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**REPORT ON THE ACTIVITIES OF THE AFRICAN COURT  
ON HUMAN AND PEOPLE'S RIGHTS**

## REPORT ON THE ACTIVITIES OF THE AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS

### I. Introduction

1. The African Court on Human and Peoples' Rights (the Court) was established by virtue of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as the Protocol), adopted on 9 June 1998 in Ouagadougou, Burkina Faso, by the then Organization of African Unity (OAU). The Protocol entered into force on 25 January 2004.

2. The Court, which became operational in 2006, is constituted of eleven Judges, nationals of Member States of the African Union. The seat of the Court is in Arusha, the United Republic of Tanzania.

3. Article 31 of the Protocol provides that "The Court shall submit to each regular session of the Assembly, a report on its work. The report shall specify, in particular, the cases in which a State has not complied with the Court's judgment".

4. The present report, which covers the period from January to December 2012, is prepared in the spirit of the abovementioned article. The report outlines, the main judicial and non-judicial activities undertaken by the Court during this period, and makes an appraisal of the functioning of the Court as well as recommendations on how to enhance the effectiveness of the Court.

5. It is however, important from the outset, to report on the status of ratification of the Protocol and the deposit of the declaration recognising the competence of the Court to receive cases submitted by individuals and non-governmental organizations (NGOs), under Article 34(6) of the said Protocol.

### II. Status of ratification of the Protocol and the deposit of the Declaration accepting the competence of the Court to receive cases from individuals and NGOs

6. As at 1 December, 2012, the Protocol establishing the Court had been ratified by twenty six (26) Member States of the African Union, namely: 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.

7. Of the 26 States Parties to the Protocol, only five, namely: Burkina Faso, Ghana, Malawi, Mali and Tanzania have deposited the declaration accepting the jurisdiction of the Court to receive cases from individuals and non-governmental organizations.

8. During the period under review there was no confirmation of any additional ratification or deposit of the declaration. It is important to emphasise that the last ratification of the Protocol was in October 2010 (more than two years ago) while the last declaration was deposited in February, 2011.

### III. The composition and organization of the Court

#### *i) Election and Swearing-in of new members of the Court*

9. At the 21<sup>st</sup> Ordinary Session of the Executive Council three Judges were elected, and they were appointed by the 19<sup>th</sup> Assembly of Heads of State and Government of the African Union held in Addis Ababa, Ethiopia, from 9 to 16, July, 2012. The Judges appointed are:

- Gérard Niyungeko (Burundi);
- El Hadji Guissé (Senegal); and
- Ben Kioko (Kenya).

10. At a public sitting prior to the opening of its Twenty-sixth Ordinary Session in Arusha, Tanzania, on 17 September 2012, Judges El Hadji Guissé and Ben Kioko were sworn-in.

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

11. At the commencement of its Twenty-sixth Ordinary Session held from 17 to 28 September, 2012, the Court elected its bureau as follows:

- Hon. Lady Justice Sophia A.B. Akuffo (Ghana) – President;
- Hon. Justice Fatsah Ouguerouz (Algeria) - Vice-President.

#### *iii) Current composition of the Court*

12. The current composition of the Court, consisting of ten (10) Judges, is attached to this Report as Annex I. Sadly, one of the Justice, Hon. Judge Joseph Mulenga (Uganda) passed away in August 2012. In accordance with Article 20 of the Protocol, the Court informed the Chairperson of the African Union Commission (AUC) of this event and the need to have the vacancy filled.

### IV. Holding of Court sessions

13. During the period under consideration, the Court held four ordinary sessions and one extra-ordinary session, as follows:

- i) 24<sup>th</sup> Ordinary Session from 19 to 30 March, 2012, in Arusha, Tanzania;
- ii) 25<sup>th</sup> Ordinary Sessions from 11 to 26 June, 2012, in Arusha, Tanzania;
- iii) 26<sup>th</sup> Ordinary Session from 17 to 28 September, 2012, in Arusha, Tanzania;

- iv) 27<sup>th</sup> Ordinary Session from 26 November to 7 December, 2012, in Port Louis, Mauritius; and
- v) 5<sup>th</sup> Extraordinary Session from 1 to 5 October, 2012, in Arusha, Tanzania.

## **V. Activities undertaken by the Court**

### ***i) Judicial Matters***

**14.** During the period under review, the Court received seven (7) applications and two (2) requests for advisory opinion. This brings to twenty-two (22) the total number of contentious matters and to four (4) the total number of requests for advisory opinion, received by the Court since its establishment.

**15.** During its 24<sup>th</sup> Ordinary Session the Court disposed of three applications, and during its 25<sup>th</sup> Ordinary Session, it disposed of two applications.

**16.** The applications disposed of during the period under consideration were:

- Application No. 001/2011 –Femi Falana v. The African Union;
- Application 002/2012 – Delta International Investments SA, Mr. AGL De Lange and Mrs. M. De Lange v. The Republic of South Africa;
- Application 004/2012 – Emmanuel Joseph and others v. The Republic of South Africa;
- Application 005/2012 – Amir Adam Timan v. The Republic of The Sudan; and
- Application 007/2012 - Baghdadi Ali Mahmoudi v. The Republic of Tunisia.

**17.** With regards to Application 001/2011, the Court held that it lacked jurisdiction to receive the Application because the Application was brought against the African Union, a non-state entity, which is not party to the Protocol.

**18.** With respect to Applications 002/2012, 004/2012, and 007/2012, the Court decided that it lacked jurisdiction to deal with the Applications because, although the Respondent States had ratified the Protocol establishing the Court, they had not made the declaration under Article 34(6) of the Protocol allowing the Court to receive cases from individuals and NGOs.

**19.** Regarding Application 005/2012, the Court decided that the Respondent State had not ratified the Protocol.

**20.** All the decisions taken on the above applications have been communicated to the respective States.

**21.** The Court has a total of nine (09) Applications pending before it as at 1 December, 2012.

22. During the period under review, the Court dealt with four (4) requests for advisory opinion – two (2) received in 2011 and two (2) in 2012.

23. At its 24<sup>th</sup> Ordinary Session, one (1) request was withdrawn and another one was struck off the cause list for lack of capacity on the part of the author.

24. At its 26<sup>th</sup> Ordinary Session, the Court instructed the Registrar to write to the author of the third request to be more accurate in framing its request so as to comply with Rule 68(2) of the Rules of Court.

25. The fourth request for advisory opinion, from the Pan African Lawyers' Union (PALU) and Southern African Litigation Centre (SALC), is still being considered by the Court.

26. To ensure the effective management of applications submitted to the Court, the Court adopted and issued Practice Directions and Instructions to the Registry.

#### ***ii) Public Hearings***

27. One important development in the history of the Court that took place during the period under consideration was the holding of its first public hearing on legal arguments, on 22 and 23 March 2012, during its 24<sup>th</sup> Ordinary Session, in the matter of *Femi Falana v. the African Union*. The Judgment in that matter was delivered on 26 June 2012. A second public hearing took place on 14 and 15 June 2012, during the 25<sup>th</sup> Ordinary Session of the Court, in the matter of *Tanganyika Law Society and The Legal and Human Rights Centre and Reverend Christopher Mtikila v. the United Republic of Tanzania*. A third public hearing was held on 29 and 30 November, 2012 in Port Louis, Mauritius, during the 27<sup>th</sup> Ordinary Session of the Court, in the matter of *Urban Mkandawire v. the Republic of Malawi*. The Judgments in the last two matters will be delivered in the course of 2013.

#### **VI. Non-judicial activities**

28. The main non-judicial activities undertaken during the period under review are described in the proceeding sections of the present report.

#### ***i) Presentations to the policy organs of the African Union***

##### ***a. Participation of the Court at the AU Summits***

29. The Court took part in the 23<sup>rd</sup> Ordinary Session of the Permanent Representatives' Committee (PRC), the 20<sup>th</sup> Ordinary Session of the Executive Council, as well as the 18<sup>th</sup> Assembly of Heads of State and Government of the African Union held in Addis Ababa, Ethiopia, from 24 - 31 January, 2012.

30. The Court also took part in the 24<sup>th</sup> Ordinary Session of the Permanent Representatives' Committee (PRC), the 21<sup>st</sup> Ordinary Session of the Executive Council,

as well as the 19<sup>th</sup> Assembly of Heads of State and Government of the African Union held in Addis Ababa, Ethiopia, from 9 - 16 July, 2012.

***b. Presentation of the 2013 budget***

**31.** In March 2012, the Court considered and adopted its draft budget for the 2013 financial year, and submitted it to the AUC for transmission to the PRC Advisory Committee on Administrative, Budgetary and Financial Matters.

**32.** The draft budget was presented to the PRC Advisory Sub-Committee on Administrative, Budgetary and Financial Matters on 5 July 2012. The 2013 proposed budget of the Court stood at US\$11,965,142, comprising US\$9,602,827 as Member States' contribution (for the operational budget) and US\$2,362,315 as partners' funds (for the programme budget).

**33.** However, at its 21<sup>st</sup> Ordinary Session, the Executive Council adopted the 2013 budget of the Court to the tune of 8,969,947, with a 2% increase to the 2012 regular budget.

***c. Execution of the 2012 budget***

**34.** The budget allocated to the Court as contributions from Member States for 2012 stood at US\$6,478,071. Overall expenditure, as at 30 November, 2012 amounted to US\$4,632,590. It follows that the rate of execution of the budget is 71.50%.

**35.** In addition to the budgetary allocations from Member States' contributions, the Executive Council also approved contributions from external partners. The contribution under the European Union Support Programme stood at US\$2,084,921. Overall expenditure as at 30 November, 2012 is US\$478,693 or an execution rate of 23%.

**36.** The contribution by the German International Cooperation (GIZ) amounted to US\$924,130. As at 31 October, 2012, the Court had expended US\$398,359, representing an execution rate of 43.1%.

**37.** The contribution from MacArthur Foundation amounted to \$56,734.55, and as at 30 November, 2012, the Court had spent \$56,034.15, representing an execution rate of 98.70%.

***d. The new structure of the Registry of the Court***

**38.** During the January Summit, the 2011 Activity Report of the Court was considered and adopted by the Executive Council. The latter also approved the PRC's recommendation of an additional forty-four (44) new posts for the Registry of the Court, as well as the PRC-proposed five year recruitment plan of 40% for the first year (2012) and 15% for each of the subsequent four years.

**39.** In its decision EX.CL Dec. 668 (XX) on Structural Reforms, the Executive Council adopted the recommendations on Structural Reforms including ‘the revised Structure of the African Court on Human and Peoples’ Rights (AfCHPR) composed of ninety (90) posts’, adding that ‘The new forty four (44) additional posts to be implemented over a period of five (5) years’. The Executive Council further requested the Commission “to report on the implementation of this Decision to the next ordinary session of the Executive Council in June 2012”.

**40.** In line with the recruitment plan proposed by the PRC and in compliance with the Executive Council decision to report on the recruitment process, the Court advertised 40% of the positions (that is, seventeen (17) positions) to be recruited in 2012. To ensure the widest possible publicity and attract as many qualified Africans as possible, the positions, advertised in Arabic, English, French and Portuguese, were posted on the websites of the Court and the African Union. They were also sent under the cover of Notes *verbale* to Ministries of Foreign Affairs/External Relations of Member States of the African Union, as well as to Embassies of AU Member States in Addis Ababa, Ethiopia and Dar es Salaam, Tanzania, where available. In addition, the Court forwarded the advertisements to be posted on the websites of the African Commission, Regional Human Rights Courts, and other human rights bodies with a wide network. The closing date for the receipt of applications was originally slated for July 15 2012, and was extended to 31 October, 2012.

**41.** However, in view of the fact that the 2012 budget of the Court was adopted before the approval of the new positions, the Court could not reflect the financial implications of the new structure in the 2012 budget. The Court decided to submit a request for supplementary budget of \$264,104 to enable it successfully complete the recruitment process and report to the Executive Council.

**42.** At its 21<sup>st</sup> Ordinary Session, the Executive Council declined to approve the budget proposed by the Court to enable it fill the positions earmarked for 2012. In November, 2012, the PRC Advisory Sub-Committee on Administrative, Budgetary and Financial Matters rejected the request for supplementary budget.

**43.** The decision of the Executive Council not to approve in the 2013 budget of the Court, the financial implications for the recruitment of staff and the subsequent decision of the PRC Advisory Sub-Committee on Administrative Budgetary and Financial Matters not to approve the Court’s request for supplementary budget to facilitate the recruitment meant the recruitment process had to be suspended.

## **VII. Recruitment and staff development**

### ***i) Recruitment of staff***

**44.** As at 31 December, 2012, of the 46 positions approved in 2007, 44 had been filled. The Court is in the process of recruiting the Deputy Registrar and the Portuguese Secretary.

**ii) Staff development**

- 45.** During the period under consideration, the staff of the Registry was involved in a number of training aimed at enhancing their capacity to ensure better productivity.
- 46.** Staff members of the Registry of the Court had a retreat from 16 - 17 February, 2012 in Moshi, Tanzania. The main objective of the retreat was to brainstorm on ways to improve the performance of staff. The retreat was the first of its kind and gave staff the opportunity to take stock of the successes and failures, as well as look at the challenges ahead, and devise concrete measures to improve the functioning of the Registry.
- 47.** Staff members of the Registry benefitted from a three day *Training Workshop on the new AUC Performance Appraisal System*, with a view to improve staff evaluation and career development. The training took place from 3 - 5 April, 2012 at the Court premises in Arusha, Tanzania, and was facilitated by a senior staff from the AUC.
- 48.** In accordance with AU Staff Regulations and Rules, an induction session for new staff and continuation of induction for old staff was organized on 10 May, 2012.
- 49.** The Finance Officer took part in the *2012 Finance Workshop* organized by the AUC in Zanzibar, Tanzania from 29 -31 March, 2012, as well as in the *4<sup>th</sup> Joint AU-EU Review Meeting*, from 20-21 June, 2012, in Addis Ababa, Ethiopia.
- 50.** The Court, with support from GIZ, organized the *Second Legal Research and Judgment Writing Training*, for Legal Officers, held in Moshi, Tanzania from 6 – 10 August, 2012.
- 51.** The Senior Information and Communication Officer took part in a *Workshop for the Validation of the AU Communication and Advocacy Strategy (2013 – 2016) : Framework on AU Website and Social Media*, organized by the Directorate of Information and Communication (DIC), African Union Commission, from 3 – 5 October 2012, in Addis Ababa, Ethiopia.
- 52.** Staff members of the Registry of the Court were involved in *Training on Protocol matters*, from 7 – 10 November, 2012, in Moshi, Tanzania, and the Protocol Assistant of the Court was attached to the Protocol Unit of the AUC from 5 – 9 November, 2012, to enhance his knowledge of protocol matters, especially within the framework of the African Union.
- 53.** Senior staff members of the Registry occupying management positions were involved in a training on *Leadership in the management of International Organisations*, from 12 -16 November, 2012 in Arusha, Tanzania, offered by the Eastern and Southern Africa Management Institute (ESAMI).
- 54.** To encourage the use of more than one official AU language, in 2012, the Court continued with its online language training for both Judges and staff, and with support

from the *Alliance Franco-Tanzanienne* and the *Organization Internationale de la Francohonie (OIF)*, a Judge and two staff members took part in an Intensive French Course in France. During the same period, two staff members took part in an intensive English Language Programme in Nairobi, Kenya. The Court also started Swahili classes for staff members in August 2012. The Court is exploring ways and means to extend its language training programme to include training in Arabic and Portuguese.

### **VIII. Promotional activities**

**55.** Since the Court is a relatively new institution, its Members decided to carry out promotional activities to raise awareness among relevant stakeholders, and to accelerate the pace of ratification of the Protocol establishing the Court, and the making of the declaration, to allow individuals and non-governmental organizations direct access to the Court, after exhausting local remedies.

**56.** In this regard, during the period under consideration, the Court carried out a number of promotional activities, including sensitization visits, a regional seminar, a retreat and networking.

#### ***i) Sensitization visits***

**57.** In 2012, the Court undertook sensitization visits to three (3) countries, that is, Burundi, Mauritius and Senegal.

##### ***a. Sensitization visit to the Republic of Burundi***

**58.** The Court undertook a sensitization visit to the Republic of Burundi from 21 - 23 May, 2012. The aim of the visit was to raise public awareness among human rights stakeholders in Burundi and to encourage the latter, which has already ratified the Protocol, to make the declaration required under Article 34 (6) of the Protocol.

**59.** The delegation of the Court was led by the President of the Court and comprised two other Judges and some staff members of the Registry.

**60.** During the visit, the delegation met and held fruitful discussions with a number of senior government officials involved in human rights issues in the country, including the First Vice-President, the Minister of Foreign Affairs and International Cooperation, the Minister of Justice and Keeper of the Seals, the Minister of Human Rights, the Speaker of Parliament and the President of Senate.

**61.** The Court also paid courtesy calls on the President of the Constitutional Court, the President of the Supreme Court, the head of the National Independent Commission on Human Rights and the Ombudsman.

**62.** In addition, the Court, in collaboration with the Government of the Republic of Burundi and the Burundi Bar Association, organized a half-day sensitization seminar for human rights organizations in Burundi on 22 May, 2012.

63. The seminar was attended by participants from the Government, the Judiciary, the Burundi Civil Society and other organizations involved in human rights work in the country.

***b. Sensitization visit to the Republic of Senegal***

64. The Court undertook a sensitization visit to the Republic of Senegal from 5 -7 September, 2012. The aim of the visit was to raise public awareness among human rights stakeholders in the country and to encourage the latter, which has already ratified the Protocol, to make the declaration under Article 34(6) of the Protocol.

65. The delegation of the Court was led by the President of the Court and he was accompanied by a Judge and some staff of the Registry.

66. During the visit, the delegation met and held discussions with a number of senior government officials involved in human rights issues in Senegal, including the President of the Republic, the Prime Minister, the Minister of Foreign Affairs, the Minister of Justice and Keeper of the Seals, the President of the Supreme Court, the Mediator of the Republic and the Deputy Chairman of the Constitutional Council, representing the President of the Constitutional Council of Senegal.

67. In addition, the Court, in collaboration with the Government of the Republic of Senegal and the Senegalese Bar Association organized a half-day sensitization seminar for human rights organizations in the country on 6 September, 2012.

68. The seminar was attended by participants from the Government, the Judiciary, the Senegalese Civil Society and other organizations involved in human rights work in Senegal.

***c. Sensitization visit to the Republic of Mauritius***

69. The Court undertook a one day sensitization mission in the Republic of Mauritius on 26 November, 2012, at the start of its 27<sup>th</sup> Ordinary Session held in the country. The aim of the visit was to raise public awareness among human rights stakeholders in Mauritius and to encourage the latter, which has already ratified the Protocol, to make the declaration required under Article 34 (6) of the Protocol.

70. During the mission, the delegation of the Court, led by the President of the Court, met and held fruitful discussions with a number of senior government officials, including the Minister of Foreign Affairs, the Attorney General, the Speaker of Parliament and the Chief Justice.

71. In addition, the Court, in collaboration with the Government of the Republic of Mauritius and the Mauritius Bar Association, organized a half-day sensitization seminar for human rights organizations in country on 26 November, 2012.

**72.** The seminar was attended by participants from the Government, the Judiciary, the Bar Council, the civil society and other organizations involved in human rights work in the country.

**ii) Regional Sensitization Seminar**

**73.** The Court organized a Regional Sensitization Seminar for East and North Africa from 22 to 24 August, 2012 in Addis Ababa, Ethiopia, on the theme “*the African Court on Human and Peoples’ Rights: your new partner in strengthening the protection of human rights in Africa*”.

**74.** The objectives of the Seminar were to promote the Court, create awareness among human rights stakeholders in the regions, and encourage more ratifications of the Protocol establishing the Court, and the deposit of the declaration to allow individuals and NGOs direct access to the Court.

**75.** The Seminar was attended by, among others, Judges of the Court, representatives of AU Organs (Pan African Parliament, African Union Commission, African Committee of Experts on the Rights and Welfare of the Child, African Union Advisory Board on Corruption, African Union Commission on International Law), the East African Court of Justice (EACJ), the Southern African Development Community (SADC) Tribunal, and representatives of other human rights stakeholders drawn from the two regions, including, Bar Associations, National Human Rights Institutions, the Academia, the Media and Non-Governmental Organizations.

**76.** The Opening Ceremony of the Seminar was graced with the presence of His Excellency, Ambassador Mr. Ferdinand Pentecôte Montcho, Ambassador of the Republic of Benin to Ethiopia, and the Chairperson of the Permanent Representatives’ Committee of the African Union.

**77.** The following AU Member States were represented at the opening ceremony of the Seminar: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Chad, Congo, Cote d’Ivoire, Democratic Republic of Congo, Egypt, Ethiopia, Eritrea, Gabon, Ghana, Kenya, Lesotho, Liberia, Mali, Mauritania, Mauritius, Mozambique, Nigeria, Rwanda, Sierra Leone, South Africa, South Sudan, Swaziland, Tanzania, Togo, Tunisia and Zimbabwe.

**78.** There were also representatives of the German International Cooperation (GIZ) - the African Union Office, the European Union Delegation to the African Union, the *Organization Internationale de la Francophonie*, various arms and bodies of the United Nations and other international organizations.

**79.** Participants at the seminar came from the following countries: Djibouti, Ethiopia, Kenya, Mauritania, Mauritius, Rwanda, Saharawi Arab Democratic Republic, South Sudan, Uganda and Tanzania.

**80.** At the end of the Seminar, participants adopted conclusions on measures to be taken to promote the Court and ensure its effectiveness.

***iii) Retreat with the PRC***

**81.** Pursuant to Executive Council Decision EX.CL/Dec.690 (XX) adopted during its 20<sup>th</sup> Ordinary Session in January 2012, in Addis Ababa, Ethiopia, the first Retreat between the Court and the Permanent Representatives' Committee took place in Arusha, Tanzania from 29 -30 October, 2012. The theme of the Retreat was "The relationship between the African Court on Human and Peoples' Rights and the Permanent Representatives' Committee (PRC)".

**82.** The Retreat was attended by thirty nine (39) members of the Permanent Representatives' Committee, seven Judges of the Court, the Commissioner for Political Affairs of the African Union Commission as well as staff from the Registry of the Court and the Secretariat of the AUC.

**83.** The Minister for Constitutional and Legal Affairs of the United Republic of Tanzania, Honourable Mathias Chikawe, officially opened the retreat on behalf of the Government of Tanzania.

**84.** At the end of the two-day retreat, the participants adopted measures that sought to enhance the relationship between the two organs, and ensure the effectiveness of the Court.

***iv) Networking***

**85.** As part of measures to establish relations with similar bodies in Africa and other regions, and exchange views and share experiences, on how to enhance the protection of human rights, the Court visited similar institutions in 2012.

**86.** From 27 February to 6 March, 2012, a delegation of four Judges of the Court visited the Inter-American Court of Human Rights in San José, Costa Rica and the Inter-American Commission of Human Rights in Washington, United States of America.

**87.** Within the framework of sharing experiences, the Registrar on the Court paid courtesy calls on the Registrar of the United Nations International Criminal Tribunal for Rwanda (UNICTR) and the Registrar of the East African Court of Justice (EACJ) on 25 April and 4 May, 2012, respectively.

***v) Other promotional activities***

**88.** Apart from the activities mentioned above, the Court also participated in a number of promotional activities, organised by other stakeholders, during the period under consideration, including the following:

- i) participation at the 8<sup>th</sup> Session of the Brandeis Institute for International Judges, from 3 – 7 January, 2012, in Carmona, Spain;
- ii) participation at a Global Governance High-Level Policy Seminar on ‘Courts, Social Change and Judicial Independence’, organised by the European University Institute, Robert Schuman Centre for Advance Studies, from 16 – 17 March, 2012, in Florence, Italy;
- iii) participation at a Consultative Meeting to create synergies amongst AU Organs, from 12 - 14 April, 2012, in Banjul, The Gambia;
- iv) participation in the public sessions of the 51<sup>st</sup> Ordinary Session of the African Commission on Human and Peoples’ Rights from 18 -24 April, 2012, in Banjul, The Gambia;
- v) undertaking a mission to Addis Ababa, Ethiopia, from 15 -22 April, 2012, to meet and discuss funding of the Court with potential partners;
- vi) participation at the Southern Africa Regional Seminar on the African Human Rights System, organised by the Pan African Lawyers’ Union (PALU) from 3-4 May, 2012, in Lusaka, Zambia;
- vii) participation in the Meeting of Government Experts (14 - 18 March) and the Meeting of Ministers of Justice and Attorneys General (9 – 17 May), in Addis Ababa, Ethiopia, aimed at adopting the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights;
- viii) participation at a Forum on Building Restorative International Justice: the ICC of the Future, on 18 May, 2012, held in London, United Kingdom;
- ix) participation at the 2012 Africa Day Celebrations, on 25 May, 2012, in Dar es Salaam, Tanzania;
- x) participation at the AGF-VIII Sub-Regional meeting organised by the United Nations Development Programme (UNDP), from 30 - 31 May, 2012,in Arusha, Tanzania;
- xi) participation at a Training workshop on Human Rights in the Administration of Justice for High Court Judges in Tanzania, (Part II), from 4 - 6 June 2012, in Bagamoyo, Tanzania;
- xii) participation at the 24<sup>th</sup> Meeting of Chairpersons of UN Treaty Bodies, from 25 – 29 June, 2012, in Addis Ababa, Ethiopia;
- xiii) participation at the Training of Young Lawyers from the East African Community, under the Continuing Legal Education Programme, organized

- by the East African Law Society, from 28 – 29 August, 2012, in Nairobi, Kenya;
- xiv) participation in the Initial Strategic Planning Retreat of the Pan African Lawyers Union (PALU), on 31 August 2012, in Arusha, Tanzania;
  - xv) participation at the opening ceremony of the Tanganyika Law Society Conference and Half-Annual General Meeting on 31 August, 2012, in Arusha, Tanzania;
  - xvi) participation in the Training of Young Lawyers from the East African Region, under the Continuing Legal Education Programme, organized by the East African Law Society, from 3 - 4 September and 6 - 7 September, 2012, in Zanzibar and Dar es Salam, respectively;
  - xvii) participation at the 81<sup>st</sup> Ordinary Session of the Committee on the Elimination of Racial Discrimination (CERD), and meeting with the High Commissioner for Human Rights, the Vice-Chairperson of the Human Rights Council, the various divisions of the Office of the High Commissioner for Human Rights (OHCHR) and representatives of the African Diplomatic Corps based in Geneva, from 27 August and 2 September 2012;
  - xviii) participation at the public sessions of the 52<sup>nd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, from 9 – 22 October, 2012, in Yamoussoukro, Cote d'Ivoire;
  - xix) participation at the Summit of Supreme, Regional and International Courts, from 8 - 9 November, 2012, as well as the General Assembly of the Association of Mexican Judges (AMIJ) on 10 November, 2012, in Mexico City, Mexico;
  - xx) participation at the 2<sup>nd</sup> World Conference on the Right to Education and Rights in Education, from 8 – 10 November, 2012, in Brussels, Belgium;
  - xxi) participation at a Conference on the "Rule of Law and Transitional Justice: Towards triangular learning—the case of Colombia", from 11 - 15 November, 2012, in Venice, Italy;
  - xxii) participation at the 3<sup>rd</sup> Pan African Forum on Children, organised by the Department of Social Affairs of the African Union Commission, from 19 – 20 November, 2012, in Addis Ababa, Ethiopia;
  - xxiii) Participation at the 9<sup>th</sup> AU/EU Human Rights Dialogue on 22 November, 2012, in Addis Ababa, Ethiopia;

- xxiv) participation at the *XXIème Congrès de la Fédération Internationale des Femmes de Carrières Juridiques*, in Dakar, Senegal, from 10 - 17, Novembre, 2012; in Dakar, Senegal;
- xxv) participation at the International Workshop on enhancing cooperation between the UN and Regional Human Rights Mechanisms, from 12 - 14 December, 2012, in Geneva, Switzerland; and
- xxvi) Participate at the Seminar on Justice to the attention of the African Union Representatives, from 13 – 14, December, 2012, in Addis Ababa, Ethiopia.

**89.** The above promotional activities were funded by external partners of the Court.

## **IX. Adoption of the Four-Year Strategic Plan of the Court**

**90.** At its Fifteenth Ordinary Session, the Court decided to develop a strategic plan, and in July 2011, engaged a consultant for the exercise. The Consultant presented the first draft of the strategic plan to the Court during the 23<sup>rd</sup> Ordinary Session held in December 2011, and after incorporating the comments from Judges, submitted a draft in January 2012.

**91.** As one of the most important documents of the Court that sets out its strategic objectives for the next four years, and defines its relations with other stakeholders, the Court decided, in consonance with best practices, that the draft should be subjected to further scrutiny by its partners and other stakeholders, with a view to enriching the same. To that end, the Court organized a Validation Workshop on the Strategic Plan of the Court, from 13 -14 September, 2012 in Arusha, Tanzania.

**92.** The workshop was attended by a cross section of the partners and human rights stakeholders, including the AUC, Pan African Parliament, the African Committee on the Rights and Welfare of the Child, the European Union, and the German International Cooperation, the Coalition for an Effective African Court, the Pan African Lawyers' Union, the East African Law Society, National Human Rights Commissions, the academia and NGOs.

**93.** The contributions received from participants during the workshop have been incorporated in the draft strategic plan and the plan was adopted by the Court during its 27<sup>th</sup> Ordinary Session in December, 2012.

**94.** The Court will align its strategic plan to the proposed AU-Wide Strategic Plan as soon as the latter is adopted.

## **X. Relations between the Court and the African Commission on Human and Peoples' Rights**

**95.** The Court and the African Commission continued to engage with each other, to strengthen their relationship and consolidate the complementarity envisaged in the

Protocol. To this end, the second meeting of the Bureaus of the two institutions took place in Algiers, Algeria on 24 July, 2012. This was followed by the First Annual Meeting between the two institutions from 26 – 27 July, 2012.

**96.** Apart from the above meetings, the Court was duly represented at the 51<sup>st</sup> and 52<sup>nd</sup> Ordinary Sessions of the African Commission, and also took part in the Thirtieth Anniversary Celebrations to commemorate the adoption of the African Charter on Human and Peoples' Rights, organised by the African Commission.

**97.** Furthermore, the Commission submitted an application to the Court during the period under consideration.

#### **XI. Contribution to the project on the extension of the jurisdiction of the Court to include criminal matters**

**98.** During the period under consideration, the Court attended the 4<sup>th</sup> Meeting of Government Experts from 14 - 18 March, 2012, and the 5<sup>th</sup> Meeting of Government Experts and the Meeting of Ministers of Justice and Attorneys General, dealing with, among other things, the adoption of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, from 9 -17 May, 2012, in Addis Ababa, Ethiopia. The Court also participated at the Expert meeting on the Definition of Unconstitutional Change of Government, from 19 – 20, December, 2012, in Arusha, Tanzania.

#### **XII. Host agreement**

**99.** In February 2012, the President of the Court led a delegation to pay a courtesy call on the President of the United Republic of Tanzania, on the margins of the January AU Summit held in Addis Ababa, Ethiopia. During the said visit, His Excellency the President of Tanzania reiterated his government's determination to build very shortly, the permanent premises of the Court.

**100.** On 1 March, 2012, the Deputy Permanent Secretary of the Ministry of Foreign Affairs visited the Court and invited the President, as well as the Registrar, to visit the proposed site where the permanent premises of the Court would be built. On 8 May, 2012, the first meeting of the Joint Facilitative Committee, set up by the host government and the Court, to ensure effective implementation of the Host Agreement, met at the premises of the Court in Arusha.

**101.** During the 24<sup>th</sup> Ordinary Session, the Court visited the site proposed by the government and decided to write to the Government to accept the proposed site. At its 26<sup>th</sup> Ordinary Session in September 2012, the Court agreed on a draft concept and sketch that would assist in the architectural design of the premises. The said concept was transmitted to the host government in October 2012.

### **XIII. Cooperation with external partners**

**102.** The Court continues to maintain relationship with three principal external partners, namely, the European Commission, the German International Cooperation and the MacArthur Foundation.

**103.** In May 2012, the President of the Court undertook a visit to Addis Ababa, Ethiopia, to explore the possibility of expanding the resource base of the Court, by engaging other potential partners, including the United Nations Development Programme (UNDP), the Australian government, the Norwegian government.

### **XIV. Institutional Audit of the Court**

**104.** In October 2011, the European Commission, at the request of the Court, conducted an institutional audit on the operations of the Court, to among other things, determine the readiness of the Court to carry out tasks in accordance with the Financial Regulation applicable to the 10<sup>th</sup> European Development Fund (EDF), and to evaluate the Court's internal accounting practices with respect to accounting, auditing, internal control, internal audit and procurement standards and procedures, which will help to determine whether the Court complies with international financial control standards.

**105.** The audit, which was conducted on behalf of the European Commission by Ernst and Young auditing firm, made certain recommendations on how to enhance the operations of the Court.

**106.** At its 27<sup>th</sup> Ordinary Session, the Court adopted a Roadmap on how to address the findings of the audit.

### **XV. Monitoring mission of the AUC**

**107.** The Department of Strategic Planning of the AUC, within the framework of the EC (Euro 55M) Contribution Agreement, undertook a Monitoring Mission to the Court from 5 - 8 June, 2012. The purpose of the mission was to, *inter alia*, assess the progress made in the implementation of the 2012 Annual Work Plan (AWP) of the Court, follow up on any issues that may be hampering smooth implementation of the AWP, use the outcome of the mission to input in the discussions during the Joint AU/EU retreat scheduled for 20 and 21 June, 2012, in Addis Ababa, Ethiopia, and discuss and agree on the Draft 2013 budget to be submitted to the EC.

**108.** During the mission, the Court discussed the recommendations of the internal and external auditors and ways of implementing them, as well as the EC contribution to the Court for 2013.

### **XVI. Visits to the Court**

**109.** During the period under review, the following delegations visited the Court :

- i) Visit by a delegation from the Government of the Federal Republic of Germany, on 20 January, 2012, led by Mr. Walter Hassman, Deputy Chief of Protocol, German Foreign Ministry, to prepare for the visit of the President of Germany for 28 February, 2012;
- ii) Visit by a delegation of five Judges from the Czech Republic, on 27 February, 2012;
- iii) Visit by a delegation of the American Bar Association, on 9 March, 2012;
- iv) Courtesy Call on the President by the OHCHR Representative for East Africa on 31 May, 2012;
- v) Courtesy call on the President by the German Ambassador to Tanzania on 4 June, 2012;
- vi) Visit by a delegation from the Miami Law School on 26 June, 2012;
- vii) Visit by His Lordship, Mohamed Chande Othman, C.J., Chief Justice of the United Republic of Tanzania, on 26 September, 2012;
- viii) Courtesy call on the President by a delegation of the Committee on Legal Affairs of the German Federal Parliament, on 9 October, 2012;
- ix) Visit by a group of Young Lawyers from the East African Community, on 25 October, 2012;
- x) Visit by PRC Members attending the retreat with the Court, on 30 October, 2012.
- xi) Visit by a group of students from the United States International University (USIU) in Nairobi, Kenya, on 5 November, 2012; and
- xii) Visit by a delegation of Judges from the East African Community, on 13 November, 2012.

## **XVII. Assessment and Recommendations**

### ***i) Assessment***

**110.** The Court wishes to thank the Policy Organs of the African Union and, in particular, the Assembly of Heads of State and Government, for providing the financial resources required for its functioning.

**111.** The Court takes this opportunity to express its appreciation to those States Parties that accepted its request to undertake promotional activities in their territories, and for the support they rendered to ensure the success of the activities.

**112.** The Court equally wishes to express its gratitude to the Government of the United Republic of Tanzania, host country of the seat of the Court, for the efforts made towards providing the Court with temporary buildings to serve as its seat, among other facilities.

**113.** The Court also appreciates the support from all its external partners.

**114.** The support that the Court has thus received helped it to carry out the following activities, during the period covered by this report:

- i) receipt and processing of seven (07) applications and two (2) requests for advisory opinion;
- ii) holding four ordinary and one extraordinary sessions;
- iii) presentation of its 2013 budget to the policy organs of the Union;
- iv) presentation of the new structure of its Registry to the policy organs;
- v) undertaking various promotional activities, including in particular, a regional seminar, national sensitization visits, courtesy calls and participation in various forums;
- vi) the organisation of its first retreat with the PRC;
- vii) recruitment of more staff of the Court;
- viii) training of staff of the Court;
- ix) continuation of sustained cooperation with some external partners;
- x) cooperating with the African Commission on Human and Peoples' Rights;
- xi) participation in activities relating to the project on the extension of the jurisdiction of the Court to deal with criminal matters;
- xii) publication and distribution of various promotion and publicity material.

**115.** It should however, be noted that the support from the African Union and external partners, notwithstanding, the Court still encounters some difficulties, which have impeded its smooth functioning, at both the judicial and administrative front.

**116.** At the judicial level, while it is encouraging to note that the Court has started receiving an increasing number of cases, the effective discharge of the mandate of the Court is seriously compromised. A Court that was established to ensure protection of human and peoples' rights on the continent as a whole still does not have the competence to receive cases from alleged victims of human rights from a majority of the

Member States of the African Union, because very few states have ratified the Protocol establishing the Court, and even fewer states have made the declaration recognising the competence of the Court to receive cases from individuals and NGOs.

**117.** As at 31 December, 2012, only 26 Member States of the Union had ratified the Protocol establishing the Court. Of these 26, only five had made the declaration allowing the Court to receive cases from individuals and NGOs.

**118.** In practical terms, the Court has competence to receive cases relating to twenty six States only, and if these cases are brought by individuals and/or NGOs, the Court's competence is limited to only those five states that have made the declaration.

**119.** This low rate of ratification of the Protocol and even lower number of States that have made the declaration seriously compromised the Court's ability to effectively discharge its mandate and contribute meaningfully to the African Union project. If such a situation were allowed to continue, the entire system of judicial protection of human rights at the continental level, which the Court symbolises, would be adversely affected.

**120.** With respect to its advisory jurisdiction, the Court takes this opportunity to remind Member States of the African Union, as well as organs and institutions of the Union that they are empowered under the Protocol establishing the Court to seek advisory opinion from the latter on any human rights issue of concern to them.

**121.** The successful organisation of three public hearings and the rendering of a Judgement and other judicial decisions and orders, coupled with the increasing number of cases received by the Court are encouraging developments, and this will contribute meaningfully to the realisation of the African Union project, if all the stakeholders, in particular, Member States, provide the Court the support it needs, including ratifying the protocol and making the declaration under Article 34(6) thereof.

**122.** From the administrative point of view, the effective administration of the Court has been severely affected by the inadequacy of the current structure of the Registry, which does not provide for critical staff for the effective management of the Court.

**123.** The Court welcomes and appreciates the decision of the policy organs to allocate forty-four additional positions, to strengthen the capacity of the Registry. Unfortunately, this decision remains on paper as the Court has not been allocated the resources needed to effect the recruitment.

**124.** With the adoption of a four-year strategic plan, the Court has set out its mission and vision more clearly, and is prepared to enhance its visibility even more. The adoption of the strategic plan provides an opportunity for the Court's partners, as well as all relevant stakeholders, including Member States, to support the Court in the accomplishment of its mandate. To effectively implement the strategic plan, it would be important to enhance the capacity of the Registry.

**125.** The findings of the institutional assessment conducted under the auspices of the European Commission only goes to confirm what the Court has indicating over the years, that inadequate human resources would lead to weaknesses that would affect the effectiveness of the Registry.

***ii) Recommendations***

**126.** Consequent upon the foregoing considerations, the Court requests the Assembly of Heads of State and Government to:

- i) provide the necessary resources to enable the Court recruit during 2013, the 40% of positions approved by the Executive Council in January 2012;
- ii) request Member States of the African Union which have not yet done so to ratify the Protocol on the Establishment of the Court and immediately make the declaration allowing individuals and non-governmental organisations direct access to the Court;
- iii) invite Member States which have already ratified the Protocol, but have not yet made the declaration accepting the jurisdiction of the Court to receive applications from individuals and non-governmental organizations after exhaustion of local remedies, to do so; and
- iv) invite Member States of the African Union and all organs of the Union to have recourse, as and when necessary, to the Court to request it to provide advisory opinion on human rights issues.

**EX.CL/783(XXII)**  
**Annex 1**

**LIST OF JUDGES OF THE AFRICAN COURT  
ON HUMAN AND PEOPLES' RIGHTS  
AS AT DECEMBER 2012**

**LIST OF JUDGES OF THE AFRICAN COURT ON HUMAN  
AND PEOPLES' RIGHTS AS AT DECEMBER 2012**

No.	Name	Term		Country
		Duration	Expiry	
1.	Hon. Sophia A. B. Akuffo (President)	6	2014	Ghana
2.	Hon. Fatsah Ouguergouz (Vice President)	6	2016	Algeria
3.	Hon. Bernard M. Ngoepe	6	2014	South Africa
4.	Hon. Gérard Niyungeko	6	2018	Burundi
5.	Hon. Augustino S.L. Ramadhani	6	2016	Tanzania
6.	Hon. Duncan Tambala	6	2016	Malawi
7.	Hon. Elsie Nwanwuri Thompson	6	2016	Nigeria
8.	Hon. Sylvain Oré	4	2014	Côte d'Ivoire
9.	Hon. El Hadji Guissé	6	2018	Senegal
10.	Hon. Ben Kioko	6	2018	Kenya