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**EXECUTIVE COUNCIL**

**Twentieth Ordinary Session**

**23 – 27 January 2012**

**Addis Ababa, ETHIOPIA**

**EX.CL/718(XX)**

Original: English

**REPORT OF THE AFRICAN COURT ON HUMAN AND  
PEOPLES' RIGHTS (AfCHPR)**

## REPORT OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS (AfCHPR)

### INTRODUCTION

1. The African Court on Human and Peoples' Rights (the Court) was established by virtue of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as the Protocol), adopted on 9 June 1998 in Ouagadougou, Burkina Faso, by the then Organization of African Unity (OAU). The Protocol entered into force on 25 January 2004.

2. The Court is composed of eleven Judges elected by the Assembly of Heads of State and Government of the African Union. The first eleven Judges were elected in 2006 and assumed duty on 2 July 2006. The current composition of the Court is attached to the present Report as Annex I. The Seat of the Court is in Arusha, United Republic of Tanzania.

3. Article 31 of the Protocol provides that "The Court shall submit to each regular session of the Assembly, a report on its work during the previous year. The report shall specify, in particular, the cases in which a State has not complied with the Court's judgment".

4. The present report, which covers the period from January to December 2011, is prepared pursuant to the above article. The report describes, on the one hand, the main judicial and non-judicial activities undertaken by the Court during this period, and on the other hand, makes an appraisal of the functioning of the Court as well as recommendations on how to enhance the effectiveness of the Court and the protection of human rights on the continent.

5. It is however, important from the onset to report on the status of ratification of the Protocol and the deposit of the declaration recognising the competence of the Court to receive cases submitted by individuals and non-governmental organizations (NGOs), under Article 34(6) of the said Protocol.

### **I. STATUS OF RATIFICATION OF THE PROTOCOL AND DEPOSIT OF THE DECLARATION ACCEPTING THE COMPETENCE OF THE COURT TO RECEIVE CASES FROM INDIVIDUALS AND NON GOVERNMENTAL ORGANIZATIONS**

6. As at 31 December, 2011, the Protocol establishing the Court had been ratified by twenty six (26) Member States of the African Union, namely: Algeria; Burkina Faso; Burundi; Congo, Côte d'Ivoire; Comoros; Gabon; the Gambia; Ghana; Kenya; Libya; Lesotho; Malawi; Mali; Mauritania; Mauritius; Mozambique; Niger; Nigeria; Uganda; Rwanda; Senegal; South Africa; Tanzania; Togo; and Tunisia.

7. It should be noted, in comparison, that 53 Member States of the African Union have ratified the African Charter on Human and Peoples' Rights that the Court is mandated to interpret and ensure its application. The disparity between the number of States that have ratified the Charter and the number that have ratified the Protocol thus becomes evident.

8. Of the 26 States Parties to the Protocol, only five, namely: Burkina Faso, Ghana, Malawi, Mali and Tanzania, have deposited the declaration accepting the jurisdiction of the Court to deal with cases from individuals and NGOs.

## II. JUDICIAL MATTERS

9. While in its 2010 Activity Report, the Court reported that it did not engage in any judicial activity, it is today encouraging to report that between March and December, 2011, the Court received a total of fourteen (14) applications and two requests for Advisory Opinion. The Court has disposed of seven of the applications.

10. The cases disposed of are:

- Application No. 002/2011 - Soufiane Ababou v. People's Democratic Republic of Algeria;
- Application No. 005/2011 - Daniel Amare and Mulugeta Amare v. Republic of Mozambique & Mozambique Airlines;
- Application No. 006/2011 - *Association Juristes d'Afrique pour la Bonne Gouvernance v. République de Côte d'Ivoire*;
- Application No. 007/2011 - Youssef Ababou v. The Kingdom of Morocco;
- Application No. 008/2011 – Ekollo Moundi Alexandre v. Cameroon and Nigeria;
- Application No. 010/2011 – Efoua Mbozo'o Samuel v. Pan African Parliament; and
- Application No. 012/2011 - *Convention Nationale des Syndicats du Secteur Education (CONSEYSED) v. Republic of Gabon*

11. In Application Nos. 002/2011, 005/2011 and 008/2011, the Court concluded that, it manifestly lacked jurisdiction to receive the Applications because, although the Respondent States have ratified the Protocol establishing the Court, they have not made the declaration required under Article 34 (6) of the Protocol. Furthermore, the Court decided to transfer the Applications to the African Commission on Human and Peoples' Rights, in accordance with Article 6 (3) of the Protocol.

12. With respect to Application Nos. 006/2011 and 012/2011, the Court concluded that it lacked jurisdiction to deal with the Applications because, although the Respondent States have ratified the Protocol establishing the Court, the NGOs that submitted the Applications did not have observer status before the African Commission, as required under Article 5 (3) of the Protocol. The Court decided to transfer Application 006/2011 to the African Commission.

13. The Court concluded with respect to Application No. 007/2011 that it manifestly lacked jurisdiction because the Kingdom of Morocco, the Respondent State in the matter, was not a member of the African Union and had not ratified the Protocol.

14. With respect to Application No. 010/2011, the Court concluded that the Application was grounded upon breach of employment contract and therefore it manifestly lacked jurisdiction to deal with the matter.

15. All the decisions taken on the above Applications have been communicated to the Respondent States.

16. As at 31 December 2011, seven (7) applications were pending before the Court. In one of the pending Applications, that is, Application 004/2011 – African Commission on Human and Peoples' Rights v. the Great Socialist People's Libyan Arab Jamahiriya, the Court has issued an order for provisional measures.

17. To ensure the effective management of applications submitted to the Court, the Court adopted its Internal Judicial Practice and has begun consideration of Instructions to the Registry.

### **III. ADMINISTRATIVE MATTERS**

#### **A. Holding of Court sessions**

18. It should be recalled that apart from the President of the Court, all the other Judges work on a part-time basis, and as a result, the Court mainly functions through the system of sessions. The Court holds four ordinary sessions a year, and may also hold extraordinary sessions as and when necessary.

19. During the period under consideration, the Court held the following sessions:

- Twentieth Ordinary Session from 14 to 25 March, 2011, in Arusha, Tanzania;
- Twenty – first Ordinary Session from 6 to 17 June, 2011 in Arusha, Tanzania;
- Twenty-second Ordinary Session from 12 to 23 September, 2011, in Arusha, Tanzania;

- Twenty-third Ordinary Session from 5 to 16 December, 2011, in Accra, Ghana; and
- Fourth extraordinary session from 26 to 30 September, in Arusha, Tanzania.

20. The main issues considered during these sessions are reported in various sections of this report.

## **B. Presentations to the Policy Organs of the African Union**

### **i) Participation of the Court at the January 2011 Summit**

21. The Court was represented at the 21<sup>st</sup> Ordinary Session of the Permanent Representatives' Committee, the 18<sup>th</sup> Ordinary Session of the Executive Council and the 16<sup>th</sup> Assembly of Heads of State and Government of the African Union, in Addis Ababa, Ethiopia, where it presented its 2011 budget as well as its 2010 Activity Report. The Executive Council adopted the 2012 budget of the Court, and took note of the Report.

### **ii) Participation of the Court at the June 2011 Summit**

22. The Court was represented at the 22<sup>nd</sup> Ordinary Session of the Permanent Representatives' Committee, the 19<sup>th</sup> Ordinary Session of the Executive Council and the 17<sup>th</sup> Assembly of Heads of State and Government of the African Union, in Malabo, Equatorial Guinea, where it presented its Mid-term Activity Report for January to May, 2011. The Executive Council adopted the Report, and decided *inter alia* to: "request the Permanent Representatives' Committee (PRC) through its Sub-Committee on Structural Reforms to consider the Court's proposal on the new structure of its Registry and submit appropriate recommendations for consideration by the Executive Council at its next session in January 2012", as well as "request[ed] the immediate implementation of the 2011 budget of AfCHPR with regards to the status of Judges".

### **iii) The 2012 Draft Budget of the Court**

23. In March 2011, the Court considered and adopted its draft budget for the 2012 financial year and submitted it to the African Union Commission (AUC).

24. The draft budget was presented to the PRC Advisory Sub-Committee on Administrative, Budgetary and Financial Matters on 28 November, 2011. The 2012 budget of the Court stands at US\$ 8,563,392, comprising US\$ 6,478,071 as Member States' contribution (for the operational budget) and US\$ 2,085,321 as partners and donor funds (for the programme budget). During its Extraordinary Session of 12 November, 2011, held in Addis Ababa, Ethiopia, the Executive Council approved the 2012 budget of the Court which stands at \$8,562,992, comprising 6,478,071 US dollars as operational budget and 2,084,921 US dollars as programme budget.

**iv) The new structure of the Registry of the Court**

**25.** At its Thirteenth Ordinary Session held in Sharm El Sheikh, Egypt from 24 to 28 June, 2008, the Executive Council, by Decision EX.CL/Dec.449 (XIII), '*AUTHORISE[D] the [African Court] to submit in 2009 a new structure of the Registry...*'. At its Fourteenth Ordinary Session held in Addis Ababa, Ethiopia from 26 to 30 January, 2009, the Executive Council, by EX.CL/Dec.483(XIV), recalled its Decision EX.CL/Dec.449 (XIII), and '*REQUEST[ED] the Permanent Representatives' Committee to examine the Court's proposals on the new structure of the Registry... and put forward recommendations thereon for the consideration of the Executive Council at its next Session*'.

**26.** Further to the above decisions, the Court submitted proposals on the new structure of its Registry to the African Union Commission in May 2009, and sent a follow up correspondence on the matter in May, 2010. Following a meeting between the Registry of the Court and the Secretariat of the Task Force of the African Union Commission from 24 to 26 May, 2010, the Court submitted new proposals on the structure of the Registry as agreed upon with the Task Force.

**27.** At its 18<sup>th</sup> Ordinary Session held in Addis Ababa, Ethiopia, from 27 to 28 January 2011, the Executive Council by Decision EX.CL/Dec.602 (XVIII), called on the Commission and the PRC, through its Sub-Committee on Structural Reforms to consider the structural proposal of the other organs and submit appropriate recommendations to the Executive Council through the PRC at its next Ordinary Session in June 2011. By Decision EX.CL/Dec.634 (XVIII), on the 2010 Activity Report of the Court, adopted at the same session, the Executive Council requested the PRC and its relevant Sub-Committee to consider the structural and budgetary proposals of the Court.

**28.** In December, 2011, the Court presented the proposed new structure of its Registry before the PRC Advisory Sub-Committee on Structural Reforms, and the latter recommended an addition of forty-three (43) staff to the Registry of the Court, and recommended that recruitment should be done in stages.

**C. Execution of the 2011 budget of the Court**

**29.** The budget allocated to the Court as contributions from Member States for 2011 stood at US\$6,478,591. Overall expenditure, as at 30 November 2011, amounts to US\$4,498,157. It follows that the rate of execution of the budget is 69.40%.

**30.** In addition to the budgetary allocations from contributions by Member States, the Executive Council approved the Court's budget from contributions by external partners. The contribution under the European Union Support Programme to the African Union stood at US\$1,727,850. Overall expenditure as at 30 November 2010 was US\$444,164 or an execution rate of 25.70%.

31. The contribution by the German International Cooperation (GIZ) amounted to US\$983,694. As at 30 November 2010, the Court had expended US\$271,856, or an execution rate of 27.60%.

32. The contribution from MacArthur Foundation amounted to \$150,000, and as at 30 November, 2011, the Court had spent \$53, 843, representing an execution rate of 35.80%.

#### **D. Recruitment and staff development**

##### **i. Recruitment of staff**

33. Pursuant to Article 24 of the Protocol of 9 June 1998 on the establishment of the Court, "The Court shall appoint its own Registrar and other staff of the Registry from among nationals of Member States of the OAU according to the Rules of Procedure".

34. By Decision EX.CL/331(XI) of June 2007, the Executive Council of the African Union approved the initial structure of the Registry, comprising 46 positions.

35. As at 31 December, 2011, of the 46 positions approved, 40 have been filled. Three staff members however left the employ of the Court in 2011.

36. During the period under consideration, the Court finalized the recruitment of the Registrar, the French Interpreter/Translator, the Senior Information and Communication Officer, the Documentalist, the ICT Specialist and the Arabic Secretary.

37. The recruitment process is continuing for the three positions left, namely two (2) Interpreter/Translators (Arabic and Portuguese) and one (1) Portuguese Secretary. During the recent recruitment, suitable candidates were not found for these positions.

##### **ii. Extension of contracts**

38. As part of the process of staff evaluation and development, the Court appraised the performance of staff members that have served the institution for three years, and decided to extend their contracts for a further two years.

##### **iii. Staff training**

39. During the period under consideration, the Court adopted a Training Policy for 2011 – 2013, as well as a Training Plan for 2012.

40. In 2011, the Court continued with its online language training for both Judges and staff, and with support from the *Organisation Internationale de la Francophonie*, a Judge and two staff members took part in an Intensive French Course in France. During the same period, a Judge and two staff members also took part in an Intensive English Course in Kenya.

41. Legal Officers as well as the Deputy Registrar of the Court undertook an intensive training on Legal Research and Judgment writing.

42. As part of its exchange programme with other regional Courts, four Judges and the Deputy Registrar visited the European Court of Human Rights, the International Criminal Court and the International Court of Justice.

43. Three staff members of the Court also took part in a training on the Integrated Management Information System (IMIS) organised by the African Union Commission. Training of the Court's staff is intended to enhance knowledge in their various fields and assist those concerned to acquire language skills or the use of new information and communication technologies.

#### **E. Promotional activities**

44. Since the Court is a relatively new institution, it decided to carry out, with the financial assistance of cooperating partners, including the European Union (EU) and German International Cooperation (GIZ), some activities aimed at its promotion.

45. In this regard, during the period under consideration, the Court carried out the following promotional activities, *inter alia*:

##### **a) Continent-wide activities**

##### **i) Continental Conference on the Promotion of the Court – Lilongwe, Malawi, 9-11 March, 2011**

46. One of the major promotional activities organised by the Court during the period covered by the present report is the Continental Conference on the Promotion of the Court. The Conference was organized in collaboration with the Government of the Republic of Malawi and the Judiciary of Malawi, on the theme "The African Court on Human and Peoples' Rights: your new partner in strengthening the protection of human rights in Africa".

47. The Conference was opened by the President of the Republic of Malawi, and was attended by over one hundred (100) participants from twenty six (26) African Union Member States, including Angola, Benin, Burkina Faso, Burundi, Cameroon, Congo, Cote d'Ivoire, Egypt, Ethiopia, Gambia, Ghana, Kenya, Malawi, Mali, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Senegal, South Africa, Tanzania, Togo, Uganda, Zambia and Zimbabwe. The participants comprised representatives of national human rights commissions; the diplomatic community; bar associations; academia; human rights NGOs; religious bodies and media from across the continent, with a view to enhancing the protection of human rights in Africa by creating awareness about the Court to enable people to bring cases to the Court and encouraging ratification of the Protocol and deposit of the declaration allowing individuals and NGOs to access the Court.

48. At the conclusion of the Conference, the participants adopted a Final Communiqué, in which the different stakeholders made various commitments on how to promote the Court.

**ii) Consultative and Sensitization Seminar for African National Human Rights Institutions, 16 – 18 November, 2011, Arusha, Tanzania**

49. The Court, in collaboration with the Network of African National Human Rights Institutions (NANHRI), organized a Sensitization and Consultative Seminar for African National Human Rights Institutions. This was the first-ever meeting between the Court and African National Human Rights Institutions.

50. The Seminar was attended by amongst others, the Vice President of the Network of African National Human Rights Institutions, and the Presidents and members of National Human Rights Institutions from twenty-nine (29) African countries. The countries represented were: Benin, Burkina Faso, Burundi, Cameroon, Cote d'Ivoire, Djibouti, Ethiopia, Gabon, Ghana, Guinea, Kenya, Liberia, Madagascar, Malawi, Mali, Mauritius, Namibia, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Swaziland, Tanzania, Togo, Uganda, Zambia, and Zimbabwe.

51. The overall purpose of the Seminar was to raise awareness about the Court amongst National Human Rights Institutions in Africa, with a view to exploring ways and means of working together to engage both their governments and civil society organizations in the effective utilization of the Court, and to encourage ratification of the Protocol and deposit of the declaration allowing individuals and NGOs to access the Court.

52. At the conclusion of the seminar, the participants adopted a plan of action which they committed themselves to implement.

**b) Sensitization seminars and visits at national level**

53. With the main objectives of raising public awareness about the Court, encouraging the ratification of the Protocol and making of the Declaration under Article 34(6) of the Protocol of the Court; sensitizing would-be applicants on how to access the Court and the procedures before the Court; encouraging the public to utilize the Court in settling human rights disputes and encouraging the utilization of the Court to render advisory opinions, the Court embarked on a sensitization campaign across the continent.

54. For this sensitization campaign, the Court used a two-pronged strategy.

55. The first strategy was to target States Parties to the Protocol which have made the Declaration allowing individuals and NGOs direct access to the Court. The focus of this strategy was to provide individuals and NGOs, including Bar Associations and the wider civil society, with the tools they need to access the Court. After its first national

sensitization seminar held in December 2010 in Dar es Salaam, Tanzania, the Court organized similar seminars in Burkina Faso, Mali and Ghana.

**56.** During these seminars, courtesy calls were also made to high authorities in government. In Burkina Faso, the delegation of the Court met with the Minister of Justice, the Chief Justice and the President of the Constitutional Court. In Mali, the delegation met of the Court met with the President of the Republic of Mali and the Minister of Justice, and in Ghana, the delegation met with the Vice President of the Republic of Ghana as well as the Attorney General and Minister of Justice.

**57.** The second strategy is to target States that have ratified the Protocol but are yet to make the Declaration, with a view to encouraging them to do so. During the visit to the country, the delegation of the Court meets with the highest State representatives, while also meeting with civil society actors, to sensitize them about the Court. States already visited under this strategy include Gabon, Mozambique, Nigeria, South Africa and Uganda.

**58.** In Gabon, the delegation of the Court met with the Secretary-General in the Office of the President (on behalf of the President), the Minister of Foreign Affairs, International Cooperation and the Francophonie, the Minister in Charge of Relations with Parliament, Constitution Institutions, Regional Integration of NEPAD and Human Rights, the Speaker of the National Assembly and the President of the Constitutional Court of Gabon.

**59.** In Mozambique, the delegation met with the President of the Republic of Mozambique, the Speaker of Parliament, the Chief Justice, the Minister of Foreign Affairs and the Minister of Justice.

**60.** In Nigeria, the delegation met with the Vice President of the Federal Republic of Nigeria, the Speaker of the House of Representatives, the President and Deputy President of Senate, the Chief Justice, the Minister of Foreign Affairs, the Minister of Justice, and the Human Rights Commission.

**61.** In South Africa, the delegation met with the Minister of Performance Monitoring and Evaluation in the Office of the President of the Republic of South Africa, the Speaker of Parliament, the Deputy Minister of Justice and the Chairperson of the National Council of Provinces. Apart from the sensitization visit and courtesy calls, the delegation, in collaboration with the University of South Africa, also organized a public lecture on the African Court.

**62.** In Uganda, the delegation met with the Vice President of the Republic of Uganda, the Speaker of Parliament, the Acting Chief Justice, the Minister of Foreign Affairs, the Deputy Attorney General and the Human Rights Commission.

**63.** Apart from the above two approaches, the Court also uses advocacy to engage States that have not ratified the Protocol. This is done mainly through the African Union Summits and other Policy Organs, as well as interactions with States' representatives.

**c) Other Promotional activities**

**64.** Apart from the continental activities and sensitization seminars and visits, the Court was invited to participate at some activities with a view to promoting the visibility of the Court, including the following:

- the Colloquium on the African Human Rights System – practical ways to create strategies for effective litigation, in Tunis, Tunisia, from 5 to 7 April, 2011;
- the NGO Forum prior to the 49<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights in Banjul, The Gambia, from 25-27 April, 2011;
- the 49<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights in Banjul, The Gambia, from 28 April to 12 May 2011;
- the Africa Day Celebrations in Dar es Salaam, Tanzania on 25 May 2011;
- a Workshop on Advocacy and Litigation Strategies before the East African Court of Justice and the African Court on Human and Peoples' Rights in Kigali, Rwanda, from 25 to 26 May, 2011;
- a Conference on African Women's Land Rights and access to Justice, in Nairobi, Kenya from 31 May to 2 June, 2011;
- a Training workshop for African Civil Society Organizations on Understanding the African Union, from 21-23 July in Abuja, Nigeria;
- the Inaugural Colloquium of Legal Scholars on the African Human Rights System, in Arusha, Tanzania on 25 July 2011;
- a lecture series at the Human Rights Development Initiative, in Pretoria, South Africa, on 28 July 2011;
- the Third Meeting of Legal Advisors of the African Union and the Regional Economic Communities from 11 to 13 July, 2011 in Arusha, Tanzania;
- the AUC meeting on the Training of African Civil Society Organizations on the Understanding of the African Union Structures and Decision making processes held on 27 August 2011, in Port Harcourt, Nigeria;
- a meeting of the 2011 Human Rights Institute of the Nigerian Bar Association Annual General Assembly, 24 August, 2011, in Abuja, Nigeria;

- the International Association of Refugee Law Jurists Conference on the Protection of the Human Rights of Refugees held from 7-9 September 2011 in Bled, Slovenia;
- the opening of the Fifth Parliament of the Pan African Parliament, from 3-6 October 2011, in Midrand, South Africa;
- a Training workshop for African civil society actors on the regional and international human rights mechanisms in Africa, held from 14-18 October, 2011, in Banjul, The Gambia;
- the 8<sup>th</sup> Biennial Conference of the Network of African National Human Rights Institutions, held from 19-20 October 2011, in Cape Town, South Africa;
- the NGO Forum prior to the 50<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights in Banjul, The Gambia;
- activities to commemorate the 30<sup>th</sup> Anniversary of the adoption of the African Charter, in Banjul The Gambia;
- the 50<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights from 24 October to 5 November, 2011, in Banjul The Gambia;
- the 5<sup>th</sup> Annual Conference of the Section on Legal Practice of the Nigerian Bar Association, held in Abuja, Nigeria, from 15 – 17 November, 2011;
- publication and distribution of various promotional and publicity material.

**65.** The Court has launched an essay competition for undergraduate students at university law schools across Africa, and also initiated the production of a film documentary of the African Court. These activities are aimed at further engaging with the public to create more awareness about the Court.

**F. Relations between the Court and the African Commission on Human and Peoples' Rights**

**66.** The Court and the African Commission decided during their meetings in 2010 to harmonise their Rules of Procedure, and to institutionalize their collaboration through regular meetings. The First Meeting between the Bureau of the Court and the Bureau of the African Commission took place in Lilongwe, Malawi on 8 March, 2011.

**67.** Apart from the meeting of the Bureaus of the two institutions, the Court was represented at the public sessions of the 49<sup>th</sup> and 50<sup>th</sup> Ordinary Sessions of the African Commission that took place in April-May 2011 and October-November 2011, respectively, in Banjul, The Gambia.

68. The African Commission also participated at the Continental Conference on the promotion of the Court, organised by the Court in March 2011.

69. Further, the Commission has submitted one application to the Court, while the Court has, to date, transferred four applications to the Commission.

**G. Contribution to the project on the extension of the jurisdiction of the Court to include criminal matters**

70. Following Assembly Decision Assembly/AU/Dec.213 (XII) of February 2009, requesting the African Union Commission, in consultation with the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights, to examine the implications of the Court being empowered to try international crimes such as genocide, crimes against humanity and war crimes, the Court has been involved in the process of preparation of a Protocol establishing an African Court vested with criminal jurisdiction.

71. During the period under consideration, the Court was represented, in March and May 2011, respectively, at the 4<sup>th</sup> and 5<sup>th</sup> Meetings of Government Experts dealing with the matter.

72. From 31 October to 4 November, 2011, the Court was represented in the follow up meeting organised by the AUC to finalise the draft document to be submitted to the Ministers of Justice Meeting.

**H. Contribution to the project on the development of a Human Rights Strategy for Africa**

73. The Court was represented in a series of meetings to develop a human rights strategy for Africa. During the period covered by the present report, the Court was represented in a meeting organised in Banjul, The Gambia, from 27 to 28 April, 2011, to adopt the human rights strategy.

**I. Contribution to the African Union Framework on Transitional Justice in Africa**

74. The Court was represented in a Consultative Meeting on Enhancing the Role of the African Union and Regional Economic Communities in Transitional Justice, held from 29 to 30 April, 2011, in Banjul, The Gambia. The objective of the meeting was to explore the role which the African Union (particularly organs with Human Rights mandates) and Regional Economic Communities may play in the re-establishment of law, order and justice in a post conflict situation.

**J. Issues relating to the Host Agreement**

75. It should be recalled that pursuant to the Host Agreement between the African Union and the Government of the United Republic of Tanzania, the Court is presently

located in Arusha, Tanzania, in a temporary premises, pending the construction of the permanent premises of the Court by the host country.

**76.** During the period under consideration, the Government of the United Republic of Tanzania requested the Court to indicate the size of the land required for the construction of the permanent seat of the Court, and the Court made proposals accordingly. The government has further requested the Court to submit a sketchy outline of the design for the type of premises it would prefer.

**77.** Furthermore, a Memorandum of Understanding setting up a Joint Facilitative Committee has been signed between the Court and the government to facilitate the implementation of the Host Agreement.

#### **K. Cooperation with foreign partners**

**78.** The Court currently has three principal external partners, the European Union, the German International Cooperation and the MacArthur Foundation. In 2011, these partners supported the activities of the Court in various ways.

**79.** The Court continues to receive assistance from the European Union through the “55 Million Euro Support Programme to the African Union”. This support enabled the Court to carry out several activities in 2011, including the organisation of the Continental Conference on the Promotion of the Court and the implementation of six sensitization seminars and visits to various African States.

**80.** The German International Cooperation also supported the Court in 2011, and facilitated in the carrying out of several activities, including the organisation of the Continental Conference on the Promotion of the Court; participation of Judges at various human rights fora, notably, the NGO Forum preceding the Ordinary Sessions of the African Commission, as well as the sessions themselves; visit of Judges to the European Court of Human Rights; the organisation of the Consultative and Sensitization Seminar for African National Human Rights Institutions and sensitization visits; as well as technical assistance to enhance the capacity of Legal Officers.

**81.** The McArthur Foundation provided financial support to strengthen the Court’s Library.

**82.** It is important to state in this Report, the contacts that have been initiated, through the AUC, with the Government of India. The Court forwarded its final proposals to the African Union Commission in November 2011.

#### **IV. ASSESSMENT AND RECOMMENDATIONS**

##### **A. Assessment**

**83.** The Court wishes to thank the Policy Organs of the African Union and, in particular, the Assembly of Heads of State and Government, for providing the financial resources required for its functioning.

**84.** The Court takes this opportunity to express its appreciation to those States Parties that accepted its request to undertake promotional activities in their territories, and for the support they rendered to ensure the success of the activities.

**85.** The Court equally wishes to express its gratitude to the Government of the United Republic of Tanzania, host country of the seat of the Court, for the efforts made towards providing the Court with permanent buildings to serve as its seat, among other facilities.

**86.** The Court also appreciates the support from its external partners, including the European Union, the German International Cooperation and the MacArthur Foundation.

**87.** The support that the Court has thus received helped it to carry out the following activities, during the period covered by this report:

- receipt and processing of fourteen applications and two requests for advisory opinion, of which seven have been finalized;
- holding four sessions and one extraordinary session;
- presentation of its 2011 and 2012 budget, as well as its 2010 Activity Report to the policy organs of the African Union;
- presentation of the new structure of its Registry to the policy organs;
- undertaking various promotional activities, including in particular, continental meetings, sensitization seminars, visits and courtesy calls at national level and participation in various fora;
- recruitment of more staff of the Court;
- training of staff of the Court;
- continuation of sustained cooperation with some external partners;
- cooperating with the African Commission on Human and Peoples' Rights;

- participation in activities relating to the project on the extension of the jurisdiction of the Court to deal with criminal matters;
- participation in the project to develop a human rights strategy for Africa;
- contribution to the African Union Framework on Transitional Justice in Africa; and
- publication and distribution of various promotion and publicity material.

**88.** It should however, be noted that the support from the African Union and external partners, notwithstanding, the Court is encountering some difficulties, which have impeded its smooth functioning.

**89.** At the judicial level, while it is encouraging to note that the Court has started receiving an increasing number of cases, the judicial mandate of the Court is seriously compromised in contentious matters by the low rate of ratification of the Protocol and even lower number of countries that have made the declaration. If such a situation were allowed to continue, the entire system of judicial protection of human rights at the continental level, which the Court symbolises, would be adversely affected.

**90.** With respect to its advisory jurisdiction, the Court would like to remind Member States of the African Union, as well as organs and institutions of the Union that they are empowered under the Protocol establishing the Court to seek advisory opinion from the Court on any human rights issue of concern to them.

**91.** From the administrative point of view, the effective administration of the Court has been severely affected by the shortcomings in the current structure of the Registry, which does not provide for critical staff for the effective management of the Court. There is need to strengthen the capacity of the Registry both in terms the number of staff and the grades attributed to the positions.

## **B. Recommendations**

**92.** Consequent upon the foregoing considerations, the Court requests the Assembly of Heads of State and Government to:

- approve the 2012 budget of the Court;
- approve the new structure of the Registry of the Court;
- request Member States of the African Union which have not yet done so to ratify the Protocol on the Establishment of the Court and make the declaration allowing individuals and non-governmental organisations direct access to the Court;

- invite Member States which have already ratified the Protocol, but have not yet made the declaration accepting the jurisdiction of the Court to receive applications from individuals and non-governmental organizations after exhaustion of local remedies, to do so; and
- invite Member States of the African Union and all organs of the Union to have recourse, as and when necessary, to the Court to request it to provide advisory opinion on human rights issues.

**ANNEX I**  
**LIST OF JUDGES OF THE AFRICAN COURT ON**  
**HUMAN AND PEOPLES' RIGHTS**  
**AS AT DECEMBER 2011**

No.	Name	Term		Country
		Duration	Expiry	
1.	Hon. Gérard Niyungeko (President)	6	2012	Burundi
2.	Hon. Sophia A. B. Akuffo ( Vice President)	6	2014	Ghana
3.	Hon. Jean Mutsinzi	6	2012	Rwanda
4.	Hon. Bernard M. Ngoepe	6	2014	South Africa
5.	Hon. Modibo T. Guindo	6	2012	Mali
6.	Hon. Fatsah Ouguergouz	6	2016	Algeria
7.	Hon. Joseph N. Mulenga	6	2014	Uganda
8.	Hon. Augustino S.L. Ramadhani	6	2016	Tanzania
9.	Hon. Duncan Tambala	6	2016	Malawi
10.	Hon. Elsie Nwanwuri Thompson	6	2016	Nigeria
11.	Hon. Sylvain Ore	4	2014	Côte d'Ivoire

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