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<p style="text-align: center;">AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES P.O Box 6274 Arusha, Tanzania Telephone: +255 27 2970 430 /431/432/433/434 Web site www.african-court.org Email: Presidents.Office@african-court.org</p> <p style="text-align: center;"><u>OFFICE OF THE PRESIDENT</u></p>		

**SPEECH BY HON. LADY JUSTICE IMANI D. ABOUD,
PRESIDENT OF THE AFRICAN COURT ON HUMAN AND PEOPLES'
RIGHTS ON THE OCCASION OF THE OPENING OF
THE 2024 JUDICIAL YEAR OF THE AFRICAN COURT**

THEME: "Enhancing the Justiciability of Economic, Social and Cultural Rights, with an emphasis on the Right to Education"

12 February 2024,

Arusha, United Republic of Tanzania

- His Excellency President William Samoei Ruto President of the Republic of Kenya, represented by Honourable Justin Muturi, The Attorney General of the Republic of Kenya,
- Her Excellency Pindi Chana -Minister of Constitutional and Legal Affairs of the United Republic of Tanzania,

- Honourable Justice Modibo Sacko, Vice-President of the African Court on Human and Peoples' Rights,
- Honourable Judges of the African Court,
- His Excellency Moussa Faki Mahamat, Chairperson of the African Union Commission,
- Chairperson of the African Committee of Experts on the Rights and Welfare of the Child,
- Your Excellencies Presidents of International and Regional Courts,
- Your Excellencies Government officials present,
- Honourable Judges of International, Regional and National Courts,
- Honourable Registrar of the African Court,
- Distinguished invited Guests,
- Members of the Media present,
- Ladies and gentlemen,

Three years ago, the first edition of the Opening of the Judicial Year of the African Court on Human and Peoples' Rights (the African Court) was held here at the Seat of the Court. Since then, this solemn ceremony has been institutionalised within the activities of the African Court and Africa's judicial calendar. It is an occasion that brings together the judicial fraternity on the continent as well as the African peoples, to announce to the world the programme of the Court for the year.

The Opening of the Judicial Year for 2024 is very significant because it coincides with the 20th Anniversary of the entry into force of Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol), on 25 January 2004. This ceremony also comes two years before the 20th

Anniversary of the operationalisation of the African Court. So, as we commemorate the 20th Anniversary of the entry into force of the Protocol, we are also preparing to commemorate the 20th anniversary of the Court in 2026. It will be an opportunity for us all to take stock of the work of the Court for the past 20 years.

It is therefore a great privilege for me to welcome you, whether you are attending virtually or in person, to this Third Opening of the Judicial Year of the African Court on Human and Peoples' Rights. I also would like to extend my deepest gratitude to the authorities of our host country, the United Republic of Tanzania, for their continued commitment to the Court, including providing facilities in organising this proud event.

Your Excellencies, Honourable colleagues, and Distinguished guests

The theme for the 2024 opening of our judicial year is ***“Enhancing the Justiciability of Economic, Social and Cultural Rights with an emphasis on the Right to Education”***. The theme sits squarely with the African Union theme for 2024, which is, **“Educate an African fit for the 21st Century: Building resilient education systems for increased access to inclusive, lifelong, quality, and relevant learning in Africa”**. It is significant to indicate that the African Union theme does not focus on any type of education, but education fit for the 21st century. To achieve this, there is need to build **resilient education systems for increased access to inclusive, lifelong, quality, and relevant learning in Africa**. The theme also anchors squarely with Sustainable Development Goal 4 to ***“ensure inclusive and equitable quality education and promote lifelong learning opportunities for all”*** by 2030.

This theme is also in line with the proposal made by the UN Secretary General to be considered during the *Summit of the Future: Multilateral solutions for a better tomorrow*, to be held on 22 – 23 September this year in New York. In Policy Brief No. 10 titled ‘Transforming Education’, the Secretary General called for a shared vision on education, and urged on Member States

to build a comprehensive and integrated system of education and lifelong learning in a world of uncertainty; ensure equality and inclusion in and through education...

On 24 January, the world celebrated the International Day of Education on the theme *"learning for lasting peace"*. According to UN, in observance of the International Day of Education, education possesses great power in addressing and preventing the most significant global challenges, including climate change, persistent inequalities, conflict, and more. The UN further emphasised the centrality of education stating that:

Learning for peace must be a transformative process, enabling learners to gain essential knowledge, values, attitudes, skills, and behaviours, thereby empowering them to serve as catalysts for peace in their communities

Excellencies, Dear colleagues,

2024 is also significant because it marks the beginning of the Second Ten Year Implementation Plan (STYIP) of Agenda 2063. It calls us to look back at our contribution as a Court during the past ten years of Agenda 2063, and at the same time look forward to the next ten years. Given the importance of human rights in the socio-economic and political development of the continent, and given the important role the Court can and should play in this regard, the PRC has specifically requested

... the Court, in collaboration with the AUC and relevant sub-committees of the PRC, to develop key performance indicators and targets regarding the protection of human rights on the continent for the next ten years of the Implementation of Agenda 2063

From 2 – 6 October 2023, the Court attended a meeting of the technical experts on the AU-Wide Strategic Plan 2024-2028 in Kigali, Rwanda, on the review and fine-tuning of the AU Strategy Balance Scorecard. The African Court, together with other AU human rights organs – the African Commission on Human and Peoples’ Rights and the African Committee of Experts on the Rights and Welfare of the Child, have been entrusted with the responsibility to develop Moonshot 3, that is, *"Public institutions are more responsive to citizen’s needs"*. This requires the Court and other human rights bodies of the African Union to formulate human rights specific strategic goals that could be mainstreamed throughout Agenda 2063.

I wish to indicate that the African Court has been actively involved in the development of the AU-wide 2024-2028 Strategic Plan which builds into the Second Ten Year Implementation Plan.

Excellencies, at the dawn of what one might term the year of new beginnings, we believe that it is a sobering moment, and the perfect time, to reflect on how the Court might contribute towards “the Africa we want” by linking the Court’s vision with the AU focus for 2024. That is to say, by asking ourselves what an Africa with a viable human rights culture actually means.

During the Executive Council Kigali Retreat of October 2023 on the implementation of Agenda 2063, I insisted, and I am insisting here again that

the Africa we want must be an Africa founded on a viable human rights culture – an Africa with universal ratification of human rights instruments, an Africa where Member States comply with decisions of human rights institutions, an Africa where the full potential of its citizens are manifested in an environment of respect for human rights. Without human rights, we cannot have peace, without peace we cannot have development and without any of these, the Africa we want, may remain a pipe dream

Your Excellencies, Honourable colleagues, and Distinguished guests,

Permit me to speak a bit on the justiciability of economic, social and cultural rights in general and the right to education in particular. Justiciability actually refers to “the ability to claim a remedy before an independent and impartial body when a violation of a right has occurred or is likely to occur.

Economic, social and cultural rights are firmly entrenched within the African human rights system. In fact, the African Charter on Human and Peoples’ Rights is the first international human rights instrument that codifies the three generations of human rights into one legally binding instrument and give them the same value, thus upholding the principle of indivisibility, interdependency and interrelatedness of human rights. In fact, the Preamble to the Charter puts it even better. It provides that:

Convinced that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from [ESCRs] in their conception as well as universality and that the satisfaction of [ESCRs] is a guarantee for the enjoyment of civil and political rights

Based on this understanding, several African countries have included economic, social and cultural rights in their national constitutions and make them justiciable. African Union human rights treaty bodies have also developed a rich jurisprudence on the protection of socio-economic rights in general, and the right to education in particular.

In ***Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria***, the Nigerian government was alleged to have violated the economic, social and cultural rights of the Ogoni people. In its decision, the African Commission held among others that

The uniqueness of the African situation and the special qualities of the African Charter imposes upon the African Commission an important task. International law and human rights must be responsive to African circumstances. Clearly, collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa. The African Commission will apply any of the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective. ...As indicated in the preceding

paragraphs, however, the Nigerian Government did not live up to the minimum expectations of the African Charter

In ***Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) v United Republic of Tanzania***, the African Committee of Experts on the Rights and Welfare of the Child reaffirmed that

the right to education is one which is inherent of all children under Article 11 of the African Charter on the Rights and Welfare of the Child and other regional instruments, so this means that the forced pregnancy testing of school girls as a precondition does not foster the realisation of the right to education.

In the Matter of ***Ligue Ivoirienne des Droits de l'homme (LIDHO) & others v Republic of Côte d'Ivoire***, some residents of Abidjan, the Capital of Côte d'Ivoire, and its suburbs, alleged that on 19 August 2006, they were poisoned: some suffered the effects of poisoning, while others died as a result of exposure to toxic waste, that had been dumped by a cargo ship chartered by a multinational company. *The Court ordered the Respondent State to organise training courses for relevant civil servants with a view to raising their awareness of human rights and environmental protection issues, and to include these courses in school and university curricula.*

By mandating the Respondent State to incorporate education into school curricula, the Court is promoting education as an important tool for not only safeguarding the environment but also for holding governments accountable.

The abovementioned decisions reiterate the underlying notion that ESCRs are to be enjoyed by all, and it is our duty, not just at the Court but collectively, to ensure we are promoting and protecting these rights. This human rights jurisprudence has enabled us to develop a *corpus* of African human rights law, making it increasingly possible to litigate socio-economic rights before the Courts.

Education is thus regarded as one of the fundamental rights without which the enjoyment of other rights may be compromised. In adopting education as the theme for 2024, the African Union noted that

progress in education therefore, has a far-reaching impact on all the other aspects of human development. Investing in education is the most effective investment in the fight against poverty, reducing gender inequalities, enabling people to survive and thrive, helping to improve socio-economic development

Your Excellencies, Honourable colleagues, and Distinguished guests,

Last year, like previous years, was a very busy year for the Court. The Court undertook a number of judicial and non-judicial activities, aimed at discharging its mandate effectively. It delivered forty-eight (48) decisions covering a wide range of issues, including protection of the environment, right to fair trial, etc. The Court also enhanced its visibility by engaging with several stakeholders, including undertaking sensitisation visits to five countries, networking with other regional human rights bodies, interaction with national judiciaries through the 6th African Union Judicial Dialogue, In 2023, I can say we met our target, both quantitatively and qualitatively.

However, we have learnt not to rest on our laurels. In June 2023, during the 2nd Retreat of Judges held in Dodoma, Tanzania, we concluded that there is always room for improvements.

We start 2024 with pretty much the same challenges we faced in 2023. To date, over twenty-five years after the adoption of the Protocol establishing the Court, only 34 of the 55 Member States of the African Union have ratified the Protocol. Of the 34 State Parties, only 8 have deposited the Declaration under Article 34(6) of the Protocol. Even more, of the over 200 decisions adopted by the Court since its establishment, less than 10% have been implemented. There is thus a legitimate concern from the public that the effective discharge of the mandate of the Court is seemingly being hindered by inadequate cooperation from Member States.

These challenges notwithstanding, the African Court holds the view that the role of Member States in the protection of human rights cannot be underestimated. The Court recognizes that its mandate is to complement the work that Member States are doing at the domestic level to promote and protect human and peoples' rights. The Court is not and cannot replace the domestic institutions charged with this exercise, as the primary responsibility for the promotion and protection of human rights resides with Member States.

To this end, in 2024, the Court will build on the momentum of 2023 and continue with its judicial diplomacy and sensitization missions, intensify its engagement with Member States to ensure that they adequately understand the role of the Court and how the Court operates. The Court will also continue its engagement with key stakeholders to ensure the effective discharge of its mandate. This will include African Union Organs,

both individually and within the framework of the African Governance Architecture Platform, Law Societies, National Human Rights institutions, the academia and civil society organisations.

The ongoing institutional reform provides a unique opportunity for both the Court and Member States to engage and strengthen the Court to effectively contribute to achieving the objectives of the African Union and the aspirations of Agenda 2063. I can assure you that the Judges and staff of the Court are dedicated and enthusiastic and only need your support.

The Court strongly believes that the Africa we want cannot be built on political integration alone. It requires all the various constituent elements, including, but not limited to, good governance and respect for human rights. History teaches us that all stable economies and communities around the world are built on a strong foundation of the rule of law, justice and respect for human rights. It is therefore imperative that if Africa is to develop, if Africa is to prosper, if Africa is to unite, if Africa is to silence the guns, and if truly we long for the AFRICA WE WANT, our actions must be guided by justice, the rule of law and respect for human rights.

Your Excellencies, Honourable colleagues, and Distinguished guests,

As I conclude, I want to make this plea to all Member States. The African Court is your baby. You had established it for a purpose – to assist you meet your international human rights obligations and contribute to the socio-economic and political development of the continent. The only way the Court can do this is if Member States give it the necessary support to enable it effectively discharge its mandate. This support, apart from the financial and human resources needed, includes ratification of the

Protocol, the deposit of the Declaration and compliance with decisions of the Court. We must put human rights at the centre of our socio-economic and political discourse. As we embark on the institutional reform, we must also have a rethink of the role we want human rights to play, and how we perceive the role of human rights bodies in the new African dispensation. We must not only talk the talk, we must be prepared to walk the walk.

Your Excellencies, Honourable colleagues, and Distinguished guests,

Finally, permit me to thank our Guest of Honour, HE Dr. William Ruto, ably represented here by Hon. Attorney General... When I met His Excellency the President last July at State House in Nairobi, he told me that, he may disagree with some of the decisions of the African Court, but his support for the Court in particular and African Union institutions in general, is unshakable. Hon. Attorney General, your presence here today, is a testimony of the President's commitment.

Excellencies, permit me now to extend a special word of appreciation to our host government, the United Republic of Tanzania, for the continued support to the Court, including in organising this event.

On this note, it is with great pride that I declare open the 2024 Judicial Year of the African Court on Human and Peoples' Rights, and my singular honour to invite Honourable Justin Muturi, The Attorney General of the Republic of Kenya, representing His Excellency President William Samoei Ruto, President of the Republic of Kenya, to deliver his keynote address.

Karibu

Imani D Aboud