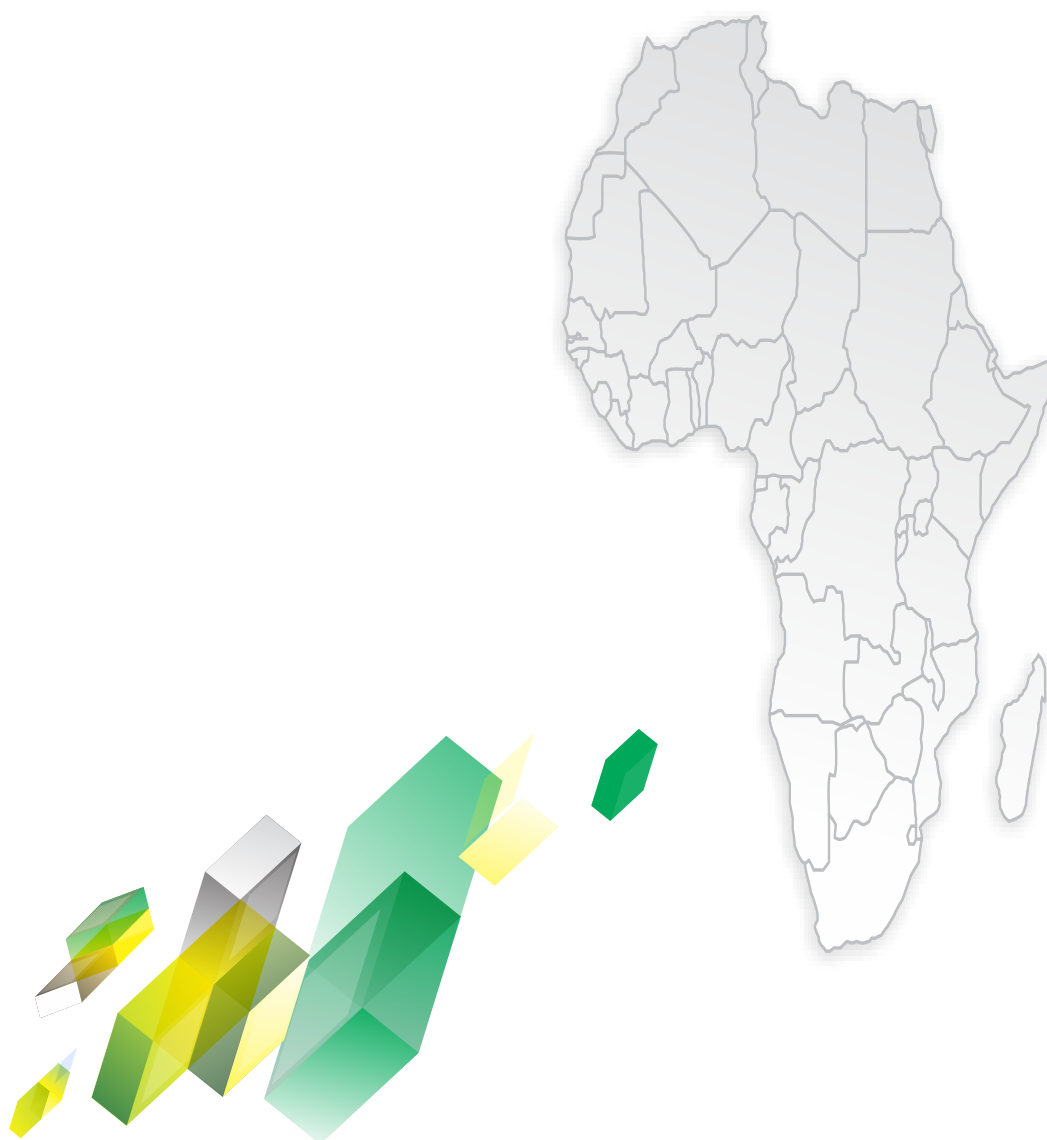


2010

STATE OF THE AFRICAN UNION REPORT

Map: Gall-Peters Projection



www.stateoftheunionafrica.net

**DELIVER THE DREAM:
Time to close the gap between continental promises and
the reality of African people**

State of the Union Continental Report 2010

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ACRONYMS AND ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
AEC	African Economic Community
AfCJ	African Court of Justice
AfCHPR	African Court of Human and Peoples' Rights
APRM	Africa Peer Review Mechanism
AU	African Union
AUC	African Union Commission
CA	Constitutive Act
CSO	Civil Society Organisations
DRC	Democratic Republic of Congo
EAC	East African Community
EC	Executive Council
G-8	Group of 8
HSGIC	Heads of State & Government Implementation Committee
IMF	International Monetary Fund
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organisation
OAU	Organisation of African Unity
PAP	Pan-African Parliament
PRC	Permanent Representatives Committee
PSC	Peace and Security Council
RECs	Regional Economic Communities
UN	United Nations
UNECA	United Nations Economic Commission for Africa

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Many thanks to the country researchers, informants and participants who contributed to the production of the ten country reports for 2010. Thanks also to all those who provided documents and materials. Without these documents, the data in this report would be hard to find.

This report belongs to the people of Africa who should assess it, consume and pursue their cause relentlessly. However, the responsibility for the accuracy and all the contents rests with the publishers.

AFTERWORD

This report and the website www.stateoftheunionafrica.net was launched on 24th July 2010. The launch took place during the 15th Ordinary Summit of the African Union in Kampala, Uganda. Copies were distributed to Government delegations and African union staff during the Summit. Members of the Continental Advisory Research Team spoke to Governments officials and the media attending the Summit on the findings and recommendations. The report was widely covered in the Ugandan, African and international mass media.

Two days after Government delegations and African Union staff received the report, the Ministers of Foreign Affairs present at the Executive Council meeting made the following decision.

Executive Council/Dec. 571 (XVII)

Decision on the status of signature and ratification of OAU/AU Treaties.

- Explicit request to specific AU organs, RECs, International and Regional Organizations and **Civil Society to “assist with advocacy and sensitization of member states to expedite the process of ratification of/ascension to OAU/AU Treaties....”**
- Requested from the commission a regular reporting mechanism to the Executive Council on the implementation of this decision Ex.CL/Dec. 571 (XVII)

This and the other decisions made by the Executive Council of African Foreign Ministers (see Appendix 3) directly respond to actions 1, 2, 3 and 4 recommended in this report. The State of the Union coalition will work with the African Union Commission and the Pan African Parliament to accelerate the poor rate of ratification and implementation of key AU policy standards and legal instruments by Member States.



FOREWORD

“The African Union seeks to build an integrated Africa, a prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the international arena”

African Union Strategic Plan (2004-2007)

One year ago in Libya, 53 Heads of States agreed to ratify and accede to all OAU and AU treaties by July 2010. They further called on African Union organs to assist with advocacy and sensitisation of African Governments. The decision is in line with Article 4.1(b) of the Rules of Procedures of the Assembly of Heads of States. Under this Article, the Assembly is required “to monitor the implementation of policies and decisions of the Union as well as ensure compliance by all Member States”.

The State of the Union project was established three months later by civil society organisations to respond to this decision. The State of the Union project tracks and engages Governments and the African Union on their commitments by managing in-country research, community hearings and national consultations. In this regard, it could be called an *African Peoples Review Mechanism*.

This 2010 State of the Union Africa report assesses the continental performance of Member States against key governance, economic, social, civil and political policy standards and rights instruments over the period 2004-2009.¹ The report incorporates national findings from ten countries reviewed in 2010. The ten countries are drawn from the five regions in Africa. They are Algeria, Egypt (North Africa), Nigeria, Senegal, Ghana (West Africa), South Africa, Mozambique (Southern Africa), Kenya, Rwanda (East Africa) and Cameroun (Central Africa). Combined, the population of these ten countries is 450 million people. Delivery on AU legal instruments and policy standards in just these ten countries would have an impact on two fifths of Africa’s citizens and peoples.

Ten AU legal instruments and four policy frameworks have been selected in recognition of the tremendous opportunities they offer for eradicating poverty, promoting justice and realising political, economic and social rights in Africa. The ten legal instruments are the;

- African Charter on Human and People’s Rights in Africa
- African Charter on Democracy, Elections and Governance
- African Charter on the Rights and Welfare of the Child
- African Convention on the Conservation of Nature and Natural Resources
- African Union Convention on Preventing and Combating Corruption
- African Youth Charter
- Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa
- Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament
- Revised African Convention on the Conservation of Nature and Natural Resources, and
- The Treaty Establishing the African Economic Community

The four policy frameworks are the Abuja Call for Accelerated Action towards Universal Access to HIV/AIDS, Tuberculosis and Malaria Services by 2010, the African Health Strategy 2007-2015, the Maputo Plan of Action for the Operationalisation of the Continental Policy Framework for Sexual and Reproductive Health and Rights 2007-2010 and the NEPAD Comprehensive Africa Agricultural Development Plan (CAADP). Combined, the ten AU legal instruments and four policy standards significantly raise the bar for most African Governments in the areas of political, social and economic rights.²

¹ Further detail on the methodology can be found on page 4

² Pan African Parliament – Compendium of African Union Decisions (2004-2009), 2009. Also see African Monitor and Oxfam International Policy Paper – Social Development is critical to meet global crisis in Africa, 2009

The 2010 reports take place at a critical moment for Africa. 2010 is an important year for several national, continental and international processes. Some of the most critical are the;

- Celebration of 50 years of independence for seventeen African countries³
- Twentieth anniversary of the adoption of the African Charter on the Rights and Welfare of the Child
- Fifth anniversary of the entry into force of AU Protocol on the Rights of Women in Africa
- Launch of the African Women's decade (2010-2020)
- The last milestone for African Governments to raise their health expenditure to 15% of national budgets and realize the Abuja Call for Accelerated Action Towards Universal Access to HIV/AIDS, Tuberculosis and Malaria Services
- The end of the period to implement the Maputo Plan of Action for the Operationalisation of the Continental Policy Framework for Sexual and Reproductive Health and Rights 2007-2010
- Tenth anniversary of the UN Millennium Declaration and review of the progress reached in meeting the Millennium Development Goals by 2015
- Fifteen year review point on the implementation of the Beijing Declaration and Platform for Action

While an exercise in enquiry, we hope this report will “stir” and commit policy-makers and citizens alike to unleash the systemic changes required at national and continental levels to promote, protect and realize the freedoms and rights contained in these legal instruments and policy standards. In this way, this report and the ten national reports could contribute to creating a tipping point for change so desired by Africa.

KEY FINDINGS AND ACTIONS REQUIRED

Progress towards popularisation, ratification, domestication and implementation of African Union Protocols, Policy Standards and Frameworks

The findings in this report show an alarming gap between AU legal instruments and policy standards, and the policies and practises of most Member States. In 2010, the State of the Union Coalition assessed ten countries against the same set of ten legal instruments and four policy standards. Ranked in terms of their performance, South Africa tops the list and XXXX has done worst.

Unless there is a change in the behaviour of both African Union organs and Member States, the many important decisions being taken at continental levels risk the danger of not being implemented. This will continue to have devastating consequences for the millions of African citizens denied good governance, fundamental freedoms and basic human rights. It will also further expose our Pan African institutions to an obvious credibility challenge.

Convinced that “Business as usual” will not unleash the change Africa needs, we hope that this report will encourage all of us to pause, reflect and revitalise our energies.. Collectively, those of us working in the organs of the AU, Member States and in civil society organisations must rise to the occasion and prevent the suffocation of the dream of continental integration whose time has come.

Actions Required by the African Union

1. With urgency, the African Union Commission in consultation with the Permanent Representatives Committee must establish an official monitoring mechanism that tracks Member States performance against key AU policy standards and legal instruments
2. Institute a standing item on the January AU Summit to annually review best practices and challenges being faced by countries in implementing AU standards and legal instruments

³ In 2010, the following seventeen countries will celebrate 50th years of independence; 1 January 1960: Cameroun, 27 April 1960: Togo, 26 June 1960: Madagascar, 30 June 1960: Democratic Republic Of Congo, 1 July 1960: Somalia, 1 August 1960: Benin, 3 August 1960: Niger, 5 August 1960: Burkina Faso, 7 August 1960: Ivory Coast, 11 August 1960: Chad, 13 August 1960: Central African Republic, 15 August 1960: Congo, 17 August 1960: Gabon, 20 August 1960: Senegal, 22 September 1960: Mali, 1 October 1960: Nigeria, 28 November 1960: Mauritania. Three of these countries, Nigeria, Senegal and Cameroun are the subject of the 2010 State of the Union country reports.



3. The Pan Africa Parliament should develop a strategy for accelerating popularisation and ratification of these instruments.
4. Extend the July 2010 commitment to universally ratify all OAU/AU legal instruments by January 2011

Actions Required by Governments

5. Establish national inter-ministerial and stakeholder working committees. This committee could bring together all stakeholders to review national progress and coordinate sensitization and implementation of key policy frameworks and instruments
6. Enable both civil servants and the public to have access to AU standards and legal instruments by uploading them to the appropriate Ministry websites
7. Establish a central database and annual reporting mechanism on the progress of the policy frameworks and instruments and related sectors
8. Work with national Parliaments, relevant parliamentary committees and national Members of the Pan African Parliament to regularly debate decisions taken at the AU and take the follow up actions required
9. Develop and make public a timetable with specific timeframes showing clear targets and benchmarks towards realizing Government's commitment to spend 10 per cent of the national budget on agriculture and CAADP commitments.
10. Outline how Governments' national agriculture strategies can better prioritize the needs of small-scale farmers . Governments must ensure that small-scale farmers have increased access to basic inputs such as affordable credit, traditional improved seeds and where necessary, fertilizers.
11. Strengthen public health systems to provide comprehensive, integrated, maternal, newborn and child health care services, in particular through revitalization of primary health care
12. Increase domestic resources to meet and surpass the Abuja target of 15 percent of budget allocation for the health sector and earmark an amount for Maternal, Newborn and Child Health
13. Extend Maputo Plan of Action for Implementing the Continental Sexual and Reproductive Health (SRH) and Rights Policy Framework (2007-2010) to 2015 in order to realize its promise for reversing maternal and child mortality rates and improving reproductive and maternal healthcare.
14. Fully integrate the provisions of the Protocol on the Rights of Women, AU Charter on the Rights and Welfare of the Child and African Youth Charter into national plans, laws and budgets

Actions Required by Civil Society Organisations

15. Immediately sensitise and mobilize society around the importance of these standards and laws for national policy-making
16. Inform and strengthen the capacity of the public to claim these standards and rights
17. Support Governments and especially the Ministry of Foreign Affairs efforts to expand their capability to guide other Ministries, Parliament and the Legislature to align with AU decisions adopted by the Head of State on behalf of Government
18. Expand the range of State of the Union reports to five new countries by July 2011.

For State policy-makers and duty-bearers cited in the above recommendations, we call on you to act on the recommendations proposed and welcome a dialogue on the findings and the way forward. We hope that you can study the country reports for best practises and actions that can be replicated in our various national contexts.

For citizens, civil society organisations and other rights-holders whose lives, security, dignity and livelihoods are directly affected by the AU standards, we urge you to monitor progress, hold Governments accountable and assist them to deliver on the promise of the AU policy standards and legal instruments.

For Africa's civil servants working in the organs of the African Union, we encourage you to urgently establish an official monitoring mechanism that holds individual Member States collectively accountable for the delivery of key AU policy frameworks and instruments.

State of the Union Methodology

This report is the first concerted civil society effort towards a review and audit of continental performance against 14 policy frameworks and human rights instruments of the African Union. These frameworks and instruments were selected among many standards as they offer huge promise for reversing decades of injustice, marginalisation, exclusion and poverty in Africa. They could also form the basis for a continental bill of rights for all citizens and peoples of Africa.

The study was undertaken over a ten-month period between September 2009 and June 2010. In September, a Pan Africa consortium of thirteen organisations came together to agree on the research protocol for the study, select the review countries and the management of the State of the Union project.

Between March and May 2010, ten country researchers reviewed official and unofficial secondary documents and interviewed key stakeholders for the ten selected countries. In each country, a draft report was subjected to a validation workshop and critique from those that participated in the research. The country reports were revised to incorporate these comments. In all ten countries, a host organisation provided guidance, research supervision and institutional support. These host organisations launched the country reports. By the time of the July Summit, the reports had been launched in Senegal, Ghana, South Africa, Mozambique, Kenya, Rwanda and Cameroun.

Between June and July, this continental report was written drawing from current reports by UN Agencies and other international and regional multi-lateral institutions including the African Union and the findings from country reports. While a historical approach has been used, this paper broadly reviews the performance of Africa between 2004-2009.

While we have analysed the standards and instruments in separate chapters, we see the interconnectedness between health rights and food security, freedom from discrimination and exclusion on the basis of class, gender and age and democracy and human rights. It is this interconnectedness that is being currently denied to millions of African people.

Where the report cites non-ratification, this does not imply that national laws, policies and processes are not in compliance with the AU Standard being assessed. Indeed, in some cases, we found that some national policies and processes were compliant and even surpassed the continental standard. In other cases we have found that despite ratification, the practise is still below the expectations set out in the frameworks and instruments in some aspects relating the provisions of a particular protocol or policy.

While all efforts have been made to ensure the accuracy of our findings, a report of this nature is likely to include omissions, errors or differences of perceptions from those held by the stakeholders it addresses. If the report generates debate and the sharing of new information, it will have served its purpose. Feel free to email us on info@stateoftheunionafrica.net.

It is expected that the State of the Union project will annually capture the performance of African Members States to popularise, implement and ensure the realisation of these commitments in the lives of their citizens. An update on progress against the recommendations made in the report will be released publicly nationally and continentally before the January 2011 African Union Summit.

From these findings, it will be possible to make some broader generalisation of findings and recommendations for African Union organs and Member States during AU Summits. It is hoped that it will stimulate dialogue and discussion as well as accelerate concerted efforts towards monitoring and raising awareness both within the Government, the African Union and the wider general public.



Total area:	30.2 million sq kms, second biggest continent after Asia and 20% of the world's landmass
Population:	One billion people (2009), 70% are 30 years old or younger making Africa the continent with the largest percentage of its population being young ⁴
Chief agricultural exports:	Cotton, coffee, cocoa, maize and cassava
Wealth:	30% of the world's minerals including 40% and 60% of the world's gold and cobalt respectively
Extreme poverty levels:	51% and 3% of the population in sub-Saharan Africa and North Africa respectively live in extreme poverty
Number of least developed countries:	33 of the world's 48 least developed countries
Culture:	Two thousand languages

Massive poverty and obscene inequality are such terrible scourges of our times — times in which the world boasts breathtaking advances in science, technology, industry and wealth accumulation — that they have to rank alongside slavery and apartheid as social evils.

President Nelson Mandela, 2005

In 2009, Africa was being governed more transparently and democratically than over the last 30 years. A number of countries have moved from grappling with large-scale conflicts to post-conflict recovery and reconstruction. However, it is important to note that war and insecurity in some countries continue to be the main cause of human rights violations, hindering development and keeping large populations displaced and as refugees. Prior to the financial crisis in 2008, Africa had also maintained an average 6% economic growth rate boosted by high commodity prices for key minerals, oil and agricultural commodities, debt relief and international aid. According to the latest IMF forecasts, eight of the world's 20 fastest growing economies in 2010 will be in Africa. However, the 2008 fuel, food and financial global crises severely affected this projected growth.

By the end of 2009, Africa had experienced a sharp economic downturn from the average growth rate of 6% in 2005 to 1.6%. Falling commodity prices, and reduced foreign direct investment, diaspora remittances and financing for development had hampered African Governments chances of meeting their obligations to their citizens, the African Union and to the international community. This has been most felt in Central Africa, Southern Africa and West Africa. Only seven countries grew at more than 5% in 2009. These figures fall far short of the 7% required for countries to meet the Millennium Development Goals.⁵ Even where there is economic growth, gross socio-economic inequalities persist.

Between 2005 and 2008, African Governments undertook many bold and impressive commitments to advance social development in Africa after losing the momentum of social transformation witnessed in the 1970s and 1980s. There had been a noticeable improvement in all sectors of social development and social policy. Concepts of free universal education, free universal health service at-the-point-of-delivery, free universal access to treatment for HIV and AIDS, tuberculosis and malaria gained acceptability with both African and donor governments.

Through increasing investment in agriculture (Malawi), dropping fees for primary education (Kenya, Uganda and Tanzania) and healthcare (Zambia and Burundi), funding school feeding programmes (Ghana) and a commitment to fight malaria and other diseases, Africa's capacity to respond to the key rights and the dignity of all citizens had begun to reverse decades of harmful Structural Adjustment Policies.⁶

United Nations analysis reveals that the overall absolute number of people struggling against extreme poverty fell marginally from 54% to 51% of the population in sub-Saharan Africa between 1981-2005.

⁴ UNECA and AU – Economic Report on Africa 2010

⁵ UNECA and AU – Economic Report on Africa 2010


⁶ Structural adjustment policies were policy changes required by the International Monetary Fund (IMF) and the World Bank in order to access their loans. Typically, they forced Governments to open up their economies to foreign investment through deregulation and liberalisation and cut back on public social services and privatise government utilities. For more see <http://www.whirledbank.org/development/sap.html>

Whereas in 1981, only two African countries had poverty rates below 25%, by 2005, seven countries had achieved this.

In 2009, seven out of the ten countries in the research had less than 50% their populations living in extreme poverty. The seven countries were Algeria, Egypt, Ghana, Cameroun, Kenya and South Africa. The remaining countries namely, Rwanda, Mozambique and Nigeria had more than 50% of their populations living in extreme poverty. In addition, income based inequality in South Africa and Kenya was growing.

While across the continent the lack of progress in eradicating absolute poverty and reducing inequality is on the whole unacceptable, it is important to note that progress is being made in some of the ten countries surveyed in 2010. In order of most progress on tackling poverty, Egypt and Senegal are top of the class of countries reviewed in 2010.⁷

Scorecard 1: Progress on reducing extreme Poverty ⁸									
Most Progress					Least Progress				
Egypt	Senegal	Kenya	Ghana	Cameroun	Algeria	Mozambique	South Africa	Rwanda	Nigeria



The scorecard translates into very real and frightening consequences for poor and marginalized populations. One in three children under the age of 14 were not in classroom and one in every sixteen women died in childbirth compared with 1 in every 3 800 of their European counterparts. Two million people, many of them women and children, were stalked by death from HIV/Aids. Further, as a result of climatic change and poor environmental adaptation plans, between 75 and 250 million people experienced stress arising from the unavailability of water for drinking, cleaning and the irrigation of farms.⁹

In order of their magnitude, youth, people with disabilities, the elderly and people living with HIV comprise the largest number of vulnerable people in Africa. Girls and women account for the majority of these categories. They bore, and continue to bear, the brunt of the food, fuel and financial crises. 2010 is therefore a critical year for public, voluntary and private action to address the capabilities and entitlements of poor and marginalised people to basic rights and fundamental freedoms.

⁷ United Nations Report on World Social Situation (2010) <http://www.un.org/esa/socdev/rwss/docs/2010/fullreport.pdf>

⁸ United Nations Report on World Social Situation (2010) <http://www.un.org/esa/socdev/rwss/docs/2010/fullreport.pdf>

⁹ Irūngū Houghton – Identifying the domains of competence and the possible impact of the establishment of a Union Government on the sovereignty of states



Human rights protocols, covenants and laws are powerless to change the lives of the majority of African women in the absence of organised and public demand for their implementation

Solidarity for African Women's Rights Coalition, Cairo, 2008

In 2007, the High Level Panel auditing the African Union calculated that between 2002 and 2007, the Executive Council and Assembly had made 565 decisions and 33 declarations respectively.¹⁰ Of these decisions, there are at least thirty key declarations, strategies and policy frameworks that have been adopted.¹¹ Four policy frameworks are the focus of this study. They are: the Abuja Call for Accelerated Action Towards Universal Access to HIV/AIDS; Tuberculosis and Malaria Services by 2010; African Health Strategy 2007-2015; Maputo Plan of Action for Implementing the Continental Sexual and Reproductive Health (SRH) and Rights Policy Framework 2007-2010 and NEPAD Comprehensive Africa Agricultural Development Plan (CAADP).

Forty treaties, conventions and protocols have been adopted by African Governments under the auspices of the African Union and its predecessor, the Organisation of African Unity. Twenty-five of these legal instruments have now come into force.¹² Ten of these legal instruments and policy frameworks are the focus of this study. Table 1 shows the performance of all 53 African Governments against these ten instruments.

Scorecard 2: Continental ratification against ten key legal instruments

Performance of all African countries in ratification of reviewed legal instruments (As of January 2010)		
	Ratified	Signed
African Charter on Democracy, Elections and Governance (2007)	3	26
Revised African Convention on the Conservation of Nature and Natural Resources, (2003)	8	28
African Youth Charter (2006)	19	19
Protocol to the African Charter on Human and People's Rights and the Rights of Women in Africa (2005)	27	21
African Convention on Conservation of Nature and Natural Resources (1968)	30	13
African Union Convention on Preventing and Combating Corruption (2003)	31	14
African Charter on the Right and Welfare of the Child (1990)	45	6
Treaty Establishing the African Economic Community (2003)	47	4
Treaty Establishing the African Economic Community (1991)	49	1
African Charter on Human and Peoples Rights (1989) (as at 28 January 2009)	53	53

This snapshot reflects a lack of serious commitment to continental integration. Africa is far from universal ratification of AU instruments. In appendix 1 of this report, the larger picture of ratification against 35 OAU and AU legal instruments amplifies this snapshot. Mali, Rwanda and Libya top the class with the most ratifications in this order. Sao Tome, Eritrea and Somalia are at the bottom of the class having ratified five or less of the 35 instruments.

¹⁰ Although it should be noted that most of the Executive Council decisions are usually referred to the Assembly, this is still a large number of decisions over a short period of time.

¹¹ High Level Panel to Audit the African Union, 2008

¹² African Union - Report on the status of OAU/AU treaties to the Executive Council, January 2010. One of the most recent, the African Youth Charter, is the subject of this review.

Of the ten countries surveyed in 2010, Rwanda tops the league, followed by Ghana, Mozambique, Senegal, South Africa, Nigeria, Kenya, Egypt, Algeria and Cameroun.

Scorecard 3: Performance of ten countries in ratification of legal instruments as of January 2010										
	Cameroun	Egypt	Algeria	Kenya	Nigeria	South Africa	Senegal	Ghana	Mozambique	Rwanda
African Charter on Democracy, Elections and Governance (2007)	N	N	N	S	S	N	S	S	N	S
African Charter on Human and Peoples Rights (1990)	R	R	R	R	R	R	R	R	R	R
African Charter on the Right and Welfare of the Child (1990)	R	R	R	R	R	R	R	R	R	R
African Convention on Conservation of Nature and Natural Resources (1968)	R	R	R	R	R	N	R	R	R	R
African Convention on Preventing and Combating Corruption (2003)	S	N	R	R	R	R	R	R	R	R
African Youth Charter (2006)	S	S	N	S	R	R	R	S	R	R
Protocol on the Rights of Women in Africa (2005)	S	N	S	S	R	R	R	R	R	R
Revised African Convention on the conservation of nature and Natural Resources (2003)	N	N	N	S	S	N	S	R	S	R
Treaty Establishing the African Economic Community (2003)	N	R	S	R	S	R	R	R	R	R
Treaty Establishing the African Economic Community (1991)	R	R	R	R	R	R	R	R	R	R
Ratification scorecard in %	40	50	50	60	70	70	80	80	80	90
Key: R= Ratified S= Signed N= Neither signed nor Ratified										

State of AU Compliance Monitoring system and its treatment of legal instruments

The process of signing, ratification and domestication of regional, continental and international treaties, conventions and protocols has proved to be long and torturous for most African Governments. A key factor has been the sheer diversity of legal systems across Africa. This has presented huge challenges for the swift domestication of AU legal instruments. The majority of African countries domesticate legal instruments through either monistic or dualistic processes or a combination of both. For those following a monist approach, ratified instruments automatically become part of national laws. For those following a dualist approach, a national executive law has to be developed and approved by a national arm of the state such as the national legislative or cabinet. The mixed approach allows for the automatic domestic application of the instrument upon ratification, as long as the provisions of the instrument do not contradict constitutional provisions or other laws in force.



Historically, there have been huge delays in securing the minimum level of ratifications required for legal instruments to come into force. Policy-makers have responded to this by reducing the minimum number of country ratifications required for the instrument to come into force. Policy-makers and civil society organisations have also campaigned and lobbied for Governments to sign, ratify and domesticate these instruments at a national level.

Across the ten countries reviewed in 2010, it is clear that many Government civil servants are unaware of what their Governments have adopted in AU fora. Staff turnover and transfers block sufficient institutional memory and platforms for implementation. Governments are not utilising the advantages of new media technologies and e-governance to popularise decisions taken and follow-up actions. In the case of Kenya, there is the stunning absence of any of the AU policy standards or instruments or Kenya's progress in achieving them on the website of the Ministry of Foreign Affairs despite the mention of its adherence to the Charters of the UN and OAU/AU in its foreign policy.

Weak inter-ministerial and departmental linkages and synergies prevent a coordinated approach to the multiple organs of the African Union. In a number of countries, there is insufficient synergy between the office of the legal counsel, the ministry responsible for AU affairs and Parliament. Attempts to follow up on key documents and processes of ratification have proved particularly frustrating. This has been most notable in the case of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.¹³

Within civil society and the media the same weak understanding and poor capacities to engage also exist. Apart from a few organisations working within the sectors of climate change, health, gender and human rights, most of Africa's civil society organisations are equally unaware and uninformed about AU instruments. In this regard, a void is left on who will champion the popularisation of key instruments throughout Africa.

A study commissioned by the State of the Union project found that six monitoring and reporting mechanisms established by the AU suffer from four similar obstacles namely; insufficient commitment and compliance by Member States, insufficient funding, weak institutional capacity to leverage greater performance at national levels and a weak capacity to popularise key instruments. This study is summarised in Scorecard 4.

¹³ Kenya is a case in point. Gender advisors and women's rights activists have been unsuccessful in following up on processes of ratification of the Protocol with various Ministries.

Scorecard 4: Efficacy of six existing monitoring and reporting mechanisms within the African Union¹⁴				
Monitoring mechanism	Main Purpose	Power and authority	Achievements/Challenges	Actions Required
African Commission on Human and Peoples Rights (1987)	Promotion and protection of human rights	Created under African Charter on Human and Peoples Rights, a legally binding instrument	<ul style="list-style-type: none"> • Commission communications and reports ignored or challenged as non-binding by states without consequences • A lack of institutionalised follow-up mechanisms undermines implementation of states commitments • Tendency of Commission to make non-explicit recommendations on remedial measures has resulted in lack of clarity on issues related to compensating victims • Weak mass media management capacity and small new media footprint 	<ol style="list-style-type: none"> 1. AU Assembly should consider recommendations separately and adopt them as directives and thus binding and in cases of non-compliance subject to appropriate sanctions 2. Peace and Security Council should follow up with States within the framework of its early warning system 3. The Commission should refer its communications to the African Court of Human and Peoples Rights for redress
African Peer Review Mechanism (2001)	Monitor and encourage pro-poor and equitable national political and economic governance	Created under 2001 AU policy declaration, of persuasive authority	<ul style="list-style-type: none"> • Outspoken and bold assessments by Eminent Persons • Clear signs of governance gains for participating countries and useful early warning mechanism • Non-transparent criteria for appointment of Eminent Persons, weak and underfunded Midrand secretariat • Lack of involvement of the national APRM focal points in auditing the performance of the Eminent Persons • Insufficient mobilization of citizens and peoples of Africa to participate in the review process 	<ol style="list-style-type: none"> 4. Establish open and public processes for nominating Eminent Persons and the Chairperson 5. Establish ways that the National Focal Points and Governing Councils can hold the Eminent Persons accountable beyond the Heads of States and Governments Implementation Committee. 6. Appoint a chief executive, publicly release the 2009 financial audit and announce management actions being taken 7. Retain the national governing councils post assessments to monitor and report on implementation
African Committee on the Rights and Welfare of the Child (2001)	Promote and protect the rights of the child	Created under African Charter on the rights and welfare of the child, a legally binding instrument	<ul style="list-style-type: none"> • Committee meets twice yearly to consider state reports (published once every three years) • Very few states file reports and most tend to be shallow in analysis • Committee has no secretariat, suffers from a lack of resources and has no capacity to undertake its own research • Poor coordination with the AU Commission leads to delays and session cancellations • Weak mass media management capacity and small new media footprint 	<ol style="list-style-type: none"> 8. Establish a functional and well-resourced secretariat 9. Civil society organisations should produce alternative reports which have to be considered for adoption by the committee if states fail to produce their own 10. The committee to establish and strengthen contacts with relevant persons and organizations at the national level to facilitate capacity building and reporting mechanisms

¹⁴ The table is a summary of the findings of Dr. Kithure Kindiki – Efficacy of six African Union’s reporting mechanisms in enhancing national implementation of AU decisions, declarations and protocols, June 2010, www.stateoftheunionafrica.net

Monitoring mechanism	Main Purpose	Power and authority	Achievements/Challenges	Actions Required
African Union Commission (2002)	Implement decisions by AU Organs in coordination with the Permanent Representatives Committee	Created under the AU Constitutive Act, a legally binding instrument	<ul style="list-style-type: none"> • Departments and Directorates have individually monitored the performance of states on specific instruments or declarations but this is not collated and communicated publicly.¹⁵ • AUC is understaffed and hampered by weak human resource management practises • The AUC practise of an annual week for ratifying Treaties is a great practise of encouraging states to ratify the outstanding Treaties. It has led to an increase in the number of ratifications. • AU website is designed to communicate events and not to support citizens to follow their states performance¹⁶ 	<ol style="list-style-type: none"> 11. Annually produce and present to the Assembly an official State of the African Union report that captures the performance of States against key legal instruments and policy standards 12. Powerfully use the mass and new media opportunities to aggressively popularise AU processes and decisions 13. Upload to the website various research papers produced by Experts and Ministerials that monitor socio-economic and political development in line with key instruments and standards 14. Commission could present a progress scorecard for all Assembly thematic special sessions to enable a candid conversation on the performance of states
Pan African Parliament (2004)	Advisory body established to promote effective implementation of AU policies, human rights, democracy, peace and prosperity, mandated to monitor and advocate ratification and implementation of instruments and standards	Created under Protocol establishing the African Economic Community, a legally binding instrument	<ul style="list-style-type: none"> • Some successes include the convening of a pan African political class around core policy issues, global representation, effective election monitoring and rapid assessment missions to conflict prone countries • Cohesion complicated by the huge variances between political systems and parliamentary traditions • Main institutional weaknesses include weak internal systems, procedures and capabilities, weak influence and a lack of enforcement over other AU organs and national state machineries and poor public credibility.¹⁷ • Poorly funded and has not prioritised its research and advocacy capacity • Has not yet identified a core set of treaties and standards to advocate for national implementation 	<ol style="list-style-type: none"> 15. Appropriate PAP committees should undertake periodic monitoring and missions to states, identify best practises and urge action 16. PAP MPs should have a mechanism to liaise with relevant units within Ministries of Foreign Affairs, cabinets and other persons that set the business in parliament to ensure that key AU legal instruments and policy guidelines are ratified and domesticated 17. Pan African MPs could urge the establishment of national commissions or coordination mechanisms for inter-ministerial and non-state actors 18. Pan African MPs could regularly provoke debate among relevant national legislative committees on the domestic integration of treaties 19. Pan African MPs could urge Heads of States or Ministers to hold public briefings or parliament to seek public mandate or inform public opinion 20. Government and National Assembly web pages need a page on AU decisions, status of national ratification, Government positions and its participation in the AU

¹⁵ One of the first attempts to do this is the High Level Audit of the African Union, 2008.

¹⁶ Re-organising web pages that track the progress of Treaty ratification along country lines for example, would assist African citizens and civil society organisations to encourage their Governments to accelerate ratification. Currently, the pages are arranged by Treaty.

¹⁷ Irungu Houghton - Parliaments, People and Progress: Reflections on the next Phase of the Pan African Parliament, 2009.

Monitoring mechanism	Main Purpose	Power and authority	Achievements/Challenges	Actions Required
Solemn Declaration on Gender Equality in Africa (2004)	Promotion of gender equality and women's empowerment	Created under AU policy document, of persuasive authority	<ul style="list-style-type: none"> • Despite a 2005 commitment to report annual, forty-six states have yet to report on their progress in compliance with monitoring and reporting guidelines.¹⁸ • Outside the AU Organs and senior officials of possibly the Ministries of Gender and Foreign Affairs, the Solemn Declaration is unknown. • The Declaration faces powerful patriarchal, conservative and sexist traditions and social beliefs • Inadequate resources in national gender ministries and in the AU Commission undermines the implementation of the Declaration¹⁹ 	<ol style="list-style-type: none"> 21. The forty-six states should start the process of reporting against the Solemn Declaration annually 22. States require a stronger political will to deliver on the Declaration and its sister legal instrument, the Protocol on the Rights of Women in Africa 23. The 26 states that have not yet done so should ratify with urgency the Protocol on the Rights of Women in Africa 24. Civil society organisations should consider undertaking peoples reports and submit these to national assemblies and AU Organs

Kithure's findings go further to cite the self-defeating attitude of many legislators and policy-makers who hide behind domestic legislation in order to avoid the responsibilities they themselves have agreed to at the continental level. He notes that to do so is a violation of Article 27 of the Vienna Convention to which all African States are party. The Article provides that a state "cannot plead provisions of its own law or deficiencies in that law" to justify being in breach of a treaty obligation. Simply put, civil servants and politicians cannot use national constitution and laws to evade obligations under Treaties that have come into force.²⁰

Unless these six mechanisms are better capacitated and resourced and states take seriously the integration of key policy standards and rights instruments, many important decisions are in danger of not being implemented. This will continue to have devastating consequences for the millions of African citizens denied good governance, fundamental freedoms and basic human rights. It will further expose our Pan African institutions to an obvious credibility challenge.

¹⁸ Three of the countries reviewed by the State of the Union project namely, Senegal, South Africa, Algeria are among the seven that have. The other four are Ethiopia, Lesotho, Namibia and Tunisia.

¹⁹ Mary Wandia – How states can deliver on women's rights commitments during the African Union commitments during the AU Womens' Decade (2010-2020), 2010

²⁰ Kithure Kindiki – Efficacy of six African Union's reporting mechanisms in enhancing national implementation of AU decisions, declarations and protocols, June 2010. Dr Kindiki was commissioned by the Coalition to write this review. His paper can be found at www.stateoftheunionafrica.net



CHAPTER 3 HUMAN RIGHTS AND DEMOCRATIC GOVERNANCE

We believe that for people to participate meaningfully in their self-development, their freedom to express themselves and their freedom from fear must be guaranteed.

African Charter For Popular Participation In Development and Transformation, Arusha, 1990

Frameworks and Instruments under review:

African Charter on Human and Peoples' Rights (1981), African Charter on Democracy, Elections and Governance (2007), the Treaty Establishing the African Economic Community (1991), and African Union Convention on Preventing and Combating Corruption (2003).

Key articles and Indicators:

The existence and enforcement of legislation concerning arbitrary arrest and detention without trial; Protection against discrimination; Freedom of movement within the borders of the State; Legitimacy of the constitution; Popular participation; Freedom of expression and assembly; Media freedom; Access to Government information; Existence of a Civil Society; Popular participation in planning and budgetary processes; The formal structures of a representative democracy; Performance and independence of the judiciary; Electoral administration; Voter registration, education and participation; Participation in elections; Electoral system; Validation of results; Internal party democracy and participation in policy development; Political, economic and social governance, Free movement of persons, rights of residence and establishment, Enabling legislation for combating corruption and abuse of office; Civil society and media; and confiscation and seizure of the proceeds and instrumentalities of corruption.

Reality against the standard

The adoption of these four legal instruments spans two of the most dramatic decades in Africa's struggles for democracy and human rights. The preamble to the 1990 African Charter for Popular Participation in Development and Transformation captures this aptly. In it, Africa's leaders stated, "*We are united in our conviction that the crisis currently engulfing Africa, is not only an economic crisis but also a human, legal, political and social crisis.... As a result, the motivation of the majority of African people and their organizations ... say in national development has been severely constrained and curtailed and their collective and individual creativity has been undervalued and underutilized*"

At the time these words were penned, only five countries namely Botswana, Mauritius, the newly independent Namibia, The Gambia and Senegal could be described as multi-party democracies. The remaining 49 were states established by military coups, armed struggle or de facto one party states. Five years later, with the exception of Eritrea, all of the 35 one-party states had survived. In 2008, the number of countries that regularly elected their Governments in open, competitive politics had increased to eighteen, 1/3 of the total number of African countries.²¹

Yet, Africa continues to be challenged by this expression of democracy. Between 19-25% of African elections are exercises in violence spawned by political intolerance, ethnic marginalization, unemployment and contestation over land. Four countries – Togo, Zanzibar/Tanzania, Kenya and Zimbabwe - in the last two years have resolved post-election violence through agreements between parties. This form of "negotiated democracy" is a critical threat to the principle of elections as a mode for electing Governments.²²

Democracy is however not only about elections. The degree of freedom with which citizens can speak out and participate in public affairs in between elections is equally important.²³ The Mo Ibrahim Foundation's Governance Index has attempted to measure issues of participation, human rights, sustainable economic opportunity and human development together with the more traditional safety and rule of the law indicators.

²¹ Ellen Johnson Sirleaf and Steven Radelet - *The Good News Out of Africa: Democracy, Stability, and the Renewal of Growth and Development, 2008, www.cgdev.org*

²² Dorina Bekoe - *Trends in Electoral Violence in Sub-Saharan Africa, www.usip.org, 2010*

²³ Duncan Green – *Power and Politics, Oxfam, 2009*

The ten countries fared as follows in 2004 and 2008;

Scorecard 5: Performance against governance and development indicators ²⁴

How they scored against key indicators (2004/2005)						How they ranked against the rest of Africa (2004/2005)					
Country	Safety and Rule of Law	Participation and Human Rights	Sustainable Economic Opportunity	Human Development	Overall Score 2004/2005	Country	Safety and Rule of Law	Participation and Human Rights	Sustainable Economic Opportunity	Human Development	Overall Score 2004/2005
Algeria	53.97	41.93	54.53	69.07	54.88	Algeria	32	31	7	6	16
Cameroon	49.67	34.47	39.67	46.17	42.49	Cameroon	37	38	33	32	39
Egypt	57.24	31.68	53.95	68.97	52.96	Egypt	26	42	8	7	20
Ghana	70.75	67.21	46.14	63.62	61.93	Ghana	8	9	20	14	8
Kenya	55.14	57.62	47.33	52.72	53.20	Kenya	30	15	17	18	19
Mozambique	65.40	63.15	45.67	39.20	53.36	Mozambique	16	11	22	46	18
Nigeria	42.58	43.95	37.73	48.51	43.19	Nigeria	43	28	34	22	36
Rwanda	50.24	43.93	47.08	46.98	47.05	Rwanda	36	29	19	28	30
Senegal	64.41	70.91	48.15	49.50	58.24	Senegal	19	7	14	19	11
SouthAfrica	73.16	77.01	59.88	66.44	69.12	SouthAfrica	6	3	4	11	5
SSA Average	56.14	48.36	40.52	49.51	48.64						
N. Africa Average	59.24	34.09	55.90	74.46	55.92						

How they scored against key indicators (2007/2008)						How they ranked against the rest of Africa (2007/2008)					
Country	Safety and Rule of Law	Participation and Human Rights	Sustainable Economic Opportunity	Human Development	OVERALL IIAG Score 2007/2008	Country	Safety and Rule of Law	Participation and Human Rights	Sustainable Economic Opportunity	Human Development	OVERALL IIAG Rank 2007/2008
Algeria	55.88	44.42	59.63	73.51	58.36	Algeria	28	31	10	6	14
Cameroon	51.29	39.29	48.33	49.07	47.00	Cameroon	35	38	24	31	33
Egypt	63.08	41.24	62.74	73.29	60.09	Egypt	16	34	7	7	11
Ghana	71.25	75.23	49.65	67.72	65.96	Ghana	6	4	21	11	7
Kenya	53.27	58.89	50.49	52.31	53.74	Kenya	32	18	18	20	22
Mozambique	62.47	63.00	46.60	37.46	52.38	Mozambique	18	13	30	49	26
Nigeria	50.57	41.84	42.65	50.77	46.46	Nigeria	36	33	34	25	35
Rwanda	55.53	45.68	47.08	45.85	48.53	Rwanda	29	30	26	36	32
Senegal	61.85	61.12	50.06	50.90	55.98	Senegal	21	14	19	24	17
SouthAfrica	70.28	76.99	62.09	68.41	69.44	SouthAfrica	7	3	8	9	5
SSA Average	55.52	50.63	44.31	51.18	50.41						
N. Africa Average	59.18	36.61	62.00	78.83	59.15						

Scorecard 6: Ranking of the ten countries in 2004 and 2008?

Who was top of the class?	
Class of 2004	Class of 2008
1. South Africa	1. South Africa
2. Ghana	2. Ghana
3. Senegal	3. Egypt
4. Algeria	4. Algeria
5. Mozambique	5. Senegal
6. Kenya	6. Kenya
7. Egypt	7. Mozambique
8. Rwanda	8. Rwanda
9. Nigeria	9. Cameroun
10. Cameroun	11. Nigeria

From the tables, it is clear that Senegal and Mozambique have done worse in terms of their overall scores between 2004 and 2008. Kenya has remained stationary, while all of the other seven countries scored better in 2008. Algeria, Cameroun, Nigeria, Egypt and Ghana have improved their status as ranked against the rest of Africa. The rest have seen deterioration in their ranking.

²⁴ Mo Ibrahim 2009 Index, www.moibrahimfoundation.org



Apart from voice and participation, another critical link between states and their citizens is taxation. Taxation is the glue that holds citizens and governments together in terms of accountability. Taxation is central to governance. The abuse of public revenue threatens this relationship. The World Bank 2009 Governance Index measures the degree to which Governments have control over corruption, Corruption is defined as the transfer of public resources into private hands. Ranked from the Governments who were the most corrupt, Kenya is the most corrupt followed by Nigeria, Cameroun, Egypt, Mozambique, Senegal, Algeria, Ghana and South Africa²⁵. The annual Transparency International Corruption Perceptions Index corroborates the World Bank findings on corruption. Albeit challengeable on the basis that most Africans tend to be sceptical about public officers in general, both provide an indicator of how well African states are doing against the Convention on Preventing and Combating Corruption of 2003.

Outside of this discourse but a growing area for Africa's leaders to address is illegal capital flight. UNECA analysis captures the scale of the problem in the following way. Their estimates establish that African Governments lost, in terms of public revenue, 3% to corrupt public officials, 32% to organised crime and a staggering 65% to illicit trade. Illicit capital are illegal financial transfers that place domestic wealth permanently out of the reach of domestic authorities by transferring resources to tax havens, fake trusts and "shell" operations. Between 1970-2008, Africa lost US\$854 billion in this way²⁶. This is four times more than Africa's combined external debt and seventeen times more than development financing target promised by the G8 in 2005. Africa is a leaking bucket not because of corruption primarily, but because we are a net capital exporter, a fact aid sceptics and corruption analysts should recognise.

Findings from the ten country reports

While these available statistics can capture trends and patterns, the quality of States and citizens efforts to breathe life to key AU legal instruments can only be captured by country specific analysis. The findings of the ten State of the Union country reports suggest that there has been progress in terms of the management of elections, legal and institutional reform and corruption.

A number of laws have been reformed over this period. At the end of 2008, Nigeria, Kenya and Rwanda had a number of justice sector reforms before their National Assemblies while Mozambique had revised laws related to expanding the freedom of association. Mozambique had created a law governing the holding of referendums. Kenya had held its first referendum on the constitution in 2005 and in 2010 is expected to hold a second one. In Kenya, Mozambique, Ghana and Nigeria, civil society organisations regularly provide advice and input in the development of national plans and budgets.

The country studies find that none of the countries maintained laws that discriminate against ethnic or religious groups. Yet, in some countries, under-representation of ethnic or social minorities continued to be a challenge in terms of ensuring the equitable distribution of resources as exemplified by the situation of the people of northern part of Mozambique or the pastoralist communities in Kenya. Democratic gains continue to be threatened by the enactment of laws and state actions to respond to terrorism in Algeria and Egypt and related religious profiling in Kenya.

Justice and freedom from violence continues to be undermined by both the state and its population. Arbitrary arrests, disappearances and extra-judicial killings by law enforcement officials are a feature in the lives of Ghanaian, Nigerian, Kenyan and Egyptian citizens. This particularly affects the rural and urban poor. In Nigeria and Kenya, extra-judicial killings have been in the hundreds.²⁷ A consequence of structural poverty and the lack of jobs, crime cannot be dealt with in this way. The continued use of extra-judicial ways of responding to crime is a violation of not only the law in respective countries, but also the standards set by AU legal instruments. In this regard, the successes achieved by statutory bodies such as National Human Rights Commissions most notably in Nigeria, Ghana, Kenya and South Africa have lessons that can be emulated elsewhere.

²⁵ <http://info.worldbank.org/governance/wgi/index.asp>

²⁶ Abdullah Hamdok, Director for Public Administration, UNECA, presented these statistics to a hushed conference of African Finance Ministers in April 2010. See also African Monitor and Oxfam International – Social Development is critical to meet global crisis in Africa, 2009

²⁷ See the Kenya and Nigeria 2010 country reports. Also for Kenya see Philip Alston - Kenya: The Cry of Blood - Report on Extra-Judicial Killings and Disappearances, 2008. For Nigeria see Open Society Justice Network -Criminal Force: Torture, Abuse, and Extrajudicial Killings by the Nigeria Police Force

Elections have taken place in all the ten countries under review. A worrying trend is the growing number of electoral disputes and post-election violence as experienced in Kenya, Nigeria, Egypt and Mozambique.²⁸ These countries could learn from the management of elections in South Africa and Ghana.

While generally, most countries noted an improvement in the scale of corruption compared to the 1990s, it is clear that the diversion of public resources into private hands is still a problem for most countries. Kenya, Ghana, Mozambique and Nigeria reformed their laws and instituted new mechanisms over this period. Finally, the role and the effective role of non-state agencies like the media and civil society organisations varies from country to country. In Ghana, Kenya, South Africa and Nigeria for instance, the media and CSOs have consistently and courageously raised issues of corruption. In Rwanda and Mozambique, their role has been less effective. Here perhaps, there are grounds for peer support, mentoring and capacity-building.

²⁸ In Kenya, this led to the deaths of more than 1,000 people the displacement of hundreds of thousands and an almost complete meltdown of the country's political and economic life. In Nigeria, there has been upwards of 1500 legal petitions following the April 2007 elections.



CHAPTER 4 RIGHTS TO FOOD SECURITY AND THE CONSERVATION OF NATURE AND NATURAL RESOURCES

Frameworks and instruments under review

The NEPAD Comprehensive Africa Agricultural Development Plan (CAADP) of July 2003 and the revised African Convention on the Conservation of Nature and Natural Resources (2003).

Indicators under review

Increase public spending to agriculture to 10 per cent of the national budget; The pursuit of a six per cent average annual sector growth rate at the national level; The trend in per capital availability of water for human consumption; The conservation of forested and other catchments areas and the co-ordination and planning of water resources; The existence and enforcement of effluent and water quality standards to minimize water pollution; The trends in the forest cover (hectares/percentage of total land area; The existence of a forest master plan, wetlands master plan, etc; The abundance of invasive alien species (e.g. water hyacinth, *prosopis juliflora* and hippo grass); The extent of mainstreaming environment and natural resources in development planning and budgetary frameworks in order to promote sustainable development; and whether a framework law exists to deal with all matters for the environment and natural resource sector, and the structure and performance of institutions created by the framework law.

The Continental Reality against the Standard

Fifty years ago, Africa was self-sufficient and a net exporter of food. Between 1966-1970, Africa produced upwards of 1.3 million surplus tonnes per annum. Under International Monetary Fund and World Bank policy conditionality in the 1980s, Government regulatory controls over agricultural prices and support mechanisms for small scale farmers was phased out. The little remaining investment in agriculture was channeled to export agriculture to generate foreign exchange that would pay for the large debts faced by African economies especially in sub-Saharan Africa.²⁹ By the end of the century, the number of Africans who experienced extreme poverty and malnutrition had reached 313 million people or 46% of the continent. It is in this context, that the NEPAD Comprehensive Africa Agricultural Development Plan (CAADP) and various subsequent AU Declarations must be viewed.

In 2009, the continent imported one-third of its grain. The number of food emergencies has tripled since the 1980s.³⁰ More than 40 percent of Africans did not even have the ability to obtain sufficient food on a daily basis. For the African farmer, conventional fertilizers cost two to six times more than the world market price. There is insufficient access to extension workers, and price and market support for small-scale farmers. They often have found themselves competing with subsidized European and American imports. Yet, the lack of Government and private investment in smallholder farming is not the only challenge Africa faces. Declining soil fertility, land degradation, and the AIDS pandemic have led to a 23 percent decrease in food production per capita in the last 25 years. African Agricultural Ministers have pointed to a possible loss of 20% of Africa's future primary productivity as a result of land degradation and deforestation.³¹ This is more worrying as Africa's population has increased dramatically.³²

These conditions have also informed Governments' commitment to the Maputo Declaration on Agriculture (2003). The Declaration sets a budgetary allocation of 10% of the national budget for investment in agriculture. It also recognises that the agricultural sector has to grow by 6% each year. In an attempt to meet this target, public investment doubled between 2000-2005. Yet, this increase is still below 1980 levels and for most countries is short of the target of 10% of national budgets.³³ By 2009, only seven countries had met the 10% target.³⁴ Of the countries under review, only Senegal and Ghana have met the target. Mozambique and Nigeria spend between 5-10% and Kenya, Cameroun and Rwanda spend less than 5% on the agricultural sector.

The Declaration has to be understood alongside the Comprehensive Africa Agricultural Development Programme adopted by Governments in the same year.³⁵ A key target in the Programme is for

²⁹ Walden Bello – Destruction of African Agriculture, Pambazuka News, www.pambazuka.org. As Bello's notes, the stronger North American and European Governments did not follow this policy conditionality and continued to apply huge subsidies to 40-50% of their farmers.

³⁰ Richard Mkandawire – Review of the Comprehensive African Agriculture Development Programme, 2009

³¹ Report of the Joint Conference Of AU Ministers of Agriculture, Land And Livestock, April 23-24, 2009

³² UN Millennium Project - Fast Facts: The Faces of Poverty, 2010

³³ Babatunde Omilola and Melissa Lambert - Public Expenditure Tracking in Africa, AU-ECA, 2009

³⁴ The seven are Burkina Faso, Niger, Guinea, Senegal, Ethiopia, Malawi and Mali.

³⁵ CAADP consists of the four pillars: extending the area under land management and reliable water control systems (Pillar 1); improving rural infrastructure and trade related capacities for market access (Pillar 2); increasing food

countries to grow their agricultural sector by 6% each year. By 2009, six years later, eighteen Governments had signed up to the CAADP compact. However, by 2003, only five countries were able to grow their agricultural sector by 6% each year. By 2009, this figure had doubled and Nigeria, Rwanda and Senegal were among the few who had met the 6% target.³⁶

While modest, the OECD community had not matched this progress by the end of 2009. Shockingly, Africa is the only continent where food aid outstrips external financing for agriculture. Although it is yet to be realised, the 2009 G8 L'Aquila announcement of US\$20 billion is an important step in reversing weak global financing for agriculture.

As the first decade of the millennium came to an end, an old external thirst for African resources took on new urgency. Increased global demand for bio-fuel and food for growing urban populations has led to increased competition for African arable land. Since 2004, over 2.4 million hectares has been leased to both African and non-African investors to produce bio-fuel and crops for export. Ghana and Mozambique are among the five countries in which Governments have leased large tracts of land despite the implications for countries that are not fully self-sufficient and have growing populations.³⁷

These land grabs as they have come to be known in the popular media further complicate historical inequalities and existing indigenous competition for sustainable access and control over Africa's natural resources.³⁸ Between 2000-2005, Africa lost 4.1% of its forest cover.³⁹ Deforestation continues to threaten Africa's bio-diversity, eco-systems and animal species as well as deplete Africa's efforts to mitigate climate change effects.

Over 2008-2009, African public opinion recognised the direct social, environmental and economic impact of global climate change. It is widely recognised that the growing seasons are getting shorter, rainfall is less predictable and temperatures are increasing. The rise in temperature could lead to the further exposure of 40-60 million people to malaria. This is an over 10% increase to the 450 million people who are currently exposed. Parts of the continent such as Southern and Eastern Africa will be vulnerable to flooding and West Africa, and especially the Nile delta, prone to rising sea levels.⁴⁰ In 2010, rising conflicts over pasture, water and other natural resources are a serious threat to human security in several countries.⁴¹

Findings from the ten country reports⁴²

The country reports reveal mixed progress. For most countries, while increases are noted, there is insufficient progress in public investment in agriculture. The passing of environment legislation and new management authorities has expanded the capacities to sustainably conserve natural resources and nature. However, considerable challenges exist in the prevention of deforestation and pollution.

Increased budgeting for agriculture has taken place across most of the countries with substantive increases in South Africa and Rwanda. While Rwanda has not yet met the 10% target for budgetary allocation to agriculture, it is worth noting that it has increased its expenditure by 30% over the period 2004-2009. The case of Rwanda should provide inspiration for other countries as the growth of its agricultural sector is taking place with less than the 10% budgetary target. It goes to show that the quality of expenditure is as important as regular and sufficient financial investment.

supply, reducing hunger and improving responses to food emergency crises (Pillar 3); and improving agricultural research, technology dissemination and adoption (Pillar 4). www.nepad-caadp.net

³⁶ Babatunde Omilola and Melissa Lambert - Public Expenditure Tracking in Africa, AU-ECA, 2009

³⁷ Lorenzo Cotula - Land grab or development opportunity? Agricultural investment and international land deals in Africa, IIED, 2009

³⁸ Kenya, Zimbabwe and South Africa are but to name a few countries with unresolved land ownership issues

³⁹ UNECA and AU – Assessing Progress in Africa towards the MDGs 2010 report to African Finance Ministers, March 2010

⁴⁰ Oxfam et al – 2 degrees, one chance, 2009

⁴¹ Babatunde Omilola and Melissa Lambert - Public Expenditure Tracking in Africa, AU-ECA, 2009

⁴² Unless cited separately, this section is drawn from the ten country reports written by the State of the Union project



This public funding has enabled Governments to invest in supporting small-scale farmers by providing fertilisers, seeds, extension services and expanding rural infrastructure and access to markets. However, despite these improvements, food insecurity stalked citizens in Nigeria, Ghana, Kenya and Rwanda in the later years of the last decade. Governments have yet to put in place the conditions for food self-sufficiency and reserves that can protect people living in poverty from malnutrition and starvation. This progress can be measured in scorecard 7.

Best			Scorecard 7: % of population that is under nourished				Worst		
South Africa	Egypt (3%)	Algeria (5%)	Nigeria (9%)	Ghana (13%)	Senegal (24%)	Kenya (33%)	Cameroun (35%)	Rwanda (37%)	Mozambique 47%



The period under review has seen a number of legal reforms regulating the sustainable management of natural resources in particular in South Africa, Rwanda and Mozambique. Between 2004 and 2006, the South African Government passed new laws regulating forestry, water, land and genetically modified organisms. It is somewhat ironic that despite the passing of at least ten laws regulating the national environment, the Government has neglected to sign the revised African Convention on the Conservation of Nature and Natural Resources of 2003. New laws have been accompanied with new environmental management authorities most notably in South Africa, Nigeria and Kenya.⁴³

Wide-scale illegal logging has depleted forests and bio-diversity resources in Cameroun, Kenya and Nigeria. In the case of Nigeria, the country is estimated to have lost 70-90% of its forests.⁴⁴ Extensive farming and excessive grazing have not only led to competition over pasture, but also soil exhaustion and the loss of natural vegetation in Cameroun, Ghana, Nigeria, Kenya and Rwanda. Algeria, Egypt and Nigeria continue to grapple with oil and industrial waste pollution. For Egypt and Algeria, desertification is a critical issue. In the case of Algeria, upwards of twelve million hectares of land have been lost to the creeping sand.⁴⁵

A key factor in the sustainability of a country's natural resources has to be political will to ensure commitment and compliance by the public, private sector and Government alike. In the case of Nigeria, the existence of laws has not prevented oil companies from continuing to extract oil at the expense of the environment. The weak public awareness noted in the case of the Mozambique contrasts with the findings in Rwanda. In the latter's case, a mixture of legislation and public awareness campaigns have seen an end to the use of non-biodegradable plastic bags and community clean ups has helped produce the cleanliness of Kigali among other towns. Herein lies a low hanging fruit for all Africa's leaders to pluck.

⁴³ In the case of Kenya, it is worth noting that most of its environmental agencies were created before this period. However, it can be argued that it is only in the review period that the force of these bodies to autonomously regulate both private and public institutions has been felt.

⁴⁴ New Internationalist – The World Guide, 11th Edition, 2007

⁴⁵ New Internationalist – The World Guide, 11th Edition, 2007

Frameworks and instruments under review

Africa Health Strategy, 2007-2015 (2007) and Abuja Call for Accelerated Action Towards Universal Access to HIV and AIDS, Tuberculosis and Malaria Services in Africa by 2010 (2001), the Maputo Plan of Action for Implementing the Continental Sexual and Reproductive Health (SRH) and Rights Policy Framework 2007–2010 (2006),

Indicators under review:

Promote all aspects of human resources for health development and retention, addressing policies, strategic plans, information, training, recruitment, deployment and retention, administration, working and living conditions and the health of staff; To mobilise local resources for sustainable and predictable financing, including the implementation of the Abuja declaration for devoting 15 per cent of the national budget to health; Access, affordability, adequacy and efficiency of the health systems (infrastructure, human resource, financing, supplies etc).

The Continental Reality against the Standard

Since 2000, Africa has made great progress on the development of policy frameworks to meet the Child Mortality and Maternal Health Millennium Development Goals (4 and 5). The 2001 Abuja Declaration on HIV/AIDS, TB and Malaria, 2006 Maputo Plan of Action for Sexual and Reproductive Health and Rights (2007-2010), the Protocol on the Rights of Women in Africa (2003), the eight year AU Health Strategy and the recently announced Campaign on the Accelerated Reduction of Maternal Mortality in Africa (CARMMA) launched in May 2009 under the slogan “*Africa Cares: No Woman Should Die While Giving Life*” are examples of this.

Yet in 2009, Africa is far off track to realise Goal 4 and 5 MDG targets. Only five countries have met the targets to manage tuberculosis.⁴⁶ Only six countries have met the target for child mortality (MDG 4).⁴⁷ Only six countries have met the financing target of 15% of their national budgets on healthcare.⁴⁸ Presently, most African countries spend less than the US\$54 per person level required to access essential health services. The collapse of public health systems manifests in the absence of accessible referral facilities, inadequate supply of doctors, nurses and midwives and medical supplies.

In 2010, countries like Tanzania are even electing to spend less. In a country where a woman has a 1 in 24 chance of dying from pregnancy or childbirth related causes in her lifetime, this is unconscionable.⁴⁹ The consequences of denying the right to health to most of Africa’s one billion inhabitants are clear. While globally, new research encouragingly points to a significant decline of maternal deaths from 526,300 in 1980 to 342,900 in 2008. The only continent yet to make dramatic progress is Africa. Six countries are responsible for 50% of maternal deaths in the world are African. Three of them, Nigeria, Ethiopia and the Democratic Republic of the Congo, are African.⁵⁰

Unsafe abortion accounts for 14 percent of all maternal deaths in Africa and a higher percentage in many countries. Almost 60 percent of annual deaths from unsafe abortion in Africa occur among women and girls younger than 25. In most countries, laws criminalize abortion and prevent the provision of safe abortion services as a last resort. Changing attitudes across the continent towards reproductive health and legal reform are a pre-condition for progress.⁵¹

The responsibility for re-building Africa’s health systems lies also with the international community. After decades of structural adjustment programmes, retrenchment of health-workers and imposition of user-fees, the international community needs to prioritise women’s rights and health, promote the wellbeing of mothers and newborns and save lives. Despite this reality, only US\$14 billion is being invested globally to strengthen health systems against a required US\$39 billion. US\$23 billion alone

⁴⁶ Angola, Comoros, Eritrea, Seychelles and Zambia

⁴⁷ Algeria, Cape Verde, Eritrea, Malawi, Mali and Seychelles.

⁴⁸ Botswana, Malawi, Nigeria, Rwanda, Uganda and Zambia

⁴⁹ The 30% cut brings the 2009 budget of US\$667.36 Million down to US\$469.86 Million and 6.1% of the national budget. Compared to 1 in 8000 for women in industrialized countries, the figure of 1 in 24 is shocking

⁵⁰ The Lancet - Maternal mortality for 181 countries, 1980—2008 Volume 375, Issue 9726

⁵¹ Communiqué of the Civil Society Experts Consultation on Maternal, Child and Infant Health and Sexual and Reproductive Health in Africa, 2010, Ethiopia



required to fight infectious diseases. The Global Fund needs \$20 billion for 2011 to 2013 while the Global Alliance for Vaccines and Immunizations (GAVI) needs an additional \$4.3 billion between 2010 and 2015. This money has to be new money channelled through the country ownership and alignment principles of the Paris Declaration and Accra Agenda for Action.

There is some progress though.

While still unacceptably high, under-five mortality rates have dropped from 160 per 1,000 to 145 per 1,000 between 2006 and 2007 in sub-Saharan Africa. Maternal mortality has seen a marginal decrease from 920 per 1000 to 900 per 1000 between 1990 and 2005.⁵² HIV prevalence rates have stabilised with progress in the management of tuberculosis and malaria. Key to managing the killer epidemics has been the increased public provision of life-saving drugs to AIDS and TB patients and insecticide treated nets to 31% of all African households. However even with these actions, without a radical acceleration in the provision of improved healthcare, Africa is unlikely to realise the right to health for the majority of its citizens.⁵³

Findings from the ten country reports

There has been considerable progress in the provision and delivery of health services with some countries recording breakthroughs in maternal and child health and reversing prevalence for HIV/AIDS, malaria and tuberculosis. Insufficient progress has been recorded in public financing of health, protecting women from unsafe abortions and adolescent sex education over the review period.

Among the countries reviewed in 2009, only Rwanda has met the 15% health-financing target nearly ten years after Governments adopted the Abuja Declaration. Mozambique, Senegal and Algeria spent between 10-15%. Kenya, South Africa, Egypt and Cameroun spent between 5-10% with Ghana and Nigeria spending less than 5% of their budget on health.⁵⁴

Scorecard 7 also shows the degree of donor dependency in the case of Rwanda and Mozambique.

Country	Health expenditure as % of budget	External Resources as % of health expenditure	Per capita expenditure (US\$)	Maternal Death Risk 1 in:	Under 5 Mortality per 1000 live deaths	Life expectancy at birth
Rwanda	18.8%	52.4%	\$14	16	181	46
Mozambique	12.5%	60.3%	\$11	45	168	42
Senegal	12.0%	12.3%	\$25	21	114	63
Algeria	11.9%	0.1%	\$120	220	37	72
Kenya	9.7%	14.9%	\$14	39	121	53
South Africa	9.1%	0.9%	\$160	110	59	50
Egypt	7.3%	0.8%	\$38	230	36	71
Cameroun	6.7%	8.0%	\$10	24	148	50
Ghana	4.4%	22.6%	\$11	45	115	60
Nigeria	3.5%	5.9%	\$10	18	189	47

⁵² UNECA and AU – Economic Report on Africa 2010.

⁵³ UNECA and AU – Assessing Progress in Africa towards the MDGs 2010 report to African Finance Ministers, March 2010

⁵⁴ World Health Organisation – Health Statistics, 2009

⁵⁵ Extracted from Africa Public Health Alliance – Scorecard on Health Financing in Africa, 2010,

Reliable access to essential health services is still elusive in most of the countries reviewed. Less than 30% of Ghanaians and Kenyans have easy access to health facilities. Slightly better are their Rwandese and Camerounian counterparts. Access in these two countries is 50% and 62% respectively. There is one healthcare professional for every 500 Ghanaians and 4000 Nigerians, and 15 for every 100,000 Kenyans.

In line with the aspirations in the Maputo Plan for Sexual and Reproductive Health, Algeria, Cameroun, Ghana, Kenya, Senegal, and especially Egypt and Rwanda have made considerable progress in meeting the right to maternal health. By increasing the number of births attended by healthcare professionals, scope of family planning and providing emergency obstetric care, Egypt has halved its maternal mortality rates. By declaring free maternal healthcare in Ghana, this country seems set to reduce its rates as well. By 2009, pre-natal coverage in Algeria had reached 95%, 75% and 46% in the cities, smaller towns and rural areas respectively. By 2008, Mozambique and South Africa have seen the rates of maternal mortality decreasing.⁵⁶

Although a major part, the expansion of maternal health services is arguably inadequate in the absence of appropriate legal framework. With the exception of South Africa, statute books across all the review countries currently criminalise abortion.⁵⁷ The lack of regulated and safe abortion services is therefore a major cause in the number of maternal deaths. This can be illustrated with only two countries. Every year, 26,000 Kenyans die from causes related to unsafe abortion and many others sustain life-altering injuries. Every year, one in three Nigerian girls and women acquire an unplanned pregnancy. The Nigeria country report indicates that Nigerian authorities agree that at least 610,000 of these girls and women abort in un-sterile and unsafe conditions annually. The criminalisation of abortion is in this regard, both futile and reckless.

Unwanted pregnancies are also a reflection of poor sex education and family services and a lack of responsible public attitudes.⁵⁸ Here, the analysis of the prevalence of contraceptive use suggests that some countries are doing very poorly and others better. For instance, while there is increasing use of contraceptives in Rwanda, , early positive trends are being rolled back in Ghana. In a continent like Africa where young people comprise a significant majority, it is imperative that sex education be incorporated in public health and education for the benefit of adolescents and teenagers.

The above factors play out in the containment and eradication of the great pandemics and epidemics of our time namely HIV/AIDS, tuberculosis and malaria. HIV/AIDS prevalence has declined in Kenya, Rwanda and Nigeria. For Kenya, the 1990s prevalence of 14% has come down to 7%. In Nigeria, a similar trend was observed in the reduction of 2001 levels of 6% prevalence down to 3%. In the case of tuberculosis, Kenya has seen a decline, Rwanda's prevalence is stagnant while Ghana and Mozambique are recording higher incidences. Malaria continues to be a major killer affecting 40-60% of Ghanaians and 30% of Kenyans.

⁵⁶ The Lancet - Maternal mortality for 181 countries, 1980—2008, Volume 375, Issue 9726

⁵⁷ Ethiopia is the only other country on the continent where abortion is legal

⁵⁸ Obviously this does include the high number of unwanted pregnancies that are a consequence of non-consensual sex, rape and violence against women



CHAPTER 6 RIGHTS OF WOMEN

Frameworks and instruments under review

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2005), and the Standards in the African Youth Charter (2006).

Indicators under review⁵⁹

The policies and legal frameworks to ensure access to comprehensive HIV/ AIDS/STI and malaria care and treatment options for pregnant women, mothers, infants, families and PLWHA; The coverage for family planning services: contraceptive prevalence rate and unmet need for family planning; Policies and legal frameworks to reduce incidence of unwanted pregnancies and unsafe abortion; Incidence of unsafe abortion; Legislative, institutional and other measures to combat all forms of discrimination against women; including constitutional provisions of the principle of equality between women and men, express prohibition of all harmful practices that endanger the health and general well-being of women; Enact and enforce laws to prohibit all forms of violence against women; Strategies to reduce harmful traditional practices; Prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation; The minimum age of marriage for women provided by law, and degree of enforcement; The pervasiveness of under-age marriage; Proportion of seats held by women in national parliaments; The share of women elected in local authorities; Share of women in the executive arm of Government as cabinet ministers; Share of women in the civil service; Measures being undertaken to ensure increased and effective representation and participation of women at all levels of decision-making in the specified spheres of public life; Gender parity in primary and secondary school enrolment; Contraceptive prevalence rate; Unmet need for family planning; Antenatal care coverage; Proportion of births attended by skilled health personnel.

The Continental Reality against the Standard

The coming into force in 2005 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa made continental history in two respects. Having taken close to ten years to be developed by government and civil society experts, the Protocol was adopted in Maputo in 2003. A concerted campaign by civil society organisations, progressive states and staff at the AU Commission caused the Protocol to come into force within eighteen months, making it the fastest instrument to come into force in the forty year history of the African Union and its predecessor, the Organisation of African Unity. The comprehensive platform of rights and freedoms contained in its provisions, and in particular, the sexual and reproductive health and rights raised even global standards.⁶⁰

However, the reality faced by African women is far from the vision of the Protocol and its sister AU policy standard, the Solemn Declaration for Gender Equality in Africa (2003). While women comprise 80 percent of all farmers, they control less than 1% of land in Africa. More than 40 percent of women in Africa do not have access to basic education yet where a girl receives at least six years of education, her vulnerability to maternal mortality and HIV/AIDS is greatly reduced as an adult.⁶¹ One fifth of African countries have shown significant improvements in the representation of women in African national legislative assemblies.⁶²

⁵⁹ Note that much of health related standards in the Protocol are also covered in the previous Chapter.

⁶⁰ The Protocol echoes the Convention on the Elimination of All Forms of Discrimination against Women (1979), an earlier international standard on the issues of discrimination against women

⁶¹ UN Millennium Project - Fast Facts: The Faces of Poverty, 2010

⁶² UNECA and AU – Economic Report on Africa 2010. For a more comprehensive treatment of the condition of African women see also Mary Wandia – How States can deliver on women's rights commitments during the AU Women's Decade (2010-2020), 2010 www.soawr.org

Findings from the ten country reports

Progress against the Protocol was assessed on the degree of gender-based discrimination, freedom from violence and harmful cultural practices, pro-women's rights legal reforms and the representation of women in public office. Scorecard 7 ranks countries in terms of gender equity across the ten countries. The Index compares men/boys and women/girls in terms of education, empowerment and economic activities.

Score card 7: Gender Equity within Society ⁶³									
Most Equitable								Least Equitable	
Rwanda	South Africa	Kenya	Mozambique	Ghana	Senegal	Egypt	Algeria	Nigeria	Cameroun

Algeria, Cameroun, Egypt and Kenya have yet to ratify the Protocol as of this review. Nigeria, Egypt and Kenya recorded some successes over this period. New Egyptian labour and citizenship laws passed in 2003 criminalise workplace abuse and discrimination, uphold the right of women to maternity leave and give women the right to confer citizenship on their spouses and children for the first time. Egypt also passed a constitutional amendment that outlaws discrimination on the basis of gender in 2007. However, there is growing concern that this path-breaking provision is undermined by reference to upholding the supremacy of Islamic legal provisions that discriminate against women. Drafted in 2009, Kenya's new proposed constitution will extend some of these rights to women in 2010. Mozambique's new family law (2009) raises the legal age of marriage to 16 and 18 with and without parental consent respectively.

Yet despite these advancements, the application of these new laws seems patchy at best. Public awareness of the new freedoms and rights contain there in is not widespread particularly among rural communities. In the case of Nigeria and Ghana, customary practices such as Trokosi⁶⁴, fly in the face of constitutional and legal safeguards. Harmful cultural practises such as female genital mutilation continued to be practised. The prevalence varies from country to country with 5% and 19% of women in Ghana and Nigeria respectively experiencing this harmful rite of passage. The Egypt report found that despite a legal ban on FGM, 97% of Egyptian women are likely to have undergone this practice. Other countries have seen marginal improvement between 2003 and 2009 from a prevalence of 32% down to 27%.

The period also saw the passing of new and important laws in Kenya (Sexual Offences Act, 2006), Nigeria (Married Women's Property Act) and Mozambique (Domestic Violence Act 2008 and the family Act, 2009).

Apart from Rwanda, most countries appear to have made only marginal improvements in increasing the representation of women in elected and appointed public offices. The AU standard for representation of women is gender parity, higher than the 30% target of previous international standards. Only Rwanda in Africa has achieved this target. Nigerian women saw a paltry 4% increase in representation within the National Assembly and 10% in the civil service between 2003 and 2007. Kenya women still have less than 10% and still occupy mostly the lower cadres of civil service jobs.

For Rwanda, their application of affirmative action has led to a 30% quota with women occupying 38% and 56% of Government posts and the National Assembly respectively. Mozambique and South Africa have reached 30% representation. Their success contrasts with the findings in Ghana where despite a higher quota of 40% only 11% of the National Assembly members are women. Indeed, there are signs that the percentage of women in the civil service is actually decreasing from 10% in 2004 to 8.7% in 2008. Egypt and Cameroun are in similar positions to Nigeria.

Most of the massive gains experienced in the 1990s in the case of South Africa and the last decade in countries like Ghana seem to continue being eroded. The lack of significant progress on freedom from violence, harmful cultural practises and the right to public representation leaves new laws and

⁶³ Gender Inequity Index produced by Social Watch quoted in New Internationalist World Guide, 2007. Note figures for Cameroun missing

⁶⁴ A religious tradition and patriarchal superstition in Ghana, as well as in Togo, Benin and Nigeria, carried out when a relative commits a crime, ranging in severity from petty theft to murder. To 'pay' the family must offer a virgin daughter, typically from eight to fifteen years of age, to the local shrine, where she will become a trokosi, or "slave of the gods." The priest then exerts full ownership rights over the girl.



constitutional amendments as powerless as the Protocol itself. This situation needs to be addressed with urgency.

CHAPTER 7 RIGHTS OF THE CHILD

Frameworks and instruments under review:

The African Charter on the Rights and Welfare of the Child (1990).

Indicators under review:

Enact law to be non-discriminative to children born out of wedlock, especially through enactment of an appropriate affiliation law; Percentage of children completing eight years of free and compulsory primary education (boys, girls, total); Percentage of children completing 4 years of secondary education free of cost (boys, girls, total); Gender parity at primary and secondary levels; percentage of children with special needs integrated into formal schooling system; number of institutions established for children with special needs; number of institutions established for children with special needs; under five mortality rate; Neonatal mortality rate; Children below one year who are fully immunized; percentage of under five in malaria prone areas sleeping in ITN; Enact laws to protect children from worst forms of labour; Enact laws and policies prohibiting corporal punishment and neglect in homes, community and in all public and private alternative care and employment settings; Enforce laws banning physical abuse including systematic monitoring; Enact and enforce legislation on laws against FGM and early marriages; Enact laws to raise the minimum age of marriage to be 18 years;

The Continental Reality against the Standard

132 out of every 1000 African infants died before reaching their fifth birthday in 2009. Sub-Saharan Africa and South Asia are the only continents whose rates of under five mortality exceed 50 per 1,000 live births in 2008. Africa's rates are at 144 per 1000, almost twice South Asia's at 76 per 1000.⁶⁵ While an improvement on the 1990 figure of 168 per 1000, the progress is unacceptably slow. The lack of progress is even more alarming given in 2010 given this tenth anniversary year of the African Charter on the Rights and Welfare of the Child

Only Algeria and Egypt reviewed in the State of Union country reports will meet the MDG target of reducing under-five mortality by two thirds. Rwanda has recorded a rapid improvement but it is still insufficient for them to meet the target. Others like Cameroun and Kenya have actually seen an increase in under-five mortality.⁶⁶

Primary education enrolment continues to increase with more girls and boys accessing education. Three countries that were reviewed - Algeria, Egypt and Rwanda - made considerable progress in reaching universal primary education. Most African countries continue to register progress in meeting gender parity in primary education enrolment terms. By 2009, Algeria alongside Cape Verde and Tunisia had met the 2015 MDG gender parity target.⁶⁷

Findings from the ten country reports

Progress has been recorded in reducing child mortality rates and eliminating gender disparities in primary education for most countries under review. There has been less success in protecting children from prematurely entering the labour market, responding to the needs of differently abled⁶⁸ children and violence.

Most of the countries under review have declared universal primary education as a right for all children. Ghana, Kenya, Rwanda and Nigeria are on the way to closing the gender disparities in education in line with the Millennium Development Goals. A trend that could threaten this investment is the continuation of child marriages especially in Ghana and Mozambique. The latter has been unable to drop its unenviable position of having the highest number of child marriages per capita in the world. Another worrying trend in the case of Mozambique has been the sexual harassment of girls. Our country study recorded that one in three girls have experienced some form of abuse. Egypt

⁶⁵ UNICEF - The State Of The World's Children, 2009

⁶⁶ UNECA and AU – Assessing Progress in Africa towards the MDGs 2010 report to African Finance Ministers, March 2010

⁶⁷ UNECA and AU – Assessing Progress in Africa towards the MDGs 2010 report to African Finance Ministers, March 2010

⁶⁸ In line with demands from this community, the term “differently abled” has been used to replace the other oftenly used term of disabled people



reflects an interesting departure from the countries described so far. Egyptian boys rather than girls are dropping out of secondary education.

Governments are having minimal success in responding to the special needs of girls and boys who are differently abled. Nigeria and Kenya are doing poorly in this regard and could learn from the passing of legislature in Egypt in 2007. This law emphasizes the various rights of the disabled child, starting from the right to health and social care, the right to education, the establishment of institutions for children with disabilities and their rehabilitation and their right to work.

Elsewhere in chapter 5, we noted that Egypt has successfully reversed its child mortality rates through an assertive health programme. Although not as remarkable as the Egypt case, Ghana and Rwanda have seen child mortality rates also drop significantly. Nigeria embarked on its largest immunization programme against measles in 2005-2006.

Various constitutional provisions and laws prohibit most forms of discrimination against both girls and boys in Egypt, Nigeria, Rwanda and Kenya. Unlike Rwanda, Kenya does not however prevent the discrimination of children born out of wedlock as yet. In the case of Nigeria, the Children's Act is only effective in the Federal Capital of Abuja until local states domesticate the Act. In terms of legal reform, most countries with the exception of Kenya (Sexual Offences Act), Ghana (human trafficking legislation, 2005), Egypt (amendments to the Labour Act amendment) and Mozambique (the Constitution and Children's Act) have not seen major changes.

Two areas that are uniformly a challenge for most countries is protecting children from prematurely entering the labour market and freedom from violence. Most countries are unable to provide children with alternatives to domestic labour, farming and informal sector livelihood activities. In Ghana and Nigeria it is estimated that 800,000 and 15 million children are working. Even Rwanda which has prohibited children from working calculates that up to 5% of its child population is in the labour market.

A harsher side of this world are the risks associated with human trafficking. Despite passing a law in Ghana and Nigeria, these two countries alongside Cameroun and Mozambique were unable to stem the number of children who were coerced in relationships against their wishes. A somewhat milder form of violence has been the continuation of corporal punishment in educational institutions despite laws that prohibit this in Ghana, Nigeria and Kenya

CHAPTER 8 RIGHTS OF THE YOUTH

Frameworks and instruments under review:

The African Youth Charter (2006)

Indicators under review:

Measures taken to promote active youth participation in political, economic, social, technological and legal aspects of development, at both community and national levels; The existence of a comprehensive and coherent national youth policy, and informed by extensive consultation with young people; Existence of national youth programs that are time bound and accompanied by adequate and sustained budgetary allocation; Whether there is free and compulsory basic education; Gender disparities in access to basic and higher education; The existence and operations of scholarship and bursary programmes to encourage entry into post-primary school education and into higher education outstanding youth from disadvantaged communities, especially young girls; Availability of accurate data on youth employment, unemployment and underemployment; Youth entrepreneurship: access to credit, business development skills training, mentorship opportunities, and internship options available for entry into the labour market; Quality of adolescent reproductive health services, including contraceptives, antenatal and post natal services; The availability and uptake of voluntary counselling and confidential testing for HIV and AIDS; Access to treatment for young people infected with HIV and AIDS including prevention of mother-to-child transmission, post-rape prophylaxis, and anti-retroviral therapy; Legislative steps (such as banning advertising and increasing price – sin tax) to control the consumption of tobacco, exposure to environmental tobacco smoke and alcohol abuse; and The existence and enforcement of anti-narcotics law to minimize supply and trafficking of drugs.

The Continental Reality against the Standard

Close to half of the population of Africa are between the ages of 15-24. Under the Charter for the African Youth, this age group defines youth. Three in every five youth are unemployed. Three quarters of them live below the income poverty measure of US\$1 dollar a day. As those that can get schooling come out onto a saturated job market, they join these disaffected, unproductive and frustrated young people. Most literature has tended to portray this “youth bulge” as a potential force for social disruption, upheaval and even terrorism. The typical picture is male and urban.

Statistically however, the typical face of the youth in Africa is a woman, 18 years of age, less educated than her male counterpart and living in the rural countryside. She is likely to be married or marry before she reaches 24 years of age. In Mozambique for instance, 58% of girls/women between the ages of 15-24 will have had their first child and 47% of women are likely to be married before their 19th birthday.

Findings from the ten country reports

Unlike the modest progress recorded in the case of children, Africa’s youth have seen more new policies and programmes that target their livelihoods, civic participation and health. During the period under review, national youth policies were passed in Ghana (2007), Nigeria (2007) and Kenya (2008) promoting employment, social protection schemes and youth Funds.

Economic disaffection affects the capacity of young people to see themselves as a critical force for a productive economy and a cohesive society. Some countries are recording some progress such as Ghana. Some of those that find work in agriculture, domestic work and self-promoted livelihoods, are exposed to the frustrations of underpaid or even unpaid labour. Economic disaffection fuels political disaffection and reduces the potential for active citizen engagement during and in between elections. This disaffection takes engendered forms as evident in the fact that young Egyptian women are half as likely to come out and vote as their male counterparts. Rwanda has provided for two youth seats in their Chamber of Deputies.

Most African countries have not met the 2010 global target set for young people aged 15-24 to be comprehensively informed and knowledgeable about HIV.⁶⁹ The country studies noted the low incidence of young people using contraceptives and condoms to protect themselves against unplanned pregnancies, HIV/AIDS and other sexually transmitted diseases. The low commitment to regular HIV/AIDS testing is still in part due to poor reproductive health public awareness. African

⁶⁹ UN General Assembly Special Session on HIV/AIDS set the target of 95% HIV/AIDS awareness to be achieved by 2010.



Governments must incorporate adolescent sex and reproductive health education with urgency or this target will continue to prove elusive.

CHAPTER 9 CONCLUSIONS AND RECOMMENDATIONS

This Continental Report and the ten Country Reports appear at a critical moment for Africa. 2010 is an important year for several national, continental and international processes. Some of the most critical are the;

- Celebration of 50 years of independence for seventeen African countries⁷⁰
- Twentieth anniversary of the adoption of the African Charter on the Rights and Welfare of the Child (adopted 1990, it came into force 1999)
- Fifth anniversary of the entry into force of the AU Protocol on the Rights of Women in Africa
- Launch of the African Women's Decade (2010-2020)
- The last milestone for African Governments to raise their health expenditure to 15% of national budgets and realize the Abuja Call for Accelerated Action Towards Universal Access to HIV/AIDS, Tuberculosis and Malaria Services
- The end of the period to implement the Maputo Plan of Action for the Operationalisation of the Continental Policy Framework for Sexual and Reproductive Health and Rights 2007-2010
- Tenth anniversary of the UN Millennium Declaration and review of the progress made towards meeting the Millennium Development Goals by 2015
- Fifteen year review point on the implementation of the Beijing Declaration and Platform for Action

This reports finds an alarming gap between AU legal instruments and policy standards, the policies and practises of most Member States. Unless there is a change in the behaviour of both African Union organs and Member States, the many important decisions being taken at continental levels risk the danger of not being implemented. This will continue to have devastating consequences for the millions of African citizens denied good governance, fundamental freedoms and basic human rights. It will also expose further our Pan African institutions to an obvious credibility challenge.

Collectively, those of us working in the organs of the AU, Member States and in civil society organisations must rise to the occasion and prevent the suffocation of the dream of continental integration whose time has come.

Actions Required by the African Union

1. With urgency, the African Union Commission in consultation with the Permanent Representatives Committee must establish an official monitoring mechanism that tracks Member States' performance against key AU policy standards and legal instruments
2. Institute a standing item on the January AU Summit to annually review best practices and challenges being faced by countries in implementing AU standards and legal instruments
3. The Pan African Parliament should develop a strategy for accelerating popularisation and ratification
4. Extend the July 2010 commitment to universally ratify all OAU/AU legal instruments to January 2011

⁷⁰ In 2010, the following seventeen countries will celebrate 50th years of independence; 1 January 1960: Cameroun, 27 April 1960: Togo, 26 June 1960: Madagascar, 30 June 1960: Democratic Republic Of Congo, 1 July 1960: Somalia, 1 August 1960: Benin, 3 August 1960: Niger, 5 August 1960: Burkina Faso, 7 August 1960: Ivory Coast, 11 August 1960: Chad, 13 August 1960: Central African Republic, 15 August 1960: Congo, 17 August 1960: Gabon, 20 August 1960: Senegal, 22 September 1960: Mali, 1 October 1960: Nigeria, 28 November 1960: Mauritania. Three of these countries, Nigeria, Senegal and Cameroun are the subject of the 2010 State of the Union country reports.



Actions Required by Governments

5. Establish national inter-ministerial and stakeholder working committees. This committee could bring together all stakeholders to review national progress and coordinate sensitization and implementation of key policy frameworks and instruments
6. Enable both civil servants and the public to have access to AU standards and legal instruments by uploading them to the appropriate Ministry websites
7. Establish a central database and annual reporting mechanism on the progress of the policy frameworks and instruments and related sectors
8. Work with national Parliaments, relevant parliamentary committees and national Members of the Pan African Parliament to regularly debate decisions taken at the AU and take the follow up actions required
9. Develop and make public a timetable with specific timeframes showing clear targets and benchmarks towards realizing Government's commitment to spend 10 per cent of the national budget on agriculture and CAADP commitments
10. Outline how Governments' national agriculture strategies can better prioritize the needs of small-scale farmers. Governments must ensure that small-scale farmers have increased access to basic inputs such as affordable credit, traditional improved seeds and where necessary, fertilizers.
11. Strengthen public health systems to provide comprehensive, integrated, maternal, newborn and child health care services, in particular through revitalization of primary health care
12. Increase domestic resources to meet and surpass the Abuja target of 15 percent of budget allocation for the health sector and earmark an amount for Maternal, Newborn and Child Health
13. Extend Maputo Plan of Action for Implementing the Continental Sexual and Reproductive Health (SRH) and Rights Policy Framework (2007-2010) to 2015 in order to realize its promise for reversing maternal and child mortality rates and improving reproductive and maternal healthcare
14. Fully integrate the provisions of the Protocol on the Rights of Women, AU Charter on the Rights and Welfare of the Child and African Youth Charter into national plans, laws and budgets

Actions Required by Civil Society Organisations

15. Immediately sensitize and mobilize society around the importance of these standards and laws for national policy-making
16. Inform and strengthen the capacity of the public to claim these standards and rights
17. Support Governments and especially the Ministry of Foreign Affairs efforts to expand their capability to guide other Ministries, Parliament and the Legislature to align with AU decisions adopted by the Head of State on behalf of Government
18. Expand the range of State of the Union reports to five new countries by July 2011

For State policy-makers and duty-bearers cited in the above recommendations, we call on you to act on the recommendations proposed and welcome a dialogue on the findings and the way forward. We hope that you can study the country reports for best practises and actions that can be replicated in our various national contexts.

For citizens, civil society organisations and other rights-holders whose lives, security, dignity and livelihoods are directly affected by the AU standards, we urge you to monitor progress, hold Governments accountable and assist them to deliver on the promise of the AU policy standards and legal instruments.

For Africa's civil servants working in the organs of the African Union, we encourage you to urgently establish an official monitoring mechanism that holds individual Member States collectively accountable for the delivery of key AU policy frameworks and instruments.

APPENDICES

Appendix 1: Status of ratification for AU Charters, Treaties, Protocols and Charters

Appendix 2: Bibliography

Appendix 3: Decisions of the Executive Council of African Foreign Ministers after the release of the Continental State of the Union 2010 Report.

Protocol	Algeria	Angola	Benin	Botswana	Burkina Faso	Burundi	Cameroon	Central Africa	Cape Verde	Chad	Cote Ivoire	Comoros	Congo	Djibouti	Dem Rep C	Egypt	Eq. guinea	Eritrea	Ethiopia	Gabon	Gambia	Ghana	Guinea Bissau	Guinea	Kenya	Libya	Lesotho	Liberia	Madagascar	Mali	Malawi	Mozambique	Mauritania	Mauritius	Namibia	Nigeria	Niger	Rwanda	South Africa	Sahrawi	Senegal	Seychelles	Sierra Leone	Somalia	Sao Tome	Sudan	Swaziland	Tanzania	Togo	Tunisia	Uganda	Zambia	Zimbabwe	Total			
Amendments to Constitutive Act 2003	N	N	R	N	R	R	N	R	N	R	N	R	N	N	N	R	R	N	N	R	R	R	N	N	R	R	R	R	N	R	N	R	R	N	N	N	N	R	R	R	N	N	N	N	N	N	N	N	N	N	N	N	N	N	25		
Combating Corruption 2003	R	N	R	N	R	R	N	N	N	N	R	R	N	N	N	N	N	N	R	R	R	R	N	N	R	R	R	R	R	R	R	R	N	N	R	R	R	R	R	N	N	N	N	N	N	N	N	N	N	N	N	N	N	R	R	R	30
Non-Aggression 2005	R	N	N	N	N	N	N	N	R	N	N	R	N	N	N	N	N	N	R	R	R	R	N	N	N	R	N	N	N	R	N	R	R	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	14	
Youth Charter 2006	N	N	N	N	R	N	N	N	N	N	N	N	N	R	N	N	N	N	N	R	R	R	R	N	N	R	N	N	N	R	N	R	N	R	R	R	R	R	R	R	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	16	
Democracy Charter 2007	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	R	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	2			
Cultural Renaissance 2006	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	0		
African Court of Justice 2008	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	R	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	1		
Statistics 2009	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	0			
Total	20	13	18	10	21	19	17	9	8	13	12	23	17	9	10	20	12	5	22	23	21	21	10	14	18	26	20	15	13	28	17	23	17	15	12	22	27	24	16	9	23	12	10	5	4	17	11	22	23	18	18	16	15				

Key: N = Not Ratified Y = Ratified

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Appendix 3: Decisions of the Executive Council of African Foreign Ministers after the release of the Continental State of the Union 2010 Report.

These decisions relate to ratification and implementation of OAU/AU Treaties and Policy Standards and directly respond to the actions recommended in Continental State of the Union 2010 Report (See Actions required 1,2,3,4)

- i. Executive Council/Dec. 571 (XVII) – Decision on the status of signature and ratification of OAU/AU Treaties.
 - Reiterated the EC’s appeal to member states to prioritize among others, the following:
 - a. Treaty establishing the African Economic Community (1991)
 - b. AU Convention on the conservation of nature and natural resources (Revised version 2003)
 - c. The African Youth Charter (2006)
 - d. The African Charter on Democracy, Elections and Governance (2007)
 - Explicit request to specific AU organs, RECs, International and Regional Organizations and **Civil Society to “assist with advocacy and sensitization of member states to expedite the process of ratification of/ascension to OAU/AU Treaties....”**
 - Requested from the commission a regular reporting mechanism to the Executive Council on the implementation of this decision Ex.CL/Dec. 571 (XVII)
- ii. Executive Council/Dec. 566(XVII) – Decision on the report of the Third Conference of the African Minister in Charge of Youth
 - Called on expeditious signing, ratification and/or acceding by member states that haven’t done so
 - Requested Commission to support member states in efforts to popularize, ratify and implement the Charter
 - Further requested the Commission to report on implementation of this decision to the Ordinary Session of the Executive Council in January 2012
- iii. Executive Council/Dec.568 (XVII) – Decision on the Special Session of the African Union Conference of Minister of Health (CAMH4) on Maternal, Infant and Child Health in Africa
 - Decision: that the Commission should submit annual reports to the Ordinary Sessions of the AU Conference of Ministers of Health, the African Committee of Experts on Rights and Welfare of the Child, and other for a
 - Decision: that the Commission should conduct a final evaluation and submit a report thereon to the Executive Council in 2014, in preparation for the 2015 review of the MDGs



We hope this report will encourage all of us to pause, reflect and revitalise our energies. "Business as usual" will not unleash the change Africa needs. Collectively, those of us working in the organs of the AU, Member States and in civil society organisations must rise to the occasion and prevent the suffocation of a regional integration dream whose time has come.

Unless the African Union is better capacitated and resourced and States take seriously the integration of key policy standards and rights instruments, many important decisions are in danger of not being implemented. This will continue to have devastating consequences for the millions of African citizens denied good governance, fundamental freedoms and basic human rights. It will further expose our Pan African institutions to an obvious credibility challenge.

Produced by the State of the Union project, this report assesses the performance of Member States against key governance, economic, social, civil and political policy standards and rights instruments. The State of the Union project tracks and engages Governments and the African Union on their commitments by managing in-country research, community hearings and national consultations.

The following organizations manage the project; Collective League of Associations for the Defence of Human Rights, The Institute for Democratic Governance, Southern Africa Trust, Fahamu, Citizen Participation on the African Union, AfriMAP, the Africa Governance Monitoring and Advocacy Project, Open Society Initiative, Civil Society Learning and Capacity Building Centre, the Al-Ahram Centre for Political and Strategic Studies, Information and Documentation Centre for Woman and Child's Rights, African Forum for Defence of Human Rights, Centre for Advanced Social Science and the Citizens Governance Initiatives and Oxfam International.

Reports for Algeria, Cameroun, Egypt, Ghana, Kenya, Mozambique, Nigeria, Rwanda, Senegal and South Africa and this Pan African Continental report can be downloaded free from www.stateoftheunionafrica.net

We welcome your comments on these reports. Email us at
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