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**Assembly/AU/8 (VIII)**

**ACTIVITY REPORT OF THE COURT FOR 2006**

## ACTIVITY REPORT OF THE COURT FOR 2006

### INTRODUCTION

1. The African Court on Human and People's Rights was established by the Protocol concluded on 9 June 1998 at Ouagadougou, Burkina Faso. According to Article 31 of the Protocol:

“The Court shall submit to each regular session of the Assembly a report on its work during the previous year. The report shall specify, in particular, the cases in which a State has not complied with the court's judgment”.

The Present report has been prepared in keeping with this Article. It should however be noted, as shall be seen later<sup>1</sup>; that for the year 2006, the activities of the Court cover only a period of six months since it was only in early July 2006 that the Judges were sworn in and officially assumed their duties.

The report reviews the establishment of the Court, its activities since its members assumed duty, then makes a tentative evaluation of the period ended and also ensuing recommendations.

### **I. ESTABLISHMENT OF THE COURT**

#### **A) Entry into force of the Protocol establishing the Court**

2. The establishment of the Court entailed the entry into force of the Protocol setting it up. According to Article 34.3 thereof, “The Protocol shall come into force thirty days after fifteen instruments of ratification or accession have been deposited”. The fifteenth instrument of ratification was deposited on 26 December 2003. Therefore the Protocol came into force on 25 January 2004.

#### **B) Election of Court Members**

3. Articles 11 to 14 of the Protocol define the profile of candidates for membership of the Court and the process for designating candidates and electing judges.

The process for designating judges as laid down by these provisions started on 4 May 2004, but was interrupted following the decision taken by the Assembly of Heads of State and Government meeting at Addis Ababa, Ethiopia, from 6 to 8 July 2004 (Assembly/AU/Dec.45(III)). They decided to merge the African Court on Human and People's Rights and the Court of Justice of the African Union provided for by the Constitutive Act of the Organization.

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<sup>1</sup> See below, paragraphs 5 and following.

Following the Decision adopted by the Assembly of Heads of State and Government at Sirte, Libya, from 4 to 5 July 2005 (Assembly/AU/Dec.83(V)), requesting that: "All the measures necessary for the functioning of the African Court on Human and People's Rights be taken including particularly the election of the judges, the determination of the budget and the operationalization of the Registry", the process resumed in July 2005. The process culminated with the election of the first judges of the Court by the Executive Council, and their appointment by the Assembly of Heads of State and Government, meeting at Khartoum, Sudan, in January 2006. The list of the judges elected, stating their nationalities and the duration of the mandates, features in an Annex of this report<sup>2</sup>.

### **C) Taking of Oath by Judges of the Court**

4. Article 16 of the Protocol establishing the Court provides that: "After their election, the judges of the Court shall make a solemn declaration to discharge their duties impartially and faithfully".

It was not until 2 July 2006, during the meeting of the Assembly of Heads of State and Government held at Banjul, Republic of The Gambia, that the African Union Commission was able to organize the oath-taking ceremony. The judges were sworn in by the incumbent Chairperson of the Assembly.

## **II. COURT ACTIVITIES SINCE ITS MEMBERS ASSUMED OFFICE**

### **A) Election of the Bureau of the Court**

5. According to Article 21.1 of the Protocol, "The Court shall elect its President and one Vice-President for a period of two years. They may be re-elected only once".

Due to organizational problems and the lack of time, it was not possible for the Court to elect its Bureau members at the first session held at Banjul, The Gambia, from 3 to 5 July 2006. This issue was postponed to its second session.

At that session held at Addis Ababa, Ethiopia, from 18 to 21 September 2006, the Court's Bureau was constituted as follows:

President:	Mr. Gerard Niyungeko
Vice-President:	Mr. Modibo Tounty Guindo

### **B) Court Sessions**

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<sup>2</sup> Article 15 of the Protocol provides that: "The judges of the Court shall be elected for a period of six years and may be re-elected only once. The terms of four judges elected at the first election shall expire at the end of two years, and the terms of four more judges shall expire at the end of four years. The judges whose terms are to expire at the end of the initial periods of two and four years shall be chosen by lot to be drawn by the Secretary-General of the OAU immediately after the first election has been completed".

6. The Court has held three sessions, since its members were sworn in on 2 July 2006.
7. The first session was held in Banjul, The Gambia, from 3 to 5 July 2006, immediately after the members of the Court assumed office. It started with briefing sessions on the African Commission on Human and People's Rights, the African Committee of Experts on the Rights and Welfare of the Child, and on the Court of Justice of the Economic Community of West African States (ECOWAS).

During the session, meetings were also held with: a delegation of the United Republic of Tanzania on how to setup the seat of the Court at Arusha, Tanzania; with a delegation of the African Commission on Human and People's Rights to consider working relationships between the two institutions; and delegations from the Konrad Adenauer Foundation and the Danish Institute for Human Rights to explore possible cooperation ties with these two organizations.

Lastly, there was a preliminary exchange of views on the method of drawing up the Rules of Procedure of the Court, on administrative and budgetary issues and on the modalities for designating the President and Vice-President of the Court at the next session. In particular, they set up Working Committees to prepare reports to be submitted at the second session of the Court: Committee on the draft Rules of Procedure of the Court; Committee on the seat of the Court; Committee on budgetary and administrative issues; Committee on judges' robes and various symbols of the Court.

8. The second session of the Court was held at Addis Ababa, from 18 to 21 September 2006. It resulted in the election of the President and Vice-President of the Court as well as the consideration of the reports submitted by the various Committees set up by the Court at its first session.

The highlight of the session was the consideration of budgetary and administrative issues. Accordingly, the Court considered the reports of the Ad Hoc Committee on the identification of Court needs and on the appropriate structure of the Registry, then invited a delegation of the African Union Commission to discuss the proposals of the two reports. The Court finally adopted the two reports and decided that they would serve as the basic documents for the preparation of the Court's budget for 2007.

As a side event of the session, the German Cooperation Agency GTZ made a cooperation offer to the Court.

9. The Court held its third session, at Addis Ababa, Ethiopia, from 11 to 20 December 2006. It started considering the draft Rules of Procedure of the Court, then reviewed all questions relating to the effective take-off of Court activities, notably budgetary and administrative issues. In this respect, it notably held talks with a delegation from the African Union Commission on finalizing the draft

structure of the Registry and the Court's budget for 2007, as well as the commitment for the 2006 budget.

### **C) Seat of the Court**

10. According to Article 25 of the Protocol on the establishment of the Court:

- “1. The Court shall have its seat at the place determined by the Assembly from among States parties to this Protocol. However, it may convene in the territory of any Member State of the OAU when the majority of the Court considers it desirable, and with the prior consent of the State concerned.
2. The seat of the Court may be changed by the Assembly after due consultation with the Court”.

At the first session held at Banjul, The Gambia, from 3 to 5 July 2006, the delegates of the African Union Commission informed the Court that Tanzania had been designated by Union organs to host the seat of the Court. During the same session, the Court held talks with a delegation from Tanzania, which had come to enquire about Court needs with respect to the seat. The Court then set up a committee of judges entrusted with following up this issue, particularly by paying a visit in August 2006, together with delegates of the Commission, to the seat proposed by Tanzania, and reporting thereon to the next session of the Court. However, the Committee was unable to make the visit since only delegates of the African Union Commission went to Tanzania, specifically to Dar-es-Salaam and Arusha.

At the second session held at Addis Ababa from 18 to 21 September 2006, the Court upheld its decision to send a delegation of its members, as soon as possible, to visit the seat at Arusha, Tanzania.

Following contacts between the African Union Commission and Tanzanian authorities, it seemed the mission could take place from 26 to 30 November 2006. It could at this same time start preparations for the third session of the court, which Tanzania wanted to be held at Arusha from 11 to 20 December 2006.

On 23 November 2006, the African Union Commission received a Memorandum from the Embassy of Tanzania at Addis Ababa informing it that it was no longer possible for the envisaged visit to take place on the dates initially proposed because of a busy schedule. In the Memorandum, the Tanzanian Government proposed that the visit could take place after mid-January 2007.

At the third session held at Addis Ababa from 11 to 20 December 2006, the Court considered that in view of preparations for meetings of African Union political organs at which a delegation of judges has to participate in January 2007, it would be difficult for the mission to carry out the visit at the same period. It

recommended that the visit should take place during the first half of February 2007.

**D) Rules of Procedure of the Court**

11. At the first session held at Banjul from 3 to 5 July 2006, the Court set up a Committee of Judges responsible for preparing draft rules of procedure.

At the second session held at Addis Ababa from 18 to 21 September 2006, the Court, which was preoccupied with urgent budgetary and administrative issues, was not able to start considering the draft Rules of Procedure.

It started considering them at the third session held at Addis Ababa from 17 to 20 December 2006, and after a first reading, adopted the first part of the Rules of Procedure of the Court.

**E) Robes of Judges and Court Symbols**

12. At the first session held at Banjul from 3 to 5 July 2006, the Court set up a Committee of Judges to come up with proposals concerning a model robe for judges, and symbols of the Court (logo, stamp, etc.)

At the second session held at Addis Ababa from 18 to 21 September 2006, the Court considered the proposals made by the committee and its other members and asked the committee to finalize them, taking into account the observations made by other members of the Court.

At the third session held at Addis Ababa from 11 to 20 December 2006, the Court adopted a model robe for judges and also its emblem. The robe will be black in colour with a white band; a sign in the colours of the African Union will feature on its other accessories and the cap. The Court's emblem will bear two elements: the insignia of the African Union on the one hand, and a scale symbolizing justice on the other.

**F) Budgetary Issues**

**a) Preparing the Court's 2007 Budget**

13. At the first session held in Banjul from 3 to 5 July 2006, the Court set up a committee to look into budgetary and administrative issues.

At its second session, the Court, as mentioned in paragraph eight adopted<sup>4</sup> the Committee's reports on these issues and decided that they would serve as basis for preparing the Court's 2007 budget.

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<sup>4</sup> See above, paragraph 8.

In November 2006, the President of the Court got the relevant African Union Commission departments to prepare a draft budget, bearing in mind the Court's proposals.

At its third session held in Addis Ababa, from 11 to 20 December 2006, the Court adopted its draft budget.

**b) Commitment of the Court's 2006 budget**

14. At its first session held in Banjul from 3 to 5 July 2006, the Court was informed by the Commission's delegates that a budget had been voted in its favour for 2006. It is this budget that financed, inter alia, sessions held by the Court in 2006.

In November 2006, the President of the Court got the competent departments of the African Union Commission to commit part of the 2006 budget for the purchase of means of transport, some equipment, materials and supplies, absolutely indispensable for the effective take-off of the Court's activities.

At its third session held in Addis Ababa, from 11 to 20 December 2006, the Court decided on other purchases or activities that had to be financed by the 2006 budget. Members of the Court underscored the need for the competent department of the African Union Commission to commit this budget without delay in order not to lose its benefits.

**G) Proposal for remuneration and benefits system for members of the Court and the Registry staff**

**a) Proposal for remuneration and benefits system for members of the Court**

15. Article 32 of the Protocol relating to the establishment of an African Court on Human and People's Rights stipulates, inter alia, that: "...emoluments and allowances of judges [.....] shall be fixed and borne by the OAU, *in consultation with the Court*"<sup>5</sup>. It is on the basis of the last part of this provision that the Court decided, at its second session held in Addis Ababa, from 18 to 21 September 2006, to propose a remuneration and benefits system to be accorded to its members.

At its third session held in Addis Ababa from 11 to 20 December 2006, the Court adopted the draft decision that recapitulates its proposals.

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<sup>5</sup> **Italics added.**

**b) Remuneration system for the Registry Staff**

16. In its report on the identification of its requirements adopted in September 2006, the Court proposed that, regarding the statutory remuneration and benefits, staff of the Registry should enjoy the same status as staff of the African Union Commission in terms of categories and grades established by the organization.

Being thus obvious, this proposal does not seem to require a special draft decision.

**H) Draft Structure of the Registry and Recruitment of Registry Staff**

**a) Draft Structure of the Registry**

17. At its first session held in Banjul from 3 to 5 July 2006, the Court set up a Committee responsible for budgetary and administrative issues. At the second session of the Court, held in Addis Ababa, from 18 to 21 September 2006, the Committee submitted, inter alia, a report on an appropriate structure for the Court's Registry. The Court considered this report before inviting a delegation of the African Union Commission to discuss proposals contained therein and adopt them.

In November 2006, the President of the Court had the draft structure finalized by the competent departments of the Commission that verified its conformity with the norms and practices of the organization. A slightly modified version particularly regarding the grades was produced.

At its third session held in Addis Ababa, from 11 to 20 December 2006, the Court discussed and adopted a modified draft structure attached to this report.

**b) Recruitment of Registry Staff**

18. According to Article 24 of the Protocol of 9 June 1998 relating to its establishment, "The Court shall appoint its Registrar and other officials of the Registry among nationals of OAU Member States, in conformity with the provisions of its Rules of Procedures".

The Court has however not yet been able to recruit staff of the Registry.

At its first session held in Banjul from 3 to 5 July 2006, the Court agreed that while waiting for the recruitment of the Registrar, the Legal Council of the African Union Commission should act as interim clerk of the Court.

At its third session held in Addis Ababa from 11 to 20 December 2006, the Court considered and adopted the description of the post of Registrar and requested that the descriptions of other posts should be finalized by the office of the Legal Counsel for the oncoming meetings of the Union's political organs.

**I) Cooperation of the Court with External Partners**

19. A number of external partners have spontaneously offered to cooperate with the Court.

At the first session of the court held in Banjul from 3 to 5 July 2006, the Konrad Adenauer Foundation (Germany) offered to organize study trips for members of the Court to regional human rights Courts (Europe and America) in 2007 and develop other support programmes in the Court in agreement with the latter. For its part, the Danish Institute of Human Rights equally offered to support the Court particularly in training Judges and staff of the Registry.

On the sidelines of the second session and at the third session of the Court, the German Governmental Agency for cooperation in development, GTZ also offered to cooperate with the Court particularly in the area of training and development of expertise in the Registry.

The Court agreed in principle to these spontaneous offers for cooperation.

**III. EVALUATION AND RECOMMENDATIONS****A) Evaluation**

20. The Court, first and foremost, appreciates efforts made by Member States of the African Union and all competent organs of the African Union for its establishment. It is also delighted that a number of actions related to the effective take-off of its activities have been undertaken or carried out, whether with regard to the establishment of its office, the holding of three ordinary sessions, the beginning of the study of its draft Rules of Procedure, the preparation of a draft 2007 budget and a draft structure of the Registry, the adoption of a proposal for a remuneration system for Judges, the order for the purchase of a number of equipment, materials or supplies from the Court's 2006 budget, or the beginning of Cooperation with some foreign partners, etc.

However, simultaneously, the Court had to face a number of difficulties that prevented it from speeding up the effective take-off of its activities as it would have wished.

21. The take-off of the Court's activities was therefore handicapped, first and foremost, by its strong dependence on the African Union Commission for the implementation of some actions. This dependence is due to the fact that the Court does not yet have support personnel and its own human resources. In fact, although the Court has been provided with a regularly voted budget for 2006, it could be implemented only with the intervention of the Commission's Finance Department. Similarly, the Court could recruit its support staff only with the

technical assistance of the competent departments of the African Union Commission.

In all these respects, while appreciating the support of the African Union for some of its activities, particularly the preparation and organization of sessions, the Court expresses regret that bureaucratic delays held back the accomplishment of some urgent actions on the take-off of its activities. Likewise, it expresses regret that in the Commission, there is still no awareness of the importance of the status of the Court and of its members. The African Court, unique judicial organ of the Continental Organization, is, in fact, one of the three major pillars of the African Union system, apart from the executive and legislative organs and must be considered accordingly. The Court expresses the hope that the dysfunctions therefore observed during the period under review will not recur, in the interest of a harmonious functioning of all the institutions and organs of the African Union.

22. In the same vein, the take-off of the Court's activities was also handicapped by the non-availability of a functional headquarters. In fact, to date, members of the Court appointed for that purpose have not been able to go to Arusha in Tanzania to undertake an evaluation mission of the headquarters proposed to the Court. In these conditions, the President of the Court is not yet in a position to go and settle at the Court's headquarters. Quite obviously, these circumstances delay the real take-off of the Court's activities.

## **B) Recommendations**

23. In view of the preceding considerations, the Court requests:
- the African Union Commission to pursue, intensify and increase its support to the Court, particularly at this take-off stage where it does not yet have its own human resources;
  - the Government of the United Republic of Tanzania, host of the Court's headquarters, to speed up the process of preparing a headquarters worthy of the first continental judicial institution and therefore enable the Court to really occupy its headquarters;

Considering the proposals made throughout the report and which require a decision from the political organs of the African Union, the Court also recommends the following to the competent organs:

- to adopt the draft structure of the Registry as proposed;
- to adopt the draft decision establishing a remuneration and benefits system to be accorded to members of the Court as proposed;
- to adopt the draft 2007 budget of the Court as proposed.

**ANNEX**

**LIST OF JUDGES**

## LIST OF JUDGES OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

No.	NAME	TERM OF OFFICE	COUNTRY
1.	Mrs. Sophia A.B. AKUFFO	2	Ghana
2.	Mr. Hamdi Faraj FANOUSH	4	Libya
3.	Mr. Modibo Tounty GUINDO	6	Mali
4.	Mr. El. Hadj GUISSSE	4	Senegal
5.	Mr. George W. KANYEIHAMBA	2	Uganda
6.	Mrs. Kelello Justina MAFOSO-GUNI	4	Lesotho
7.	Mr. Jean MUTSINZI	6	Rwanda
8.	Mr. Bernard Makgabo NGOEPE	2	South Africa
9.	Mr. Gérard NIYUNGEKO	6	Burundi
10.	Mr. Fatsah OUGUERGOUZ	4	Algeria
11.	Mr. Jean Emile SOMDA	2	Burkina Faso

