorities within the scope of the Convention and for receiving and evaluating information from the States Parties in respect of application of the Convention.

It shall also be responsible for cooperating with other international organizations competent in the matter.

FINAL PROVISIONS

Article 28

This Convention shall be open for signature by the Member States of the Organization of American States.

Article 29

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 30

This Convention shall remain open for accession by any other State. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 31

Each State may, at the time of signature, ratification or accession, make reservations to this Convention, provided that each reservation concerns one or more specific provisions and is not incompatible with the purposes and objectives of this Convention.

Article 32

If a State has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or to only one or more of them.

Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective thirty days after the date of their receipt.

Article 33

In the case of a State that, with respect to the custody of children, has two or more systems of law applicable in different territorial units:

(*a*) Any reference to the habitual residence in that State refers to habitual residence in a territorial unit of that State;

(*b*) Any reference to the law of the State of habitual residence refers to the law of the territorial unit in which the child has its habitual residence.

Article 34

Among the Member States of the Organization of American States that are parties to this Convention and to the Hague Convention of October 25, 1980 on the civil aspects of international child abduction, this Convention shall prevail.

However, States Parties may enter into bilateral agreements to give priority to the application of the Hague Convention.

Article 35

This Convention shall limit neither the provisions of existing or future bilateral or multilateral conventions on this subject entered into by the States Parties, nor the more favourable practices that those States may observe in this area.

Article 36

This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification.

For each State ratifying; or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 37

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in force for the denouncing State, but shall remain in force for the other States Parties.

Article 38

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall forward an authenticated copy of its text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of its Charter. The General Secretariat of the Organization of American States shall notify the Member States of that Organization and the States that have acceded to the Convention of the signatures, deposits of instruments of ratification, accession and denunciation, as well as of reservations, if any. It shall also transmit the declarations provided for in the pertinent articles of this Convention.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE AT MONTEVIDEO, EASTERN REPUBLIC OF URUGUAY, this fifteenth day of July, one thousand nine hundred and eighty-nine.

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INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST WOMEN (CONVENTION OF BELÉM DO PARÁ)

Adopted on 9 June 1994 at the twenty-fourth regular session of the OAS General Assembly

Entry into force: 5 March 1995, in accordance with Article 26
Text: 33 International Legal Materials 1534 (1994)

The States Parties to this Convention,

Recognizing that full respect for human rights has been enshrined in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights, and reaffirmed in other international and regional instruments;

Affirming that violence against women constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms;

Concerned that violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men;

Recalling the Declaration on the Elimination of Violence against Women, adopted by the Twenty-fifth Assembly of Delegates of the Inter-American Commission of Women, and affirming that violence against women pervades every sector of society regardless of class, race or ethnic group, income, culture, level of education, age or religion and strikes at its very foundations;

Convinced that the elimination of violence against women is essential for their individual and social development and their full and equal participation in all walks of life; and

Convinced that the adoption of a convention on the prevention, punishment and eradication of all forms of violence against women within the framework of the Organization of American States is a positive contribution to protecting the rights of women and eliminating violence against them,

Have agreed to the following:

CHAPTER I

DEFINITION AND SCOPE OF APPLICATION

Article 1

For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

Article 2

Violence against women shall be understood to include physical, sexual and psychological violence:

(*a*) That occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;

(*b*) That occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and

(*c*) That is perpetrated or condoned by the state or its agents regardless of where it occurs.

CHAPTER II

RIGHTS PROTECTED

Article 3

Every woman has the right to be free from violence in both the public and private spheres.

Article 4

Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others:

(*a*) The right to have her life respected;

(*b*) The right to have her physical, mental and moral integrity respected;

(*c*) The right to personal liberty and security;

(*d*) The right not to be subjected to torture;

(*e*) The rights to have the inherent dignity of her person respected and her family protected;

(*f*) The right to equal protection before the law and of the law;

(*g*) The right to simple and prompt recourse to a competent court for protection against acts that violate her rights;

(*h*) The right to associate freely;

(*i*) The right of freedom to profess her religion and beliefs within the law; and

(*j*) The right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making.

Article 5

Every woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. The States Parties recognize that violence against women prevents and nullifies the exercise of these rights.

Article 6

The right of every woman to be free from violence includes, among others:

(*a*) The right of women to be free from all forms of discrimination; and

(*b*) The right of women to be valued and educated free of stereotyped patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination.

CHAPTER III

DUTIES OF THE STATES

Article 7

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

(*a*) Refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;

(*b*) Apply due diligence to prevent, investigate and impose penalties for violence against women;

(*c*) Include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;

(*d*) Adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;

(*e*) Take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;

(*f*) Establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;

(*g*) Establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and

(*h*) Adopt such legislative or other measures as may be necessary to give effect to this Convention.

Article 8

The States Parties agree to undertake progressively specific measures, including programs:

(*a*) To promote awareness and observance of the right of women to be free from violence, and the right of women to have their human rights respected and protected;

(*b*) To modify social and cultural patterns of conduct of men and women, including the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women;

(*c*) To promote the education and training of all those involved in the administration of justice, police and other law enforcement officers as well as other personnel responsible for implementing policies for the prevention, punishment and eradication of violence against women;

(*d*) To provide appropriate specialized services for women who have been subjected to violence, through public and private sector agencies, including shelters, counselling services for all family members where appropriate, and care and custody of the affected children;

(*e*) To promote and support governmental and private sector education designed to raise the awareness of the public with respect to the problems of and remedies for violence against women;

(*f*) To provide women who are subjected to violence access to effective readjustment and training programs to enable them to fully participate in public, private and social life;

(*g*) To encourage the communications media to develop appropriate media guidelines in order to contribute to the eradication of violence against women in all its forms, and to enhance respect for the dignity of women;

(*h*) To ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes; and

(*i*) To foster international cooperation for the exchange of ideas and experiences and the execution of programs aimed at protecting women who are subjected to violence.

Article 9

With respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.

CHAPTER IV

INTER-AMERICAN MECHANISMS OF PROTECTION

Article 10

In order to protect the right of every woman to be free from violence, the States Parties shall include in their national reports to the Inter-American Commission of Women information on measures adopted to prevent and prohibit violence against women, and to assist women affected by violence, as well as on any difficulties they observe in applying those measures, and the factors that contribute to violence against women.

Article 11

The States Parties to this Convention and the Inter-American Commission of Women may request of the Inter-American Court of Human Rights advisory opinions on the interpretation of this Convention.

Article 12

Any person or group of persons, or any nongovernmental entity legally recognized in one or more Member States of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions.

CHAPTER V

GENERAL PROVISIONS

Article 13

No part of this Convention shall be understood to restrict or limit the domestic law of any State Party that affords equal or greater protection and guarantees of the rights of women and appropriate safeguards to prevent and eradicate violence against women.

Article 14

No part of this Convention shall be understood to restrict or limit the American Convention on Human Rights or any other international convention on the subject that provides for equal or greater protection in this area.

Article 15

This Convention is open to signature by all the Member States of the Organization of American States.

Article 16

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 17

This Convention is open to accession by any other state. Instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 18

Any State may, at the time of approval, signature, ratification, or accession, make reservations to this Convention provided that such reservations are:

(*a*) Not incompatible with the object and purpose of the Convention, and

(*b*) Not of a general nature and relate to one or more specific provisions.

Article 19

Any State Party may submit to the General Assembly, through the Inter-American Commission of Women, proposals for the amendment of this Convention.

Amendments shall enter into force for the states ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification.

Article 20

If a State Party has two or more territorial units in which the matters dealt with in this Convention are governed by different systems of law, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or to only one or more of them.

Such a declaration may be amended at any time by subsequent declarations, which shall expressly specify the territorial unit or units to which this Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall enter into force thirty days after the date of their receipt.

Article 21

This Convention shall enter into force on the thirtieth day after the date of deposit of the second instrument of ratification. For each State that ratifies or accedes to the Convention after the second instrument of ratification is deposited, it shall enter into force thirty days after the date on which that State deposited its instrument of ratification or accession.

Article 22

The Secretary General shall inform all Member States of the Organization of American States of the entry into force of this Convention.

Article 23

The Secretary General of the Organization of American States shall present an annual report to the Member States of the Organization on the status of this Convention, including the signatures, deposits of instruments of ratification and accession, and declarations, and any reservations that may have been presented by the States Parties, accompanied by a report thereon if needed.

Article 24

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it by depositing an instrument to that effect with the General Secretariat of the Organization of American States. One year after the date of deposit of the instrument of denunciation, this Convention shall cease to be in effect for the denouncing State but shall remain in force for the remaining States Parties.

Article 25

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send a certified copy to the Secretariat of the United Nations for registration and publication in accordance with the provisions of Article 102 of the United Nations Charter.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective governments, have signed this Convention, which shall be called the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belém do Pará.”

DONE IN THE CITY OF BELEM DO PARA, BRAZIL, the ninth of June in the year one thousand nine hundred ninety-four.

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INTER-AMERICAN CONVENTION ON INTERNATIONAL TRAFFIC IN MINORS

Adopted Mexico, D.F., Mexico, on March 18, 1994 at the Fifth Inter-American Specialized Conference on Private International Law (CIDIP-V)

Entry into force: 15 August 1997, in accordance with Article 33
Text: OAS, *Treaty Series*, No. 79

The States Parties to this Convention,

Considering the importance of ensuring comprehensive and effective protection for minors, through appropriate mechanisms to guarantee respect for their rights;

Aware that the international traffic in minors is a universal concern;

Taking into consideration conventions on international protection of minors, particularly the provisions of Articles 11 and 35 of the Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989;

Convinced of the need to regulate civil and penal aspects of the international traffic in minors; and

Reaffirming the importance of international cooperation to achieve effective protection of the best interests of minors,

Have agreed upon the following:

CHAPTER I

GENERAL PROVISIONS

Article 1

The purpose of the present Convention, with a view to protection of the fundamental rights of minors and their best interests, is the prevention and punishment of the international traffic in minors as well as the regulation of its civil and penal aspects.

Accordingly, the States Parties to this Convention undertake to:

(*a*) Ensure the protection of minors in consideration of their best interests;

(*b*) Institute a system of mutual legal assistance among the States Parties, dedicated to the prevention and punishment of the international traffic in minors, as well as adopt related administrative and legal provisions to that effect; and

(*c*) Ensure the prompt return of minors who are victims of international traffic to the State of their habitual residence, bearing in mind the best interests of the minors.

Article 2

This Convention shall apply to any minor who is habitually resident in a State Party or is located in a State Party at the time when an act of international traffic occurs in respect of him or her. For the purpose of the present Convention:

(*a*) "Minor" means any human being below the age of eighteen.

(*b*) "International traffic in minors" means the abduction, removal or retention, or attempted abduction, removal or retention, of a minor for unlawful purposes or by unlawful means.

(*c*) "Unlawful purpose" includes, among others, prostitution, sexual exploitation, servitude or any other purpose unlawful in either the State of the minor's habitual residence or the State Party where the minor is located.

(*d*) "Unlawful means" includes, among others, kidnapping, fraudulent or coerced consent, the giving or receipt of unlawful payments or benefits to achieve the consent of the parents, persons or institution

having care of the child, or any other means unlawful in either the State of the minor's habitual residence or the State Party where the minor is located.

Article 3

This Convention shall also cover the civil aspects of the wrongful removal, transfer, or retention of minors internationally, not dealt with by other international conventions on this subject.

Article 4

To the extent possible, States Parties shall cooperate with States that are not Parties in preventing and punishing international traffic in minors, and in protecting and caring for minors who are victims of that wrongful act.

The competent authorities of a State Party are to notify the competent authorities of a State that is not a Party whenever a minor is within its territory who has been a victim of international traffic in minors in a State Party.

Article 5

For the purposes of the present Convention, each State Party shall designate a Central Authority and shall inform the General Secretariat of the Organization of American States of that designation.

A federal State, or a State in which several legal systems apply, or a State with autonomous territorial units may designate more than one Central Authority, specifying the legal or territorial area covered by each of them. The State making use of this possibility shall designate the Central Authority to which all communications should be addressed.

Should a State Party designate more than one Central Authority, it shall so inform the General Secretariat of the Organization of American States.

Article 6

States Parties shall protect the minor's interests with a view to ensuring that all procedures applied pursuant to the present Convention shall remain confidential.

CHAPTER II

PENAL ASPECTS

Article 7

The States Parties undertake to adopt effective measures, under their domestic law, to prevent and severely punish the international traffic in minors defined in this Convention.

Article 8

The States Parties to the present Convention undertake to:

(*a*) Assist each other promptly and expeditiously through their Central Authorities, as permitted by the domestic laws of each State and by applicable international treaties, to conduct judicial and administrative proceedings, to take evidence, and to take any other procedural steps that may be necessary for fulfilling the objectives of this Convention;

(*b*) Establish through their Central Authorities mechanisms for the exchange of information about any domestic statute, case law, administrative practices, statistics and modalities regarding international traffic in minors in their States; and

(*c*) Order such measures as may be necessary to remove any obstacles that might affect the enforcement of this Convention in their States.

Article 9

The following shall have competence in cases of crimes involving international traffic in minors:

(*a*) The State Party where the wrongful conduct occurred;

(*b*) The State Party that is the habitual residence of the minor;

(*c*) The State Party in which the alleged offender is located if said offender has not been extradited.

(*d*) The State Party in which the minor who is a victim of said traffic is located.

For the purposes of the preceding paragraph, the State Party that first conducted formal proceedings concerning the wrongful act shall have preference.

Article 10

If one of the States Parties where extradition is subject to the existence of a treaty receives a request for extradition from a State Party with which it has no such treaty, or if it has such a treaty, this crime is not among the extraditable offenses, it may consider the present Convention as the legal grounds needed to grant extradition in the case of the international traffic in minors.

Further, States Parties that do not make extradition conditional on the existence of a treaty shall recognize the international traffic in minors as a basis for extradition between them. Where no extradition treaty exists, extradition shall be subject to the other conditions required by the domestic laws of the requested State.

Article 11

The actions taken in accordance with the provisions of this chapter shall not prevent the competent authorities of the State Party where the minor is located from ordering, at any time, said minor's immediate return to the State of his or her habitual residence, bearing in mind the best interests of the minor.

CHAPTER III

CIVIL ASPECTS

Article 12

A request for locating and returning a minor under the present Convention shall be lodged by those entitled to do so by the laws of the State where the minor habitually resides.

Article 13

The judicial or administrative authorities of the State Party of the minor's habitual residence, or those of the State Party where the minor is or is assumed to be retained, shall be competent to hear the request for the minor's location and return, at the option of the complainants.

When in the complainants' view there are urgent reasons, the request may be submitted to the judicial or administrative authorities of the State Party where the wrongful act occurred.

Article 14

The request for locating and returning shall not require authentication and shall be processed through the Central Authorities or directly through the competent authorities referred to in Article 13 of the present Convention. The requested authorities shall decide upon the most expeditious procedures for effecting it.

After receiving the request, the requested authorities shall order the necessary steps taken in accordance with their domestic laws to initiate, facilitate, and assist the judicial and administrative procedures involved in locating and returning the minor. In addition, steps shall be taken to ensure the immediate return of the minor, and where necessary, to ensure his or her care, custody or provisional guardianship, depending on the circumstances, and, as a preventive measure, to bar the minor from being wrongfully removed to another State.

The request, stating grounds for location and return of the minor, shall be lodged within one hundred and twenty days after the wrongful removal or retention of the minor has been detected. If the request for location and return is lodged by a State Party, the latter shall do so within one hundred and eighty days.

When it is necessary to take action before locating the minor, the above-mentioned period shall run from the day on which a person or authority entitled to file the request is informed that the minor has been located.

Irrespective of the above, the authorities of the State Party where the minor is retained may at any time order his or her return if it is in the minor's best interests.

Article 15

The authentication or similar formalities otherwise required shall be unnecessary when requests for cooperation encompassed by this Convention are transmitted via consular or diplomatic channels or via the Central Authorities, and when conveyed directly from one tribunal to another in the border area of the States Parties. No authentication in the requesting State Party shall be required in the case of related documents returned via the same channels.

Where necessary, the requests shall be translated into the official language or languages of the State Party to which they are addressed. With respect to attachments, a translation of the summary of the essential information shall suffice.

Article 16

Having confirmed that a victim of traffic in minors is present within their jurisdiction, the competent authorities of a State Party shall take such immediate measures as may be necessary for the minor's protection, including those of a preventive nature to ensure that the minor is not improperly removed to another State.

The Central Authorities shall inform the competent authorities of the State of the minor's previous habitual residence of all such measures. The intervening authorities shall take such steps as may be necessary to keep the persons or authorities seeking the minor's location and return duly informed of the measures adopted.

Article 17

In keeping with the purposes of this Convention, the Central Authorities of the States Parties shall exchange information and cooperate with their competent judicial and administrative authorities on all matters concerning control of the entry of minors into and departure from their territories.

Article 18

Adoptions and other similar legal proceedings performed in a State Party shall be subject to annulment if they had their origin or purpose in international traffic in minors.

In such annulment, the minor's best interests shall be taken into account at all times.

The annulment shall be subject to the law and the competent authorities of the State where the adoption or legal proceedings concerned took place.

Article 19

Care or custody of a minor may be revoked whenever it has its origin or purpose in the international traffic in minors, under the same conditions provided for in the preceding article.

Article 20

A request for locating and returning a minor may be lodged without prejudice to the annulment and revocation actions provided for in Articles 18 and 19.

Article 21

In any proceeding provided for under this chapter, the competent authority may order the person or organization responsible for international traffic in minors to pay the costs and expenses of locating and returning the minor if such person or organization is a party to the proceeding.

A person or authority lodging a request for the return or, where applicable, the competent authority may bring a civil action to recover costs, including legal fees and the expenses of locating and returning the minor, unless said costs were already assessed in a criminal proceeding or a proceeding under this chapter.

The competent authority or any injured person or authority may bring a civil action for damages against the persons or organizations responsible for the international traffic in minors involving the minor.

Article 22

The States Parties shall adopt the measures needed to ensure that no costs are charged for proceedings to secure the return of the minor, in accordance with their laws and shall advise persons legitimately interested in the return of the minor of the public defender services, benefits to the needy and other forms of free legal aid to which they may be entitled under the laws and regulations of the respective States Parties.

CHAPTER IV

FINAL CLAUSES

Each State Party may, at the time of signature, ratification, or accession to the present Convention or at any time thereafter, declare that it will recognize and execute criminal judgments handed down in other States Parties in respect of awards of damages resulting from the international traffic in minors.

Article 24

In the case of a State which has two or more systems of law applicable in different territorial units with respect to matters covered by the Convention, any reference to:

(*a*) The law of the State shall be construed as referring to the law in the territorial unit in question;

(*b*) Habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

(*c*) The competent authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit.

Article 25

If a State has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or to only one or more of them.

Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective ninety days after the date of their receipt.

Article 26

Each State Party may, at the time of signature, ratification or accession to the present Convention or at any time thereafter, declare that it will not entertain in any civil suit a challenge to the existence of the facts of the crime or the guilt of the person convicted when a conviction has been handed down for this crime in another State Party.

Article 27

The competent authorities in border areas of the States Parties may, at any time, directly agree on more expeditious procedures to locate and return minors than those provided for in the present Convention and without prejudice thereto.

None of the provisions in the present Convention shall be interpreted as restricting the more favourable practices that the competent authorities of the States Parties may agree to follow for the matters covered by this Convention.

Article 28

This Convention shall be open to signature by the Member States of the Organization of American States.

Article 29

This Convention shall be subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 30

This Convention shall remain open for accession by any other State after it has entered into force. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 31

Each State may, at the time of signature, ratification or accession, make reservations to this Convention, provided that each reservation concerns one or more specific provisions and is not incompatible with the purposes and objectives of this Convention.

Article 32

None of the provisions in this Convention shall be construed as limiting other bilateral or multilateral treaties or other agreements entered into between the Parties.

Article 33

This Convention shall enter into force for the ratifying States on the thirtieth day following the date of deposit of the second instrument of ratification.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 34

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in force for the denouncing State.

Article 35

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall forward an authenticated copy of its text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of its Charter. The General Secretariat of the Organization of American States shall notify the Member States of the Organization and the States that have acceded to the Convention of the signatures, deposits of instruments of ratification, accession and denunciation, as well as of reservations, if any, and of their withdrawal.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, do hereby sign the present Convention.

DONE AT MEXICO, D.F., MEXICO, this eighteenth day of March, one thousand nine hundred and ninety-four.

183

INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE

Adopted at Cartagena de Indias on 9 December 1985 at the fifteenth regular session of the OAS General Assembly

Entry into force: 28 February 1987, in accordance with Article 22
Text: OAS, *Treaty Series*, No. 67

The American States signatory to the present Convention,

Aware of the provision of the American Convention on Human Rights that no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment;

Reaffirming that all acts of torture or any other cruel, inhuman, or degrading treatment or punishment constitute an offense against human dignity and a denial of the principles set forth in the Charter of the Organization of American States and in the Charter of the United Nations and are violations of the fundamental human rights and freedoms proclaimed in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights;

Noting that, in order for the pertinent rules contained in the aforementioned global and regional instruments to take effect, it is necessary to draft an Inter-American Convention that prevents and punishes torture;

Reaffirming their purpose of consolidating in this hemisphere the conditions that make for recognition of and respect for the inherent dignity of man, and ensure the full exercise of his fundamental rights and freedoms,

Have agreed upon the following:

Article 1

The States Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

Article 2

For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

Article 3

The following shall be held guilty of the crime of torture:

(*a*) A public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so.

(*b*) A person who at the instigation of a public servant or employee mentioned in subparagraph (a) orders, instigates or induces the use of torture, directly commits it or is an accomplice thereto.

Article 4

The fact of having acted under orders of a superior shall not provide exemption from the corresponding criminal liability.

Article 5

The existence of circumstances such as a state of war, threat of war, state of siege or of emergency, domestic disturbance or strife, suspension of constitutional guarantees, domestic political instability, or other public emergencies or disasters shall not be invoked or admitted as justification for the crime of torture.

Neither the dangerous character of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture.

Article 6

In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Article 7

The States Parties shall take measures so that, in the training of police officers and other public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, special emphasis shall be put on the prohibition of the use of torture in interrogation, detention, or arrest.

The States Parties likewise shall take similar measures to prevent other cruel, inhuman, or degrading treatment or punishment.

Article 8

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

Article 9

The States Parties undertake to incorporate into their national laws regulations guaranteeing suitable compensation for victims of torture.

None of the provisions of this article shall affect the right to receive compensation that the victim or other persons may have by virtue of existing national legislation.

Article 10

No statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding, except in a legal action taken against a person or persons accused of having elicited it through acts of torture, and only as evidence that the accused obtained such statement by such means.

Article 11

The States Parties shall take the necessary steps to extradite anyone accused of having committed the crime of torture or sentenced for commission of that crime, in accordance with their respective national laws on extradition and their international commitments on this matter.

Article 12

Every State Party shall take the necessary measures to establish its jurisdiction over the crime described in this Convention in the following cases:

(*a*) When torture has been committed within its jurisdiction;

(*b*) When the alleged criminal is a national of that State; or

(*c*) When the victim is a national of that State and it so deems appropriate.

Every State Party shall also take the necessary measures to establish its jurisdiction over the crime described in this Convention when the alleged criminal is within the area under its jurisdiction and it is not appropriate to extradite him in accordance with Article 11.

This Convention does not exclude criminal jurisdiction exercised in accordance with domestic law.

Article 13

The crime referred to in Article 2 shall be deemed to be included among the extraditable crimes in every extradition treaty entered into between States Parties. The States Parties undertake to include the crime of torture as an extraditable offence in every extradition treaty to be concluded between them.

Every State Party that makes extradition conditional on the existence of a treaty may, if it receives a request for extradition from another State Party with which it has no extradition treaty, consider this Convention as the legal basis for extradition in respect of the crime of torture. Extradition shall be subject to the other conditions that may be required by the law of the requested State.

States Parties which do not make extradition conditional on the existence of a treaty shall recognize such crimes as extraditable offences between themselves, subject to the conditions required by the law of the requested State.

Extradition shall not be granted nor shall the person sought be returned when there are grounds to believe that his life is in danger, that he will be subjected to torture or to cruel, inhuman or degrading treatment, or that he will be tried by special or *ad hoc* courts in the requesting State.

Article 14

When a State Party does not grant the extradition, the case shall be submitted to its competent authorities as if the crime had been committed within its jurisdiction, for the purposes of investigation, and when appropriate, for criminal action, in accordance with its national law. Any decision adopted by these authorities shall be communicated to the State that has requested the extradition.

Article 15

No provision of this Convention may be interpreted as limiting the right of asylum, when appropriate, nor as altering the obligations of the States Parties in the matter of extradition.

Article 16

This Convention shall not limit the provisions of the American Convention on Human Rights, other conventions on the subject, or the Statutes of the Inter-American Commission on Human Rights, with respect to the crime of torture.

Article 17

The States Parties undertake to inform the Inter-American Commission on Human Rights of any legislative, judicial, administrative, or other measures they adopt in application of this Convention.

In keeping with its duties and responsibilities, the Inter-American Commission on Human Rights will endeavour in its annual report to analyze the existing situation in the Member States of the Organization of American States in regard to the prevention and elimination of torture.

Article 18

This Convention is open to signature by the Member States of the Organization of American States.

Article 19

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 20

This Convention is open to accession by any other American state. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 21

The States Parties may, at the time of approval, signature, ratification, or accession, make reservations to this Convention, provided that such reservations are not incompatible with the object and purpose of the Convention and concern one or more specific provisions.

Article 22

This Convention shall enter into force on the thirtieth day following the date on which the second instrument of ratification is deposited. For each State ratifying or acceding to the Convention after the second instrument of ratification has been deposited, the Convention shall enter into force on the thirtieth day following the date on which that State deposits its instrument of ratification or accession.

Article 23

This Convention shall remain in force indefinitely, but may be denounced by any State Party. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, this Convention shall cease to be in effect for the denouncing State but shall remain in force for the remaining States Parties.

Article 24

The original instrument of this Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send a certified copy to the Secretariat of the United Nations for registration and publication, in accordance with the provisions of Article 102 of the United Nations Charter. The General Secretariat of the Organization of American States shall notify the Member States of the Organization and the States that have acceded to the Convention of signatures and of deposits of instruments of ratification, accession, and denunciation, as well as reservations, if any.

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INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS

Adopted at Belem do Para on 9 June 1994 at the twenty-fourth regular session of the OAS General Assembly

Entry into force: 28 March 1996, in accordance with Article 20
Text: OAS, *Treaty Series*, No. 68

PREAMBLE

The Member States of the Organization of American States signatory to the present Convention,

Disturbed by the persistence of the forced disappearance of persons;

Reaffirming that the true meaning of American solidarity and good neighbourliness can be none other than that of consolidating in this Hemisphere, in the framework of democratic institutions, a system of individual freedom and social justice based on respect for essential human rights;

Considering that the forced disappearance of persons is an affront to the conscience of the Hemisphere and a grave and abominable offense against the inherent dignity of the human being, and one that contradicts the principles and purposes enshrined in the Charter of the Organization of American States;

Considering that the forced disappearance of persons violates numerous non-derogable and essential human rights enshrined in the American Convention on Human Rights, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights;

Recalling that the international protection of human rights is in the form of a convention reinforcing or complementing the protection provided by domestic law and is based upon the attributes of the human personality;

Reaffirming that the systematic practice of the forced disappearance of persons constitutes a crime against humanity;

Hoping that this Convention may help to prevent, punish, and eliminate the forced disappearance of persons in the Hemisphere and make a decisive contribution to the protection of human rights and the rule of law,

Resolve to adopt the following Inter-American Convention on Forced Disappearance of Persons:

Article I

The States Parties to this Convention undertake:

(*a*) Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees;

(*b*) To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories;

(*c*) To cooperate with one another in helping to prevent, punish, and eliminate the forced disappearance of persons;

(*d*) To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.

Article II

For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

Article III

The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

The States Parties may establish mitigating circumstances for persons who have participated in acts constituting forced disappearance when they help to cause the victim to reappear alive or provide information that sheds light on the forced disappearance of a person.

Article IV

The acts constituting the forced disappearance of persons shall be considered offenses in every State Party. Consequently, each State Party shall take measures to establish its jurisdiction over such cases in the following instances:

(*a*) When the forced disappearance of persons or any act constituting such offense was committed within its jurisdiction;

(*b*) When the accused is a national of that state;

(*c*) When the victim is a national of that state and that state sees fit to do so.

Every State Party shall, moreover, take the necessary measures to establish its jurisdiction over the crime described in this Convention when the alleged criminal is within its territory and it does not proceed to extradite him.

This Convention does not authorize any State Party to undertake, in the territory of another State Party, the exercise of jurisdiction or the performance of functions that are placed within the exclusive purview of the authorities of that other Party by its domestic law.

Article V

The forced disappearance of persons shall not be considered a political offense for purposes of extradition.

The forced disappearance of persons shall be deemed to be included among the extraditable offenses in every extradition treaty entered into between States Parties.

The States Parties undertake to include the offense of forced disappearance as one which is extraditable in every extradition treaty to be concluded between them in the future.

Every State Party that makes extradition conditional on the existence of a treaty and receives a request for extradition from another State Party with which it has no extradition treaty may consider this Convention as the necessary legal basis for extradition with respect to the offense of forced disappearance.

States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offense as extraditable, subject to the conditions imposed by the law of the requested state.

Extradition shall be subject to the provisions set forth in the constitution and other laws of the request state.

Article VI

When a State Party does not grant the extradition, the case shall be submitted to its competent authorities as if the offense had been committed within its jurisdiction, for the purposes of investigation and when appropriate, for criminal action, in accordance with its national law. Any decision adopted by these authorities shall be communicated to the state that has requested the extradition.

Article VII

Criminal prosecution for the forced disappearance of persons and the penalty judicially imposed on its perpetrator shall not be subject to statutes of limitations.

However, if there should be a norm of a fundamental character preventing application of the stipulation contained in the previous paragraph, the period of limitation shall be equal to that which applies to the gravest crime in the domestic laws of the corresponding State Party.

Article VIII

The defence of due obedience to superior orders or instructions that stipulate, authorize, or encourage forced disappearance shall not be admitted. All persons who receive such orders have the right and duty not to obey them.

The States Parties shall ensure that the training of public law-enforcement personnel or officials includes the necessary education on the offense of forced disappearance of persons.

Article IX

Persons alleged to be responsible for the acts constituting the offense of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each state, to the exclusion of all other special jurisdictions, particularly military jurisdictions.

The acts constituting forced disappearance shall not be deemed to have been committed in the course of military duties.

Privileges, immunities, or special dispensations shall not be admitted in such trials, without prejudice to the provisions set forth in the Vienna Convention on Diplomatic Relations.

Article X

In no case may exceptional circumstances such as a state of war, the threat of war, internal political instability, or any other public emergency be invoked to justify the forced disappearance of persons. In such cases, the right to expeditious and effective judicial procedures and recourse shall be retained as a means of determining the whereabouts or state of health of a person who has been deprived of freedom, or of identifying the official who ordered or carried out such deprivation of freedom.

In pursuing such procedures or recourse, and in keeping with applicable domestic law, the competent judicial authorities shall have free and immediate access to all detention centres and to each of their units, and to all places where there is reason to believe the disappeared person might be found including places that are subject to military jurisdiction.

Article XI

Every person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law.

The States Parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities.

Article XII

The States Parties shall give each other mutual assistance in the search for, identification, location, and return of minors who have been removed to another state or detained therein as a consequence of the forced disappearance of their parents or guardians.

Article XIII

For the purposes of this Convention, the processing of petitions or communications presented to the Inter-American Commission on Human Rights alleging the forced disappearance of persons shall be subject to the procedures established in the American Convention on Human Rights and to the Statue and Regulations of the Inter-American Commission on Human Rights and to the Statute and Rules of Procedure of the Inter-American Court of Human Rights, including the provisions on precautionary measures.

Article XIV

Without prejudice to the provisions of the preceding article, when the Inter-American Commission on Human Rights receives a petition or communication regarding an alleged forced disappearance, its Executive Secretariat shall urgently and confidentially address the respective government, and shall request that government to provide as soon as possible information as to the whereabouts of the allegedly disappeared

person together with any other information it considers pertinent, and such request shall be without prejudice as to the admissibility of the petition.

Article XV

None of the provisions of this Convention shall be interpreted as limiting other bilateral or multilateral treaties or other agreements signed by the Parties.

This Convention shall not apply to the international armed conflicts governed by the 1949 Geneva Conventions and their Protocols, concerning protection of wounded, sick, and shipwrecked members of the armed forces; and prisoners of war and civilians in time of war.

Article XVI

This Convention is open for signature by the Member States of the Organization of American States.

Article XVII

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article XVIII

This Convention shall be open to accession by any other state. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article XIX

The states may express reservations with respect to this Convention when adopting, signing, ratifying or acceding to it, unless such reservations are incompatible with the object and purpose of the Convention and as long as they refer to one or more specific provisions.

Article XX

This Convention shall enter into force for the ratifying states on the thirtieth day from the date of deposit of the second instrument of ratification.

For each state ratifying or acceding to the Convention after the second instrument of ratification has been deposited, the Convention shall enter into force on the thirtieth day from the date on which that state deposited its instrument of ratification or accession.

Article XXI

This Convention shall remain in force indefinitely, but may be denounced by any State Party. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. The Convention shall cease to be in effect for the denouncing state and shall remain in force for the other States Parties one year from the date of deposit of the instrument of denunciation.

Article XXII

The original instrument of this Convention, the Spanish, English, Portuguese, and French texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall forward certified copies thereof to the United Nations Secretariat, for registration and publication, in accordance with Article 102 of the Charter of the United Nations. The General Secretariat of the Organization of American States shall notify Member States of the Organization and states acceding to the Convention of the signatures and deposit of instruments of ratification, accession or denunciation, as well as of any reservations that may be expressed.

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INTER-AMERICAN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

Adopted on 7 June 1999

Entry into force: 14 September 2001, in accordance with Article 8
Text: AG/RES. 1608 (XXIX-O/99)

The General Assembly,

Having seen the report of the Permanent Council on the draft Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (CP/CAJP-1532/99);

Considering that, during its twenty-sixth regular session, the General Assembly, in resolution AG/RES. 1369 (XXVI-O/96), "Panama Commitment to Persons with Disabilities in the American Hemisphere," instructed the Permanent Council to prepare, through the appropriate working group, a "draft Inter-American Convention on the Elimination of All Forms of Discrimination by Reason of Disability";

Bearing in mind that disability can lead to situations of discrimination, and that it is necessary therefore to encourage actions and measures to bring about a substantial improvement in the situation of persons with disabilities in the Hemisphere;

Recalling that the American Declaration of the Rights and Duties of Man proclaims that all human beings are born free and equal, in dignity and in rights, and that the rights and freedoms of every person must be respected without distinction of any kind;

Taking into consideration that the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights, or "Protocol of San Salvador," recognizes that "everyone affected by a diminution of his physical or mental capacities is entitled to receive special attention designed to help him achieve the greatest possible development of his personality"; and

Noting that resolution AG/RES. 1564 (XXVIII-O/98) reiterates "the importance of adopting an Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities" and, in addition, requests that every necessary effort be made to ensure that this legal instrument is adopted and signed at the twenty-ninth regular session of the General Assembly,

Resolves

To adopt the following Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities:

INTER-AMERICAN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

The States Parties to this Convention,

Reaffirming that persons with disabilities have the same human rights and fundamental freedoms as other persons; and that these rights, which include freedom from discrimination based on disability, flow from the inherent dignity and equality of each person;

Considering that the Charter of the Organization of American States, in Article 3.j, establishes the principle that "social justice and social security are bases of lasting peace";

Concerned by the discrimination to which people are subject based on their disability;

Bearing in mind the agreement of the International Labour Organization on the vocational rehabilitation and employment of disabled persons (Convention 159); the Declaration of the Rights of Mentally Retarded Persons (UN General Assembly resolution 2856 (XXVI) of December 20, 1971); the Declaration on the Rights of Disabled Persons (UN General Assembly resolution 3447 (XXX) of December 9, 1975); the World Programme of Action concerning Disabled Persons (UN General Assembly resolution 37/52 of December 3, 1982); the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social,

and Cultural Rights, "Protocol of San Salvador" (1988); the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (UN General Assembly resolution 46/119 of December 17, 1991); the Declaration of Caracas of the Pan American Health Organization; resolution AG/RES. 1249 (XXIII-O/93), "Situation of Persons with Disabilities in the American Hemisphere"; the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (UN General Assembly resolution 48/96 of December 20, 1993); the Declaration of Managua (December 1993); the Vienna Declaration and Programme of Action, adopted by the UN World Conference on Human Rights (157/93); resolution AG/RES. 1356 (XXV-O/95), "Situation of Persons with Disabilities in the American Hemisphere"; and AG/RES. 1369 (XXVI-O/96), "Panama Commitment to Persons with Disabilities in the American Hemisphere"; and

Committed to eliminating discrimination, in all its forms and manifestations, against persons with disabilities,

Have agreed as follows:

Article I

For the purposes of this Convention, the following terms are defined:

1. **Disability**

The term "disability" means a physical, mental, or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities of daily life, and which can be caused or aggravated by the economic and social environment.

2. **Discrimination against persons with disabilities**

(*a*) The term "discrimination against persons with disabilities" means any distinction, exclusion, or restriction based on a disability, record of disability, condition resulting from a previous disability, or perception of disability, whether present or past, which has the effect or objective of impairing or nullifying the recognition, enjoyment, or exercise by a person with a disability of his or her human rights and fundamental freedoms.

(*b)* A distinction or preference adopted by a state party to promote the social integration or personal development of persons with disabilities does not constitute discrimination provided that the distinction or preference does not in itself limit the right of persons with disabilities to equality and that individuals with disabilities are not forced to accept such distinction or preference. If, under a state's internal law, a person can be declared legally incompetent, when necessary and appropriate for his or her well-being, such declaration does not constitute discrimination.

Article II

The objectives of this Convention are to prevent and eliminate all forms of discrimination against persons with disabilities and to promote their full integration into society.

Article III

To achieve the objectives of this Convention, the states parties undertake:

1. To adopt the legislative, social, educational, labour-related, or any other measures needed to eliminate discrimination against persons with disabilities and to promote their full integration into society, including, but not limited to:

(*a*) Measures to eliminate discrimination gradually and to promote integration by government authorities and/or private entities in providing or making available goods, services, facilities, programs, and activities such as employment, transportation, communications, housing, recreation, education, sports, law enforcement and administration of justice, and political and administrative activities;

(*b*) Measures to ensure that new buildings, vehicles, and facilities constructed or manufactured within their respective territories facilitate transportation, communications, and access by persons with disabilities;

(*c*) Measures to eliminate, to the extent possible, architectural, transportation, and communication obstacles to facilitate access and use by persons with disabilities; and

(*d*) Measures to ensure that persons responsible for applying this Convention and domestic law in this area are trained to do so.

2. To work on a priority basis in the following areas:

(*a*) Prevention of all forms of preventable disabilities;

(*b*) Early detection and intervention, treatment, rehabilitation, education, job training, and the provision of comprehensive services to ensure the optimal level of independence and quality of life for persons with disabilities; and

(*c*) Increasing of public awareness through educational campaigns aimed at eliminating prejudices, stereotypes, and other attitudes that jeopardize the right of persons to live as equals, thus promoting respect for and coexistence with persons with disabilities.

Article IV

To achieve the objectives of this Convention, the states parties undertake to:

1. Cooperate with one another in helping to prevent and eliminate discrimination against persons with disabilities;

2. Collaborate effectively in:

(*a*) Scientific and technological research related to the prevention of disabilities and to the treatment, rehabilitation, and integration into society of persons with disabilities; and

(*b*) The development of means and resources designed to facilitate or promote the independence, self-sufficiency, and total integration into society of persons with disabilities, under conditions of equality.

Article V

1. To the extent that it is consistent with their respective internal laws, the states parties shall promote participation by representatives of organizations of persons with disabilities, nongovernmental organizations working in this area, or, if such organizations do not exist, persons with disabilities, in the development, execution, and evaluation of measures and policies to implement this Convention.

2. The states parties shall create effective communication channels to disseminate among the public and private organizations working with persons with disabilities the normative and juridical advances that may be achieved in order to eliminate discrimination against persons with disabilities.

Article VI

1. To follow up on the commitments undertaken in this Convention, a Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities, composed of one representative appointed by each state party, shall be established.

2. The Committee shall hold its first meeting within the 90 days following the deposit of the 11th instrument of ratification. Said meeting shall be convened by the General Secretariat of the Organization of American States and shall be held at the Organization’s headquarters, unless a state party offers to host it.

3. At the first meeting, the states parties undertake to submit a report to the Secretary General of the Organization for transmission to the Committee so that it may be examined and reviewed. Thereafter, reports shall be submitted every four years.

4. The reports prepared under the previous paragraph shall include information on measures adopted by the Member States pursuant to this Convention and on any progress made by the states parties in eliminating all forms of discrimination against persons with disabilities. The reports shall indicate any circumstances or difficulties affecting the degree of fulfilment of the obligations arising from this Convention.

5. The Committee shall be the forum for assessment of progress made in the application of the Convention and for the exchange of experience among the states parties. The reports prepared by the Committee shall reflect the deliberations; shall include information on any measures adopted by the states parties pursuant to this Convention, on any progress they have made in eliminating all forms of discrimination against persons with disabilities, and on any circumstances or difficulties they have encountered in the

implementation of the Convention; and shall include the Committee's conclusions, its observations, and its general suggestions for the gradual fulfilment of the Convention.

6. The Committee shall draft its rules of procedure and adopt them by a simple majority.

7. The Secretary General shall provide the Committee with the support it requires in order to perform its functions.

Article VII

No provision of this Convention shall be interpreted as restricting, or permitting the restriction by states parties of the enjoyment of the rights of persons with disabilities recognized by customary international law or the international instruments by which a particular state party is bound.

Article VIII

1. This Convention shall be open for signature by all Member States in Guatemala City, Guatemala, on June 8, 1999, and, thereafter, shall remain open for signature by all states at the headquarters of the Organization of American States, until its entry into force.

2. This Convention is subject to ratification.

3. This Convention shall enter into force for the ratifying states on the 30th day following the date of deposit of the sixth instrument of ratification by a Member State of the Organization of American States.

Article IX

After its entry into force, this Convention shall be open for accession by all states that have not signed it.

Article X

1. The instruments of ratification and accession shall be deposited with the General Secretariat of the Organization of American States.

2. For each state that ratifies or accedes to the Convention after the sixth instrument of ratification has been deposited, the Convention shall enter into force on the 30th day following deposit by that state of its instrument of ratification or accession.

Article XI

1. Any state party may make proposals for amendment of this Convention. Said proposals shall be submitted to the General Secretariat of the OAS for dissemination to the states parties.

2. Amendments shall enter into force for the states ratifying them on the date of deposit of the respective instruments of ratification by two thirds of the Member States. For the remaining states parties, they shall enter into force on the date of deposit of their respective instruments of ratification.

Article XII

The states may enter reservations to this Convention when ratifying or acceding to it, provided that such reservations are not incompatible with the aim and purpose of the Convention and relate to one or more specific provisions thereof.

Article XIII

This Convention shall remain in force indefinitely, but any state party may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. The Convention shall cease to have force and effect for the denouncing state one year after the date of deposit of the instrument of denunciation, and shall remain in force for the other states parties. Such denunciation shall not exempt the state party from the obligations imposed upon it under this Convention in respect of any action or omission prior to the date on which the denunciation takes effect.

Article XIV

1. The original instrument of this Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send a certified copy thereof to the United Nations Secretariat for registration and publication pursuant to Article 102 of the United Nations Charter.

2. The General Secretariat of the Organization of American States shall notify the Member States of that Organization and the states that have acceded to the Convention of the signatures, deposits of instruments of ratification, accession, and denunciation, and any reservations entered.

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TREATY ON INTERNATIONAL PENAL LAW[1]

Signed at Montevideo on 23 January 1889 at the First South American Congress on Private International Law

Text: OAS, *Treaty Series*, No. 34

Their Excellencies the Presidents of the Argentine Republic, Bolivia, Paraguay, Peru and Uruguay have agreed to a Treaty on International Penal Law, through their respective Plenipotentiaries, assembled in Congress, in the City of Montevideo, on the initiative of the Government of the Eastern Republic of Uruguay and of the Argentine Republic, represented by:

Here follow the names of the Plenipotentiaries,

Who, after the presentation of their full powers, which were found in good form, and after conferences and discussions of the matter, have agreed to the following stipulations:

TITLE I

ON JURISDICTION

Article 1

Crimes and offenses shall be subject to trial by the courts and punished according to the laws of the country where the offense was committed, regardless of the nationality of the agent, or of the victim or wronged party.

Article 2

Such violations of criminal law as are perpetrated in a State, but exclusively affect rights and interests guaranteed by the laws of another State, shall fall under the jurisdiction of the State affected by them, and shall be punished according to its laws.

Article 3

When an offense affects different States, the jurisdiction of the State in whose territory the offender is caught shall prevail.

If the offender should seek shelter in a State different from the ones affected by his action, the jurisdiction of the State which first requests the extradition shall prevail.

Article 4

In the cases referred to in the preceding article, if there is only one offender there shall be only one trial, and the penalty to be imposed shall be the severest one imposed by the penal laws of the different States concerned.

If the penalty ascertained to be the severest one should be one not permitted in the State in which the trial takes place, the severest penalty which is permitted shall be imposed.

The court shall, in all cases, apply to the executive power in order that due notice of the initiation of the proceedings may be given through it to the interested States.

Article 5

Each one of the contracting States shall have the power to expel from its territory, under its own laws, offenders who have taken shelter therein, if after notice to the State against which the refugee committed an extraditable offense no action shall have been taken by such State.

[1] Revised by the Treaty on International Penal Law signed at Montevideo, March 19, 1940, at the Second South American Congress on Private International Law. See p. 1355.

Article 6

Acts done in the territory of a State, which are not punishable according to its laws, but are punishable in another country, in which they produce injurious results, shall not be made the subject of judicial action in the latter, unless the offender is found within its territory.

The same rule shall also apply to those offenses which do not admit of extradition.

Article 7

In the trial and punishment of offenses committed by a member of a legation, the rules of public international law shall be observed.

Article 8

Crimes committed on the high seas, or on neutral waters, on board either a man-of-war or a merchant vessel, shall be tried and punished according to the laws of the State to which the flag of the vessel belongs.

Article 9

Crimes and offenses committed on board a man-of-war when in the waters of a foreign nation shall be tried and punished according to the laws of the State to which the vessel belongs.

The same rule shall be applicable to offenses committed outside the vessels by members of the crew thereof, or by persons employed on board the same, if the said crimes or offenses infringe principally the law or rules of discipline in force upon the vessel.

But when the crimes or offenses herein referred to, committed outside the vessel, were so committed by persons not belonging to the ship’s company, then the jurisdiction to try the offenders shall belong to the State in whose territorial waters the vessel may happen to find itself.

Article 10

Crimes and offenses committed on board a man-of-war or on board a merchant vessel, under the circumstances mentioned in Article 2, shall be tried and punished as provided by that article.

Article 11

Crimes and offenses committed on board a merchant vessel shall be tried and punished according to the laws of the State in whose territorial waters the offense was committed.

Article 12

For purposes of jurisdiction, territorial waters are declared to be those comprised in a belt five miles wide running along the coast, either of the mainland or of the islands which form part of the territory of each State.

Article 13

Acts of piracy, as defined by public international law, shall be subject to the jurisdiction of the State under whose power the offenders may happen to fall.

Article 14

Criminal prosecution shall be governed by the laws of the State having jurisdiction to punish the offense.

TITLE II

ON ASYLUM

Article 15

No offender who has taken refuge in the territory of a State shall be surrendered to the authorities of any other State except in compliance with the rules governing extradition.

Article 16

Political refugees shall be afforded an inviolable asylum; but it is the duty of the nation of refuge to prevent asylees of this kind from committing within its territory any acts which may endanger the public peace of the nation against which the offense was committed.

Article 17

Such persons as may be charged with non-political offenses and seek refuge in a legation, shall be surrendered to the local authorities by the head of the said legation, at the request of the Ministry of Foreign Relations, or of his own motion.

Said asylum shall be respected with regard to political offenders, but the head of the legation shall be bound to give immediate notice to the government of the State to which he is accredited; and the said government shall have the power to demand that the offender be sent away from the national territory in the shortest possible time.

The head of the legation shall, in his turn, have the right to require proper guarantees for the exit of the refugee without any injury to the inviolability of his person.

The same rule shall be applicable to the refugees on board a man-of-war anchored in the territorial waters of the State.

Article 18

The provisions of Article 15 shall not be applicable to deserters from vessels of war while in the territorial waters of a State.

Said deserters, whatever their nationality may be, shall be surrendered by the local authorities, upon proper identification, whenever the legation, or if there is no legation, the consular officer of the country concerned may request it.

TITLE III

EXTRADITION

Article 19

The signatory States shall be bound to deliver up to another such offenders as have taken refuge within its territory, whenever the following circumstances shall concur, namely:

1. That the nation which claims the offender has competent jurisdiction to take cognizance of and punish the offense with which the refugee is charged.
2. That the kind and gravity of the offense are such as to justify extradition.
3. That the nation which demands the extradition has presented such documents as, under its own laws, authorize the imprisonment and trial of the offender.
4. That the action against the offender has not been barred by the statute of limitations, under the laws of the country which makes the demand.
5. That the offender has not been sentenced for the same offense and served out his sentence.

Article 20

Extradition shall in no case be barred by the nationality of the offender.

Article 21

The offenses for which extradition is warranted are the following:

1. As to alleged offenders, those offenses which under the laws of the country which demands the extradition are punishable by imprisonment for not less than two years, or the equivalent thereof.
2. As to the convicted offenders, those offenses the minimum penalty for which is imprisonment for one year.

Article 22

No person shall be delivered up on extradition proceedings when the offense charged is one of the following:

- Duelling;
- Adultery;
- Slander and libel;
- Crimes against worship.

But common (non-political) offenses connected with any of the above named shall warrant the extradition of the offenders.

Article 23

Political offenses, offenses subversive of the internal or external safety of a State, or common offenses connected with these, shall not warrant extradition.

The determination of the character of the offense is incumbent upon the nation upon which the demand for extradition is made; and its decision shall be made under and according to the provisions of the law which shall prove to be most favourable to the accused.

Article 24

No civil or commercial action affecting the offender shall prevent the extradition from being accomplished.

Article 25

The surrender of the offender may be delayed as long as he shall continue subject to the penal action of the State from which he is demanded; but the extradition proceedings shall not be interrupted for that reason.

Article 26

Such offenders as shall have been delivered up on extradition proceedings, shall never be either tried or punished for political offenses, or for any acts connected with political offenses, previously committed.

But said offenders may be subject to trial and punishment upon consent of the State which surrendered them, in accordance with the terms of the present treaty, for offenses which are extraditable but which did not form part of the charge upon which extradition was granted.

Article 27

When several nations demand the surrender of an offender for different offenses, he shall be surrendered to the nation against which the gravest offense was committed in the judgment of the State upon which the requisition has been made. If the offenses are equally grave, preference shall be given to the nation which had priority in the demand for extradition; if all the demands bear the same date, the country upon which the demand is made shall determine the order of surrender.

Article 28

If, after an offender is delivered up to one State, a new demand for his extradition is made by another State, it shall be optional with the State which first granted the extradition whether or not to accede to the new demand, provided that the prisoner has not been set at liberty.

Article 29

When the penalty for the offense with which the offender is charged is the penalty of death, the nation which grants the extradition may demand the imposition of the penalty next lower in degree.

TITLE IV

PROCEEDINGS FOR EXTRADITION

Article 30

Demands for extradition shall be presented through the respective legations or consular offices, and, in the absence of these, directly from Government to Government, and they shall be accompanied by the following documents:

1. In cases of alleged delinquents, a legalized copy of the penal law applicable to the offense on which the demand is based, and of the warrant of arrest and other antecedents referred to in paragraph 3 of Article 19.
2. In cases of those already sentenced, by a legalized copy of the final sentence of condemnation passed against the offender and the proper evidence that the condemned man was summoned and was either represented at the trial, or legally adjudged in contumanciam.

Article 31

If the State upon which the demand for extradition is made should deem the said demand to be unwarranted, owing to some defects of form, it shall return the papers to the Government which made it, with the proper explanation of the defects.

Article 32

If the demand for extradition is made in due form, the Government upon which it is made shall transmit all the antecedents to a judge or tribunal of competent jurisdiction on the subject, and the said judge or tribunal shall order the arrest of the offender and the sequestration of any property related to the crime, if it is deemed proper, under the provisions of this Treaty.

Article 33

In all cases involving the arrest of the refugee, due notice shall be given to him within the twenty-four hours following his arrest, of the cause for his arrest and of the right which is vested in him under the following article.

Article 34

The prisoner shall be allowed, within three days and no more, to be counted from the day following that on which notification was first received, to object to his extradition on the following grounds:

1. That he is not the person to whom the demand for extradition refers.
2. That the documents upon which the demand is based are not in due form.
3. That the extradition is not warranted.

Article 35

Evidence shall be admitted in the cases in which it may be necessary, governed by the same rules, as far as relevancy and time are concerned, as are in force in the country upon which the demand is made.

Article 36

After the whole evidence is on file, the judge or tribunal shall decide within ten days, and without any further steps, whether the extradition must or must not be granted.

An appeal can be taken against this decision to the competent court within three days, and that court shall decide within five days.

Article 37

If the decision is to the effect that the extradition be granted, the tribunal which rendered it shall give notice thereof immediately to the executive power, in order that the proper provision may be made by it for the delivery of the prisoner.

If the decision be adverse to the extradition, the judge or tribunal shall at once order the release of the prisoner, and shall give due information to the executive power by sending to it a copy of its decision.

If extradition was refused due to insufficient documents, the case shall be reopened provided that the Government demanding the extradition presents new documents, or supplements those which had been presented before.

Article 38

Whenever the prisoner acquiesces in his surrender, the court, upon entering the said acquiescence in due form, shall render a decision, without further transaction, granting his extradition.

Article 39

Every article or object related to the crime on which the extradition is based and found in the possession of the offender, shall be yielded to the State which obtained the surrender.

Those found in the possession of third parties shall not be surrendered unless the possessors thereof have first been given the proper hearing, and unless their objections have been resolved.

Article 40

When the extradition is to take place by land, the Government which delivers up the prisoner shall be bound to take the latter to the most convenient point of its frontier.

When the extradition is to take place over sea or by a river route, the prisoner shall be delivered up to the agents of the other nation at the most appropriate port of embarkation.

The nation requesting the extradition shall always have the right to send one or more security agents for the proper custody of the prisoner; but the functions and power of said officers shall be subordinate to the agents or authorities of the country which makes the delivery, or of the country over which the prisoner is conveyed.

Article 41

Whenever the extradition of a prisoner has been granted but the delivery cannot be actually accomplished without passing through the territory of another State, the latter shall grant permission to do so, upon no other requisite than the exhibition, diplomatically, of the decree of extradition issued by the Government which granted it.

If the transit is granted, the provisions of the third paragraph of the preceding article shall be complied with.

Article 42

The expenses which may be incurred owing to the demand of extradition up to the moment of the delivery, shall be paid by the State upon which the demand is made; but all those incurred after such delivery shall be paid by the Government making the demand.

Article 43

Whenever the extradition is granted, and the offender involved is a convicted criminal, the Government which obtained the extradition shall be bound to communicate to the Government which granted it, the decision rendered in the case or trial for which it was granted.

TITLE V

OF THE PRECAUTIONARY ARREST

Article 44

When the signatory Governments deem the case to be urgent, they shall request by mail or by telegraph that administrative procedures leading to the provisional arrest of the offender, as well as to the security of the objects related to the crime, be taken, provided that a sentence or a warrant of arrest is positively asserted to have been issued and the nature of the offense with which he is charged is clearly defined.

Article 45

The person so arrested shall be set at liberty if within ten days subsequent to the arrival of the first mail sent after the date of the petition for the provisional arrest no formal demand of extradition shall have been made by the requesting State.

Article 46

In all cases of precautionary arrest the responsibilities thereof belong to the Government which requested it.

TITLE VI

GENERAL PROVISIONS

Article 47

No simultaneous ratification of this treaty by all the signatory States shall be necessary for its validity. Any State which approves of the treaty shall communicate its approval thereof to the Governments of the Argentine Republic and of the Oriental Republic of Uruguay, which shall give notice thereof to the other contracting States. This process shall take the place of an exchange.

Article 48

The exchange having been made in the manner provided for in the preceding article, the treaty shall remain in force for an indefinite period of time.

Article 49

If any one of the contracting nations should deem it advisable to discontinue its adhesion to the treaty, or should desire to introduce modifications into its provisions, it shall be in its power to do so provided that it give notice of its intention to do so to the other parties; but it shall not be released from its obligation until after two years have elapsed after the notice aforesaid was given by it; and in these two years it shall endeavour to reach a new agreement on the subject.

Article 50

The stipulations of this treaty shall be applicable only to offenses committed during the time in which it has been in force.

Article 51

The provisions of Article 47 are applicable to nations which have not attended this Congress, but wish to adhere to this treaty.

IN TESTIMONY WHEREOF, the Plenipotentiaries of the cited Nations sign it and set thereto the seal on five copies, in Montevideo, on the twenty-third day of January in the year of one thousand eight hundred and eighty nine.

Here follow the signatures of the Plenipotentiaries.

Note: The following countries are parties to this treaty, having deposited their instruments of ratification, without reservations, with the Government of Uruguay: Argentina, Bolivia, Paraguay, Peru, and Uruguay.

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TREATY ON INTERNATIONAL PENAL LAW (REVISED)[1]

Signed at Montevideo on 19 March 1940 at the Second South American Congress on Private International Law

Text: OAS Official Records, OEA/Ser. X/1. *Treaty Series* 34

His Excellency the President of the Oriental Republic of Uruguay; His Excellency the President of the Republic of the United States of Brazil; His Excellency the President of the Republic of Colombia; His Excellency the President of the Republic of Bolivia; His Excellency the President of the Argentine Republic; His Excellency the President of the Republic of Peru, and His Excellency the President of the Republic of Paraguay,

Have agreed to conclude the present treaty through the medium of their respective plenipotentiaries, assembled in congress in the City of Montevideo as a result of the initiative taken by the Governments of the Oriental Republic of Uruguay and the Argentine Republic.

[Here follow the names of the Plenipotentiaries]

The said representatives, having presented their full powers, which were found to be in due form, having taken into consideration the fact that the Treaty on International Penal Law signed at Montevideo on January 23, 1889, might well be subjected to a process of revision for the purpose of modifying and harmonizing the rules therein laid down, and bearing in mind the conferences and discussions held in this connection, have agreed upon the following provisions:

TITLE I

JURISDICTION AND THE LAW APPLICABLE THERETO

Article 1

Crimes, whatever may be the nationality of the agent, of the victim, or of the injured party, shall be tried by the tribunals, and punished according to the laws, of the State in whose territory they are committed.

Article 2

Crimes affecting two or more States and committed by one or more offenders, shall come under the jurisdiction of the judges or tribunals of the place where the said crimes were perpetrated; and the local laws must be applied in the corresponding proceedings.

If the crime was perpetrated in more than one country, it shall come under the jurisdiction of the tribunals of the first State to take judicial cognizance thereof, and the laws of that State must apply.

Article 3

In cases involving connected crimes committed by one or more offenders, whether as principals, as accomplices, or as harbourers, in the territory of two or more signatory States, preference shall be given in regard to trial of the crime, to the authorities and penal law of the country in which the more serious offense was perpetrated, a matter which shall be left to the discretion of the requested State.

Article 4

In the cases to which Articles 2 and 3 refer, the judge of the proceedings shall communicate with the Executive Power, in order that the latter may notify the States interested in the trial, of the institution of proceedings.

[1] Revision of the Treaty on International Penal Law signed at the First South American Congress on Private International Law, Montevideo, 1888-1889. See p. 1348.

Article 5

Acts committed in the territory of a given State, which are not susceptible of punishment according to its own laws but which are punishable by the State wherein they produce their effects, may not be tried by the judges or tribunals of the latter unless the offender shall be found within its jurisdiction.

A similar rule applies with respect to those crimes for which the extradition of the offenders is not authorized.

In cases involving acts committed by public functionaries who are serving in a foreign country, if such acts constitute a criminal violation of the specific duties attached to the office with which they have been entrusted, the foregoing rule shall not apply, and the said functionaries shall be tried and punished by the judges or tribunals of the offenders' own State, in conformity with its laws.

Article 6

Any of the signatory States may expel, in accordance with its laws, alien offenders who have taken refuge in its territory, provided that after the appropriate request has been presented to the authorities of the country where any of the extraditable crimes were committed, the surrender of the said offenders is not requested, through the channel of extradition, within ninety days.

Article 7

The principles of public international law shall be observed for the trial of crimes committed by any of the functionaries of a diplomatic mission or by any member of their respective suites.

A similar procedure shall be followed with respect to Chiefs of State and their suites; and also with respect to members of armed forces, when the crime has been committed within the bounds of the place where they are stationed, and bears a legal relationship to the said forces.

Article 8

Crimes committed on the high seas, whether on board airplanes, or on men-of-war, or on merchant ships, must be tried and punished according to the law of the State whose flag the vessel flies.

Article 9

Crimes perpetrated on board men-of-war or military planes of one State, while these are in the territorial waters of another State, shall be tried by the tribunals, and punished according to the laws, of the State to which the said men-of-war or airplanes belong.

If only persons who do not belong to the crew of the warship or airplane, participate in the commission, on board, of such acts, prosecution and punishment shall be conducted in accordance with the laws of the State within whose territorial waters the warship or airplane is located.

The laws of the country to which the ship or airplane belongs, shall also govern the trial and punishment of such punishable acts as are committed elsewhere than on board by members of the crew or by individuals charged with the exercise of some function on board, when the said acts affect only the disciplinary order of those ships or planes.

Article 10

Crimes committed on board vessels other than vessels of war shall be tried and punished by the judges or tribunals, and according to the laws, of the State in whose territorial waters a given vessel was located at the time when such a crime was committed.

If the crimes are committed on board private airplanes which are not in flight, the corresponding trial and imposition of punishment shall be conducted according to the laws, and by the judges of the territory where the crimes occurred.

Article 11

Trial and punishment for crimes committed on board airplanes or on men-of-war or on merchant ships, under the conditions specified in Articles 2 and 3, shall be conducted according to the provisions laid down in those articles.

Article 12

For the purposes of criminal jurisdiction, territorial waters are declared to be those included in a belt five miles wide running along the coast of the mainland or of the islands which constitute part of the territory of the various States.

Article 13

A riparian State has the right to continue on the high seas a pursuit begun within its territorial waters, as well as the right to arrest and try the vessel that has committed an offense within the said waters. In all cases where a capture is effected on the high seas, that fact shall be communicated without delay to the State whose flag the vessel flies. The pursuit must be broken off instantly when the vessel enters [other] territorial waters, or a port belonging to its own country or to a third State.

Article 14

International piracy, traffic in narcotics, white slavery, and the destruction or damage of submarine cables, are subject to the jurisdiction and law of the State into whose power the offenders may come, regardless of the place where such crimes were committed; but without prejudice to the preferential right of the State in which the criminal acts were perpetrated, to request the extradition of the offenders.

Article 15

Crimes committed on board airplanes in flight over a foreign State shall come under the jurisdiction of the latter if the airplane should make its first landing there. Otherwise, such jurisdiction shall appertain to the State in whose territory that first landing is made, and the laws of the subjacent State shall apply. When it is not possible to determine the territory over which the crime was committed, the case shall be governed by the law of the State whose flag the plane flies.

The pilot of an airplane in flight, who has been notified of the commission of a crime, is bound to land at the first known airport and inform the authorities of that port.

Article 16

Prescription of actions and of penalties shall be determined by the judges or tribunals, and in accordance with the laws, of the State to which cognizance of the crimes in question appertains.

Article 17

A judgment rendered in any of the signatory States shall be recognized in those States for the purpose of establishing the repetition or habitual commission of the offense, or a tendency thereto, on the part of the accused; and also in order to make it obligatory that he accede, while he is in their territory, to indemnification of the damage, to measures of security against his person, and to the interdiction resulting from the proceedings.

The signatory States shall furnish reports in regard to the judicial or police antecedents on file in their archives, if they are requested to do so by another interested State.

TITLE II

EXTRADITION

CHAPTER I

THE SYSTEM OF EXTRADITION

Article 18

The contracting States bind themselves to surrender, if they are requested to do so, persons who have been prosecuted or condemned by the authorities of one of those States, and who are found in the territory of another.

The request for surrender shall be granted in accordance with the procedural formalities in force within the requested State, provided that the following conditions are both met:

(*a*) The person to be surrendered must have been condemned by final judgment to one year in prison, at least; or, if the case concerns an indicated person, the crime that constitutes the subject-matter of the prosecution must be punishable, according to the laws of the requesting State, by a minimum intermediate penalty of two years' imprisonment. Half the sum of the extremes within which the particular penalty involving deprivation of liberty is fixed, shall be considered as the intermediate penalty.

(*b*) The requesting State must have jurisdiction to try and to pass sentence concerning the crime which motivates the demand, even when the acts involved have been committed outside the territory of the contracting States.

Article 19

The nationality of the accused may not be invoked as a reason for refusing extradition, except when a constitutional provision establishes otherwise.

Article 20

Extradition shall not be granted:

(*a*) For the crime of duelling;

(*b*) For the crime of adultery;

(*c*) For the crimes of libel and slander, even when perpetrated through the medium of the press;

(*d*) For political crimes;

(*e*) For common crimes committed with a political purpose, except when, in the opinion of the judge or tribunal receiving the request, the common character manifestly predominates;

(*f*) For common crimes in cases where, in the opinion of the judge or tribunal of the requested State, it can be inferred from the attendant circumstances that the purpose in making that request is preponderantly political;

(*g*) For essentially military crimes, exclusive of those governed by the common law. If the person sought is charged with a military crime which is also punishable by the common law, he shall be surrendered with the reservation that he is to be tried only in accordance with the said law and by the ordinary tribunals;

(*h*) When the person sought has been or is being tried, for the same act and in accordance with the provisions of this treaty, in the requested State; or when the action or penalty has been invalidated by prescription, according to the laws of the requesting State, before the seizure of the accused;

(*i*) When the person sought would have to appear before a tribunal or court taking cognizance of exceptions.

The determination of the character of the offenses involved appertains exclusively to the authorities of the requested State, on the basis of the law more favourable to the accused.

Article 21

No civil or commercial action involving the accused shall hinder his extradition.

Article 22

When the individual sought is deprived of his freedom by virtue of a prosecution or a service of sentence in the requested State, his surrender may be postponed until the restriction on his freedom has been removed, or the sentence has been served; but in the meantime, prescription of the action or penalty in question shall be suspended.

Article 23

The murder of the Chief of a contracting State, or an attempt upon his life, shall not be regarded as a political crime or act connected therewith.

Article 24

Persons whose extradition has been granted may not be tried for crimes previous to those on which the extradition is based.

Crimes constituting grounds for extradition may be tried and punished, provided that the requested State gives its consent previously and in conformity with the terms of this treaty.

Article 25

When the extradition of a given individual is demanded by different States, and the demands are based upon the same crime, preference shall be accorded to that of the State in whose territory the crime was perpetrated; or, if it was committed in different countries, preference shall be given to the first demand. If different acts are involved, preference in granting the extradition shall be given to the State in whose territory the more serious crime was committed, according to the judgment of the requested State.

In cases involving different acts which the requested State regards as equally serious, the preference shall be determined by the order in which the requests are received.

Article 26

In the cases contemplated in paragraphs 2 and 3 of the foregoing article, the requested State may, as a condition of granting the extradition, stipulate that the person demanded must also be subject to ulterior extradition.

Article 27

In no case shall the death penalty be imposed for the crime for which extradition has been granted.

Article 28

The foregoing rules will apply in the case of persons condemned to measures of security, provided that the latter consist of deprivation or restriction of freedom, and that for their extinction more than a year has yet to elapse.

TITLE II

EXTRADITION

CHAPTER II

EXTRADITION PROCEDURE

Article 29

The demand for extradition must be made by the appropriate diplomatic agent or, in default thereof, either by the consular agents or directly from Government to Government; and it must be accompanied, according to whether the persons involved are accused or condemned persons, either by a copy of the order of imprisonment or judicial order providing for deprivation of freedom, issued by the competent authorities, or by an authenticated copy of the judgment of condemnation.

The records supplied must include a precise statement as to the act on which the charge is based, and the date and place of its occurrence. The said records shall be accompanied by copies of the laws applicable to the case, as well as by copies of those relative to prescription as it affects the action or penalty in question. Data and information regarding antecedents, to facilitate identification of the person sought, shall also be included.

Article 30

The demand for extradition of a condemned person cannot be based on a sentence rendered by default, that is to say, a sentence rendered when the accused has not been personally summoned to defend, or when he has been summoned but has not appeared. However, the requested extradition may be granted if the requesting State promises to reopen the case in such a way as to allow for the defence of the accused.

Article 31

If the demand for extradition has been made in due form, the requested Government shall send the documents on the case to the competent judge or tribunal, who must pass upon the propriety of the said demand, on the basis of the provisions contained in Articles 29 and 30; and, whenever the case warrants such action, the said judge or tribunal shall take the necessary steps for the apprehension of the person sought, ordering his arrest and the seizure of the articles involved in the crime, if they believe this to be the proper procedure.

Article 32

If the judge of the requested State considers that the demand is legally inadmissible because of some defect of form, he shall advise the judge of the requesting State as to what documents are lacking and shall fix a reasonable time-limit for their remission.

Article 33

In cases where the arrest is made, the party concerned shall be informed of the cause of arrest within twenty-four hours.

Within a period of three days and no more, reckoned from the day following the notification, the interested party may oppose exceptions based on the following grounds:

(*a*) Incompetence of the judge of the requested State who ordered the arrest;

(*b*) The fact that the said party is not the person sought;

(*c*) Defects of form in the document presented;

(*d*) Impropriety of the demand for extradition.

Article 34

In cases where it is necessary to verify the allegations, the question shall be laid open for proof; and the provisions of the procedural law of the requested State shall govern with respect to such proof and to the time allowed for it.

Article 35

When the proof has been produced, a decision on the question shall be reached without further proceedings, by a declaration as to whether or not grounds for extradition exist.

In cases where cognizance of the demand appertains originally to the judge of first instance, the decision shall be appealable to the competent tribunal.

Article 36

If the sentence is favourable to the demand for extradition, the tribunal which renders the decision shall communicate it immediately to the Executive Power, in order that he may take the steps necessary for the surrender of the culprit.

If the sentence is unfavourable, the judge or tribunal, once it has become final, shall order the immediate release of the prisoner and shall so advise the Executive Power, enclosing a copy of the said sentence in order that the Executive may bring it to the knowledge of the requesting Government.

Article 37

If the prisoner acquiesces in the demand, the judge or tribunal shall draw up a statement regarding the terms of that acquiescence, and shall, without further proceedings, declare that extradition is proper.

Article 38

Articles found in the possession of the person sought, if they were acquired in consequence of the act in question, if they were used in its execution, if the act was perpetrated upon them, or if they constitute evidence in some other way, shall be seized and delivered to the demanding State, even though the extradition may fail to take place owing to the death or disappearance of the accused.

Article 39

In cases where the delivery of the accused is to be effected over a land route, the requested State shall transfer him to the most suitable point on the frontier.

When his transfer must be effected over a maritime, fluvial or air route, he shall be delivered to those agents whom the requesting State may appoint, at the most suitable port or aerodrome of embarkation.

The requesting State may, in any case, appoint one or more police agents; but they shall act as subordinates of the agents or authorities representing the territory of the requested State, or that of the State of transit.

Article 40

If it should be necessary to traverse the territory of an intermediate State in order to surrender a prisoner whose extradition has been agreed to by one State in favour of another, such transit shall be permitted by the said intermediate State without any requirement other than the exhibition through diplomatic channels of the proper attestation, in the form of a decree of extradition which authorized the surrender.

Article 41

The expenses incurred in the extradition of the offender shall be borne by the requested State until the moment when the surrender takes place; and thenceforth, they shall be borne by the requesting Government.

Article 42

When extradition of a person under indictment has been accorded, the Government whose request was granted shall communicate to the Government that granted it, the final judgment pronounced in the case which constituted the grounds for extradition.

Article 43

When extradition has been accorded, and the person sought has been placed at the disposal of the diplomatic, consular or police agent of the demanding State, he shall be released if, within a period of forty days from the date of the pertinent communication, he has not been sent to his destination; always provided that no request for a reasonable delay has been presented. In such circumstances, no new demand based upon the same grounds will be admissible.

Article 44

When the request for extradition has been granted, the requesting State agrees to try the accused, in accordance with Article 24, exclusively for the act for which he was surrendered and not for any previous act, unless he should remain voluntarily for more than thirty days, after being released, in the territory of the requested State.

Article 45

During the extradition proceedings the person detained may not be released on bail.

TITLE III

PROVISIONAL ARREST

Article 46

In urgent cases, the contracting States may request by post or by telegraph that steps be taken for the arrest of the accused and for the seizure of articles connected with the crime, once the nature of that crime has been determined and the existence of an order of imprisonment issued by a competent judge, has been invoked.

In such cases, the prisoner shall be released if, within sixty days from the date of his arrest, the formal demand for extradition, duly drawn up, has not been presented to the requested State. When that interval has elapsed and the prisoner has been released, his arrest cannot be requested again until after the documents required by Article 29 have been presented.

Article 47

In cases of provisional arrest, the release of the accused shall be effected without prejudice to the retention of the articles mentioned in Article 38, for a reasonable time, to be fixed by the judges of the State which proceeded to the arrest and in accordance with the attendant circumstances.

Article 48

In all cases of provisional arrest, the responsibilities which may arise therefrom appertain to the State that requested it.

TITLE IV

GENERAL PROVISIONS

Article 49

The simultaneous ratification of this treaty by all of the signatory States is not necessary in order to bring it into operation. The States which approve it shall communicate their approval to the Government of the Oriental Republic of Uruguay, so that the latter may notify the other contracting States to that effect. This procedure shall take the place of an exchange.

Article 50

When the exchange has been made, in the form indicated by the preceding article, this treaty shall be effective from that time forth indefinitely.

Article 51

If any of the contracting States should deem it advisable to withdraw its adherence to the treaty or introduce changes into the said instrument, it shall so advise the other signatories; but the withdrawal shall not take effect until two years after the date of denunciation, during which time an effort to reach a new accord shall be made.

Article 52

No demand for extradition in connection with a crime committed before the exchange of the ratifications of this treaty may be based upon the provisions therein contained.

Article 53

Article 49 applies also to States which have not attended this Congress, but which wish to adhere to the present treaty.

IN WITNESS WHEREOF, the Plenipotentiaries of the aforesaid nations sign the present treaty in Montevideo on the 19th day of March, 1940.

Here follow the signatures of the Plenipotentiaries.

Note: The following countries are signatories to this treaty: Argentina, which signed with a reservation, Bolivia, Brazil, Colombia, Paraguay, and Peru. Uruguay, which is the depositary country, has deposited its instrument of ratification.

RESERVATION

The Delegation of the Argentine Republic reserves the right to differentiate between “political offender” and “international terrorist”.

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MONTEVIDEO MULTILATERAL CONVENTION ON EXTRADITION

Signed at Montevideo on 26 December 1933

Entry into force: 26 December 1934, in accordance with Article 20
Text: OAS, *Treaty Series*, No. 34

The Governments represented in the Seventh International Conference of American States: Wishing to conclude a Convention on Extradition, have appointed the following plenipotentiaries:

[Here follow the names of the plenipotentiaries.]

Who, after having exhibited their Full Powers, which were found in good and due form, have agreed upon the following:

Article 1

Each one of the signatory States in harmony with the stipulations of the present Convention assumes the obligation of surrendering to any one of the States which may make the requisition, the persons who may be in their territory and who are accused or under sentence. This right shall be claimed only under the following circumstances:

(*a*) That the demanding State has the jurisdiction to try and to punish the delinquency which is attributed to the individual whom it desires to extradite.

(*b*) That the act for which extradition is sought constitutes a crime and is punishable under the laws of the demanding and surrendering States with a minimum penalty of imprisonment for one year.

Article 2

When the person whose extradition is sought is a citizen of the country to which the requisition is addressed, his delivery may or may not be made, as the legislation or circumstances of the case may, in the judgment of the surrendering State, determine. If the accused is not surrendered, the latter State is obliged to bring action against him for the crime with which he is accused, if such crime meets the conditions established in sub-article (b) of the previous article. The sentence pronounced shall be communicated to the demanding State.

Article 3

Extradition will not be granted:

(*a*) When, previous to the arrest of the accused person, the penal action or sentence has expired according to the laws of the demanding or the surrendering State.

(*b*) When the accused has served his sentence in the country where the crime was committed or when he may have been pardoned or granted an amnesty.

(*c*) When the accused has been or is being tried by the State to which the requisition was directed for the act with which he is charged and on which the petition of extradition is based.

(*d*) When the accused must appear before any extraordinary tribunal or court of the demanding State (tribunal o juzgado de excepcion del Estado requiriente). Military courts will not be considered as such tribunals.

(*e*) When the offense is of a political nature or of a character related thereto. An attempt against the life or person of the Chief of State or members of his family, shall not be deemed to be a political offense.

(*f*) When the offense is purely military or directed against religion.

Article 4

The determination of whether or not the exceptions referred to in the previous article are applicable shall belong exclusively to the State to which the request for extradition is addressed.

Article 5

A request for extradition should be formulated by the respective diplomatic representative. When no such representative is available, consular agents may serve, or the governments may communicate directly with one another. The following documents in the language of the country to which the request for extradition is directed, shall accompany every such request:

(*a*) An authentic copy of the sentence, when the accused has been tried and condemned by the courts of the demanding State.

(*b*) When the person is only under accusation, an authentic copy of the order of detention issued by the competent judge, with a precise description of the imputed offense, a copy of the penal laws applicable thereto, and a copy of the laws referring to the prescription of the action or the penalty.

(*c*) In the case of an individual under accusation as also of an individual already condemned, there shall be furnished all possible information of a personal character which may help to identify the individual whose extradition is sought.

Article 6

When a person whose extradition is sought shall be under trial or shall be already condemned in the State from which it is sought to extradite him, for an offense committed prior to the request for extradition, said extradition shall be granted at once, but the surrender of the accused to the demanding State shall be deferred until his trial ends or his sentence is served.

Article 7

When the extradition of a person is sought by several States for the same offense, preference will be given to the State in whose territory said offense was committed. If he is sought for several offenses, preference will be given to the State within whose bounds shall have been committed the offense which has the greatest penalty according to the law of the surrendering State.

If the case is one of different acts which the State from which extradition is sought esteems of equal gravity, the preference will be determined by the priority of the request.

Article 8

The request for extradition shall be determined in accordance with the domestic legislation of the surrendering State and the individual whose extradition is sought shall have the right to use all the remedies and resources authorized by such legislation, either before the judiciary or the administrative authorities as may be provided for by the aforesaid legislation.

Article 9

Once a request for extradition in the form indicated in Article 5 has been received, the State from which the extradition is sought will exhaust all necessary measures for the capture of the person whose extradition is requested.

Article 10

The requesting State may ask, by any means of communication, the provisional or preventive detention of a person, if there is, at least, an order by some court for his detention and if the State at the same time offers to request extradition in due course. The State from which the extradition is sought will order the immediate arrest of the accused. If within a maximum period of two months after the requesting State has been notified of the arrest of the person, said State has not formally applied for extradition, the detained person will be set at liberty and his extradition may not again be requested except in the way established by Article 5.

The demanding State is exclusively liable for any damages which might arise from the provisional or preventive detention of a person.

Article 11

Extradition having been granted and the person requested put at the disposition of the diplomatic agent of the demanding State, then, if, within two months from the time when said agent is notified of same, the person has not been sent to his destination, he will be set at liberty, and he cannot again be detained for the same cause.

The period of two months will be reduced to forty days when the countries concerned are conterminous.

Article 12

Once extradition of a person has been refused, application may not again be made for the same alleged act.

Article 13

The State requesting the extradition may designate one or more guards for the purpose of taking charge of the person extradited, but said guards will be subject to the orders of the police or other authorities of the State granting the extradition or of the States in transit.

Article 14

The surrender of the person extradited to the requesting State will be done at the most appropriate point on the frontier or in the most accessible port, if the transfer is to be made by water.

Article 15

The objects found in the possession of the person extradited, obtained by the perpetration of the illegal act for which extradition is requested, or which might be useful as evidence of same, will be confiscated and handed over to the demanding country, notwithstanding it might not be possible to surrender the accused because of some unusual situation such as his escape or death.

Article 16

The costs of arrest, custody, maintenance, and transportation of the person, as well as of the objects referred to in the preceding article, will be borne by the State granting the extradition up to the moment of surrender and from thereon they will be borne by the demanding State.

Article 17

Once the extradition is granted, the demanding State undertakes:

(*a*) Not to try nor to punish the person for a common offense which was committed previous to the request for extradition and which has not been included in said request, except only if the interested party expressly consents.

(*b*) Not to try nor to punish the person for a political offense, or for an offense connected with a political offense, committed previous to the request for extradition.

(*c*) To apply to the accused the punishment of next lesser degree than death if according to the legislation of the country of refuge the death penalty would not be applicable.

(*d*) To furnish to the State granting the extradition an authentic copy of the sentence pronounced.

Article 18

The signatory States undertake to permit the transit through their respective territories of any person whose extradition has been granted by another State in favour of a third, requiring only the original or an authentic copy of the agreement by which the country of refuge granted the extradition.

Article 19

No request for extradition may be based upon the stipulations of this Convention if the offense in question has been committed before the ratification of the Convention is deposited.

Article 20

The present Convention will be ratified by means of the legal forms in common use in each of the signatory States, and will come into force, for each of them, thirty days after the deposit of the respective ratification.

The Minister of Foreign Affairs of the Republic of Uruguay shall transmit authentic certified copies to the governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan-American Union in Washington, which shall notify the signatory governments of said deposit. Such notification shall be considered as an exchange of ratifications.

Article 21

The present Convention does not abrogate or modify the bilateral or collective treaties, which at the present date are in force between the signatory States. Nevertheless, if any of said treaties lapse, the present Convention will take effect and become applicable immediately among the respective States, if each of them has fulfilled the stipulations of the preceding article.

Article 22

The present Convention shall remain in force indefinitely but may be denounced by means of one year's notice given to the Pan-American Union, which shall transmit it to the other signatory governments. After the expiration of this period the Convention shall cease in its effects as regards the party which denounces but shall remain in effect for the remaining High Contracting Parties.

Article 23

The present Convention shall be open for the adherence and accession of the States which are not signatories. The corresponding instruments shall be deposited in the archives of the Pan-American Union, which shall communicate them to the other High Contracting Parties.

IN WITNESS WHEREOF, the following Plenipotentiaries have signed this convention in Spanish, English, Portuguese and French and hereunto affix their respective seals in the city of Montevideo, Republic of Uruguay, this 26th day of December, 1933.

Reservations

The Delegation of the United States of America, in signing the present Extradition Convention, reserves the following articles:

Article 2 (second sentence, English text);

Article 3, paragraph (d);

Articles 12, 15, and 18.

Reservation to the effect that El Salvador, although it accepts in general principle Article 18 of the Inter-American Treaty of Extradition, concretely stipulates the exception that it cannot cooperate in the surrender of its own nationals, prohibited by its Political Constitution, by permitting the transit through its territory of said nationals when one foreign State surrenders them to another.

Mexico signs the Convention on Extradition with the declaration with respect to Article 3, paragraph f, that the internal legislation of Mexico does not recognize offenses against religion. It will not sign the optional clause of this Convention.

The Delegation from Ecuador, in dealing with the Nations with which Ecuador has signed Conventions on Extraditions, accepts the stipulations herein established in all respects which are not contrary to said Conventions.

Optional clause

The States signing this clause, notwithstanding Article 2 of the preceding Convention on Extradition, agree among themselves that in no case will the nationality of the criminal be permitted to impede his extradition.

The present clause is open to those States signing said Treaty of Extradition, which desire to be ruled by it in the future, for which purpose it will be sufficient to communicate their adherence to the Pan American Union.

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INTER-AMERICAN CONVENTION ON EXTRADITION

Signed at Caracas on 25 February 1981 at the Inter-American Specialized Conference on Extradition

Entry into force: 28 March 1992, in accordance with Article 31
Text: OAS, *Treaty Series*, No. 60, p. 45

The Member States of the Organization of American States,

Reaffirming their goal of strengthening international cooperation in legal and criminal law matters, which was the inspiration for the agreements reached in Lima on March 27, 1879, in Montevideo on January 23, 1889, in Mexico City on January 28, 1902, in Washington on February 7, 1923, in Havana on February 20, 1928, in Montevideo on December 26, 1933, in Guatemala City on April 12, 1934, and in Montevideo on March 19, 1940;

Taking into consideration resolutions CVII of the Tenth Inter-American Conference (Caracas, 1954), VII of the Third Meeting of the Inter-American Council of Jurists (Mexico, 1956). IV of the Fourth Meeting of that Council (Santiago, Chile, 1959), and AG/RES.91 (II-0/72), 183 (V-0/75) and 310 (VII-0/77) of the General Assembly of the Organization of American States, as well as the draft Conventions proposed by the Inter-American Juridical Committee in 1954, 1957, 1973, and 1977;

Believing that the close ties and the cooperation that exist in the Americas call for the extension of extradition to ensure that crime does not go unpunished, and to simplify procedures and promote mutual assistance in the field of criminal law on a wider scale than provided for by the treaties in force, with due respect to the human rights embodied in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights; and

Conscious that the fight against crime at the international level will enhance the fundamental value of justice in criminal law matters,

The Member States of the Organization of American States

ADOPT THE FOLLOWING INTER-AMERICAN CONVENTION ON EXTRADITION:

Article 1

Obligation to Extradite

The States Parties bind themselves, in accordance with the provisions of this Convention, to surrender to other States Parties that request their extradition persons who are judicially required for prosecution, are being tried, have been convicted or have been sentenced to a penalty involving deprivation of liberty.

Article 2

Jurisdiction

1. For extradition to be granted, the offense that gave rise to the request for extradition must have been committed in the territory of the requesting State.
2. When the offense for which extradition is requested has been committed outside the territory of the requesting State, extradition shall be granted provided the requesting State has jurisdiction to try the offense that gave rise to the request for extradition and to pronounce judgement thereon.
3. The requested State may deny extradition when it is competent, according to its own legislation, to prosecute the person whose extradition is sought for the offense on which the request is based. If it denies extradition for this reason, the requested State shall submit the case to its competent authorities and inform the requesting State of the result.

Article 3

Extraditable Offenses

1. For extradition to be granted, the offense for which the person is sought shall be punishable at the time of its commission, by reason of the acts that constitute it, disregarding extenuating circumstances and the denomination of the offense, by a penalty of not less than two years of deprivation of liberty under the laws of both the requesting State and the requested State. Where the principle of retroactivity of penal law exists, it shall be applied only when it is favourable to the offender.
2. If the extradition is to be carried out between States whose laws establish minimum and maximum penalties, the offense for which extradition is requested shall be punishable, under the laws of the requesting and the requested States, by an average penalty of at least two years of deprivation of liberty. Average penalty is understood to be one-half of the sum of the minimum and maximum terms of each penalty of deprivation of liberty.
3. Where the extradition of an offender is requested for the execution of a sentence involving deprivation of liberty, the duration of the sentence still to be served must be at least six months.
4. In determining whether extradition should be granted to a State having a federal form of government and separate federal and state criminal legislation, the requested State shall take into consideration only the essential elements of the offense and shall disregard elements such as interstate transportation or use of the mails or other facilities of interstate commerce, since the sole purpose of such elements is to establish the jurisdiction of the federal courts of the requesting State.

Article 4

Grounds for Denying Extradition

Extradition shall not be granted:

1. When the person sought has completed his punishment or has been granted amnesty, pardon or grace for the offense for which extradition is sought, or when he has been acquitted or the case against him for the same offense has been dismissed with prejudice.
2. When the prosecution or punishment is barred by the statute of limitations according to the laws of the requesting State or the requested State prior to the presentation of the request for extradition.
3. When the person sought has been tried or sentenced or is to be tried before an extraordinary or *ad hoc* tribunal of the requesting State.
4. When, as determined by the requested State, the offense for which the person is sought is a political offense, an offense related thereto, or an ordinary criminal offense prosecuted for political reasons. The requested State may decide that the fact that the victim of the punishable act in question performed political functions does not in itself justify the designation of the offense as political.
5. When, from the circumstances of the case, it can be inferred that persecution for reasons of race, religion or nationality is involved, or that the position of the person sought may be prejudiced for any of these reasons.
6. With respect to offenses that in the requested State cannot be prosecuted unless a complaint or charge has been made by a party having a legitimate interest.

Article 5

Specific Offenses

No provision of this Convention shall preclude extradition regulated by a treaty or Convention in force between the requesting State and the requested State whose purpose is to prevent or repress a specific category of offenses and which imposes on such States an obligation to either prosecute or extradite the person sought.

Article 6

Right of Asylum

No provision of this Convention may be interpreted as a limitation on the right of asylum when its exercise is appropriate.

Article 7

Nationality

1. The nationality of the person sought may not be invoked as a ground for denying extradition, except when the law of the requested State otherwise provides.
2. In the case of convicted persons, the States Parties may negotiate the mutual surrender of nationals so that they may serve their sentences in the States of which they are nationals.

Article 8

Prosecution by the Requested State

If, when extradition is applicable, a State does not deliver the person sought, the requested State shall, when its laws or other treaties so permit, be obligated to prosecute him for the offense with which he is charged, just as if it had been committed within its territory, and shall inform the requesting State of the judgment handed down.

Article 9

Penalties Excluded

The States Parties shall not grant extradition when the offense in question is punishable in the requesting State by the death penalty, by life imprisonment, or by degrading punishment, unless the requested State has previously obtained from the requesting State, through the diplomatic channel, sufficient assurances that none of the above-mentioned penalties will be imposed on the person sought or that, if such penalties are imposed, they will not be enforced.

Article 10

Transmission of Request

The request for extradition shall be made by the diplomatic agent of the requesting State, or, if none is present, by its consular officer, or, when appropriate, by the diplomatic agent of a third State to which is entrusted, with the consent of the government of the requested State, the representation and protection of the interests of the requesting State. The request may also be made directly from government to government, in accordance with such procedure as the governments concerned may agree upon.

Article 11

Supporting Documents

1. The request for extradition shall be accompanied by the documents listed below, duly certified in the manner prescribed by the laws of the requesting State:

   (*a*) A certified copy of the warrant for arrest, or other document of like nature, issued by a competent judicial authority, or the *Ministerio Público* as well as a certified copy of evidence that, according to the laws of the requested State, is sufficient for the arrest and commitment for trial of the person sought. The last mentioned requirement shall not apply if the laws of the requesting State and of the requested State do not so provide. If the person has been tried and convicted of the offense by the courts of the requesting State, a certified verbatim copy of the final judgment shall suffice.

   (*b*) The text of the legal provisions that define and penalize the alleged crime, as well as those of the statute of limitations governing prosecution and punishment.

2. The request for extradition shall also be accompanied by the translation into the language of the requested State, if appropriate, of the documents enumerated in the previous paragraph, as well as by any personal data that will permit identification of the person sought, indication of his nationality, and, whenever possible, his location within the territory of the requested State, photographs, fingerprints, or any other satisfactory means of identification.

Article 12

Supplementary Information and Legal Assistance

1. The requested State, when it considers that the documents presented are insufficient, in accordance with the provisions of Article 11 of this Convention, shall so inform the requesting State as soon as possible. The requesting State shall correct any omissions or defects observed within a period of thirty days in the event the person sought is already detained or subject to precautionary measures. If, because of special circumstances, the requesting State is unable to correct the omissions or defects within that term, it may ask the requested State to extend the term by thirty days.
2. The requested State shall provide, at no cost to the requesting State, legal assistance to protect the interests of the requesting State before the competent authorities of the requested State.

Article 13

Rule of Speciality

1. A person extradited under this Convention shall not be detained, tried or punished in the territory of the requesting State for an offense, committed prior to the date of the request for extradition, other than that for which extradition has been granted unless:

   (*a*) That person leaves the territory of the requesting State after extradition and voluntarily returns to it; or

   (*b*) That person does not leave the territory of the requesting State within thirty days after being free to do so; or

   (*c*) The competent authority of the requested State consents to that person's detention, trial or punishment for another offense. In such case, the requested State may require the requesting State to submit the documents mentioned in Article 11 of this Convention.
2. When extradition has been granted, the requesting State shall inform the requested State of the final resolution of the case against the person extradited.

Article 14

Provisional Detention and Precautionary Measures

1. In urgent cases, a State Party may request by the means of communication provided for in Article 10 of this Convention, or any other such means, the detention of the person who is judicially required for prosecution, is being tried, has been convicted, or has been sentenced to a penalty involving deprivation of liberty, and may also request the seizure of the objects related to the offense. The request for provisional detention shall contain a statement of intention to present the formal request for the extradition of the person sought, a statement of the existence of a warrant of arrest or of a judgment of conviction against the person issued by a judicial authority, and a description of the offense. The request for provisional detention shall be the sole responsibility of the requesting State.
2. The requested State shall order provisional detention and, when appropriate, the seizure of objects and shall immediately inform the requesting State of the date on which provisional detention commenced.
3. If the request for extradition, accompanied by the documents referred to in Article 11 of this Convention, is not presented within sixty days of the date on which the provisional detention referred to in paragraph 1 of this article commenced, the person sought shall be set free.
4. After the period of time referred to in the preceding paragraph has expired, the detention of the person sought may not be again requested except upon presentation of the documents required under Article 11 of this Convention.

Article 15

Requests by more than One State

When the extradition is requested by more than one State for the same offense, the requested State shall give preference to the request of the State in which the offense was committed. If the requests are for different offenses, preference shall be given to the State seeking the individual for the offense punishable by the most severe penalty, in accordance with the laws of the requested State. If the requests involve different offenses that the requested State considers to be of equal gravity, preference shall be determined by the order in which the requests are received.

Article 16

Legal Rights and Assistance

1. The person sought shall enjoy in the requested State all the legal rights and guarantees granted by the laws of that State.
2. The person sought shall be assisted by legal counsel, and if the official language of the country is other than his own, he shall also be assisted by an interpreter.

Article 17

Communication of the Extradition Decision

The requested State shall promptly inform the requesting State of its decision on the request for extradition and the reasons for its approval or denial.

Article 18

Non bis in idem

Once the request for extradition of a person has been denied, a request may not be made again for the same offense.

Article 19

Surrender of the Person Sought and Delivery of Property

1. The surrender of the person sought to the agents of the requesting State shall be carried out at a place determined by the requested State. This place shall, if possible, be an airport from which direct international flights depart for the requesting State.
2. If the request for provisional detention or for extradition is accompanied by a request for the seizure of documents, money or other objects that result from the alleged offense or may serve as evidence, such objects shall be collected and deposited under inventory by the requested State for subsequent delivery to the requesting State when the extradition is granted and even though the extradition is impeded by *force majeure*, unless the law of the requested State forbids such delivery. In any event, the rights of third parties shall not be affected.

Article 20

Deferral of Surrender

1. When the person sought is being tried or is serving a sentence in the requested State for an offense other than that for which the extradition is requested, his surrender may be deferred until he is entitled to be set free by virtue of acquittal, completed service or commutation of sentence, dismissal, pardon, amnesty or grace. No civil suit that the person sought may have pending against him in the requested State may prevent or defer his surrender.
2. When the surrender of the person sought would, for reasons of health, endanger his life, his surrender may be deferred until it would no longer pose such a danger.

Article 21

Simplified Extradition

The requested State may grant extradition without a formal extradition proceeding if:

(*a*) Its laws do not expressly prohibit it;

(*b*) The person sought irrevocably consents in writing to the extradition after being advised by a judge or other competent authority of his right to a formal extradition proceeding and the protection afforded by such a proceeding.

Article 22

Period for Taking Custody of the Person Sought

If the extradition has been granted, the requesting State shall take custody of the person sought within a period of thirty days from the date on which he was placed at its disposal. If it does not take custody within that period, the person sought shall be set free and may not be subjected to a new extradition procedure for the same offense or offenses.

This period, however, may be extended for thirty days if the requesting State is unable, owing to circumstances beyond its control, to take custody of the person sought and escort him out of the territory of the requested State.

Article 23

Custody

The agents of the requesting State who are in the territory of another State Party to take custody of a person whose extradition has been granted shall be authorized to have custody of him and escort him to the territory of the requesting State, provided, however, that such agents shall be subject to the jurisdiction of the State in which they are.

Article 24

Transit

1. If prior notification has been given from government to government through diplomatic or consular channels, the States Parties shall permit and cooperate in the transit through their territories of a person whose extradition has been granted under the custody of agents of the requesting State and/or the requested State, as the case may be, upon presentation of a copy of the order granting the extradition.
2. Such prior notification shall not be necessary when air transport is used and no landing is scheduled in the territory of the State Party that will be flown over.

Article 25

Expenses

Expenses incurred in the detention, custody, maintenance, and transportation of both the person extradited and of the objects referred to in Article 19 of this Convention shall be borne by the requested State up to the moment of surrender and delivery, and thereafter such expenses shall be borne by the requesting State.

Article 26

Waiver of Legalization

When the documents provided for in this Convention are communicated through the diplomatic or consular channel, or direct from government to government, their legalization shall not be required.

Article 27

Signature

This Convention shall be open for signature by the Member States of the Organization of American States.

Article 28

Ratification

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 29

Accession

1. This Convention shall be open to accession by any American State.
2. This Convention shall be open to accession by States having the status of permanent observer to the Organization of American States, following approval of the pertinent request by the General Assembly of the Organization.

Article 30

Reservations

Each State may, at the time of signature, approval, ratification, or accession, make reservations to this Convention, provided that each reservation concerns one or more specific provisions and is not incompatible with the object and purpose of the Convention.

Article 31

Entry into Force

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification.
2. For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 32

Special Cases of Territorial Application

1. If a State Party has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it shall, at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them.
2. Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which this Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective thirty days after the date of their receipt.

Article 33

Relations with other Conventions on Extradition

1. This Convention shall apply to the States Parties that ratify it or accede to it and shall not supersede multilateral or bilateral treaties that are in force or were concluded earlier unless the States Parties concerned otherwise expressly declare or agree, respectively.

2. The States Parties may decide to maintain in force as supplementary instruments treaties entered into earlier.

Article 34

Duration and Denunciation

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in effect for the denouncing State, but shall remain in effect for the other States Parties.

Article 35

Deposit, Registration, Publication and Notification

The original instrument of this Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send an authenticated copy of its text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of its Charter. The General Secretariat of the Organization of American States shall notify the Member States of that Organization and the states that have acceded to the Convention of the signatures; deposits of instruments of ratification, accession, or denunciation; and reservations, if any. It shall also transmit to them the declarations referred to in Article 32 of this Convention.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto by their respective governments, have signed this Convention.

DONE at Caracas, Republic of Venezuela, on this twenty-fifth day of February, one thousand nine hundred and eighty-one.

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INTER-AMERICAN CONVENTION AGAINST TERRORISM

Adopted on 3 June 2002

Entry into force: 10 July 2003, in accordance with Article 22
Text: OAS Treaty A-66

The General Assembly,

Reaffirming the principles and provisions contained in the Charter of the Organization of American States and the Charter of the United Nations;

Recognizing the threat that terrorism poses to democratic values and international peace and security, and that it is a source of profound concern to all Member States;

Convinced that the Charter of the Organization of American States and international law constitute the appropriate framework for strengthening hemispheric cooperation for the prevention, combating, and elimination of terrorism in all its forms and manifestations;

Bearing in mind resolution RC.23/RES. 1/01 rev. 1 corr. 1, "Strengthening Hemispheric Cooperation to Prevent, Combat, and Eliminate Terrorism," of the Twenty-Third Meeting of Consultation of the Ministers of Foreign Affairs of September 21, 2001, which entrusted the Permanent Council with preparing a Draft Inter-American Convention against Terrorism;

Recalling the Declaration of Lima to Prevent, Combat, and Eliminate Terrorism and the Plan of Action on Hemispheric Cooperation to Prevent, Combat, and Eliminate Terrorism, adopted within the framework of the First Inter-American Specialized Conference on Terrorism, in Lima, Peru, in April 1996, as well as the Commitment of Mar del Plata, adopted at the Second Inter-American Specialized Conference on Terrorism, and the work of the Inter-American Committee against Terrorism (CICTE);

Considering that terrorism is a serious criminal phenomenon, which is of deep concern to all Member States; attacks democracy; impedes the enjoyment of human rights and fundamental freedoms; threatens the security of states, destabilizing and undermining the foundations of all society; and seriously impacts the economic and social development of the states in the region;

Bearing in mind that the Inter-American Democratic Charter recognizes the commitment by Member States to promote and defend representative democracy and that no democratic state can be indifferent to the clear threat that terrorism poses to democratic institutions and freedoms;

Reaffirming that the fight against terrorism must be undertaken with full respect for national and international law, human rights, and democratic institutions, in order to preserve the rule of law, liberties and democratic values in the Hemisphere, which are essential components of a successful fight against terrorism;

Convinced that the adoption, ratification, and effective implementation of the Inter-American Convention against Terrorism contribute to the progressive development and the codification of international law;

Underscoring the importance of effective action in cutting off the supply of funds for terrorism, and of coordinated action with international entities competent in the area of money laundering, especially the Inter-American Drug Abuse Control Commission (CICAD);

Recognizing the urgency of strengthening and establishing new forms of regional cooperation against terrorism with a view to its eradication; and

Recognizing the importance and timeliness of the existing international legal instruments on combating terrorism, including the 10 international instruments considered for the text of the Inter-American Convention against Terrorism itself, as well as the Convention to Prevent and Punish the Acts of Terrorism Taking the Forms of Crimes against Persons and Related Extortion That Are of International Significance, adopted by the General Assembly itself on February 2, 1971; the Convention on Offences and Certain Other Acts Committed on Board Aircraft, adopted in Tokyo on September 14, 1963; and the Convention on the Marking of Plastic Explosives for the Purpose of Detection, adopted in Montreal on March 1, 1991,

Resolves:

1. To adopt the Inter-American Convention against Terrorism attached to this resolution and to open it for signature by the Member States on this date.
2. To urge Member States to ratify the Convention as soon as possible, in accordance with their constitutional procedures.
3. To request the Secretary General to present a report to the General Assembly at its thirty-third regular session on progress made toward the Convention's entry into force.

INTER-AMERICAN CONVENTION AGAINST TERRORISM

The States Parties to this Convention,

Bearing in mind the purposes and principles of the Charter of the Organization of American States and the Charter of the United Nations;

Considering that terrorism represents a serious threat to democratic values and to international peace and security and is a cause of profound concern to all Member States;

Reaffirming the need to adopt effective steps in the inter-American system to prevent, punish, and eliminate terrorism through the broadest cooperation;

Recognizing that the serious economic harm to states which may result from terrorist acts is one of the factors that underscore the need for cooperation and the urgency of efforts to eradicate terrorism;

Reaffirming the commitment of the states to prevent, combat, punish, and eliminate terrorism; and

Bearing in mind resolution RC.23/RES. 1/01 rev. 1 corr. 1, "Strengthening Hemispheric Cooperation to Prevent, Combat, and Eliminate Terrorism," adopted at the Twenty-third Meeting of Consultation of Ministers of Foreign Affairs,

Have agreed to the following:

Article 1

Object[1] and purposes

The purposes of this Convention are to prevent, punish, and eliminate terrorism. To that end, the states parties agree to adopt the necessary measures and to strengthen cooperation among them, in accordance with the terms of this Convention.

Article 2[2]

Applicable international instruments

1. For the purposes of this Convention, "offenses" means the offenses established in the international instruments listed below:

   (*a*) Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970.

   (*b*) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971.

   (*c*) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973.

   (*d*) International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979.

[1] According to 1969 Vienna Convention
[2] According to annex of 1999 UN Convention on Financing on Terrorism

(*e*) Convention on the Physical Protection of Nuclear Material, signed at Vienna on March 3, 1980.

(*f*) Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on February 24, 1988.

(*g*) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988.

(*h*) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988.

(*i*) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997.

(*j*) International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999.

2. Upon depositing its instrument of ratification to this Convention, a state party that is not a party to one or more of the international instruments listed in paragraph 1 of this article may declare that, in application of this Convention to such state party, that particular instrument shall be deemed not to be included in that paragraph. The declaration shall cease to have effect as soon as that instrument enters into force for that state party, which shall notify the depositary of this fact.

3. When a state party ceases to be a party to one of the international instruments listed in paragraph 1 of this article, it may make a declaration, as provided in paragraph 2 of this article, with respect to that instrument.

Article 3

Domestic measures

Each state party, in accordance with the provisions of its constitution, shall endeavour to become a party to the international instruments listed in Article 2 to which it is not yet a party and to adopt the necessary measures to effectively implement such instruments, including establishing, in its domestic legislation, penalties for the offenses described therein.

Article 4

Measures to prevent, combat, and eradicate the financing of terrorism

1. Each state party, to the extent it has not already done so, shall institute a legal and regulatory regime to prevent, combat, and eradicate the financing of terrorism and for effective international cooperation with respect thereto, which shall include:

   (*a*) A comprehensive domestic regulatory and supervisory regime for banks, other financial institutions, and other entities deemed particularly susceptible to being used for the financing of terrorist activities. This regime shall emphasize requirements for customer identification, record-keeping, and the reporting of suspicious or unusual transactions.

   (*b*) Measures to detect and monitor movements across borders of cash, bearer negotiable instruments, and other appropriate movements of value. These measures shall be subject to safeguards to ensure proper use of information and should not impede legitimate capital movements.

   (*c*) Measures to ensure that the competent authorities dedicated to combating the offenses established in the international instruments listed in Article 2 have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed under its domestic law. To that end, each state party shall establish and maintain a financial intelligence unit to serve as a national centre for the collection, analysis, and dissemination of pertinent money laundering and terrorist financing information. Each state party shall inform the Secretary General of the Organization of American States of the authority designated to be its financial intelligence unit.

2. When implementing paragraph 1 of this article, states parties shall use as guidelines the recommendations developed by specialized international and regional entities, in particular the Financial Action Task Force

and, as appropriate, the Inter-American Drug Abuse Control Commission, the Caribbean Financial Action Task Force, and the South American Financial Action Task Force.

Article 5

Seizure and confiscation of funds or other assets

1. Each state party shall, in accordance with the procedures established in its domestic law, take such measures as may be necessary to provide for the identification, freezing or seizure for the purposes of possible forfeiture, and confiscation or forfeiture, of any funds or other assets constituting the proceeds of, used to facilitate, or used or intended to finance, the commission of any of the offenses established in the international instruments listed in Article 2 of this Convention.
2. The measures referred to in paragraph 1 shall apply to offenses committed both within and outside the jurisdiction of the state party.

Article 6

Predicate offenses to money laundering

1. Each state party shall take the necessary measures to ensure that its domestic penal money laundering legislation also includes as predicate offenses those offenses established in the international instruments listed in Article 2 of this Convention.
2. The money laundering predicate offenses referred to in paragraph 1 shall include those committed both within and outside the jurisdiction of the state party.

Article 7

Cooperation on border controls

1. The states parties, consistent with their respective domestic legal and administrative regimes, shall promote cooperation and the exchange of information in order to improve border and customs control measures to detect and prevent the international movement of terrorists and trafficking in arms or other materials intended to support terrorist activities.
2. In this context, they shall promote cooperation and the exchange of information to improve their controls on the issuance of travel and identity documents and to prevent their counterfeiting, forgery, or fraudulent use.
3. Such measures shall be carried out without prejudice to applicable international commitments in relation to the free movement of people and the facilitation of commerce.

Article 8

Cooperation among law enforcement authorities

The states parties shall work closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offenses established in the international instruments listed in Article 2. In this context, they shall establish and enhance, where necessary, channels of communication between their competent authorities in order to facilitate the secure and rapid exchange of information concerning all aspects of the offenses established in the international instruments listed in Article 2 of this Convention.

Article 9

Mutual legal assistance

The states parties shall afford one another the greatest measure of expeditious mutual legal assistance with respect to the prevention, investigation, and prosecution of the offenses established in the international instruments listed in Article 2 and proceedings related thereto, in accordance with applicable international agreements in force. In the absence of such agreements, states parties shall afford one another expeditious assistance in accordance with their domestic law.

Article 10

Transfer of persons in custody

1. A person who is being detained or is serving a sentence in the territory of one state party and whose presence in another state party is requested for purposes of identification, testimony, or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offenses established in the international instruments listed in Article 2 may be transferred if the following conditions are met:

   (*a*) The person freely gives his or her informed consent; and

   (*b*) Both states agree, subject to such conditions as those states may deem appropriate.

2. For the purposes of this article:

   (*a*) The state to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the state from which the person was transferred.

   (*b*) The state to which the person is transferred shall without delay implement its obligation to return the person to the custody of the state from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both states.

   (*c*) The state to which the person is transferred shall not require the state from which the person was transferred to initiate extradition proceedings for the return of the person.

   (*d*) The person transferred shall receive, for time spent in the custody of the state to which he or she was transferred, credit toward service of the sentence being served in the state from which he or she was transferred.

3. Unless the state party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the state to which that person is transferred in respect of acts or convictions prior to his or her departure from the territory of the state from which said person was transferred.

Article 11

Inapplicability of political offense exception

For the purposes of extradition or mutual legal assistance, none of the offenses established in the international instruments listed in Article 2 shall be regarded as a political offense or an offense connected with a political offense or an offense inspired by political motives. Accordingly, a request for extradition or mutual legal assistance may not be refused on the sole ground that it concerns a political offense or an offense connected with a political offense or an offense inspired by political motives.

Article 12

Denial of refugee status

Each state party shall take appropriate measures, consistent with the relevant provisions of national and international law, for the purpose of ensuring that refugee status is not granted to any person in respect of whom there are serious reasons for considering that he or she has committed an offense established in the international instruments listed in Article 2 of this Convention.

Article 13

Denial of asylum

Each state party shall take appropriate measures, consistent with the relevant provisions of national and international law, for the purpose of ensuring that asylum is not granted to any person in respect of whom there are reasonable grounds to believe that he or she has committed an offense established in the international instruments listed in Article 2 of this Convention.

Article 14

Non-discrimination

None of the provisions of this Convention shall be interpreted as imposing an obligation to provide mutual legal assistance if the requested state party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, or political opinion, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 15

Human rights

1. The measures carried out by the states parties under this Convention shall take place with full respect for the rule of law, human rights, and fundamental freedoms.
2. Nothing in this Convention shall be interpreted as affecting other rights and obligations of states and individuals under international law, in particular the Charter of the United Nations, the Charter of the Organization of American States, international humanitarian law, international human rights law, and international refugee law.
3. Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including the enjoyment of all rights and guarantees in conformity with the law of the state in the territory of which that person is present and applicable provisions of international law.

Article 16

Training

1. The states parties shall promote technical cooperation and training programs at the national, bilateral, subregional, and regional levels and in the framework of the Organization of American States to strengthen the national institutions responsible for compliance with the obligations assumed under this Convention.
2. The states parties shall also promote, where appropriate, technical cooperation and training programs with other regional and international organizations conducting activities related to the purposes of this Convention.

Article 17

Cooperation through the Organization of American States

The states parties shall encourage the broadest cooperation within the pertinent organs of the Organization of American States, including the Inter-American Committee against Terrorism (CICTE), on matters related to the object and purposes of this Convention.

Article 18

Consultations among the parties

1. The states parties shall hold periodic meetings of consultation, as appropriate, with a view to facilitating:
   (*a*) The full implementation of this Convention, including the consideration of issues of interest relating thereto identified by the states parties; and
   (*b*) The exchange of information and experiences on effective means and methods to prevent, detect, investigate, and punish terrorism.
2. The Secretary General shall convene a meeting of consultation of the states parties after receiving the 10th instrument of ratification. Without prejudice to this, the states parties may hold consultations as they consider appropriate.

3. The states parties may request the pertinent organs of the Organization of American States, including CICTE, to facilitate the consultations referred to in the previous paragraphs and to provide other forms of assistance with respect to the implementation of this Convention.

Article 19

Exercise of jurisdiction

Nothing in this Convention entitles a state party to undertake in the territory of another state party the exercise of jurisdiction or performance of functions that are exclusively reserved to the authorities of that other state party by its domestic law.

Article 20

Depositary

The original instrument of this Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States.

Article 21

Signature and ratification

1. This Convention is open for signature by all Member States of the Organization of American States.
2. This Convention is subject to ratification by the signatory states in accordance with their respective constitutional procedures. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 22

Entry into force

1. This Convention shall enter into force on the 30th day following the date of deposit of the sixth instrument of ratification of the Convention with the General Secretariat of the Organization of American States.
2. For each state ratifying the Convention after deposit of the sixth instrument of ratification, the Convention shall enter into force on the 30th day following the deposit by such state of its instrument of ratification.

Article 23

Denunciation

1. Any state party may denounce this Convention by written notification to the Secretary General of the Organization of American States. Denunciation shall take effect one year following the date on which notification is received by the Secretary General of the Organization.
2. Such denunciation shall not affect any requests for information or assistance made during the time the Convention is in force for the denouncing state.[3]

[3] According to paragraph approved in the session

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- Nationally and Internationally: 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and __, vol. 1, p. 471
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- 2004 Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal __, who cooperate with the competent authorities, vol. 4, p. 1790

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- 2001 Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass __ of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, vol. 4, p. 1620

Inhuman
- *See:* ***Torture***

Intercountry
- *See:* ***Adoption***

Internal Displacement
- 1998 Guiding Principles on Internal Displacement, vol. 1, p. 114

Internally Displaced
- 2006 Recommendation Rec(2006)6 on __ persons, vol. 4, p. 1438
- *See also:* ***Central American Refugees,***
  Displaced Persons,
  Internal Displacement

International Criminal Court

- 1998 Rome Statute of the __, vol. 2, p. 650

International Labour Organization

- 1933 Forced Labour Convention (No. 29), vol. 1, p. 355
- 1948 Freedom of Association and Protection of the Right to Organise Convention (No. 87), vol. 1, p. 374

International Refugee Organization

- 1946 Constitution of the __, vol. 1, p. 53

Islam

- 1981 Universal __ic Declaration of Human Rights, vol. 3, p. 1155
- 1990 Cairo Declaration on Human Rights in __, vol. 3, p. 1166
- 2005 Covenant on the Rights of the Child in __, vol. 3, p. 1171

Istanbul

- 1999 __ Summit – Charter for European Security *(para. 22)*, vol. 4, p. 1853

J

Juvenile(s)

- 1985 United Nations Standard Minimum Rules for the Administration of __ Justice (The Beijing Rules), vol. 1, p. 245
- 1990 United Nations Guidelines for the Prevention of __ Delinquency (The Riyadh Guidelines), vol. 1, p. 278
- 1990 United Nations Rules for the Protection of __ Deprived of their Liberty, vol. 1, p. 284

L

Liberty

- 1990 United Nations Rules for the Protection of Juveniles Deprived of their __, vol. 1, p. 284

Limitation

- *See:* ***Humanity***

Lisbon

- 1996 __ Summit – Summit Declaration *(paras. 9 and 10)*, vol. 4, p. 1852

M

Maastricht
- 2003 __ – Eleventh Meeting of the Ministerial Council OSCE Strategy to address Threats to Security and Stability in the 21st century *(para. 38)*, vol. 4, p. 1854
- 2003 __ – OSCE Action Plan to combat Trafficking in human beings *(chapter IV, para. 5.2, and chapter V, paras. 9.1 and 10.3)*; OSCE Action Plan on improving the situation of Roma and Sinti *(chapter VII, preamble, paras. 108, 109, 110, 114)*, vol. 4, p. 1855

Marriage
- 1962 Convention on Consent to __, Minimum Age for __ and Registration of __s, vol. 1, p. 529
- 1965 Recommendation on Consent to __, Minimum Age for __ and Registration of __s, vol. 1, p. 544
- 1980 Convention concerning the Issue of Certificates of Non-Impediment to __, vol. 1, p. 535

Mass Influx
- *See:* ***Influx***

Mercenarism
- 1977 Convention for the Elimination of __ in Africa, vol. 3, p. 1115

Migrants
- 1993 CIS Agreement on Aid to Refugees and Forced __, vol. 4, p. 1885
- 2000 Protocol against the Smuggling of __ by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol on Smuggling), vol. 2, p. 734

Migrant Workers
- 1975 __ (Supplementary Provisions) Convention (No. 143) (ILO), vol. 1, p. 160
- 1977 European Convention on the Legal Status of __, vol. 4, p. 1440
- 1990 International Convention on the Protection of the Rights of All __ and Members of their Families, vol. 1, p. 124
- *See also:* ***Social Security***

Migration
- 1949 __ for Employment Convention (Revised) (No. 97) (ILO), vol. 1, p. 149

Millennium
- 2000 United Nations __ Declaration, vol. 2, p. 991

Minors
- 1970 European Convention on the Repatriation of __, vol. 4, p. 1557
- 1984 Inter-American Convention on Conflict of Laws Concerning the Adoption of __, vol. 3, p. 1314
- 1994 Inter-American Convention on International Traffic in __, vol. 3, p. 1329

Minorities - 1995 Framework Convention for the Protection of National __, vol. 4, p. 1521

Montevideo - 1933 __ Multilateral Convention on Extradition, vol. 3, p. 1364

N

Nationality - 1957 Convention on the __ of Married Women, vol. 1, p. 541

- 1997 European Convention on __, vol. 4, p. 1421
- 1999 Draft articles on the __ of Natural Persons in relation to the Succession of States, vol. 1, p. 106
- *See also:* ***Stateless Persons, Statelessness***

Nationals - 1962 Equality of Treatment of __ and Non-Nationals in Social Security Convention (No. 118) (ILO), vol. 2, p. 958
- 1985 Declaration on the Human Rights of Individuals who are not __ of the Country in which They Live, vol. 1, p. 166
- 2001 Council Directive 2001/40/EC on mutual recognition of decisions on the expulsion of third country __, vol. 4, p. 1743
- 2003 Council Directive 2003/109/EC concerning the status of third-country __ who are long-term residents, vol. 4, p. 1776
- 2004 Council Directive 2004/81/EC on the residence permit issued to third-country __ who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, vol. 4, p. 1790
- 2004 Council Directive 2004/83/EC on minimum standards for the qualification and status of third country __ or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, vol. 4, p. 1691
- *See also:* ***Social Security***

O

OAU - *See:* ***Organization of African Unity***

Organization of African Unity

- 1969 __ Convention Governing the Specific Aspects of Refugee Problems in Africa, vol. 3, p. 1004
- 1999 __ Convention on the Prevention and Combating of Terrorism, vol. 3, p. 1119
- *See also:* ***Refugees***

P

Palermo
- 2000 United Nations Convention against Transnational Organized Crime (__ Convention), vol. 2, p. 705
- 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (__ Protocol on Trafficking), vol. 2, p. 727
- 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol on Smuggling), vol. 2, p. 734

Palestine
- 1949 Assistance to __ Refugees, UN GA Resolution 302 (IV), vol. 3, p. 1146
- 1965 Protocol on the Treatment of Palestinian Refugees (Casablanca Protocol), vol. 3, p. 1149

Penal
- 1889 Treaty on International __ Law, vol. 3, p. 1348
- 1940 Treaty on International __ Law (Revised), vol. 3, p. 1355
- 2002 Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence, vol. 4, p. 1772

Peoples' Rights
- African Charter on Human and __, vol. 3, p. 1029

Persecution
- 1967 Resolution 14 on Asylum to Persons in Danger of __, vol. 4, p. 1399

Pinheiro
- 2005 UN Principles on Housing and Property Restitution (The __ Principles), vol. 1, p. 566

Pornography
- *See:* ***Child(ren)***

Prostitution
- 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the __ of Others, vol. 1, p. 350
- *Also see:* ***Child(ren)***

Punishment
- *See:* ***Torture,***
  Crimes,
  Genocide

R

Refuge
- 1939 Treaty on Political Asylum and __, vol. 3, p. 1203

- 2000 Rio de Janeiro Declaration on the Institution of __, vol. 3, p. 1220

Refugees
- 1949 __ and Stateless Persons, UN GA Resolution 319 A (IV), vol. 1, p. 2
- 1951 Convention relating to the Status of __, vol. 1, p. 10
- Definitions of __, according to Agreements, Conventions and Protocols mentioned in Article 1A (1) of the Geneva Convention, vol. 1, p. 36
- 1966 Final Text of the Revised AALCO 1966 Bangkok Principles on Status and Treatment of __, vol. 3, p. 1182
- 1967 Protocol relating to the Status of __, vol. 1, p. 32
- 1969 OAU Convention Governing the Specific Aspects of __ Problems in Africa, vol. 3, p. 1004
- 1985 Convention concerning International Co-operation regarding Administrative Assistance to __, vol. 1, p. 43
- 1993 CIS Agreement on Aid to __ and Forced Migrants, vol. 4, p. 1885
- 1994 Addis Ababa Document on __ and Forced Population Displacements in Africa, vol. 3, p. 1009
- 1996 General Recommendation No. 22, __ and displaced persons, Committee on the Elimination of Racial Discrimination, vol. 1, p. 589
- 2001 Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of __, vol. 1, p. 51
- *See also:* ***Arab Experts,***
  Assistance,
  Cartagena,
  Central American,
  Consular Functions,
  Copyright,
  Displaced persons,
  Emergency,
  High Commissioner for Refugees,
  Nationality,
  Palestine,
  Responsibility,
  Seamen,
  Treatment,
  Visas

Registration
- *See:* ***Marriage***

Religion
- 1982 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on __ or Belief, vol. 1, p. 336

Repatriation
- 1970 European Convention on the __ of Minors, vol. 4, p. 1557

Rescue
- 1979 International Convention on Maritime Search and __, vol. 2, p. 749

Responsibility
- 1980 European Agreement on Transfer of __ for Refugees, vol. 4, p. 1392
- 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental __ and Measures for the Protection of Children, vol. 1, p. 447

Restitution
- *See:* ***Pinheiro***

Return
- 2005 “Twenty Guidelines on Forced __”, vol. 4, p. 1596

Returnees - *See:* ***Displaced Persons***

Rio de Janeiro - 2000 __ Declaration on the Institution of Refuge, vol. 3, p. 1220

Rights - 1981 African Charter on Human and Peoples' __, vol. 3, p. 1029

- 1948 American Declaration of the __ and Duties of Man, vol. 3, p. 1258
- Civil and Political: 1966 International Covenant on __, vol. 1, p. 183
- Civil and Political: 1966 Optional Protocol to the International Covenant on Civil and Political __, vol. 1, p. 196
- Civil and Political: 1989 Second Optional Protocol to the International Covenant on Civil and Political __ (Aiming at the Abolition of the Death Penalty), vol. 1, p. 199
- Economic, Social and Cultural: 1966 International Covenant on __, vol. 1, p. 176
- of Women: 1953 Convention on the Political __, vol. 1, p. 394
- of Persons with Disabilities: 1971 Declaration on the __ of Mentally Retarded Persons, vol. 1, p. 500
- of Persons with Disabilities: 1975 Declaration on the __ of Disabled Persons, vol. 1, p. 501
- of Persons with Disabilities: 2006 Convention on the __ of Persons with Disabilities, vol. 1, p. 478
- of Persons with Disabilities: 2006 Optional Protocol to the Convention on the __ of Persons with Disabilities, vol. 1, p. 497
- *See also:* ***Asylum,***
  Charter,
  Child(ren),
  Human Rights,
  Migrant Workers,
  Minorities,
  Nationals

Riyadh - 1983 The ____ Arab Agreement for Judicial Co-operation (Excerpts), vol. 3, p. 1133

- 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency of (The __ Guidelines), vol. 1, p. 278

Rome - 1998 __ Statute of the International Criminal Court, vol. 2, p. 650

S

San Jose - *See:* ***Displaced Persons,***
Human Rights

San Salvador - 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of __), vol. 3, p. 1282

Sanctions - 2001 Council Directive 2001/51/EC supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, (Carrier __ Directive), vol. 4, p. 1617

SAR - *See:* ***Rescue***

Sea
- 1974 International Convention for the Safety of Life at __ (SOLAS) (Excerpts), vol. 2, p. 746
- 1982 United Nations Convention on the Law of the __ (UNCLOS), vol. 2, p. 766

Seamen
- 1957 Agreement relating to Refugee ____, vol. 1, p. 37
- 1973 Protocol to the Agreement relating to Refugee __, vol. 1, p. 41

Security
- 1962 Equality of Treatment of Nationals and Non-Nationals in Social __ Convention Convention (No. 118) (ILO), vol. 2, p. 958
- 1972 European Convention on Social __ (Excerpts), vol. 4, p. 1388
- 1975 Final Act of the Conference on __ and Co-operation in Europe (Helsinki Final Act), vol. 4, p. 1797
- 1999 OSCE Istanbul Summit – Charter for European __ (*para. 22*), vol. 4, p. 1853
- 2003 OSCE Maastricht Summit – Eleventh Meeting of the Ministerial Council; OSCE Strategy to address Threats to __ and Stability in the 21st century, *para. 38,* vol. 4, p. 1854

Seizure
- 1970 Convention for the Suppression of Unlawful __ of Aircraft, vol. 2, p. 913

Smuggling
- 2000 Protocol against the __ of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol on __), vol. 2, p. 734
- *See also:* ***Trafficking***

Social Security
- 1961 European Social Charter, vol. 4, p. 1483
- 1962 Convention concerning Equality of Treatment of Nationals and Non-Nationals in __ (No. 118), vol. 2, p. 958
- 1972 European Convention on __ (Excerpts), vol. 4, p. 1388
- 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, vol. 4, p. 1497
- 1996 European Social Charter (Revised), vol. 4, p. 1500

Sofia
- 2004 __ – Twelfth Meeting of the Ministerial Council – Decision No.2/04 on the Elaboration of an OSCE Border Security and Management Concept; OSCE Action Plan for the Promotion of Gender Equality *(chapter IV, para. 42)*, vol. 4, p. 1858

SOLAS
- *See:* ***Sea***

Stateless Persons
- 1949 Refugees and __, UN GA Resolution 319 A (IV), vol. 1, p. 2
- 1954 Convention relating to the Status of __, vol. 1, p. 68
- 2004 Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or __ as refugees or as persons who otherwise need international protection and the content of the protection granted, vol. 4, p. 1691
- *See also:* ***Copyright,***
  Nationality,
  Statelessness

Statelessness
- 1930 Special Protocol concerning __, vol. 1, p. 98

- 1961 Convention on the Reduction of __,vol. 1, p. 86
- 1973 Convention to Reduce the Number of Cases of __, vol. 1, p. 95
- 1999 Recommendation No. R (99) 18 on the avoidance and reduction of __, vol. 4, p. 1436
- 2006 AALCO Resolution on "Legal Identity and __", vol. 3, p. 1192
- 2006 Council of Europe Convention on the Avoidance of __ in relation to State Succession, vol. 4, p. 1431

Stockholm - 1992 __ – Third Meeting of the Ministerial Council *(Decisions, "The CSCE as a Community of Values", paras. 5 and 7)*, vol. 4, p. 1851

Stowaways - 1957 International Convention relating to __, vol. 2, p. 904

T

Teheran - 1968 Final Act of the International Conference on Human Rights – Proclamation of __– Resolution on Co-operation with UNHCR, vol. 2, p. 963

Terrorism - 1977 European Convention on the Suppression of __, vol. 4, p. 1563
- 1999 OAU Convention on the Prevention and Combating of __, vol. 3, p. 1119
- 2002 Inter-American Convention Against __, vol. 3, p. 1376
- 2003 Protocol Amending the European Convention on the Suppression of __, vol. 4, p. 1567

Tokyo - 1990 Nations Standard Minimum Rules for Non-custodial Measures (The __ Rules), vol. 1, p. 293

Torture - 1975 Declaration on the Protection of All Persons from Being Subjected to __ and Other Cruel, Inhuman or Degrading Treatment or Punishment, vol. 1, p. 219
- 1984 Convention against __ and other Cruel, Inhuman or Degrading Treatment or Punishment, vol. 1, p. 201
- 1985 Inter-American Convention to Prevent and Punish __, vol. 3, p. 1335
- 1987 European Convention for the Prevention of __ and Inhumane or Degrading Treatment or Punishment, vol. 4, p. 1574
- 1992 General Comment No. 20, Article 7 (Replaces general comment 7 concerning prohibition of __ and cruel treatment or punishment), Human Rights Committee, vol. 1, p. 577
- 1997 General Comment No. 1, Implementation of article 3 of the Convention in the context of article 22 (Refoulement and communications), Committee against __, vol. 1, p. 587

- 2000 Principles on the Effective Investigation and Documentation of __ and Other Cruel, Inhuman or Degrading Treatment or Punishment, vol. 1, p. 221
- 2002 Optional Protocol to the Convention against __ and Other Cruel, Inhuman or Degrading Treatment or Punishment, vol. 1, p. 210

Treatment - *See:* ***Nationals,***
Palestine,
Torture

Trafficking - 2000 Protocol to Prevent, Suppress and Punish __ in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol on __), vol. 2, p. 727
- 2002 Recommended Principles and Guidelines on Human Rights and Human __, vol. 1, p. 364
- 2002 Council Framework Decision on Combating __ in Human Beings, vol. 4, p. 1767
- 2003 Maastricht 2003 – OSCE Action Plan to combat __ in human beings; *chapter IV, para. 5.2, and chapter V, paras. 9.1 and 10.3*, vol. 4, p. 1855
- 2004 Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of __ in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, vol. 4, p. 1790
- 2005 Council of Europe Convention on Action against __ in Human Beings, vol. 4, p. 1580
- 2005 Addendum to the OSCE Action Plan to combat __ in human beings; Addressing the Special Needs of Child Victims of __ for Protection and Assistance of 7 July 2005 (Decision No. 685), vol. 4, p. 1856
- *See also:* ***Prostitution,***
Smuggling

U

UNCLOS - *See:* ***Sea***

UNESCO - *See:* ***Discrimination***

United Nations High Commissioner for Refugees

- See*:* ***High Commissioner for Refugees***

V

Vienna - 1993 __ Declaration and Programme of Action, vol. 2, p. 972

Visas - 1959 European Agreement on the Abolition of __for Refugees, vol. 4, p. 1386

W

War crimes - *See:* **Crimes**

Welfare - *See:* ***Adoption***

Women - *See:* ***Discrimination,***
Rights,
Trafficking

Y

Youth - 2006 African __ Charter, vol. 3, p. 1072

Electronic resources

A few electronic resources in English available on the internet and that may be useful to researchers and practitioners have been provided below:

International Instruments and Legal Texts

Source	Thematic Area	Website
UNHCR RefWorld	International and Regional Instruments, National Legislation	http://www.refworld.org/
United Nations	UN General Assembly Resolutions	http://www.un.org/documents/resga.htm
United Nations	UN Treaty Collection	http://untreaty.un.org/
OCHCR	UN Treaty Bodies	http://www.ohchr.org/english/bodies/treaty/index.htm
OCHCR	UN Human Rights Council	http://www.ohchr.org/english/bodies/hrcouncil/
OHCHR	International Human Rights Law	http://www.ohchr.org/english/law/
United Nations (WomenWatch)	Gender and women's issues	http://www.un.org/womenwatch/asp/user/list.asp?ParentID=1003
ICRC	International Humanitarian Law	http://www.icrc.org/ihl
ILO	International Labour Law	http://www.ilo.org/ilolex/
International Criminal Court	International Criminal Law	http://www.icc-cpi.int/legal_tools.html
IOM	International Instruments in relation to migration	http://www.iom.int/jahia/page855.html
EISIL	International Law	http://eisil.org/

Regional Instruments and Legal Texts

Source	Geographic Area	Website
African Union	Africa	http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm
African Commission on Human and Peoples' Rights	Africa	http://www.achpr.org/english/_info/news_en.html
Economic Community of West African States (ECOWAS)	Africa	http://www.sec.ecowas.int/sitecedeao/english/protocoles.htm
Asian-African Legal Consultative Organization (AALCO)	Asia	http://www.aalco.int/
Association of Southeast Asian Nations (ASEAN)	Asia	http://www.aseansec.org/4966.htm
United Nations Development Programme (UNDP)	Middle East	http://www.arabhumanrights.org/en/
Organization of American States	Americas	http://www.oas.org/DIL/treaties_and_agreements.htm
Inter-American Commission on Human Rights	Americas	http://www.cidh.oas.org/basic.htm
Council of Europe	Europe	http://conventions.coe.int/ http://www.coe.int/t/cm/adoptedTexts_en.asp
European Union	Europe	http://eur-lex.europa.eu/en/index.htm
OSCE	Europe	http://www.osce.org/documents/