

AFRICAN UNION  
الاتحاد الأفريقي



UNION AFRICAINE  
UNIÃO AFRICANA

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**Executive Council  
Eighth Ordinary Session  
16 – 21 January 2006  
Khartoum, SUDAN**

**EX.CL/ 211 (VIII)**

**REPORT OF THE MEETING OF GOVERNMENT LEGAL  
EXPERTS ON THE MERGER OF THE AFRICAN COURT ON  
HUMAN AND PEOPLES' RIGHTS AND THE COURT OF  
JUSTICE OF THE AFRICAN UNION**

**REPORT OF THE MEETING OF GOVERNMENT LEGAL EXPERTS ON THE  
MERGER OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS AND  
THE COURT OF JUSTICE OF THE AFRICAN UNION**

Pursuant to decision Assembly/AU/Dec.83 (V) adopted by the Fifth Ordinary Session of the Assembly of the Union held in Sirte, Libya, in July 2005, the Meeting of Legal Experts from Member States to consider the Draft Single Legal Instrument relating to the Merger of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union was convened from 21 to 24 November 2005 at the El Mithak Residence in Algiers, Algeria.

It will be recalled that the Assembly by virtue of the said decision decided "that a draft legal instrument relating to the establishment of the merged court comprising the Human Rights Court and the Court of Justice should be completed for consideration by the next ordinary sessions of the Executive Council and the Assembly" and welcomed "the offer by the Minister for Foreign Affairs of the Republic of Algeria, Mr. Mohamed BEDJAOUI, former President of the International Court of Justice to contribute to the drafting of this instrument."

By its Note verbale referenced AMB/ADDIS/615/2005/O.A. dated 17 October 2005, the Embassy of Algeria in Addis Ababa forwarded a draft single instrument on the merged court to the Commission. The said draft was circulated to all Member States for comments and observations and thereafter, the Algiers meeting was convened. However, in view of the fact that there was no quorum (twenty-two (22) Member States), the Member States present in Algiers constituted themselves into a working group and decided that their recommendations should be submitted to an Ordinary Session of the PRC and that if possible, government legal experts should be invited to attend that session before the draft instrument is submitted to the Policy Organs of the Union in January 2006.

The draft single instrument is submitted to the Executive Council and the Assembly in accordance with Decision Assembly/AU/Dec.83 (V), for consideration.

EX.CL/211 (VIII)  
Annex 1

**SUMMARY REPORT OF THE WORKING GROUP ON THE DRAFT  
SINGLE LEGAL INSTRUMENT RELATING TO THE MERGER  
OF THE AFRICAN COURT ON HUMAN AND PEOPLES'  
RIGHTS AND THE COURT OF JUSTICE OF THE  
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**MEETING OF LEGAL EXPERTS  
ON THE DRAFT LEGAL INSTRUMENT RELATING TO  
THE MERGER OF THE AFRICAN COURT ON HUMAN  
AND PEOPLES' RIGHTS AND THE COURT  
OF JUSTICE OF THE AFRICAN UNION  
21 –25 November 2005  
Algiers, Algeria**

UA/EXP/Fusion.cours/Rpt (I)

**SUMMARY REPORT OF THE WORKING GROUP ON THE DRAFT  
SINGLE LEGAL INSTRUMENT RELATING TO THE MERGER  
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RIGHTS AND THE COURT OF JUSTICE  
OF THE AFRICAN UNION**

**I. INTRODUCTION**

1. The Meeting of Legal Experts from Member States was convened from 21 to 24 November 2005 at the El Mithak Residence in Algiers, Algeria, to consider the Draft Single Legal Instrument relating to the Merger of the African Court on Human and Peoples' Rights and the Court of justice of the African union, pursuant to decision Assembly/AU/Dec.83(V) adopted by the Fifth Ordinary Session of the Assembly of the Union held in Sirte, Libya, in July 2005. In view of the fact that there was no quorum, it was decided that the Member States present would constitute a working group, whose recommendations would be submitted to the ordinary session of the PRC and Legal experts before submission to the Policy Organs of the Union in January 2006.

**II. ATTENDANCE**

2. In attendance were the following twenty two (22) Member States: Algeria, Angola, Burkina Faso, Cameroon, Chad, Congo, Côte d'Ivoire, Egypt, Ghana, Kenya, Lesotho, Libya, Madagascar, Mali, Niger, Nigeria, SADR, Senegal, South Africa, Sudan, Swaziland and Tunisia.

**III. OPENING CEREMONY**

3. The opening ceremony was presided over by H.E. Mohamed Bejaoui, Minister of State, Minister of Foreign Affairs of the People's Democratic Republic of Algeria in the presence of H.E. Abdelkader Messahel, Minister responsible for Maghreb and African Affairs.

**Opening Statement by H.E. Mohamed Bejaoui, Minister of State, Minister of Foreign Affairs of the People's Democratic Republic of Algeria**

4. H.E. Mohamed Bedjaoui, Minister of State, Minister of Foreign Affairs of the People's Democratic Republic of Algeria on behalf of the government and the people of Algeria welcomed all the delegations attending the meeting. After recalling the background and the need to merge the African Court of Human and Peoples Rights and the African Court of Justice, he intimated that the Draft Protocol submitted for consideration by the Working Group had taken on board the concerns expressed at previous meetings and the need to have a harmonious and efficient court that meets the expectations of Member States and the African Civil Society.

5. Concluding, the Minister of State said he was confident that the experts would discharge their task with great seriousness and success.

**Preliminary remarks by Ms. Djénéba Diarra, Deputy Legal Counsel and representative of the African Union Commission**

6. Ms Djénéba Diarra, Deputy Legal Counsel of the Commission of the African Union, on behalf of H.E. Alpha Oumar Konare, Chairperson of the Commission welcomed all the delegations present and thanked them for accepting to participate in this important meeting convened to prepare a draft legal instrument relating to the establishment of the merged court comprising the Human Rights Court and the Court of Justice.

7. She concluded by paying tribute to H.E. M. Bedjaoui and, through him, to the government of the People's Democratic Republic of Algeria, for having prepared the preliminary draft of the document which served as basis for the work of the experts' meeting and which, she said, would facilitate the task of the experts and enable the Meeting finish its work within the stipulated time frame.

**IV. ADOPTION OF THE AGENDA**

8. The Working Group adopted the following Agenda:

1. Consideration of the Draft Agenda
2. Election of the Bureau
3. Organization of work
4. Consideration of the Draft of the Single Judicial Instrument (African Court of Justice and Human Rights)
5. Adoption of the Draft Single instrument
6. Any Other Business
7. Adoption of recommendations and the Draft Legal Instrument
8. Closing Ceremony

**V. ELECTION OF THE BUREAU**

9. The Working Group elected the following Bureau:

- |                    |                  |
|--------------------|------------------|
| - Chairperson      | - Algeria        |
| - Vice-Chairperson | - Nigeria        |
| - Rapporteur       | - The Commission |

10. As Chairperson of the Working Group, Ambassador Chergui, Director General for Africa, underscored the importance of the work expected of the experts and solicited the

help and cooperation of all the delegations in carrying out the mandate entrusted by the Assembly and the Executive Council.

## **VI. ORGANISATION OF WORK**

11. The Working Group adopted the following working hours:

Morning:	09:00 hrs.	–	13:00 hrs.
Afternoon:	15:00 hrs.	–	18:30 hrs.

## **VII. CONSIDERATION OF THE PRELIMINARY DRAFT OF THE SINGLE LEGAL INSTRUMENT (African Court of Justice and Human Rights)**

### **Presentation of the Preliminary Draft of the Single Legal Instrument (African Court of Justice and Human Rights)**

12. Dr. Fatsah Ouguergouz, Secretary of the International Court of Justice, in his capacity as independent expert underscored the historic and unique nature of the African Court that should emerge from the merger of the African Court of Human and Peoples Rights and the Court of Justice of the African Union.

13. He indicated that the single preliminary draft instrument had been prepared in accordance with the recommendations of the Commission, and among others, the need to take into account all the essential or relevant elements of the Protocol to the African Charter on Human and Peoples' Rights establishing the 1998 African Court of Human and Peoples' Rights, and the 2003 Protocol on the Court of Justice of the African Union. He further indicated that the preliminary draft instrument was inspired by a number of existing legal instruments, such as, protocols adopted by the African Union and regional organisations, the Statutes of the International Court of Justice and the International Criminal Court, the United Nations Charter, as well as recommendations made by some non-Governmental organisations.

14. Dr. Ouguergouz concluded by drawing the attention of the Working Group to a number of sensitive issues such as the number of judges of the single court, the modalities of distribution of these judges between the two sections, the presidency of the sections of the Court, the appointment of ad hoc judges, the choice of official languages or possible submission to the Court of cases by individuals or by the African Committee of Experts on the Rights of the Child.

## **VIII. ISSUES RAISED DURING THE CONSIDERATION OF THE DRAFT SINGLE LEGAL INSTRUMENT**

### **Protocol on the Statute of the African Court of Justice and Human Rights:**

15. **Article 12 now Article 9, Entry into force**: The Working Group noted that the prescription for the entry into force of the Protocol upon its ratification by all the States Parties to the Protocol of the African Court on Human and Peoples' Rights would pose practical difficulties. Thus, it was agreed that the deposit of the fifteenth Instrument of ratification by Member States would suffice.

**Statute of the African Court of Justice and Human Rights:**

16. **Article 3- Composition**: The Working Group agreed that the Court should be composed of twelve (12) Judges based on the need to save costs and given that the court at its initial stages might have a limited number of cases to deal with. Further, there is a subsequent provision for the Assembly to review the number of the judges if it deems it necessary.

17. **Article 7 (3) Election of judges**: The provision contained therein is to cater for the event that more than the twelve (12) candidates required attain the two-thirds majority for election. In this case, the candidates that have the highest number of votes shall be deemed elected whilst the remaining candidates shall be dropped.

18. **Article 9 (1) Resignation, Suspension or Removal from Office**: The Working Group opted for a recommendation of a two-thirds majority of the members of the court rather than an unanimous opinion, in order to prevent a situation where a member of the Court may have a veto which might restrain the recommendation for suspension or removal from office of one of its members.

19. **Article 11 Solemn Declaration**: The Working Group agreed that the Solemn Declaration for the first set of members of the Court should be made before the Assembly and administered by its Chairperson. However, for subsequent members elected, the Solemn Declaration should be made before the open Court and administered by its President.

20. **Article 23 (5) Presidency, Vice Presidency and Registrar**: The Working Group decided that the President as well as the first Vice-President, who shall preside over all the sessions of the Human Rights Section shall be full time judges and reside at the seat of the Court, whilst all the other judges perform their functions on a part-time basis as reflected in Article 7 (4) of the Protocol.

21. **Article 25 Remuneration of Judges**: The Working Group was of the opinion that all the judges should be entitled to allowances, however, only the President and First Vice-President should in addition, be entitled to an annual salary.

22. **Article 31 (3) Entities eligible to submit cases to the Court**: Some delegations were of the opinion that non-States Parties to the Protocol as well as non Member

States should not be expressly excluded from bringing cases before the Court. However, the Working Group decided that the provision should be retained as is.

23. **Article 32 (2) Other entities eligible to submit cases to the Court:** Some delegations indicated that this paragraph should be re-phrased such that a State Party can affirm in a declaration its intention to be bound by the provisions of paragraph 1, sub-paragraph d of Article 32 rather than a declaration of intention not to be bound. However, the Working Group decided that the provision should be retained as is.

#### **IX. ANY OTHER BUSINESS**

24. In view of the fact that there was no quorum for its deliberations, the Working Group agreed to the convening of another meeting of the PRC and legal Experts to consider the outcome of its Meeting.

#### **X. CLOSING**

25. The Chairperson of the Meeting thanked the Experts for their individual and collective input, and particularly, for the frank and fruitful debate, which enabled enrichment of the draft Single legal Instrument on the Merger of the Courts submitted by the Government of Algeria. He also thanked the Commission and all those who have worked to ensure the success of the Meeting.

26. On behalf of all the experts, the Delegate from the Libyan Arab Jamahiriya thanked the Chairperson for the able manner in which he conducted the Meeting. The Delegate also expressed his appreciation for the efforts deployed by the Commission to bring the process to fruition.

27. Finally, the Deputy Legal Counsel, on behalf of the Commission, thanked the all the participants for their commitment, which contributed to the success of the meeting.

EX.CL/211 (VIII)  
Annex II

**DRAFT PROTOCOL ON THE STATUTE OF THE AFRICAN COURT  
OF JUSTICE AND HUMAN RIGHTS**

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21 –25 November 2005  
Algiers, Algeria**

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**DRAFT PROTOCOL ON THE STATUTE OF THE AFRICAN COURT  
OF JUSTICE AND HUMAN RIGHTS**

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## **PROTOCOL ON THE STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS**

The Member States of the African Union, Parties to this Protocol,

**RECALLING** the objectives and principles enunciated in the Constitutive Act of the African Union, adopted on 11 July 2000 in Lomé, Togo;

**BEARING IN MIND** their commitment to promote peace, security and stability on the African Continent and to protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant instruments relating to human rights;

**BEARING IN MIND ALSO** their commitment to settle their disputes through peaceful means;

**CONSIDERING** that the Constitutive Act of the African Union provides for the establishment of a Court of Justice charged with hearing, among other things, all cases relating to interpretation or application of the said Act or of all Treaties adopted within the framework of the Union;

**FIRMLY CONVINCED** that the establishment of a Court of Justice shall build their capacity to attain the goals pursued by the African Union and that the attainment of the objectives of the African Charter on Human and Peoples' Rights requires the establishment of a judicial organ to supplement and strengthen the mission of the African Commission on Human and Peoples' Rights as well as the African Committee of Experts on the Rights and Welfare of the Child;

**TAKING DUE ACCOUNT** of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, adopted by the Assembly of Heads of States and Governments of the Organisation of African Unity on 10 June 1998 at Ouagadougou, Burkina Faso, and which entered into force on 25 January 2004;

**TAKING DUE ACCOUNT EQUALLY** of the Protocol of the Court of Justice of the African Union, adopted by the Assembly of the Union on 11 July 2003 in Maputo (Mozambique);

**RECALLING** their commitment to take all necessary measures to strengthen their common institutions and to endow them with the necessary powers and resources to carry out their missions effectively;

**CONSIDERING** Decisions Assembly/AU/Dec.45 (III) and Assembly/AU/Dec.83 (V) of the Assembly of the Union, adopted respectively at its Third (6-8 July 2004, Addis Ababa, Ethiopia) and Fifth (4-5 July, Sirte, Libya), Ordinary Sessions, to merge the African Court on Human and Peoples' Rights and the Court of Justice of the African Union into a single Court,

**REAFFIRMING** their commitments in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and in the Solemn Declaration on the gender equality in Africa (Assembly/AU/Decl.12 (III) adopted by the Assembly

of the Union respectively at its Second and Third ordinary sessions held in July 2003 and 2004, in Maputo, Mozambique and in Addis Ababa, Ethiopia);

**HAVE AGREED AS FOLLOWS:**

## **Chapter I**

### **MERGER OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS AND THE COURT OF JUSTICE OF THE AFRICAN UNION**

#### **Article 1**

##### **Replacement of the 1998 and 2003 Protocols**

The Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights, adopted on 10 June 1998 in Ouagadougou (Burkina Faso) and which entered into force on 25 January 2004, and the Protocol of the Court of Justice of the African Union, adopted on 11 July 2003 in Maputo (Mozambique), are hereby replaced by the present Protocol and Statute annexed hereto, subject to the provisions of Article 10 of this Protocol.

#### **Article 2**

##### **Establishment of a single Court**

The African Court on Human and Peoples' Rights established by the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights and the Court of Justice of the African Union established by the Constitutive Act of the African Union, are hereby merged into a single Court known as "The African Court of Justice and Human Rights".

#### **Article 3**

##### **Reference to the single Court in the Constitutive Act**

References made to the "Court of Justice" in the Constitutive Act of the African Union shall be read as references to the "African Court of Justice and Human Rights" established under Article 2 of this Protocol.

## **Chapter II**

### **TRANSITIONAL PROVISIONS**

#### **Article 4**

##### **Term of Office of the Judges of the African Court on Human and Peoples' Rights**

The term of office of the Judges of the African Court on Human and Peoples' Rights shall end following the election of the members of the African Court of Justice and Human Rights.

**Article 5**  
**Cases Pending before the African Court on Human and Peoples' Rights**

Cases pending before the African Court on Human and Peoples' Rights, including those which have not been concluded before the entry into force of the present Protocol, shall be transferred to the Human and Peoples' Rights Section of the African Court of Justice and Human Rights, which shall rule on the cases in accordance with the provisions of the Statute annexed to this Protocol.

**Article 6**  
**Registry of the Court**

The Registrar of the African Court on Human and Peoples' Rights shall remain in office until the appointment of a new Registrar for the African Court of Justice and Human Rights.

**Article 7**  
**Provisional validity of the 1998 Protocol**

The Protocol on the Establishment of an African Court on Human and Peoples' Rights shall remain in force for a transitional period not exceeding one (1) year or any other period determined by the Assembly, after entry into force of the present Protocol, to enable the African Court on Human and Peoples' Rights to take the necessary measures for the transfer of its prerogatives, assets, rights and obligations to the African Court of Justice and Human Rights.

**Chapter III**

**FINAL PROVISIONS**

**Article 8**  
**Signature, Ratification and Accession**

1. The present Protocol shall be open for signature, ratification or accession by Member States, in accordance with their respective constitutional procedures, subject to the provisions of paragraph 2 of this Article.
2. The signing of this Protocol by a State Party to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights and to the Protocol of the Court of Justice of the African Union, shall constitute consent to be bound by the present Protocol, unless the said State expresses a contrary intention at the time of signature.
3. The instruments of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission.

**Article 9**  
**Entry into force**

1. The present Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by fifteen (15) Member States.
2. For each Member State which shall ratify or accede to it subsequently, the present Protocol shall enter into force on the date on which the instruments of ratification or accession are deposited.
3. The Chairperson of the Commission shall inform all Member States of the entry into force of the present Protocol.

**Adopted by the 6<sup>th</sup> Ordinary Session of the Assembly of the Union,  
Khartoum (Sudan) the .....January 2006**

## Annex

# STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS

## Chapter I

### GENERAL PROVISIONS

#### Article 1 Definitions

1. In this Statute, except otherwise indicated, the following shall mean:
  - “**African Charter**” means the African Charter on Human and Peoples’ Rights;
  - “**African Commission**” means the African Commission on Human and Peoples’ Rights;
  - “**African Committee of Experts**” means the African Committee of Experts on the Rights and Welfare of the Child;
  - “**African Intergovernmental Organisations**” means an organisation that has been established with the aim of ensuring socio-economic integration, and to which some Member States have ceded certain competences to act on their behalf, as well as other sub-regional, regional or inter-African Organisations;
  - “**African Non-Governmental Organisations**” means Non-Governmental Organisations at the sub-regional, regional or inter-African levels as well as those in the Diaspora as may be defined by the Executive Council;
  - “**Assembly**” means the Assembly of Heads of State and Government of the Union;
  - “**Chamber**” means the Chamber of the General Affairs Section of the Court established in accordance with Article 18 of the Statute as well as the Summary Procedure Chamber established in accordance with Article 19 of the Statute;
  - “**Constitutive Act**” means the Constitutive Act of the African Union;
  - “**Commission**”: means the Commission of the Union;
  - “**Court**” means the African Court of Justice and Human Rights as well as its sections and chambers;
  - “**Executive Council**” means the Executive Council of Ministers of the Union;
  - “**Full Court**” means joint sitting of the General Affairs and Human Rights Sections of the Court;
  - “**Judge/Member**” means a judge of the Court;
  - “**Member State**” means a Member State of the Union;
  - “**President**” means the President of the Court;
  - “**Protocol**” means the Protocol to the Statute of the African Court of Justice and Human Rights;
  - “**Registrar**” means the person appointed as such in accordance with Article 23 (4) of the Statute;
  - “**Rules**” means the Rules of the Court;
  - “**Section**” means the General Affairs or the Human Rights Section of the Court;
  - “**States Parties**” means Member States which have ratified or acceded to this Protocol;
  - “**Statute**” means the present Statute;

**“Union”** means the African Union established by the Constitutive Act;  
**“Vice President”** means persons elected as such in accordance with Article 23 (1) of the Statute;

2. For the purpose of this Statute, the use of the masculine also refers to the feminine; it does not in anyway imply a discrimination on the basis of sex.

## **Article 2 Functions of the Court**

The African Court of Justice and Human Rights shall be the main judicial organ of the African Union and shall complement the functions of protection assigned to the African Commission and the African Committee of Experts. The Court shall be constituted and function in accordance with the provisions of the present Statute.

## **Chapter II**

### **ORGANISATION OF THE COURT**

#### **Article 3 Composition**

1. The Court shall consist of twelve (12) members who are nationals of States Parties. The Assembly, may, when it deems it necessary, review the number of Judges.
2. The Court shall not, at any one time, have more than one judge from a single Member State. In this regard, where there is doubt, the Judge concerned shall be deemed to be the national of the country where he habitually exercises his civil and political rights.
3. Each geographical region of the Continent, as determined by the Decisions of the Assembly, shall be represented by at least two (2) Judges.

#### **Article 4 Qualifications of Judges**

The Court shall be composed of impartial and independent Judges elected from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurists of recognized competence in International law and /or, Human Rights law.

## **Article 5 Presentation of Candidates**

1. As soon as the Protocol to this Statute enters into force, the Chairperson of the Commission shall invite each State Party to submit, in writing, within a period of ninety (90) days, candidatures to the post of judge of the Court.
2. Each State Party may present up to two (2) candidates and shall take into account adequate gender representation in the nomination process.

## **Article 6 List of candidates**

1. For the purpose of election, the Chairperson of the Commission shall establish two alphabetical lists of candidates presented as follows:
  - i) List A containing the names of candidates having recognised competence and experience in International law;  
and
  - ii) List B containing the names of candidates possessing recognised competence and experience in Human Rights law.
2. States Parties that nominate candidates possessing the competences required on the two lists shall choose the list on which their candidates may be placed.
3. At the first election, seven (7) Judges shall be elected from amongst the candidates of list A and five (5) from among the candidates of list B. The elections shall be organized in a way as to maintain the same proportion of judges elected on the two lists.
4. The Chairperson of the Commission shall communicate the two lists to Member States, at least thirty (30) days before the Ordinary Session of the Assembly or of the Council, during which the elections shall take place.

## **Article 7 Election of judges**

1. Members of the Court shall be elected by the Assembly or by the Executive Council, if the Assembly delegates powers of the said election to the Council.
2. They shall be elected through secret ballot by a two-thirds majority of Member States with voting rights, from among the candidates provided for in Article 6 of this Statute.
3. Candidates who obtain the two-thirds majority and the highest number of votes shall be elected. However, if several rounds of election are required, the candidates with the least number of votes shall withdraw.
4. The Assembly shall ensure that in the Court as a whole there is representation of the main regions of Africa and their principal legal traditions.

5. In the election of the members of the Court, the Assembly shall ensure that there is adequate gender representation.

### **Article 8 Term of Office**

1. Members of the Court shall be elected for a period of six (6) years and may be re-elected only once. However, the term of office of four (4) judges, two (2) from each section, elected during the first election shall end after four (4) years.

2. Members of the Court, whose term of office shall end after the initial period of four (4) years, shall be determined for each section, by lot drawn by the Chairperson of the Assembly or the Executive Council, immediately after the first election.

3. A Member of the Court, elected to replace a Member whose term of office has not expired, shall complete the term of office of his predecessor.

4. All the members of the Court except the President and the First Vice-President, shall perform their functions on a part-time basis. However, the Assembly may change this arrangement, whenever it deems necessary.

### **Article 9 Resignation, Suspension and Removal from Office**

1. A member of the Court may resign his position in writing addressed to the President for transmission to the Chairperson of the Assembly.

2. A member of the Court shall not be suspended or removed from office save, where, on the recommendation of two-thirds majority of the other members, he no longer meets the requisite conditions to be a Judge.

3. The President shall communicate the recommendation for the suspension or removal of a member of the Court to the Chairperson of the Assembly and the Chairperson of the Commission.

4. Such a recommendation of the Court shall become final upon its adoption by the Assembly.

### **Article 10 Vacancies**

1. A vacancy shall arise in the Court under the following circumstances:

- a. Death;
- b. Resignation;
- c. Removal from office.

2. In the case of death or resignation of a Judge, the President shall immediately inform the Chairperson of the Assembly in writing, who shall declare the seat vacant.

3. The same procedure and consideration for the election of a member of the Court shall also be followed in filling the vacancies.

### **Article 11 Solemn Declaration**

1. After the first election, the members of the Court shall, in a public session of the Assembly, make a Solemn Declaration as follows:

“ I ,, Do solemnly swear (or affirm or declare) that I shall faithfully exercise the duties of my office as Judge of the African Court of Justice and Human Rights of the African Union impartially and conscientiously, without fear or favour, affection or ill will and that I will preserve the secrecy of the deliberations of the Court.

2. The Chairperson of the Assembly or his/her duly authorized representative shall administer the Solemn Declaration.
3. Subsequently, the Solemn Declaration shall be made before the President of the Court.

### **Article 12 Conflict of Interest**

1. Functions of a member of the Court are incompatible with all other activities which might infringe on the need for independence or impartiality of the judicial profession. In case of doubt, the Court shall decide.
2. Members of the Court shall not exercise the function of agent, counsel, or lawyer in any case before the Court.

### **Article 13 Conditions Governing the Participation of Members in the Settlement of a Specific Case**

1. Members of the Court shall not participate in the settlement of a case for which they were previously involved as agents, counsels or lawyers of one of the parties, or as members of a national or international Court or Tribunal, or a Commission of enquiry or in any other capacity.
2. If a member of the Court decides not to participate in a particular case, he shall notify his intention to the President.
3. If the President considers that a member of the Court should not participate in a particular case, he shall notify the member concerned. Such notification from the President shall, after agreement by the Court, exclude that member from participating in that particular case.
4. Where there is doubt on these points, the Court shall decide.

#### **Article 14**

##### **Privileges and immunities**

1. The Judges shall enjoy, from the time of their election and throughout their term of office, the full privileges and immunities extended to diplomatic agents in accordance with international law.
2. The Judges shall be immune from legal proceedings for any act or omission committed in the discharge of their judicial functions.
3. The Judges shall continue, after they have ceased to hold office, to enjoy immunity in respect of acts performed by them when engaged in their official capacity.

#### **Article 15**

##### **Sections of the Court**

The Court shall have two (2) Sections; a General Affairs Section composed of seven (7) Judges and a Human Rights Section composed of five (5) Judges.

#### **Article 16**

##### **Assignment of matters to Sections**

1. The General Affairs Section shall be competent to hear all submitted cases under Article 30 of this Statute.
2. The Human and Peoples' Rights Section shall be competent to hear all cases relating to the alleged violation of human or peoples rights, submitted under Articles 31 or 32 of this Statute.

#### **Article 17**

##### **Referral of matters to the Full Court**

When a Section of the Court is seized with a case, it may, if it deems it necessary refer that case to the Full Court for consideration.

#### **Article 18**

##### **Chambers**

1. The General Affairs Section, may, at any time, constitute one or several chambers consisting of at least three (3) judges as it may deem fit, to hear specified categories of cases, including but not limited to economic, border delimitation or environment cases.
2. It may also, at any time, constitute one chamber to hear a specific case. The number of judges for this chamber shall be determined by the Full Court with the consent of the Parties.
3. The Chambers provided for under this Article shall give judgment, if the parties so request.

**Article 19**  
**Summary Procedure Chamber**

With a view to the speedy settlement of cases, the Full Court, shall form annually a chamber composed of five (5) Judges, which, at the request of the parties, shall hear and determine cases by summary procedure. In addition, two (2) Judges shall be selected for the purpose of replacing any of the five (5) Judges who find it impossible to sit.

**Article 20**  
**Relations between the Court and the Sections and Chambers**

A judgement given by any Section or Chamber shall be considered as rendered by the Court.

**Article 21**  
**Sessions**

1. The Court shall hold ordinary and extraordinary sessions.
2. The Court shall decide each year on the periods of its ordinary sessions.
3. Extraordinary sessions shall be convened by the President or at the request of the majority of members of the Court.

**Article 22**  
**Quorum**

1. A quorum of seven (7) Judges shall be required for deliberations of the Full Court.
2. A quorum of five (5) Judges shall be required for the deliberations of the General Affairs Section.
3. A quorum of three (3) Judges shall be required for the deliberations of the Human and Peoples' Rights Section.
4. The quorum required for the deliberations of a Chamber of the General Affairs Section shall be set out in the Rules of the Court.

**Article 23**  
**Presidency, Vice-Presidency and Registry**

1. At its first ordinary session after the election of its members, the full Court shall elect its President as well as the First and Second Vice-Presidents for a period of three (3) years. The President and the Vice-Presidents may be re-elected once.

2. The President shall preside over all sessions of the full Court and those of the General Affairs Section; in the event of being unable to sit, the President shall be replaced by the second Vice-President.
3. The first Vice-President shall preside over all sessions of the Human and People's Rights Section.
4. The Court shall appoint a Registrar and may provide for the appointment of such other officers as may be necessary.
5. The President, the First Vice-President and the Registrar shall reside at the seat of the Court.

#### **Article 24**

##### **Composition of the Court for Specific Cases**

1. Subject to the provisions of paragraph 2 of the present Article, Judges of the nationality of each of the States Parties to a case before the full Court or one of its Sections, shall retain the right to sit on the case.
2. The Judge of the nationality of a State Party in a case before the Human and Peoples' Rights Section by virtue of paragraph 1, *sub-paragraph d)* of Article 32 of the Present Statutes cannot sit on that case.
3. If the hearing of a case before the General Affairs Section includes on the Bench a Judge of the nationality of one of the State Parties to the case, any other State Party to the case may choose a person of its choice to sit as Judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates provided for in Article 5 and paragraph 1, *sub-paragraph i)*, Article 6 of the present Statutes.
4. If the General Affairs Section does not include on the Bench a Judge of the nationality of a State Party to a case, each of the States Parties may proceed to choose a Judge as provided for in the previous paragraph.
5. This Article shall apply in the cases provided for in Articles 18 and 19 of the present Statute. In such cases, the President shall request one or, if necessary, two members of the Section forming the Chamber, to cede their places to members of the Section of the nationality of the States Parties concerned, and, failing such, or if they are unable to be present, to Judges specially chosen by the States Parties to the case.
6. Should there be several States Parties jointly pursuing the same case, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.
7. Judges chosen in conformity with Paragraphs 3, 4 and 5 of this Article shall fulfill the conditions required by Articles 3, 4, 11, 12 and 13 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

## **Article 25**

### **Remuneration of Judges**

1. The President and the First Vice-President shall receive an annual salary and a special allowance for each day on which he or she exercises his or her functions, provided that in any year, the total sum payable to any Judge as special allowance shall not exceed the amount of the annual salary.
2. The other members of the court shall receive a special allowance for each day on which he or she exercises his or her functions provided that in each year the total sum payable to any Judge as special allowance shall not exceed the amount of the annual salary received by the First Vice-President.
3. The Judges chosen by virtue of Article 24, other than the members of the Court, shall receive compensation for each day on which they exercise their functions.
4. These salaries, allowances and compensation shall be determined by the Assembly, on the proposal of the Executive Council. They may not be decreased during the term of office of members of the Court.
5. Regulations adopted by the Assembly on the proposal of the Executive Council shall determine the conditions under which retirement pensions shall be given to the members of the Court as well as the conditions under which their travel expenses shall be paid or refunded.
6. The above-mentioned salaries, allowances and compensation shall be free of all taxation.

## **Article 26**

### **Conditions of Service of the Registrar and Members of the Registry**

The salaries and conditions of service of the Registrar and other Court Officials shall be determined by the Assembly on the proposal of the Court, through the Executive Council.

## **Article 27**

### **Seat and Seal of the Court**

1. The Seat of the African Court of Justice and Human Rights shall be same as the Seat of the African Court of Human and Peoples' Rights However, the Court may sit in any other Member State, if circumstances warrant, and with the consent of the Member State concerned. The Assembly may change the seat of the Court after due consultations with the Court.
2. The Court shall have a seal bearing the inscription "The African Court of Justice and Human Rights"

### **Article 28 Budget**

1. The Court shall prepare its draft annual budget and shall submit it to the Assembly through the Executive Council.
2. The budget of the Court shall be borne by the African Union.

### **Article 29 Rules of the Court**

1. The Court shall adopt rules for carrying out its functions and the implementation of the present Statute. In particular, it shall lay down its Rules of Procedure.
2. In elaborating its Rules, the Court shall bear in mind the complementarity it maintains with the African Commission and African Committee of Experts.

## **Chapter III**

### **COMPETENCE OF THE COURT**

#### **Article 30 Jurisdiction of the Court**

1. The Court shall have jurisdiction over all cases and all legal disputes submitted to it in accordance with the present Statute which relate to:
  - a) the interpretation and application of the Act;
  - b) the interpretation, application or validity of Union Treaties and all subsidiary legal instruments adopted within the framework of the Union or the Organisation of African Unity;
  - c) the interpretation and the application of the African Charter on Human and Peoples' Rights, the Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, or any other legal instrument relating to human rights, ratified by the States Parties concerned;
  - d) any question of international law;
  - e) all acts, decisions, regulations and directives of the organs of the Union;
  - f) all matters specifically provided for in any other agreements that States Parties may conclude among themselves, or with the Union and which confer jurisdiction on the Court;
  - g) the existence of any fact which, if established, would constitute a breach of an obligation owed to a State Party or to the Union;
  - h) the nature or extent of the reparation to be made for the breach of an international obligation.

2. The Assembly may confer on the Court the power to assume jurisdiction over any dispute other than those referred to in this Article.
3. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

**Article 31**  
**Entities Eligible to Submit Cases to the Court**

1. The following entities shall be entitled to submit cases to the Court on any issue or dispute provided for in Article 30:
  - a) State Parties to the present Protocol;
  - b) The Assembly, the Parliament and other organs of the Union authorized by the Assembly;
  - c) A staff member of the African Union Commission, on appeal, in a dispute and within the limits and under the terms and conditions laid down in the Staff Rules and Regulations of the Union;
2. The conditions under which the Court shall be open to other Member States or other entities shall be laid down by the Assembly, and, in no case, shall such conditions place the parties in a position of inequality before the Court.
3. The Court shall not be open to States which are not members of the Union. The Court shall also have no jurisdiction to deal with a dispute involving a Member State that has not ratified the Protocol, subject to the provisions of paragraph 2 of this Article.

**Article 32**  
**Other Entities Eligible to Submit Cases to the Court**

1. The following entities shall also be entitled to submit cases to the Court on any violation of a right guaranteed by the African Charter on Human and Peoples' Rights, by the Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, or any other legal instrument relating to human rights ratified by the States Parties concerned:
  - a) the African Commission on Human and Peoples' Rights;
  - b) the African Committee of Experts on the Rights and Welfare of the Child;
  - c) African Intergovernmental Organisations;
  - d) Individuals or African Non-Governmental Organisations.
2. Each State may, at the time of ratification or accession to the Protocol declare that it does not consider itself bound by the provisions of paragraph 1, *sub-paragraph d)* of this Article.
3. Any State, which may have lodged an objection in conformity with the provisions of paragraph 2 of this Article may, at any time, withdraw this objection by a notice addressed to the Chairperson of the African Union Commission.

**Article 33**  
**Applicable Law**

1. The Court, whose function is to decide in accordance with international law, such disputes as are submitted to it, shall have regard to:
  - a) The Constitutive Act of the African Union;
  - b) International treaties, whether general or particular, ratified by the contesting States;
  - c) International custom, as evidence of a general practice accepted as law;
  - d) The general principles of law recognized universally or by African States;
  - e) Subject to the provisions of paragraph 1, of Article 56 of the present Statute, judicial decisions and writings of the most highly qualified publicists of various nations as well as the regulations, directives and decisions of the Union, as subsidiary means for the determination of the rules of law.
  
2. This Article shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

**Chapter IV**

**PROCEDURE**

**Article 34**  
**Official Languages**

The official and working languages of the Court shall be those of the Union.

**Article 35**  
**Institution of Proceedings before the General Affairs Section**

1. Cases brought before the Court by virtue of Article 31 of the present Statute shall be submitted by written application addressed to the Registrar. The subject of the dispute, the applicable law and basis of jurisdiction shall be indicated.
2. The Registrar shall forthwith give notice of the application to the Parties concerned.
3. The Registrar shall also notify, through the Chairperson of the Commission, all Member States of the Union and, if necessary, the organs of the Union whose decisions are in dispute.

**Article 36**  
**Institution of Proceedings before the Human and Peoples' Rights Section**

1. Cases brought before the Court relating to an alleged violation of a human or peoples' right shall be submitted by a written application to the Registrar. The application shall indicate the right (s) alleged to have been violated, and, insofar as it is possible, the provision or provisions of the African Charter on Human and Peoples' Rights, the Charter on the Rights and Welfare of the Child, Protocol on the Rights of

Women in Africa or any other legal instrument pertaining to human rights, ratified by the State concerned, on which it is based.

2. The Registrar shall forthwith give notice of the application to all parties concerned, as well as the Chairperson of the Commission.

### **Article 37 Provisional Measures**

1. The Court shall have the power, on its own motion or on application by the parties, to indicate, if it considers that circumstances so require any provisional measures which ought to be taken to preserve the respective rights of the parties.

2. Pending the final decision, notice of the provisional measures shall forthwith be given to the parties and the Chairperson of the Commission, who shall inform the Assembly.

### **Article 38 Representation of Parties**

1. The States, parties to a case, shall be represented by agents.

2. They may, if necessary, have the assistance of counsel or advocates before the Court.

3. The organs of the Union entitled to appear before the Court shall be represented by the Chairperson of the Commission or his or her representative.

4. The African Commission, the African Committee of Experts and other Inter-Governmental Organizations entitled to appear before the Court shall be represented by any person they choose for that purpose.

5. Individuals and Non-Governmental Organizations may be represented or assisted by a person of their choice.

6. The agents and other representatives of parties before the Court, their counsel or advocates, witnesses, and any other persons whose presence is required at the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties or the smooth functioning of the Court.

### **Article 39 Communications and Notices**

1. Communications and notices addressed to agents or counsel of parties to a case shall be considered as addressed to the parties.

2. For the service of all communications or notices upon persons other than the agents, counsel or advocates of parties concerned, the Court shall direct its request to the government of the State upon whose territory the notice has to be served.

3. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

#### **Article 40**

##### **Procedure Before the General Affairs Section**

1. When a case is submitted before the Court by virtue of Article 31 of the present Statute, the procedure shall consist of two parts: written and oral.
2. The written proceedings shall consist of the communication to the Court, the parties and if necessary, the organs of the Union whose decisions are in dispute, of memorials, counter-memorials and, if necessary, replies as well as all papers and documents in support.
3. The communications shall be made through the Registrar, in the order and within the time fixed by the Court.
4. A certified copy of every document produced by one party shall be communicated to the other party.
5. The oral proceedings shall, if necessary, consist of hearing by the Court of agents, counsels, advocates, witnesses and experts.

#### **Article 41**

##### **Procedure Before the Human and Peoples' Rights Section**

1. Whenever a case relating to an alleged violation of a human or peoples' right is submitted to the Court by virtue of Article 31 or 32 of the present Statute, and it declares the application admissible, the procedure shall consist of a written part and an oral part, if this proves to be necessary to the effective administration of justice.
2. The Court may hear a case after exhausting all internal recourse mechanisms, as understood by generally recognized principles of International law and within a period of six (6) months starting from the date on which the person whose rights are alleged to have been violated has taken cognizance of the final decision. This condition with regard to time limit shall not be applicable to cases originating from a State Party, the African Commission or the African Committee of Experts, and which have already been considered by one or the other of these two organs.
3. The Court shall rule on the admissibility of the application submitted by virtue of paragraph 1, sub-paragraph d), of Article 32 of the present Statute, taking into account the other conditions laid down in Article 42.
4. Before ruling on the admissibility of an application, the Court may seek the opinion of the African Commission or the African Committee of Experts whose opinion should be given as soon as possible.
5. The Court may deal with the merits of an application, or refer it to the African Commission or the African Committee of Experts.

6. If the Court decides to deal with the merits of an application, it shall proceed with the adversary hearing of the case with the agents and, if necessary, conduct an investigation for which the States concerned shall provide all the necessary facilities for it to be carried out effectively.

7. The Court shall be at the disposal of the parties concerned with a view to reaching an amicable settlement of the case based on the respect of human and peoples' rights as guaranteed by the African Charter and other instruments whose application is under the control of the Court. The proceedings described in this paragraph shall be confidential.

8. In the event of an amicable settlement, the Court shall drop the case from its schedule of hearings by a decision which shall be limited to a brief statement of the facts and the decision adopted.

#### **Article 42** **Conditions of Admissibility of Application by Individuals and Non-Governmental Organizations**

The Court may not deal with the merits of an application submitted by virtue of paragraph 1, *sub-paragraph d*), of Article 32 of the present Statutes if it:

- a) is anonymous;
- b) is incompatible with the provisions of the Constitutive Act, the African Charter, the African Charter on the Rights and Welfare of the Child or any other legal instrument invoked by the applicant;
- c) contains terms that are offensive or insulting to the State involved, its institutions or the Union;
- d) is limited exclusively to gathering information broadcast by the mass media;
- e) is essentially the same as a previous application examined by the Court or already submitted to another procedure of international investigation or settlement, if it does not contain any new facts.

#### **Article 43** **Public Hearing**

The hearing shall be public, unless the Court, on its own motion or upon application by the parties, decides that the public shall not be admitted.

#### **Article 44** **Record of Proceedings**

1. A record of proceedings shall be made at each hearing and shall be signed by the Registrar and the presiding Judge of the session.

2. This record alone shall be authentic.

#### **Article 45 Conduct of Proceedings**

Whenever a case is submitted to the Court by virtue of Article 31 of the present Statutes, it shall make orders for the conduct of the case.

#### **Article 46 Additional Information**

The Court may, before the hearing begins, call upon the agents to produce any relevant document or to provide any relevant explanations. Formal note shall be taken of any refusal.

#### **Article 47 Investigations and Expert Evidence**

The Court may, at any time, entrust any individual, body, bureau, commission or organ it may select, with the task of carrying out an enquiry or giving expert opinion.

#### **Article 48 Request for opinion or information from International Intergovernmental Organizations**

1. The Court may request from International Intergovernmental Organisations information relating to the case brought before it, and also receive the said information which shall be presented to the Court by these organisations on their own initiative.

2. Where a case submitted to the Court involves interpretation of the Constitutive Instrument of an International Intergovernmental Organisation or an international convention, the Registrar shall notify such organisation and communicate all the written proceedings to it for its opinion.

#### **Article 49 New Documents and Depositions**

After the Court has received the proofs and evidence within the time specified for the purpose, it may, unless it decides that the interests of justice so require, refuse to accept any further oral deposition or written evidence that any party may desire to present.

### **Article 50**

#### **Default Judgement**

1. Whenever one of the parties does not appear before the Court, or fails to defend the case against it, the other party may call upon the Court to give its judgement.
2. The Court must before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 30, 31 and 32 of the present Statute, but also that the claim is well founded in fact and law, and that the other party had due notice.
3. An objection by the party concerned may be lodged against the judgement within ninety (90) days of it being notified of the default judgement. Unless there is a decision to the contrary by the Court, the objection shall not have effect of staying the enforcement of the default judgement.

### **Article 51**

#### **Deliberations of the Court**

1. When, subject to the control of the Court, the agents, counsels and advocates have completed their submissions of the case, the President shall declare the hearing closed.
2. The Court shall adjourn to consider the judgement.
3. The deliberations of the Court shall take place in private and shall remain secret at all times.

### **Article 52**

#### **Majority Required for Decision of the Court**

1. Without prejudice to the provisions of paragraph 4, of Article 60 of the present Statute, the decisions of the Court shall be decided by a majority of the Judges present.
2. In the event of an equality of votes, the presiding Judge shall have a casting vote.

### **Article 53**

#### **Judgements and Decisions**

1. All judgements and decisions declaring the admissibility or inadmissibility of applications shall state the reasons on which they are based.
2. The judgement shall contain the names of the Judges who have taken part in the decision.
3. The judgement shall be signed by all the Judges and certified by the Presiding Judge and the Registrar. It shall be read in open session, due notice having been given to the agents.

4. The Parties to the case shall be notified of the judgement of the Court and it shall be transmitted to the Member States of the Union and the Commission.
5. The Executive Council shall also be notified of the judgement and shall monitor its execution on behalf of the Assembly

#### **Article 54 Dissenting Opinion**

If the judgement does not represent in whole or in part the unanimous opinion of the Judges, any Judge shall be entitled to deliver a dissenting opinion.

#### **Article 55 Compensation**

Without prejudice to its competence to rule on issues of compensation at the request of a party by virtue of paragraph 1(h), of Article 30 of the present Statute, the Court may, if it considers that there was a violation of a human or peoples' right, order any appropriate measures in order to remedy the situation, including granting fair compensation.

#### **Article 56 Binding Force and Execution of Judgements**

1. The decision of the Court has no binding force except between the parties and in respect of that particular case.
2. Subject to the provisions of paragraph 3, Article 50 of the present Statute, the judgement of the Court is final.
3. The parties shall comply with the judgement made by the Court in any dispute to which they are parties within the time stipulated by the Court and shall guarantee its execution.
4. Where a party has failed to comply with a judgement, the Court shall refer the matter to the Assembly, which shall decide upon measures to be taken to give effect to that judgement.
5. The Assembly may impose sanctions by virtue of paragraph 2 of Article 23 of the Constitutive Act.

#### **Article 57 Interpretation**

In the event of any dispute as to the meaning or scope of a judgement, the Court shall construe it upon the request of any party.

#### **Article 58 Revision**

1. An application for revision of a judgement may be made to the Court only when it is based upon discovery of a new fact of such nature as to be a decisive

factor, which fact was, when the judgement was given, unknown to the Court and also to the party claiming revision, provided that such ignorance was not due to negligence.

2. The proceedings for revision shall be opened by a ruling of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the revision admissible on this ground.

3. The Court may require prior compliance with the terms of the judgement before it admits proceedings in revision.

4. The application for revision shall be made within six (6) months of the discovery of the new fact.

5. No application may be made after the lapse of ten (10) years from the date of the judgement.

#### **Article 59 Intervention**

1. Should a Member State or organ of the Union consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene. It shall be for the Court to decide upon this request.

2. If a Member State or organ of the Union should exercise the option offered under paragraph 1 of the present Article, the interpretation contained in the decision shall be equally binding upon it.

3. In the interest of the effective administration of justice, the Court may invite any Member State that is not a party to the case, any organ of the Union or any person concerned other than the claimant, to present written observations or take part in hearings.

#### **Article 60 Intervention in a Case Concerning the Interpretation of the Constitutive Act**

1. Whenever the question of interpretation of the Constitutive Act arises, in a case in which Member States other than the parties to the dispute have expressed an interest, the Registrar shall notify all such States and organs of the Union forthwith.

2. Every State Party and organ of the Union so notified has the right to intervene in the proceedings.

3. The decisions of the Court concerning the interpretation and application of the Constitutive Act shall be binding on Member States and organs of the Union, notwithstanding the provisions of paragraph 1, of Article 56 of this Statute.

4. Any decision made by virtue of this Article shall be made by a qualified majority of at least two votes and in the presence of at least two-thirds of the members of the Court.

### **Article 61**

#### **Intervention in a Case concerning the Interpretation of Other Treaties**

1. Whenever the question is that of interpretation of other treaties ratified by Member States other than the parties to a dispute, the Registrar shall notify all such States and the organs of the Union forthwith.

2. Every State Party and organ of the Union so notified has the right to intervene in the proceedings, and if it exercises this right, the interpretation given by the judgement shall be equally binding upon it.

3. This Article shall not be applicable to cases relating to alleged violations of a human or peoples' right, submitted by virtue of the Articles 31 or 32 of the present Statute.

### **Article 62**

#### **Costs**

1. Unless otherwise decided by the Court, each party shall bear its own costs.

2. Should it be required in the interest of justice, free legal aid may be provided for the person presenting an individual communication.

## **Chapter V**

### **ADVISORY OPINION**

### **Article 63**

#### **Request for Advisory Opinion**

1. The Court may give an advisory opinion on any legal question at the request of the Assembly, the Parliament, the Executive Council, the Peace and Security Council, the Economic, Social and Cultural Council (ECOSOCC), the Financial Institutions or any other organ of the Union as may be authorized by the Assembly.

2. A request for an advisory opinion shall be in writing and shall contain an exact statement of the question upon which the opinion is required and shall be accompanied by all relevant documents.

3. A request for an advisory opinion must not be related to a pending application before the African Commission or the African Committee of Experts.

## **Article 64**

### **Service of Notice**

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all States or organs entitled to appear before the Court by virtue of Article 31 of the present Statute.
2. The Registrar shall also, by means of a special and direct communication, notify any State entitled to appear before the Court or any Intergovernmental Organisation considered by the Court, or should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.
3. Should any such State entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such State may express the desire to submit a written statement or to be heard, and the Court shall decide.
4. States and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other States or organizations in the form, to the extent, and within the time limits which the Court, or should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due course communicate any such written statements to States and organizations having submitted similar statements.

## **Article 65**

### **Delivery of Advisory Opinion**

The Court shall deliver its advisory opinion in open court, notice having been given to the Chairperson of the Commission and Member States, and other International Organisations directly concerned.

## **Article 66**

### **Application by Analogy of the Provisions of the Statute Applicable to Contentious Cases**

In the exercise of its advisory functions, the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

## **Chapter VI**

### **REPORT TO THE ASSEMBLY**

## **Article 67**

### **Annual Activity Report**

The Court shall submit to each ordinary session of the Assembly, a report on its work during the previous year. The report shall specify, in particular, the cases in which a party has not complied with the judgement of the Court.

## Chapter VII

### PROCEDURE FOR AMENDMENTS

#### Article 68

##### Proposed Amendments from a State Party

1. The present Statute may be amended if a State Party makes a written request to that effect to the Chairperson of the Commission, who shall transmit same to Member States within thirty (30) days of receipt thereof.
2. The Assembly may adopt by a simple majority, the proposed amendment after the Court has given its opinion on it.

#### Article 69

##### Proposed Amendments from the Court

The Court may propose such amendments to the present Statute as it may deem necessary, to the Assembly through written communication to the Chairperson of the Commission, for consideration in conformity with the provisions of Article 68 of the present Statute.

#### Article 70

##### Entry into Force of Amendments

The amendment shall enter into force for every State which has accepted it in conformity with its Constitutional laws thirty (30) days after the Chairperson of the Commission is notified of this acceptance.

2005

# Report of the Meeting of Government Legal Experts on the Merger of the African court on human and peoples' rights and the court of justice of the African Union

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