

Commitments by African heads of state to peace, democracy, human rights and associated issues

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"We are fully aware that ... to facilitate ... socio-economic transformation and integration, it is necessary to promote popular participation of our peoples in the processes of government and development. A political environment which guarantees human rights and the observance of the rule of law, would assure high standards of probity and accountability, particularly on the part of those who hold public office. In addition, popular-based political processes would ensure the involvement of all including, in particular, women and youth in the development efforts. We accordingly recommit ourselves to the further democratisation of our societies and to the consolidation of democratic institutions in our countries. ... We therefore assert that democracy and development should go together and should be mutually reinforcing." Declaration of the Assembly of Heads of State and Government of the OAU on the political and socio-economic situation in Africa and the fundamental changes taking place in the world, Addis Ababa, July 1990.

"For many years, we have adopted at the national, regional and continental levels many plans, strategies and programmes for the development of our countries, individually and collectively. Unfortunately, these plans and programmes were not adequately implemented by the majority of our countries and in some cases were completely paralysed and jeopardised by incessant civil strife and natural calamities." Relaunching Africa's economic and social development: the Cairo Agenda for Action, 31st Ordinary Session of the Assembly of Heads of State and Government, Addis Ababa, June, 1995.

"Africa's plight is ... largely attributable to the lack of an enabling environment, adequate development strategies and particularly to the failure of our countries to provide good governance and make proper macro-economic and sectoral options." Yaoundé Declaration of the Assembly of African Heads of State and Government, July 1996.

INTRODUCTION AND SCOPE

This document is a summary of the most important commitments made by African Heads of State and Government in recent years at the level of Summit Meetings of the Organization of African Unity (OAU). These commitments are reflected in decisions, recommendations, treaties, protocols and acts with detailed references regarding their source. Calls for support and assistance from the international community, reform of the UN Security Council, etc. have not been included.

The summary is divided as follows:

- basic tenets of democracy;
- unconstitutional changes in government;
- individual rights and duties;
- self-determination and liberation;
- involvement of civil society;
- children;

- women;
- refugees;
- asylum;
- mercenarism;
- terrorism;
- inter-state relations;
- use of force;
- peacekeeping;
- nuclear weapons;
- arms control, small arms, light weapons and landmines;
- drugs.

BASIC TENETS OF DEMOCRACY

African leaders have recognised the linkage between democracy, peace and development¹ in numerous statements and commitments as that between stability and development within and between African countries.²

Democracy, good governance, respect for human and peoples' rights and the rule of law are prerequisites for the security, stability and development of the continent.³ Domestic security is based on the security of the life of individual citizens to live in peace and to satisfy basic needs while being able to participate fully in societal affairs and enjoying freedom and fundamental human rights.⁴

African leaders have agreed to abide by a set of minimum common values and principles on democratic governance to be adhered to by all Member States of the OAU reflecting their adherence to a common, global concept of democracy.⁵ Elements of this concept are as follows:

- a. A democratic constitution: its preparation, content and method of revision in conformity with generally acceptable principles of democracy;
- b. Respect for the constitution and adherence to the provisions of the law and other legislative enactments adopted by parliament;⁶
- c. Separation of powers, independence of the judiciary and a guarantee for the independence of the courts;⁷
- d. Promotion of political pluralism,⁸ allowing for the existence of several political parties and workers' unions, the participation of African civil society, including enhancing and ensuring gender balance in the political process;
- e. The principle of democratic change and recognition of a role for the opposition;
- f. Organisation of free, open, democratic and regular elections, periodically organised to allow every citizen the opportunity to exercise his/her right to choose their leaders freely and to participate freely in the government of his/her country, either directly or through freely chosen representatives in accordance with the provisions of the law;⁹
- g. Guarantee of freedom of expression and freedom of the press, including guaranteeing access to the media for all political stakeholders;
- h. Constitutional recognition of fundamental rights and freedoms in conformity with the Universal Declaration of Human Rights of 1948, the African Charter on Human and Peoples' Rights of 1981 and other relevant human rights instruments.¹⁰
- i. To allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the African Charter on Human and Peoples' Rights.¹¹
- j. To promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the Charter on Human and Peoples' Rights and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.¹²
- k. The elimination of every discrimination against women and the protection of the rights of the woman and the child as stipulated in international declarations and conventions.¹³ (Also see the separate sections below.)

According to Heads of State, these clear standards of good governance, accountability, transparency and participatory government apply at national and sub-national levels,¹⁴ including a policy of regionalisation and decentralisation as essential to ensure the full participation of all Africa's peoples.¹⁵ Leaders have given special attention to the establishment of a system of government based on permanent social dialogue and the search for political consensus.¹⁶

UNCONSTITUTIONAL CHANGES IN GOVERNMENT

African Heads of State have condemned and rejected unconstitutional changes of government.¹⁷ Governments that come to power through unconstitutional means will not be allowed to participate in the activities of the African Union.¹⁸ Leaders agreed on the following as constituting unconstitutional change of government:¹⁹

- a. Military coups d'etat against a democratically elected government;
- b. Intervention by mercenaries to replace a democratically elected government;
- c. Replacement of democratically elected governments by armed dissident groups and rebel movements;
- d. The refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections.

Whenever an unconstitutional change takes place leaders have agreed that the OAU should immediately and publicly condemn such a change

and urge the speedy return to constitutional order. Thereafter the government concerned will be suspended from participating in the decision-making structures of the OAU while African leaders and personalities will seek to bring "discreet moral pressure" to bear for an initial period of six months. Thereafter a range of limited and targeted sanctions against the regime would be instituted. This could include visa denials, restrictions of government-to-government contacts, trade restrictions, etc.²⁰

A Central Organ sanctions sub-committee of five members, chosen on the basis of regional representation, is to monitor compliance with decisions taken on situations of unconstitutional changes and recommend appropriate review measures to the OAU.²¹

INDIVIDUAL RIGHTS AND DUTIES

Leaders have recognised the undivided nature of rights:

- Individuals are entitled to a set of comprehensive rights and freedoms 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.²² In fact, Heads of State have expressed their belief that political organisations should be devoid of sectarian, religious, ethnic, regional or racial extremism²³ and agreed to vigorously combat racism, extreme nationalism, religious extremism and xenophobic tendencies.²⁴
- Human beings are inviolable. Every human being is entitled to respect for his/her life and the integrity of his/her person. No one may be arbitrarily deprived of this right.²⁵
- People enjoy the same respect and have the same rights. As a result, nothing justifies the domination of a people by another.²⁶

Similar commitments have been made regarding equality before the law:

- Every individual is equal before the law²⁷ and is entitled to equal protection of the law.²⁸ No one should be exempted from accountability.²⁹ The CSSDCA Solemn Declaration even speaks of "... accountability by leaders and officials as a shared community value",³⁰
- Every individual has the right to the respect of the dignity inherent in a human being and to the recognition of his/her legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or

degrading punishment and treatment are prohibited.³¹

- Every individual has the right to liberty and to the security of his/her person. No one may be deprived of his/her freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.³²
- Every individual has the right to have his/her cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his/her fundamental rights; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his/her choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.³³
- 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.³⁴

Freedom of conscience, profession and religion has received some, although less, attention. For example:

- Freedom of conscience, the profession and free practice of religion must be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.³⁵
- Every individual has the right to express and disseminate his/her opinions within the law.³⁶

Leaders have guaranteed freedom of association and assembly, although it is sometimes qualified:

- Every individual has the right to free association provided that he/she abides by the law.³⁷
- Every individual has the right to assemble freely with others. The exercise of this right is 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.³⁸
- Every citizen has the right of equal access to the public service of his/her country³⁹ and Heads of State have agreed to involve all and sundry without discrimination in the management of public affairs.⁴⁰

- Every individual has the right to receive information.⁴¹

While recognising these individual rights, Heads of State have sought to balance them with duties of the individual towards his/her family and society, the state and other legally recognised communities and the international community.⁴² As a result:

- Every individual has the duty to respect and consider his/her fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.⁴³
- The rights and freedoms of each individual must be exercised with due regard to the rights of others, collective security, morality and common interest.⁴⁴
- The individual has a duty not to compromise the security of the state whose national or resident he/she is.⁴⁵
- The individual has a duty to preserve and strengthen social and national solidarity, particularly when the latter is threatened.⁴⁶
- The individual has a duty to preserve and strengthen the national independence and the territorial integrity of his/her country and to contribute to its defense in accordance with the law.⁴⁷
- The individual has a duty to work to the best of his/her abilities and competence, and to pay taxes imposed by law in the interest of the society.⁴⁸
- The individual has a duty to preserve and strengthen positive African cultural values in his/her relations with other members of society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society.⁴⁹
- The individual has a duty to contribute to the best of his/her abilities, at all times and at all levels, to the promotion and achievement of African unity.⁵⁰

There is a degree of ambiguity amongst Heads of State in the right to property, as reflected in the following commitments:

- Every individual has the right of access to public property and services in strict equality of all persons before the law.⁵¹

- The right to property is guaranteed and may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.⁵²

- All peoples may freely dispose of their wealth and natural resources. This right will be exercised in the exclusive interest of the people and a people may not be deprived of it.⁵³

- In case of spoliation the dispossessed people have the right to the lawful recovery of its property as well as to an adequate compensation.⁵⁴

The right to an own culture, morals and traditional values is reflected as follows:

- Every individual may freely, take part in the cultural life of his/her community.⁵⁵
- The promotion and protection of morals and traditional values recognised by the community is the duty of the State.⁵⁶

Throughout Heads of State view the family is the natural unit and basis of society and enjoys the protection and support of the state.⁵⁷

African leaders have committed themselves to adopt, individually, at bilateral or regional levels, the necessary measures, in order to achieve progressively the free movement of persons, and to ensure the enjoyment of the right of residence and the right of establishment by their nationals.⁵⁸

This should, from the onset, be envisaged in two stages, namely at (sub)regional level in the first instance, and then at continental level.⁵⁹ Leaders have agreed to conclude a Protocol on the Free Movement of Persons, Right of Residence and Right of Establishment.⁶⁰

Furthermore:

- Every individual has the right to freedom of movement and residence within the borders of a state provided he/she abides by the law.⁶¹
- Every individual has the right to leave any country including his/her own, and to return to his/her 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.⁶²
- A non-national legally admitted in a territory of a

While recognising these individual rights, Heads of State have sought to balance them with duties

state party may only be expelled from it by virtue of a decision taken in accordance with the law.⁶³

- The mass expulsion of non-nationals, i.e. aimed at national, racial, ethnic or religious groups, is prohibited.⁶⁴

SELF-DETERMINATION AND LIBERATION

African Heads of State have recognised that all peoples have the right to existence, the unquestionable and inalienable right to self-determination, to freely determine their political status and to pursue their economic and social development according to the policy they have freely chosen.⁶⁵

At the same time colonised or oppressed peoples have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community.⁶⁶ In this context struggles 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, are not considered as constituting terrorist acts.⁶⁷

All peoples have the right to the assistance in their liberation struggle against foreign domination, be it political, economic or cultural.⁶⁸

All peoples 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.⁶⁹

To give effect to their commitments to human and peoples' rights, Heads of State have established an African Commission on Human and Peoples' Rights and an African Court on Human and Peoples' Rights.

INVOLVEMENT OF CIVIL SOCIETY

Heads of State have agreed to the establishment of a Pan-African Parliament (PAP) as part of the African Union in order to ensure the full participation of African peoples in the development and economic integration of the continent⁷⁰ and allow for parliamentarians to vote in their personal and independent capacity.⁷¹

African Heads of State have agreed to additional measures regarding the participation of the African peoples in the activity of the African Union.⁷² The Treaty establishing the African Economic Community of 1991 already provided for relations

between the Community and African NGOs, including the establishment of a mechanism for consultation with African NGOs.⁷³ During the Lusaka Summit meeting in 2001 African Heads of State agreed that this structure, the Economic and Social Council, will be replaced by the Economic, Social and Cultural Council (ECOSOCC) of the African Union—an advisory organ composed of different social and professional groups of the Member States of the Union. Elsewhere African leaders have agreed on the active and genuine participation of citizens of every country in the decision-making processes and that the conduct of public affairs must be fostered and facilitated.⁷⁴ Civil society, Heads of State agree, contributes to democracy and their participation should be encouraged.⁷⁵

CHILDREN

African Heads of State have committed themselves to guarantee children's⁷⁶ rights and freedoms irrespective of race, ethnic group, colour, sex, religion, political or other opinion, national or social origin, fortune, birth or other status.⁷⁷ Any child who is permanently or temporarily deprived of his/her family environment for any reason will, according to these leaders, be entitled to special protection and assistance.⁷⁸ No child will be separated from his/her parents against his/her will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child.⁷⁹

Every child has the right to free association and freedom of peaceful assembly in conformity with the law.⁸⁰ Every child, African leaders agree, has an inherent right to life—a right that Heads of State agreed must be protected by law.⁸¹ Leaders also agreed that the death sentence will not be pronounced for crimes committed by people under the age of eighteen.⁸²

Every child who is capable of communicating his/her or her own views will be assured the rights to express his/her opinions freely in all matters and to disseminate his/her opinions subject to such restrictions as are prescribed by laws.⁸³ According to Heads of State, every child has the right to freedom of thought, conscience and religion and must be guided by their parents in the exercise of these rights having regard to the evolving capacities, and best interests of the child.⁸⁴ In doing so Member States will respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of the right to freedom of thought, conscience and religious rights subject to the national laws and policies.⁸⁵ In all judicial or administrative

proceedings affecting a child who is capable of communicating his/her own views, an opportunity will 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 will be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.⁸⁶

According to African Heads of State, no child will be subject to arbitrary or unlawful interference with his/her privacy, family home or correspondence, or to the attacks upon his/her honour or reputation, provided that parents or legal guardians 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.⁸⁷

Every child accused or found guilty of having infringed penal law has 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.⁸⁸

Heads of State agreed that states will, in particular:⁸⁹

- 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 of infringing the penal law:
 - (i) will be presumed innocent until duly recognised guilty;
 - (ii) will be informed promptly in a language that he/she understands and in detail of the charge against him/her, and entitled to the assistance of an interpreter if he/she cannot understand the language used;
 - (iii) will be afforded legal and other appropriate assistance in the preparation and presentation of his/her defence;
 - (iv) will 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.

African leaders have agreed that there must be a minimum age below which children will be presumed not to have the capacity to infringe the penal law.⁹⁰

Leaders agreed that states 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 will in particular:⁹¹

- 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 is not imprisoned with her child;
- e. Ensure that a death sentence is not 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.⁹²

Heads of State agreed to take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the event of its dissolution. In case of the dissolution of the marriage, provision will be made for the necessary protection of the child.⁹³

Leaders undertook to ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.⁹⁴ African leaders will take all necessary measures to ensure that no child takes a direct part in hostilities and refrain in particular, from recruiting any child.⁹⁵

Leaders will, in accordance with their obligations under international humanitarian law, ensure the protection of the civilian population in armed conflicts and take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules will also apply to children in situations of internal armed conflicts, tension and strife.⁹⁶

African Heads of State agreed that states, individually and collectively, must undertake to accord the highest priority to the special needs of children living under regimes practising racial, ethnic, and religious or other forms of discrimination as well as in states subject to military destabilisation.⁹⁷

Leaders agreed that every child has the right to acquire a nationality.⁹⁸ National constitutional

legislation must recognise the principles according to which a child will acquire the nationality of the state in the territory of which he/she has been born if, at the time of the child's birth, he/she is not granted nationality by any other state in accordance with its laws.⁹⁹

African Heads of State have agreed to 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.¹⁰⁰

They will also ensure that states 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 will receive appropriate protection and humanitarian assistance.¹⁰¹

Heads of State have undertaken to co-operate with existing international organisations that 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.¹⁰²

African Heads of State agreed that states will protect the child from all forms of sexual exploitation and sexual abuse, including: the inducement, coercion or encouragement of a child to engage in any sexual activity; the use of children in prostitution or other sexual practices; the use of children in pornographic activities, performances and materials.¹⁰³ Member States were encouraged to take legal and educational measures to abolish practices that are harmful to normal growth and development of the child such as child marriage and female circumcision.¹⁰⁴

Leaders have agreed to take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances, and to prevent the use of children in the production and trafficking of such substances.¹⁰⁵

Similarly leaders have agreed to take appropriate measures to prevent: the abduction, the sale of, or trafficking children for any purpose or in any form, by any person including parents or legal guardians of the child.¹⁰⁶ African leaders agreed to establish an African Committee of 11 Experts on the Rights and Welfare of the Child within the OAU to promote and protect the rights and welfare of the child.¹⁰⁷

WOMEN

African leaders urged states to work assiduously

towards the elimination of discrimination against women and the abolition of cultural practices that dehumanise or demean women.¹⁰⁸ Leaders have decided to elaborate a protocol to the African Charter for the more effective protection of women's rights.

REFUGEES¹⁰⁹

Leaders have committed themselves to tackle the root causes of the problem of refugees and displaced persons, and to create conditions conducive to voluntary repatriation of refugees and return of displaced persons to their places of origin.¹¹⁰

Heads of State have agreed on the fundamental right of refugees to return to their country of origin.¹¹¹ They also agreed that the voluntary character of repatriation must be respected in all cases and no refugee may be repatriated against his/her will.¹¹²

Leaders also agreed that the country of origin, on receiving back refugees, must facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.¹¹³ States will not discriminate against a refugee on the basis of race, religion, nationality, membership of a particular social group or political opinions.¹¹⁴

Refugees who voluntarily return to their country may in no way be penalised for having left it for any of the reasons giving rise to refugee situations.¹¹⁵ Conventional reintegration programmes should be complemented with activities which are more specifically designed to promote democracy, reconciliation and justice, including consensus-building on notions of responsibility and justice, and the promotion of human rights and majority rights.¹¹⁶ Assistance should always be provided on the basis of need, be non-discriminatory, community-based and participatory.¹¹⁷ Special attention should be given to unaccompanied minors and the need for their protection and reunification with their families, as well as recognition of the special importance of households headed by women and children in war-torn countries.¹¹⁸

Leaders have also agreed to address the phenomena of armed elements and political activists in refugee camps,¹¹⁹ including the separation of armed elements from the civilian refugee population to ensure the civilian and humanitarian character of refugee camps and settlements.¹²⁰

Refugee camps should be located as far as possible from the frontier at the outset of an emergency

operation rather than promoting their relocation at a later stage.¹²¹

African Heads of State will 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.¹²²

Leaders further agreed that no person will be subjected to measures such as rejection at the frontier, return or expulsion, which would compel him/her to return to or remain in a territory where his/her life, physical integrity or liberty would be threatened due to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion or who is compelled to leave his/her place of habitual residence due to country of origin or nationality due to external aggression, occupation, foreign domination or events seriously disturbing public order in order to seek refuge in another place outside his/her country of origin or nationality.¹²³

Refugees also have certain obligations and leaders agreed that a refugee must conform with the laws and regulations of the country that he/she finds him/herself in, as well as with measures taken for the maintenance of public order. He/she must also abstain from any subversive activities against any states,¹²⁴ attack another state or engage in any other activity likely to cause tension between countries, and in particular by use of arms, through the press, or by radio.¹²⁵

Member States undertake to provide the Secretariat in the appropriate form with information and statistical data requested concerning: the condition of refugees; the implementation of the 1969 OAU Convention governing the Specific Aspects of Refugee problems in Africa, and laws, regulations and decrees which are in force relating to refugees.¹²⁶

Leaders agreed to co-operate with the Office of the UN High Commission and agreed in this context to the opening of the Special Contingency Fund for Refugees to voluntary contributions.¹²⁷

African leaders directed the OAU to establish a monitoring function to ensure that all states adhere rigorously to African and international laws and conventions which establish clear standards of acceptable treatment for refugees.¹²⁸

Heads of State and non-state actors are to allow unconditional and unhindered access to protect and assist refugees and other persons in need.¹²⁹

ASYLUM

Heads of State agree that every individual has the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.¹³⁰

The granting of asylum to refugees is a peaceful and humanitarian act and will not be regarded as an unfriendly act by any Member State.¹³¹

Where a country finds difficulty in continuing to grant asylum to refugees, it may appeal directly to other states to take appropriate measures to lighten the burden of the state granting asylum.¹³²

Leaders agreed that where a refugee has not received the right to reside in any country of asylum, he/she may be granted temporary residence in any country of asylum in which he/she first presented him/herself as a refugee pending arrangement for his/her resettlement.¹³³

For reasons of security, countries of asylum will, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.¹³⁴

The country of asylum, in collaboration with the country of origin, will make adequate arrangements for the safe return of refugees who request repatriation.¹³⁵

Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, will be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organisations, to facilitate their return.¹³⁶

For the purpose of strengthening peace, solidarity and friendly relations, states must ensure that:

- (a) any individual enjoying the right of asylum will not engage in subversive activities against his/her country of origin or any other state;
- (b) their territories will not be used as bases for subversive or terrorist activities against the people of any other state.¹³⁷

Member States must issue to refugees lawfully staying in their territories travel documents in accordance with the UN 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.¹³⁸

MERCENARISM

African Heads of State have decided that any person, natural or juridical, who commits the crime of mercenarism¹³⁹ will be punished by the severest penalties under national laws including capital punishment.¹⁴⁰ States must either extradite mercenaries or punish them.¹⁴¹ States may not refuse a request to extradite¹⁴² except in the case of a national of the state but must then take action.¹⁴³

Leaders agree that states will afford one another the greatest measure of assistance in connection with the investigation and criminal proceedings brought in respect of mercenarism and related acts connected with the offender.¹⁴⁴

Mercenaries do not enjoy the status of combatants and are not entitled to prisoner of war status.¹⁴⁵

States and their representatives are responsible for acts or omissions regarding the crime of mercenarism and will be punished for such acts or omissions.¹⁴⁶ Any other state may invoke such responsibility in its relations with the state responsible and before competent international organisations or bodies.¹⁴⁷

Leaders agreed to take all necessary measures to eradicate all mercenary activities in Africa and undertook to:¹⁴⁸

- a. Prevent its nationals or foreigners on its territory from engaging in any of the acts of mercenarism;
- b. Prevent entry into or passage through its territory of any mercenary or any equipment destined for mercenary use;
- c. Prohibit on its territory and activities by persons or organisations who use mercenaries against any African state member of the OAU or the people of Africa in their struggle for liberation;
- d. Communicate to the other Member States 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 the Convention on Mercenarism.

TERRORISM

African leaders have condemned and rejected impunity¹⁴⁹ and political assassination, acts of terrorism¹⁵⁰ and subversive activities.¹⁵¹ Elsewhere they argue that all forms of extremism and intolerance foster instability.¹⁵²

African leaders have committed themselves to effective and efficient international co-operation through the speedy conclusion of a Global International Convention for the Prevention and Control of Terrorism in all its forms and the convening of an International Summit Conference under the auspices of the UN to consider this and the means to combat it.¹⁵³

Leaders have undertaken to review their national laws and establish criminal offences for terrorist acts as defined in the OAU Convention on Terrorism and to make such acts punishable by appropriate penalties.¹⁵⁴ African countries will sign, ratify and accede, as a matter of priority, to the following, including the enactment of national legislation:

Leaders have undertaken to review their national laws and establish criminal offences for terrorist acts

- Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft of 1963; Montreal Convention on the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971 and the Protocol thereto of 1984; New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 1973; International Convention against the Taking of Hostages of 1979; Convention on the Physical Protection of Nuclear Material of 1979; United Nations Convention on the Law of the Sea of 1982; 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; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf of 1988; Convention for the Suppression of Unlawful Acts against Maritime Navigation of 1988; Convention on the Marking of Plastic Explosives of 1991; International Convention for the Suppression of Terrorist Explosive Bombs of 1997; and Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 1997.¹⁵⁵

African Heads of State agreed that states will refrain

from any acts aimed at organising, 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.¹⁵⁶

Leaders agreed to take any legitimate measures to prevent their territories from being used as a base for the planning, organisation or execution of terrorist acts or for the participation or collaboration in terrorist acts in any form,¹⁵⁷ promote co-operation amongst themselves and help one another with investigations¹⁵⁸ and arrests, in conformity with the national law of each state.¹⁵⁹ Other measures include the following:

- To develop and strengthen methods of monitoring and detecting plans of 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.¹⁶⁰
- 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, organisation and execution of terrorist acts.¹⁶¹
- Strengthen the protection and security of persons, diplomatic and consular missions, premises of regional and international organisations accredited to a state party, in accordance with the relevant conventions and rules of international law.¹⁶²
- Promote the exchange of information and expertise on terrorist acts and establish databases for the collection and analysis of information and data on terrorist elements, groups, movements and organisations in conformation of the OAU Convention and national legislation.¹⁶³ States will exchange information regarding: the 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; their communication and propaganda methods and techniques, their behaviour, movement and travel documents.¹⁶⁴ Such information may involve information leading to the possible arrest of suspects involved or an accomplice or

instigator in terrorism, the seizure and confiscation of arms, ammunition, explosives, devices or funds intended or used for terrorism.¹⁶⁵ Information provided must be treated in confidence and not provided to other states without the prior consent of the state from where such information originated.¹⁶⁶ Countries also agreed to exchange studies, research and conduct joint training courses.¹⁶⁷

- Take all necessary measures to prevent the establishment of terrorist support networks in any form whatsoever.¹⁶⁸
- Ascertain, when granting asylum, that the asylum seeker is not involved in any terrorist act.¹⁶⁹
- Investigate, arrest, try without undue delay or extradite the perpetrators of terrorist acts in accordance with national legislation.¹⁷⁰
- Establish effective co-operation between relevant domestic security officials and services and the citizens of the states parties in a bid to enhance public awareness of terrorism and encourage the provision of information.¹⁷¹

The national governments of terrorist suspects must be informed once action is taken.¹⁷²

Instability in one country affects the stability of neighbouring countries and the continent as a whole

INTER-STATE RELATIONS

African leaders have agreed to work towards greater unity and solidarity between the African countries and the peoples of Africa,¹⁷³ accelerate the political and socio-economic integration of the continent,¹⁷⁴ promote and defend African common positions on issues of interest to the continent and its peoples.¹⁷⁵ They have recognised that instability in one country affects the stability of neighbouring countries and the continent as a whole.¹⁷⁶

African leaders believe in seeking African solutions to Africa's dispute and that the responsibility for the security, stability and socio-economic development of the continent lies primarily with Africa.¹⁷⁷

African Heads of State have agreed to respect and defend the sovereignty, territorial integrity and independence of the various Member States¹⁷⁸ as well as their sovereign equality¹⁷⁹ through, amongst others, the establishment of a common defence policy for the continent.¹⁸⁰

Leaders have agreed to the exchange of information

and co-operation at the sub-regional level on security matters, especially on issues relating to terrorism, cross-border criminal activities and joint military training.¹⁸¹ Conflicts among Member States of the Union are to be resolved peacefully through such appropriate means as decided upon by the Assembly of the African Union.¹⁸²

Border disputes have been a long-standing issue in Africa and although African leaders have expressed a repeated adherence to the inviolability of and respect for the borders inherited from colonialism,¹⁸³ there are a number of commitments by African Heads of State to, in times of peace, undertake the delimitation and demarcation of common borders.¹⁸⁴

African leaders have committed themselves to resolutely combat cross-border criminality, drug trafficking, corruption and terrorism at the sub-regional and continental levels.¹⁸⁵

USE OF FORCE

The use of force or the threat thereof is explicitly prohibited among Member States of the African Union.¹⁸⁶ Force may only be used in international relations inside the duly conferred mandate of the UN Security Council.¹⁸⁷ Any other resort to the use of force or the threat thereof against the territorial integrity or political independence of any state constitutes a violation of international law.¹⁸⁸

This being said, the African Union now has the right 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 humanity¹⁸⁹ while any Member State has the right to request intervention from the African Union in order to restore peace and security.¹⁹⁰ African leaders have also agreed to co-operate with relevant institutions set up to prosecute the perpetrators and to reject a culture of impunity.¹⁹¹

PEACEKEEPING¹⁹²

African leaders have agreed, that in the event that conflicts degenerate to the extent of requiring collective international intervention and policing, the assistance or where appropriate the services of the UN will be sought under the general terms of its Charter. In this instance, Heads of State agreed to examine ways and modalities through which they can make practical contributions to UN peacekeeping operations in Africa.¹⁹³

Leaders agreed that the OAU will co-operate and

work closely with the UN with regard to issues relating to peace-making and peace-keeping. Where necessary, recourse will be had to the UN to provide the necessary financial, logistical and military support for the OAU's activities in Conflict Prevention, Management and Resolution in Africa in keeping with the provisions of Chapter VIII of the UN Charter.¹⁹⁴

Leaders agreed to implement a system of ready contingents for possible deployment by the UN, and in exceptional circumstances by the OAU.¹⁹⁵

NUCLEAR WEAPONS

African Heads of State seek to preserve Africa as a nuclear free zone.¹⁹⁶

As a result nuclear research in Africa is restricted to peaceful use.¹⁹⁷ African leaders have undertaken not to conduct research, develop, manufacture, stockpile or otherwise acquire, possess or have control over any nuclear explosive device or to receive assistance to this end,¹⁹⁸ nor to test or allow their territory to be used for nuclear explosions/tests.¹⁹⁹ Nor will leaders allow the dumping of radioactive wastes or material within Africa.²⁰⁰

Leaders agreed to establish the African Commission on Nuclear Energy to ensure compliance with their undertakings under the African Nuclear Weapon-Free Zone (Pelindaba Treaty).²⁰¹

ARMS CONTROL, SMALL ARMS, LIGHT WEAPONS AND LANDMINES

Heads of State decided to:

- Conduct an in-depth study on the question of reducing the armament burden in all its aspects, including the proliferation and dissemination (illicit and clandestine traffic of arms) of low-calibre war arms in the conflict zones and its vicinity. Leaders raised the possibility of using a certain percentage of the results from disarmament to increase the financial capacity of the Mechanism for Conflict Prevention, Management and Resolution.²⁰²
- Set up a Regional Register on the transfer of Conventional Arms within the OAU to initiate a regional dynamism to enhance mutual confidence and security through greater transparency in the international transfer of conventional arms.²⁰³

African leaders have committed themselves to resolutely combat illicit proliferation, circulation

and trafficking of small arms, light weapons and landmines at the sub-regional and continental levels²⁰⁴ in a comprehensive, integrated, sustainable and efficient manner²⁰⁵ through:

- a. Ensuring that the behaviour and conduct of Member States and suppliers are not only transparent but also go beyond narrow national interests;
- b. The promotion of measures aimed at restoring peace, security and confidence among and between Member States with a view to reducing the resort to arms;
- c. The promotion of structures and processes to strengthen democracy, the observance of human rights, the rule of law and good governance, as well as economic recovery and growth;
- d. The promotion of conflict prevention measures and the pursuit of negotiated solutions to conflicts;
- e. The promotion of comprehensive solutions to the problem of the illicit proliferation, circulation and trafficking of small arms and light weapons that:
 - include both control and reduction, as well as supply and demand aspects;
 - are based on the co-ordination and harmonisation of the efforts of the Member States at regional, continental and international levels;
 - involve civil society in support of the central role of governments, in this regard.
- f. The enhancement of the capacity of Member States to identify, seize and destroy illicit weapons and to put in place measures to control the circulation, possession, transfer and use of small arms and light weapons;
- g. The promotion of a culture of peace by encouraging education and public awareness programmes on the problems of the illicit proliferation, circulation and trafficking of small arms and light weapons, involving all sectors of society;
- h. The institutionalisation of national and regional programmes for action aimed at preventing, controlling and eradicating the illicit proliferation, circulation and trafficking of small arms and light weapons in Africa; and
- i. The respect for international humanitarian law.

To address the problem of the illicit proliferation,

circulation and trafficking of small arms and light weapons African Heads of State agreed to recommendations at the national and regional levels. At the national level Heads of State recommended the following:²⁰⁶

- a. National co-ordination agencies or bodies and the appropriate institutional infrastructure responsible for policy guidance, research and monitoring on all aspects of small arms and light weapons proliferation, control, circulation, trafficking and reduction;
- b. Enhance the capacity of national law enforcement and security agencies and officials to deal with all aspects of the arms problem, including appropriate training on investigative procedures, border control and specialised actions, and upgrading of equipment and resources;
- c. Adopt the necessary legislative and other measures to establish as a criminal offence under national law, the illicit manufacturing of, trafficking in, and illegal possession and use of small arms and light weapons, ammunition and other related materials;
- d. Develop and implement national programmes for:
 - the responsible management of licit arms;
 - the voluntary surrender of illicit small arms and light weapons;
 - the identification and the destruction by competent national authorities and where necessary, of surplus, obsolete and seized stocks in possession of the state, with, as appropriate, international financial and technical support;
 - the reintegration of demobilised youth and those who possess small arms and light weapons illegally.
- e. Develop and implement public awareness programmes on the problem of the proliferation and the illicit trafficking of small arms and light weapons;
- f. Encourage the adoption of appropriate national legislation or regulations to prevent the breaching of international arms embargoes, as decided by the UN Security Council;
- g. Take appropriate measures to control arms transfers by manufacturers, suppliers, traders, brokers, as well as shipping and transit agents, in a transparent fashion;
- h. Encourage, where appropriate, the active

involvement of civil society in the formulation and implementation of a national action plan to deal with the problem;

- i. Enter into binding bilateral agreements, on a voluntary basis with neighbouring countries, so as to put in place an effective common system of control, including the recording, licensing and collection of small arms and light weapons, within common frontier zones.

Heads of State recommended the following actions at the regional level:²⁰⁷

- a. Put in place, where they do not exist, mechanisms to co-ordinate and harmonise efforts to address the illicit proliferation, circulation and trafficking of small arms and light weapons;
- b. Encourage the codification and harmonisation of legislation governing the manufacture, trading, brokering, possession and use of small arms and ammunition. Common standards should include, but not be limited to, marking, record-keeping and control governing imports, exports and the illicit trade;
- c. Strengthen regional and continental co-operation among police, customs and border control services to address the illicit proliferation, circulation and trafficking of small arms and light weapons. These efforts should include, but not be limited to, training, the exchange of information to support common action to contain and reduce illicit small arms and light weapons trafficking across borders, and the conclusion of the necessary agreements in this regard;
- d. Ensure that the manufacturers and suppliers of illicit small arms and light weapons, who violate global or continental regulations on the issue, shall be sanctioned. Known brokers and states which act as suppliers of illicitly acquired arms and weapons to combatants in Member States, should equally be sanctioned by the international community.

The OAU Secretary-General is to report regular progress in respect of the implementation of the Bamako Declaration on the illicit proliferation, circulation and trafficking of small arms and light weapons to the OAU Council of Ministers.²⁰⁸

African Heads of State recognised that the issue of

anti-personnel mines constitutes a major public health threat and affects free circulation of people and goods in affected countries.²⁰⁹ They called on all African countries which had not done so to sign and ratify the UN Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.²¹⁰ The Secretary-General of the OAU was requested to sensitise Member States to contribute to the effective implementation of the Convention.²¹¹

African leaders supported the Maputo Declaration, 1999 of States Parties to the UN Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, including those states' commitment to the total eradication of anti-personnel mines.²¹² The Maputo Declaration calls on all parties to cease to use, develop, produce, otherwise acquire, stockpile, retain and transfer these weapons.²¹³

African Heads of State supported the objectives of a work programme by states parties to the Convention to address issues of mine clearance; victim assistance and mine awareness; stockpile destruction; technologies for mine action; and the general status and operation of the Convention.²¹⁴

Anti-personnel mines constitute a major public health threat and affect the free circulation of people and goods in affected countries

DRUGS

Leaders agreed to a Plan of Action covering the period 1997 to 2001 aimed at eradicating drug abuse and illicit trafficking that includes the following:²¹⁵

- Ensuring coherence in drug control actions at national, regional and continental levels and enhancing co-operation among countries sharing the same problems.
- Setting up appropriate institutions to address illicit drug trafficking and illicit drug demand in a balanced, integrated and timely manner. Drug control activities would be actively integrated into national policies. National administrations or focal points for drug control will be established or strengthened, as will inter-ministerial committees. Adequate resources, including adequate equipment, would be allocated for drug control activities. The development, adoption and regular review of administrative and regulatory mechanisms for the prevention of drug abuse and illicit trafficking.
- Drug demand reduction programmes that are integrated into the national health and social

policy and providing, where not available, infrastructures for the treatment of drug addicts and their social integration. The promotion of regulated drug distribution channels and preventive education through mass education campaigns and inclusion of relevant material into school curricula. Facilities that detect drug addiction at an early stage and provide for the treatment and social reintegration of drug addicts must be introduced. Communities and NGOs must be mobilised to assist with drug demand reduction.

- A commitment to devote sufficient resources to assess the supply and demand drug problem, including the introduction of mechanisms for the collection and analysis of information and ability to adequately report to international organisations. This data will include drug seizures, nature, extent and trends of drug abuse, illicit trafficking and the profiles of illicit drug traffickers.
- Adoption of the relevant international drug conventions and legal instruments.
- The development of human resources to build national agencies that are staffed by competent, committed and motivated staff. To this end drug law enforcement officers will be trained to detect and interdict illicit drug trafficking using up-to-date techniques where possible, while personnel for drug demand reduction programmes will be trained in all aspects of drug demand reduction, while recognising the need for specialisation. The judiciary must be offered training on the laws specific to the control of narcotic drugs and psychotropic substances and their capacity to deal effectively with cases of illicit drug trafficking improved. Regular, in-service training will be provided to personnel to update their skills and knowledge and to allow for exchange of experience. An adequate number of personnel will be employed in drug law enforcement agencies to provide full time security coverage of ports, land borders and post offices, and to enforce drug laws through arrests, prosecution of

suspects and imposition of appropriate penal sanctions.

- Periodic evaluation of programmes.
- Governments agreed to make adequate budgetary allocations for controlling narcotic drugs and psychotropic substances. National governments, regional economic communities and the OAU agreed to examine existing external sources of funding, but the RECs and the OAU would play the catalytic role.

Leaders agreed to identify priority actions for Governments, to develop co-operation among countries on these priorities, to mobilise the community and NGOs, etc.²¹⁶

To give effect to the Plan of Action, leaders agreed that the OAU should formally enlarge its mandate to include consideration of drug control activities and establish a focal point at the Secretariat for the co-ordination and monitoring of drug control activities at the continental level. The focal point will be responsible to prepare and present annual reports of the current drug situation on the continent to the OAU meetings of the Foreign Affairs', Ministers and Heads of State and Government.²¹⁷ The focal point would also review and recommend changes to the Plan of Action. The OAU secretariat will maintain an inventory of African experts in the field of drug control, collate information on institutions that provide relevant training in drug control, disseminate such information to Member States, promote the exchange of experts, organise seminars/workshops to update skills, facilitate the exchange of information to interdict illicit trafficking, establish a forum for consultations by experts on drug demand reduction programs, using its facilities to promote international cooperation in the field of drug control.

The Secretariat of the OAU was tasked to monitor the implementation of the Plan of Action and to report to the Assembly of Heads of State and Government, including proposals for improvement.

NOTES

- 1 For example par 10 in Relaunching Africa's Economic and Social Development: the Cairo Agenda for Action, 31st Ordinary Session of the Assembly of Heads of State and Government, Addis Ababa, Ethiopia, 26 to 28 June, 1995. Also par 24, Yaoundé Declaration (Africa: Preparing for the 21st Century), 32nd Ordinary Session of the Assembly of Heads of State and Government, Yaoundé, Cameroon, 8 to 10 July 1996.
- 2 Par 9(b), Solemn Declaration on the Conference for Security, Stability, Development and Co-operation in Africa (CSSDCA), 10–12 July 2000, Lomé, Togo. Also par 1, Ougadougou Declaration adopted by the 34th Ordinary Session of the OAU/2nd Ordinary Session of the AEC, 8–10 June 1998, Ouagadougou, Burkina Faso.
- 3 Para 9(h), 11 and 14(f), CSSDCA Declaration, 2000.
- 4 Par 10(b), CSSDCA Declaration, 2000.
- 5 Declaration on the framework for an OAU response to unconstitutional changes in government, 36th Ordinary Session/4th Ordinary Session of the Assembly of Heads of State and Government of the AEC, 10–12 July 2000, Lomé, Togo. Also Art 3(g), Art 4(m), Art 4(n) of the Constitutive Act of the African Union, adopted in Lomé, Togo, 11th July 2000. Also Art 3(3) of the Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament, adopted in 2001, not yet in force. Also Para 49 and 79 of NEPAD, 2001. [Note: the 37th Assembly of the OAU also adopted the Strategic Policy Framework of the New Africa Initiative as well as its Programme of Action. The New African Initiative has subsequently been renamed the New Partnership for Africa's Development (NEPAD). These are therefore included in the summary. References used in this memorandum refer to the Abuja, October 2001 version of NEPAD]. Also Algiers Declaration, 35th Ordinary Session of the Assembly of Heads of State and Government, 12–14 July 1999, par 5. Also par 12 of 1993 Declaration on 30th Anniversary of OAU. Also par 10 of the Cairo Agenda for Action, 1995.
- 6 The Cairo Agenda for Action of 1995 speaks of "... programmes to promote national unity especially through the politics of inclusion and a culture of tolerance ..., based on the principles of respect of human rights and dignity, free and fair elections, as well as respect for the freedom of the press, speech, association and conscience." Par 10(i).
- 7 Also par 1 of Ougadougou Declaration, 1998.
- 8 Also par 14(i) of CSSDCA Declaration, 2000, which mentions political and trade union pluralism and other forms of participatory democracy.
- 9 Also Art 13(1) of African (Banjul) Charter On Human And Peoples' Rights, adopted 27 June 1981, entered into force 21 October 1986; and par 14(a) of CSSDCA Declaration, 2000.
- 10 Also Art 3(h) of AU Act. Also Art 3(g) of the AEC Treaty. Also par 12 of 1993 Declaration on 30th Anniversary of OAU. Also Art 60 of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 11 Art 26 of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 12 Art 25 of African (Banjul) Charter On Human And Peoples' Rights, 1981. The education of children under 18 shall be directed, inter alia, to: 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; a 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; The preservation of national independence and territorial integrity; The promotion and achievements of African Unity and Solidarity; Art 11(2) of African Charter on the Rights and Welfare of the Child, adopted 11 July 1990, entered into force 29th November 1999.
- 13 Art 18(3) of African (Banjul) Charter On Human And Peoples' Rights, 1981. Par 49 of NEPAD, 2001.
- 14 Par 49 of NEPAD, 2001.
- 15 Par 10(ii) of the Cairo Agenda for Action, 1995.
- 16 Par 1 of Ougadougou Declaration, 1998.
- 17 Art 4(p) of AU Act.
- 18 Art 30 of AU Act.
- 19 Lomé Declaration on OAU response to Unconstitutional changes of Government, 2000.
- 20 Lomé Declaration on OAU response to Unconstitutional changes of Government, 2000.
- 21 Lomé Declaration on OAU response to Unconstitutional changes of Government, 2000.
- 22 Art 2 of African (Banjul) Charter On Human And Peoples' Rights. Also par 5 of the Declaration on the Code of Conduct for Inter-African Relations, 30th Ordinary Session of the Assembly of Heads of State and Government, Tunis 13-15 July 1994.
- 23 Par 11 of CSSDCA Declaration, 2000.
- 24 Par 14(f) of CSSDCA Declaration, 2000.
- 25 Art 4 of African (Banjul) Charter On Human And Peoples' Rights, 1981. Art 4(o) of AU Act, 2000. Also par 13 of Lomé Declaration, 2000 and Par 49 of NEPAD, 2001.
- 26 Art 19 of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 27 Art 3(1) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 28 Art 3(2) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 29 Par 11(a) of CSSDCA Declaration, 2000.
- 30 Par 14 of CSSDCA Declaration, 2000.
- 31 Art 5 of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 32 Art 6 of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 33 Art 7(1) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 34 Art 7(2) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 35 Art 8 of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 36 Art 9(2) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 37 Art 10(1) of African (Banjul) Charter On Human And Peoples' Rights, 1981.

- 38 Art 11 of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 39 Art 13(2) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 40 Par 1 of Ougadougou Declaration, 1998.
- 41 Art 9(1) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 42 Art 27(1) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 43 Art 28 of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 44 Art 27(2) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 45 Art 29(3) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 46 Art 29(4) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 47 Art 29(5) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 48 Art 29(6) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 49 Art 29(7) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 50 Art 29(8) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 51 Art 13(3) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 52 Art 14 of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 53 Art 21(1) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 54 Art 21(2) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 55 Art 17(2) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 56 Art 17(3) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 57 Art 18(1) of Charter on Child, 1990
- 58 Art 43(1) of the Treaty establishing the African Economic Community, adopted 3 June 1991, entered into force 12 May 1994. [Note: according to Art 33(2) the Constitutive Act of the African Union takes precedence over and supersedes any inconsistent or contrary provisions of the Treaty establishing the African Economic Community. Therefore only provisions from the AEC Treaty that do not contradict the Act have been included.]
- 59 Second Ordinary Session of the Assembly of Heads of State and Government, 8-9 June 1998, Ouagadougou, Burkina Faso, par 5.
- 60 Art 43(2) of the AEC Treaty.
- 61 Art 12(1) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 62 Art 12(2) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 63 Art 12(4) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 64 Art 12(5) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 65 Art 20(1) of African (Banjul) Charter On Human And Peoples' Rights, 1981. Par 4 of the Tunis Code of Conduct for Inter-African Relations, 1994 speaks of the 'protection of ethnic, cultural, linguistic and religious identity, including national minorities and the creation of conditions conducive to the promotion of this identity.', par 4.
- 66 Art 20(2) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 67 Art 3(1) of Convention on the Prevention and Combating of Terrorism, adopted in Algiers, July 1999. The Convention is not yet in force.
- 68 Art 20(3) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 69 Art 22(1) of African (Banjul) Charter On Human And Peoples' Rights, 1981.
- 70 Art 17(1) of AU Act. Originally the establishment of the PAP would have been concluded as part of the Sixth Stage of the establishment of a Pan-African Economic and Monetary Union. See AEC Treat Art 6(2)(f)(iv).
- 71 Art 6 of PAP Protocol.
- 72 Art 4(c) of AU Act.
- 73 Art 90 of AEC Treaty.
- 74 Par 11(b) of CSSDCA Declaration, 2000.
- 75 Par 14(c) of CSSDCA Declaration, 2000.
- 76 Every human being below the age of 18 years according to Art 2 of Charter on Child, 1990.
- 77 Art 3 of Charter on Child, 1990.
- 78 Art 25(1) of Charter on Child, 1990.
- 79 Art 19(1) of Charter on Child, 1990.
- 80 Art 8 of Charter on Child, 1990.
- 81 Art 5(1) of Charter on Child, 1990.
- 82 Art 5(3) of Charter on Child, 1990.
- 83 Art 7 of Charter on Child, 1990.
- 84 Art 9(1) and (2) of Charter on Child, 1990.
- 85 Art 9(1) of Charter on Child, 1990.
- 86 Art 4 of Charter on Child, 1990.
- 87 Art 10 of Charter on Child, 1990.
- 88 Art 17(1) of Charter on Child, 1990.
- 89 Art 17(2) of Charter on Child, 1990.
- 90 Art 17(4) of Charter on Child, 1990.
- 91 Art 30 of Charter on Child, 1990.
- 92 Also Art 17(3) of Charter on Child, 1990.
- 93 Art 18(2) of Charter on Child, 1990.
- 94 Art 22(1) of Charter on Child, 1990.
- 95 Art 22(2) of Charter on Child, 1990.
- 96 Art 22(3) of Charter on Child, 1990.
- 97 Art 26(2) of Charter on Child, 1990.
- 98 Art 6(3) of Charter on Child, 1990.
- 99 Art 6(4) of Charter on Child, 1990.
- 100 Art 25(2)(b) of Charter on Child, 1990.
- 101 Art 23(1) of Charter on Child, 1990.
- 102 Art 23(2) of Charter on Child, 1990.
- 103 Art 27 of Charter on Child, 1990.
- 104 Par 3 of Declaration on the Rights and Welfare of the African Child, 16th Ordinary Session of the Assembly of Heads of State and Government, Monrovia, 17-20 July 1979.
- 105 Art 28 of Charter on Child, 1990.
- 106 Art 29(a) of Charter on Child, 1990.
- 107 Art 32 of Charter on Child, 1990.
- 108 Par 6, Declaration and the Plan of Action on Human Rights, Grand Bay (Mauritius), First OAU Ministerial Conference on Human Rights in Africa, 12 to 16 April 1999. Adopted by Algiers Summit in 2000.
- 109 According to Art 1 of the Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted 10 September 1969, Addis Ababa, entered into force 20 June 1974: the term 'refugee' means 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/her 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/her former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it. The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his/her country of origin or nationality, is compelled to leave his/her place of habitual residence in order to seek refuge in another place outside his/her country of origin or nationality. This Convention shall cease to apply to any refugee if:

- (a) he/she has voluntarily re-availed himself of the protection of the country of his/her nationality, or,
 - (b) having lost his/her nationality, he/she has voluntarily reacquired it, or,
 - (c) he/she has acquired a new nationality, and enjoys the protection of the country of his/her new nationality, or,
 - (d) he/she has voluntarily re-established himself in the country which he/she left or outside which he/she remained owing to fear of persecution, or,
 - (e) he/she can no longer, because the circumstances in connection with which he/she was recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his/her nationality, or,
 - (f) he/she has committed a serious non-political crime outside his/her country of refuge after his/her admission to that country as a refugee, or,
 - (g) he/she has seriously infringed the purposes and objectives of this Convention. 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/she 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/she committed a serious non-political crime outside the country of refuge prior to his/her admission to that country as a refugee; (c) he/she has been guilty of acts contrary to the purposes and principles of the Organisation of African Unity; (d) he/she has been guilty of acts contrary to the purposes and principles of the United Nations. For the purposes of this Convention, the Contracting State of Asylum shall determine whether an applicant is a refugee.
- 110 Par 7 of Lomé Declaration, 36th Ordinary Session of the Assembly of Heads of State and Government, 10-12 July 2000. Par 10(iv) of the Cairo Agenda for Action, 1995. Para 10(g) of CSSDCA Declaration, 2000.
 - 111 Par 12 of Khartoum Recommendations of the OAU Ministerial Meeting on Refugees, Returnees and Internally Displaced Persons in Africa, adopted together with the Khartoum Declaration on 14 December 1998, Khartoum, The Sudan. [Note: the subsequent Summit meeting in Algiers in 1999 adopted both for implementation. The Summit also requested a follow-up to update 1969 Convention. This led to a meeting in Conakry in 1999 which saw the adoption of a Comprehensive Implementation Plan (CIP) to give effect to the 1969 Convention. The CIP was subsequently adopted by 2000 in Lomé and is now in process of implementation.]
 - 112 Art 5(1) of Refugee Convention, 1969. Also par 7 in the 1998 Khartoum Declaration and par 14 of the Khartoum Recommendations, 1998.
 - 113 Art 5(3) of Refugee Convention, 1969.
 - 114 Art 4 of Refugee Convention, 1969.
 - 115 Art 5(4) of Refugee Convention, 1969.
 - 116 Par 16 of Khartoum Recommendations, 1998.
 - 117 Par 17 of Khartoum Recommendations, 1998.
 - 118 Par 18 of Khartoum Recommendations, 1998.
 - 119 Par 14(j) of CSSDCA Declaration, 2000.
 - 120 Par 12 of Khartoum Declaration, 1998. Par 9 of Khartoum Recommendations, 1998.
 - 121 Par 11 of Khartoum Recommendations, 1998.
 - 122 Art 2(1) of Refugee Convention, 1969.
 - 123 Art 2(3) of Refugee Convention, 1969.
 - 124 Art 3(1) of Refugee Convention, 1969.
 - 125 Art 3(2) of Refugee Convention, 1969.
 - 126 Art 7 of Refugee Convention, 1969.
 - 127 Par 15 of Khartoum Recommendations, 1998.
 - 128 Par 19, page 290, Rwanda: the Preventable Genocide, the Report of the International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events, Organisation of African Unity, Addis Ababa, 2000. The report was tabled in the Council of Ministers during the Lomé 2000 Summit and the recommendations adopted.
 - 129 Par 10 of Khartoum Declaration, 1998.
 - 130 Art 12(3) of African (Banjul) Charter On Human And Peoples' Rights.
 - 131 Art 2(2) of Refugee Convention, 1969.
 - 132 Art 2(4) of Refugee Convention, 1969.
 - 133 Art 2(5) of Refugee Convention, 1969.
 - 134 Art 2(6) of Refugee Convention, 1969.
 - 135 Art 5(2) of Refugee Convention, 1969.
 - 136 Art 5(5) of Refugee Convention, 1969.
 - 137 Art 23(2) of African (Banjul) Charter On Human And Peoples' Rights.
 - 138 Art 6(1) of Refugee Convention, 1969.
 - 139 Art 1(2) of the Convention for the Elimination of Mercenarism in Africa, adopted 3 July 1977, entered into force 22 April 1985. According to Art 1(1): "The crime of mercenarism is committed by the individual, group or association, representatives of a State and the State itself with the aim of opposing by armed violence a process of self-determination or the territorial integrity of another State that practices 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, enrolls or tries to enrol in the said forces;
 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."

- 140 Art 7 of Mercenarism Convention.
- 141 Art 8 of Mercenarism Convention.
- 142 Art 9(2) of Mercenarism Convention.
- 143 Art 9(3) of Mercenarism Convention.
- 144 Art 10 of Mercenarism Convention.
- 145 Art 3 of Mercenarism Convention.
- 146 Art 5(1) of Mercenarism Convention.
- 147 Art 5(2) of Mercenarism Convention.
- 148 Art 6 of Mercenarism Convention.
- 149 Also in par 14(k) in CSSDCA Declaration, 2000, and Art 4(o) of Constitutive Act.
- 150 A '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 or, or cause serious injury or death to, any person, any number of 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, organising, or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i) to (iii). Art 1 of Terrorism Convention. Art 6 of the Convention establishes jurisdiction.
- 151 Art 4(o) of AU Act.
- 152 Par 11(d) of CSSDCA Declaration, 2000.
- 153 Algiers Declaration, 1999, p 8.
- 154 Art 2(a) Convention on Terrorism, 1999.
- 155 Annex 'List of International Instruments' to Convention on Terrorism and art 2(b) and (c) of the same Convention.
- 156 Art 4(1) of Convention on Terrorism.
- 157 Art 4(2)(a) of Convention on Terrorism.
- 158 Art 14 to 18 of the Convention on Terrorism deals with extra-territorial investigations and mutual legal assistance.
- 159 Art 5(4) of Convention on Terrorism.
- 160 Art 4(2)(b) of Convention on Terrorism.
- 161 Art 4(2)(c) of Convention on Terrorism.
- 162 Art 4(2)(d) of Convention on Terrorism.
- 163 Art 4(2)(e) of Convention on Terrorism.
- 164 Art 5(1) of Convention on Terrorism.
- 165 Art 5(2) of Convention on Terrorism.
- 166 Art 5(3) of Convention on Terrorism.
- 167 Art 5(5) and (6) of Convention on Terrorism.
- 168 Art 4(2)(f) of Convention on Terrorism.
- 169 Art 4(2)(g) of Convention on Terrorism.
- 170 Art 4(2)(h) and 7(1) of Convention on Terrorism. Art 8 of the Convention deals with Extradition in some detail.
- 171 Art 4(2)(i) of Convention on Terrorism.
- 172 Art 7() of Convention on Terrorism.
- 173 Art 3(a) of AU Act. Art 3(a) and (b) of the AEC Treaty affirms the principle of equality, interdependence solidarity and collective self-reliance of Member States.
- 174 Art 3(c) of AU Act. Art 3(c) of the AEC Treaty refers to inter-state co-operation, harmonisation of policies and integration of programmes.
- 175 Art 3(d) of AU Act. Also Art 94 of AEC Treaty.
- 176 Par 9(b), CSSDCA Declaration, 2000. Also par 1, Ouagadougou Declaration, 1998.
- 177 Para 9(d) to f() of CSSDCA Declaration, 2000.
- 178 Art 3(b) of AU Act. Also par 14 of Cairo Declaration on Mechanism, 1993. Para 9(a) of CSSDCA Declaration, 2000.
- 179 Art 4(a) of AU Act. Also para 9(c) CSSDCA Declaration, 2000.
- 180 Art 4(d) of AU Act.
- 181 Par 14(d) of CSSDCA Declaration, 2000.
- 182 Art 4(e) of AU Act. Also para 9(d) of CSSDCA Declaration, 2000.
- 183 Art 4(b) of AU Act. Par 14, Cairo Declaration on Mechanism, 1993.
- 184 Para 10(d) and 14(d), CSSDCA Declaration, 2000.
- 185 Para 2 & 9 of Lomé Declaration, 2000. Algiers Declaration, 1999, p 7. Par 49 & 74 of NEPAD, 2001.
- 186 Art 4(f) of AU Act.
- 187 Par 3 of Tunis Declaration on Code of Conduct.
- 188 Algiers Declaration 1999, p 6. Par 7 of Tunis Declaration on Code of Conduct.
- 189 Art 4(h) of AU Act.
- 190 Art 4(j) of AU Act.
- 191 Par 14(l) of CSSDCA Declaration, 2000. Also par 1 of Ouagadougou Declaration, 1998 and Art 4(o) of AU Act.
- 192 The General Secretariat of the OAU hosted two meetings on peacekeeping. The recommendations of the second meeting of the Chiefs of Staff of the Central Organ of the OAU that was held in Harare in 1997 built upon the recommendations of the earlier meeting held in Addis Ababa in 1995. The Harare document was subsequently submitted to the Council in Ouagadougou, Burkina Faso in 1998. The CoM 'took note' of the report but stopped short of endorsing or adopting the recommendations, requesting that further work be done to follow up on the recommendations, particularly with RECs. Although the OAU submitted the report to the RECs there has been little follow-up.
- 193 Par 16, Cairo Declaration on Mechanism, 1993.
- 194 Par 25, Cairo Declaration on Mechanism, 1993.
- 195 Par 14(i) of CSSDCA Declaration, 2000.
- 196 Par 8 of Lomé Declaration, 2000.
- 197 Art 8 of the African Nuclear Weapon-Free Zone Treaty (Treaty of Pelindaba), Cairo, 1995. Adopted 28 June 1995, not yet in force.
- 198 Art 3 of Pelindaba Treaty.
- 199 Art 4 of Pelindaba Treaty.
- 200 Art 7 of Pelindaba Treaty.
- 201 Art 12 of Pelindaba Treaty.
- 202 Par 27 of Yaoundé Declaration, 1996.
- 203 Par 28 of Yaoundé Declaration, 1996.
- 204 Para 2 & 9 of Lomé Declaration, 2000. Para 10 (h) and 14(l) of CSSDCA Declaration, 2000. Algiers Declaration, 1999, p 7. Par 49 & 74 of NEPAD, 2001.
- 205 Par 2 of the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking on Small Arms and Light

- Weapons, 1 December 2000. The Declaration was subsequently adopted by the Summit meeting in Lusaka, 2001.
- 206 Par 3(A) of Bamako Declaration, 2000.
- 207 Par 3(B) of Bamako Declaration, 2000.
- 208 Par 5 of Bamako Declaration, 2000.
- 209 Assembly of Heads of State and Government, Algiers 12-14 July 1999, Decision 135 (LXX), Par 2 & 4.
- 210 Assembly of Heads of State and Government, Algiers 12-14 July 1999, Dec.135 (LXX), Par 7.
- 211 Assembly of Heads of State and Government, Algiers 12-14 July 1999, Dec.135 (LXX), Par 10.
- 212 Maputo Declaration of the States Parties to the UN Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 7 May 1999, Par 1.
- 213 Maputo Declaration of the States Parties to the UN Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 7 May 1999, Par 6.
- 214 Maputo Declaration of the States Parties to the UN Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 7 May 1999, Par 18.
- 215 Declaration and Plan of Action on Drug Control Abuse and Illicit Drug Trafficking in Africa, Yaoundé 8-10 July 1996, pp 4-9.
- 216 Declaration and Plan of Action on Drug Control Abuse and Illicit Drug Trafficking in Africa, p 5.
- 217 This in view of Article 72(2)(9) of the Treaty Establishing the African Economic Community, 1991. In fact there is no such sub-sub-Article, and one assumes the reference is to 72(2)(g) that reads "harmonise their efforts to put an end to the illegal production, trafficking and use of narcotic drugs and psychotropic substances and formulate sensitisation and rehabilitation programmes in this field." Declarations and Decisions adopted by the 32nd Ordinary Session of the Assembly of Heads of State and Government, Yaoundé, Cameroon, 8 to 10 July 1996, Declaration and Plan of Action on Drug Control Abuse and Illicit Drug Trafficking in Africa, Section IV, page 10. This does not appear to have happened. In particular the subsequent Constitutive Act establishing the African Union contains no such explicit reference.

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The vision of the Institute for Security Studies is one of a stable and peaceful Africa characterised by human rights, the rule of law, democracy and collaborative security. As an applied policy research institute with a mission to conceptualise, inform and enhance the security debate in Africa, the Institute supports this vision statement by undertaking independent applied research and analysis; facilitating and supporting policy formulation; raising the awareness of decision makers and the public; monitoring trends and policy implementation; collecting, interpreting and disseminating information; networking on national, regional and international levels; and capacity building.

About this paper

This paper is a summary of the most important commitments made by the African Heads of State and Government in recent years at the level of Summit Meetings of the Organisation of African Unity regarding: basic tenets of democracy; unconstitutional changes in government; individual rights and duties; self-determination and liberation; involvement of civil society; children; women; refugees; asylum; mercenarism; terrorism; inter-state relations; use of force; peacekeeping; nuclear weapons; arms control, small arms, light weapons and landmines; and drugs.

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