

**AFRICAN UNION**

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**EXECUTIVE COUNCIL**

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**23 – 27 January 2015**

**Addis Ababa, ETHIOPIA**

**EX.CL/888(XXVI)**

**2014 ACTIVITY REPORT OF THE AFRICAN COURT  
ON HUMAN AND PEOPLES' RIGHTS**

## 2014 ACTIVITY REPORT OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

### I. INTRODUCTION

1. The African Court on Human and Peoples' Rights (the Court) was established in terms 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"), which was 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, which became operational in 2006, is composed of eleven Judges and has its seat in Arusha, United Republic of Tanzania.

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

4. This Report, presented in conformity with Article 31 of the Protocol, describes the activities undertaken by the Court from January to December, 2014.

### II. Status of ratification of the Protocol and the deposit of the Declaration accepting the competence of the Court to receive cases from individuals and NGOs

5. As at 5 December 2014, the Protocol establishing the Court had been ratified by twenty eight (28) Member States of the African Union, namely: Algeria; Benin, Burkina Faso; Burundi; Congo; Côte d'Ivoire; Comoros; Gabon; the Gambia; Ghana; Kenya; Libya; Lesotho; Malawi; Mali; Mauritania; Mauritius; Mozambique; Niger; Nigeria; Uganda; Rwanda; Sahrawi Arab Democratic Republic; Senegal; South Africa; Tanzania; Togo; and Tunisia. See Table 1.

6. Of these 28 State Parties to the Protocol, only seven (7), namely: Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Rwanda and Tanzania, have deposited the declaration accepting the jurisdiction of the Court to deal with cases from individuals and non-governmental organizations. See Table 2.

<b>Table 1: List of countries that have ratified/acceded to the Protocol</b>				
<b>No.</b>	<b>Country</b>	<b>Date of Signature</b>	<b>Date of Ratification or Accession</b>	<b>Date of deposit</b>
1.	Algeria	13/07/1999	22/04/2003	03/06/2003
2.	Benin	09/06/1998	22/08/2014	22/08/2014
3.	Burkina Faso	09/06/1998	31/12/1998	23/02/1999

4.	Burundi	09/06/1998	02/04/2003	12/05/2003
5.	Congo	09/06/1998	10/08/2010	06/10/2010
6.	Cote d'Ivoire	09/06/1998	07/01/2003	21/03/2003
7.	Comoros	09/06/1998	23/12/2003	26/12/2003
8.	Gabon	09/06/1998	14/08/2000	29/06/2004
9.	The Gambia	09/06/1998	30/06/1999	15/10/1999
10.	Ghana	09/06/1998	25/08/2004	16/08/2005
11.	Kenya	07/07/2003	04/02/2004	18/02/2005
12.	Libya	09/06/1998	19/11/2003	08/12/2003
13.	Lesotho	29/10/1999	28/10/2003	23/12/2003
14.	Malawi	09/06/1998	09/09/2008	09/10/2008
15.	Mali	09/06/1998	10/05/2000	20/06/2000
16.	Mauritania	22/03/1999	19/05/2005	14/12/2005
17.	Mauritius	09/06/1998	03/03/2003	24/03/2003
18.	Mozambique	23/05/2003	17/07/2004	20/07/2004
19.	Niger	09/06/1998	17/05/2004	26/06/2004
20.	Nigeria	09/06/2004	20/05/2004	09/06/2004
21.	Rwanda	09/06/1998	05/05/2003	06/05/2003
22.	Sahrawi Arab Democratic Republic	25/07/2010	27/11/2013	27/01/2014
23.	Senegal	09/06/1998	29/09/1998	30/10/1998
24.	South Africa	09/06/1999	03/07/2002	03/07/2002
25.	Tanzania	09/06/1998	07/02/2006	10/02/2006
26.	Togo	09/06/1998	23/06/2003	06/07/2003
27.	Tunisia	09/06/1998	21/08/2007	05/10/2007
28.	Uganda	01/02/2001	16/02/2001	06/06/2001

# of Countries – 54, # of Signature – 52, # of Ratification – 28, # of Deposit -

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Source: African Union Website.

No.	Country	Date of Signature	Date of deposit
1.	Burkina Faso	14/07/1998	28/07/1998
2.	Côte d'Ivoire	19/06/2013	23/07/2013
3.	Ghana	09/02/2011	10/03/2011
4.	Malawi	09/09/2008	09/10/2008
5.	Mali	05/02/2010	19/02/2010
6.	Rwanda	22/01/2013	06/02/2013
7.	Tanzania	09/03/2010	29/03/2010

Source: African Union Website

Total # Seven (7)

### III. Operations of the Court

#### *i) Election and Swearing-in of new Members of the Court*

7. During its 25<sup>th</sup> Ordinary Session held from 24 to 25 June, 2014, the Executive Council of the African Union re-elected Justice Sylvain Oré (Côte d'Ivoire), and at its 23<sup>rd</sup> Ordinary Session held from 26 to 27 June, 2014 in Malabo, Equatorial Guinea, the Assembly of Heads of State and Government of the African Union re-appointed him for a six year term.

8. The Executive Council also elected three new Judges who were appointed by the Assembly for the same term. The new Judges are:

- Mr. Rafea Ben Achour (Tunisia);
- Mrs. Solomy Balungi Bossa (Uganda); and
- Mr. Angelo Vasco Matusse (Mozambique)

9. The new Judges replaced Lady Justice Sophia A. B. Akuffo from Ghana and Justice Bernard M. Ngoepe from South Africa, who had served the statutory two terms required by the Protocol, and were thus not eligible for re-election, as well as Justice Kimelabalou Aba (Togo), who was not re-elected.

10. Pursuant to Article 16 of the Protocol and in conformity with Rule 4(2) of the Rules of Court (hereinafter referred to as "the Rules"), the new Judges were sworn-in at a public sitting of the Court, on 8 September 2014, at the Seat of the Court in Arusha, Tanzania, in accordance with Rule 2(1) of the Rules.

#### *ii) Bureau of the Court*

11. On 8 September, 2014, the Court elected, for a period of two years, its new Bureau composed as follows:

- Hon. Justice Augustino S. L. Ramadhani – President;
- Hon. Lady Justice Elsie N. Thompson - Vice-President.

#### *iii) Current composition of the Court*

12. The current composition of the Court is attached to this Report as **Annex I**.

### IV. Activities undertaken by the Court

13. During the period under review, the Court undertook a number of judicial as well as non-judicial activities.

***i) Judicial Matters***

**14.** The judicial activities undertaken by the Court relate to the receipt and handling of judicial matters, in particular, case management, organisation of public hearings and delivery of judgments, rulings and opinion.

**15.** From January to December, 2014, the Court registered three (3) new applications and two (2) requests for advisory opinion. The number of applications received by the Court since its establishment now stands at thirty-two (32), while the number of requests for advisory opinion has increased to eight (8).

***a. Sessions held in 2014***

**16.** During the reporting period, the Court held four (4) ordinary sessions as follows:

- 32<sup>nd</sup> Ordinary Session held from 10 to 28 March, 2014, in Arusha, Tanzania;
- 33<sup>rd</sup> Ordinary session held from 26 May to 13 June, 2014 in Arusha, Tanzania;
- 34<sup>th</sup> Ordinary session held from 8 to 19 September, 2014, in Arusha, Tanzania;
- 35<sup>th</sup> Ordinary session held from 24 November to 5 December 2014, in Addis Ababa, Ethiopia.

***b. Case Management***

**17.** The Court continues to manage the applications and requests for advisory opinion that are pending before it.

**18.** During the period under review, the Court disposed of eight (8) cases, including one application for review and one application for interpretation of judgment. This brings to twenty five (25) the total number of applications and to five (5) the total number of requests for advisory opinion finalized by the Court.

**19.** During the same period, the Court also delivered an Advisory Opinion in the matter of Request No. 002/2013 – African Committee of Experts on the Rights and Welfare of the Child.

**20.** Table 3 below shows the number of contentious matters and Request for advisory opinion finalized by the Court during this period.

No.	Application No.	Applicant	Respondent	Date Received	Date of Judgement/ Ruling
1.	003/2011	Urban Mkandawire (Application for Review and Interpretation of Judgment)	Republic of Malawi	13/03/2011	28/03/ 2014
2.	011/2011 (Application for reparations)	Rev. Christopher Mtikila	United Republic of Tanzania	10/06/2011	13/06/2014
3.	013/2011	Beneficiaries of the late Norbert Zongo-Abdoulaye Nikiema, Ernest Zongo, Blaise Ilboudo and <i>Burkinabe Human &amp; Peoples' Rights Movement</i>	Burkina Faso	11/12/2011	28/03/2014
4.	001/2012	Frank David Omary	United Republic of Tanzania	27/01/2012	28/03/2014
5.	003/2012	Joseph Peter Chacha	United Republic of Tanzania	30/09/2011	28/03/2014
6	003/2013	Rutabingwa Chrysanthe	Republic of Rwanda	18/03/2013	14/04/2014
7.	004/2013	Issa Lohé Konaté	Burkina Faso	17/06/2013	05/12/2014
1. Request No. 002/2013 – African Committee of Experts on the Rights and Welfare of the Child.					

**21.** All the decisions taken on the above matters have been communicated to the parties and to the AU Commission, and to all Member States, through the AU Commission, in accordance with Article 29 of the Protocol.

**22.** The Court has a total of eight (8) applications in contentious matters and three (3) requests for advisory opinion pending before it, which it is processing in accordance with the relevant provisions of the Protocol and the Rules.

23. Table 4 below shows the contentious matters pending before the Court as at December 2014.

No.	Application No.	Applicant	Respondent	Date received
1.	006/2012	African Commission on Human and Peoples' Rights	Republic of Kenya	18/05/12
2.	002/2013	African Commission on Human and Peoples' Rights	Libya	31/01/2013
3.	005/2013	Alex Thomas	United Republic of Tanzania	02/08/2013
4.	006/2013	Wilfred Onyango Nganyi & 9 Others	The United Republic Of Tanzania	23/07/2013
5.	007/2013	Mohamed Abubakari	United Republic of Tanzania	08/10/2013
6.	001/2014	<i>Association pour la Protection des Droits de l'Homme</i>	Cote d'Ivoire	12/07/2014
7.	002/2014	Faustin Uwintije	Rwanda	06/08/2012
8.	003/2014	Ingabire Victoire Umehoza	Rwanda	08/10/2014
<b>b. Requests for Advisory Opinion</b>				
	<b>Request</b>	<b>Author</b>		
1.	Request No. 001/2013	Socio-Economic Rights and Accountability Project		
2.	Request No. 001/2014	Coalition on the International Criminal Court, Legal Defence & Assistance Project, Civil Resource Development & Documentation Center and Women Advocates Documentation Center		
3.	Request No. 002/2014	Rencontre Africaine Pour la Defense des Droits de l'Homme ( <b>RADDHO</b> )		

**c. Public Sitings**

24. From January to December 2014, the Court organised seven (7) public sittings, to receive oral arguments from parties, as well as to deliver judgments/rulings/opinion.

25. Table 5 below indicates the public sittings organised during the period under consideration.

Table 5 – Public sittings organised in 2014					
No.	Date of Public sitting	Purpose of public sitting	Application	Applicant	Respondent
1.	20 – 21 March, 2014	Receive oral arguments	004/2013	Lohé Issa Konaté	Burkina Faso
2.	28 March 2014	Delivery of judgment	013/2011	Beneficiaries of the late Norbet Zongo–Abdoulaye Nikiema, Ernest Zongo, Blaise Ilboudo and <i>Burkinabe Human &amp; Peoples' Rights Movement</i>	Burkina Faso
	28 March 2014	Delivery of Ruling	003/2011	Urban Mkandawire	Republic of Malawi
	28 March 2014	Delivery of Ruling	001/2012	Frank David Omary	United Republic of Tanzania
	28 March 2014	Delivery of Ruling	003/2012	Joseph Peter Chacha	United Republic of Tanzania
3.	13/06/2014	Delivery of judgment on Reparation.	011/2011	Rev. Christopher Mtikila	United Republic of Tanzania
4.	27-28 November, 2014	Receive oral arguments from the parties	006/2012	African Commission on Human and Peoples' Rights	Republic of Kenya
5.	3-4 December, 2014	Receive oral arguments from the parties	005/2013	Alex Thomas	United Republic of Tanzania
6.	5 December, 2014	Delivery of Judgment	004/2013	Lohé Issa Konaté	Burkina Faso
7.	5 December, 2014	Delivery of Advisory Opinion	Request No. 002/2013	African Committee of Experts on the Rights and Welfare of the Child	



**d. Non-Compliance with Order of the Court**

**26.** Under Article 31 of the Protocol, in submitting its activity report to the Assembly, the Court "...shall specify, in particular, the cases in which a State has not complied with the Court's judgment".

**27.** During the 25<sup>th</sup> Ordinary Session of the Executive Council, the Court reported on Libya's continuous refusal to comply with the Court's Order of Provisional Measures issued on 15 March, 2013. The Executive Council, in its decision EX.CL/Dec.842(XXV) **welcomed** the response of Libya to the Court's Order of Provisional Measures in relation to a matter filed against the State Party before the Court, but **noted** that the response did not indicate the measures Libya had taken to implement the said Order, with regard to allowing "...the accused access to a lawyer of his choosing, family visits and to refrain from taking any action that may affect the Detainee's physical and mental integrity as well as his health..."; and **URGED** Libya "to inform the Court on the concrete measures it has taken to implement the Order of Provisional Measures...".

**28.** The delegation of the Court to the Executive Council Ordinary Session of June 2014 further discussed the matter with the Libyan delegation, and the latter informed the Court that all matters relating to the case should be addressed to the focal point appointed by Libya for all issues relating to the Court, H.E. Salim Maoloud Alfighi, Deputy Director, Department of Legal Affairs, at the Ministry of Foreign Affairs and International Cooperation of Libya,

**29.** On 14 July 2014, the Registry of the Court sent a letter to the said focal point, informing him of the information from the Libyan delegation, and sending him all documents relating to the case. The same letter was sent to and received by the Libyan Embassy in Addis Ababa, Ethiopia on 21 July, 2014. According to Airway Bill no. 803579179998, from FEDEX, the letter sent to the focal point was rerouted on 18 August, 2014 to the Libyan Embassy in Addis Ababa, Ethiopia, due to difficulties of delivery in Tripoli. The rerouted letter was received at the Libyan Embassy in Addis Ababa, Ethiopia on 21 August, 2014. It is important to note that the same letter was also sent to and received at the Libyan Embassy in Dar-es-Salaam, Tanzania on 12 November, 2014.

**30.** To date, the Court has not received an acknowledgement of receipt of the letter, let alone, a response and an indication of the measures taken by Libya to comply with the Court Order.

**31.** At its 34<sup>th</sup> Ordinary Session, the Court decided to notify the Applicant of Libya's continuous non-compliance.

**ii) Non-judicial activities**

**32.** The main non-judicial activities undertaken by the Court during the period under review are described below:

**a. Participation of the Court at the AU Summits**

**33.** The Court took part in the 26<sup>th</sup> Ordinary Session of the Permanent Representatives' Committee (PRC), from 21 to 23 January, 2014, the 24<sup>th</sup> Ordinary Session of the Executive Council, from 27 to 28 January, 2014, as well as the 22<sup>nd</sup> Assembly of Heads of State and Government of the African Union, held from 30 – 31 January, 2014, in Addis Ababa, Ethiopia; as well as the 27<sup>th</sup> Ordinary Session of the PRC, from 20 to 22 June, 2014, the 25<sup>th</sup> Ordinary Session of the Executive Council, from 23 to 25 June, 2014, and the 23<sup>rd</sup> Assembly of Heads of State and Government of the African Union, held from 26 to 27 June, 2014, in Malabo, Equatorial Guinea.

**b. Implementation of Executive Council Decisions**

**34.** During its 25<sup>th</sup> Ordinary Session, the Executive Council, in its decision EX.CL/Dec.842(XXV), requested the Court, in collaboration with the PRC, to take all necessary measures to present to the January 2015 Session of the Executive Council, the studies undertaken with respect to the establishment of a Legal Assistance Fund, the Continental Judicial Dialogue and a Concrete Reporting and Monitoring Mechanism for the Court.

**35.** The Court has prepared and submitted the above studies to the PRC, through the African Union Commission and is awaiting consultations with the said organs.

**36.** During its 27<sup>th</sup> Ordinary Session held in June 2014, the PRC deferred consideration of the Draft Concept Paper on the Declaration of 2016 as Africa Year of Human Rights with particular focus on the rights of women, and undertook to consider it during one of its meetings and report to the January 2015 session of Council. The Court, in collaboration with other relevant stakeholders, has resubmitted the Concept Paper to the PRC and awaits consultation of the latter on the same.

**c. Execution of the 2014 budget**

**37.** The budget appropriated to the Court for 2014 stood at \$9,619,525, comprising of the Member States' funded component of \$6,938,014 and the Donor funded component of \$1,681,511. Additionally, the Policy Organs also approved a total of \$1,000,000 to be used for the recruitment of the first contingent of critical staff approved under the new structure of the Registry of the Court in January 2012.

**38.** The total projected budget execution for 2014 amounts to \$7,835,240, which represents a budget execution rate of 81.5%.

**39.** This level of execution comprises \$6,641,406 from the Member States funded budget representing an 83.7% execution level and \$1,193,833 under the donor funded budget which is a 71.0% execution level.

40. In July 2014, the Accounting Officer, approved some internal budget virements from some budget lines with low execution to budget lines forecast to require more funds in line with the provisions of the new financial rules and regulations (2014). A total of \$204,294.30 was approved out of the requested amount of \$211,689.30.

## V. Staff recruitment and development

### a. Staff Recruitment

41. As at December 2014, of the 90 positions on the approved structure of the Registry, 55 positions had been filled (including short-term and fixed term staff). The recruitment exercise for other positions have been suspended due to lack of funds.

### b. Staff development

42. During the period under consideration, Judges and staff of the Registry participated in a number of training activities, aimed at enhancing their capacity to ensure higher productivity.

43. Table 6 below indicates the training activities undertaken during this period.

Table 6 – Training activities undertaken in 2014				
N°	Training Activity	Funding Institution	Participants	Date and Venue
1.	Judicial Education Exchange	GIZ	Judges of the Court and Legal Officers	5-7 March 2014, in Arusha, Tanzania
2.	African Law Library International Workshop	MS	Librarian	28 – 30 March, 2014, Cotonou, Benin
3.	Language courses (Arabic, English, French and Kiswahili)	MS	On-going (all staff)	Arusha, Tanzania, from January to December, 2014
4	Staff retreat	GIZ	All Staff	29/09 – 3/10/2014, Tanga, Tanzania
5	Induction/ exchange visit for new staff to AUC	EC	Finance Officer, Project Finance and Administrative Assistant and HR Assistant Training	AUC, Addis Ababa, 11 to 15/08/2014
6	Finance for non-Finance Managers	EC	12 Staff members	Arusha, Tanzania, 20 to 24/10/2014

7	Short course on legal translation (English and French Languages)	EC	English Interpreter/Translator and French Interpreter/Translator	Nairobi, Kenya, 6 to 10/10/2014
8	Dissemination of information and maintenance of the website	EC	5 Staff members	Arusha, Tanzania, from 6 to 10/10/2014
9	Finance Project Management Training	EC	Finance Officer and Project Finance and Administration Officer	22 to 26/09/2014, Manzini, Swaziland
10	Training of Trainers	EC	15 Staff members	Arusha, Tanzania 3 to 7/11/2014
11	Intensive language training in English	MS	1 Judge and 1 Staff	Nairobi, Kenya 6 to 26/07/2014 for staff, and 13 to 30/10/2014 for Judge
12	Intensive language training in French	MS/OIF	1 Judge and 1 Staff	La Reunion, France 20/09 to 4/10/2014
13	Audit, risk and Governance in Africa	EC	Senior Audit Officer	1 – 5 September 2014, Livingstone, Zambia
14	AU Audit Retreat	EC	Senior Audit Officer	Addis Ababa, Ethiopia 5 to 7 December 2014

## VI. Promotional activities

44. During the period under consideration, the Court undertook a number of promotional activities, aimed at raising awareness among stakeholders, about its existence. The activities undertaken included inter alia, sensitization visits and seminars, as well as participation in seminars and conferences organised by other stakeholders.

### a. Sensitization visits

45. During the period under consideration, the Court undertook four (4) sensitization visits to the Republic of Togo, the Republic of Benin, the Republic of Zambia and the Federal Democratic Republic of Ethiopia.

46. The aim of the sensitization visits was to raise public awareness among human rights stakeholders in these countries, and to encourage the States concerned, to ratify

the Protocol and to make the declaration required under Article 34(6) of the Protocol, as the case may be.

47. During the sensitization visits, the Court, in collaboration with the governments of the countries concerned, also organised a half-day seminar for human rights stakeholders in these countries, bringing together government officials, human rights NGOs, the National Human Rights Institutions, lawyers, religious personalities and the media.

***i)* Sensitization visit to the Republic of Togo**

48. The sensitization visit to the Republic of Togo took place from 12 to 13 May, 2014. During the visit, the delegation of the Court held fruitful discussions with a number of senior government officials, including, the Prime Minister; the Minister of Foreign Affairs and International Cooperation; the Minister of Justice and Relations with State Institutions, the Minister of Human Rights, the Consolidation of Democracy, and Responsible for the Implementation of the Recommendations of the Truth, Justice and Reconciliation Commission; the Chief Justice; the Vice-President of the Constitutional Council and the President of the National Human Rights Commission. The delegation of the Court also delivered a public lecture to students of the Faculty of Law of the University of Lomé.

49. The Government of Togo expressed its support for the work of the Court in particular, and African Union institutions in general, and undertook to take all necessary and urgent measures to ensure the declaration required under Article 34(6) of the Protocol is deposited.

***ii)* Sensitization visit to Benin**

50. The visit to the Republic of Benin took place from 15 to 16 May, 2014. During the visit, the delegation held fruitful discussions with a number of senior government officials including, the Minister of African Integration, the *Francophonie* and Beninese in the Diaspora; the Director of Cabinet at the Ministry of Justice, Legislation and Human Rights, representing the Minister of Justice and Keeper of the Seals; the President of the Constitutional Court; and the Chief Justice. The delegation of the Court also delivered a public lecture to students at the Faculty of Law of the University of Abomey-Calavi.

51. The Government of Benin informed the delegation that it already adopted a law to ratify the Protocol, and the same would be deposited with the AU soon.

52. The Court is pleased to report that the Republic of Benin deposited the instrument of ratification on 22 August, 2014, making it the 28<sup>th</sup> State Party to the Protocol.

**iii) Sensitization visit to Zambia**

**53.** The visit to the Republic of Zambia took place from 13 to 14 October, 2014. During the visit, the delegation held fruitful discussions with a number of senior government officials including, the Vice President, the Minister of Home Affairs, the Deputy Minister of Justice, the Deputy Minister of Foreign Affairs, the Speaker of Parliament, the Acting Chief Justice and the Director of the Zambian Human Rights Commission. The delegation of the Court also delivered a public lecture to students at the Faculty of Law of the University of Zambia.

**54.** The Government of Zambia informed the delegation that it would engage with relevant stakeholder in the country to discuss the possibility of ratifying the Protocol and making the Declaration.

**iv) Sensitization visit to Ethiopia**

**55.** The visit to the Federal Democratic Republic of Ethiopia took place from 19 to 20 November, 2014. During the visit, the delegation held fruitful discussions with a number of senior government officials including, the Minister of Justice, the Vice President of the Supreme Court, the Committee of Legal, Justice and Administrative Affairs of the House of Peoples' Representatives and the Chief Commissioner of the Ethiopian Human Rights Commission.

**56.** The Government of Ethiopia informed the delegation that the process of ratifying the Protocol and making the declaration was underway.

**b. Regional Sensitization Seminar for Southern Africa**

**57.** The Court, with financial support of the German International Cooperation (GIZ), organized a 3-day Regional Sensitization Seminar on the Promotion of the Court for Southern Africa, on the theme "*The African Court on Human and Peoples' Rights: your new partner in strengthening the protection of human rights in Africa*", from 15 to 17 October, 2014 in Lusaka, Zambia.

**58.** The objectives of the Seminar were: to publicize the Court to the major stakeholders in the region, to encourage States that have not yet done so, to ratify the Protocol and make the declaration provided for under Article 34(6) thereto, to sensitize potential users of the Court on how to seize the Court and the procedure to follow, to encourage the public to seize the Court in matters relating to human rights and encourage participants to use the Court to seek advisory opinion.

**59.** The seminar, which was officially opened by the Minister of Justice of the Republic of Zambia, was attended by, amongst others, the President and a Judge of the Court, representatives of the government of Zambia, representatives of the judiciary of Zambia, Civil Society Organizations (CSOs) and over seventy (70) participants representing a wide range of human rights stakeholders from thirteen (13) of the fifteen (15) countries from the Southern African Region, namely: Angola, Botswana,

Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Tanzania, South Africa, Swaziland, Zambia and Zimbabwe.

**60.** The participants came from various walks of life, including, Bar Associations, National Human Rights Institutions, the Academia, the Media, International organizations, Non-Governmental Organizations (NGOs), the International Community, Parliament and University students. The Seminar was closed by the Solicitor General of the Republic of Zambia.

**61.** At the end of the Seminar, participants adopted conclusions in which they expressed their readiness to work with the Court, in collaboration with other relevant stakeholders in their respective countries, as well as across the continent, to promote the Court and ensure its effectiveness.

***c. Other promotional activities***

**62.** In addition to the foregoing activities, the Court also participated in a number of promotional activities organized by other stakeholders. Below is a list of other promotional activities the Court was engaged in during the period under consideration:

- i) Adjudicating the International Rounds of the Oxford University Price Moot Court Competition, in Oxford, United Kingdom from 1-4 April 2014;
- ii) Lecture at the LUISS Guido Carli University, Rome, Italy on 10 April, 2014;
- iii) The Glion Human Rights Dialogue 2014, in Montreaux, Switzerland, from 13-14 May 2014;
- iv) The Commonwealth Judicial Education Institute (CJEI) Biennial Meeting for Commonwealth Judicial Educators, in Bermuda, 12 - 14, May, 2014;
- v) The International Conference on Arab Court of Human Rights, held in Manama, Bahrain, from 25 to 26 May 2014;
- vi) Moot Court Competition organized by the Centre for Human Rights, 5-6 September, 2014, in Nairobi, Kenya;
- vii) Yale Law School, Global Constitutionalism Seminar 2014, held at New Haven, Connecticut, USA, from September 17-20, 2014;
- viii) The Pan-African Parliament (PAP) Development Partners Round Table Meeting, held in Nouakchott, Mauritania from 24 to 26 September, 2014;
- ix) Audience with the Interim President of the Republic of Tunisia in Tunis, Tunisia on 4 October, 2014;

- x) 3rd Partners Workshop of the African Law Library (ALL) held in Rabat, Kingdom of Morocco from 14-16 October 2014, Rabat;
- xi) The UN Meeting with Regional Human Rights Bodies, held in Geneva, Switzerland, from 8 to 9 October, 2014;
- xii) The Konrad Adenauer Stiftung (KAS) and Pan African Lawyers' Union (PALU) Conference on "Current role and proposed evolution of the African Court: Keys for a comprehensive engagement of the African human rights system", held in Arusha, Tanzania, from 9-10 October 2014;
- xiii) Dialogue on the 'End of an Era of Intervention? Lessons for a New Generation of Peace Missions' held at the Tswalu Kalahari Reserve, South Africa, from 17–19 October 2014;
- xiv) The International Conference on Indo-US relations and South Asia" , held in Punjab, India, from 29-30 October, 2014;
- xv) Celebrations of the 20<sup>th</sup> Anniversary of the establishment of the International Criminal Tribunal for Rwanda (ICTR) – 20 years of the Legacy of the ICTR, held in Arusha, Tanzania, from 4 to 8 November, 2014;
- xvi) The International Conference on the Challenges to Human Security and Human Rights in the Arab Region, held in Doha, Qatar, from 5 to 6 November, 2014; and
- xvii) Expert Meeting on International Criminal Justice in Africa, held in Arusha, Tanzania, from 12 to 13 November, 2014.

### **Participation in AU Initiatives**

**63.** The Court was invited, and participated in a number of AU initiatives, including, *inter alia*:

- i) Participating as part of the AU Observer Mission to the General Elections in the Republic of South Africa, from 30 April to 10 May, 2014;
- ii) Consultations with the Working Group on Agenda 2063 on 10 April, 2014 in Arusha, Tanzania;
- iii) Participation in the African Governance Architecture (AGA) planning Meeting, in Cape Town, South Africa, from 17 to 24 May, 2014;
- iv) Participation in the meeting of the Specialised Technical Committee on Justice and Legal Affairs in Addis Ababa, Ethiopia, from 5 – 17 May, 2014;



- v) Participation in the AU Mission to the Central African Republic from 17 to 20 February 2014;
- vi) Participation in the AU Commission of Inquiry on South Sudan from 24 April to 2 May, 2014; and
- vii) Participation in the AU Commission of Inquiry on South Sudan from 19 to 23 May, 2014;
- viii) The High Level Meeting on Silencing the Guns, held in Dakar, Senegal, from 30 to 31 October, 2014.

### **Networking**

**64.** In furtherance of the good relationship between the two institutions, the International Criminal Tribunal for Rwanda (ICTR) donated furniture and some courtroom equipment to the Court, as its contribution to the advancement of human rights on the continent.

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

**65.** The Court and the African Commission continue to engage with each other, to strengthen their relationship and consolidate the complementarity envisaged in the Protocol. During the period under review, the Fifth and Sixth Meetings of the Bureaux of the two institutions took place in Addis Ababa, Ethiopia on 24 January and Kigali, Rwanda on 16 July, 2014, respectively. During this meeting, the two institutions discussed ways and means of strengthening their working relationship in a bid to enhance the promotion and protection of human rights on the continent. The two institutions also held a joint press conference and organised a joint exhibition on the side-lines of the January 2014 Summit.

**66.** The two institutions also held their Third Annual Meeting from 18 – 19 July, 2014, in Kigali, Rwanda.

**67.** Apart from the above meetings, the Court was duly represented at the 55<sup>th</sup> Ordinary Session of the African Commission, held in Luanda, Angola, in April/May 2014.

### **VIII. Cooperation with external partners**

**68.** The Court continues to work with external partners in the discharge of its mandate. The two principal partners of the Court, namely, the European Commission (EC) and the German International Cooperation (GIZ), continue to support the capacity building as well as the outreach programmes of the Court, including training of staff, sensitization missions, seminars and conferences.

69. Other partners of the Court include the United Nations Development Programme (UNDP) and the *Organization Internationale de la Francophonie* (OIF). The UNDP, during the period under review, provided technical assistance for the installation of courtroom technology and case management software, while the OIF continues to facilitate the participation of Judges and staff of the Registry in intensive French Language Training programme.

## **IX. Host agreement**

### ***Premises of the Court***

70. The current premises being used by the Court have become very small to accommodate the growing number of staff. In spite of the measures taken to partition some offices, it has become evident that another structure has to be urgently provided to accommodate additional staff.

71. The host government, as an interim measure, is in the process of obtaining another building within close proximity to the current temporary premises of the Court, to ease the acute office space problem. As a long term measure, the government is working with the Court on the construction of the permanent premises, and to this end, has submitted to the Court, architectural designs of the said premises for the Court's comments.

## **X. Assessment and Recommendations**

### ***i) Assessment***

72. During the period under review, the Court made some achievements both in its judicial and non-judicial activities. From a judicial perspective, the Court delivered four (4) judgments, three (3) rulings and an Advisory Opinion. The judgments have been transmitted, through the AUC, to Member States and the Executive Council, for the latter to monitor their execution on behalf of the Assembly, in accordance with Article 29 (2) of the Protocol. The Rulings have been notified to the parties, while the Advisory Opinion has been transmitted to the relevant entities provided for in the Rules.

73. To ensure effective discharge of its mandate, the Court is moving towards the modernization of its case management processes, and to this end, has initiated the installation of courtroom technology and case management software to enhance the effective management of cases. The process to establish a Legal Assistance Fund is underway, and is intended to provide indigent applicants with effective access to the Court and to present their cases in a structured manner that will provide the Court with cogent information to make quality decisions. These two initiatives are aimed at ensuring speedy consideration and finalization of cases.

74. The decision of the AU to institutionalise a continental judicial dialogue will go a long way to strengthen the relationships between the Court and national and sub-regional judiciaries, as well as other quasi-judicial bodies and human rights stakeholders

on the continent, and facilitate the dissemination and application of the judgments of the Court. To manifest its commitment in this regard, the Executive Council requested the Court, at its 24<sup>th</sup> Ordinary Session held in January 2014, to carry out a study on the advisability and feasibility, as well as the financial implications of institutionalizing such a Dialogue.

**75.** On the request of the Executive Council, the Court, in collaboration with the PRC, has undertaken a study and proposed a concrete reporting and monitoring mechanism that will ensure proper monitoring of compliance with the judgments of the Court. The establishment of a strong and viable judicial system within the African Union structure is indispensable to the realisation of the objectives of the Union.

**76.** The above positive developments notwithstanding, the Court continues to encounter challenges in the discharge of its mandate. These challenges include, among others, lack of cooperation from States, low levels of ratifications, deposit of declarations and insufficient resources.

**77.** Although Libya reacted to the Court's Order of Provisional Measures, it has failed to indicate the concrete measures it has taken to implement the said Order. This was reported by the Court to the 25<sup>th</sup> Ordinary Session of the Executive Council, and the latter urged Libya to "inform the Court on the concrete measures it has taken to implement the Order of Provisional Measures". To date, Libya has not informed the Court of the measures it has taken to comply with the said Order.

**78.** The failure of Libya to comply with the Court Order or to inform the Court on measures it has taken is regrettable. Under Article 30 of the Protocol, Libya, (and for that matter, all State Parties) undertook to comply with the judgment of the Court.

**79.** In the circumstances, the Executive Council is invited to take the necessary measures, on behalf of the Assembly, to ensure that Libya complies with the Order of the Court.

**80.** A major obstacle to the effective discharge of the Court's mandate is the low level of ratification and even lower number of declarations made. Seventeen years after the adoption of the Protocol establishing the Court, the Protocol has been ratified by only 28 Members of the African Union, and even more worrying is the fact that of these 28, only 7 have made the declaration required under Article 34(6) of the Protocol, recognising the competence of the Court to receive cases from individuals and NGOs.

**81.** In June 2014, the Executive Council, noted "with concern that, sixteen years after its adoption, only twenty seven Member States of the African Union have ratified the Protocol establishing the Court and only seven of the twenty seven State Parties have made the declaration required under Article 34 (6) of the Protocol, allowing individuals and NGOs to bring cases to the Court", and invited those Member States that had not already done so, to accede to the Protocol and make the declaration required under Article 34 (6) of the Protocol. The Executive Council further urged "concerned Member States that have not already done so, to accede to the Protocol and make the

Declaration before January 2016”, as a manifestation of their commitment to the celebration of 2016 as Africa Year of Human Rights.

**82.** Since January 2014, only two countries, that is, the Sahrawi Arab Democratic Republic (SADR) and the Republic of Benin, have ratified the Protocol. The Court has been informed that some countries have completed the national processes of ratifying the Protocol but have not yet deposited the instruments of ratification with the relevant authorities within the African Union. The Court takes this opportunity to encourage those countries to complete the process by depositing the instruments of ratification.

**83.** The establishment of the Court was premised on the realization that continental integration, peace and development must be grounded on a firm human rights foundation. Its establishment was also an attempt by African leaders to fight impunity and ensure that individual and group disputes with member states concerning human rights are settled within a proper holistic judicial framework.

**84.** The fact that only 28 States are parties and only 7 have made the required declaration means that the Court does not have the jurisdiction to hear cases against half the Member States of the Union because the States have not ratified the Protocol establishing the Court. Effectively therefore, the Court does not have the legal capacity to receive cases for alleged human rights violations from the greater majority of citizens of the Member States of the Union, because they have either not ratified the Protocol or made the declaration.

**85.** It should be noted that the establishment of the Court was aimed at enhancing the protection and enjoyment of human rights by individuals. Ironically, after the establishment of the Court, those very individuals have been barred from accessing the Court.

**86.** From the administrative point of view, the inadequate human and financial resources have affected the smooth functioning of the Court. Although the Executive Council approved 44 new positions for the Registry of the Court in 2012, it was only in May 2013, that the Council approved funding for the recruitment of some of the staff. In May 2014, the Court completed the recruitment of 8 staff, who assumed duty in August 2014.

**87.** Recruitment for the remaining positions has been suspended due to lack of funds and there is no indication as to when funds will be made available for the recruitment.

**88.** This uncertainty regarding the availability of funds has serious impact on the ability of the Court to effectively discharge its mandate, and leaves the administration of justice at the mercy of whether or not funds are available. It also cast aspersions on the independence of the Court, in particular, its ability to shape a truly effective continental judicial body.

**89.** The Court therefore welcomes the decision of the Executive Council in June 2014, requesting the Court, in collaboration with the PRC and the AUC, to undertake a

feasibility study on the establishment of an Endowment Fund or Trust Fund for the Court, including in particular, the financial implications on Member States' assessment and submit a report to the June 2015 session of the Executive Council. The said study will be submitted to Council in June 2015.

**90.** A further difficulty facing the Court is the shortage of office space. While the host government is in the process of securing another temporary building to ease the problem, it is important to ensure that a durable solution to the problem is found by constructing a permanent seat for the Court.

**91.** The Court notes that a lot of work has been done in the preparatory stages of constructing its permanent premises, however, the actual construction has not yet started.

**92.** The Court nevertheless, expresses 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 temporary buildings to serve as its seat, among other facilities. The Court also appreciates the support from all its collaborating partners.

***ii) Recommendations***

**93.** If truly the Court is to make any meaningful contribution to the development of the continent, Member States have to ensure that it is provided with the necessary tools and support to effectively discharge its mandate. In this regard, the Court submits the following recommendations for consideration by the Assembly of the Union:

- i) The Member States of the Union that have not yet ratified/acceded to the Protocol establishing the Court and or made the Declaration under Article 34(6) thereof, should do so before January, 2016;
- ii) The African Union should manifest its commitment to the ideals of human rights by repealing the requirement of a declaration under Article 34(6);
- iii) In accordance with Article 30 of the Protocol, Member States should commit to unconditionally comply with the judgments of the Court;
- iv) The Assembly of Heads of State and Government should provide the necessary resources to enable the Court to recruit and fill the structure of the Registry approved in January 2012 by the Executive Council;
- v) The Assembly should adopt the studies undertaken by the Court to:
  - Establish a concrete reporting and monitoring mechanism for the Court;
  - Institutionalize a Continental Judicial Dialogue;

- The Embellishment of the Legal Aid Fund; and
- The adoption of the Concept Paper on the Declaration of 2016 as Africa Human Rights Year.

**EX.CL/888(XXVI)**  
**Annex**

**LIST OF JUDGES OF THE AFRICAN COURT  
ON HUMAN AND PEOPLES' RIGHTS  
AS AT DECEMBER 2014**

**LIST OF JUDGES OF THE AFRICAN COURT  
ON HUMAN AND PEOPLES' RIGHTS  
AS AT DECEMBER 2014**

No.	Name	Term		Country
		Duration	Expiry	
1.	Justice Augustino S. L. Ramadhani	6	2016	Tanzania
2.	Justice Elsie Nwanwuri Thompson	6	2016	Nigeria
3.	Justice Gérard Niyungeko	6	2018	Burundi
4.	Justice Fatsah Ouguergouz	6	2016	Algeria
5.	Justice Duncan Tambala	6	2016	Malawi
6.	Justice Sylvain Oré	6	2020	Côte d'Ivoire
7.	Justice El Hadji Guissé	6	2018	Senegal
8.	Justice Ben Kioko	6	2018	Kenya
9.	Justice Raafa Ben-Achour	6	2020	Tunisia
10.	Justice Solomy Bossa Balungi	6	2020	Uganda
11.	Justice Angelo Vasco Matusse	6	2020	Mozambique



2015

# 2014 activity report of the African court on human and peoples' rights

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