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REPORT OF THE AFRICAN COURT
ON HUMAN AND PEOPLES' RIGHTS

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INTRODUCTION

1. By its Decision Assembly/AU/Dec.144 (VIII) of January 2007 on the Report of the African Court on Human and Peoples' Rights for 2006, the Assembly of the African Union requested "the PRC Sub-Committee on Structures and the Advisory Sub-Committee on Administrative, Budgetary and Financial Matters to consider, as soon as possible, the Draft Structure of the Registry of the Court and the proposed remuneration and benefits of the staff of the Court and submit appropriate recommendations thereon to the PRC". The Assembly also decided "that the recommendations of the PRC be applied with immediate effect, temporarily, pending final decision by the policy organs at the next Ordinary Session scheduled for July 2007".

2. By the same Decision, the Assembly further requested "the Commission, in close collaboration with the African Court, to actively engage the host country, the United Republic of Tanzania, with a view to securing speedy installation of the Court at its Headquarters in Arusha".

3. The Assembly lastly requested "the Commission to submit a report on implementation of this Decision to the next Ordinary Session of the Executive Council in July 2007".

4. This Report is supplementary to the Report of the Commission on the two following issues: Approval by the PRC Sub-Committee and the PRC itself of the Draft Structure of the Registry of the Court and a Draft Decision on the Remuneration and Benefits System for Members of the Court and on the Court's Headquarters¹.

I. APPROVAL OF THE DRAFT STRUCTURE OF THE REGISTRY OF THE COURT AND THE DRAFT DECISION ON THE REMUNERATION SYSTEM FOR MEMBERS OF THE COURT

5. In pursuance of the aforesaid Assembly Decision Assembly/AU/Dec.144 (VIII) of January 2007, the Bureau of the PRC Sub-Committee on Structures met on 9 February 2007 and decided to schedule consideration of the Draft Structure and Remuneration System submitted by the Court for 19 March 2007, as the African Union Commission had raised the problem of delay in the translation of the relevant documents. However, that meeting did not take place.

6. At its 4th Session held in Addis Ababa, Ethiopia, from 19 to 28 March 2007, the Court was informed that the meeting of the PRC Sub-Committee on Structures was to be finally held on 2 April 2007. However, the meeting once again did not take place.

¹ It should be recalled that the Protocol establishing the Court became effective on 25 February 2004; that the first members of the Court were elected by the Executive Council and the Assembly of the African Union in Khartoum, The Sudan, in January 2006; and that these members took their oath office and assumed duty on 2 July 2006 at the Assembly of the Union meeting in Banjul, The Gambia.

7. On 3 April 2007, the President of the Court addressed a letter to the Chair of the Sub-Committee on Structures expressing the Court's concern at the delay in considering the aforementioned documents of the Court and requested the Sub-Committee to hold the proposed meeting as early as possible.

8. The meeting, which finally took place on 12 April 2007, was attended by a delegation of the Court which came to present and defend the two documents. The PRC Sub-Committee on Structures adopted the recommendations contained in a report which was subsequently submitted to the PRC.

9. Regarding the Structure of the Registry of the Court, the Sub-Committee recommended abolition of a significant number of positions (32 out of the proposed 78), a lowering of the recruitment grade for most of the positions in the "professional" category and the merger of several services.

10. With respect to the salary status of the President of the Court, the latter had proposed that this should be aligned with that of the Chairperson of the African Union Commission. The Sub-Committee however recommended that the salary should rather be aligned with that of Commissioner in the AU Commission.

11. On the Remuneration System for other members of the Court, the Sub-Committee recommended that this be adopted as presented by the Court.

12. On 16 May 2007, the President of the Court addressed a letter to the Chair of the PRC and copied to the Chair of the Sub-Committee on Structures for information, transmitting a document containing the observations of the Court's delegation on the Sub-Committee's recommendations. The said document welcomed the fact that the Sub-Committee had recommended adoption of a remuneration system for members of the Court for work on part-time basis, but for the most part proposed a return to the initial proposals of the Court regarding the Structure of its Registry and the salary status of its President. In that same correspondence, the President of the Court requested the Chair of the PRC to schedule, as speedily as possible, a meeting solely for consideration of the two documents presented by the Court to enable the latter to start recruiting staff for the Registry and to have a remuneration base for members of the Court. The President of the Court further requested that the delegation of the Court be invited to that meeting to explain the Court's position.

13. The PRC was only able to meet on 25 June in Accra, Ghana, to consider the Report of the Sub-Committee on Structures. It endorsed all the recommendations submitted by the Sub-Committee including the proposed Structure of the Registry of the Court, the remuneration system and the benefits to be accorded to members of the Court.

II. HEADQUARTERS OF THE COURT

14. Following the above-mentioned Assembly Decision Assembly/AU/Dec.144 (VIII) of January 2007, the Ministry of Foreign Affairs and International Cooperation of the United Republic of Tanzania, by a Note Verbale dated 14 February 2007, informed the African Union Commission that Tanzania was ready for the visit of a delegation of the Court, and to finalize the signing of the Headquarters Agreement that would facilitate installation of the Court in Arusha. The Ministry also requested the Commission to avail it with the Annexes to the Draft Headquarters Agreement before arrival of delegation.

15. By letter dated 16 February 2006, the President of the Court requested the Commission to officially forward to the Court, the Draft Headquarters Agreement as well as the Annexes mentioned in the Note Verbale. He also indicated that the Court would like to have a copy of the Report of the Mission undertaken by the Commission to Tanzania in August 2006 on the issue of Headquarters of the Court.

16. By letter dated 27 February 2007, Chief of Staff of the Bureau of the Chairperson of the African Union Commission transmitted to the Court, the Draft Headquarters Agreement and the August 2006 Mission Report of the Commission.

17. Meanwhile, by Note Verbale of 23 February 2007, the Embassy of Tanzania in Addis Ababa informed the Commission about the proposal of the Government of Tanzania that the Mission to be led by President of the Court which could take place in the first week of March 2007 and requested for precise dates thereof to be transmitted to it.

18. After several exchange of correspondence, it was agreed that the visit would take place between 14 and 18 March 2007. The delegation of the Court comprising three of its members accompanied by three officials of the Commission finally undertook the Mission on the date indicated. After visiting the venues proposed for provisional Headquarters of the Court (a floor at the Arusha International Conference Centre complex) the delegation of the Court decided that the proposed space was too small to accommodate all the initial divisions of the Court and requested that a larger space be provided.

19. At the 4th Session of the Court held in Addis Ababa, Ethiopia, from 19 to 28 March 2007, the Court requested its President to address, through the African Union Commission, a Memorandum to the Government of Tanzania, on the issue of the Court's Headquarters spelling out the needs of the Court in terms of its Headquarters, the residence of its President of the Court, accommodation for other members of the Court and the residence of the Registrar.

20. By letter dated 5 April 2007, the President of the Court forwarded the said Memorandum to the Chairperson of the Commission requesting the latter to transmit same to the Tanzanian Government. Apart from forwarding the list of needs as indicated above, the Memorandum requested: that the buildings hosting the

headquarters of the Court as well as those meant for residence and accommodation for its staff members should be made available to the Court as expeditiously as possible; that another mission to inspect these buildings be scheduled for May 2007; that the Headquarters Agreement be concluded as speedily as possible and that the next session of the Court scheduled for 4 – 13 June take place at its Headquarters in Arusha, Tanzania.

21. By Note Verbale dated 17 April 2007 addressed to the African Union Commission and copied to the African Court on Human and Peoples' Rights for information, the Ministry of Foreign Affairs and International Cooperation of the United Republic of Tanzania invited an official team of the Commission and the Court to undertake, as early as possible, a mission to inspect the new infrastructure proposed to serve as Headquarters of the Court.

22. The mission requested finally took place from 2 to 3 May 2007. The new site proposed for Headquarters of the Court is a property located some ten kilometres outside Arusha in rural setting, but on the major road between Arusha and the Kilimanjaro International Airport. The buildings on this property comprise a hotel with a number of pavilions. The Tanzanian delegation explained that these buildings would serve as provisional Headquarters of the Court, that the site was meant to host the definitive Headquarters and that the permanent structures of the Court would be constructed therein. The Tanzanian delegations further indicated that the government was ready to acquire property in the neighbourhood for expansion of the land allocated to the Court in accordance with its needs. It also informed the mission that the government was ready to immediately release the funds required to undertake all the adjustment works as necessary to adapt the existing buildings to the functional needs of the Court. The Tanzanian delegation handed to the Chairperson a series of site plans and later forwarded a panorama of photographs of the site to the Secretariat of the Court.

23. After preliminary consultation by members of the Court, the President of the Court informed the African Union Commission by letter dated 18 May 2007 that members of the Court had agreed to the offer of the new site, and proposed that the next session of the Court slated for 4 to 13 June 2007 be held in Arusha to afford them opportunity to visit the site and confirm their acceptance of the offer.

24. In the mean time, by Note Verbale dated 21 May 2007, addressed to the Commission and copied to the Court for information, the Tanzanian Foreign Ministry expressed concern at the delay on the part of the African Union Commission in approving the infrastructure proposed to accommodate the Headquarters of the Court. The Foreign Ministry also proposed that the negotiation and signing of the Headquarters agreement take place in the first week of May 2007, in Dar-es-Salaam or Addis Ababa.

25. With specific regard to the Headquarters Agreement, members of the Committee on the Headquarters of the Court meeting during the 4th Session of the Court in Addis Ababa, Ethiopia, from 19 to 28 March 2007, considered the Draft Headquarters Agreement prepared by the African Union Commission. They made amendments to it

and drafted the Annexes which feature in the final version. The draft Headquarters Agreement was subsequently finalized in April 2007.

26. By letter dated 18 May 2007, the President of the Court transmitted to the Chairperson of the African Union Commission the draft Headquarters Agreements prepared by the African Union Commission, as amended and enriched by the Court.

27. By a Note Verbale of 6 June 2007, the African Union Commission forwarded to the Government of the United Republic of Tanzania the draft Headquarters Agreement including proposals by the Court, expressing agreement that the conclusion and signing of the Agreement could take place at the beginning of June 2007.

28. Meanwhile, members of the Court on 9 – 10 June 2007, had the opportunity to visit the new site offered to accommodate the Headquarters of the Court as well as the buildings proposed to serve as official residence of the President of the Court. At the 5th Session of the Court which ended on 13 June 2007 in Addis Ababa, Ethiopia, members of the Court reaffirmed their acceptance of the new site proposed to accommodate the Headquarters of the Court under the conditions proposed by the Tanzanian delegation on 3 May 2007. They also agreed to the offer of a provisional residence for the President of the Court which they visited on 10 June 2007, pending the speedy construction, by the Tanzanian Government, of a new official residence for the President of the Court in line with the commitment made by the Tanzanian delegation during the inspection visit of 2 – 3 May 2007.

III. EVALUATION AND RECOMMENDATIONS

A. Approval of the Draft Structure of the Registry of the Court and the Draft Decision on the Remuneration System for Members of the Court

29. The Court welcomed the fact that the PRC Sub-Committee on Structures and the PRC itself finally met prior to the July 2007 sessions of the Policy Organs of the Union to consider the two documents presented by the Court and put forward recommendation thereon; and also the fact that the above bodies had accepted some of the Court's proposals. The Court, in particular, welcomed the fact that the PRC approved the remuneration system for members of the Court, except the President of the Court, as well as all the provisions contained in the draft decision presented by the Court regarding the special allowance of the Vice-President of the Court, judicature allowance and other statutory entitlements of members of the Court.

30. The Court however regrets that the Sub-Committee on Structures and the PRC had delayed consideration of the documents submitted to them despite the extremely urgent nature of the issues involved, in recognition of which the Assembly of the Union took Decision Assembly/AU/Dec.144 (VIII) mentioned at the beginning this report. The delay put the Court in a situation whereby it could not proceed with recruitment of the regular staff of the Registry of the Court and it had no remuneration base for members of the Court, despite the fact that a lump sum budgetary allocation had been made to the Court for the year 2007.

31. The Court expressed regrets that the PRC did not agree to readjust the Structure of the Registry of the Court to reintegrate some of the abolished positions, raise the grades that had been lowered and re-establish the units/sections that had been abolished or merged. Although the PRC pointed out that establishing any structure was a gradual process and that it was prepared to undertake the requisite adjustments in future, the Structure it recommended was likely to prove grossly inadequate for the initial needs of the Court.

32. Lastly, the Court regretted that the PRC did not accept its proposal to place the Court at the same level as other key organs of the African Union, notably the African Union Commission, and thus align the remuneration of the President of the Court with that of the Chairperson of the African Union Commission. Although the PRC explained that its recommendation was an interim measure pending, in particular, harmonization of the remuneration system for heads of African Union organs, the said recommendation seriously undermines the principle of equality of the legislative, executive and judicial organs of the continental organization and the principle of absolute balance between these three bodies.

33. In view of the aforesaid, the Court hereby requests the Executive Council to devote special attention to the concerns herein expressed by the Court and to accord these concerns due consideration.

B. Headquarters of the Court

34. The Court appreciates the efforts deployed by the Government of the United Republic of Tanzania since March 2007 to make available the buildings that could serve as Headquarters of the Court, and as residence for the President and the Registrar, and to ensure speedy conclusion of the Headquarters Agreement.

35. It is however necessary to point out that despite these efforts, the Court is yet to be installed in its Headquarters one year after the assumption of duty of members of the Court,

36. The Court therefore requests the Tanzanian Government and the African Union Commission to speedily organize a meeting for conclusion and signing of the Headquarters Agreement.

37. The Court also requests the Tanzanian Government to take all appropriate measures to enable the President of the Court to move into the Headquarters of the Court in a coming weeks and that the next session of the Court slated for September 2007 take place in Arusha.