NATIONAL SENSITIZATION SEMINAR ON THE AFRICAN COURT ON HUMAN AND PEOPLES’ RIGHTS, ACCRA, GHANA: 12 DECEMBER 2011

SPEECH BY HONOURABLE JUSTICE GÉRARD NIYUNGEKO, PRESIDENT OF THE COURT
Your Ladyship, the Chief Justice of the Republic of Ghana;

Honourable Deputy Attorney General representing the Attorney General and Minister of Justice of the Republic of Ghana;

Honourable Vice-President and Judges of the African Court on Human and Peoples’ Rights;

Honourable Members of the Judiciary of Ghana;

Your Excellencies, Members of the Diplomatic and Consular Corps accredited to Ghana; Distinguished Representatives of International Organizations;

The Chairperson of the Commission of Human Rights and Administrative Justice;

The President of the Ghanaian Bar Association;

Distinguished Guests;

Representative of the German Cooperation Agency, GIZ;

Ladies and Gentlemen;
1. The African Court on Human and Peoples’ Rights sought to organize this national seminar in Ghana for several reasons. First of all, Ghana was one of the first group of Member States of the African Union to ratify the 9 June 1998 Protocol establishing the Court, on 25 August 2004. Then, on 9 February 2011, it became the fifth African State to make the declaration recognizing the Court’s jurisdiction to receive applications from individuals and non-governmental organizations. In addition, Ghana was one of the very first States to have one of its citizens elected as Judge of the Court as of 2006 - I am referring in that regard to our colleague, Justice Sophia A. B. Akuffo, who has been Vice-President of the Court since 2008. Further, Ghana has always lent its political support to the Court, especially within the policy organs of the African Union, whether it be at the level of the Permanent Representatives Committee and the Executive Council or at the level of the Assembly of Heads of State and Government. Finally, Ghana is the first African country to accept to host a session of the Court, away from its Seat.

2. Let me therefore, first and foremost, on behalf of the Court, express my deep appreciation to the President and the Government of Ghana for the interest they have thus shown in various ways in support of a budding African Court on Human and Peoples’ Rights.

Honourable Deputy Attorney General and Minister of Justice, I would also like to express my gratitude to the Government of Ghana for accepting our offer to organize this seminar in this country and for all the facilities we have been provided towards the preparation of this important activity.
Furthermore, I am most grateful to you for kindly accepting to grace this opening ceremony with your presence.

All these acts and gestures are clearly indicative of the commitment of the authorities of your country to the promotion of the African Court on Human and Peoples’ Rights.

3. May I also be allowed to express my gratitude to the Ghana Bar Association and its President for accepting to be actively associated with the holding of this seminar.

4. I also wish to thank all the institutions and organizations represented here, for responding to our invitation to appear and to participate in this seminar. Whether they be from the Ghana Ministry of Foreign Affairs or the Ministry of Justice, the Judiciary, the diplomatic missions based in Accra, the Ghana Bar Association, the National Commission on Human Rights, non-governmental human rights organizations, media outlets, academic institutions (....), well, let me say how pleased we are that you could all come and participate in this seminar. Let me also seize the opportunity to commend the German Cooperation Agency (GIZ), for extending its support towards the holding of this meeting.

Your Excellencies, Ladies and Gentlemen,

5. As you are all no doubt aware, the African Court on Human and Peoples' Rights was established by a Protocol to the African Charter on Human and Peoples' Rights adopted by Member States of the Organization of African
Unity (OAU) in Ouagadougou in June 1998. The Protocol came into force in January 2004; the first Judges were elected in January 2006, and the Court began work in July 2006, initially from Addis Ababa, the headquarters of the African Union and then from its own Seat in Arusha, in the United Republic of Tanzania.

As you might also know, the Court is required to play a dual role: first it has a contentious jurisdiction which allows it to resolve disputes regarding the interpretation and application of the African Charter on Human and Peoples' Rights and any other international instrument relating to human rights. It may exercise such jurisdiction at the request of a State Party to the Protocol, the African Commission on Human and Peoples’ Rights, an African inter-governmental organization, or an individual or non-governmental organization, as long as in the latter cases, the State concerned accepts the Court's jurisdiction to hear applications from individuals and NGOs.

Secondly, it has an advisory jurisdiction, which allows it to issue a advisory opinions on any matter relating to human rights, at the request of a State Party to the Protocol, the African Union, any organ of the African Union and any African organization recognized by the African Union, provided that such matter is not pending before the African Commission on Human and Peoples' Rights.

The Court became operational from the administrative perspective rather quickly- that is in 2008- as Member States of the African Union had set aside a budget and provided Registry staff; the host Government for its part
had allocated premises for its headquarters, and the Court itself had established its rules of procedure.

6. However, the main challenge that the Court now faces is one of not being utilized to the extent it should in its judicial business, which happens to be its primary function. In fact, between 2008 and 2010, the Court was seized of only one case. Quite fortunately, since the beginning of this year 2011, the Court has been seized of about a dozen contentious matters and two requests for advisory opinions.

In our view, the fact that the Court is not being fully utilized can be attributed to two main factors: the first is that, though individuals and non-governmental organizations are key stakeholders in the judicial protection of human rights, the Court is not yet widely open to them. In fact, of the fifty-four Member States of the African Union, only twenty-six have already ratified the Protocol establishing the Court, and more specifically, of those twenty-six States, only five have so far allowed individuals and NGOs direct access to the Court. Apart from Ghana which I had already mentioned with a sense of satisfaction, the other countries championing this cause are Burkina Faso, Mali, Malawi and Tanzania, the host country of the Court.

The second factor is without question the fact that, due to the relative novelty of the Court, it is not well known by the African people and various other entities entitled to bring contentious matters and seek advisory opinion, indeed even in countries that have already ratified the Protocol or made a declaration allowing individuals and NGOs access to the Court.
Distinguished Guests, Ladies and Gentlemen,

7. It is precisely to raise awareness about itself that the Court decided to embark on a series of promotional activities, comprising the organization of sensitization seminars in a number of countries, with a view to popularize the Court among representatives of State and Non-State human rights stakeholders. This seminar is part of that general programme on the promotion of the Court.

The main goal of this national seminar is therefore to make the Court known, in all its facets, to a wide range of human rights stakeholders in the Ghana human rights protection system, so that they in turn would carry the message to their respective audiences, with the ultimate goal being to ensure that those who are entitled to resort to the Court actually do so, whether the issues at stake are contentious matters or requests for advisory opinion.

Distinguished Guests, Ladies and Gentlemen,

8. You have been invited because we do indeed believe that each of the entities, institutions and organizations that you represent has an important role to play in the promotion of the Court, which ultimately is your Court.

a) Beginning with the Member States of the African Union, their role is of course at the very core of the judicial protection of human rights on the continent, as embodied by the Court. They are the ones who created the
Court and provided the means for it to operate. It is therefore their duty to ensure that it actually performs its judicial functions. Each time we are afforded the opportunity, we make it a duty to remind the States of that responsibility, so that those which are yet to ratify the Protocol establishing the Court act accordingly, and those that have ratified the Protocol, do allow individuals and NGOs to have direct access to the Court, and for all to consider the possibility of resorting to the Court, if necessary, to seek appropriate advisory opinion on matters of human rights, and collaborate in the sensitization campaigns on the Court. On this occasion, I wish to reiterate the same appeal to the African States represented here.

b) In the case of national judicial institutions, as guarantors of the protection of human rights within States, they can assist in making the Court known, especially by accepting to be associated, same as the most senior members of the Judiciary in Ghana have done in the case of this seminar, with the sensitization campaigns conducted by the African Court or other partner institutions.

c) In the case of National Human Rights Commissions, which are independent bodies charged with monitoring the state of human rights in various States, they can, especially in certain situations, advise governments on matters which the latter could submit to the African Court for advisory opinions; they can also organize briefing sessions on the Court.

d) In the case of national bar associations, we all know that it is their members who can bring contentious matters before the Court. These
organizations can also assist effectively in promoting the Court among their respective members, especially at their general meetings, symposia or seminars.

e) The possible role of academic institutions is crucial, since they are in a position to provide the most detailed information on the human rights protection system in Africa and on the African Court itself, to audiences which would obviously include future Judges and lawyers as well as the intellectual and political elite of Africa.

f) In the case of non-governmental human rights organizations, they can, better than the Court itself, organize and conduct campaigns for the ratification of the Protocol; the signing, by States, of the special declaration allowing individuals and NGOs access to the Court; the optimum utilization of the Court in advisory matters, and the promotion of the Court in general. Moreover, they could themselves submit applications to the Court under certain conditions.

g) Finally, as regards the media, their role is equally important, as it is through them that all sensitization campaigns will reach those for whom they are intended, and all the activities of the Court could be brought to the attention of the African people in general.

Distinguished Guests, Ladies and Gentlemen,

9. Let me therefore ask you all to acquaint yourselves fully with the respective roles your institutions and organizations have to play in the
promotion and utilization of the Court, and to be fully involved in carrying it out, once you shall have had a better understanding of the institution.

10. In that regard, the programme of this seminar is indeed designed to cover the various components of the institution. After an overview of the African human rights system so as to situate the Court in that context, there will be a series of topics focusing on the Court itself. These topics cover primarily a general introduction of the Court, and, more specifically, aspects concerning its contentious and advisory functions. Each of these topics will obviously be subject to discussion among participants. Finally, there will be a panel discussion on the strategies that various human rights stakeholders may apply in order to promote the Court and ensure a maximum utilization of its services. It is our hope that this programme will, to a large extent, be consistent with your expectations.

11. What we expect, Ladies and Gentlemen, is that you will all be able to participate in the discussions on each topic, and be in a position to make contributions to enable us achieve the goals we have set for this seminar, both now and in the future. Your contributions will guarantee the success of this meeting.

Distinguished Guests, Ladies and Gentlemen,

12. I would like to conclude by again expressing my appreciation to the Honourable Deputy Attorney General and Minister of Justice for kindly accepting to open this seminar.
I would like, in the same thrust, to express my hope that Ghana will be able to continue to play a pioneering role vis-à-vis the Court, particularly by considering the possibility, where the need arises, of resorting to the latter’s advisory jurisdiction.

Let me further express the hope that Ghanaian citizens will fully exercise, when necessary, the right allowed them by their Government to use the services of the Court in contentious matters, after having exhausted, or attempted to exhaust domestic remedies.

May the Court ultimately become, really and in the near future, for you all, as suggested in the general theme of this seminar, "Your new partner in the reinforcement of the protection of human rights in Africa".

Such are our most fervent wishes, and I thank you for your kind attention.