HUMAN RIGHTS DEVELOPMENT INITIATIVE (HRDI)

LLM PROGRAMME ON INTERNATIONAL HUMAN RIGHTS LAW AND HIV IN AFRICA

LECTURES ON THE AFRICAN COURT ON HUMAN AND PEOPLES’ RIGHTS

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INTRODUCTION

I. THE NORMATIVE AND INSTITUTIONAL FRAMEWORK

II. THE ESTABLISHMENT OF THE COURT

III. THE GENERAL ORGANIZATION OF THE COURT

IV. THE ROLE OF THE COURT IN CONTENTIOUS MATTERS

V. THE ROLE OF THE COURT IN ADVISORY MATTERS

VI. THE APPLICABLE LAW

VII. THE RELATIONS BETWEEN THE COURT AND THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

VIII. THE MAIN CHALLENGES FACED BY THE COURT AND THE APPROPRIATE STRATEGIES

IX. THE FUTURE OF THE COURT AS AN INSTITUTION

X. THE CURRENT JURISPRUDENCE OF THE COURT

CONCLUSION
I. THE NORMATIVE AND INSTITUTIONAL FRAMEWORK

A. THE MAIN LEGAL INSTRUMENTS


B. THE MAIN INSTITUTIONS WITH HUMAN RIGHTS MANDATE

1. The African Commission on Human and Peoples’ Rights
2. The African Committee of Experts on the Rights and Welfare of the Child
3. The African Court on Human and Peoples’ Rights

II. THE ESTABLISHMENT OF THE COURT

A. HISTORICAL BACKGROUND

2. Other similar initiatives between 1960 and 1970
5. Meetings of Governmental Experts between 1995 and 1997; Meeting of Ministers of Justice in December 1997
6. Meeting of the Council of Ministers of the OAU (February 1998)

7. Summit of the OAU, June 1998, Ouagadougou, Burkina Faso: Adoption of the Protocol establishing the Court

**B. SETTING UP OF THE COURT AND PROGRESS SO FAR MADE**

1. Entry into force of the Protocol: January 2004

2. Election of the First Judges: January 2006

3. Assumption of duty: July 2006

4. Operationalization of the Court from the administrative perspective: 2006 – 2008 (budget; structure of the Registry; recruitment of staff; host agreement; Rules of Court; etc.)

5. Operationalization of the Court from the judicial perspective: 2008 – present (increasing number of cases)

**III. THE GENERAL ORGANIZATION OF THE COURT**

**A. COMPOSITION**

1. Number of Judges: eleven.

2. Qualifications: skills, high moral character.


B. ELEMENTS ON THE STATUS OF JUDGES

1. Term of office: Six years, renewable once.

2. Employment of Judges on part time basis (except the President of the Court for the duration of his/her term of office)

3. Independence: assertion of the principle; enjoyment of diplomatic immunities

4. Incompatibilities (for instance: political, diplomatic or administrative positions of function as government legal adviser at the national level)

C. STRUCTURE AND INTERNAL FUNCTIONING OF THE COURT

1. Presidency of the Court: President and Vice-President elected by Judges themselves, for a term of office of two years renewable once

2. The Registry of the Court: composed of international civil servants; responsible for providing technical assistance to the Court

3. The Seat of the Court: Arusha, Tanzania

4. The Budget of the Court: a part of the budget of the African Union (mandatory contributions of Member States); possible contributions of external partners

5. Court Sessions: Four (4) ordinary sessions a year; possibility of extra ordinary sessions

6. Quorum: minimum of seven Judges

7. Official languages and working languages: African national languages; Arabic, English, French, Portuguese; Swahili, Spanish (?)
IV. THE ROLE OF THE COURT IN CONTENTIOUS MATTERS

A. ACCESS TO THE COURT

1. Entities entitled to submit cases to the Court

a) The African Commission on Human and Peoples’ Rights
b) State Parties to the Protocol establishing the Court

c) African Intergovernmental Organizations
d) Individuals and Non-Governmental Organizations (provided that the State against which they act has made a special declaration accepting the competence of the Court to hear cases brought by individuals and NGOs)

2. Modalities of seizure

Any application submitted to the Court must include the following elements:

a) A summary of the facts of the case

b) The evidence intended to be adduced

c) Clear particulars of the Applicant and the names and addresses of its representatives, as well as particulars of the Defendant.

d) Alleged violations

e) Evidence of exhaustion of local remedies or of the inordinate delay of such local remedies

f) Orders or injunctions sought

g) Signature of the Applicant or his/her representative
B. THE JURISDICTION OF THE COURT

1. Substantive jurisdiction

a) All cases and disputes concerning the interpretation and application of the African Charter on Human and Peoples’ Rights, the Protocol establishing the Court and any other relevant instrument on human rights ratified by the States concerned.

b) It follows that the scope of the applicable law is very broad.

2. Personal jurisdiction:

a) Regarding the Applicant: see supra entities entitled to submit cases to the Court

b) Regarding the Defendant: State Parties to the Protocol; Other entities?

3. Territorial jurisdiction:

Localization of facts

4. Jurisdiction ratione temporis: What about facts that occurred before the ratification of the Protocol or the deposit of the special declaration?

C. ADMISSIBILITY OF AN APPLICATION

1. It should disclose the identity of the Applicant even if he/she has requested for anonymity

2. It should be compatible with the Constitutive Act of the African Union and the Charter

3. It should not contain any disparaging or insulting language directed against the State concerned and its institutions or against the African Union

4. It should not be based exclusively on news disseminated through the mass media
5. It should be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.

6. It should be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter.

7. It should not deal with cases already settled in the framework of the United Nations or the African Union.

**D. PRINCIPLES GOVERNING PROCEDURE BEFORE THE COURT**

1. Two-stage procedure: written and possibly oral

2. Adversarial principle: service of pleadings on the other party; the right to reply

3. Public hearings (when held)

4. Evidence regime: liberal with regard to admissibility of evidence; possibility of the Court to play an active role

5. Representation of parties: liberal (any person of the party’s choice)

6. Legal costs (unless otherwise decided, each party shall bear its own costs)

7. Possibility of legal assistance

**E. SPECIFIC PROCEDURES**

1. Interim measures

2. Preliminary objections

3. Intervention

4. Joinder of cases and pleadings
5. Judgment in default

6. Amicable settlement

7. Discontinuance

**F. JUDGMENTS OF THE COURT**

1. Need to give reasons for judgments

2. Possibility of the Judge to make an individual (separate) or dissenting opinion

3. Possible subject matters of judgments

   a) Jurisdiction of the Court
   b) Admissibility of the application
   c) Merits of the case
      - Finding or not of a violation of the Charter or any other relevant legal instrument
      - Reparation

4. Nature of the judgments

   a) Binding on the parties

   b) Final (except application for interpretation of the judgment or request for review of the judgment)

5. Execution of judgments: It is the responsibility of:

   a) The State concerned: commitment to comply with the judgment

   b) The Court: obligation to make reports on refusal to comply with its decisions
c) The Executive Council of the African Union: ensuring the enforcement of the judgment on behalf of the Assembly of Heads of State and Government

V. THE ROLE OF THE COURT IN ADVISORY MATTERS

A. REQUEST FOR ADVISORY OPINION

1. Entities that may seek an advisory opinion

a) Member States of the African Union

b) The African Union

c) Any organ of the African Union

d) Any African Organization recognized by the African Union

2. Modalities of the request for advisory opinion

a) The subject matter of the request:

- May concern any legal matter related to the African Charter on Human and Peoples’ Rights, or any other relevant human rights instrument.
- Cannot be related to a matter being examined by the African Commission on Human and Peoples’ Rights.

b) The request must specify:

- The provisions of the Charter or the instrument in respect of which the opinion is requested.
- The circumstances giving rise to the request
- The names and addresses of representatives of entities who introduced the request.
B. PRINCIPLES OF THE PROCEEDINGS

1. Openness of procedure to all States Parties to the Protocol and any other interested entity authorized by the Court.

2. Two-stage procedure: written and possibly oral

3. Public hearings (when held)

4. Application, *mutatis mutandis* (changing what needs to be changed), of other provisions relating to contentious procedure.

C. ADVISORY OPINION

1. The opinion shall be accompanied by reasons

2. The opinion is normally delivered in open Court

3. The Judges may attach an individual or a dissenting opinion

4. Is the opinion binding? Legally speaking, no; but high moral authority

VI. THE APPLICABLE LAW

1. The African Charter on Human and Peoples’ Rights

2. Any other relevant human rights instrument ratified by the State concerned.

VII. RELATIONS BETWEEN THE COURT AND THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

1. The *principle of complementarity* when it comes to the protection of human rights

2. From the Commission to the Court

   Possibility for the Commission to seize the Court of contentious matters
3. From the Court to the Commission

a) Possibility for the Court to request the opinion of the Commission on the admissibility of a case

b) Possibility of the Court to transfer cases to the Commission

4. Harmonization of the Rules of the Commission and those of the Court

5. Institutionalizing relations between the Court and the Commission

VIII. THE MAIN CHALLENGES FACED BY THE COURT AND THE APPROPRIATE STRATEGIES

1. Low rate of ratification of the Protocol establishing the Court

a) Current situation: only twenty-six (26) States out of the fifty-four (54) Member States of the African Union (Algeria; Burkina Faso; Burundi; Congo, Côte d’Ivoire; Comoros; Gabon; the Gambia; Ghana; Kenya; Libya; Lesotho; Malawi; Mali; Mauritania; Mauritius; Mozambique; Niger; Nigeria; Uganda; Rwanda; Senegal; South Africa; Tanzania; Togo; and Tunisia).

b) Strategies: Sensitization activities

2. Access to the Court by individuals and non-governmental organizations

a) Current situation: only five (5) States (Burkina Faso, Mali, Ghana, Tanzania, Malawi) out of the twenty-six (26) which have ratified the Protocol and out of the fifty-four (54) Member States of the African Union.

b) Strategies: Sensitization visits in States which have ratified the Protocol
3. **Promotion of the Court among Africans**

a) Current situation: lack of awareness about the Court

b) Strategies: Sensitization conferences, seminars and lectures

**X. THE FUTURE OF THE COURT AS AN INSTITUTION**

1. The merger between the Court and the Court of Justice of the African Union: Protocol on the African Court of Justice and Human Rights (July 2008)

2. The planned extension of the jurisdiction of the Court to criminal matters: Draft Protocol currently under consideration by Policy Organs of the African Union

**X. THE CURRENT JURISPRUDENCE OF THE COURT**

**A. CONTENTIOUS MATTERS**

1. Statistics: 21

2. Cases decided upon: 12

3. Pending cases: 9

**B. REQUESTS FOR AN ADVISORY OPINION**

1. Statistics: 3

2. Requests disposed of: 2

3. Pending requests: 1
CONCLUSION

1. The African Court exists and is now operational

2. However, the scope of its action is still limited because of the four challenges mentioned above (low rate of ratification of the Protocol; very low rate of deposit of the special declaration enabling individuals and NGOs to access the Court; lack of awareness of the Court by the African public, underutilization of the Court)

3. That is why the Court has embarked on sensitization programme across the continent

4. It is our hope that your respective institutions and organizations will play their respective role to promote the Court and make it really effective in the protection of human rights at the continental level.