

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

Addis Ababa, Ethiopia

P. O. Box 3243

Telephone: 5517 700

Fax: 5517844

Website: www.Africa-union.org

EXECUTIVE COUNCIL
Sixteenth Ordinary Session
25 - 29 January 2010
Addis Ababa, Ethiopia

EX.CL/576 (XVI)

**REPORT OF THE AFRICAN COURT ON HUMAN AND PEOPLE'S
RIGHTS (AfCHPR)**

CONTENTS

I - Introduction

II- Status of ratification of the Protocol to the establishment of the Court and submission of declarations by which States accept the jurisdiction of the Court to receive cases instituted by individuals and non governmental organizations.

III- Activities conducted in 2009

A- Judicial matters

B- Administrative issues

C- Sessions and issues examined

D- Issues that received special attention:

a) Harmonization of the internal rules of the Court and those of the African Commission on Human and Peoples' Rights

b) Report of the Court on the decision of Heads of State and Government and on Paragraph 9 of Decision Assembly/AU/Dec. 213 (XII) on abuse of the principle of universal jurisdiction.

c) recruitment of staff

d) New Court Registry and Status of the Judges

e) Implementation of the Headquarters Agreement

f) Cooperation with external partners

IV - Evaluation and recommendations

1. Evaluation

2. Recommendations

REPORT OF THE AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS (AfCHPR)

I - INTRODUCTION

1. The African Court on Human and Peoples' Rights (the Court) was established by the Protocol to the African Charter on Human and Peoples' Rights adopted by State Parties to the Organization of African Unity (OAU) in Ouagadougou, Burkina Faso, on 9 June 1998. The Protocol entered into force on 25 January 2004, following its ratification by 15 member States of the African Union, in accordance with Article 34(3) of the Protocol. The Court comprises 11 Judges. Apart from the President, the Judges exercise their duties on part-time basis. The seat of the Court is in Arusha, Tanzania.
2. The first members of the Court were elected by the Executive Council of the African Union and appointed by the Assembly of Heads of State and Government at the session organized in Khartoum, Sudan, in January 2006. Members of the Court were sworn in on 2 July 2006 before the Assembly of Heads of State and Government at the session in Banjul, the Gambia and started exercising their functions on the same day.
3. Judge Githu Muigai (Kenya) who was elected in July 2008 for a six-year term of office informed the President of the Court by letter of 3 June 2009 of his resignation. The President, in accordance with Articles 20(1) of the Protocol and 6(1) of the internal rules of the Court, immediately notified the Chairperson of the AU Commission by letter of 4 June 2009. The election of a new Judge to replace him for the remaining tenure is still being awaited.
4. The list of members of the Court, as well as their respective nationalities and tenure of office is contained in the annex of this report.

The new Bureau of the Court that was elected on 15 September 2008 during its tenth session remains unchanged and is composed as follows:

President: Judge Jean Mutsinzi

Vice-President: Judge Sophia Akuffo.

5. By virtue of the provisions of Article 31 of the Protocol to establish the Court, « *the Court shall submit to each regular session of the Assembly, a report on its activities during the previous year. The report shall specify, in particular, the cases in which a State has not complied with the Court's judgment* »

6. This report covers the main activities of the Court in 2009 and gives an assessment of the said period, as well as recommendations.
7. Because of its importance for the functioning of the Court and the need to protect human rights in all African States, this report will analyse, firstly, the status of ratification of the Protocol to the establishment of the Court and the Declaration by which States accept the jurisdiction of the Court to receive cases instituted directly by individuals and non-governmental organizations, in accordance with Articles 5(3) and 34 (6) of the Protocol.

II- STATUS OF RATIFICATION OF THE PROTOCOL TO ESTABLISH THE COURT AND THE DECLARATION BY WHICH THE STATES ACCEPT THE JURISDICTION OF THE COURT TO RECEIVE CASES INSTITUTED BY INDIVIDUALS AND NON GOVERNMENTAL ORGANIZATIONS

8. Till date, only 25 (twenty-five) States have ratified the Protocol to the establishment of the Court namely : Algeria, Burkina Faso, Burundi, Côte d'Ivoire, Comoros, Gabon, The Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, Senegal, South Africa, Tanzania, Togo, Tunisia and Uganda. It should be noted that since the Court submitted its 2008 progress report, no other State has ratified the above-mentioned Protocol nor made a declaration accepting the jurisdiction of the Court to receive cases instituted by individuals and non governmental organisations.
9. Indeed, all 53 member States of the African Union have ratified the African Charter on Human and Peoples' Rights which the Court is specifically in charge of implementing. It appears clearly that the delay observed in the ratification of the Protocol establishing the Court is an impediment and does not enable the Court to discharge its duties smoothly and attain its goals as the judicial body responsible for the protection and enhancement of human rights.
10. In addition, as at the date of this report, information available at the AU Commission affirms that of the 25 States that have ratified the Protocol, only Burkina Faso and Malawi have made a declaration accepting the jurisdiction of the Court to receive cases directly from individuals and non governmental organizations, in accordance with Articles 5(3) and 34(6) of the Protocol. This means that less than half of AU member States have ratified the Protocol and even fewer have made the above-mentioned declaration, a situation that may have a negative impact on access by African States and citizens to the Court.

III- ACTIVITIES CONDUCTED IN 2009

11. As judges are not permanent, the activities of the court are especially through sessions organized approximately every three months and during which judicial matters and administrative issues are examined.

A- Judicial matters

12. On 7 October 2008, the Court received an application, dated 11 August 2008, by Mr. Michelot Yogogombaye of Chadian nationality against the Republic of Senegal.

The application concerned the case of Mr. Hissein Habré, former President of Chad, from June 1982 to December 1990, presently awaiting trial in the Republic of Senegal.

The Court examined the application, in accordance with the Protocol establishing the Court as well as its internal rules of procedure. The ruling, the first since the establishment of the Court, is expected at its fifteenth ordinary session to be held from the seventh to the eighteenth of December in Arusha. A copy of the order is appended to this report, for the intention of the Executive Council of the Conference (**Annex 1**).

The Court has not received any other application till date.

B- Administrative issues

13. Administrative issues are diverse and vary from one session to another, though some are recurrent in many sessions as could be observed below.

C- Court Sessions and issues examined

14. In 2009, the Court held four annual ordinary sessions namely; the twelfth, thirteenth, fourteenth and fifteenth ordinary sessions as well as two extra-ordinary sessions.

- **Ordinary sessions**

15. The twelfth ordinary session took place from 2 to 23 March 2009 during which it examined the following issues:

On judicial affairs, the Court examined Application No. 001/2008 introduced by Mr. Michelot Yogogombaye against the Republic of Senegal.

On administrative issues, the Court examined, inter alia:

- decisions of the Executive Council of the Assembly of Heads of State and Government relating to the Court ;
- harmonization of the Court's internal rules with those of the African Commission on Human and Peoples' Rights ;
- cooperation between the Court and external partners ;
- recruitment of a full time Registrar, a Deputy Registrar and interpreters and translators;
- implementation Agreement reached at the Headquarters;
- consultant's report on the financial procedures of the Court.

16. The thirteenth ordinary session of the Court took place from 1 to 12 June 2009. During this session, the Court continued to examine Application No. 001/2008 and reviewed issues concerning:

- the decision of the Assembly of Heads of State and Government relating to the abuse of the principle of universal jurisdiction and the possible extension of the jurisdiction of the African Court to judge international crimes ;
- the meeting of judges of the African Court with judges of international human rights courts namely, the European Court on Human Rights and the Inter-American Court of Human Rights.

17. The fourteenth ordinary session held from 7 to 18 September 2009. This session pursued the finalization of the ruling in the matter Michelot Yogogombaye vs the Republic of Senegal. In addition, the Court adopted its report on the decision of the Assembly of Heads of State and Government on the implications of the possible extension of the jurisdiction of the Court to judge international crimes.

18. The fifteenth ordinary session held from 7 to 18 December 2009. At this session, the Court considered such issues as :

- Finalization of the ruling in the matter Michelot Yogogombaye vs the Republic of Senegal ;
- Confirmation of members of staff at the end of their probation period ;
- Recruitment of a full time Registrar, a Deputy Registrar, a French language Interpreter/Translator an Arabic language Interpreter/Translator, a Portuguese language Interpreter/Translator, an Arabic Secretary, a Portuguese Secretary and an information and Communication technology Specialist ;
- Assessment of the two joint meetings between the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights and the amendments of the interim rules of the Court;
- Cooperation between the Court and its external partners : Danish Institute of Human Rights and other partners;
- Report of Activities of the Court for 2009 ;
- The Draft Budget of the Court for 2010 ;
- An application from the East African Law Society and others to become Amicus Curiae of the African Court.

- **Extra-ordinary sessions**

19. The Court held an extra-ordinary session from 13 to 17 July 2009 during which it organized a joint meeting between the African Court on Human and Peoples' Rights and African Commission on Human and Peoples' Rights on the harmonization of their respective internal rules of procedure. As the two institutions did not examine this issue fully, another meeting was organized in Dakar from 10 to 16 October 2009 on the same subject and during which provisions relating to this recommendation were adopted.

ISSUES THAT RECEIVED SPECIAL ATTENTION**a) Harmonization of the internal rules of procedure of the Court and those of the African Commission on Human and Peoples' Rights**

20. According to Article 2 of the Protocol, « *The Court shall, bearing in mind the provisions of this Protocol, complement the protective mandate of the African Commission on Human and Peoples' Rights hereinafter referred to as "the Commission", conferred upon it by the African Charter on Human and Peoples' Rights, hereinafter referred to as "the Charter".*

Article 5 (a) of the Protocol equally provides that the Commission may submit cases to the Court. Moreover, by virtue of Article 6(1) of the Protocol, "*the Court, when deciding on the admissibility of a case instituted under article 5 (3) of this Protocol, may request the opinion of the Commission which shall give it as soon as possible*".

Finally, in conformity with Article 33, "*the Court shall draw up its Rules and determine its own procedures. The Court shall consult the Commission as appropriate*".

Reciprocally, concerning the Court, Article 6(3) of the Protocol states that "*the Court may consider cases or transfer them to the Commission*".

21. The implementation of these provisions under the Protocol requires both the Court and the Commission to harmonize their respective internal rules of procedure. In this regard, they organized the two above-mentioned joint meetings, from 13 to 17 July in Arusha and from 12 to 16 October 2009 in Dakar, respectively.

b) Report of the Court on the decision of Heads of State and Government and on Paragraph 9 of Decision Assembly/AU/Dec. 213 (XII) on the abuse of the principle of universal jurisdiction.

22. Under Paragraph 9 of Decision Assembly/AU/Dec. 213 (XII) of February 2009, the Assembly of Heads of State and Government of the African Union requested "the AU Commission, in consultation with the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights to examine the implications of extending the jurisdiction of the Court to judge international crimes such as genocide, crimes against humanity and war crimes and to forward a report to the Assembly in 2010".

In this respect, the Court has submitted its contribution to the Commission on the matter and this will be taken into account in the final submission of the Report on this issue.

c) Staff recruitment

23. Of the forty-six positions awarded to the Court by the decision-making organs of the African Union, thirty-three were filled in 2008. In 2009, the Court continued to fill the remaining vacancies.

In addition, decisions were taken concerning staff that had completed their twelve-month probation period.

It should be recalled that for service requirements, the Court, during its eleventh session, from 24 to 5 December 2008, recruited an interim Registrar for a six-month period, in replacement of the selected candidate who, unfortunately, declined the offer. One translator/interpreter, one assistant accountant and three drivers were equally recruited. The recruitment process remains open for the eight remaining positions, in particular, one full time Registrar, one Deputy Registrar, one information and communications technology specialist, three interpreters/translators (French, Arabic, Portuguese) and two secretaries (Arabic, Portuguese).

The delay observed in the recruitment process is due to the unattractive offers of the African Union, particularly for the positions of Registrar, Deputy Registrar, interpreter/translator and information and communications specialist, with regard to the required qualifications and the nature and intensity of the work load, as compared to offers proposed by similar institutions.

d) New Court Registry and Status of the Judges

Following the presentation of the Court's 2008 progress report, the Executive Council took decision EX.XL/DEC.483 (XIV) in which it « Recalls its EX.CL/DEC.449 (XIII) decision which, inter alia, "*authorizes the African Court on Human and Peoples' Rights to submit in 2009 a new court registry structure and fresh proposals relating to the status of judges*". ... "*Requests the Permanent Representatives' Committee to examine the proposals of the Court regarding the new Court registry structure and the status of judges and to make recommendations to the Executive Council in its next session*".

Since the Sub-Committee on Structures has not met, the Permanent Representatives Committee, meeting in June 2009 to prepare for the Syrte Summit, could not examine the proposals of the Court and, as such, could not make any proposals to that effect to the Executive Council as requested through the above-mentioned decision.

That is why the Court is once again requesting the relevant organs of the African Union to examine its proposals relating to the structure of the Registry and the status of the Court.

e) Implementation of the Headquarters Agreement

- 24.** According to the agreement signed between the African Union and the Government of Tanzania, pending the construction by the government of a permanent headquarters for the Court, the premises identified in 2007 in Tengeru to tentatively house the seat of the Court require some significant renovation works. Till date, the works have not yet started.

In October 2008, the Tanzanian Ministry of Foreign Affairs negotiated a lease contract with TANAPA (Tanzania National Parks Authority) for the Court to use the Mwalimu Julius K. Nyerere Conference Centre belonging to this organization. Even though these buildings were placed at the disposal of the Court in October 2008, the contract was signed in May 2009.

The Centre also requires rehabilitation works to enable the Court to function conveniently, but as things stand a lot still remains to be done, the many consultation meetings held with the delegates of the Foreign Affairs Ministry notwithstanding.

The Court hereby expresses its gratitude to the Tanzanian Government for the facilities put at its disposal and prays the Government to accelerate the implementation of measures already taken to this effect pending the construction of the permanent seat of the Court.

f) Cooperation with external partners

- 25.** Some institutions have proposed to establish cooperation ties with the African Court on Human and Peoples' Rights. They are:

- The European Union, through the African Union;
- The German Technical Cooperation Agency (GTZ);
- The Konrad Adenauer Foundation;
- The Danish Institute of Human Rights;
- The McArthur Foundation.

For now, the Court entertains cooperation ties with the above-mentioned institutions for either short-term or long-term activities.

The Konrad Adenauer Foundation financed the study trips of members of the Court in continental courts in Europe and America in 2007 as well as in the German Constitutional Court, in the International Court of Justice and in the International Criminal Court.

In November 2008, the Court entered into an agreement with GTZ which is now in its implementation phase. Under this agreement, some activities were carried out in 2009 in the domains of law, training, information and communication technologies.

In the implementation of the project “Building the Capacity of the African Court”, a colloquium was organized in Berlin from 1 to 7 August 2009. The colloquium brought together African, European and inter-American courts on human rights to share their experiences and reflect on the issues relating to the protection of human rights.

Moreover, in 2009 the GTZ accepted to finance training activities for the judges and personnel of the Court following a training timetable that extends to 2010. It also helped the Court in setting up its library.

Lastly, within the framework of the implementation of this cooperation agreement, the website of the Court has been created and went operational in June 2009.

The European Union, through the African Union, cooperates with the Court through the “55 million euro support programme of the European Commission to the African Union”.

The Court has submitted its 2008 action plan to the African Union Commission, which has approved it and cooperation is currently going on.

The areas of cooperation between the McArthur Foundation and the Court are now being finalized.

The Danish Institute of Human Rights is in negotiation with the Court to identify projects for implementation.

IV - EVALUATION AND RECOMMENDATIONS

1. Evaluation

- 26.** The Court would like to express its gratitude to decision-making bodies of the African Union and, especially, to the Assembly of Heads of State and Government and to the Executive Council of the African Union for their support, in particular for providing the financial resources necessary for its functioning in 2009. The Court also expresses its sincere gratitude for the particular attention the Assembly of Heads of State and Government of the Union accorded it and especially for the decision to authorize the Court to submit a new Court Registry structure and to make fresh proposals regarding the status of the judges which are some of the domains that determine the success of the mission assigned to the Court.

The Court would also like to thank the African Union Commission for the constant support it has always given the Court pending the effective setting up of its structures, notably with regard to the process of recruitment of staff members of the Court's registry.

The Court also expresses its gratitude to the Government of the United Republic of Tanzania, the host country of the Court, for the particular attention it attaches to finding solutions to its problems and notably for the efforts it made in order to provide provisional premises to the Court in Arusha while waiting for the construction of permanent structures.

During the year 2009, notwithstanding the impediments resulting from the late or still incomplete recruitment of its personnel, disparities between the grades of recruited staff members and their duties, inadequate staff as well as lack of offices, the Court was able to successfully carry out quite a number of activities, the most important of which are:

- the holding of four statutory ordinary sessions and two extraordinary sessions;
- the organization of two joint meetings with the African Commission on Human and Peoples' Rights which culminated in the harmonization of their respective internal rules of procedure, especially with regard to the procedure for the Commission to refer cases to the Court and the mutual relations of complementarity between them;
- the holding of the first consultation meeting between the three continental courts on human rights: the African Court, the European Court and the inter-American Court;
- the organization of training courses for the legal professionals of the Court at the European Court of Human Rights and training missions abroad for the other staff members;
- the conclusion of procedures relating to the handling of the first case referred to the Court;
- following the decision of the Assembly of Heads of State and Government, paragraph 9 (Assembly/AU/Dec.213 (XII) of February 2009 on the abuse of the principle of universal jurisdiction, the drafting of a report on the consequences of extending the jurisdiction of the

Court to entertain international crimes such as genocide, crimes against humanity and war crimes.

Finally, it is worth noting that as long as a good number of Member States do not ratify the Protocol relating to the establishment of the Court, or do not make the declaration to accept the jurisdiction of the Court to directly receive cases instituted individuals and non-governmental organizations, access to the Court will remain extremely limited and the legal system for the protection of human and peoples' rights through the Court would not play its role on the continent fully.

2. Recommendations

27. In the light of the foregoing, the Court recommends as follows:

1) To the Assembly of Heads of State and Government to:

- Approve the 2010 draft budget as submitted;
- Examine the Court's proposals regarding the structure of the registry and the status of judges;
- Requests African Union Member States which have not yet ratified the Protocol relating to the establishment of the Court and have not yet made a declaration to accept the jurisdiction of the Court to directly receive applications from individuals or nongovernmental organizations, to do so.

2) To the Government of the United Republic of Tanzania,

Host country of the Court, and in keeping with the Headquarters Agreement, to:

- Accelerate the process for the construction of a permanent seat for the Court to enable it have a befitting permanent site that meets the standards of an international court;
- Accelerate the implementation of all other provisions contained in the Headquarters Agreement, in particular, the rehabilitation of the current building located in TANAPA;

- As the host country of the seat of the Court, set the example by submitting the declaration to recognize the jurisdiction of the Court to directly receive cases from individuals or nongovernmental organizations.

ANNEX:

**LIST OF THE JUDGES OF THE AFRICAN COURT ON HUMAN AND PEOPLES'
RIGHTS IN DECEMBER 2009**

No.	NAME	TERM		COUNTRY
		Duration	Expiry	
1	Mr. Jean MUTSINZI (President)	6	July 2012	Rwanda
2	Mrs Sophia A.B AKUFFO (Vice-President)	6	July 2014	Ghana
3	Mr. El Hadji GUISSSE	4	July 2010	Senegal
4	Mr. Hamdi Faraj FANNOUSH	4	July 2010	Libya
5	Mr. Modibo Tounty GUINDO	6	July 2012	Mali
6	Mrs Justina Kelello Mafoso-guni	4	July 2010	Lesotho
7	Mr. Bernard Makgapo NGOEPE	6	July 2014	South Africa
8	Mr. Gérard NIYUNGEKO	6	July 2012	Burundi
9	Mr. Fatsah OUGUERGOUZ	4	July 2010	Algeria
10	Mr. Joseph MULENGA	6	July 2014	Uganda
11	Mr. Githu MUIGAI (*)	6	July 2014	Kenya

(*) **Judge Githu MUIGAI (Kenya), elected in July 2008 for a six-year term of office resigned in June 2009 and should be replaced for the remainder of his appointment.**