

PRACTICAL GUIDE

**THE AFRICAN COURT
ON HUMAN AND
PEOPLES' RIGHTS****towards the African Court
of Justice and Human Rights**

APRIL 2010

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P R E F A C E



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FIDH President

The African Court on Human and Peoples' Rights is finally operational. It issued its first decision on 15 December 2009. This is a momentous occasion for all supporters of the fight against impunity in Africa and all victims of human rights violations.

The actual establishment of the Court has been slow. More than five years. Indeed, while the Protocol entered into force in January 2004, the Court only became fully operational in early 2009 – after choosing a seat, the election of judges, the appointment of a Registrar and Court staff and the adoption of adequate operating funds. The Court has now entered into action and we must use it to assert the rights of the victims.

The Court's lifespan is obviously limited since it is destined to become the Human Rights Section of the future African Court of Justice and Human Rights when its Protocol enters into force. But this change will have little consequences on the overall African system of protection of human rights. And meanwhile, the African Court on Human and Peoples' Rights does indeed exist for yet an undetermined time and sets the scenery of the Court that will succeed it: therefore, all of those who, like FIDH, are working so that the rule of law prevails where the rule of force used to, should imperatively master its functioning.

The Court's mandate is to judge the compliance by a State Party with rights included in the African Charter on Human and Peoples' Rights and other instruments on the protection of human rights ratified by that State. Individuals and non-governmental organizations may, under certain conditions, bring a case of a breach of human rights directly before the Court or indirectly through the African Commission on Human and Peoples' Rights.

Considering that the preservation of peace and security depends upon the fight against impunity and unconditional respect for human rights, the inauguration of the African Court on Human and Peoples' Rights brings hope for the entire African continent.

Since the 1980s and the adoption of the African Charter on Human and Peoples' Rights, FIDH and its member organizations have been fighting for the existence on this continent of a truly judicial body charged with protecting the core values of the human condition: the right to life, freedom of expression and assembly, the right to move freely, the right to shelter, the right to an adequate standard of living in a healthy environment, etc.

This goal was quickly transformed into a demand after serious violations of human rights were suffered by the African civilian population. The genocide in Rwanda and the international crimes in the Democratic Republic of Congo, Liberia, Côte d'Ivoire, Sierra Leone, Somalia and Darfur are dramatic examples. But FIDH is also constantly mobilized against torture, slavery, censorship, arbitrary arrests and detentions, discrimination against women or ethnic minorities, barriers to education or to the right to health, etc. These many fields are covered by the Charter and included in the jurisdiction of the new Court.

This guide, an updated edition, is a practical tool for victims and human rights defenders to better understand and use the African Court on Human and Peoples' Rights and to consider the arrival of the new African Court of Justice and Human Rights. The ideal goal would be for each Burundian, Mauritanian, Senegalese, Angolan, Kenyan, South African, to hold the key to assert his or her right to justice and redress when their country does not respect its regional and international commitments regarding the protection of human rights.

Now that the African Court on Human and Peoples' Rights is functioning, we must continue to mobilize African States to ratify the Protocol to the African Court on Human and Peoples' Rights and to accept the right of individual application. We must support victims in making claims before the Court on "their right to rights" and ensure that the Court's judgments are actually effected. Finally, we must ensure the effective implementation of the new African Court of Justice and Human Rights.

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FOREWORD



Modibo Tounty Guindo

Judge and former Vice-president
of the African Court on Human
and Peoples' Rights.

The importance of the African Court on Human and Peoples' Rights is no longer to be demonstrated in the light of current events happening on the continent.

The establishment of the Court was the culmination of a long process, a long road that has been built thanks to the vision, the conviction, the determination and the tireless struggle of women and men who believed in a quite simple ideal – freedom with dignity – but an ideal so hard to achieve, to live, to conquer and to maintain during a lifetime.

It would be presumptuous to present in only two or three sentences the African Court on Human and Peoples' Rights. This guide delivers a brilliant presentation and demonstrates the acuity of this regional judicial institution.

This institution crowns the patient efforts of all activists, anonymous and known ones, that have been undertaken since Lagos in 1961 where was held the African Conference on the Rule of Law, at a time when most of the continent was gaining its independence, until Arusha, where the Court now has its headquarters, at a time when the African people aspires to more democracy and better governance.

The volume of work of the African Commission on Human and Peoples' Rights provides an indication of the importance and future activity of the African Court on Human and Peoples' Rights; this Court has been timely established to give greater efficiency to the existing protection system through the adoption of binding judicial decisions which may result in sanctions of violations and compensation for the victims who will see their actions against the perpetrators of human rights violations succeed.

Such strengthening of the African system of human rights protection, however, requires a real commitment on the part of States parties to the Protocol to the African Charter on Human and Peoples' Rights establishing the African Court on Human and Peoples' Rights in accordance with Article 34.6 allowing free access for citizens and NGOs to the Court.

It is particularly important to give sense to the heavy financial sacrifice that all states have made from their ratification of the African Charter on Human and Peoples' until the actual start up of the Court.

The first edition of this guide was a very significant contribution to the effective establishment of the Court thanks to the light it shedded on the Court's history, architecture and the procedures to be followed before it.

This second edition, especially needed because of the future merger of the African Court on Human and Peoples' Rights with the Court of Justice of the African Union, is a valuable reference guide for lawyers, NGOs, researchers, students and Human rights activists since it provides key concepts to practice the African Court on Human and Peoples' Rights and the future African Court of Justice and Human Rights.

INTRODUCTION

Why this guide?

Since January 25th 2004 which is the date of entry into force of the Protocol creating the African Court on Human and Peoples' Rights (African Court), Africa possesses a new mechanism for the protection of human rights. This court complements the role of the African Commission on Human and Peoples' Rights (African Commission). The Court rendered its first judgement on December 15th 2009 after an initial slow debut due to the African Union's decision to unify the African Court and the African Court of Justice. The Court is hence working as an interim one until the effective establishment of the African Court of Justice and Human Rights.

This guide aims at being informative, educational and easy to use for all those who wish to know more about the development of the protection of human rights on the African continent. It sheds light on the organisation and the working of the African Court in a simple, thorough and critical manner.

This guide offers the practical tools necessary for victims of human rights violations in Africa and human rights defenders to understand and use this mechanism, but also for NGOs to contribute to the campaign aiming at strengthening the Court.

Our work is crucial for the African Court to achieve credibility and efficiency in the fight against impunity on the continent.

What reasoning?

The updating of FIDH's first guide on the African Court, which was published in 2004, comes at the time of the effective working debut of the Court.

The Court is made up of 11 judges and one court registrar and is based in Arusha, Tanzania. The Interim Rules of Court have now been adopted (at the time of the publication of this guide, changes were to be done by the Court to bring its Rules into line with those of the African Commission). The Court has the capacity to receive applications concerning human rights violations by States parties to its Protocol.

Due to its recent functionality, the analysis of the African Court is mostly based on its fundamental documents: its Protocol and its Interim Rules. These are truly fundamental documents which provide answers to essential questions regarding the mandate, the working, functioning and use of the Court. In this respect, the reasoning is analytical.

The reasoning is also comparative. The Court will draw inspiration for its contentious activity from the work of the African Commission – the first institution protecting human rights on the continent - but also from its regional counterparts, the European Court of Human Rights created in 1950 and the Inter-American Court of Human Rights established in 1978. By comparing these mechanisms and presenting their transformation and adaptation in order to affirm their role of protection of human rights makes it possible to foresee the work of the African Court and its possible evolutions.

What methodology?

The analysis of the African Court required a thorough study of the provisions of the Protocol to the African Charter on Human and Peoples' Rights establishing the Court and its Interim Rules and a review of the quasi-contentious activities of the African Commission. The comparison of the African system with two other regional legal systems, the European Court of Human Rights and the Inter-American Court of Human Rights, was carried out through bibliographical research and interviews with legal experts, lawyers and judges.

How to use this guide?

The first part of the guide is organised into ten chapters – ten key points on how to understand and use the African Court. These ten points are articulated in a coherent manner but can also be consulted independently.

Each chapter answers a specific question on the African Court:

- How and why was the Court established?
- What is the composition of the Court?
- What are the functions of the Court?
- What rights does it protect?
- Who can seize the Court?
- What conditions have to be fulfilled to file an application to the Court?
- How to file an application to the Court?
- How do proceedings before the Court take place?

- What is the victims' role in the proceedings before the Court?
- What power and scope do the Court's decision have?

The second part of the guidebook is dedicated to analysing the differences and similarities between the African Court and the other regional human rights courts as well as the lessons which can be drawn from these.

The third part aims at explaining the transition between the African Court on Human and Peoples' Rights and the African Court of Justice and Human Rights by analysing the workings of the both Courts.

Each chapter includes boxes which correspond to the following:



Definition



Criticism, challenges
to be faced



Comparison with the other
regional human rights courts



example, jurisprudence
of the African Commission
on Human and Peoples' Rights

PART
1

The African
Court on
Human and
Peoples' Rights

How and Why was the Court Created?

Key point

The positioning of the African Court within the African system of human rights protection.

This chapter presents the African Charter on Human and Peoples' Rights (African Charter or Charter) and the entry into force, mandate and functioning of the African Commission on Human and Peoples' Rights (African Commission or Commission) and explains the basics of creating the African Court on Human and Peoples' Rights (African Court or Court). It positions the Court within its historical and institutional context in order to understand its role and its place within the system of human rights protection on the African continent.

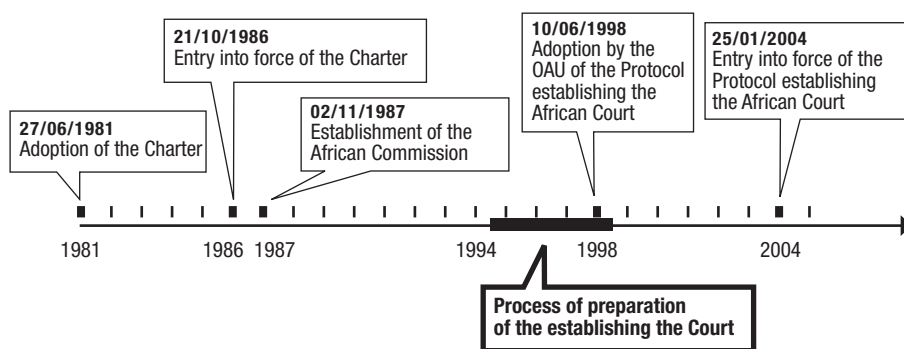
The creation of the African Court is an essential step towards the establishment of a coherent and effective system of human rights protection on the African continent. This new step strengthens and complements the existing structure established by the African Charter as well as the original controlling body for the respect of rights guaranteed by it, the African Commission on Human and Peoples' Rights.

1 The establishment of the Court to strengthen the African system of human rights protection

The creation of a coherent continental system of human rights protection in Africa responds to a broader international movement to develop regional systems of human rights protection. This movement was initiated by the adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950

followed by the establishment of a European Court of Human Rights, as well as the entry into force of the American Convention on Human Rights in 1969, establishing the Inter-American Court of Human Rights. The delay in establishing the African system corresponds mainly with the political and social environment of the 1970s and 1980s, a period marked by the fact that some heads of state were more concerned with wielding the principle of national sovereignty to hide violations of human rights committed in their country, than building a supra-national system of protection of human rights. Nonetheless, this delay will soon be filled by the adoption of African instruments for the protection of human rights and structures to ensure the rights guaranteed by these new standards.

▼ Timeline of the construction of the human rights protection system in Africa



Ⓐ The African instruments for human rights protection

1. The African Charter on Human and Peoples' Rights

The African Charter, adopted by the Conference of Heads of State and Government of the Organisation of African Unity (OAU) on **27 June 1981** in Nairobi, Kenya, came into force on **21 October 1986** and was ratified by all Member States of the African Union (AU). The AU, which replaced the OAU on 26 May 2001, establishes the rights guaranteed under the African Charter on Human and Peoples' Rights as the principle and objective in its Constitutive Act.

Opening a new era of human rights protection in Africa, the Charter was influenced by the legal texts of international and regional human rights protection systems and the legal traditions of Africa. **Its conception of "human right" is broad**, which makes it different from other conventions: it includes not only civil and political rights but also economic, social and cultural rights as well as peoples' rights (see Part 1. Chapter IV).

State parties to the African Charter: South Africa (ratification date: 1996), Algeria (1987), Angola (1990), Benin (1986), Botswana (1986), Burkina Faso (1984), Burundi (1989), Cameroon (1989), Cap-Vert (1987), Comoros (1986), Congo (1982), Côte d'Ivoire (1992), Djibouti (1991), Egypt (1984), Eritrea (1999), Ethiopia (1998), Gabon (1986), Gambia (1983), Ghana (1989), Guinea (1982), Guinea-Bissau (1985), Equatorial Guinea (1986), Libyan Arab Jamahiriya (1986), Kenya (1992), Lesotho (1992), Liberia (1982), Madagascar (1992), Malawi (1989), Mali (1981), Mauritius (1992), Mauritania (1986), Mozambique (1989), Namibia (1992), Niger (1986), Nigeria (1983), Uganda (1986), Republic of Rwanda (1983), Sahrawi Arab Democratic Republic (1986), Central African Republic (1986), Democratic Republic of Congo (1987), Sao Tome and Principe (1986), Senegal (1982), Seychelles (1992), Sierra Leone (1983), Somalia (1985), Sudan (1986), Swaziland (1995), Tanzania (1984), Chad (1986), Togo (1982), Tunisia (1983), Zambia (1984), Zimbabwe (1986).

2. Other instruments of protection

Other conventions, charters and protocols adopted by the Heads of State and Government of the OAU and the AU deal directly or indirectly with the promotion and protection of human rights on the African continent.

These include:

| CONVENTION / CHARTER / PROTOCOL | DATE OF ADOPTION | DATE OF ENTRY INTO FORCE |
|---|------------------|--------------------------|
| OAU Convention Governing the Specific Aspects of Refugee Problems in Africa | 1969 | 1974 |
| African Charter on the Rights and Welfare of the Child | 1990 | 1999 |
| OAU Convention on the Prevention and Combating of Terrorism | 1999 | 2002 |
| Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women | 2003 | 2005 |
| AU Convention on Preventing and Combating Corruption | 2003 | 2006 |
| African Charter on Democracy, Elections and Governance | 2007 | / |
| AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa | 2009 | / |

➤ **Date of adoption and entry into force of African instruments for the protection of human rights**

Ⓑ The African Commission: an authority without a judge that ensures the respect of human rights by States

1. Establishment and functions

The African Charter provides for the establishment of the African Commission (art. 30 of the Charter), as a **mechanism for monitoring the implementation of the Charter** by States parties.

The Commission began its work on **2 November 1987**. It is headquartered in Banjul (Gambia) and meets in ordinary session twice a year. The sessions of the Commission are held at headquarters unless a State Party invites the Commission to hold a session in its country.

Composed of 11 elected commissioners (for six years renewable) by the Conference of Heads of State and Government of the AU, the Commission has a dual **mandate to promote and protect human rights** in Africa (art. 45 of the Charter).

The **promotional functions** of the Commission include the following tasks:

- Collect documents and conduct research on African problems in the field of human rights; organize seminars, symposia and conferences; disseminate information; encourage national and local institutions concerned with human rights; make recommendations to governments.
- Send promotional missions to gather information on the situation of human rights within a State Party's territory; popularize the African Charter; improve the situation of human rights (art. 74.3 of the Commission's Interim Rules of Procedure).
- Formulate and develop principles and rules relating to human rights to serve as the basis for the adoption of legislation by African governments.
- Cooperate with other African and international institutions working in the field of promotion and protection of human rights.

Regarding protection, the African Commission has the following powers:

- Send protection missions to States parties.
- Receive communications from States parties, non-governmental organizations (NGOs) and individuals for violations of human rights committed by a State party (art. 47 and 55 of the Charter).
- Adopt urgent resolutions on the human rights situation in countries and adopt resolutions on specific issues relating to human rights.
- Send urgent appeals to States parties (art. 23 of the Commission's Interim Rules of Procedure) and publish press releases.

- Examine State reports on legislative or other measures taken to bring about the practical protection of rights guaranteed under the African Charter (art. 62 of the Charter) and make recommendations in this regard.

The African Commission also has **jurisdiction to interpret** provisions of the African Charter at the request of a State Party, an AU institution or an African NGO recognized by the AU (Section 45 of the Charter).

According to the African Charter, the Commission is the organ of protection and promotion of human rights on the African continent. Unlike European and American Conventions on Human Rights, the African Charter does not provide for the establishment of a Court of Human Rights. During the development of the African Charter, two trends emerged: one, the minority, supported the creation of a court to supplement the protection of human rights. The other, the majority, rejected this idea based on respect for African legal traditions that give preference to political settlements of disputes.



Website of the African Commission

It is helpful to regularly consult the website of the Commission www.achpr.org to find the following information:

- The final report of each session
 - Resolutions adopted at the end of sessions
 - Press releases published by the Commissioners
 - State reports and the conclusions and observations of the Commission following their review
 - Dates and venues of meetings and contact information of the Commissioners
 - Guidelines for obtaining observer status within the Commission
 - Reports of Special Rapporteurs presented at each session
-

2. A mechanism more and more effective to promote human rights and condemn human rights violations

Since beginning its work in 1987, the Commission has strongly consolidated its activities in terms of promotion and protection of human rights on the continent.

With regard to its promotion activities, the Commission long suffered from an extremely limited operating budget, preventing it from organising seminars, conferences, meetings with State authorities and other awareness-raising events on human rights. Finally, by insisting to the Conference of Heads of State and Government of the AU, the Commission's budget was greatly increased, a change essential to the effectiveness of its work. The budget went from USD one million in 2007 to approximately UDS 3.6 million in 2009.

Another dramatic change that allows the Commission to respond more effectively to its mandate of protecting the rights guaranteed under the African Charter is the progressive affirmation of its independence. After constant finger-pointing by NGOs attending the Commission's sessions, Member States have gradually stopped nominating candidates for the post of Commissioner who also have functions within the executive branches of their countries (such as Ministers, Chief of Staff, etc..) or who have mandates for external representation (ambassadors, diplomats, etc.) in order to comply with the independence requirements of the Commission (Article 31 of the Charter). This development was essential in order to avoid a problematic situation such as failure to adopt an emergency resolution on violations of human rights in any country in order not to offend a State.



What is a resolution?

During sessions, held twice a year, the Commission discusses questions relating to human rights in Africa. After these sessions, Commissioners can attach "resolutions" to their final declarations, condemning human rights violations by a State Party or recommending State Parties to comply with a specific duty.

The Commission is now more prepared to adopt at the end of its sessions **resolutions** condemning human rights violations in a State. Thus, driven by the draft resolution proposed by NGOs (who organised themselves in a forum to prepare and attend the sessions of the Commission), the Commission has commented, since 2005, on the human rights situation in Sudan, Gambia, Zimbabwe, Uganda, Democratic Republic of Congo, Ethiopia, Somalia, Côte d'Ivoire, South Africa, etc. Also driven by NGOs, including FIDH, the Commission has adopted several resolutions on specific topics, such as abolition of the death penalty, respect for human rights in the fight against terrorism, migration and human rights, respect for economic and social rights, the rights of women, respect for human rights defenders, etc. All of these resolutions, which were previously subject to validation by the Conference of Heads of State and Government of the African Union, are now publicly disclosed at the end of each session before being endorsed by the AU.

This positive trend was also felt in the attitude of the Commissioners during the **review of State reports**. States must provide regularly (art. 62 of the African Charter) a report of legislative measures or other measures taken to give effect to the rights and freedoms recognized and guaranteed in the Charter. This procedure proved to be a mere formality in the early years – a sort of peer review – but has evolved into a real examination. Still driven by NGOs that provide shadow reports to those of the State, commissioners no longer hesitate in expressing their concerns about the situation of human rights in countries examined, and focus on the thematic priority of the Commission, such as women's rights, indigenous peoples, freedom of expression, economic and social rights, etc. Moreover, conclusions and recommendations from this review, once non-public, are in principle now available on

the website of the Commission, allowing NGOs to monitor their implementation by States.

The condemnation of human rights violations by a State party to the Charter may also result from the **communication** procedure under the African Charter (art. 47 to 61 of the Charter). A State, an individual or a NGO can refer a matter of a human rights violation by a State Party to the Commission, on the condition of exhaustion of domestic remedies (unless they are ineffective). This quasi-judicial process, while long and tedious (see below) allows, where appropriate, the Commission to make decisions condemning the violation of Charter rights by a State and to make recommendations in this regard. The Commission has been able to condemn the generals' regime in Nigeria, torture in Mauritania, inhumane practices in Sudan, etc.



What is a communication?

The term “communication” means the document filed by a State party, an NGO or an individual alleging violations of the African Charter by a State party.

The changing structure of the Commission has also improved the Commissioners' capacity to respond and alert, especially outside of the sessions, on urgent situations of human rights violations. Indeed, the Commission recently designated Special Rapporteurs among the Commissioners who are in charge of protecting a specific duty. Thus, there are **Special Rapporteurs** on women's rights, prisons and conditions of detention, freedom of expression and access to information, human rights defenders, refugees, asylum seekers, displaced persons and migrants. These Rapporteur Commissioners may be contacted at any time by NGOs and they have the opportunity to act in public – including through statements – to condemn the violation of rights for which they are responsible, in any country. For example, the Observatory for the Protection of Human Rights Defenders (a joint program of FIDH and the World Organization against Torture - OMCT), contacted the Special Rapporteur on human rights defenders in Africa, Ms. Reine Alapini Gansou, who, between 2006 and 2009, publicly condemned the violations of the rights of defenders in Guinea, Djibouti, Cameroon, Democratic Republic of Congo, etc.

Additionally, Commissioners are divided among various **Working Groups**: on the death penalty (which creation has been motivated by FIDH); indigenous populations/communities; economic and social rights; extractive industries, environment and human rights; specific issues relating to the work of the Commission, the prevention of torture; and the rights of older persons and people with disabilities. These groups are primarily mandated to develop guidelines on the protection of specific rights, which may serve as the basis for future draft conventions and protocols of the African Union.

This positive evolution of the Commission for the protection of human rights has largely been the result of action by NGOs and human rights defenders who, from the beginning, sought to make this mechanism more effective. The significant and structured participation (through the NGO Forum) of NGOs during sessions and their access to the Commissioners facilitated by their greater independence, the provision of information to support the Rapporteurs and Working Groups all enabled more NGOs to raise their concerns of human rights violations on the continent to the Commission. Meanwhile, the platform available to NGOs during sessions of the Commission was enlarged, showing the credibility and significance that the Commissioners grant them.



The Forum on the participation of NGO in the sessions of the African Commission

This forum, held before each session of the African Commission on Human and Peoples' Rights by the African Centre for Democracy and Human Rights Studies (an NGO based in Banjul, Gambia), brings together around one hundred representatives from African and international NGOs with the goal:

- To inform participants on issues relating to human rights on the continent
- Propose draft resolutions to Commissioners on urgent situations or on a specific right

The Commissioners are now involved in the work of this Forum.

3. The shortcomings of the African Commission in terms of the protection of rights

The Commission is more and more inclined to condemn violations of human rights on the continent but still struggles to impose protection of Charter rights by States.

The communications procedure is emblematic of the protection mandate of the Commission. It is through this quasi-judicial procedure that the Commission is supposed to actually enforce the respect of rights of the Charter by State Parties. But this procedure is long and the decisions taken in respect of communications are too often not enforced by States.

The review of communications is variable, but often too long, between two and eight years (The decision *Diakite v. Gabon* was rendered in 2000 but the communication was brought before the Commission in 1992). Commissioners are still trying to focus on settlements at the expense of efficiency, despite the urgency of the cases submitted to them. The reviews are prolonged because of the length of time allowed between receipt of the communication and the admissibility decision; the junction of communication on the same country; a lack of priority in dealing

with communications; vague proceedings; the shortening of sessions by lack of funds; lack of personnel at the Secretariat of the Commission.



The relative weaknesses of the African Commission in its role of protecting human rights

- Few resolutions condemning human rights violations by States.
 - Insufficient number of field inquiries by the Commission due to the unwillingness of States.
 - Average processing time too long to review individual communications by the Commission, even if this is being improved.
 - A complex procedure to compel States to implement the recommendations of the Commission, which results most of the time in no enforcement or follow-up by States
 - Lack of visibility of the Commission's work.
 - Allocated budget by the AU too low for the Commission.
-

While the decisions by the Commission on Communications are generally progressive in terms of protection of human rights, their effects are often invalid because they are generally not enforced by the States condemned. Not only are the decisions of the Commission purely recommendations, which are not legally binding, but until 2009 and the adoption of the new Interim Rules of Procedure for the Commission, there was no mechanism for monitoring their implementation by States.

The slowness and lack of binding decisions, as well as the failure to understand the procedure by States, NGOs and individuals certainly explain the relative low number of communications to the Commission and accordingly low number of adjudicated decisions.


» Number of communications received and adjudicated by the Commission

| PERIOD | ADJUDICATED DECISIONS |
|---|---|
| 1987 – May 1994 (7th report of activities) | 44 |
| November 1994 – May 1995 (8th report) | 26 |
| November 1995 – May 1996 (9th report) | 6 |
| November 1996 – May 1997 (10th report) | 8 |
| November 1997 – May 1998 (11th report) | 4 |
| November 1998 – May 1999 (12th report) | 6 |
| November 1999 – May 2000 (13th report) | 16 |
| November 2000 – May 2001 (14th report) | 12 |
| November 2001 – May 2002 (15th report) | 4 |
| November 2002 – January 2004 (16th report) | 10 |
| January 2004 – June 2004 (17th report) | 10 |
| July 2004 – December 2004 (18th report) | 5 |
| January 2005 – June 2005 (18th report bis) | 5 |
| June 2005 – December 2005 (19th report) | 0 |
| January 2006 – June 2006 (20th report) | 5 |
| June 2006 – November 2006 (21st report) | 3 |
| December 2006 – May 2007 (22nd report) | 1 |
| June 2007 – May 2008 (23rd and 24th report) | 3 |
| Total | 168 (of approximately 400 communications received) |

These various deficiencies alone justified the establishment of a real court in charge of rights guaranteed by the African Charter with decisions binding on States.

Nonetheless, with the new interim rules of procedure, the protection mandate of the Commission will be more effective. It requires the State against whom a decision has been taken by way of a communication, to submit, in writing within six months of notification of the decision, all the measures adopted to give effect to that decision. If the Commission does not receive any information from the State, it will be asked to send information before a new deadline of three months. At each session, the Commission shall submit a report on the monitoring of recommendations by States. This report will also be included in the report of the Commission submitted to the Conference of Heads of State and Government of the AU. Moreover, in cases of non-compliance with the Commission's decisions, it will notify the Sub-committee on the implementation of AU decisions.

» Table comparing: financial and litigious activities
of the three regional systems of human rights protection

|  | AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS | EUROPEAN COURT OF HUMAN RIGHTS | INTER-AMERICAN COURT OF HUMAN RIGHTS |
|---|--|---|--|
| Average time to review communications/cases | Extremely variable : between 14 months and eight years | Expected time: Three years maximum (often more for important cases) - 50% of petitions result in a decision by the Court in the year following their registration. | About eight years between the first referral to the Commission and the decision by the Court (a little less than two years between the referral to the Court by the Commission and the final decision) |
| Number of petitions/communications received | In 2009: 27 | In 2009: 57,000 | In 2009: 12 |
| Number of decisions/cases adjudicated per year | In 2009: - 67 decisions on admissibility - 23 decisions on the merits. | In 2009: - 33,000 decisions of inadmissibility. - 1,625 cases adjudicated. - 635 friendly settlements or unilateral withdrawal of the petition. | In 2009: 15 litigations |
| Number of cases/communications pending | In 2009: 78 | In 2009: 120 000 | In 2009: 14 |
| Budget/ financing | In 2009: 3,671,766 US\$ - 2,376,639 US\$ (operations) - 1,295,127 US\$ (programmes) | In 2009: 56,620,000 Euros | In 2009: 1,780,500 US\$ |

© The African Court: a judicial body complementing the work of the African Commission

1. 1994-2004: Towards the entry into force of the Protocol of the African Court

Original institutional weaknesses, lack of resources, lack of binding effects of decisions and of their implementation by States thus resulting in the relative ineffectiveness of the African Commission for the protection of human rights that has been noted by NGOs and officially recognized in 1994 by the OAU: these are the reasons for the will to draft a Protocol to the African Charter establishing an African Court.

It was during the Assembly of Heads of State and Government of the OAU in Tunis (Tunisia) in **June 1994** that the process of drafting the Protocol to the African

Charter establishing the African Court (Protocol) was officially launched: a resolution was adopted that set in motion the preparatory work for the establishment of an African Court. In fact, a first draft Protocol had already been drafted in 1993 by the International Commission of Jurists, an NGO based in Geneva.

It was due to the pressure from African and international human rights NGOs, including FIDH, that in **September 1995** in Cape Town (South Africa), a draft protocol prepared by the OAU was proposed and discussed at numerous meetings and consultations that followed. The Protocol was finally adopted in Ouagadougou (Burkina Faso), on the occasion of the 34th Ordinary Session of the Conference of Heads of State and Government of OAU on **10 June 1998**, during which 30 Member States signed the text.

The Protocol was set to enter into force 30 days after the deposit of the 15th instrument of ratification by an African State (art. 34 of the Protocol). This was accomplished on **25 January 2004** after the ratification of the Protocol by the Union of Comoros on 26 December 2003.

At the date of publication of this guide, the States that ratified the Protocol of the Court are:

| COUNTRY | DATE OF RATIFICATION | DECLARATION PURSUANT TO ARTICLE 34.6 | COUNTRY | DATE OF RATIFICATION | DECLARATION PURSUANT TO ARTICLE 34.6 |
|---------------|----------------------|--------------------------------------|------------------|----------------------|--------------------------------------|
| South Africa | 03/07/2002 | / | Mauritania | 19/05/2005 | / |
| Algeria | 22/04/2003 | / | Mozambique | 19/07/2004 | / |
| Burkina Faso | 31/12/1998 | Yes | Mauritius | 03/03/2003 | / |
| Burundi | 02/04/2003 | / | Niger | 15/05/2004 | / |
| Côte d'Ivoire | 07/01/2003 | / | Nigeria | 20/05/2004 | / |
| Gabon | 14/08/2000 | / | Uganda | 16/02/2001 | / |
| Gambia | 30/06/1999 | / | Rwanda | 05/05/2003 | / |
| Ghana | 24/08/2004 | / | Senegal | 29/09/1998 | / |
| Kenya | 04/02/2004 | / | Tanzania | 07/02/2006 | / |
| Lesotho | 28/10/2003 | / | Togo | 23/06/2003 | / |
| Libya | 19/11/2003 | / | Tunisia | 21/08/2007 | / |
| Malawi | 09/09/08 | / | Union of Comoros | 26/12/2003 | / |
| Mali | 10/05/2000 | Yes | | | |

➤ Status of ratifications of the Protocol creating an African Court on 1 January 2010

2. 2004-2008: Towards the establishment of the African Court despite a merger project with the African Union Court of Justice

The entry into force of the Protocol on 25 January 2004 should have resulted in the immediate establishment of the Court. The process of nominations of candidates to the post of judge began in May 2004, for election by the Heads of State at the AU Summit scheduled for July 2004 in Addis Ababa (Ethiopia).

Yet at this Summit, on the occasion of a decision regarding the geographical distribution of seats in various organs of the AU, Heads of State and Government decided (Assembly/AU/Dec.45 (III)) to merge the African Court with the Court of Justice (judicial organ of the AU included in its Constitutive Act, see below). This decision was motivated primarily by economic reasons, holding that the AU would not have the resources to establish and operate two separate courts. The specificity of the two Courts and the functional modalities of the merger were not considered. The African Court seemed dead born.

Finally, recognizing that the process of creating the instruments of the merged Court (or single Court) and its implementation would take time, the Heads of State and Government, during its Summit in Abuja (Nigeria) in **January 2005**, decided to operationalise the African Court, notwithstanding the decision of merger.

This decision was confirmed at the Summit in Sirte (Libya), in **July 2005**: “all measures necessary for the functioning of the African Court on Human and Peoples’ Rights must be taken, including particularly the election of the judges, the determination of the budget and the operationalization of the Registry.” (Assembly/UA/Dec.83 (V)).

This process culminated in the election of the first judges of the Court by the AU Executive Council, endorsed by the Assembly of Heads of State and Government meeting in Khartoum (Sudan) in January 2006. The judges were sworn in at the Summit held in Banjul (Gambia), on **2 July 2006**.

The Court has since held several sessions, in particular to define its structure (election of the office of the president and vice-president), to establish its operating budget, to address the issues of the seat and to adopt the texts of the Court (such as the Rules of Court).

In **July 2006**, the decision was made to seat the African Court in Arusha, Tanzania.

On **28 June 2008**, the Interim Rules of Court were adopted.

In October 2009, the Commission and the African Court met in Dakar (Senegal) to harmonize their respective Interim Rules of Procedure on issues relevant to their complementarity: consultations between the Court and the Commission, advisory opinions, referral to the Court by the Commission, admissibility, representation of the Commission before the Court and points on the legal procedures for the conduct of proceedings before the Court by the Commission and vice-versa.



The website of the African Court

It is useful to regularly consult the website of the African Court www.african-court.org to find the following information:

- History of the Court
 - Basic documents of the Court
 - Cases pending before the Court
 - The Court's judgments
 - Activity reports by the Court
 - Contacts at the Court
 - Employment opportunities
-

On 15 December 2009, the Court issued its first ruling.

The African Court on Human and Peoples' Rights is thus operational. Cases can be brought to its attention. But the Court is an interim body, pending the establishment of the single Court: the African Court of Justice and Human Rights (see Part III).

3. The African Court and the African Commission

While acknowledging the progress made by the African Commission on Human and Peoples' Rights in promoting and protecting human and peoples rights since its inception in 1987, the drafters of the Protocol stated that the African Court on Human and Peoples' Rights has a mandate to supplement and enhance the mission of the African Commission (Preamble of the Protocol).

It is specified in Article 2 of the Protocol that **the Court shall “complement the protective mandate of the African Commission on Human and Peoples' Rights ... conferred upon it by the African Charter on Human and Peoples' Rights.”**

This complementarity is reflected in the relationship between the Court and the Commission (see Part I. Chapter V) specified in their respective interim rules of procedure¹.

In particular, **the African Commission is able to bring a case to the Court** involving a violation of the rights of the African Charter by a State party to the Protocol. This power (specified by the Interim Rules of Procedure of the Commission) is significant, as it may allow individuals and NGOs who have no opportunity to appeal directly to the Court – when the offending State is opposed to a direct appeal – to refer a matter to the African Commission in the hope that it subsequently refers that matter to the Court. **Thus, the Commission may serve as a route to the Court when the offending State has not made the declaration under Article 34.6 of the Protocol that allows direct appeal to the Court by individuals and NGOs.**

If one considers that States are reluctant to allow direct appeals to the Court by individuals and NGOs (as of the date of publication of this report, only Burkina Faso and Mali have agreed to this referral), the African Commission could be the main forum for referral to the Court, by initiatives of individuals and NGOs. Its role will thus be crucial in the functioning of the Court. We know, for example, that the Inter-American Commission on Human Rights did, for so long, obstruct the work of the Inter-American Court by not referring any case to it.

Another relationship between the two bodies is the fact that only NGOs with observer status with the African Commission on Human and Peoples' Rights can directly apply to the Court if the State concerned by the complaint made the declaration under Article 34.6 of the Protocol (see Part I, Chapter V).

Moreover, before ruling on the admissibility of a complaint, the Court may seek the opinion of the Commission, which shall give that opinion as soon as possible (section 6.1 of the Protocol).


The Court may also, once having crossed into the stage of examining the admissibility of a complaint, decide not to hear the case and refer it back to the Commission (Article 6.3 of the Protocol).

Finally, **the Court may ask the Commission to provide an advisory opinion** on any particular case before it.

The articulation of the relationship between the Court and the Commission will therefore be crucial for the effectiveness of the Court and the fulfillment of its mandate.

1. For information: if the finalisation of the Rules of Court and the Rules of Procedure of the African Commission brings some substantial change to the complementarity process between the two institutions, such change will be included in the electronic version of this guide

➤ Comparison between the African Commission and the African Court

|  | AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (in its role of protection via communications) | AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS (in its litigious role) |
|---|---|---|
| Founding document | The African Charter on Human and Peoples' Rights, adopted 27 June 1981, entry into force 21 October 1986 | The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, adopted 10 June 1998, entry into force 25 January 2004 |
| Composition | 11 Commissioners | 11 Judges |
| Jurisdiction | <ul style="list-style-type: none"> - interpretation and application of the Charter by State parties - friendly settlement - advisory opinion | <ul style="list-style-type: none"> - interpretation and application of the Charter and every other relevant instrument to human rights by State parties - friendly settlement - advisory opinion - interpretation and revision of cases |
| Procedure | Communications | Applications |
| Referral | <ul style="list-style-type: none"> - State parties - individuals and NGOs | <ul style="list-style-type: none"> - the Commission - the State party which has lodged a complaint to the Commission - the State party against which the complaint has been lodged at the Commission - the State party whose citizen is a victim of a human rights violation - African inter-governmental organisations - individuals and NGOs granted observer status by the Commission, pursuant to Article 34(6) of the Protocol |
| Decisions | Incentive | Mandatory |

2 The positioning of the Court within the African regional judicial authorities

A The African Court and the African Union Court of Justice

Under Article 5 of the AU Constitutive Act, the Court of Justice (CJ) would be *“the principal judicial organ of the Union”*, responsible (like the European Union Court of Justice) to **settle disputes concerning the interpretation and application of the Constitutive Act of the African Union, AU treaties and decisions made by organs of the AU.**

The mandate and operation of the CJ are governed by its **Protocol adopted 11 July 2003** in Maputo (Mozambique) by the Heads of State and Government of the AU. The **Protocol entered into force 11 February 2009** after the deposit of the fifteenth instrument of ratification by a State. However, it appears that this Court, as defined by the Protocol, will never see daylight. Indeed, during its Summit in July 2004, the

AU decided to merge the CJ and the African Court on Human and Peoples' Rights into a single Court: the African Court of Justice and Human Rights (see Part III). The merger decision was primarily based on economic issues, considering that the AU will not be able to bear the costs of running two courts. However, while the AU decided to establish the African Court on Human Rights and Peoples' pending merger of the two courts, no similar decision was taken (at the date of publication of this Guide) concerning the CJ.

Despite some criticism regarding the decision to merge the two courts (see Part III), it does have the merit of dissipating jurisdictional competition that the coexistence of the two Courts could spark. Indeed, the extent the CJ's mandate, as defined by the Protocol, could interfere with the jurisdiction of the African Court. Some provisions of the Constitutive Act over which the CJ would be the guardian are indeed explicit references to human rights, particularly Article 3.h., which gives as objective for member States of the AU *"the promotion and protection of human rights and peoples under the African Charter on Human and Peoples' Rights and other relevant instruments relating to human rights."* The Court could, on this basis, be required to rule on the inapplicability of that goal by a Member State. This duality of jurisdiction could pose certain problems, including different interpretations and judgments on the same point of law.

With the establishment of the African Court of Justice and Human Rights, jurisdictional competition could come to pass. A mechanism will be established to allocate cases between the General Affairs Section and the Human Rights Section (See the Protocol of the single Court, Part III).

Unlike the CJ and the future African Court of Justice and Human Rights, the African Court on Human and Peoples' Rights is not an organ of the African Union. However, several provisions of the Protocol establish links between the Court and the continental institution:

It is the AU that has endorsed the Protocol and now has the burden of financing the judicial institution and providing sufficient resources to ensure its effectiveness. The AU must also follow the decisions of the African Court and ensure they are implemented by States. In return, the Court is accountable to the African Union.

The relationship between the African Union and the Court is as follows:

- The African Union finances the practical functioning of the Court, the judges' allowances and expenses of the Registry (Art. 32 of Protocol);
- Judges of the African Court are elected by the Executive Council of the AU and appointed by the Conference of Heads of State and Government of the AU (Art. 14 of Protocol);
- The Executive Council of the AU is to oversee the implementation of the Court's decisions (art. 29.2 of the Protocol);

- The African Court shall prepare an annual report of activities for presentation to the Conference of Heads of State and Government of the AU and make mention of States that have not implemented the decisions of the Court (art. 31 of the Protocol);
- The AU has the power to amend the Protocol to the African Charter if a State so requests. The Conference of Heads of State and Government of the AU must approve the amendment by absolute majority (section 35 of the Protocol).

Ⓑ The African Court and the Courts of Justice of Regional Economic Communities

The African Court is not the only supranational judicial body that is capable of ensuring respect for the rights guaranteed under the African Charter and condemning a State for violations of these rights. This is also the case of certain courts from the Regional Economic Communities (RECs).

Today there are eight RECs recognized by the AU:

- the Economic Community of West African States (ECOWAS)
- the Common Market for Eastern and Southern Africa (COMESA)
- the Economic Community of Central African States (ECCAS)
- the Southern African Development Community (SADC)
- the Intergovernmental Authority on Development (IGAD)
- the Arab Maghreb Union (UMA)
- the Community of Sahel-Saharan States (CEN-SAD)
- the East African Community (EAC).

The creation and strengthening of the RECs, and the harmonization of their policies, responds to the first step towards the implementation of the African Economic Community under the Abuja Treaty (1991), with vision of introducing the United States of Africa.

Several of these RECs have established Courts of justice to deal with disputes relating to violations of treaties and acts of the RECs (mainly pertaining to economic and monetary policy) by a State party.

Yet the Courts of justice may soon have to deal with violations of human rights committed by a State party. Indeed, some of them have inherent jurisdiction in this regard. For example, Courts of Justice in the SADC and EAC have jurisdiction for all disputes concerning the application of the treaties establishing the Communities, urging States to respect the rights guaranteed under the African Charter.

The Court of Justice of ECOWAS has explicit jurisdiction on respect for human rights. Section 9 (4) of the its Additional Protocol (adopted in 2005) gives the Court jurisdiction over violations of human rights committed by a State Party.


Moreover, in its decision in the case *Dame Hadijatou Mani Koraou v. the Republic of Niger*, issued 27 October 2008, the Court ruled that Article 4(g) of the Revised Treaty, which stipulates that member States adhere to the fundamental principles of the African Charter on Human and Peoples' Rights, confirms the desire of the Community legislature to incorporate this instrument into the applicable law before the Court.

Thus, the Court relied on rights guaranteed by the African Charter on Human and Peoples' Rights in two important cases concerning the arbitrary detention of a Gambian journalist and the servile condition of a Nigerian national.

The case *Chief Ebrimah Manneh v. the Republic of Gambia* ruled on the arrest on 11 July 2006 and detainment thereafter of a Gambian journalist of the Daily Observer by the secret services. The applicant's lawyers based their submission on the arbitrary arrest and detention of their client (Art. 6 and 7 of the African Charter). The Court held that Gambia was responsible for the arrest and arbitrary detention of the applicant, locked in *communicado* without trial.

In the case *Dame Hadijatou Mani Koraou v. the Republic of Niger*, the applicant was sold at the age of 12 years by a tribal leader to Mr Naroua, as a "Wahiya." The applicant became a "Sadaka," an actual slave to her master and devoted to housework. She was sexually abused by her master from the age of 13. In August 2005, Mr. Naroua provided Hadijatou with an emancipating document. But he did not allow her to leave the home on the pretext that she remained his wife. The applicant brought her case before the ECOWAS Court as a violation of the provisions of the African Charter relating to discrimination (violation of art. 2, 3 and 18(3)), slavery (art. 5), arbitrary arrest and detention (art. 6). In its ruling, the Court held that the discrimination the victim suffered was not the fact of Niger (but of Mr. Naroua) and that the arrest and detention was the result of a judicial decision that they were thus not arbitrary. However, the Court condemned Niger for its tolerance, passivity, and inaction of national authorities regarding the practice of slavery.

➤ Comparison of the jurisdiction and methods of referral of ECOWAS, SADC and EAC

|  | ECOWAS COURT OF JUSTICE | SADC TRIBUNAL | EAC COURT OF JUSTICE |
|---|---|---|---|
| Member States | Benin; Burkina Faso; Cape Verde; Côte d'Ivoire; Gambia; Ghana; Guinea; Guinea Bissau; Liberia; Mali; Niger; Nigeria; Senegal; Sierra Leone; Togo. | South Africa; Angola; Botswana; Lesotho; Malawi; Mauritius; Mozambique; Namibia; Democratic Republic of Congo; Seychelles; Swaziland; Tanzania; Zambia; Zimbabwe. | Burundi ; Kenya; Tanzania; Uganda; Rwanda. |
| Founding document | The Court of Justice is found in Articles 6 and 15 of the ECOWAS Revised Treaty. The Protocol of the Court of Justice (signed on 6 July 1991) came into force on 5 November 1996. In January 2005, a additional Protocol was adopted, amending several provisions of the Court. | The Tribunal is found in Article 9(f) of the SADC Treaty. The Protocol establishing the Tribunal and its Rules of Procedure were adopted in 2000 and came into force in 2001. The Tribunal became operational in November 2005 and ready to receive cases in 2007. | Article 9 of the Treaty establishing the East African Community provides for the establishment of the Court. It became operational in November 2001. The Rules of Procedure were adopted in 2004. |
| Seat | Abuja (Nigeria) | Windhoek (Namibia) | Arusha (Tanzania) |
| Jurisdiction on human rights | Explicit. Article 9(4) of the Additional Protocol gives the Court jurisdiction over human rights violations committed by a State party. | Implicit. The Tribunal has jurisdiction to hear cases concerning the interpretation and application of the Treaty (Art. 14 of the Protocol). The Treaty makes no reference to the African Charter on Human and Peoples' Rights, but urges the parties to respect human rights, democracy, rule of law, and non-discrimination. | Implicit. The Tribunal has jurisdiction to hear cases concerning the interpretation and application of the Treaty (Art. 23 of the Treaty) which commits (Art. 6(d)) States to respect the basic principles, including the rights guaranteed by the African Charter on Human and Peoples' Rights. Article 27(2) provides that a protocol can be adopted to give a wider jurisdiction to the Court, including on human rights. |
| Referral by individuals? | Article 10(d) provides access to the Court for individuals seeking redress of a human rights violation. | Article 15 of the Protocol provides for the referral by any natural or legal person. | The Court may be engaged by any person or legal resident in the community. |

Some claim tha the REC courts were granted powers for protecting human rights at a time when the establishment of the African Court was still hypothetical. Thus, the idea was to allow supranational bodies to compensate for the deficiencies of certain national courts in the absence of a continental mechanism for human rights protection. It is difficult, today, to foresee the future relationships that will exist between the Courts of Justice of the RECs and the African Court. The coexistence of these jurisdictions could lead to different interpretations of the African Charter and

thus lead to different protection of these rights. Will this situation lead individuals and NGOs to select the supranational institution they will refer matter to based on the jurisprudence of the different jurisdictions?

In this respect, we can wonder whether, if hearing a dispute concerning the protection of human rights, the Courts of Justice of the RECs will be willing to de-refer themselves to the benefit of the African Court. Will the African Court authorize a procedure, based on Article 56 of the Protocol, which allows african international organizations to refer a matter to the African Court? Furthermore, could an individual or an NGO refer a matter to the African Court regarding a decision already issued to his/her disadvantage by a Court of Justice of a REC, or will the Court consider that such a procedure is contrary to the principle of ne bis in idem, which prevents a court to rule on a matter that has already been judged on the same basis? These questions will only find answers with jurisprudential decisions.



With the creation of the African Court on Human and Peoples' Rights, the African continent is equipping itself with a body that complements the role of the African Commission and should enable better protection of human rights in Africa. While NGOs have played an important role in the development of a coherent regional system, they must remain present and vigilant to ensure its smooth functioning.



House of Slaves,
Gorée island - Senegal

Article 5 of the African Charter

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Who Composes the Court?

Key
point

The independence of judges.

This chapter discusses the two main bodies that make up the Court: the litigious branch (judges) and the administrative branch (the Registry). It examines, above all, questions concerning the nomination and election of judges and the guarantees of their independence, a *sine qua non* condition for the credibility and authority of the Court.

Relevant information on the composition of the African Court are found in Articles 11 to 24 of the Protocol.

1 The judges

A verbal note from the AU Commission (Secretariat of the AU) sent on 5 April 2004 to the States Parties to the African Court (those that have ratified the Protocol) insists that the moral authority, credibility and reputation of the African Court will depend, to a large extent, on its composition.

The court consists of **eleven judges** elected for a **term of six years**, renewable once. The judges, however, remain in office until replaced. If that date is scheduled for after a case which has already been the subject of a hearing, the judge concerned shall continue to serve until the completion of that case (art. 2 of the Interim Rules of Court).

The Court can not include more than one judge of the same nationality.

The judges (except their president) exert **part-time employment** subject to amendments by the Conference of Heads of State and Government of the AU (art. 15.4 of the Protocol). The issue of employment of full-time judges was discussed by the drafters of the Protocol, and it was noted that if this option were adopted, the number of judges would be reduced to seven, for financial reasons. Depending on the volume of cases that the Court will have to treat, experience will prove whether this part-time employment is effective. For example, the Council of Europe made a political choice in 1998 with the adoption of Protocol No. 11 to transform the European Court of Human Rights into a permanent judicial body.

(A) Nomination and election

The States Parties to the African Court may nominate candidates. The Executive Council of the African Union shall elect the judges of the Court. The election must then be endorsed by the Conference of Heads of State and Government of the AU.

1. State Parties to the Protocol propose candidates

Each State Party to the Protocol may propose three people for candidacy as judge, including two who must be nationals of that State.

Candidates must be chosen among the *“jurists of high moral character and of recognized practical, judicial or academic competence and experience in the field of human and peoples’ rights”* (art. 11.1 of the Protocol).

States parties are obliged to ensure **adequate gender representation** among the judges (art. 12.2 of the Protocol). To this end, the Coalition for the African Court, of which FIDH is a member, advises States parties to propose for each new election at least one woman among their candidates.



The Coalition for the African Court

Created in 2003, the Coalition for the African Court, of which FIDH is a member, has the mission to advocate for a credible, effective and independent Court by:

- Promoting the ratification without reservation of the Protocol by all African States;
- Promoting the right of individuals and NGOs to refer matters to the African Court by encouraging State Parties to make the declaration under Art. 34.6 of the Protocol;
- Ensuring a transparent process of nomination and election of judges;
- Guaranteeing the full participation of civil society to ensure the implementation and sustainability of the Court.

For more information, see the website: **www.africancourtcoalition.org**

According to Article 11.2 of the Protocol, State parties must also ensure that the composition of judges balance the **geographical distribution and representation of the major legal systems** (civil law, common law, Islamic rights and customs and African customary law).

In order to meet these criteria, the Coalition for the African Court calls on all States parties to the Protocol to present candidates on the occasion of calls for nominations of judges.

To ensure the successful implementation of these criteria, the AU Commission, in a verbal note in April 2004, required states parties to *“encourage the participation of civil society, including the judiciary and other bodies of the State, bar associations, academic organizations and human rights and women’s groups, in the process of selecting candidates.”*

2. Member States of the African Union elect judges

While only those States that have ratified the Protocol can submit candidates for judges, all Member States of the African Union have the right to vote (art. 14.1 of the Protocol).

The method decided by the African Union to elect judges must guarantee the same criteria of representativity as those required for the process of nomination of candidates at the national level: a fair distribution between men and women; composition that is geographically equitable; and adequate representation of the different legal systems.

In its note of 5 April 2004, the AU Commission proposed that the geographical composition effects as follows: West Africa (3 judges) Central Africa (2) East Africa (2); Southern Africa (2) North Africa (2). To achieve this allocation, the Coalition encourages States parties to select a non-national from a country not having ratified the Protocol among their top three candidates during elections.

In practice, the Executive Council of the AU (the decision making body composed of foreign ministers of member States) **elects the judges from among the candidates nominated by States Parties. The results must then be endorsed by the Conference of Heads of State and Government of the AU.**

3. Criteria for nomination and election of judges

It is essential that NGOs monitor the process of nominating candidates for the post of judge by States and the process of electing judges by the AU so that they meet strict criteria set by the Protocol and specified in the verbal note from the AU.

Indeed, the supervision of these processes for the nomination and election of the first judges of the Court revealed several shortcomings, including: lack of participation or consultation of civil society in the nomination process of candidates for

the position of judge by States Parties; only eight candidates, among the list of 21 submitted by States, enjoyed a verifiable experience in the field of human rights; and the absence of an equitable gender distribution. Only two women among 11 judges were elected by the Conference of Heads of State of the AU meeting in Khartoum (Sudan) in January 2006.

B Independence


Judicial independence is guaranteed by Articles 17 to 19 of the Protocol in a manner similar to the relevant provisions of the Statutes of the European and inter-American Courts:

During their terms, judges enjoy privileges and immunities accorded under international law to diplomatic staff. They can not at any time, even after the end of their term, be prosecuted because of votes or opinions issued in the exercise of their functions. **The functions of judges are incompatible with any other activities which affect the requirements of independence and impartiality** – in other words, a judge can not simultaneously be minister, Secretary of State or a diplomatic representative. Moreover, a procedure for suspension or revocation is considered (art. 19.1 of the Protocol) if a judge ceases to meet these requirements.

Judges should not sit in a case in which they were involved in any capacity whatsoever – as an agent, adviser, lawyer of a party, a member of any national or international tribunal, commission of inquiry, etc.

However, the African Court differs from the other two regional courts on one point: **a judge will not sit in a case involving the State of which he or she has nationality** (Art. 22 of Protocol) **or the State that elected him or her** (reminder: a State may nominate a foreign judge). In the inter-American system, the state concerned may appoint an ad hoc judge to hear the case if it has no permanent judges serving on the Court. In the European system, the judge from the state in question will automatically participate in the case.

➤ Comparison of the three regional courts: the status of judges

|  | AFRICAN COURT OF HUMAN AND PEOPLES' RIGHTS | EUROPEAN COURT OF HUMAN RIGHTS | INTER-AMERICAN COURT OF HUMAN RIGHTS |
|---|---|---|---|
| Judges | Nationals of Member States of the African Union, elected in their personal capacity | Nationals of State parties to the European Convention of Human Rights, elected in their personal capacity | Nationals of Member States of the Organization of American States, elected in their personal capacity |
| Number of judges | 11 judges | 45 judges (number equal to that of State parties) | 7 judges |
| Criteria of the composition of judges | - Equitable geographic distribution - A fair representation of major legal systems - An adequate representation of both sexes | None | None |
| Length of term | 6 years, renewable once | 6 years, renewable | 6 years, renewable once |
| Method of election | Elected by the Conference of Heads of State and Government of the AU | Elected by the Parliamentary Assembly of the Council of Europe | Elected by State Parties to the Convention of the General Assembly of the Organization of American States |
| Employment of judges | Permanent for the president, during sessions for other judges | Permanent | Permanent for the president, during sessions for other judges |

© The Presidency

The judges shall elect among themselves a President and Vice-President for a period of **two years renewable once** (art. 21.1 of the Protocol).

Unlike other judges, the President shall exercise his duties full time.

The protocol is vague regarding the duties of the President and Vice-President: they “are defined in the Rules of the Court” (Article 21.3 of the Protocol). The latter specifies in Article 11 that the functions of the President shall include:

- representing the Court;
- supervising the administration of the Court;
- promoting the activities of the Court;
- preparing and submitting the annual report of the Court to the Conference of Heads of State and Government of the AU.

He or she therefore has a **very important institutional role and mandate of representation**. Finally, he or she presides over Court meetings.

2 The Registry

A Registrar is appointed by the Court from among the nationals of Member States of the AU (art. 24.1 of the Protocol).

The Interim Rules of the Court state (Title 2) that candidates for the post of Registrar shall enjoy the highest moral authority and possess the legal, administrative and linguistic knowledge and experience required to exercise his or her functions. The Registrar is appointed for a **term of 5 years, renewable**.

The **functions** of the Registrar are defined by article 25 of the Interim Rules of Court. They include:

- keeping a general list of cases;
- being a regular channel of communication to and from the Court;
- sending to the parties a copy of all pleadings;
- establishing the minutes of Court sittings;
- providing translation and interpretation according to the Court needs;
- printing and publishing Court’s judgments, advisory opinions and orders;
- preparing the draft budget of the Court;
- maintaining relations between the Court and the departments of the AU Commission as well as the organs of the AU.

In other regional systems, the Courts elect the Registrar by secret ballot. Candidates in the European and American systems should enjoy the highest moral character and possess the legal, administrative and linguistic knowledge and experience required to perform their work. **The Registrar assists the Court in carrying out its functions. He or she is responsible for the organization and activities of the Registry, under the authority of the President of the Court.** He or she keeps the records of the court and serves as an intermediary for communications and notices from or to the court. For example, the Registrar shall notify the parties of judgments, advisory opinions and other Court decisions. The Registrar, subject to the secrecy attached to his duties, responds to inquiries concerning the activity of the Court, including those from the press.

In European and American systems, the Registry staff is appointed with the approval of the President of the Court or the Registrar, respectively by the Secretary General of Council of Europe and the Secretary General of the OAS.

In the African system, the Court shall appoint the other officials of the Registry. It may delegate this function to the Registrar with the approval of the President of the Court. Unlike other regional systems, it is stated in the Interim Rules of Court (art. 13) that for these appointments, the members of the Court must ensure, as far as possible, adequate representation of both sexes, of major legal systems and an equitable geographical distribution.

3 How to take action?

Ensure transparency in the appointment process at the national level for the post of judges in calling upon States to:

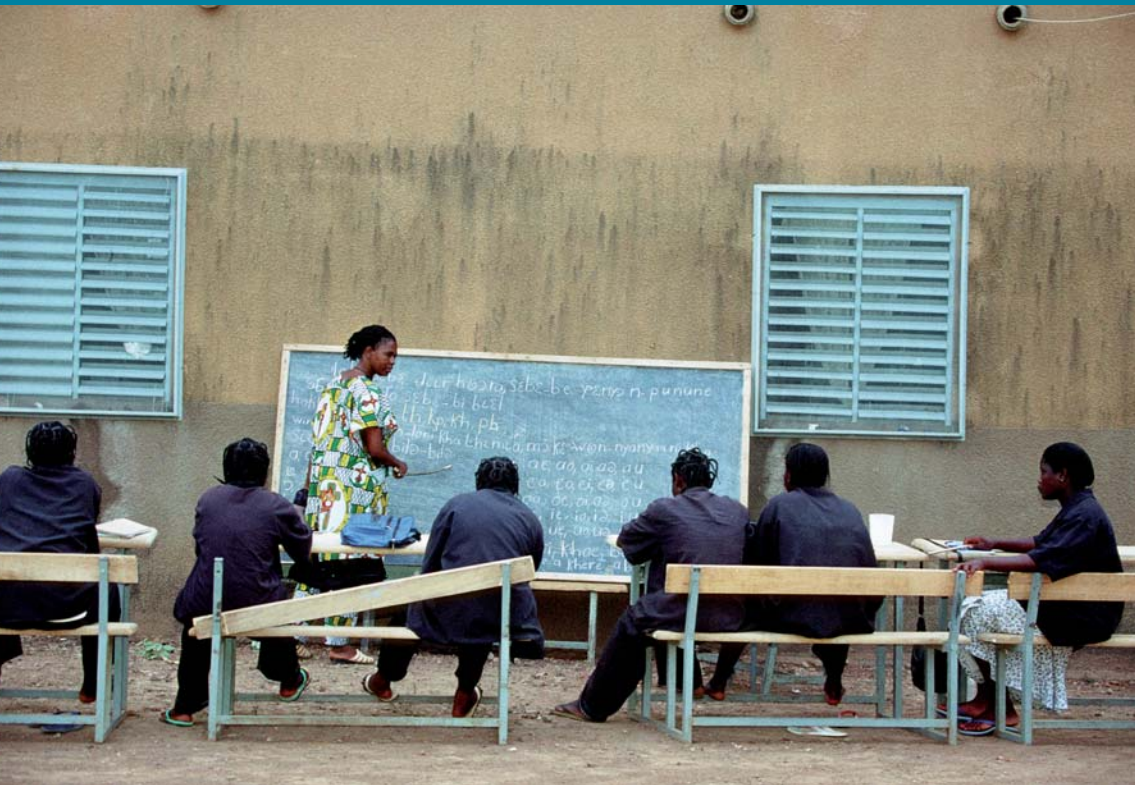
- ➔ Involve civil society in their selection of candidates;
- ➔ Make public the procedure for nominating candidates;
- ➔ Publish the Curriculum Vitae of candidates to verify that they meet the criteria of competence and independence;
- ➔ Ensure the presence of at least one woman among the three candidates from each State;
- ➔ Ensure the presence of at least one non-national among the three candidates from each State for the purposes of equitable geographical representation and fair representation of the different legal systems in Africa.

Ensure transparency of the process of electing judges by the African Union, making sure there exists:

- ➔ A fair gender balance, geographical distribution and representation of different legal systems among the judges.

Ensure the impartiality and independence of judges during their term by checking that:

- ➔ The judges do not exercise functions incompatible with their mandate;
- ➔ A judge does not sit in a case involving the State of his or her nationality;
- ➔ A judge does not sit in a case in which he or she was involved.



The Scholling of girls,
Sourou Region - Burkina Faso

Article 17.1 of the African charter

Every individual shall have the right to education.

What are the Functions of the Court?



The Court advises, arbitrates and judges.

This chapter presents the different functions of the Court: it can give its opinion on a matter relating to the protection of human rights, it tries to amicably settle cases brought before it or else judge that case, and it can interpret and revise its decisions.

Information about the jurisdiction of the African Court can be found in Articles 3, 4 and 9 of the Protocol.

1 The Court advises

The Court may give an opinion on **any legal matter concerning the African Charter or any other relevant instrument on human rights**.

It can do so at the request of an AU Member State, any organ of the AU (e.g. the Assembly of Heads of State and Government, the Parliament or the Economic, Social and Cultural Council) or an organisation recognized by the AU (Section 4 of the Protocol), such as a Regional Economic Community, e.g. Economic Community of West African States (ECOWAS).

To clarify this competence, one can refer oneself to the African Commission, whose function is also to give its opinion on any matter relating to instruments for the promotion and protection of human rights. The Commission has repeatedly exercised that power. An example: in June 2006, the United Nations Commission on Human Rights adopted the UN Declaration on the Rights of Indigenous Peoples. This text

should have been adopted that year by the UN General Assembly, but the African group raised concerns about the wording of some provisions of the Declaration. During a Summit meeting in January 2007 in Addis Ababa (Ethiopia), the Heads of State of the AU confirmed their intention to delay adoption of the text to obtain the opinion of the Commission to make any amendments. The Commission produced a legal opinion (released in May 2007 at its meeting in Accra, Ghana) on the provisions of the Declaration, responding point by point to the concerns of the African Group.



Request for an advisory opinion: A possible role for NGOs?

The Protocol authorizes the African Court to issue advisory opinions “upon demand by [...] an African organization recognized by the AU (Section 4.1)”. This seems to refer to intergovernmental organizations such as the Regional Economic Communities, but if interpreted broadly by the Court, this provision could allow advisory opinions to be requested by NGOs. Indeed, the AU recognizes some NGOs as having observer status. These NGOs, provided they are African, according to this interpretation, could request an advisory opinion from the Court on a legal issue relating to the African Charter or “any other relevant instruments on human rights.” The jurisprudence of the Court will respond to this question.

No conflict of jurisdiction can arise between the Court and the Commission on the production of legal advice. According to the Protocol, **the Court may receive a request for an advisory opinion on the condition that the object of this opinion does not relate to a request pending before the Commission** (Article 4 of Protocol).

Upon receipt of a request for an advisory opinion, the Court shall send a copy to the Commission. It will also inform the States parties and any other interested entity who can submit written comments on the points raised by the request. If it so decides, the Court can also conduct a hearing in accordance with its rules. These opinions are public and substantiated.

2 The Court judges or arbitrates

After a petition is referred to it regarding a violation of a Charter right or any other instrument of protection of human rights (ratified by the State concerned) by a State party, **the Court judges the case or can attempt to settle it amicably.**

Ⓐ The contentious jurisdiction of the Court

The Court has two contentious jurisdictions (Article 3.1 of Protocol): **It can be called upon and then judge any matter concerning either the interpretation or application of provisions of the Charter or other instruments on human rights ratified by the State concerned by the request.**

Often this dual jurisdiction is exercised cumulatively: to judge whether or not a State correctly applied a right guaranteed by the Charter, the Court will interpret some of these provisions.

Indeed, the Court may be asked to specify, detail, and argue certain provisions whose wording may be open to interpretation and thus guide its decisions on the merits.

The jurisprudence of the African Commission again shows the importance and value of the power of interpretation of the Court. The Commission (like the Court, see Part I Chapter IV) may receive a communication from an NGO or an individual, on condition of exhaustion of domestic remedies. This provision is justified by the Commission by the fact that governments must first be informed of human rights violations in order to address them before an international court takes up the case. But in practice, matters can be referred quickly to the Commission where the complainants indicate that proceedings before national courts are impossible for lack of judicial independence; opposition to an amnesty law; undue prolongation of proceedings; the exile of the applicant, etc.. Accordingly, the Commission has interpreted this provision, stating, in these decisions, that the condition of exhaustion of domestic remedies was valid only if those remedies exist, are judicial, efficient and not dependent on the discretion of public authorities (*Communication 48/90 Amnesty International and Others v. Sudan*).

The European Court of Human Rights and the Inter-American Court of Human Rights also recognize this power of interpretation. It has been used repeatedly to clarify the extent of a right, then to judge whether it had been violated by a State party. For example, the European Court, in its ruling of *Pretty v. United Kingdom*, considered that the “right to life” guaranteed by article 2 of the European Convention on Human Rights and Fundamental Freedoms does not contain a negative aspect and should thus not be interpreted as conferring the diametrically opposite right, namely, a right to die.

Repeatedly, in its judgments the European Court recalled that the European Convention on Human Rights and Fundamental Freedoms is not a dull text to be interpreted literally, but rather “a living instrument to interpret in light of current living conditions” and that “*the growing level of demand for the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.*”

Finally, the Protocol provides that in case of dispute as to whether the Court has jurisdiction, the Court decides.

B The “diplomatic” jurisdiction of the Court

When called upon to consider a violation of a right by a State party, **the Court may attempt to amicably settle** the case (Article 9 of the Protocol). Thus, in the context of judicial proceedings, either when considering admissibility or during adjudication of the case, the Court may attempt to reach agreement between the parties in dispute, which not only pleases both sides but also complies with the provisions of the African Charter. This means that the agreement can not infringe upon a right guaranteed by the Charter.



Amicable settlement

To settle a dispute amicably means to give the Court the possibility to find a solution for reconciliation that satisfies both parties in the dispute. For example, in the case of an individual claiming violation of a discrimination law, a State may, at the urging of the Court, repeal the law before the Court issues its ruling.

Once again, the practice of the African Commission can help to understand the key lines of this competence. After a communication is filed by an NGO or an individual for an alleged violation of rights of the African Charter by a State party, the Commission has sometimes tried - as it is authorized to do in the Charter - to find an amicable solution to resolve the dispute. Thus was the case in *Association for the Defense of Human Rights v. Djibouti* (Communication 133/94), wherein an individual referred grave violations of human rights perpetrated by the Djiboutian governmental troops against members of the Afar ethnic group in the combat zones with the Front for the Restoration of Unity Democracy (FRUD). Once the communication was declared admissible by the Commission, it was warned by the parties that a protocol was being signed by the Djibouti government to uphold the claims of civilian casualties, refugees and persons displaced by conflict, and strongly encouraged this process. Finally, once the Protocol was signed, the complainant asked the Commission to take note of the agreement. The Commission issued its decision on the merits by deciding to terminate the proceedings “on the basis of the settlement reached between the parties.”

The European Court of Human Rights (Art. 38.1.b and 39 of the Convention for the Protection of Human Rights and Fundamental Freedoms) and the Inter-American Court of Human Rights (art. 53 of the Rules of Court) also use this procedure of amicable settlement of conflicts.

3 The Court interprets or revises its judgments

A Interpretation

The Court may interpret its judgments for their execution. It may do so on request of any party in the case concerned (art. 28 (4) of the Protocol and art. 66 of the Rules of Court) within 12 months following the date of the issuing of the ruling.

When called upon for a request for interpretation, the Court invites the other parties to the case to submit their comments. The same judges who reviewed the merits of the case assess the application.

The request for interpretation shall not suspend the execution of the decision unless the Court decides otherwise.

B Revision

Any party to a case may ask the Court to review its ruling in case of discovery of evidence which the party had no knowledge of when the decision was made. This request must be made within six months from the time the party was aware of the evidence found (article 67 of the Rules of Court). Any party to the case can comment.

The request for revision does not suspend execution of the decision unless the Court decides otherwise.

4 How to take action?

To participate in developing the jurisprudence of the Court:

- ➔ Call upon it for advisory opinions on legal questions concerning the Charter or any other relevant instrument on human rights;
- ➔ Call upon it for a decision on the interpretation of a provision of the Charter in order to extend the protection of the rights guaranteed by it.



Hermits, Lalibela – Ethiopia

Article 8 of the African Charter

Freedom of conscience, the profession
and free practice of religion shall be guaranteed.
No one may, subject to law and order,
be submitted to measures restricting
the exercise of these freedoms.

What is the Adjudicatory Function of the Court?

Key
point

The Court judges violations of human rights committed by a State party.

This chapter outlines the key lines of the litigious jurisdiction of the Court. The Court considers whether State parties to the Protocol (States that have ratified the Protocol) have committed violations of rights guaranteed under the African Charter and other relevant instruments on human rights. For the Court to have jurisdiction, the violation must have occurred after the date of ratification of the Protocol by the State concerned.

The court protects a wide range of rights: it can be called upon to deal with cases related to violations of the African Charter on Human and Peoples' Rights of 1981, protocols to this Charter, or any other relevant instrument on human rights ratified by the State concerned (Article 3 of Protocol).

1 The Court rules on applications concerning violations of human rights

A Violations of the African Charter

The African Charter, which was adopted in 1981 and came into force in 1986, is unique because it protects a wide range of rights. Unlike the European and American Conventions on Human Rights, the Charter includes articles to protect not only civil and political rights but also economic, social and cultural rights. Combining traditional African values and the modernity of universally recognized rights, the Charter also recognizes the rights of peoples. Thus, the Charter includes innova-

tive elements linked to the history of African civilization, while broadly keeping with the continuity of legal instruments for regional and international protection of human rights.

1. Civil and political rights

The following rights are provided for in Articles 2 to 14 of the Charter:

- the right to non-discrimination (art. 2)
- the right to equality before the law (art. 3)
- the right to life and physical and moral integrity (art. 4)
- the right to respect for the inherent human dignity of the person, prohibition of all forms of slavery, trafficking in persons, physical or mental torture and cruel, inhuman or degrading treatment (art. 5)
- the right to liberty and security of person and prohibition of arbitrary arrest or detention (art. 6)
- the right to have one's case heard by the judicial branch, the right to a fair trial, the right to presumption of innocence, the right to defence, the right to be tried within a reasonable amount of time by an impartial tribunal and the principle of non-retroactivity of criminal law (art. 7)
- freedom of conscience and religion (art. 8)
- the right to information and freedom of expression “under the law” and the right to free exercise of religion (contains a reservation clause) (art. 9)
- the right to freedom of association under the rules laid down by the law (contains a reservation clause) (art. 10)
- the right to freedom of assembly (contains a reservation clause) (art. 11)
- the right to freedom of movement within a State, the right to leave any country, including one's own, the right to asylum, the prohibition of collective expulsion (art. 12)
- the right to freely participate in public affairs and equal access to public service, the right to equal access to public goods and services (art. 13)
- the right to property (art. 14)

General principles of non-discrimination and equality

Article 2 of the Charter on non-discrimination is not an autonomous provision and can only be invoked in pursuance with another right protected by the text.

Article 3 of the Charter is broad and enshrines the principle of equality before the law, whatever right is in question.



Reservation and derogation clauses

Reservation clauses are associated with many articles in the Charter, by which the enjoyment of a right or freedom may be limited by national laws. For example, freedom of association is protected, “provides it abides by the law.” (Art. 10).

However, as underlined by the African Commission, these clauses are provided in accordance with international law only if:

“– The reasons for the limitation are based on a legitimate public interest and the disadvantages of the limitation are strictly proportionate and absolutely necessary for obtaining that benefit . . . the limitation does not result in rendering the law illusory.”

(Communication before the African Commission 105/93, 128/94, 130/94 and 152/96, Media Rights Agenda, Constitutional Rights Project, Media Rights agenda and Constitutional Rights Project v. Nigeria)

Unlike other international legal instruments pertaining to human rights, the Charter does not have a general derogation clause, which allows States, in situations of national emergencies, to suspend the application of certain fundamental rights. This loophole could be harmful if it allows African states to invoke an emergency at any time without basing it on a legal provision. Conversely, it can be considered that according to the Charter no emergency can justify the violation of rights guaranteed by it.

2. Economic, social and cultural rights

These rights are enshrined in Articles 15 to 18 of the Charter:

- the right to work under equitable and satisfactory conditions; the right to equal pay for equal work (art. 15)
- the right to the highest attainable standard of physical and mental health (art. 16)
- the right to education and the right of individuals to take part in the cultural life of the Community (art. 17)
- the rights of the family, women, elderly and disabled to special measures of protection (art. 18)

3. Peoples' rights

These rights are enshrined in Articles 19 to 24 of the Charter:

- the right of peoples to equality (art. 19)
- the right of peoples to existence, self-determination and the right of peoples to liberate themselves from the bonds of domination by resorting to any means recognized by the international community; the right to assistance in their liberation struggle against foreign domination, whether political, economic or cultural (art. 20)
- the right of peoples to freely dispose of their wealth and natural resources (art. 21)

- the right of peoples to economic, social and cultural development (art. 22)
- the right of peoples to peace and national and international security (art. 23)
- the right of peoples to a general satisfactory environment favorable to their development (Article 24)

ⓑ Violations of other instruments for the protection of human rights

The Court is not only competent to deal with violations of the rights of the African Charter committed by a State Party to the Protocol. It may also be required to prosecute violations by a State Party of any other instrument, international or African, for the protection of human rights ratified by it. Below is a list of relevant instruments, compliance with which could be monitored by the Court when ratified by the State party concerned:

1. Relevant African instruments

- The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted 10 September 1969, entry into force 20 June 1974.
- The African Charter on the Rights and Welfare of the Child: adopted in July 1990, entry into force 29 November 1999.
- The OAU Convention on the Prevention and Combating of Terrorism adopted 14 July 1999, entry into force 6 December 2002.
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa adopted 12 July 2003, entry into force 25 November 2005
- The African Charter on Democracy, Elections and Governance: adopted 30 January 2007.
- The AU Convention on the Protection of and Assistance to Internally Displaced Persons in Africa: adopted 23 October 2009.

2. Relevant international instruments

- The Convention on the Prevention and Punishment of Genocide, adopted 9 December 1948, entry into force 12 January 1951.
- The International Covenant on Civil and Political Rights, adopted 16 December 1966, entry into force 23 March 1976.
- The International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, entry into force 3 January 1976.
- The International Convention on the Elimination of All Forms of Racial Discrimination, adopted 21 December 1965, entry into force 4 January 1969.
- The Convention on the Elimination of All Forms of Discrimination against Women, adopted 18 December 1979, entry into force 3 September 1981.
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment adopted 10 December 1984, entry into force 26 June 1987.

- The Convention on the Rights of the Child, adopted 20 November 1989, entry into force 2 September 1990.

The jurisdiction of the Court therefore relies on a broad range of legal instruments to complement the African Charter and to fill in any gaps. It is a great improvement over the other two regional courts. An applicant can refer a matter to the African Court alleging the breach of an agreement ratified by the State in question that guarantees a range of rights more substantial than those specified in the Charter, particularly women's rights or economic, social and cultural rights. The Court then bases its interpretation on those given to these instruments by the treaty bodies they establish. Thus, the Court's ruling may be based on observations of the Human Rights Committee, which interprets the International Covenant on Civil and Political Rights, to determine whether a State has violated any of its provisions.

© The jurisprudence of the African Commission provides a glimpse of the range of protection provided by the African Court

As part of its litigious jurisdiction, the Court may draw on the work of the first instance for the protection of human rights in Africa to make its judgments. The jurisprudence of the Commission is important because it indicates the violations of human rights allowed for consideration and the direction towards which decisions have been made.

The jurisprudence of the Commission initially focused on violations of civil and political rights. Despite the emphasis on economic and social rights in the preamble to the African Charter and in Articles 15 to 18 therein, the Commission was at first tempted to exclude consideration of these rights out of fear of having to handle too many cases in too many countries.

This initial resistance was transferred gradually to the realities of the African continent, making it necessary to take account of such rights. The Commission has since confirmed the indivisibility and interdependence of human rights.

In 2002, of the 45 cases examined by the Commission, 15 involved various economic and social rights guaranteed by the Charter.

Below are some examples of violations that have been the subject of a decision by the African Commission and which are the types of rights protected by the Charter:

Right to equality before the law



Communication 241/01 – Purohit and Moore v. Gambia

The complainant alleged that the law governing mental illness in Gambia was outdated. The Commission argued that the mentally disabled share the same hopes, dreams and goals and have equal rights to realize these hopes, dreams and goals, like any other human being. In particular, the mentally disabled or ill have the right to live a decent life as normal and full as possible, which is right at the heart of the right to human dignity. The Commission held that the relevant legislation in Gambia violated Article 3 of the Charter, the right to equality before the law.

Right to life



Communication 249/02 – Institute for human rights and development in Africa v. Republic of Guinea

On 9 September 2002, Guinean President Lansana Conté told the national radio that Sierra Leonean refugees in Guinea were to be arrested, searched and detained in camps. That speech prompted soldiers and civilians alike to rise up against the Sierra Leonean refugees, many of whom died during attacks. The Commission held that these facts amounted to a violation of Article 4 of the Charter concerning the right to life.

Right to liberty and security of the person



Communication 250/02 – Liesbeth Zegveld and Musie Ephrem v. Eritrea

In its decision, the Commission held that the incommunicado detention without charge of 11 former senior officials of the Eritrean government was a violation of Article 6 of the Charter enshrining the right to liberty and security of the person.

Prohibition of torture and other cruel, inhuman or degrading treatment / Right to humane conditions of detention



Communication 232/99, John D. Ouko v. Kenya

The complainant alleged that he had been arrested and detained without trial for 10 months in the Department of Secret Services in Nairobi and kept in a cell where there was a 250-watt bulb constantly lit and no toilet. The Commission decided that the detention was arbitrary and constituted inhuman and degrading treatment in violation of Articles 5 and 6 of the Charter.

Communication 236/2000, Curtis Francis Doebbler v. Sudan

Also on the basis of Article 5 of the Charter, the African Commission asked Sudan to abolish flogging, which is contrary to physical integrity and human dignity.

Communication 64/92, Achuthan and others v. Malawi

The Commission held that detention in a completely isolated place, the fact to be chained up in cells, with poor quality food and denial of access to adequate health care must be called inhuman and degrading treatment contrary to Article 5 of the Charter.

Right to a fair trial



Communication 222/98 and 299/99 – Law office of Ghazi Suleiman v. Sudan

A Special Tribunal established by Presidential Decree and composed of military personnel appointed by the President had judged several civilians without giving them the opportunity to be represented by a lawyer. The ruling was not subject to appeal. The Commission held that *“Military courts should handle crimes of a purely military nature committed by military personnel. In exercising this function, Military courts must respect the standards of a fair trial.”*

The Commission concluded that Sudan had violated Article 7 of the Charter concerning the right to a fair trial.

Rights of human rights defenders / Freedom of expression, information and association



Communication 225/98 - CLO v. Nigeria

The NGO Civil Liberties Organisation (CLO), an FIDH member organisation, lamented that since its legal creation its members have been harassed and persecuted by the authorities. The Commission decided that Nigeria was in violation of Art. 9 and 10 of the Charter, stating that *“the legislative authorities should not obstruct the exercise of freedom of expression and association.”*

Communication 102/93 – Constitutional Rights Project v. Nigeria

The detention of human rights activists, without charge and without opportunity for bail, constitutes an arbitrary deprivation of their liberty and thus a violation of Article 6.

In that same decision, the Commission held that, given the fact that Nigerian law contains all of the traditional provisions on defamation trials, a ban on the publication of the newspaper was a violation of the right to information guaranteed by Article 9 of the Charter.

Right to freedom of assembly



Communication 251/02 – Lawyers for Human Rights v. Swaziland.

The Commission held that the Proclamation of 1973, which abolished and prohibited the existence and formation of political organisations or parties, was inconsistent with Article 11 of the Charter on the right to assemble.

➔ Right to non-discrimination



Communication 159/96- International Federation for Human Rights, Inter-african Union for Human Rights, African Rencontre for Human Rights, National Organisation of Human Rights in Senegal and Malian Association of Human Rights v. Angola.

In 1996, the Angolan government carried out a brutal expulsion of West African nationals on its territory. The deportees lost all of their possessions during the operation. According to the Commission, this act violates the rights guaranteed in Articles 2, 7 and 12 of the Charter relating to the principle of non-discrimination and the right to a fair trial, those evicted having not been presented with the opportunity to protest their treatment in a court of law.

➔ Right to freedom of conscience



Communication 48/90 – Amnesty international v. Sudan

In its decision, the Commission insisted that the Sudanese courts, when applying Shariah law, must comply with other international and national obligations of the State, including those on the right to a fair trial. According to the Commission, it is fundamentally unjust that religious laws can be applied against persons who do not practice that religion. The courts that apply Shariah should not have jurisdiction over non-Muslims and everyone should have the right to be tried by a secular court if they wish. Furthermore, the Commission held that persecution of non-Muslims was a violation of Article 8 of the Charter, which guarantees freedom of conscience, profession and free exercise of religion.

➔ Right to free and fair elections



Communication 102/93- Constitutional Rights Project and others v. Nigeria

The complainant challenged a decision by the Abuja High Court to prevent the proclamation of the 1993 presidential elections, which had taken place freely and fairly according to domestic and international observers.

The Commission considered the cancellation of election results, which reflected the free choice of voters, to be a violation of Article 13(1) of the Charter.

➔ Right to self-determination of peoples



Communication 147/95- Jawara v. Gambia

The coup d'Etat by the military in Gambia in 1994 was, according to the Commission, a grave and flagrant violation of the Gambian people's right to choose its system of government, as provided for by Article 20(1) of the Charter.

Protection of the family



Communication 275/03, Article 19 v. Eritrea

The Commission held that the illegal and incommunicado detention without trial since 2001 of 11 former senior officials of the Eritrean government is a violation of Article 18 of the Charter on the protection of family life for the inmates as well as their families.

Right to health and a clean environment



Communication 155/96, Social and Economic Rights Action Center v. Nigeria

The complainant alleged that the state administration of a consortium oil operation caused severe damage to the environment and, consequently, caused health problems among the Ogoni people. The Commission confirmed the violations of Articles 16 and 24 of the Charter and asked the Government to ensure adequate compensation to victims by cleaning the land and rivers affected and ensuring that future assessments of the social and ecological impact of oil operations are carried out.

Communication 100/93, Free Legal Assistance Groupe and others v. Zaire

The Commission held that the government's inability to provide essential services, such as potable water and electricity, and a lack of medicine, were violations of Article 16 of the Charter, which states that State Parties shall take measures necessary to protect the health of their populations.

The Court rules on applications concerning violations of human rights committed by African States which have ratified the Protocol

The Court has jurisdiction over States

The Court may be called upon to investigate violations of the Charter and other regional and international instruments on the protection of human rights **committed by States Parties to the Protocol**.

This distinguishes it from other courts, such as the International Criminal Court, International Criminal Tribunals for the Former Yugoslavia and Rwanda and the Special Court for Sierra Leone, who judge not States but individuals who have committed international crimes such as genocide, crimes against humanity, war crimes.



The International Criminal Court (ICC)

The ICC is an independent, permanent court that tries persons accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes.

The ICC is a court of last resort. It will not act if a case is investigated or prosecuted by a national judicial system unless the national proceedings are not genuine, for example if formal proceedings were undertaken solely to shield a person from criminal responsibility. In addition, the ICC only tries those accused of the gravest crimes.

In all of its activities, the ICC observes the highest standards of fairness and due process. The jurisdiction and functioning of the ICC are governed by the Rome Statute which was adopted in 1998 and entered into force on July 1st 2002.

But what exactly is a violation of human rights committed by a State? Does this condition require direct violations perpetrated by agents of the state: police, military, members of government, etc.? The jurisprudence of the African Commission can clarify the future position of the Court.

The Commission has repeatedly addressed this issue. In its jurisprudence (e.g. Communication 155/96, Social and Economic Rights Action Center v. Nigeria), the Commission has identified three types of obligations of States towards the Charter:

First, the State has an **obligation to respect** (negative obligation) the Charter rights. This is the “classic” obligation: the State can not interfere with the enjoyment of rights. The State can not itself violate the rights of individuals. Thus the State can not prohibit a lawful protest. The State should not arrest and detain individuals arbitrarily, etc..

The second obligation of the State vis-à-vis the rights guaranteed by the Charter is more progressive and can lead to a lot of action: the **obligation to protect and act** (affirmative obligation): the State must protect the beneficiaries of rights vis-à-vis third parties (e.g. companies) by adopting protective legislation and ensuring effective remedies. The state must take steps to ensure the enjoyment of rights guaranteed by the Charter.

The third type of obligation is to **promote the rights** guaranteed by the Charter (long term).

Thus, a complaint can be brought before the Court against a state that exposes a lack of state protection against violations of human rights committed by a company, by rebel groups, etc..



Communication 74/92 - National Commission on Human Rights and Liberties v. Chad

This communication alleged serious and massive human rights violations in Chad (disappearances, torture, murder, etc.) that had been committed in the context of civil war between security forces and rebel groups. The government claimed that no violation had been committed by its agents, and that they had no control over the violations committed by third parties, since Chad was a country at war. The Commission did not accept this argument and stated that *"the Charter states in Article 1 that not only do State Parties recognize the rights, duties and freedoms enshrined in this Charter but they also undertake to ... take steps to implement them. In other words, if a State fails to ensure respects for the rights contained in the African Charter, this constitutes a violation of the Charter, even if that State or its agents were not the direct perpetrators of the violation."*

B Will the Court have jurisdiction to try individuals?

Given the lack of willingness and ability of some African national courts to try perpetrators of crimes, several supra national and international courts have expressed their jurisdiction against impunity and for justice to victims. For example, the International Criminal Court has initiated proceedings against nationals from Democratic Republic of Congo, Uganda and Sudan. A special tribunal composed of local and international judges was established to try war criminals in Sierra Leone and Liberia. National courts (African, European and American) have also initiated proceedings against Mauritanian and Tunisian torturers, Rwandan who perpetrated genocide and Congolese and Chadian criminals, etc., according to the principle of universal jurisdiction.¹

This situation led the African Union to react on the action of international justice in Africa. By request of the Rwandan president, Paul Kagame, who challenged proceedings in France against RPF forces regarding the attacks in 1994 against former President Habyarimana, the AU adopted a decision in February 2009, at its 12th Summit in Addis Ababa (Ethiopia), on the "misuse of universal jurisdiction." In its recommendations, the AU requested the AU Commission, the African Commission and African Court to consider the possibility of extending the jurisdiction of the African Court to enable it to try individuals who committed international crimes (crimes against humanity, war crimes and genocide). This same recommendation was renewed by the AU at its Summit in July 2009 in Sirte (Libya), at a decision

¹Universal jurisdiction is a principle of exception to traditional territorial jurisdiction. It is provided for by certain international conventions that require State parties to extend the jurisdiction of their courts to try individuals who committed certain international crimes (torture, war crimes, genocide) against foreign victims. This exception is often subject to certain conditions, including the presence of the alleged criminal on the territory.

on the meeting of African States Parties on the ICC in response to the issuance of an ICC arrest warrant against Sudanese President Omar al Bashir.

The goal put forward by the AU was an “Africanization” of international justice and thus avoidance of procedures from other continents against African nationals. This vision is a misconception of universal justice based on international conventions ratified by most African states. Moreover, giving the African Court jurisdiction to try individuals would not allow that body to substitute for international justice. It would become an additional body of judging the international criminal responsibility of individuals, with the obvious risk of competition between courts and jurisprudence. In addition, this solution does not appear viable considering institutional and financial implications.

In this regard, FIDH prefers to encourage African countries to adopt within their domestic legislation, laws to define international crimes and to reform their judicial system to give them independence. FIDH recalls that international justice only intervenes in the absence of willingness and capacity of national courts to fight against the impunity of perpetrators of the most serious crimes.

3 The Court rules on applications concerning violations of human rights committed by African States after the entry into force of the Protocol for the State concerned

The Protocol establishing the African Court entered into force 25 January 2004, 30 days after the deposit of the 15th ratification by the Union of Comoros on 26 December 2003. Thus, the African Court can be called upon to deal with violations of human rights committed since 25 January 2004 by one of these 15 states (art. 34.3 of the Protocol).

For States that have ratified or will ratify the Protocol after that date, its provision take effect for them on the date of deposit of the instrument of ratification or accession. The African Court will then deal with violations committed by these states after the date of deposit of the instrument of ratification of the Protocol.

4 How to take action?

To refer a matter to the Court, ensure that it has jurisdiction by verifying that:

- ➔ The right of the person whose violation is alleged is covered by the provisions of the African Charter on Human and Peoples' Rights or other relevant instrument ratified by the State concerned,
- ➔ The State, the author of the violation of human rights, has ratified the Protocol,
- ➔ The perpetrator is an agent of the State or the State had an obligation to protect the right violated,
- ➔ The violation was committed after the date of ratification of the Protocol by the State concerned

To participate in developing the jurisprudence of the Court:

- ➔ Refer matters of violations of civil and political as well as economic, social and cultural rights or the rights of peoples.
- ➔ Refer matters of violations of rights guaranteed by other instruments than the African Charter



Women at work, Lomé - Togo

Article 15 of the African Charter

Every individual shall have the right to work
under equitable and satisfactory conditions,
and shall receive equal pay for equal work.

Who can Seize the Court?

Key
point

Individuals' and NGOs' access to the African Court.

This chapter studies and explains article 5 of the Protocol which lists the persons, organisations or institutions which may submit cases to the Court to denounce human rights violations committed by a State which has ratified the Protocol. An important part is devoted to individuals' and NGOs' right of access. This is only possible if States have explicitly accepted such a right. This is one of the Court's main limitations although individuals and NGOs can attempt to get round this obstacle through the African Commission.

Excerpts of the Protocol establishing the African Court

Article 5: Access to the Court

1. The following are entitled to submit cases to the Court
 - a. The Commission;
 - b. The State Party which has lodged a complaint to the Commission;
 - c. The State Party against which the complaint has been lodged at the Commission;
 - d. The State Party whose citizen is a victim of human rights violation;
 - e. African Intergovernmental Organizations.
2. When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join.
3. The Court may entitle relevant Non Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34 (6) of this Protocol.

Article 34: Ratification

6. At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5(3) of this Protocol. The Court shall not receive any petition under article 5(3) involving a State Party which has not made such a declaration.
-

In conformity with article 5 of its Protocol, the African Court is competent to receive petitions from the African Commission, certain African States, and African intergovernmental institutions. The Court can also receive petitions filed by individuals and NGOs with observer statute before the African Commission, only if the State concerned by the petition has accepted their direct access to the Court (having made a declaration under Article 34.6 of the Protocol). If the State did not accept such right, individuals and NGOs could try to seize the Court via a petition filed to the African Commission.



Ratification of the Protocol by African States

NGOs must sensitize the population and national authorities to encourage all African States to ratify without reservation the Protocol to respect their international obligations regarding human rights protection.

1 The African Commission on Human and Peoples' Rights

Ⓐ can seize the Court on serious violations of human rights

The Commission may submit a case to the Court if a situation has come to its attention that, in its view, constitutes one of serious and massive violations of human rights (art. 119.4 of the Interim Rules of Procedure of the African Commission). This is only possible if the State party has ratified the Court's Protocol.

Thus, the Commission can decide whether or not to refer a case – for which it received a communication from another state, an individual or an NGO – concerning serious and massive violations of human rights in conflict situations, for example, without even examining its admissibility beforehand.

Additionally the Commission can decide to submit a case – which it heard about either from NGOs, international institutions or individuals – to the Court regarding serious and massive human rights violations without having received an official communication for it.

Ⓑ can seize the Court if a State Party has not executed an act issued by the Commission under the procedure of communication

1. In the case of a State's failure to implement provisional measures

If the Commission has taken provisional measures against a State party to the Court Protocol and it considers that this State has not complied with the provisional measures requested, the Commission may refer the situation to the Court and inform the complainant and the State concerned thereof (art. 119.3 of the Interim Rules of Procedure of the African Commission).

In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary (art. 27.2 of the Protocol). For example, the Court can ask a State Party to defer the execution of a death row prisoner.

2. In the case of a State's failure to execute a decision

If the Commission has made a decision with respect to a communication submitted against a State party that has ratified the Protocol on the establishment of the African Court, and the Commission considers that the State has not complied or is unwilling to comply with its recommendations in respect of the communication within, the Commission shall refer the communication to the Court, and inform the parties accordingly.

In fact, after examining a communication, the Commission often makes recommendations along its decision. When it ascertains a human rights violation committed by the State mentioned in the communication, the Commission can recommend the authorities to pursue the perpetrators of the violations, to compensate the victims, to reform its penal system or to abolish a law which limits freedoms, etc.

If the State Party does not implement its decision and recommendations within the given time frame of 6 months, the Commission can prolong the deadline for another 3 months. If the State Party still does not respond, the Commission can take this as a sign that the State Party is not willing to comply with its decision. The Commission can then decide to bring the case before the Court whose judgement is binding.

In all the above situations, The Commission can only submit the case to the Court if the State Party concerned by the communication has ratified the Protocol of the Court.

Once the matter has been referred to the Court, the Court shall adopt appropriate measures to implement the decision (art. 119.2 of the Interim Rules of Court).

For NGOs and individuals it is a fundamental element of access to the Court that the Commission can submit cases to it.

2 The State Parties

The State Parties to the Protocol also have the right to refer to the African Court and become a party to a case. This applies to:

The State Party which had lodged a complaint to the Commission (art. 5.1. b of the Protocol)

If a State Party to the African Charter considers that another State Party has violated the provisions of the Charter, it may refer the matter directly to the Commission (art. 49 of the African Charter). This option has rarely been used by states, as states do not wish to be accused of violations in return. There is one exception so far: In 1999, the Democratic Republic of Congo brought a communication to the Commission against Burundi, Uganda and Rwanda for serious and massive human and peoples' rights violations which had been committed by the armed forces of these three states in the provinces of Eastern Congo, a region touched by a rebellion movement since August 1998. In 2003, the Commission decided that the accused states had indeed violated various articles of the African Charter and asked for adequate compensation for the accusing state in the victim's interests.

The Interim Rules of Court clarifies in art. 119.5 that a State Party to the Protocol which submitted a communication to the Commission cannot file a case with the Court until the Commission has issued a decision on the case. In this instance the Court fulfils the role of an appeals court for a State party if it is not satisfied with the decision made by the Commission or if it wishes to obtain a compulsory ruling over the accused state.

The State Party against which a petition has been lodged at the Commission (art. 5.1.d of the Protocol)

The Interim Rules of Court (art. 33 c) point out that the State Party against which an application has been lodged with the Commission can submit a case to the Court.

Furthermore the Interim Rules of Procedure of the Commission (art. 119.5) point out that the State party must wait for the Commission's decision. In this case the accused state party can use the Court to appeal if it feels the Commissions' decision was disadvantageous.

The State Party whose citizen is a victim of a human rights violation (art. 5.1.d of the Protocol)

The Protocol does not explicitly mention this, but the State Party whose citizen is a victim of a human rights violation has two ways of submitting a case to the Court:

1) The State Party can directly submit an application to the Court for human rights violations committed against its citizens by another State Party; 2) The State Party can become a complainant along with an NGO or an individual who submitted a case against another state party if it involves one or more of its citizens. For example, a state which has ratified the Protocol could ask to become a party to a case concerning the migration politics of another state party if it affects its own citizens.

The State Party which has an interest in the case (art. 5.2 of the Protocol)

This is also a way for State to become a party to a case which has already been brought to the Court's attention when it considers it has an interest in a case. In this case the interest to take action is not limited to the victims' nationality.

3 The African intergovernmental organisations

The access to the Court for intergovernmental organisations is one of the specificities of the African Court compared to the other regional courts. The institutions which may submit cases to the Court under this article include the African Union, but also the Regional Economic Communities (REC):

- the Economic Community of West African States (ECOWAS)
- the Common Market for Eastern and Southern Africa (COMESA)
- the Economic Community of Central African States (ECCAS)
- the Southern African Development Community (SADC)
- the Intergovernmental Authority on Development (IGAD)
- the Arab Maghreb Union (UMA)
- the Community of Sahel-Saharan States (CEN-SAD)
- the East African Community (EAC).

4 The NGOs and individuals

A Direct access

According to article 5.3 of the Protocol, *“the Court may entitle relevant NGOs with Observer Status before the Commission and individuals to institute cases directly before it”*.



Contrary to the other regional courts, the possibility granted to individuals and NGOs to submit cases to the Court is not limited to a particular interest in bringing a case to Court such as being a direct victim of the human rights violation. Once the authorization is given by a State Party, in accordance with article 34.6 of the Protocol, any individual or NGO with the Observer Status before the African Commission, whatever the civil or legal nationality, may refer to the Court to challenge human rights violations perpetrated by that State.

Taking this into consideration, the Court should follow the precedence set out by the African Commission which explained in a case (Malawi African Association and others v. Mauritania): “Those submitting communications do not necessarily have to be the victims of such violations or members of their families. This characteristic of the African Charter reflects sensitivity to the practical difficulties that individuals can face in countries where human rights are violated. The national or international channels of remedy may not be accessible to the victims themselves or may be dangerous to pursue”.

However, **this competence is only facultative**, as it is subject to the prior acceptance of the State accused of human rights violations. Actually, individuals and NGOs with the Observer Status before the African Commission may refer directly to the Court **only if the State Party to the Protocol concerned has made a declaration under article 34.6 of the Protocol authorizing such a procedure**. Article 34.6 says that “At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5(3) of this Protocol. The Court shall not receive any petition under article 5(3) involving a State Party which has not made such a declaration”.

This is one of the main limits of the African system of protection of human rights. The possibility for the Court to receive individual communications is fundamental so that it plays a credible role in the fight against impunity and the protection of human rights on the continent. **Yet** when this guide was published, **among those States that have ratified the Protocol, only Burkina Faso and Mali have made a declaration under article 34.6**.



Observer Status of NGOs at the African Commission

NGOs which can submit cases to the Court are those with Observer Status at the African Commission.

In order to obtain Observer Status, an NGO working in the area of human rights (and complying with the fundamental principles and aims of the African Union and the African Charter) has to submit a written request to the Commission's Secretariat. It has to include the following:

- The status of the NGO, the proof of its judicial standing, the list of its members, its organs, its financial resources and its last financial report as well as a report on its activities.

The Commission's Bureau shall designate a rapporteur to examine the application. The rapporteur presents his findings at one of the Commission's sessions concerning the NGO applicant.

Criteria for Observer Status can be found on the Commission's website: **www.achpr.org/english/_info/observer_en.html**



The access of individuals and NGOs to the Court

One of the main weaknesses of the African Court is **the limited access of individuals and NGOs to the Court**. To ensure real efficiency of the Court, all African States wishing to ratify or having ratified the Protocol must be encouraged to make a declaration in accordance with article 34.6 accepting the Court's competence to receive petitions from individuals and NGOs with Observer Status before the African Commission.

Due to the conditions of access to the Court for State Parties and submission criteria for individuals and NGOs, the Court risks treating only a few cases. The role of the Commission in light of these obstacles for bringing cases before the Court is hence fundamental.

B Indirect access

Individuals and NGOs with Observer Status before the African Commission have the possibility to bring a case concerning human rights violations to the Court's attention, even if the State concerned has not made the declaration under article 34.6 of the Protocol.


They may present communications before the African Commission, which cannot be opposed by a State Party. After receiving a case submitted by an individual or an NGO with Observer Status, **the Commission may decide to bring the case before the African Court** as previously explained:

- The Commission can decide to submit a case against a State Party to the Court's Protocol for which it has received a communication from an NGO or individual to the Court regarding serious and massive human rights violations (even without having examined its admissibility beforehand).
- If the State Party against which it received a communication from an NGO or individual has not fulfilled the Commission's recommendations (provisional measures or decisions on the merit), the Commission can decide to submit the case to the Court.

In these cases, the individuals and NGOs with Observer Status can become parties to the case brought forward by the Commission to the Court.

Obviously the African Commission can only submit a case if the State in question is a state party to the Court's Protocol.

➤ Ways to access the Court for NGOs, individuals and the African Commission

|  | ACCESS TO THE COURT FOR INDIVIDUALS AND NGOS WITH OBSERVER STATUS AT THE AFRICAN COMMISSION | AFRICAN COMMISSION'S ACCESS TO THE COURT IN CASES OF SERIOUS AND MASSIVE HUMAN RIGHTS VIOLATIONS | AFRICAN COMMISSION'S ACCESS TO THE COURT IF A STATE PARTY DOES NOT COMPLY WITH ITS DECISION OR RECOMMENDATIONS |
|---|---|---|--|
| When? | Anytime through an application | <ul style="list-style-type: none"> - Anytime after hearing about a case of serious and massive human rights violations. - After a communication has been submitted by a state, an individual or an NGO concerning massive and serious human rights violations | <ul style="list-style-type: none"> - When examining the merits of a communication if the Commission considers that the State concerned has not executed the provisional measures recommended by the Court. - Once a decision has been issued regarding a communication, if the Commission considers that the State concerned has not executed its recommendations. |
| NGO and Individual Participation | Direct: - Submit an application | Indirect: <ul style="list-style-type: none"> - Possible to inform the Commission of serious and massive human rights violations - Possible to submit a communication to the Commission concerning serious and massive human rights violations | Indirect: <ul style="list-style-type: none"> - Can inform the Commission of the lack of implementation with regards to provisional measures and decisions made by the Commission |
| Conditions | The case to be submitted must concern a State Party to the Court's Protocol and which has made a declaration under article 34.6 | Must concern a State party to the Court's Protocol | Must concern a State party to the Protocol |
| Representation of NGOs and Individuals before the Court | Yes | <ul style="list-style-type: none"> - No, if the Commission submits the case to the Court on its own initiative - Yes, if the Commission submits the case to the Court following a communication by an individual or NGO | The Commission suggests the individuals and NGOs who were parties to the communication to be represented before the Court |
| Court's jurisdiction | Decision on the admissibility and the merits of the case and/or attempt of amicable settlement | Decision on the admissibility and the merits of the case and/or attempt of amicable settlement | Decision on the follow-up of the Commission's recommendations |




The evolution of the seizing system of the European Court of Human Rights

The solution adopted by the African system- the fact that direct referral to the Court by individuals and NGOs depends on prior agreement of the State concerned- sets a limit to the efficiency of the Court. It is highly possible that the Commission becomes a prerequisite for NGOs and individuals to access the Cour. However, it is noteworthy that the model of the European system at the time of its creation is reproduced here. All individual petitions imperatively had to go before the Commission before, maybe, being were brought before the Court, on the condition that the State concerned had made a prior declaration of acceptance.

When the European Convention was adopted in 1950, the provision opening the way for individual petitions constituted an innovation in international law, and several European countries were reluctant to accept those. At the time of the Convention's entry into force in 1953, only 3 out of the 10 countries which had ratified the Convention had made a declaration accepting individual petitions. In 1960, they were 10 over 15 countries bound by the Convention. Afterwards, the reluctant States became increasingly marginalized, as the new members of the Council of Europe rapidly accepted all the commitments of the Convention. Faced with this reversed trend, the Council of Europe finally adopted Protocol no. 11, which entered into force in November 1998. Protocol no.11 imposes individual petition on all State Parties.

▼ Table comparing access to the three regional courts

|  | AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS | EUROPEAN COURT OF HUMAN RIGHTS | INTER-AMERICAN COURT OF HUMAN RIGHTS |
|---|--|--|--|
| Mandatory jurisdiction | <ul style="list-style-type: none"> - African Commission on Human and Peoples' Rights - African intergovernmental organisations - The State Party which submitted a case to the African Commission - The State Party against which a complaint was lodged with the African Commission - The State Party whose citizen is the victim of human rights violations | <ul style="list-style-type: none"> - High contracting parties - Individuals, groups of individuals and NGOs considering to be victims of a violation | <ul style="list-style-type: none"> - State Parties - Inter-American Commission of Human Rights |
| Facultative jurisdiction | <ul style="list-style-type: none"> - Individuals and NGOs with Observer Status before the African Commission concerning a state which has made a declaration under art. 34.6 regarding the submission of such cases | | |

5 How to take action?

In order to further promote and protect human rights, NGOs must:

- ➔ Raise awareness amongst its members and the civilian population regarding the possibilities of submitting a case to the Commission and the African Court and assist them in the process.
- ➔ Collect precise and detailed information on cases of human rights violations to denounce them before the African Commission or Court.
- ➔ Ensure Observer Status before the African Commission in order to have access to the African Court or Commission in the victim's name or in its own name.
- ➔ Put pressure on governments and national authorities to ratify the Protocol without reservations.
- ➔ Urge national authorities to recognize the African Court's jurisdiction to receive petitions from individuals and NGOs with Observer Status before the African Commission.
- ➔ Inform the Commission of serious and massive human rights violations taking place in countries which have ratified the Court's Protocol in order for the Commission to submit a case to the Court.



Slum, Lagos – Nigeria

Article 24 of the African Charter

All peoples shall have the right to a general satisfactory environment favorable to their development.

What Conditions Have to be Fulfilled for the Court to Receive an Application Issued by an Individual or an NGO?

Key point

Conditions of admissibility for an application to avoid being rejected.

This chapter deals with the conditions of admissibility for an application initiated by an NGO or an individual before the African Court. To decide whether the conditions are respected – compulsory step before the scrutiny of the merits of the case, the Court may follow the relevant decisions of the African Commission, which applies the same conditions of admissibility for a communication. The only difference is that, in order for the Court to receive applications directly, the State against which it is directed has to have made a declaration under article 34.6 of the Protocol.

1 General conditions of admissibility

- The application must be directed **against a State Party which has made a declaration under article 34.6** of the Protocol authorizing direct access for individuals and NGOs with Observer Status before the African Commission.
- The application must be submitted by **an individual, an NGO** or their representatives.

The application can be brought forward by anyone. The applicant does not necessarily have to be the victim or a member of the victim's family in order to bring an application to the Court's attention.

The application can also be submitted by any NGO with Observer Status before the African Commission. The NGO does not necessarily need to have a specific interest in the case nor does it need to be the victim of the alleged violation in order for the case to be declared admissible.

The individual or NGO submitting the application is called a "applicant".

- The applicant does not need to be a national of the State against which the case is being brought to Court.
- The application **must involve circumstances which fall within the jurisdiction of the accused State and must have occurred after the ratification of the Protocol by this State**. Hence, if a state ratified the Protocol on 1st January 2006 by submitting a declaration under article 34.6, the plaintiff can only bring a case against a State concerning human rights violations which occurred after 1st January 2006.

Exception: International Law regards forced disappearances as ongoing violations. This means that in the aforementioned case, it is possible to submit a case of forced disappearance to the Court which occurred before 1st January 2006. The Court's case laws would most likely respond to this special case of human rights violation.

- The violation in question before the Court must concern a right protected in the African Charter or any other regional or **international human rights document which the accused State has ratified**.
- Any application which does not adhere to these conditions is inadmissible to the Court.

2 Specific conditions of admissibility.

The application is admissible if:

Further to the general conditions of admissibility, the application must also satisfy certain particular conditions in order to be examined by the Court. These are set forth in article 6 of the Protocol which refers to the provisions of **article 56 of the Charter** on the conditions of admissibility of communications before the African Commission, presented below.

Article 6.1 of the Protocol provides that **the Court, when deciding on the admissibility of applications from individuals or NGOs, may request the opinion of the Commission**. The Commission shall answer "as soon as possible" on the reality of the Observer Status of an applicant NGO, the existence of a same case

already examined or being examined by the Commission, the efficiency of the administration of justice in a particular country, on the basis of its reports, resolutions or on a decision concerning a communication against the State accused before the Court.

Since article 6.2 of the Protocol refers to article 56 of the Charter, **the specific conditions of admissibility of a application of an individual or NGO are identical before the Commission and the Court.** These conditions, especially the requirement to exhaust domestic remedies, have been examined in several cases before the Commission, which specified their scope. It is therefore necessary to refer to the jurisprudence of the Commission (presented below), which the Court might follow, in order to know the conditions of admissibility of communications before the African Court.

(A) It is compatible with the Constitutive Act of the African Union and the African Charter on Human and Peoples' Rights

According to article 56.2 of the Charter the application must invoke provisions of the African Charter allegedly violated to be admissible. The Court's Protocol also regards the applications based on the violation of an international instrument protecting human rights ratified by the State concerned, as admissible.

(B) It is not written in disparaging or insulting language against the State concerned and its institutions or the African Union

In accordance with article 56.3 of the Charter, the author of the communication must indicate the elements of his case without insulting anybody.



Communication 65/92 – Ligue camerounaise des droits de l'Homme v. Cameroon

The African Commission declared the case inadmissible because of the use of expressions such as “regime of torture” and “barbaric government”. This kind of insulting language makes a communication inadmissible, independently of the gravity of the facts denounced.

(C) It is not based exclusively on news disseminated through the mass media

This requirement is set out in article 56.4 of the Charter. It aims at avoiding complaints based on simple allegations or even false information without the applicants verifying their veracity.



Communication 147/95 and 149/96 - Sir Dawda K. Jawara v. Gambia

The government wished for the communication to be declared inadmissible because it was based exclusively on information disseminated by the media.

According to the Commission : *“while it is little suitable to rely exclusively on news disseminated by mass media, it would be also as detrimental that the Commission reject a communication because some of its aspects are based on information transmitted by mass media. This is related to the use of the term “exclusively” in the Charter. There is no doubt that the mass media remain the most important or even sometimes the only source of information.*

The genocide in Rwanda, human rights violations in Burundi, Zaire and Congo, only to mention a few, were revealed by mass media. The question should therefore not be about whether the information comes from mass media, but rather if that information is correct. It is about the petitioner verifying the veracity of his allegations and whether he could do so in the circumstances in which he finds himself”.

D All domestic remedies have been exhausted

1. The principle

This condition, set out in article 56.5 of the Charter, is the most problematic one. The exhaustion of domestic remedies implies that a case regarding the violation of a human right must go through all the levels of national jurisdiction before being brought to the Court. This admissibility condition is also required before the European and Inter-American Courts. It is *“based on the principle that a government should be informed of human rights violations in order to have the opportunity to remedy them before being called before an international institution”*.¹

The Commission – which has the same admissibility criteria as the Court – has ruled on several occasions on the condition of the exhaustion of domestic remedies and clarified its scope.

Definition of domestic remedy

The Commission specified that the domestic remedies mentioned in article 56 of the Charter included the “remedies introduced before courts of a judicial nature”, including all the possibilities for appeal.

1. Communications 25/89, 47/90, 56/91, 100/93 (regrouped); Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Inter africaine des Droits de l'Homme, Les Témoins de Jéhovah v. Zaïre.



Communication– 221/98 Alfred B. Cudjoe v. Ghana

In this case, the plaintiff invoked the abusive termination of his work contract at the Ghana embassy in Guinea. The Commission considered it was not sufficient that the plaintiff lodged a complaint before the Commission of Human Rights of Ghana. The submission of his case to this non judicial institution should have been followed by an action in courts, and since it had not been the case, the communication to the Commission was declared inadmissible.

If the victim of the human rights violation (or his/her representative) has not appealed against a decision in the time limit fixed by the law, the Commission considers that the communication is inadmissible. It refers to the jurisprudence of the European bodies of protection of human rights.² It is therefore important to be aware of all the domestic rules of procedure in order to make sure that all the judicial possibilities have been used, in the period of time granted, before lodging a complaint with the Court.

Domestic remedies are considered exhausted if all levels of national courts have been petitioned

If a case is brought before the domestic jurisdictions, and the procedure is still ongoing when the Court examines the application, the domestic remedies have not been exhausted.³

The exhaustion of non judicial remedies is not necessary

The Commission does not require the exhaustion of domestic remedies when those are of a non-judicial nature.



Communication– 60/91 Constitutional Rights Project v. Nigeria

In this case, the decision – a death sentence – made by a special tribunal could be confirmed or cancelled by the military governor. Considering that the prerogative of the governor was “a discretionary and extraordinary remedy of a non judicial nature” and that “the objective of this remedy is to obtain a favour and not to claim a right”, the Commission decided that “it wouldn’t be suitable to force the plaintiffs to use remedies which do not work in an impartial way and do not have to respect the principles of law”.

2. Communication 90/93, *Paul S. Haye v. Gambia*.

3. Communication 18/88, *El Hadj Boubacar Diawara v. Benin*, Communication 135/94, *Kenya Human Rights Commission v. Kenya*.

It is the applicant's responsibility to provide the Court with all information demonstrating the exhaustion of domestic remedies

The applicant bears the burden of initial proof, which means he must provide the Court with the information required to demonstrate that the domestic remedies have been exhausted. On several occasions, communications brought before the Commission were declared inadmissible when the plaintiffs failed to answer the questions on the exhaustion of domestic remedies.⁴ On a practical level, plaintiffs are advised to always attach copies of the decisions of national jurisdictions to their petition.



The admissibility control in the European and Inter-American systems

Of the 39,000 petitions introduced before the European Court in 2003, over 90 % were declared inadmissible. The two conditions most used to decide on their inadmissibility are the exhaustion of domestic remedies and the requirement that the complaint not be “manifestly unfounded”. Protocol no. 14 adds a further condition under which a petition may be declared inadmissible if “the plaintiff did not suffer any important damage”.

The Inter-American system uses the same conditions of admissibility, but in practice, there are only rare obstacles to the examination of petitions brought before the Inter-American Commission. To face the reality of Latin American States where the judicial systems were unlikely to be able to offer sufficient guarantees for the right to a fair trial, the Commission chose to presume that the domestic remedies had been exhausted, leaving it to the States concerned to raise the question.

2. The exceptions: the application is admissible even if the domestic remedies have not been exhausted if...

When the African Court considers that the domestic remedies are inapplicable or inefficient (if they do not offer any chance of success), unavailable (when the applicant faces obstacles to use them) or discretionary, the requirement of their exhaustion is no longer necessary for the application to be declared admissible.

The Commission has used a number of particular situations to receive multiple communications on that basis.⁵

The Commission does not simply rely on the plaintiff's affirmations and the absence of concrete effort concerning the exhaustion of domestic remedies. The plaintiff must be able to prove the veracity of the alleged facts in order to invoke an

4. See for instance Communication 127/94, *Sana Dumbuya v. Gambia*, Communication 198/97, *SOS Esclaves v. Mauritania*.

5. Further to the decisions mentioned below, see for instance Communication 71/92, *Rencontre Africaine pour la Défense des Droits de l'Homme v. Zambia*.

exception. Proof must be provided either by an attempt to gain access to national tribunals or by giving the Court an example of a similar case for which the outcome proved to be inefficient.

...the violations are serious and massive

The first category of cases subject to this exception concerns serious and massive human rights violations. The four communications initiated by several NGOs against Zaire (now the Democratic Republic of Congo) between 1989 and 1993 reported a high number of cases of arbitrary arrests, torture, extrajudicial executions and restrictions to fundamental freedoms. The Commission declared the communications admissible:

“The Commission never considered that the requirement of exhaustion of domestic remedies was to be applied strictly when it is neither practical nor advisable that the plaintiff submits his case to national tribunals in the case of each violation. This is the case in the present communications in view of the extent and diversity of the human rights violations”.⁶

This implies that in cases of serious and massive human rights violations, the exhaustion of domestic remedies will always be regarded as inapplicable.⁷ A good counter-example is the *Affaire 299/05 Anuak Justice Council v. Ethiopia*, when the plaintiff alleged mass murder and the incapacity of the Ethiopian jurisdiction to grant efficient reparations, the Commission did not hesitate to describe the accusations as “slander” and to declare the case as inadmissible due to the lack of exhausting domestic remedies.

...a state of emergency hinders the administration of justice



Communication – 129/94 Civil Liberties Organisation v. Nigeria

The plaintiff alleged that the normal application of law had been made difficult because of the state of emergency declared in the country. Due to the political situation in Nigeria, the Commission declared the communication admissible and proclaimed that in such a case, *“the procedure of domestic remedies would take too much time, but would also fail to produce any result”*.

Here the application of the exception can be matched with the condition of at least attempting to submit a case to domestic tribunals, as it had been expected in the case 220/98 *Law Office of Ghazi Suleiman v. Sudan*.

6. Communications 25/89, 47/90, 56/91, 100/93; *Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jéhovah v. Zaïre*.

7. See also Communications 83/92, 88/93 and 91/93, *Jean Y. Degli (in the name of N. Bikagni) v. Togo*, and Communications 64/92, 68/92, 78/92, *Krischna Achuthan for Aleke Banda and Amnesty International for Orton and Vera Chirva v. Malawi*.

...the existence of derogation clauses prevents all recourse

In the case of the existence of derogation clauses preventing tribunals from examining decrees and decisions of the executive, the Commission considered that these clauses rendered domestic remedies “inexistent, inefficient or illegal”⁸ It was in particular the case in Nigeria in the 1990s, where the military government adopted a series of derogation clauses.

...the exhaustion of domestic remedies is not “logical”

The applicant is not obliged to exhaust domestic remedies when it does not make sense to do so. For instance, the Commission considered that a plaintiff who had fled from a prison in Ghana to the Ivory Coast, and claimed that his detention was illegal, did not have to return to his country of origin to submit his case to Ghanaian courts. The communication was declared admissible.⁹

...access to justice is obstructed



Communication– 241/01 Purohit and Moore v. Gambia

The African Commission considered in this case that:

“The general provisions set out by law which could offer a remedy to any person adversely affected by the fault of others are accessible for the rich and those in a position to afford the services of private counsel. However, it cannot be affirmed as a general truth that there is no domestic remedies in the country, but they exist for those who can afford to use them”.

The African Commission considered that in this case, which dealt with the conditions of detention and treatment of mental patients in Gambia, the existing remedies were not realistic and therefore inefficient for this category of persons. The communication was therefore declared admissible.

...domestic remedies are inefficient or inaccessible

In the cases where the victim of a human rights violation was forced to flee from his country, the Commission considered that he did not have to exhaust domestic remedies. In the communication *Rights International v. Nigeria*, a student had been arrested and tortured in a military detention camp in Nigeria. The Commission considered that:

“In this particular case, the Commission found that the student was not in a posi-

8. Communications 137/94, 139/94, 154/96 and 161/97, *International PEN, Constitutional Rights, Interights in the name of Ken Saro-Wiwa Jr. and Civil Liberties Organisation v. Nigeria*. See also Communication 87/93, *The Constitutional Rights Project v. Nigeria*, Communication 129/94, *Civil Liberties Organisation v. Nigeria*, Communications 105/93, 128/9, 130/94 and 152/96, *Media Rights Agenda and Constitutional Rights Project v. Nigeria*.

9. Communication 103/93, *Alhassan Abubakar v. Ghana*.

tion to make use of any domestic remedy, after he had fled to the Republic of Benin out of fear for his life and was granted refugee status by the United States of America”¹⁰

On the other hand, the Commission decided the contrary in the case 247/02 *Institut des droits humains et développement en Afrique v. Democratic Republic of Congo*, when it estimated that a Congolese refugee should have exhausted domestic remedies via a third party consultant.

Ⓔ The domestic procedures are unduly prolonged

According to article 56.5 of the African Charter, the requirement of exhaustion of domestic remedies does not apply if those are unduly prolonged. The Commission has not defined the time period constituting an “undue prolongation”. This allowed the Commission to maintain a certain flexibility to take into account the specificities of each situation. In the case *Kenya Human Rights Commission v. Kenya*, a period of one year and 10 months was not considered as an undue prolongation.¹¹ In the case 199/97 *Odjouoriby Cossi Paul v. Benin* on the other hand, the fact that the case had been pending on a national level for 3 years was considered to be an abnormal length of procedure. In the communication 250/02 *Liesbeth Zegveld et Mussie Ephrem v. Eritrea*, the Commission found that the case was admissible after 18 months of detention without judicial proceedings.

Ⓕ It is transmitted to the Court in a reasonable amount of time after the exhaustion of domestic remedies

The African Commission has never ruled on this admissibility condition set out in article 56.6 of the Charter. The decisions of the European Court on this point can shed some light on the future position of the African Court: the petition must be presented in a time period of six months from the final domestic decision. However, the European system pragmatically starts this period from the date when the decision is made public or when the person concerned has been notified.

10. Communication 215/98, *Rights International v. Nigeria*. See also Communication 232/99, *John D. Ouko v. Kenya*.

11. Communication 135/94, *Kenya Human Rights Commission v. Kenya*.

⑥ The alleged violation has not been settled in accordance with the principles set out in the African Charter

1. The application is admissible even if the violation has been settled by the improvement of the situation

Based on its jurisprudence, the Commission has always dealt with communications by ruling on the facts presented at the time of the petition.¹² As a consequence, even if the situation has improved since the deposit, the communication remains admissible.

On the same basis, in its communication 62/92, 68/92 and 78/92 *Krishna Achutan and Amnesty International v. Malawi* the Commission considered that a new government inherits the international commitments made by the previous government, including responsibility for its crimes.

2. The application is admissible if the same matter has not been adjudicated by another international institution

If the same case is submitted concomitantly to another international institution, such as the United Nations Committee on Human Rights or the Committee against Torture the petition before the African Commission becomes inadmissible. The accumulation of procedures cannot be admitted since it would transform one international instrument of protection of human rights into an institution of re-examination or appeal of another. This is why the *communication 69/92 Amnesty international v. Tunisia* was declared inadmissible by the African Commission, as the case was already undergoing examination in accordance with article 1503 of the Rules of the United Nations. However, the African Commission considers that the mediation by political institutions such as the European Union or the OAU is not concerned with article 56.7 of the Charter.¹³

③ How to take action?

For an application to be declared admissible before the Court:

- ➔ Make sure that the State concerned has made the declaration under article 34.6 allowing for direct access to the Court for individuals and NGOs with Observer Status before the African Commission.

12. See Communications 27/89, 46/91 and 99/93 *World Organization against Torture and Association internationale de juristes démocrates, Commission internationale de juristes, World Organization against Torture, Union Interafricaine des Droits de l'Homme v. Rwanda*.

13. Communication 59/91, *Emgba Mekongo Louis v. Cameroon*.

- ➔ Make sure that all domestic remedies have been exhausted and, if the case arises, continue the procedure or assist the victims in their actions at national level.
- ➔ Verify and prove that the obstacles to the exhaustion of domestic remedies constitutes one of the exceptions noted by the African Commission.
- ➔ Make sure that the case has not been submitted to other supranational institutions of human rights protection concomitantly.



Street children, Luanda - Angola

Article 18.3 of the African Charter

The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

How to File an Application to the Court?



Essential elements to be included in an application.

In order to petition the Court the application of an individual or an NGO with Observer Status before the African Commission must contain the following information in accordance with articles 5.3 and 34.6 of the Protocol. The duly completed application form must be sent to the Registry of the Court. The Court has made provisions for a sample (see Annexes). This chapter describes in an thorough manner what an application must contain.

The petition must be written in one of the official languages of the Court (English, French, Arabic or Portuguese). It cannot be based on information already brought to the attention of other international organisations. It cannot include slanders.

1 It must contain the following:

1. Fill in the form for the identification of the applicant: victim, family member of the victim, any individual or NGO with Observer Status before the African Commission

Name/Organization
Age/Legal Status
Nationality
Function, Profession/Mandate
Address
Tel./fax
Email

- Reminder: the applicant is not necessarily the victim or a family member of the victim. It can be any individual or NGO presenting the case.
- If there is more than one applicant, please give details for each one of them (individuals or NGOs)
- If the applicant wishes his identity to be kept secret, indicate this and justify the request.
- Indicate if the applicant has legal representation (by an individual, an NGO or a lawyer). If yes, provide the proxy to the Court
- If the applicant is an NGO, indicate when Observer Status before the African Commission of Human and Peoples' Rights was obtained.

2. Fill in the name of the State against whom the application is being lodged

- Make sure that the State concerned is party to the Protocol, and that it has declared, under article 34.6, its acceptance of the Court's jurisdiction to receive applications from individuals and NGOs.

3. Describe the alleged human rights violation

- Explain in as much detail as possible the violation: give details of the circumstance, the place, the time and the date.

- Make sure that the violation was committed after the State concerned ratified the Protocol
- If the case concerns several distinct matters, treat each matter separately.

4. Name the victim(s) of the violation

- If the violation affected one or several people, give details of their identity.
- In cases of serious and massive human rights violations, it may be impossible to give an exhaustive list of all the victims. In this case it is not necessary to provide details of their identity.

5. Urgency of the case

- Specify if there is a risk of loss of human life or serious physical harm if the case is not treated immediately. Provide information of the nature of the case and the reasons why it demands immediate action from the Court. These elements can lead the Court to take provisional measures.

6. Indicate the provisions of the African Charter (or any other instrument of human rights ratified by the State concerned) that have, supposedly, been violated

- If you are unsure of the specific articles, do not mention them. It is not a condition of admissibility.

7. Give the names and titles of the authorities that have supposedly committed the violation

- If it is an institution, give the name of the institution and the name of the person in charge.

8. Specify if there are witnesses

- Give the names, addresses, and if possible the telephone numbers of any witnesses. They may be asked to testify in Court.

9. Provide all evidence of the alleged violations (not the originals, copies only)

- For example include letters, legal documents, photographs, autopsy reports etc. as supporting evidence

10. Specify the domestic remedies explored

- Give details of all the domestic courts which heard the case. Attach copies of rulings and decisions etc.
- Furthermore mention all other authorities that were involved (such as administrative, national human rights institutions, ombudsman, etc.).

11. Specify all domestic remedies which were not explored

- Mention any domestic remedy which could have been used, but was not. Specify the authority in question.
- Explain why they were not used by referring to the exceptions to the principle of exhaustion of domestic remedies (see Chapter VI).

12. Specify the aim of the application

- Mention the outcome desired from submitting the case to the Court.
- Specify the expected compensation and redress. The amount of compensation and the related proof can be submitted at a later date which the Court can freely determine.

13. Date and sign

- If the applicant is an individual, the document has to be signed by the applicant himself or his legal representative.
- If the applicant is an NGO, the document has to be signed by someone within the organisation with the legal capacity to represent the organisation or its legal representative.

CAUTION: Once the application has been filled in, it is the backbone of your petition and will be used in the examination of your case. The Court may ask for supplementary information during the hearing, but it is very important for the application to be complete and precise.

14. Send an example of the petition to the Registry of the Court

Send an example of the petition addressed to the Registrar of the Court to the following address (including all the annexes):

African Court on Human and Peoples' Rights

Dodoma Road - BP. 6274 - Arusha, Tanzania

Tel : + 255-27-2050-134/135/136/137/138

Fax : +255-27-2050-141

E-mail : registry@african-court.org

**This form is based on the European Court of Human Rights application form and reproduces several elements of the "Guidelines for submission of communications with the African Commission of Human and Peoples' Rights" as well as the provisions of the Interim Rules of Court. It is noteworthy that this document can also be used in individual communications before the African Commission when the State concerned has not ratified the Protocol or has not made the declaration under article 34.6 that allows individual applications to be made to the Court. In the latter case, the applicant must precise to the Commissioners that it is his or her will that the case be examined by the Court if the alleged violations are serious and massive.*

2 How to take action?

- ➔ Help victims of human rights violations in filling in an application form for the African Court on Human and Peoples' Rights, making sure that all the necessary elements have been included.
- ➔ Become the victim's legal representative by submitting a case to the Court in the victim's name.
- ➔ Submit a case to the Court concerning human rights violations regarding the rights protected in the African Charter or any other relevant regional or international instruments on the protection of human rights.



Headquarter of ONUCI -
Ivory Coast

Article 23.1 of the African Charter

All peoples shall have the right to national
and international peace and security.

How do Proceedings Before the Court Take Place?



Adversarial Procedure.

This chapter explains the Court's oral and written proceedings when examining an application starting with the reception of a case by the Registrar through to the judgement.

One of the fundamental differences between the African Court and the Commission, which examines the same kinds of human rights violations, is the juridical examination procedure of submissions. The Court's procedure allows for transparency in the treatment of cases, the equality of the parties and their representation. It follows general legal principles of fair trial which are recognized by regional and international conventions for the protection of human rights.

The Protocol creating the African Court does not provide the answers to questions concerning the examination procedure of applications. Article 8 of the Protocol only stipulates that *“the Rules of Procedure of the Court shall lay down the detailed conditions under which the Court shall consider cases brought before it, bearing in mind the complementarities between the Commission and the Court”*.

1 The Registrar receives and transmits the application

As soon as the Registrar receives an application, he/she acknowledges receipt thereof. Then he/she shall transmit a copy of the application and its annexes to the President and other Members of the Court (art. 34 and 35 of the Interim Rules of Court).

Unless the Court decides otherwise, the Registrar sends a copy -depending on who the applicant is (art.35 of the Interim Rules of Court) – to the following:

- The State party against which the application before the Court has been filed (by recorded mail accompanied by an acknowledgement of receipt)
- The State party whose citizen is the victim of the alleged violation
- The State party against which an application has been filed at the African Commission
- The African Commission
- The individual or legal entity or the NGO that has filed an application at the Commission by virtue of article 55 of the Charter.

Furthermore, the Registrar informs the President of the African Union Commission and through him/her the Executive Council of the African Union as well as all other State Parties.

When dealing with the applications, the Registrar shall invite:

- the Respondent State Party to indicate, within thirty (30) days of receipt of the application, the names and addresses of its representatives;
- any other State Party that may wish to intervene in the proceedings under article 5(2) of the Protocol, to inform the Registrar accordingly, within the time stipulated in Rule 53;
- if applicable, the Commission to forward to the Registrar, within thirty (30) days the names and addresses of its representatives;
- if applicable, the individual or legal entity or the Non-Governmental Organization that has filed an application at the Commission under article 55 of the Charter, to set out, within thirty (30) days, if he/she/it wishes to participate in the proceedings before the Court and in the affirmative, the names and addresses of his/her/its representatives.

This communication procedure allows the Registrar to inform all interested parties of the petition and to define the future parties to the case.

2 The Court dismisses an application with no merit

The Court can decide that an application is unfounded before even starting a Court procedure after its first examination of the application. In this case, the Court can dismiss an application without asking the involved parties to appear. The reasons and its decision must simply be passed onto all interested parties.

This option of dismissing applications as soon as receiving them was introduced by the need to stop clogging the Court with proceedings which would not have any follow up, as they do not fall within the jurisdiction of the Court.

An application can be found with no merit, as it does not actually refer to human rights violations or the respondent to the case is not a State, but an individual or the facts of the accusation are simply incorrect.

3 The Court examines the application

A Adversarial examination of cases, both written and oral



Common law and civil law

In Africa, besides Islamic law and customary law, two broad currents of legal systems inherited from the colonial period co-exist: **Common law** or **Anglo-Saxon law** is applied in the majority of Anglophone countries, while **Civil law** or Continental law of continental Europe is applied in Francophone countries.

The two systems can be distinguished by their procedures: the former uses an adversarial model where the judge is the arbitrator between two equal parties that investigate the case; the latter uses an inquisitorial model whereby the judge is both investigator and arbitrator.

The procedure of the African Court is mostly inspired by the Anglo-Saxon tradition, whilst retaining certain elements of Continental law. It is therefore a mixed system, different from national models. Thus, NGOs have the role of informing the victims, so they are able to understand the workings of the Court and their place within the judicial system.

1. Written phase: the evidence

This whole phase takes place in one of the official languages of the Court (English, Portuguese, Arabic or French).

The examination procedure of applications by the African Court is primarily of an adversarial nature. This means that the parties must bring evidence before the Court. The parties have the right to **have access to the other parties' evidence brought before the Court and to refute them.**

The written phase is made up of the communication to the Court and to the parties of the petition, memos, observations and pleas and, possibly, the responses, as well as all documents to support the case (or their certified copies).

Once the application has been received by the Court, it is sent to the State concerned and to all other parties – individuals, NGOs or Institutions – that may become a party to the case (depending on the case: individuals or NGOs who initiate the communication brought by the Commission before the Court; the Commission; the States from which the victim of an alleged violation is a national, etc.). **The accused State party has 60 days to reply to the allegations** and show its arguments concerning the jurisdiction of the Court, the admissibility of the case or

the facts described by the applicant. This time frame can be deferred by the Court (art. 37 of the Interim Rules of Court). Other individuals, NGOs and interested institutions can also submit their observations concerning the petition and thus become a party to the case.

Once the Court has the applicant's application, the Respondent State's reply and all other observations by concerned parties, it can ask any of the parties to the case for written supplementary information on which to base its decision regarding its jurisdiction, the admissibility of the case, the adoption of provisional measures and the substantive facts of the case.

Hence **documents are passed backwards and forwards between the parties and the Court**. If a party does not provide the Court with a given document, the Court takes official note of the refusal (art. 41 of the Interim Rules of Court). For example, if a Respondent State refused to give relevant information on the admissibility of the petition, the Court evaluates the absence of a response as an acceptance of the applicant's arguments.

Article 26 of the Protocol states that the Court **may receive all types of evidence it esteems appropriate**. This includes written evidence such as letters, copies of legal texts, court rulings or rulings by Executive Authorities, press articles, expert reports, photographs etc, and statements of victims or other witnesses likely to enlighten the facts.

The Court can also decide to lead an inquiry if it judges it useful for the examination of the case (art. 26 of the Protocol). In other words, the Court can send a mission to the place where the alleged violations took place to gather its own evidence. This supposes that considerable financial resources will be accorded by the African Union. The European and Inter-American Courts both have the option of leading an inquiry, but this is rarely exercised.

For all these proceedings, the Court has the cooperation of the State parties concerned (art. 32 of the Interim Rules of Court).

2. The oral phase: the hearings

Once the written phase is over, if necessary, the Court will provide for **oral hearings to take place in front of the judges** to confront the parties involved.

The Registrar informs the parties to the case of the hearing dates.

The hearings take place during Court sessions. The Court has four sessions a year which take around 15 days each. The president can also summon extraordinary sessions.



Hearings before the Commission

Hearings before the Commission are held in closed sessions. The procedure is simpler than that of legal organs. It does not exactly follow the adversarial method. The NGO or the individual who has lodged the complaint has 15 to 20 minutes to make its case. The State concerned then has a little more time, but this rarely lasts more than an hour. Finally the members of the Commission question the parties which can last for several hours. The parties do not have the right to ask each other questions.

The location of hearings

The sessions usually take place in Arusha, Tanzania which is where the seat of the Court is. It is possible for **the Court to decide to hold a session in any other member state of the African Union** (art. 25.1 of the Protocol).

This option was used by the ECOWAS Court of Justice. This tribunal usually resides in Abuja, Nigeria, but decided to hold one of its sessions in Niamey, Niger, to examine a case concerning slavery in this country. The reasons were twofold. On the one hand, it took into account the extreme poverty of the applicant who could not travel to Nigeria for a Court case and on the other hand, it was a symbolic act to strengthened its judicial impact and importance with the authorities and citizens of Niger.

The quorum

In order for a case to be examined the quorum is set at **7 judges** (art. 23 of the Protocol). Hence for a case to be examined and for a judgment to be valid, 7 out of the 11 judges have to be present. The judges may not be part of a session if they have been in some way involved in the case, no matter the way, for example as an agent, a counsellor or advocate for one of the parties or as a member of a national or international Court or Commission of Inquiry or in any other capacity (art. 17.2 of the Protocol). The judges must also decline to take part in a case if their own country of nationality, or if the country that submitted its candidacy, is involved in the case (art. 22 of the Protocol).

Public and in camera hearings

Court hearings are public (art. 10 of the Protocol) **Nevertheless the Court can decide to hold hearings in closed sessions (in camera)**, if in its opinion it is in the interest of public morality, safety or public order to do so (art. 43 of the Interim Rules of Court). This option would be invoked in a case involving classified information of a State for example. The Court could also hold sessions in camera to protect either the applicant or witnesses.

The principle of public hearings is also applied in the two other regional courts, except in “exceptional circumstances”, notably when the life of the victims and of witnesses is in danger or when the case concerns matters relative to the national security of the State concerned.

Legal representation of the parties

Article 10.2 of the African Charter provides that all parties to the case are allowed to choose their legal representation. It also says that **“free legal representation may be provided where the interests of justice so require”**. This is especially applicable in cases in which the parties do not have the financial means to hire a lawyer.

Absence of a party

The absence of one of the parties to the hearing does not hinder the Court in rendering a judgement.

Witnesses and experts

The Court can decide, upon its own initiative or at the request of the parties, to hear witnesses or experts whose declarations would seem relevant and helpful in rendering a judgment. These can be victims, NGOs, magistrates, researchers, etc.

The debates

The president of the Court defines the order of the parties’ appearances.

The Court’s president can question the party representatives, the witnesses, the experts and any other person appearing in Court.

The representatives of the parties can question witnesses, experts and other individuals before the Court in accordance with adversarial proceedings. Cross-examination followed by further questioning can also take place.

The debates are recorded and are the basis for the reports of the oral proceedings.

No party can bring forward new proof once the debates have been closed, except if the Court authorises it.

B) During proceedings the Court examines

1. The possibility of amicable settlements

Following article 9 of the Protocol *“the Court may try to reach an amicable settlement in a case pending before it in accordance with the provisions of the Charter.”*

This is in accordance with the practices of the African Commission which also has the mandate to *“ (try) all appropriate means to reach an amicable solution based on the respect of human and peoples’ rights”* (art. 52 of the Charter). Furthermore, in accordance with the Commission, *“the principle objective of the communication procedure before the Commission is to initiate a positive dialogue between the applicants and the State to work towards an end to the conflict.”*¹



Amicable settlements before the European and Inter-American Courts

The two other regional courts also have jurisdiction to attempt amicable settlement of cases brought before them. Attempts at mediation are often fruitful in the European system, but are much rarer in the Inter-American system.

This **insistence on amicable settlement** reflects numerous African customs illustrated by judgment under “the Palavertree” where conciliation is preferred to confrontation.

As soon as the Court has received the application, it can contact the parties and take appropriate measures to facilitate amicable settlement of the dispute as provided for in the Charter (art. 57 of the Interim Rules of Court). This explanation aims at ensuring that an **amicable settlement cannot be concluded at the expense of the applicant’s rights**. For example the liberation of the applicant held in arbitrary detention cannot be bargained for by asking the plaintiff not to try and obtain reparation for damages.

Any negotiations entered into with a view of reaching an amicable settlement shall be confidential and without prejudice to the parties’ observations in the proceedings before the Court. The procedures concerning conciliation and litigation take place at the same time, but do not interfere with one another.

Amicable settlements do not necessarily have to be settled through Court intervention, but can happen outside the Court. If this is the case, once a settlement has been reached, both parties have to inform the Court of it. The Court then decides

1. Communications 25/89, 47/90, 56/91, 100/93, *Free Legal Assistance Group, Lawyers’ Committee for Human Rights, Union Interafricaine des Droits de l’Homme, Les Témoins de Jéhova v. Zaïre*.

whether the amicable settlement conforms with the measures provided for in the Protocol (in other words, if it conforms with the rights protected in the Charter). Following this, it decides whether or not to continue the adversarial proceedings before the Court (art. 56 of the Interim Rules of Court).

If the amicable settlement complies with the rights protected in the Charter, the Court renders a ruling which contains a short explanation of the facts and the adopted solution.

2. The possibility of provisional measures

The Court can issue provisional measures before having examined jurisdiction and admissibility. Thus, **it can, on its own initiative or upon a party's request, adopt such provisional measures as it deems necessary** in the interest of the parties or justice (art. 27.2 of the Protocol).



Provisional measures before the European Court

The number of applications for provisional measures (art. 39 of the Rules of Court) remained high in 2009: Out of the 2 399 requests 654 were admitted by the Court.

In case of extreme urgency (e.g. an application concerning someone awaiting the death sentence), the President may convene an extraordinary session of the Court to decide on measures to be taken (e.g. ask for the capital punishment to be deferred).

The other regional systems and the African Commission also use provisional measures. Hence, the African Commission in the case *269/03 Interights v. Nigeria*, asked the Nigerian authorities to defer the execution of a woman accused of adultery in the state of Zamfara where Chari's law is practiced.

The Court shall duly notify the parties to the case, the Commission, the Assembly, the Executive Council and the African Union Commission of the interim measures taken. In the Court's Annual Report, it also informs the Assembly of Heads of States of the provisional measures taken (art. 51 of the Interim Rules of Court).

The Court may invite the parties to provide it with information on any issue relating to implementation of the interim measures adopted. If these measures are still not respected, the Court shall make recommendations as it deems appropriate (art. 51 of the Interim Rules of Court). A question remains: Is it possible for the Court to ask the Assembly of Heads of states to put sanctions on the non compliant state? The Court's jurisprudence will give precedence concerning this issue.

3. The possible preliminary objections

Any party who received notification for an application may raise preliminary objections to respond to the application or parts thereof. Objections shall be raised at the latest before the date fixed by the Court for the filing of the first set of pleadings to be submitted by the party who intends to raise the objections. The submission of preliminary objections shall not cause the proceedings on the merits of the case to be suspended unless the Court so decides.

When looking at the European Court's jurisprudence, **preliminary objections mostly deal with the Court's jurisdiction on the matter submitted**. For example, a state can make preliminary objections, as the alleged violation took place before the State had accepted the Court's jurisdiction.

Where a party raises a preliminary objection, the Court shall invite the other party to submit, its written observations in reply. The Court may decide to invite the parties to submit further observations in writing.

Before deciding on the preliminary objection, the Court may, on the request of a party, or of its own accord, decide to hold a hearing if it deems it necessary.

The Court shall give reasons for its ruling on the preliminary objection. It can also decide to rule on the objections in its decision on the merits of the case.

4. The Court's jurisdiction regarding the application

Once the Court has rejected the preliminary objections (or if it decides to integrate them into the substantive case), the Court must check whether it has jurisdiction to judge the case.

If the application is submitted by an individual or an NGO with Observer Status before the African Court (but also the African Commission or an intergovernmental for instance), **the Court is competent if the case concerns the interpretation or application of the Charter or any other instrument relevant to Human Rights which the Respondent State has ratified**.

Reminder: The Court also has jurisdiction to give Advisory Opinions for any case concerning the Charter or any other instrument relevant to Human Rights. Member States to the African Union, the African Union and its institutions or any other African Institution recognized by the AU can ask for an Advisory Opinion (see Chapter III).

5. The admissibility of the application

If the Court considers it has jurisdiction to treat the application, it has to judge on the admissibility of the case. This means the Court must **examine the general and specific conditions of admissibility** in compliance with article 56 of the Charter (see Chapter VI).



Examination of admissibility by the European Court

In 2009 more than 33000 applications were deemed inadmissible by the European Court of Human Rights. Hence it is of paramount importance to understand the conditions for admissibility of applications in order to avoid being dismissed.

The Court may request the opinion of the Commission in order to facilitate the examination of admissibility (art. 6.1 of the Protocol) (see Chapter VI).

Reminder: According to the general conditions of admissibility, the Court has jurisdiction if the following conditions have been fulfilled (art. 5 of the Protocol):

- the application of a case is directed against a State party to the Protocol;
- the application of a case is directed against a State party to the Protocol having made a declaration under article 34. 6 (except if the African Commission submits the case to the Court);
- the application concerns a violation of a right protected in the African Charter or any other relevant instrument related to human rights which the State party has ratified before the violation happened.

Applications to the Court also have to comply with the following conditions to be admissible:

1. disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
2. comply with the Constitutive Act of the African Union and the Charter;
3. not contain any disparaging or insulting language;
4. not be based exclusively on news disseminated through the mass media;
5. be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
6. be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and
7. not raise any matter or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act

of the African Union, the provisions of the Charter or of any legal instrument of the African Union.

If any one of the general or specific conditions of admissibility is not fulfilled, the African Court declares the application inadmissible. In this case, the Court does not examine the substantive questions of the case. This means the Court does not examine whether or not human rights violations took place. The case is closed and the ruling contains the alleged facts, the elements of the procedure and the reasons why the case was inadmissible.

If the general and specific conditions of admissibility are fulfilled (see Chapter VI), the application is declared admissible.

The Court then has the following two options:

- The Court can transfer the case to the African Commission.
Article 6(3) of the Protocol allows the African Court, if it so desires, to not deal with an application (even if the case was declared admissible) and to transfer the case to the African Commission. This further shows the complementary relationship between the Court and the Commission in their function to protect human rights.
It is legitimate to question why the Court might transfer cases back to the Commission when the case was submitted to the Court. The Interim Rules of Court offer no more in-depth explanation than the Protocol concerning the reasons for a transfer to the Commission (art. 29). Maybe such a transfer could be due to the Commission already having judged on a similar case. In the future, the Court's jurisprudence will clarify the conditions for transfer of jurisdiction in more detail.
- The Court can examine the merits of the case.

6. The merits of the case

Once the Court has declared that it does have jurisdiction to treat the case and that the case is admissible, it examines the merits of it. This means that **the Court examines** – depending on the elements of evidence brought before the Court during the written and oral phases – **whether or not the accused State did or did not violate one or more of the rights protected in the African Charter or in any other instrument relevant to human rights ratified by the Respondent State.**

The Court analyses whether the right to freedom of expression, right to liberty, etc. (see Chapter IV) was violated or not.

To do this, the Court refers to the State's obligations to respect, protect and promote the rights in question (see Chapter IV).

4 The Court deliberates

Once the hearings have ended, the Court closes the discussions to retire for deliberations and rulings.

The deliberations take place in private and remain confidential. Only those judges who were present in the case take part in the deliberations.

The Court's decisions are decided by a majority vote. If the votes are split down the middle, the president's vote (or his replacement) has predominance.

The Court's final decision is declared within 90 days following the end of deliberations.

5 The Court renders its ruling

The Court renders reasoned rulings (art. 28(6) of the Protocol).

In its rulings, the Court gives reasons on why it has jurisdiction and why the case was admissible or not. Finally, if applicable, the judges explain, according to them, whether the facts constitute a violation or not of the rights protected in the Charter or any other relevant human rights instrument which the state party ratified.

If the judges ascertain a violation, **the verdict also contains the reparations the victim is to receive**. The Court may decide to give a separate ruling concerning the reparations (art. 63 of the Interim Rules of Court).

The Court's rulings are final and binding (see Chapter X).

6 How to take action?

- ➔ Study the Rules of Court
- ➔ Provide the applicant with assistance during the examination of evidence (provided in the applicant's application and by the respondent) before the Court
- ➔ Suggest to the victims an expert's testimony / or ask the Court to be allowed to submit an amicus curiae (a way for individuals or NGOs to bring expert knowledge to the Court)



Students – Ivory Coast



Wall painting representing
the family, Dakar – Senegal

Article 18.1 of the African Charter

The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.

What is the Victim's Role in Proceedings Before the Court?

Key
point

Application, participation, representation and protection of witnesses and victims.

This chapter aims at looking at the active role that victims of a human rights violation (or members of their family) can play before the African Court: the right to make a direct or indirect referral; intervention in the proceedings. It also sets out the safeguards linked to taking legal action: possibility of representation and of protection. Victims therefore have the capacity and an interest in engaging in the reaffirmation of their rights before the Court, and NGOs and human rights defenders can assist and support them to this effect.

This chapter summarises the several themes that have already been treated in this guide and should be read to complement the chapters about the proceedings and decisions of the Court.

1 The evolving role of victims before supra national courts

The presence and the role of individuals, including victims, is a **relatively recent** development before supra national courts.

Traditionally only states were considered subjects and actors in international law. Cases in international law were solely played out between states. Nevertheless, since Nuremberg and the judgment of Nazi criminals in 1945, individual responsibility

concerning violation of international law has been recognized. However, at that point in time, victims were only witnesses to the procedure.

In 1950 it was the **innovation of the European Court of Human Rights** to recognize the rights of individuals – although bound by the prerequisite declaration of States giving them the right to bring action directly before a supra-national institution (in 1998 the Protocol n°11 of the European Convention abolished this condition and gives victims an important position before the European Court).



Challenge: guarantee victims' rights

NGOs must ensure that the rights of victims and witnesses are guaranteed by the services of the African Court (representation, protection, etc.). Otherwise, justice will be exercised without including the main complainants. This will no doubt negatively affect the trust of African civil society in this mechanism of fight against impunity.

In the 1990s, the debate about the role of the victims in international law re-emerged with the apparition of the International Criminal Tribunal (ICT) for the Former Yugoslavia and for Rwanda. But although the victim can appear before these courts as witnesses for one of the parties, he/she is not granted any means of action nor can he/she ask for reparations for the harm caused. However the **Statutes of the ICTs guarantee a framework of protection for victims/witnesses**. The Court Registrar is charged with looking after their welfare before, during and after the proceedings. Measures to protect their identity, mainly by remaining anonymous, are put in place. In extreme cases, the relocation to another country and a new identity can be planned.

The Statute of the International Criminal Court which was adopted in 1998 and came into effect in July 2002, represents a historic leap regarding the recognition of victims' rights. It guarantees not only their protection, but also their participation and representation in Court. Victims have the right to participate at every level of the procedure and can have legal representation. Furthermore, they can benefit from a right to reparation.

It is fundamental to guarantee victims an important role in supra-national legal proceedings in order to condemn serious human rights violations committed by individuals and by states. This responds to a right to effective remedies aimed for by international instruments for the protection of human rights, and gives these institutions independence and credibility in the eyes of civil society.

The Protocol on the establishment of **the African Court holds an important key for victims** as it grants them participation, representation, protection and reparation. These measures, which are complemented by the Interim Rules of Court,

must be followed by practices which respect victims' rights in order to ensure the Court's efficiency.

2 The role of victims before the African Court

A The victims' participation as a party to the case

1. Access to the Court

The victim's (or his/her representative's) direct access

Individual who are victims of a violation of a right recognized by the African Charter or by another instrument of human rights protection ratified by the State concerned, can directly petition the Court, if the State has made a declaration under article 34.6 of the Protocol (see Chapter IV).

If the victim cannot (due to detention for example) or does not want to (for security reasons for example) file an application to the Court directly, the victim can ask either a family member, his/her lawyer or any other individual or NGO with Observer Status before the African Commission to represent him/her.



The right to petition the African Court is not limited to victims who suffered violations first hand

According to article 34 of the European Court: "*The Court may receive applications from any person, NGO, or group of individuals **claiming to be the victim** of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto.*" The European Court can only be petitioned by the victim him/herself, whether the victim is an individual or an NGO or a group of people.

Contrary to the European Court, the right accorded to individuals and NGOs to petition the African Court is not limited to the actual victim of a human rights violation. If the State responsible for a violation has made a declaration under article 34.6 of the Protocol, individuals or NGOs with Observer Status before the Commission – victim or not of the violation – can petition the Court.

These representatives can either file an application to the Court in their name or in the victim's name.

When the plaintiff (victim, NGO or other individual) or their representative directly petitions the Court, they acquire the status of "party" to the procedure. They benefit from an important role in the process and from representation and protection as provided for in the Protocol.

***The victim's (or his/her representative's) indirect access
via the African Commission***

If the Respondent State has not made a declaration under article 34.6 of the Protocol, the victim (or his/her representative) cannot directly petition the Court.

The victim (or his/her representative) can, on the other hand, turn towards the African Commission in order to try and obtain access to the Court. Once the Commission has received a communication concerning violations of rights protected in the Charter (see Chapter IV), it can decide, on its own accord, to submit the case to the Court if it considers the violations to be serious and massive. The access to the Court is then indirect, as it goes through the African Commission.

Furthermore, the Commission can submit a case to the Court if it deems that the State concerned by its decision did not put into place the Commissions' recommendations.

Thus, the victim (or his/her representative) can suggest that the Commission submit the case to the Court by submitting a communication to the Court regarding serious and massive violations or by observing the non-compliance of the concerned State with the Commission's decision. Hence the victim can have an instigating role.

In both cases it is not a prerequisite for the Respondent State to have made a declaration under article 34.6 of the Protocol.

Once the Registrar of the Court has received an application from the Commission, the Registrar asks the victim (or his/her representative) to notify the Court within 30 days if they wish to take part in the proceedings before the Court and, if he/she does, to transmit the names and addresses of the judicial counsel (art. 35 of the Interim Rules of Court).

Thus the victim (or individual or NGO who / which submitted a communication to the Commission) can become a party to the case before the Court either in their own name or via a representative.

2. Legal representation of victims

In the case of direct access to the Court

The victim or their representative (NGO, family member etc.) shall be entitled to be represented by a legal representative of their choice (art. 10.2 of the Protocol).

Article 10.2 of the African Charter provides that "free legal representation may be provided where the interests of justice so require". This is especially applicable in

cases when the parties do not have the financial means to hire a lawyer. This is a great improvement on the African Commission which does not offer this kind of assistance. Nevertheless the Protocol only says that it “may be provided” and hence does not entail a right for the applicant, but a mere possibility.

In the case of indirect access to the Court – The African Commission submits a case to the Court following a communication received from a victim or his/her representative

As soon as the Court receives an application submitted by the Commission, the Registrar passes on the information to the person or NGO who had submitted the original communication to the Commission in order to find out if he/she or the NGO wants to participate in the procedure. If he/she/it does, the individual or NGO, can choose their own legal representation or ask the Court for free judicial assistance if they do not have their own financial means.



The representation of victims before the Inter-American Court

In the Inter-American system only State Parties and the Inter-American Commission can submit cases to the Court. Furthermore the victim does not have the right to independent legal representation (except in the final part on reparations). To fill this void the following practice has been established:

The Inter-American Commission fulfils the role of legal representative before the Court. This is difficult, as the Commission is supposed to have an impartial role before the Court. In practice to remedy these incompatibilities, the Commission does actually allow the victims to have legal representatives throughout the whole procedure before the Court. Officially this participation is done under the auspices of the Commission. The demand to follow the European Court's example of independent legal representation for victims is intensifying in the Inter-American system.

3. The role of victims as a party to the case during the proceedings

Once the case has been submitted to the Court, the victim (or his/her representative) **acquires the status of party to the case** just like the State against which the case is addressed.

This status brings with it the right and responsibility to prove the alleged violations before the Court and the right to obtain and to negate the proof brought forward by the Respondent State.

The victim (or his/her representative) takes part in the hearings either directly or through his/her legal representative. The victim can also call witnesses (see Chapter VIII). The Court can also allow the victim (or his /her representative) to use the language of their choice before the Court if they do not speak any of the official

languages well enough to participate in the proceedings (official languages: English, Portuguese, French and Arabic) (art. 18 of the Interim Rules of Court).

Ⓑ The victim as a witness in the case

Apart from participating before the Court (art. 5.3 of the Protocol), victims can, when called by the parties, intervene during the examination procedure of cases. In this case, **their role and their rights are less extensive** as they are considered to be just like other witnesses. For example they do not have the right to representation or a legal assistance provided by the Court.

Just like the victims who are party to the case, the witness-victims who testify in Court can – if the Court grants it – use their own language if they do not understand or speak one of the official Court languages sufficiently.

Ⓒ Victim's protection before, during and after proceedings

All victims, whether they are party to the case or witnesses, benefit from some degree of protection provided by the Court.

Article 10.3 of the Protocol indicates that *“any person, witness or representative of the parties, who appears before the Court, shall enjoy protection and all facilities, in accordance with international law, necessary for the discharging of their functions, tasks and duties in relation to the Court.”*

When the Protocol recognizes protection for victims, parties or witnesses, in compliance with international law: it makes reference to the right to psychological and medical care, the right to organize oneself legally, the possibility to give evidence anonymously, the possibility to have a hearing in camera (a closed hearing) or the possibility of relocation to another country after the process.

In this respect the African Court can benefit from the experiences of the Inter-American Court which accords great importance to the protection and care of victims and witnesses.



Protection before the Inter-American Court

The protection of victims and witness in the Inter-American system is guaranteed mainly by article 50 of its Rules of Procedure : States cannot try the witnesses or experts, nor can they conduct acts of reprisal against them or their families as a consequence of their declarations or reports before the Court.


In the cases Velásquez Rodríguez, Fairén Garbí and Solís Corrales, and Godínez Cruz, on “disappearances” in Honduras, two witnesses were assassinated and others were threatened. The Inter-American Court declared that *“the physical elimination of witnesses is a savage act, primitive, inhumane and condemnable that profoundly offended the American conscience and reflects a total disregard for the values that form the very essence of the Inter-American system”*. It demanded that the Honduran government adopt all measures necessary to guarantee the protection and fundamental rights of witnesses and that it identify and punish those persons responsible for the crimes committed.

4 Victims' right to reparation

According to article 27 of the Protocol, the Court can, when it ascertains a human rights violation, make appropriate orders to remedy the violation, including the payment of fair compensation or reparation. In cases where the violation continues, for example if the victim continues to be arbitrarily detained, the Court can demand that the State cease this. If it concerns a right guaranteed in the Charter, such as the liberty to free association, it can demand that the law be abolished by the State. In other cases where a violation has already taken place, for example if the victim was detained but then released, or tortured or received ill treatment, the reparation can also be financial.

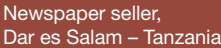
As the procedure fees are at the parties' expense (art. 30 of the Interim Rules of Court), the reparation can also take the form of covering the plaintiff's costs.

➤ Chart comparing the victim's role and rights before the three regional courts

|  | AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS | EUROPEAN COURT OF HUMAN RIGHTS | INTER-AMERICAN COURT OF HUMAN RIGHTS |
|---|---|---|--|
| Victim's direct access to the Court | Yes, if the State Party in question has made a declaration under article 34.6 of the Protocol | Yes, since the adoption of Protocol N°11 in 1998 to the Convention of Human Rights and Fundamental Freedoms | No |
| Interest to act | No, the victim can access the Court via a representative (individual or NGO) | Yes, the individual or legal person petitioning the Court has to be the victim of the alleged violation | n.a |
| Representation | Yes, by an individual, an NGO, or legal aid | Yes, through legal representation | Yes, via the Inter-American Commission if it decides to petition the Court concerning a case it received from an individual |
| Free legal assistance | Yes | Yes | No |
| Protection | Yes, in compliance with international law | Yes | Yes |
| Testimonies | Yes | Yes | Yes |
| Reparation | Yes | Yes | Yes |

5 How to take action?

- ➔ Petition the Court on behalf of a victim if he/she is unable to do so, or if such an action would put them in danger
- ➔ Help victims during the process by ensuring that their rights are respected:
 - Inform them of the possibility of legal assistance
 - Help them with legal assistance
 - Inform them of the possibility of protection
- ➔ Advocate in order for the right to legal assistance to become fully recognised. For example, a fund to provide legal assistance could be created and financed by voluntary contributions from States, international organizations and private donors, in compliance with ethical criteria and transparency.
- ➔ Assist the victims throughout the adversarial procedure.
- ➔ Show interest in the proceedings before the Court and suggest testifying.



Every individual shall have the right to receive information.

Every individual shall have the right to receive information.

What is the Scope of the Court's Decisions?

Key
point

The African Court renders binding judgments.

This chapter underlines two aspects of the decisions of the African Court: it exercises binding power contrary to the Commission's communications and the execution of its decisions is monitored by the African Union.

1 The Court renders different kinds of decisions

The Court can give **advisory opinions** in compliance with article 4 of the Protocol.

In the case of **adversarial proceedings**, the Court can make two types of decisions: **provisional measures** and **judgments** (on admissibility, on amicable settlements, on the merits of the case, on the interpretation or revision of a judgment).



What is a judgment ?

A judgment is the term used for legal decisions of Appeal and Supreme Courts which are binding. The African Court renders judgments whereas the Commission only renders decisions.

2 The contentious decisions

According to its litigious jurisdiction, the Court can make decisions at two distinctively different points in time:

during the examination of the case, the Court can order **provisional measures**
after the examination of the case, the Court can render a **judgment**

A) Provisional measures

In extreme cases the Court can order provisional measures to prevent any irreparable harm to individuals during the inquiry (art. 27.2 of the Protocol). A provisional measure is taken for the length of the trial to temporarily resolve an urgent situation while awaiting the final judgment. A concrete example would be the suspension of the execution of a death sentence.



The implementation of provisional measures

Article 30 of the Protocol states that State parties to the Protocol commit themselves to comply with the decisions made by the Court. It is possible that certain States will opt for a limited interpretation of the term “decision” only taking into account judgements and not provisional measures.

In these cases NGOs must help with the implementation of provisional measures by spreading information on the Court’s decisions as much as possible.



An example of non implementation of provisional measures recommended by the Commission

Writer and militant of the Ogoni cause, Ken Saro-Wiwa was arrested on the 22nd May 1994 with hundreds of others associated with the Movement for Survival of the Ogoni People (MOSOP). Communications were brought before the African Commission in Autumn 1994. A short while afterwards, a Nigerian court condemned Saro-Wiwa and his 8 co-accused to death; following an irregular process with regards to the right to a fair trial. The NGO Constitutional Rights Project presented an urgent additional communication asking the Commission to order provisional measures to prevent the execution of the condemned. The Secretariat of the Commission immediately addressed a verbal note to the government, underlining that the matter was before the Commission and calling on the Nigerian Authorities to suspend execution until the Commission had discussed the case with the government. Despite this intervention, the execution was carried out on the 10th November 1995. In 1998 the Commission declared that the detention and treatment of Ken Saro-Wiwa constituted a violation of the prohibition of cruel, degrading and inhuman treatment (art. 5 of the African Charter). **Furthermore the procedure leading to his death had not been in compliance with the principles of a fair trial (art. 7 of the Charter).**

B) Judgments of the Court

The Court’s judgments are decided by a majority vote of the judges (art. 28.2 of the Protocol). Judgements are binding on the States, contrary to the Communications of the African Commission. Thus, its decisions, which are considered binding on the States, must be taken into account by national courts as precedent jurisprudence.

In other words, State courts are subject to the judgments of the African Court in matters concerning human rights violations.

1. The judgement must be rendered within 90 days following deliberations and be publicly announced

The **90 days** limit (art. 28.1 of the Protocol) aims to resolve the problem of delays (sometimes more than a year), between the deliberations and the publication of communications of the African Commission.

By rendering its decision in public (art. 28.5 of the Protocol) is another way to respond to problems of the African Commission which simply attaches its decisions in its annual report which parties to the case are not even certain to receive. Article 29 of the Court's Protocol specifies that parties must be kept up-to-date and that judgments must be sent to member States, the Commission and the Executive Council of the AU.

2. The judgment is well reasoned and final

Judgments must be well reasoned (art. 28.6 of the Protocol). It is final and cannot be subject to appeal (art. 28.3 of the Protocol). Each judge can deliver a separate or dissenting opinion (art. 28.7 of the Protocol). This allows for the African Court to show the reasoning behind the verdict. It is important to mention this here, as the African Commission – especially in its early days – sometimes rendered communications without reference to the facts at hand or even without legal reasoning.

3. Contents of a judgment

A judgment shall contain (article 62 of the Interim Rules of Court):

- the date on which it was delivered
- the names of the parties
- the names of the representatives of the parties
- a summary of the proceedings
- the submissions of the parties, and as may be required, the Commission's representatives
- a statement of the facts of the case
- the legal grounds
- the operative provisions of the judgement
- the decision, if any, on costs
- the number of Judges constituting the majority
- a statement as to the authentic text of the judgement

4. The judgment on Reparation

If the Court decides that a right guaranteed by the Charter has been violated, **“it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation”** (art. 27.1 of the Protocol).

The implementation of the judgement in the strictest sense concerns the individual situation of the person wronged in their rights. Hence it is either about paying the victim for the harm done or about taking particular appropriate measures in order to stop rights violations if the internal system allows for such an action – for example, by abolishing an administrative action; or even both. The general experience of the European Court has been that if a law has been ruled incompatible with the European Convention on Human Rights, the law has been changed or abolished internally. States often do this in order to avoid other complaints which will end in repeated judgments on the same topic. States often make these legislation reforms although they are not strictly obliged to by the ruling.

The African Commission’s decisions show the variety of options of appropriate measures available¹.



The variety of appropriate measures

The African Commission received a large amount of communications concerning the prevailing situation in Mauritania between 1986 and 1992. The communications denounced serious and massive human rights violations committed by the Mauritanian government: arbitrary detention of thousands of people in part due to their political views or their ethnicity, persecutions, arbitrary executions and mass expulsions of negro-Mauritanians, as well as torture and disappearances. After having established that the complaints were true, the Commission recommended the government to:

- arrange for the commencement of an independent inquiry in order to clarify the fate of disappeared persons and identify the authors of the violations
 - take appropriate measures to ensure payment of a compensatory benefit to the widows and beneficiaries of the victims of human rights violations.
 - reinstate the rights due to the unduly dismissed and/or forcibly retired workers, with all the legal consequences appertaining thereto.
 - take appropriate measures to abolish slavery in Mauritania.
-

The European Court’s jurisprudence also shows that States often have to **pay a large amount of money to the victim for compensation**. For example the judgment in the case of *Allenet de Ribemont* in 1995 ordered France to pay a hundred

1. Communications 54/91, 61/91, 98/93, 154/97 and 210/98, *Amnesty International, Ms Sarr Diop, UIDH and RADDHO, Collectif des Veuvesandt Ayants-droits, Association Mauritanienne des Droits de l’Homme v. Mauritania*.

thousand francs (15.000 Euros) for costs and two millions francs (300.000 Euros) for material and psychological harm.

5. The judgment is published

The Registrar of the Court publishes the final judgments.

6. The judgment may be reviewed and interpreted

The African Court can review its judgment: *“The Court may review its decision in the light of new evidence under conditions to be set out in the Rules of Procedure”* (art. 28.3 of the Protocol). A revision to a case can only be made when new information is available which by its nature would have influenced the decision of the Court and which at the time was unknown. Any party to the case can ask for a revision of it. This demand is then passed onto all parties who have the option of submitting their written remarks within the time frame determined by the President of the Court. The latter also decides on the date of the hearing if the Court decides to have one (art. 67 of the Interim Rules of Court)

If the application is declared admissible, the Court shall, after consultation with the parties, determine the time limit for all future proceedings on the substance of the application it may deem necessary.

An application for review shall not stay the execution of a judgment unless the Court decides otherwise (art. 67.5 of the Interim Rules of Court).



Demands for revision and interpretation in other regional courts

In the European system, demands for revision can only be deposited at the registry by a party to the trial within 6 months after the new evidence has come to light. It is important to note that the definition of new evidence is very restrictive and revisions are, in consequence, exceptional.

The possibility for revision does not exist in the Inter-American system.

Interpretation of the Court's judgments is possible in the Inter-American system which allows for demands to be made in the 90 days after the judgment is delivered. The European system grants a delay of one year. Demands for interpretation do not usually stop the execution of a judgement.

The Court may interpret its own decisions (art. 28.4 of the Protocol). Any party may apply to the Court for interpretation of the judgment within twelve months from the date the judgment was delivered unless the Court, in the interest of justice, decides otherwise (art. 66 of the Interim Rules of Court).

“Upon the instruction of the Court, the Registrar shall transmit the application for interpretation to any other parties concerned and shall invite them to submit

their written comments, if any, within the time limit established by the President. The President shall also fix the date for the hearing of the application, in the event the Court decides to hold one. The Court's decision shall take the form of a judgment." (art. 66.3 of the Interim Rules of Court)

When considering an application for interpretation, the Court shall be composed of the same Judges who delivered judgment on the merits of the case (art. 66.4 of the Interim Rules of Court).

An application for interpretation shall not stall the execution of the judgment unless the Court decides otherwise (art. 66.5 of the Interim Rules of Court).

3 The execution of judgments by States is obligatory but voluntary

A State parties commit themselves to executing the judgments within the time limit determined by the Court

States' commitment to implementing the Court's judgment is voluntary (art. 30 of the Protocol). The Protocol does not foresee measures of constraint in order to force States to comply. Nevertheless, the fact that the Court publishes its decisions and notifies the parties to the case, the Commission, the Assembly, the African Union Commission and the Executive Council constitutes an important mean of pressurizing the condemned States (art. 64 of the Interim Rules of Court). **NGOs can also act on the condemned State's reputation and international image** by raising awareness on the Courts decisions and their non execution by the State.



Strategy

- Raise awareness of the Court's judgments among the public;
- Put diplomatic pressure, via the African Union, on the States condemned in order for them to comply with the decision.

B The Executive Council of the African Union monitors the implementation of judgments

Article 29.2 of the Protocol gives the AU Executive Council the role of monitoring the execution of the judgments on behalf of the Assembly. Thus, the monitoring stage leaves the judicial realm and becomes part of the political realm. This follows the European example whereas in the Inter-American system the monitoring is done by the Court itself.

This can cause a certain number of problems: The Council of Ministers is made up of the entirety of the ministers of foreign affairs of the AU member States. This

creates the paradox situation whereby it is up to the ministers of those countries which have not ratified the Protocol and those ministers whose countries have been condemned by the Court to monitor the execution of the judgments of the regional judiciary. The lessons that may be learnt from this experience may lead in the future to the creation of a specialised institution which would be to take on the role of monitoring the Court's judgments.

Furthermore the Statute is silent on the types of sanctions the Executive Council could employ for those States refusing to implement the Court's decisions. It is envisageable that the Executive Council has the right and power to impose sanctions or penalties.

Finally, in order to combat this efficiency problem, NGOs should demand that a mechanism be created within the countries' administrative bodies to follow up on the Court's decisions.



The execution of judgments in the European system

Up until now State parties to the European Court condemned to pay indemnities paid off their debts and did their duty. However, given the slow progress with which they did so, the Court decided that as of October 1991 State parties had to do so within three months. As of January 1996 the Court has expected the country to pay interest if it does not pay its dues within the given time limit.

© The Court must address the Assembly of the Heads of State and Government in an annual report which includes the non-fulfilment of judgments and decisions

It is not clear whether this demand, specified in article 31 of the Protocol, implies that the Conference of Heads of States and Governments, the supreme organ of the African Union, may force states to implement the judgments or whether it remains a way of pressurizing governments by tainting their reputation.

4 How to take action?

- ➔ Monitor the implementation of provisional measures.
- ➔ Monitor the implementation of the Court's judgments:
 - Make the largest possible public aware of the judgment,
 - Put pressure on the States concerned,
 - Put pressure on the African Union.
- ➔ Call on States to put in place a special national mechanism to follow up on the Court's decisions.
- ➔ Make sure the jurisprudence of the Court is known and applied by national courts.

PART
2

Comparison Between
the African Court on Human
and Peoples' Rights and
the European and
Inter-American Courts
of Human Rights

Comparison Between the African Court on Human and Peoples' Rights and the European and Inter-American Courts of Human Rights



What lessons can be learned from the experience of other regional Courts of Human Rights?

This chapter is a synthesis of the comparisons made in the first part of this guide between the African Court and the European and Inter-American Courts of Human Rights. Such a comparison will help human rights defenders to: become aware of the strengths and weaknesses of the African Court; understand how important it is for them to remain vigilant to some or other clause in the Protocol; enable them to oversee its application following the judicial practice of other Courts; provide some clues as to the possible development of this African instrument in the fight against impunity.

1 Election, status and independence of judges

The African Court consists of eleven judges, elected in their personal capacity amongst jurists recognised as being of very high moral character, competent and experienced either practically or academically in the field of human and peoples' rights (art. 11.1 of the Protocol). This is an in-principle requirement to ensure the competency and credibility of the Court. The qualities required of judges are the same as in other regional Courts.

Judges of the three regional courts are elected for a term of six years, renewable once for the African and Inter-American Courts (art. 15.1 of the Protocol).^{1,2}



How can we use comparisons?

- As a means of bringing pressure to bear on African institutions and States with the goal of developing the competencies of the African Court;
- In the interpretation of the Protocol and of the Charter to ensure an interpretation favouring extensive human rights protection;
- As arguments in actual cases, when similar matters have been subject to a decision of the European or Inter-American Courts.

Judges of the African Court exercise their duties part-time, except for the President (art. 15.4 of the Protocol). This is the same system as for the Inter-American Court, whereas in the European Court judges currently work full-time, having formerly worked on a part-time basis.³

If the African Court proves its efficiency and becomes a credible instrument for the continent in the fight against impunity, if the Commission exercises its right of referral often, and if the number of State parties making a declaration under article 34.6 increases, then we can imagine that the number of cases brought before the Court will grow and, as a result, more full time judges will be needed.

Judicial independence is guaranteed in articles 17 to 19 of the Protocol, in a similar manner to the way it is guaranteed by the European and the Inter-American Courts.⁴ There is one point in which the African Court differs: judges do not sit on a case involving a country of which they are a citizen (art. 22 of the Protocol) or the State which promoted their candidature. In the American system, the State concerned can nominate a judge ad hoc to hear the matter if they do not have a judge sitting permanently at the Court. In the European system, the judge elected as a representative of the State concerned has the right to sit on the case.⁵

1. American Convention on Human Rights (ACHR) art. 54.

2. European Convention on Human Rights (ECHR) art. 23, modified by Protocol n°14.

3. Statute of the Inter-American Court of Human Rights art 16, ECHR art 19 and 21.

4. See ECHR art. 21 and 24, Statute of the Inter-American Court of Human Rights chapter IV.

5. Statute of the Inter-American Court of Human Rights art 10, ECHR art. 27 (2).

2 The rights protected by the Courts

The African Court, along with its European and Inter-American counterparts, is competent to interpret and apply the general regional instrument for the protection of human rights – for the African Court, the African Charter on Human and Peoples’ Rights and its Protocols; for the European Court, the European Convention on Human Rights and Fundamental Freedoms, with its Protocols; and in the American case, the American Convention on Human Rights.

For the European Court this is an exclusive competency, while for the African and Inter-American Courts they share it with their respective Commissions.



Similar rights, different realities

The European and American Conventions essentially protect the same rights. However, the different contexts in which the regional courts operate, have created differences in their jurisprudence. Cases before the European Court have largely dealt with the right to fair trial and rights such as freedom of speech and association and respect for privacy. On the other hand, the more limited jurisprudence of the Inter-American Court has concerned the right to life, prohibition of torture and matters related to “disappearances”.

The originality of the African Charter is that it protects not only civil and political rights following the example of other regional conventions, but also social, economic, cultural and peoples’ rights. Its scope, in this respect, is much greater than that of the other two courts.

Moreover, contrary to the two other regional courts, the African Court is also competent to rule on “*any other relevant human rights instruments ratified by the State concerned*” (art 3.1 of the Protocol).

3 Access to the Courts

In this matter there are notable differences between the three regional systems. In the African system access to the court is open by right to the Commission, to States whose citizens have been subject to human rights violations and to African intergovernmental organisations. The right of individuals or NGOs with observer status to the African Commission to access the Court is conditional, subject to whether or not the States involved have previously made a declaration under article 34.6 of the Protocol.

Until 1998, when Protocol No 11 of the European Convention came into force, the European system was practically similar to that adopted by the African Court. The competence of the European Court to receive complaints from individuals was limited to States which had approved of this possible action. Since Protocol n°11

came into force and the reform of the Court, the right of individuals, groups of individuals or NGOs to access the court, believing they have been the victim of human rights violations, is guaranteed by the European Convention and obligatory for all member States of the Council of Europe.



The European Court: a victim of its own success?

The European Court has suffered for some time from its own success: an ever increasing number of citizens is bringing cases before the Court to ensure their rights are respected. The number of petitions to the Court reached 57100 in 2009, an increase of 500% since 2000. Hearing petitions often takes years. To solve this problem, the Council of Ministers in 2004 adopted Protocol 14, which amended the European Convention. The reform aims to simplify the procedure, allowing for petitions to be declared inadmissible by a single judge instead of three. The committee of three judges will be able to decide on the substance of “repeat” cases. These reforms are necessary and welcome. The most controversial measure invokes a new condition of admissibility: cases can be dropped if the plaintiff has not suffered “significant harm”.

In the Inter-American system, only States signatory to the American Convention, and the Inter-American Commission, can submit cases to the Court. Individuals, groups of individuals and legally recognized NGOs can only submit cases to the Commission. If the Commission decides to do so, it can pass cases on to the Court for a ruling. In both cases, the jurisdiction of the Court is optional and is limited to States which have explicitly accepted its jurisdiction.

4 Relations between the Commissions and the Courts

According to article 2 of the Protocol, *“the Court [...] shall complement the protective mandate of the African Commission on Human and Peoples’ Rights conferred upon it by the African Charter of Human and Peoples’ Rights”*. The promotion of human rights seems to be the preserve of the Commission, although as far as the protection of human rights is concerned, the relationship between the two bodies needs to be further refined. To that end, they may be able to rely on the experience of the other two regional systems.

In the model chosen by the Inter-American Court, all communication must pass through the Inter-American Commission before being submitted to the Court. The Commission can be petitioned by a State party, an Individual or an NGO. The Commission decides on the admissibility of the petition and prepares a report on the facts of the case and its conclusions. Only the State concerned or the Commission can decide to refer the matter to the Court. In fact this system has performed badly; for the first ten years of its existence, the Inter-American Court received no cases from the Commission, and the two bodies are still struggling to establish a good working relationship.

A similar model existed in the European system until 1998. Since the coming into force of Protocol n°11 of the European Convention on Human Rights and Fundamental Freedoms, the Court has been the only organ of protection, as the Commission has ceased to exist. Previously, all cases started before the Commission, which gave its opinion as to the admissibility and merits of each case. Once the Commission procedure was complete, the Court was then petitioned and was competent to rule on the admissibility, as well as the merits, of the case.

In practice, if States which are party to the Protocol are hesitant to make a declaration under article 34.6, the African system will be similar in function to that of the Inter-American system and will receive most of its cases from the Commission. There is no precision about which cases will be referred to the Court by the Commission, so there is no guarantee of justice for the plaintiffs. This situation is not the most desirable and detracts from the Court's original purpose, which was to grant individuals and NGOs a last legal resort for the protection of human rights where no adequate domestic alternatives existed. Therefore, it is essential that human rights defenders conduct an active campaign in African States to encourage them to ratify the Protocol and to make a declaration under article 34.6.

5 Proceedings before the Courts

The procedure before the three courts follows the same basic principles: written submissions; public hearings; cross-examination; and freedom of the courts to receive all types of written or oral evidence as they see fit.

For the African and European Courts, which allow victims to be parties in the procedure, the same guarantees exist for their legal representation⁶. In the Inter-American system, the Commission represents the victims, even though practice has determined that victims henceforth can equally be represented by their legal counsel.

There is a significant difference which distinguishes the European Court from the two others: the possibility of appeal. It is the only Court of the three to have established a system where a ruling made by the Chamber of 7 Judges (the normal size for an in-depth examination of a case) can be referred to the Grand Chamber consisting of 17 Judges.⁷

6 Courts' decisions

The three Courts make their final decisions through a judgment made by a majority of the Judges. In the three systems, member States commit themselves to execute

6. See Protocol articles 10 and 26.

7. ECHR art. 43.

the decisions of the Court. However, this remains voluntary and there are no real avenues for forcing States to execute the decisions. In the case of the African Court, which follows the example of the European Court, implementation is monitored by the Executive Council of the AU.⁸

In contrast, in the Inter-American system, the Court itself has the authority to monitor States' compliance with its judgments.

7 The role of NGOs

The role granted to NGOs, as well as the ways in which they intervene during procedures, differ between the three regional courts.

Firstly, the right to petition the Court: in the European system an NGO can only petition the court if it is victim of a violation. In the African system the right to petition the Court is more limited, in so far as it is, for both individuals and NGOs, conditioned. It is also broader given that there is no conditions regarding the interest to act. In the Inter-American system, the Court can only be petitioned by the Commission and States but NGOs can petition the Commission.

However, NGOs work closely with the Inter-American Commission, which has often allowed them to represent victims on its behalf before the Court. In the European system, NGOs can intervene as “friends of the court”, under to quite limited conditions, to defend their own interests. NGOs can also give assistance to victims without being an intervening party. This assistance may take the form of legal counsel, expert input on the human rights situation or more generally, financial, material or psychological support.

NGOs have acquired an important place in the work of the African Commission. It is to be hoped that this good co-operation will continue with the African Court, even if, for the time being, the right to directly petition the Court remains limited.


This comparative study shows firstly that the African Court has borrowed a lot from the two other regional systems for the protection of human rights, and is similar in many respects to the European and Inter-American Courts as they were conceived in 1950 and 1969 respectively. Since then the European system has evolved considerably, with similar transformations seemingly underway in the Inter-American system.


Two conclusions can be drawn: despite certain limitations and statutory weaknesses in the African Court today, it has the potential to develop into an important instrument for human rights protection. Nonetheless, this development depends on judges showing a resolve to be independent and unswerving in matters of law, in the face

8. Protocol art. 28 and 29 (2), ECHR art 46, ACHR art. 68.

of States which are often wary of supra-national mechanisms. Furthermore, human rights defenders must work to promote and raise awareness as it is necessary to ascertain the crucial role the Court plays in the fight against impunity .

➤ **Comparison of the African Court and the European and Inter-American Courts of Human Rights**

|  | AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS | EUROPEAN COURT OF HUMAN RIGHTS | INTER-AMERICAN COURT OF HUMAN RIGHTS |
|---|--|--|---|
| ORGANISATION | | | |
| Judges | Nationals from member States of the African Union, elected in their personal capacity | Nationals from States party to the European Convention of Human Rights, elected in their personal capacity | Nationals from member States of the Organisation of American States (OAS), elected in their personal capacity |
| Number of Judges | 11 | 45 Judges (equal to the number of State parties) | 7 |
| Criteria for the composition of the Judges | <ul style="list-style-type: none"> - Equal geographical representation - Fair representation of major legal systems - Suitable gender balance | None | None |
| Length of mandate | 6 years, renewable once | 6 years renewable | 6 years, renewable once |
| Election | Election by the Conference of Heads of State of the governments of the AU | Election by the Parliamentary Assembly of the Council of Europe | Election by States party to the Convention during the General Assembly of the OAS |
| Employment of Judges | Permanent for the President; during sittings for the other Judges | Permanent | Permanent for the President; during sittings for the other Judges |
| Existence of a Commission | African Commission of Human and Peoples' Rights | No. The European Commission of Human Rights ceased to exist in 1998. | Inter-American Commission of Human Rights |
| Budgetary Autonomy | Budget drawn up by the Court, decided by the AU | Budget drawn up by the Court, decided by the Council of Europe | Budget drawn up by the Court and approved by the OAS |
| Relationship with the mother organisation | <ul style="list-style-type: none"> - budget - election of Judges - execution of judgments | <ul style="list-style-type: none"> - budget - election of Judges - execution of judgments | <ul style="list-style-type: none"> - budget - election of Judges |
| States party at 01/01/10 | African Union: 53 African Charter: 53 African Court: 25 | Council of Europe: 45 European Convention: 45 European Court: 45 | OAS : 35 American Convention: 25 Inter-American Court: 21 |

|  | AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS | EUROPEAN COURT OF HUMAN RIGHTS | INTER-AMERICAN COURT OF HUMAN RIGHTS |
|---|---|--|---|
| JURISDICTION | | | |
| Jurisdiction | Litigation, advisory opinion and amicable settlement | Litigation, advisory opinion and amicable settlement | Litigation, advisory opinion and amicable settlement |
| Personal jurisdiction (Who can petition the Court ?) | <ul style="list-style-type: none"> • Obligatory Jurisdiction: <ul style="list-style-type: none"> - African Commission on Human and Peoples' Rights - International African Organisations - States whose citizens are victims of human rights violations • Optional Jurisdiction: <ul style="list-style-type: none"> - Individuals and NGOs with Observer Status before the African Commission, against a State which has assented to article 34.6 authorising such a petition | <ul style="list-style-type: none"> • Obligatory Jurisdiction: <ul style="list-style-type: none"> - States parties - Individuals, groups and NGOs who believe they have been victim of a violation of a right guaranteed by the European Convention | <ul style="list-style-type: none"> • Obligatory Jurisdiction: <ul style="list-style-type: none"> - States parties - Inter-American Commission of Human Rights |
| Material jurisdiction (Which violations?) | Interpretation and application of the African Charter, Protocols and other human rights related instruments ratified by the State concerned | Interpretation and application of the European Convention of Human Rights | Interpretation and application of the Inter-American Convention on Human Rights |
| PROCEDURE AND DECISIONS | | | |
| Conditions of hearings | Public, except in exceptional circumstances | Public, except in exceptional circumstances | Public, except in exceptional circumstances |
| Method of examination | Adversarial | Adversarial | Adversarial |
| Possibility of appeal | No, but interpretation or revision is possible under certain conditions | Yes, referral to the Grand Chamber, under certain strict conditions | No, but request for interpretation possible |
| Types of decisions | Judgments, rendered by a majority of Judges | Judgments, rendered by a majority of Judges | Judgments, rendered by a majority of Judges |
| Execution of decisions | Obligatory but voluntary. Monitored by the Executive Council of the AU | Obligatory but voluntary. Monitored by the Committee of Ministers of the Council of Europe | Obligatory but voluntary. Monitored by the Inter-American Court |

PART
3

The Future African
Court of Justice
and Human Rights

How will the African Court of Justice and Human Rights Replace the African Court on Human and Peoples' Rights?

Key point

The Human Rights Section of the Single Court will be in the lines with the African Court.

This chapter explains the reasons behind the creation of the African Court of Justice and Human Rights (or Single Court) and the way its Protocol has been developed. It describes the provisional nature of the African Court on Human and Peoples' Rights and outlines the steps in its merger with the Court of Justice of the African Union to become a Single Court.

1 From the decision to merge to the adoption of the Statute of the Single Court

The idea to merge the African Court on Human and Peoples' Rights with the Court of Justice (the African Union's judicial body foreshadowed in its Constitutive Act and empowered to judge how compliant the actions of member States are with the AU's treaties and decisions) was first mooted during negotiations surrounding the draft Protocol of the Court of Justice in April and June 2003.

Among the arguments put forward in favour of a single Court was the simple fact that there were insufficient human and financial resources to sustain two Courts. The fact that both had the jurisdiction to examine human rights cases (the Court of Justice has the jurisdiction, by virtue of the AU Constitutive Act, to hear cases dealing with the respect for human rights) was yet another argument in support of the merger. Some member States opposed this point of view, claiming that a dearth of financial resources affected all AU institutions and could not be used as an argument in favour of the merger of the two Courts. Those wanting to see the creation of two distinct Courts claimed that the merger would lead to a relegation of human rights issues to a less important level, while affording other problems on the African continent a higher priority. Finally, the AU's Executive Council delivered its decision: *"The African Court on Human and Peoples' Rights will remain a distinct institution, separate from the Court of Justice of the African Union (Doc. Ex/CL/59 (111) /58 (111), para 2)"*.

However, even though the Protocol to the African Charter creating the African Court on Human and Peoples' Rights had just come into force (25th January 2004), and the process establishing the Court was already underway, **the Heads of State and Government, at the initiative of the president of the AU Conference, the Nigerian President Obasanjo, decided at the Addis Ababa (Ethiopia) Summit in July 2004, to merge the African Court on Human and Peoples' Rights with the Court of Justice.**

The merger was made public with the announcement of a rationalisation of the location of the headquarters of various AU bodies (Assembly/AU/Dec.45(III)). The decision was mainly taken for economic reasons, with the Heads of State and Government feeling that the AU could not afford two distinct judicial institutions.

Many thought the African Court was stillborn. Nonetheless, aware that the process of creating the instruments for the joint Court (or single Court) and their implementation would take some time, **the Chiefs of State, assembled at the Abuja Summit (Nigeria), in January 2005, decided to activate the African Court on Human and Peoples' Rights, despite the previous decision to merge.**

This decision was confirmed at the Syrte Summit (Libya), in July 2005: "all necessary measures for the functioning of the African Court on Human and Peoples' Rights must be taken, particularly the election of judges, the determination of the budget and the operationalisation of the Registry" (Assembly/UA/Dec.83(V)).

Concurrently, the AU Commission was directed to work out the details of the decision to merge the Courts. Meeting in January 2005, in Addis Ababa (Ethiopia), an expert committee commissioned by the AU considered that a merger of the two Courts required the drafting of a new Protocol.

An initial version of this text, as well as reports from the AU Commission and the Permanent Representative Committee about the merger, were presented to the AU Executive Council meeting in Abuja (Nigeria), at the end of January 2005. The latter proposed organise a second meeting of experts in April 2005, whose task was to develop a list of recommendations in time for the Heads of State and Government Summit in July. This time the Expert Committee confirmed the need for the establishment of the African Court on Human and Peoples' Rights, taking into account the difficulty of the process by which the two Courts would be merged into a single jurisdiction, and proposed new guidelines for the merger.

From the 21st to the 25th November 2005 in Algiers (Algeria), a working group charged with developing a single judicial instrument leading to the merger of the two Courts, came together to draft a Protocol. This document, while slightly modified, was presented to the AU Summit in Khartoum (Sudan), in January 2006. A further meeting of the Working Group in May 2006, again led to the tabling of an altered text.

It is interesting to emphasise that all the early versions of the merger Protocol were quite progressive, especially relating to the entities which were eligible to petition the single Court: the texts authorised NGOs and individuals to directly petition the joint Court without needing the prior authorisation of the State concerned (even though this condition exists when petitioning the African Court on Human and Peoples' Rights, according to article 34.6 of its Protocol).

In April 2008, a new, more conservative draft Protocol for the merged Court was issued, following a meeting on legal matters attended by Justice Ministers and public prosecutors.

The draft Protocol for the single Court was finally adopted by the Conference of Heads of State and Government at the Sharm El Sheikh Summit (Egypt), in July 2008. The Conference called on States to ratify it.

2 From the work of the African Court on Human and Peoples' Rights to the establishment of a Single Court

The Protocol on the Statute of the African Court of Justice and Human Rights (or Protocol of the Single Court) will come into force 30 days after the deposit of the 15th ratification document by a State (art. 9 of the Protocol of the Single Court). Once it is in force, the African Court on Human and Peoples' Rights and the Court of Justice will be merged into one Court: the African Court of Justice and Human Rights (art. 2 of the Protocol of the Single Court).

Therefore, until this Protocol comes into force, the African Court on Human and Peoples' Rights will continue to exist in full and complete form. And once the Protocol of the Single Court comes into force, the African Court will exist only as a transition.

Indeed, the Protocol of the Single Court stipulates that once it is in force, the Protocol of the African Court on Human and Peoples' Rights will remain temporarily in force for a period not exceeding one year or any other period as determined by the Conference of Heads of State and Government (art. 7 of the Protocol of the Single Court). This transition period should enable the African Court on Human and Peoples' Rights to take appropriate measures for the transfer of its prerogatives, properties, rights and obligations to the African Court of Justice and Human Rights.

What will happen to pending cases before the African Court on Human and Peoples' Rights once the Protocol for the Single Court comes into force? The latter envisages that once it has come into force, such cases will be transferred to the Human Rights Section of the Single Court and will be assessed according to the Protocol of the African Court on Human and Peoples' Rights (art. 5 of the Protocol).

This framework raises two questions: firstly, it is likely that once the Protocol has come into force, the actual establishment and operation of the Single Court will take some time. Therefore, the African Court's transition phase should, logically, allow it to continue hearing pending cases, at least until the swearing in of Judges on the Single Court (see below). Furthermore, it would seemingly be a challenge for new Judges of the Single Court to be required initially and concomitantly, to hear cases subject to different procedural rules.

Lastly, the terms of Judges on the African Court on Human and Peoples' Rights will cease when judges on the Single Court are elected. Nevertheless, judges on the African Court on Human and Peoples' Rights will remain in office until Single Court judges are sworn in (art. 4 of the Protocol of the Single Court). Likewise, the African Court Registrar will remain in office until the Single Court Registrar is appointed (art. 6 of the Protocol of the Single Court).

Once the Protocol of the Single Court is in force, and the transition period for the African Court on Human and Peoples' Rights is over, with hearings of pending cases before the African Court on Human and Peoples' Rights concluded by new judges on the Single Court, the Protocol of the African Court on Human and Peoples' Rights will be repealed. The African Court of Justice and Human Rights will then exist fully in its own right.

3 How to take action?

- ➔ Ask States to ratify the Statute of the African Court on Human and Peoples' Rights and to make a declaration under article 34.6 which allows individuals and NGOs to directly access the Court.
- ➔ Ask States to ratify the Protocol the Statute of the African Court of Justice and Human Rights by assenting to article 8 of the Protocol which allows individuals and NGOs to directly access the Court.



Demonstration,
Luanda – Angola

Article 11 of the African Charter

Every individual shall have the right to assemble
freely with others.

What are the Differences Between the Human Rights Section of the Single Court and the African Court on Human and Peoples' Rights?

**Key
point**

The keys to understanding and use the Human Rights Section of the Single Court are more or less the same as for the African Court on Human and Peoples' Rights.

This chapter describes the overall shape and function of the new African Court of Justice and Human Rights (or Single Court) which will replace the current African Court on Human and Peoples' Rights, once it comes into force. It presents the Statute of this new Court, its composition, jurisdiction, procedures, legal force and follow-up to its rulings, compared to the African Court on Human and Peoples' Rights.

The analysis shows that the Human Rights Section of the Single Court will be governed by more or less the same principles as those of the African Court on Human and Peoples' Rights, with a few notable differences.

1 Statute, structure and composition of the Single Court: an analysis of differences between the Single Court and the African Court on Human and Peoples' Rights

A Statute and seat

Unlike the African Court on Human and Peoples' Rights, which is a conventional body, the **Single Court will be the Union's main judicial body** (art. 3 of the Protocol and art. 2 of the Statute of the Single Court). This new situation could well usher in some positive consequences, especially in so far as the AU is obliged to concede it an adequate operating budget (article 26 of the Statute mentions that the Court budget will be looked after by the AU), along with an increased legitimisation of the system by which Court rulings are followed up by the Executive Council of the AU.

The **seat of the Single Court will be the same as that of the African Court on Human and Peoples' Rights** (art. 25 of the Statute of the Single Court), namely Arusha, in Tanzania. This decision is linked to the same concern for economic rationalisation which led to the decision to merge the two Courts into a Single Court.

As for the African Court on Human and Peoples' Rights, **the Single Court will be able to sit in any other member State** (art. 25 of the Statute of the Single Court) if circumstances require, and with the consent of the State concerned. This possibility means the continental judicial body will be able to connect with the individuals whom it protects, affording it a greater visibility.

Lastly, the Statute goes on to state that the AU Conference of Heads of State and Government may decide to change the seat of the Court in consultation with one another. Although reasons for such a change are not specified, it is conceivable that such a decision would have to be taken in the event of gross human rights violations being committed in Tanzania. Accordingly, for several years now, FIDH has been campaigning in favour of a relocation of the seat of the African Commission of Human and Peoples' Rights because of serious human rights violations perpetrated by the Gambian authorities.

B Structure

The Single Court will be divided into two sections (article 17 of its Statute): **the General Affairs Section and the Human Rights Section.**

The General Affairs Section will be competent to examine all cases brought before it in terms of article 28 of its Statute, except for those dealing with human rights and/or peoples' rights matters. This Section's jurisdiction corresponds more or

less to that which would have been the preserve of the AU's Court of Justice. The General Affairs Section will thus have the jurisdiction to examine all cases and disputes of a legal nature dealing with:

- the interpretation and application of the Constitutive Act of the AU;
- the interpretation, application or validity of other Union treaties and all legal instruments derived and adopted within the framework of the Union or the OAU (apart from those relating to human and peoples' rights);
- all matters of international law (apart from those relating to human rights);
- all acts, decisions, rulings or directives by Union bodies;
- all matters referred to in any other agreement which the States parties might have concluded with one another, or with the Union, and which falls within the Court's jurisdiction;
- the existence of any eventuality which, if established, would constitute a violation of an obligation towards a State party or the Union;
- the nature or extent of reparation due for breach of an international covenant.

The Human Rights Section, for its part, will have brought before it any matter concerning human and peoples' rights (art. 17 of the Statute of the Single Court). **To a certain extent, this Section will be a continuation of the African Court on Human and Peoples' Rights.**

Article 19 of the Statute of the Single Court states that each Section will be able to establish one or several chambers.

Article 18 stipulates that when a case is referred to the Section, it can, if it deems it necessary, decide to refer the matter to a plenary sitting of the Court for examination. There is no further detail given as to the reasons for referring a case to a plenary session of the Single Court. No doubt this will be elaborated in the internal regulations of the Single Court.

© Composition

The Single Court will be composed of **16 judges, 8 for the General Affairs Section and 8 for The Human Rights Section** (and no longer 11 as existed in the African Court on Human and Peoples' Rights).

They will be elected for a term of 6 years (the same as for the African Court on Human and Peoples' Rights) **in a part-time capacity, except for the president and vice-president who will have a full-time mandate** (only the president of the African Court on Human and Peoples' Rights has a full-time mandate).

1. The judges

Contrary to the Statute of the African Court on Human and Peoples' Rights, the Single Court's specifies that **judges will be nationals of the States party**. For the African Court on Human and Peoples' Rights, the States party enjoyed the privilege of nominating candidates for the position of judge, but nothing prevented them from being citizens of a non party State. This had the advantage, however, of offering a greater flexibility in fulfilling the conditions of geographical representation and equal representation of African legal systems.

On the other hand, as for the African Court on Human and Peoples' Rights, the Single Court can have no more than one judge coming from the same State.

To ensure an **equal geographical representation** of judges, article 3 of the Statute of the Single Court provides the following ideal breakdown:

- 4 judges from West Africa
- 3 judges from North Africa
- 3 judges from East Africa
- 3 judges from Central Africa
- 3 judges from Southern Africa

Furthermore, as for the African Court on Human and Peoples' Rights, it is desirable that the composition of the Court reflect **an equal representation of the different African legal systems** (art. 7 of the Statute of the Single Court).

Articles 5 and 7 of the Statute of the Single Court state that when candidates are nominated by States party and when judges are subsequently elected by the Conference, **an appropriate gender balance must be observed**.

Judges must be elected from people known for their **impartiality and integrity**, enjoying the highest moral respect. They must comply with the required conditions by already exercising the highest judicial functions in their respective countries, and/or are jurisconsults **having a recognised competence and experience in international law and/or human rights**.

2. Nomination and election procedures

The process of nomination and election of judges of the Single Court (art. 5 to 7 of the Statute of the Single Court) will be almost the same as for judges on the African Court on Human and Peoples' Rights: each State party may nominate two candidates (instead of three for the African Court on Human and Peoples' Rights). The president of the AU Commission then places the candidates on two distinct lists (art. 6 of the Statute of the Single Court): list A includes the list of candidates

having particular competence in international law (for the General Affairs Section); on list B are the candidates who have recognised qualifications in the protection of human rights (for the Human Rights Section).

These two lists are submitted to member States at least 30 days before a AU Summit of Heads of State and Government.

At the first round of voting, the aim is to choose 8 judges from list A and 8 others from list B.

The judges will be elected by the States parties to the Statute during a meeting of the AU Executive Council and then ascertained by the Conference of Heads of State and Government (art. 7 of the of the Statute of the Single Court).

3. Independence

The independence of judges is totally guaranteed, **in accordance with international law** (art. 12 of the of the Statute of the Single Court). Therefore, as for the African Court on Human and Peoples' Rights, functions of a judge of the Single Court are incompatible with any activity likely to undermine the need for the independence or impartiality of the legal profession (art. 13 of the Single Court).

To avoid any conflict of interest, a judge cannot hear a case in which he has previously been implicated, whether as an agent, counsel, lawyer, member of a national or international Court, or commission of inquiry (art. 14 of the Statute of the Single Court). And like in the Protocol of the African Court on Human and Peoples' Rights, a judge who is a national of a State party to a case, cannot hear the case.

Thus, apart from the number of judges, 11 for the African Court on Human and Peoples' Rights and 16 for the Single Court (8 of whom for the Human Rights Section of the Single Court), the composition of the two Courts requires the same human rights competence, the same insistence on independence, and the same conditions of geographical representation, equal representation of African legal systems and gender balance.

Also, FIDH hopes that the AU Note Verbale which outlines the procedures for the nomination and election of judges to the African Court on Human and Peoples' Rights can likewise be used for the Single Court, so that all the criteria relating to the composition of the African Court of Justice and Human Rights are duly respected.

2 Jurisdiction, referrals and proceedings of the Human Rights Section of the Single Court compared to the African Court on Human and Peoples' Rights

A Jurisdiction

1. Advisory jurisdiction

Like the African Court on Human and Peoples' Rights, **the Single Court (particularly its Human Rights Section) will be able to give a legal opinion on any legal matter** not brought before the African Commission and the African Committee of Experts (art. 53 of the Statute of the Single Court).

However, there are fewer bodies entitled to lodge a legal matter with the Single Court than with the African Court. According to article 53, only certain specific bodies of the AU (the Conference; the Peace and Security Council, the Parliament, the Economic, Social and Cultural Council) and AU body authorised by the Conference and the financial institutions, will be able to refer matters to the Single Court for an opinion, whereas AU member States and all other organisations recognised by the AU can petition the African Court on Human and Peoples' Rights for advisory opinion.

2. Litigious jurisdiction

The two Sections of the Single Court base their jurisdictions on the same article 28 of the Statute. To distinguish between jurisdictions assigned to one or other of the Sections, one must refer to articles 17 and 34 which confirm the obvious namely that the Human Rights Section has the jurisdiction to decide on cases dealing with human and peoples' rights.

Thus, according to articles 28, 17 and 34, the Human Rights Section has the jurisdiction to: **Interpret and apply the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on the Rights of Women, or any other legal instrument relating to human rights, to which the States concerned are party.**

The Human Rights Section's jurisdiction to interpret and apply is thus the same as that of the African Court on Human and Peoples' Rights. In fact, according to its Protocol, the African Court on Human and Peoples' Rights has the jurisdiction to interpret and apply for matters relating to the African Charter on Human and Peoples' Rights or any other relevant human rights instrument, to which the States concerned are party. The Statute of the Single Court foreshadows the same jurisdiction for the Human Rights Section, a minor difference being that it cites two of the other instruments relating to human rights: the Protocol to the African

Charter on the Rights of Women and the African Charter on the Rights and Welfare of the Child.

Like the African Court on Human and Peoples' Rights, **the Human Rights Section of the Single Court is empowered to interpret and revise its judgments.**

In case of a dispute about the meaning or scope of a judgment, it is up to the Court to interpret it at the request of any party (art. 47 of the Statute of the Single Court).

The revision of a judgment can only be requested to the Court because of the discovery of a new fact of such nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, provided that such ignorance was not due to negligence (art. 48.1 of the Statute of the Single Court).

The application for revision shall be made within 6 months of the discovery of the new fact (art. 48.4). No application may be made after the lapse of 10 years from the date of the judgment (art. 48.5).

3. No reference to amicable settlement in the Statute of the Single Court

It is surprising to note that, contrary to the Protocole of the African Court on Human and Peoples' Rights, there is no reference in the Statute of the Single Court to the resolution of disputes through amicable settlement. This capacity does, however, seem essential in regional systems for the protection of human rights, as it occurs in the European Court of Human Rights, which often resorts to this procedure to resolve certain cases.

For example, in 2007, the European Court resolved 60 cases through amicable settlement.

One would think that Judges on the Single Court will remedy this omission by inserting the possibility of resolving disputes via amicable settlement into its internal procedures.

Ⓑ Entities eligible to file and application

The Statute of the Single Court identifies the entities entitled to file an application to the General Affairs Section and to the Human Rights Section.

Concerning the General Cases Section, only the following entities have the capacity to petition the Court:

- The States party to the Statute of the Single Court;
- the Assembly, the Parliament and other organs of the Union authorised by the Assembly;

- A staff member of the AU, on appeal, in a dispute led and within the limits and under the terms of conditions laid down in the Staff Rules and Regulations of the Union.

The following entities will be able to petition the Human Rights Section:

- States parties to the protocol of the Single Court
- The African Commission of Human and Peoples’ Rights
- The African Committee of Experts on the Rights and Welfare of the Child
- African intergovernmental organisations accredited to the Union or its organs

Note 1: By African intergovernmental organisations accredited to the Union or its organs, the Statute of the Single Court mainly has in mind Regional Economic Communities, such as the Economic Community of West African States or the Community of East African States.

- National human rights institutions.
- Individuals or relevant NGOs accredited to the African Union or to its organs, subject to the provision of article 8 of the Protocol.

Note 2: By designating individuals as entities entitled to petition the Human Rights Section, the Statute, like the Protocol of the African Court on Human and Peoples’ Rights, does not limit this privilege to persons who have been a victim of a human rights violation.

Note 3: There are certain Union organs, like the ECOSOC Committee, which offer accreditation procedures (or observer status) to NGOs. These procedures are often restricted to African NGOs, and are so restrictive (especially in respect to an NGO’s financial arrangements) that they only afford observer status to Gongos’ (governmental NGOs), leaving aside independent NGOs. A revision of the conditions of access to Union organs for NGOs is therefore necessary to open the Single to Court to independent NGOs.

Note 4: Conditions relating to the getting of Observer Status to the African Commission of Human and Peoples’ Rights are among some of the most progressive, in that they allow independent national and international NGOs to achieve this status fairly easily. But, until now, the Commission has been a conventional body (as prescribed by the African Charter) and is therefore not a Union organs. However, in 2008, the Commission requested a change in its status so that it could become a Union organs. Once this change of status has been realised, NGOs with Observer Status to the African Commission will be able to file an application with the Human Rights Section of the Single Court.

Note 5: As for the Protocol of the African Court on Human and Peoples' Rights, **the possibility for individuals and NGOs accredited to the Union or its organs to file an application with the Human Rights Section of the Single Court, is conditional on the prior acceptance of the State concerned.** Thus, according to article 8 of the Protocol, a State party may, from the moment of signing, through submission and registration of the instrument of ratification or accession, or at any other period after the coming into force of the Protocol of the Single Court, make a declaration accepting the competence of individuals and accredited NGOs to file an application before the Court which concerns the State in question. This clause in the Protocol is therefore similar to article 34.6 of the Protocol of the African Court on Human and Peoples' Rights, which imposes the same condition.

Entities entitled to file an application before the African Court on Human and Peoples' Rights will, therefore, also be able to petition the future Human Rights Section of the Single Court: the African Commission of Human and Peoples' Rights, the States party, African intergovernmental organisations, as well as NGOs and individuals, subject to prior acceptance by the States.

Nevertheless, the NGOs able to petition the African Court on Human and Peoples' Rights are those enjoying Observer Status to the African Commission of Human and Peoples' Rights, while it will be NGOs accredited to AU organs who will be able to petition the future Human Rights Section of the Single Court.

Furthermore two additional entities are entitled to petition the future Human Rights Section: national human rights institutions and the African Committee of Experts on the Rights and Welfare of the Child. The latter is the conventional institution charged with monitoring the application of the African Charter on the Rights and Welfare of the Child by the States party.



National human right institutions

National human rights institutions are national bodies for the promotion and protection of human rights. They play an advisory and consultative role with Governments in the areas of human rights, law and humanitarian action, and respect for the fundamental guarantees afforded to citizens in the exercise of their public freedoms.

© Proceedings

As for the African Court on Human and Peoples' Rights, all Single Court procedures are conducted in the official languages of the African Union: English; French; Arabic; Portuguese.

1. The application

All applications concerning human rights violations must be addressed, by written petition, to the Registrar of the Single Court (art. 34 of the Statute of the Single Court).

The application must indicate:

- the rights allegedly violated
- if possible, the clause or clauses of the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, the additional Protocol to the African Charter on the Rights of Women, or any other instrument relating to human rights ratified by the State party concerned, on which they are based.

There is little doubt that the Internal Regulations of the Single Court will further specify other elements that must appear in the application, in accordance with the requirements governing its admissibility.

Once the application has been received, the Registrar immediately notifies the State party concerned, any other party likely to be involved in the matter (the Commission; the State whose citizen has been the victim of a human rights violation) and the chairman of the Commission of the African Union.

2. Methods of procedure

The procedure before the Single Court is contradictory and, like the African Court on Human and Peoples' Rights, follows a written phase and a possible oral phase (hearings). Procedural details will be worked out in the Single Court's regulations, taking account of the complementarity between the Court and the other organs of the Union (article 38).

Article 39 states, nonetheless, that hearings will be public, unless the Court, at its own initiative or by request of the parties, decides that the session shall be closed.

3. Representation of individuals and NGOs before the Single Court

In an identical manner to the procedure before the African Court on Human and Peoples' Rights, individuals and NGOs entitled to file an application the Human Rights Section can seek assistance from, or be represented by, a person of their choice (article 36.5 of the Statute of the Single Court). It is made clear in article 52 that in cases where the interest of justice demands it, free legal aid can be granted to the author of an individual communication, according to conditions to be determined in Court regulations.

Furthermore, article 36.6 states that all parties, their representatives and possible witnesses whose presence is required at the Court bench, will enjoy the privileges and necessary immunities for the independent exercising of their function and the good conduct of the Court.

Ⓓ Examining the application

1. Provisional measures

In the same way as for the Protocol of the African Court on Human and Peoples' Rights, the Statute of the Single Court affords the Court the power if, on its own motion or on application by the parties, to indicate, if it considers that circumstances so require any provisional measures which ought to be taken to preserve the respective rights of the parties (art. 35 of the Statute of the Single Court).

2. Admissibility

To be admissible in the Human Rights Section of the Single Court, the application must involve a human rights violation committed by a State party after the date on which the relevant Statute came into force. If the application comes from an individual or an NGO accredited to the AU or one of its organs, it must concern a State party which has assented to Article 8 of the Protocol of the Single Court authorising such a referral.

On the other hand, article 34 of the Statute of the Single Court is practically silent on the specific conditions for the admissibility of an application to the Single Court. This further omission will no doubt also be taken into account in the Internal Regulations of the Court. There it may be stated, as in the Statute of the African Court on Human and Peoples' Rights, whether the petition will or will not:

- just be based on news originating in the mass media;
- be admissible no matter what the length of time elapsed since the human rights violation was committed;
- concern cases that have already been heard according to the principles of the United Nations Charter.

More surprisingly still, the Statute of the Single Court departs from that of the African Court on Human and Peoples' Rights in that it, in no way, stipulates the obligation to exhaust all avenues of domestic remedies before filing an application to the Human Rights Section. It would therefore not be necessary to assert one's rights before the Courts in one's own country before filing an application with the Human Rights Section.

The absence of this condition sets the Single Court apart from all other regional systems protecting human rights. Will this omission be put right by the judges in the future Internal Regulations of the Court, or is it deliberate? Preparatory work on the Statute of the Single Court does not provide an answer to this question.

Thus, contrary to the Protocol of the African Court on Human and Peoples' Rights, the Statute of the Single Court is virtually silent as to the conditions of admissibility for a petition before the Human Rights Section.

3. Judgments

As for the African Court on Human and Peoples' Rights, article 41 of the Statute of the Single Court states that in the case of a party not appearing in Court or refraining from asserting their rights, the Court will hear the matter according to its Statute and will bring down its ruling. In this event, it is further stated that the judgment can be appealed in the 90 days from when it was first notified, by the interested party. But unless otherwise instructed by the Court, this appeal does not suspend the execution of the judgment by default.

The decisions of the Court are taken by the majority of judges present (art. 42 of the Statute of the Single Court).

The Court delivers its judgment within 90 days of the conclusion of hearings (art. 43). All Court judgments must be reasoned.

Judgments are communicated to the parties before the Court and transmitted to member States and to the AU Commission and Executive Council.

Judgments are final (art. 46.2 of the Statute of the Single Court) and are obligatory for the parties concerned (art. 46.1).

Parties must comply with Court decisions. They must ensure judgments are executed within the timeframe set by the Court.

4. Reparations

According to article 45 of the Statute of the Single Court, the Court can, when it finds there has been a violation of human or peoples' rights, order all appropriate measures to remedy the situation, including the granting of a fair indemnity.

5. Follow-up on the execution of judgments

As for the African Court on Human and Peoples' Rights, it is the AU Executive Council which is in charge of monitoring the execution of rulings of the Single Court (art. 43.6 du Statute of the Single Court).


6. Sanctions in case of non-execution of judgments


If a party does not meet the obligations incumbent upon them by virtue of the judgment made by the Human Rights Section, the latter can refer the matter to the AU Assembly which can decide on what measures to take to give effect to a decision (art. 46.4 of the Statute of the Single Court).

Furthermore, article 57 of the Statute of the Single Court states that the Court must submit to the AU Assembly an annual report on its activities, in particular on cases in which a party has not carried out the decisions of the Court.

Then, the AU Assembly can impose sanctions, following clauses in article 23.2 of the Constitutive Act of the AU. This article sets out that a State can be subject to sanctions, particularly in regard to links with other member States in the area of transport and communication, and any other measure determined by the Assembly in the political and economic domains.

» Table of comparison between the African Court on Human and Peoples' Rights and the Human Rights Section of the future Single Court

|  | AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS | HUMAN RIGHTS SECTION OF THE SINGLE COURT |
|---|--|--|
| Composition | 11 judges | 8 judges |
| Jurisdiction | <ul style="list-style-type: none"> - Advisory opinion on any legal question on referral from AU agencies, AU organs States and organisations recognised by the AU - interpretation and application of the African Charter and any other relevant instrument concerning the protection of human rights ratified by a State party - amicable settlement of matters - interpretation and revision of rulings | <ul style="list-style-type: none"> - Advisory opinion on any legal question on referral from AU organs and financial institutions - interpretation and application of the African Charter and any other relevant instrument concerning the protection of human rights ratified by a State party - interpretation and revision of rulings |
| Right of referral | <ul style="list-style-type: none"> - The Commission - The State Party, which had lodged a complaint to the Commission - The State Party against which the complaint has been lodged at the Commission - The State Party whose citizen is a victim of human rights violation - African Intergovernmental Organizations - When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join. - NGOs with observer status before the Commission, and individuals, in accordance with article 34 (6) of this Protocol. | <ul style="list-style-type: none"> - States party to the Protocol of the Single Court - African Commission on Human and Peoples' Rights - African Committee of Experts on the Rights and Welfare of the Child - African intergovernmental organisations accredited to the Union or its organs - national human rights institutions - individuals and NGOs accredited to the Union and its organs, subject to the clauses in article 8 of the Protocol. |

|  | AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS | HUMAN RIGHTS SECTION OF THE SINGLE COURT |
|---|---|--|
| Conditions of admissibility | <p>To be examined, the petition must fulfill the following conditions:</p> <ol style="list-style-type: none"> 1. Indicates the identity of its source; 2. Is compatible with the Constitutive Act of the AU; 3. Does not contain slanderous language in respect of the State implicated, its institutions or the AU; 4. Does not limit itself exclusively to news originating in the mass media; 5. Comes after domestic remedies have been exhausted, if they exist, unless it's obvious that the procedure has been prolonged abnormally; 6. Be introduced in a reasonable time after the exhaustion of domestic remedies; 7. Does not concern cases which have been concluded either according to the principles of the United Nations Charter, the Constitutive Act of the AU or the clauses of the African Charter. | <p>The petition must indicate:</p> <ol style="list-style-type: none"> 1. the rights allegedly violated; 2. if possible, the clause or clauses of the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, the additional Protocol to the African Charter on women's rights in Africa, or any other instrument relating to human rights ratified by the State party concerned, on which it is based. <p>No other condition is specified in the Statute of the Single Court</p> |
| Possibility of provisional measures | Yes | Yes |
| Judgment | Obligatory | Obligatory |
| Follow-up to rulings | Executive Council of the AU | Executive Council of the AU |
| Sanction if ruling is not executed | Not mentioned in the Protocol | Yes, upon decision of the Conference |

3 How to take action?

- ➔ Call on States to ratify the Protocol and the Statute of the Single Court by assenting to article 8 of the Protocol allowing individuals and NGOs to directly petition the Court.
- ➔ Ensure that the AU provides the Court an adequate budget to fulfill its mandate.
- ➔ Ensure that the AU's Note Verbale is strictly taken into account in the process of nomination and election of judges to permit a good geographical distribution, an equitable representation of different African legal systems and an equal gender balance.
- ➔ Ensure that the Court adopt Internal Regulations which specify the procedural avenues before the Court, as well as the conditions of admissibility for a matter brought before the Human Rights Section of the Single Court.
- ➔ Ensure a faithful execution of Court judgments by States and the use by national tribunals of Court jurisprudence.



Protest against the
Civil Concorde Law
(Loi sur la concorde civile),
Algiers – Algeria

Article 4 of the African Charter

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

CONCLUSION

This guide gives some indispensable keys for understanding and using the African Court of Human and Peoples' Rights and the future African Court of Justice and Human Rights. It points out the crucial role NGOs and human rights defenders play in contributing to the efficiency, integrity and credibility of the African system for the protection of human rights. The following actions are therefore vital:

Information on the African system for the protection of human rights

- NGOs must mount information and awareness-raising campaigns alerting people on their rights and the steps to take before the Commission and the African Court (later the Single Court).
- NGOs must make known the decisions of the African Court, especially for the way they can influence national case law.

Promotion of the Court among African governments

- NGOs must urge States to ratify the Protocol creating the African Court on Human and Peoples' Rights, as well as that of the African Court of Justice and Human Rights.
- NGOs must urge States to recognise the jurisdiction of the African Court on Human and Peoples' Rights and that of the African Court of Justice and Human Rights so that they accept applications from individuals and NGOs.
- NGOs can also ensure that the African Court on Human and Peoples' Rights and the new African Court of Justice and Human Rights have an adequate operating budget.

Support of victims

- NGOs can file applications to the African Court (later the Single Court) in their name or on behalf of victims.
- NGOs help individuals and victims throughout the process. They inform them with their rights and, if required, afford them legal assistance.
- NGOs can help with the creation of a legal aid fund.

Ensuring the effectiveness of the Court

- NGOs play an important role in guaranteeing the independence of judges sitting at the African Court (later the Single Court).

- ➔ NGOs must help guarantee the transparency of the process of electing judges by the African Union, making sure there is: a fair gender balance, a geographical balance and a representation of the different legal systems among the judges.
- ➔ NGOs must ensure both provisional measures and judgments of the Court (later of the Single Court) are executed.
- ➔ NGOs must monitor the execution of judgments of the African Court (later the Single Court) by the States concerned.

Contribution to the development of jurisprudence

- ➔ NGOs must appear before the African Court (later the Single Court) to denounce violations of all the rights guaranteed by the African Charter and other relevant instruments relating to human rights.
- ➔ By way of advisory opinion, NGOs can contribute to an in-depth and positive interpretation of the whole gamut of rights that are protected.

HUMAN RIGHTS DEFENDERS QUOTES



“ The birth of the African Court is an event equally important as the entry into force of the International Criminal Court. It is a real hope for the African continent and for all persons who fight against impunity of human rights violations.”

Sidiki Kaba (Senegal), lawyer, FIDH Honorary President



“ Too often, national jurisdictions deny the victims’ rights to justice and redress. The African Court will help them. We call African States to ratify the Protocol on the Court and to make the declaration under its article 34.6 allowing victims and NGOs to directly access the Court. ”

Fatimata Mbaye (Mauritania), President of the Association mauritanienne des droits de l’Homme, FIDH Vice-President



Paul Nsapu, (Democratic Republic of Congo),
President of the Ligue des Electeurs, FIDH Secretary-General



“ It is important to sanction the States that violate the Human Rights Conventions they have ratified. States, like others, are not beyond the law. The African Court shall be strong and independent to recall States’ obligations. ”

Arnold Tsunga (Zimbabwe), Director of the International Commission of Jurists (ICJ) Africa Regional Programme, FIDH Vice-President



Dismas Kitenge (Democratic Republic of Congo),
President of Groupe Lotus, FIDH Vice-President.



“ Like the European and Inter-American Human Rights systems, Africa now has a legal instrument mandated to monitor the respect of human rights by States. NGOs must learn to know and use the African Court to better defend the rights of Africans. We will act.”

Mabassa Fall (Senegal), Professor, FIDH Representative before the African Union.

GLOSSARY¹

ADMISSIBILITY: A case is admissible when it deserves an in-depth examination of its merits. A petition must be regular in its form and well-founded as to its merits.

ADVERSARIAL PRINCIPLE: This is a fundamental procedural principle by which both parties are afforded the possibility of discussing, within the framework of a fair legal exchange, the claims and line of argument of the other party, or as envisaged by the judge.

ADVISORY OPINION: An opinion given on a point of law by a tribunal, following a judicial procedure, which is not a decision.

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS: A treaty body charged with ensuring the promotion and protection of rights guaranteed by the African Charter on Human and Peoples' Rights.

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS: Court charged with judging violations of rights enshrined in the African Charter of Human and Peoples' Rights and any other instrument relating to human rights by a State party, the Statute of which (the additional Protocol to the African Charter on the establishment of the African Court of Human and Peoples' Rights) came into force in January 2004.

AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS: Court, the Statute of which was adopted by the African Union (AU) in July 2008, and which will result in the merging, once it has come into force, of the African Court of Human and Peoples' Rights and the Court of Justice of the African Union.

AMICABLE SETTLEMENT: An amicable settlement stems from a common agreement. It is the opposite of terms such as judicial, jurisdictional or contentious. The parties themselves reach a settlement without recourse to a judge.

BURDEN OF PROOF: The need for the plaintiff to establish the facts on which the success of an allegation depends, when they are disputed.

COMMUNICATION: The term "communication" denotes a document submitted to the African Commission by a State party, NGO or an individual alleging human rights violations by a State. The communication must indicate the facts, the violations of the African Charter by the State concerned, and a request for compensation.

Definitions from Garner, Bryan A., /Black's law Dictionary, 1999, 7th Edition, West Group, St Paul, USA, and James, John S., Greenberg, Daniel, and Millbrook, Alexandra, / Stroud's Judicial Dictionary of Words and Phrases/, 1999, 5th Edition, Sweet & Maxwell, London, UK, and Bridges, Frank, /The Council of Europe French-English Legal Dictionary/, 1994, Council of Europe, Strasbourg, France.

COURT OF JUSTICE OF THE AFRICAN UNION: Judicial body of the African Union foreshadowed in its Constitutive Act, charged with ensuring the application of treaties, acts, rulings and directives of AU bodies by States party. This court will never see the light of day and will be integrated into the new African Court of Justice and Human Rights.

COURT REGISTRY: The Registrar assists the Court in the completion of its functions. He/she is responsible for registry organisation and activities, under the authority of the Court President.

DECISION: A decision is a generally used procedural term, to designate acts emanating from an administrative or jurisdictional authority.

EXHAUSTION OF DOMESTIC REMEDIES: The condition of the exhaustion of domestic remedies demands that before a complaint is brought before the Commission or Court, the person who believes that their rights have been violated, must attempt to obtain compensation before the highest level of national courts, so far as is possible

INTEREST TO ACT: This designates the importance of the plaintiff, rendering their complaint admissible (if the interest is sufficiently personal, direct and legitimate) and if this requirement is not met, then the plaintiff does not have the right to act (no interest, no action).

PROVISIONAL MEASURES: A provisional measure is a measure taken during a trial to resolve an urgent situation while awaiting a final ruling.

JUDGMENT: A judgment designates the jurisdictional decisions of courts of appeal and supreme courts. The African Court of Human and Peoples' Rights delivers judgments.

PETITION: A petition is a request lodged with a decision-making authority.

REFERRAL: The action of bringing before a body a question upon which it is called to make a ruling.

REGIONAL ECONOMIC COMMUNITIES: African sub-regional groupings, recognised by the African Union, aimed at economic and political integration, like the Economic Community of West African States (ECOWAS).

REPARATION: A reparation is a compensation or restitution payment for a wrong committed by the person or State responsible.

DEROGATORY CLAUSE: A clause which, within determined limits, suspends a normally applicable rule.

LIST OF ACRONYMS AND ABBREVIATIONS

| | |
|---------------------------------|--|
| EAC | East African Community |
| ECOWAS | Economic Community Of West African States |
| ECCAS | Economic Community of Central African States |
| CEN-SAD | Community of Sahel-Saharan States |
| REC | Regional Economic Community |
| African Charter | African Charter on Human and Peoples' Rights |
| CJ | Court of Justice of the African Union |
| COMESA | Common Market for Eastern and Southern Africa |
| African Commission | African Commission on Human and Peoples' Rights |
| African Court | African Court on Human and Peoples' Rights |
| Single Court | African Court of Justice and Human Rights |
| FIDH | International Federation for Human Rights |
| IGAD | Intergovernmental Authority for Development |
| NGO | Non-Governmental Organisations |
| OAS | Organisation of American States |
| OMCT | World Organisation Against Torture |
| OAU | Organisation of African Unity |
| Protocol | Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights |
| IRC | Interim Rules of Court |
| SADC | Southern African Development Community |
| AMU | Arab Maghreb Union |
| AU | African union |

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<http://www.fidh.org>

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<http://www.africa-union.org>

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www.achpr.org

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ANNEX I

African Charter on Human and Peoples' Rights

Adopted on 27 June 1981
Entered into force on 21 October 1986

PREAMBULE

The African States members of the Organisation of African Unity, parties to the present Convention entitled “African Charter on Human and Peoples’ Rights

Recalling Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of “a preliminary draft on an African Charter on Human and Peoples’ Rights, providing inter alia for the establishment of bodies to promote and protect human and peoples’ rights”;

Considering the Charter of the Organisation of African Unity, which stipulates that “freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples”;

Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples’ rights;

Recognizing on the one hand, that fundamental human rights stem from the attitudes of human beings, which justifies their international protection and on the other hand that the reality and respect of peoples’ rights should necessarily guarantee human rights;

Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone;

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 economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights; Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence,

and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, language, religion or political opinions;

Reaffirming their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organisation of African Unity, the Movement of Non-Aligned Countries and the United Nations;

Firmly convinced of their duty to promote and protect human and peoples' rights and freedoms and taking into account the importance traditionally attached to these rights and freedoms in Africa;

Have agreed as follows:

PART I: RIGHTS AND DUTIES

➔ Chapter I - HUMAN AND PEOPLES' RIGHTS

ARTICLE 1

The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

ARTICLE 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.

ARTICLE 3

1. Every individual shall be equal before the law
2. Every individual shall be entitled to equal protection of the law

ARTICLE 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

ARTICLE 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

ARTICLE 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

ARTICLE 7

1. Every individual shall have the right to have his cause heard. This comprises:
 - a. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
 - b. The right to be presumed innocent until proved guilty by a competent court or tribunal;
 - c. The right to defence, including the right to be defended by counsel of his choice;
 - d. The right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

ARTICLE 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed.

No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

ARTICLE 9

1 Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law.

ARTICLE 10

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association.

ARTICLE 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

ARTICLE 12

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.

3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

ARTICLE 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of the country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

ARTICLE 14

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

ARTICLE 15

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

ARTICLE 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick

ARTICLE 17

1. Every individual shall have the right to education
2. Every individual may freely take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

ARTICLE 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

ARTICLE 19

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

ARTICLE 20

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the State Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

ARTICLE 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.
4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity.
5. State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

ARTICLE 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

ARTICLE 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organisation of African Unity shall govern relations between States.
2. For the purpose of strengthening peace, solidarity and friendly relations, State Parties to the present Charter shall ensure that:
 - a. any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State Party to the present Charter;

- b. their territories shall not be used as bases for subversive or terrorist activities against the people of any other State Party to the present Charter.

ARTICLE 24

All peoples shall have the right to a general satisfactory environment favourable to their development.

ARTICLE 25

State Parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

ARTICLE 26

State Parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

⊕ Chapter II - DUTIES

ARTICLE 27

1. Every individual shall have duties towards his family and society, the State and other legally recognised communities and the international community.
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

ARTICLE 28

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

ARTICLE 29

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need.
2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is strengthened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to his defence in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;

7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;
 8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.
-

PART II: MEASURES OF SAFEGUARD

⊕ Chapter I - ESTABLISHMENT AND ORGANISATION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

ARTICLE 30

An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organisation of African Unity to promote human and peoples' rights and ensure their protection in Africa.

ARTICLE 31

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to person shavings legal experience.
2. The members of the Commission shall serve in their personal capacity.

ARTICLE 32

The Commission shall not include more than one national of the same State.

ARTICLE 33

The members of the Commission shall be elected by secret ballot by the Assembly of Heads of State and Government, from a list of persons nominated by the State Parties to the present Charter.

ARTICLE 34

Each State Party to the present Charter may not nominate more than two candidates. The candidates must have the nationality of one of the State Parties to the present Charter. When two candidates are nominated by a State, one of them may not be a national of that State.

ARTICLE 35

1. The Secretary General of the Organisation of African Unity shall invite State Parties to the present Charter at least four months before the elections to nominate candidates;
2. The Secretary General of the Organisation of African Unity shall make an alphabetical list of the persons thus nominated and communicate it to the Heads of State and Government at least one month before the elections.

ARTICLE 36

The members of the Commission shall be elected for a six year period and shall be eligible for re-election. However, the term of office of four of the members elected at

the first election shall terminate after two years and the term of office of three others, at the end of four years.

ARTICLE 37

Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organisation of African Unity shall draw lots to decide the names of those members referred to in Article 36.

ARTICLE 38

After their election, the members of the Commission shall make a solemn declaration to discharge their duties impartially and faithfully.

ARTICLE 39

1. In case of death or resignation of a member of the Commission, the Chairman of the Commission shall immediately inform the Secretary General of the Organisation of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.
2. If, in the unanimous opinion of other members of the Commission, a member has stopped discharging his duties for any reason other than a temporary absence, the Chairman of the Commission shall inform the Secretary General of the Organisation of African Unity, who shall then declare the seat vacant.
3. In each of the cases anticipated above, the Assembly of Heads of State and Government shall replace the member whose seat became vacant for the remaining period of his term, unless the period is less than six months.

ARTICLE 40

Every member of the Commission shall be in office until the date his successor assumes office.

ARTICLE 41

The Secretary General of the Organisation of African Unity shall appoint the Secretary of the Commission. He shall provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organisation of African Unity shall bear cost of the staff and services.

ARTICLE 42

1. The Commission shall elect its Chairman and Vice Chairman for a two-year period. They shall be eligible for re-election.
2. The Commission shall lay down its rules of procedure.
3. Seven members shall form the quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The Secretary General may attend the meetings of the Commission. He shall neither participate in deliberations nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.

ARTICLE 43

In discharging their duties, members of the Commission shall enjoy diplomatic privileges and immunities provided for in the General Convention on the Privileges and Immunities of the Organisation of African Unity.

ARTICLE 44

Provision shall be made for the emoluments and allowances of the members of the Commission in the Regular Budget of the Organisation of African Unity.

⊕ Chapter II - MANDATE OF THE COMMISSION

ARTICLE 45

The functions of the Commission shall be:

1. To promote human and peoples' rights and in particular:
 - a. to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organise seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights and, should the case arise, give its views or make recommendations to Governments.
 - b. to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation.
 - c. cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
3. Interpret all the provisions of the present Charter at the request of a State Party, an institution of the OAU or an African Organisation recognised by the OAU.
4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

⊕ Chapter III - PROCEDURE OF THE COMMISSION

ARTICLE 46

The Commission may resort to any appropriate method of investigation; it may hear from the Secretary General of the Organisation of African Unity or any other person capable of enlightening it.

ARTICLE 47

If a State Party to the present Charter has good reasons to believe that another State Party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter. This Communication shall also be addressed to the Secretary General of the OAU and to the Chairman of the Commission. Within three months of the receipt of the Communication, the State to which the Communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter. This should include as much as possible, relevant information relating to the laws and rules of procedure applied and applicable and the redress already given or course of action available.

ARTICLE 48

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

ARTICLE 49

Notwithstanding the provisions of Article 47, if a State Party to the present Charter considers that another State Party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organisation of African unity and the State concerned.

ARTICLE 50

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

ARTICLE 51

1. The Commission may ask the State concerned to provide it with all relevant information.
2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

ARTICLE 52

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of human and peoples' rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in Article 48, a report to the States concerned and communicated to the Assembly of Heads of State and Government.

ARTICLE 53

While transmitting its report, the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.

ARTICLE 54

The Commission shall submit to each Ordinary Session of the Assembly of Heads of State and Government a report on its activities.

ARTICLE 55

1. Before each Session, the Secretary of the Commission shall make a list of the Communications other than those of State Parties to the present Charter and transmit them to Members of the Commission, who shall indicate which Communications should be considered by the Commission.
2. A Communication shall be considered by the Commission if a simple majority of its members so decide.

ARTICLE 56

Communications relating to Human and Peoples' rights referred to in Article 55 received by the Commission, shall be considered if they:

1. Indicate their authors even if the latter requests anonymity,
2. Are compatible with the Charter of the Organisation of African Unity or with the present Charter,
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organisation of African Unity,
4. Are not based exclusively on news disseminated through the mass media,
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter, and
7. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organisation of African Unity or the provisions of the present Charter.

ARTICLE 57

Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

ARTICLE 58

1. When it appears after deliberations of the Commission that one or more Communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.
2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its finding and recommendations.
3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.

ARTICLE 59

1. All measures taken within the provisions of the present Chapter shall remain confidential until the Assembly of Heads of State and Government shall otherwise decide.
2. However the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government.
3. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

➡ Chapter IV - APPLICABLE PRINCIPLES

ARTICLE 60

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on Human and Peoples' Rights, the Charter of the United Nations, the Charter of the Organisation of African Unity, the Universal Declaration of Human Rights, other instruments adopted by

the United Nations and by African countries in the field of Human and Peoples' Rights, as well as from the provisions of various instruments adopted within the Specialised Agencies of the United Nations of which the Parties to the present Charter are members.

ARTICLE 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognised by Member States of the Organisation of African Unity, African practices consistent with international norms on Human and Peoples' Rights, customs generally accepted as law, general principles of law recognised by African States as well as legal precedents and doctrine.

ARTICLE 62

Each State Party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter.

ARTICLE 63

1. The present Charter shall be open to signature, ratification or adherence of the Member States of the Organisation of African Unity.
2. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary General of the Organisation of African Unity.
3. The present Charter shall come into force three months after the reception by the Secretary General of the instruments of ratification or adherence of a simple majority of the Member States of the Organisation of African Unity.

PART III: GENERAL PROVISIONS

ARTICLE 64

1. After the coming into force of the present Charter, members of the Commission shall be elected in accordance with the relevant Articles of the present Charter.
2. The Secretary General of the Organisation of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organisation within three months of the constitution of the Commission. Thereafter, the Commission shall be convened by its Chairman whenever necessary but at least once a year.

ARTICLE 65

For each of the States that will ratify or adhere to the present Charter after its coming into force, the Charter shall take effect three months after the date of the deposit by that State of the instrument of ratification or adherence.

ARTICLE 66

Special protocols or agreements may, if necessary, supplement the provisions of the present Charter.

ARTICLE 67

The Secretary General of the Organisation of African Unity shall inform members of the Organisation of the deposit of each instrument of ratification or adherence.

ARTICLE 68

The present Charter may be amended if a State Party makes a written request to that effect to the Secretary General of the Organisation of African Unity. The Assembly of Heads of State and Government may only consider the draft amendment after all the State Parties have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring State. The amendment shall be approved by a simple majority of the State Parties. It shall come into force for each State which has accepted it in accordance with its constitutional procedure three months after the Secretary General has received notice of the acceptance.

Adopted by the eighteenth Assembly of Heads of State and Government, June 1981 - Nairobi, Kenya

ANNEX II

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights

Adopted on 10 June 1998
Entered into force on 25 January 2004

The Member States of the Organization of African Unity hereinafter referred to as the OAU, States Parties to the African Charter on Human and Peoples' Rights,

Considering that the Charter of the Organization of African Unity recognizes that freedom, equality, justice, peace and dignity are essential objectives for the achievement of the legitimate aspirations of the African Peoples;

Noting that the African Charter on Human and Peoples' Rights reaffirms adherence to the principles of Human and Peoples' Rights, freedoms and duties contained in the declarations, conventions and other instruments adopted by the Organization of African Unity, and other international organizations;

Recognizing that the two-fold objective of the African Commission on Human and Peoples' Rights is to ensure on the one hand promotion and on the other protection of Human and Peoples' Rights, freedom and duties;

Recognizing further, the efforts of the African Charter on Human and Peoples' Rights in the promotion and protection of Human and Peoples' Rights since its inception in 1987;

Recalling resolution AHGéRes.230 (XXX) adopted by the Assembly of Heads of State and Government in June 1994 in Tunis, Tunisia, requesting the Secretary-General to convene a Government experts' meeting to ponder, in conjunction with the African Commission, over the means to enhance the efficiency of the African commission and to consider in particular the establishment of an African Court on Human and Peoples' Rights;

Noting the first and second Government legal experts' meeting held respectively in Cape Town, South Africa (September, 1995) and Nouakchott, Mauritania (April 1997), and the third Government Legal Experts meeting held in Addis Ababa, Ethiopia (December, 1997), which was enlarged to include Diplomats;

Firmly convinced that the attainment of the objectives of the African Charter on Human and Peoples' Rights requires the establishment of an African Court on Human and Peoples' Rights to complement and reinforce the functions of the African Commission on Human and Peoples' Rights.

Have agreed as follows:

ARTICLE 1: Establishment of the Court

There shall be established within the Organization of African Unity an African Court on Human and Peoples' Rights hereinafter referred to as "the Court", the organization, jurisdiction and functioning of which shall be governed by the present Protocol.

ARTICLE 2: Relationship between the Court and the Commission

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 3: Jurisdiction

The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

ARTICLE 4: Advisory opinions

At the request of a Member State of the OAU, the OAU, any of its organs, or any African organization recognized by the OAU, the Court may provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided

that the subject matter of the opinion is not related to a matter being examined by the Commission. The Court shall give reasons for its advisory opinions provided that every judge shall be entitled to deliver a separate or dissenting decision.

ARTICLE 5: Access to the Court

the following are entitled to submit cases to the Court:

- The Commission
- The State Party, which had lodged a complaint to the Commission
- The State Party against which the complaint has been lodged at the Commission
- The State Party whose citizen is a victim of human rights violation
- African Intergovernmental Organizations
- When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join.

The Court may entitle relevant Non Governmental organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34 (6) of this Protocol.

ARTICLE 6: Admissibility of cases

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.

The Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter.

The Court may consider cases or transfer them to the Commission.

ARTICLE 7: Sources of law

The Court shall apply the provision of the Charter and any other relevant human rights instruments ratified by the States concerned.

ARTICLE 8: Consideration of cases

The Rules of Procedure of the Court shall lay down the detailed conditions under which the Court shall consider cases brought before it, bearing in mind the complementarities between the Commission and the Court.

ARTICLE 9: Amicable settlement

The Court may try to reach an amicable settlement in a case pending before it in accordance with the provisions of the Charter.

ARTICLE 10: Hearings and representation

The Court shall conduct its proceedings in public. The Court may, however, conduct proceedings in camera as may be provided for in the Rules of Procedure.

Any party to a case shall be entitled to be represented by a legal representative of the party's choice. Free legal representation may be provided where the interests of justice so require.

Any person, witness or representative of the parties, who appears before the Court, shall enjoy protection and all facilities, in accordance with international law, necessary for the discharging of their functions, tasks and duties in relation to the Court.

ARTICLE 11: Composition

The Court shall consist of eleven judges, nationals of Member States of the OAU, elected in an individual capacity from among jurists of high moral character and of recognized practical, judicial or academic competence and experience in the field of human and peoples' rights.

No two judges shall be nationals of the same State.

ARTICLE 12: Nominations

States Parties to the Protocol may each propose up to three candidates, at least two of whom shall be nationals of that State.

Due consideration shall be given to adequate gender representation in nomination process.

ARTICLE 13: List of candidates

Upon entry into force of this Protocol, the Secretary-general of the OAU shall request each State Party to the Protocol to present, within ninety (90) days of such a request, its nominees for the office of judge of the Court.

The Secretary-General of the OAU shall prepare a list in alphabetical order of the candidates nominated and transmit it to the Member States of the OAU at least thirty days prior to the next session of the Assembly of Heads of State and Government of the OAU hereinafter referred to as "the Assembly".

ARTICLE 14: Elections

The judges of the Court shall be elected by secret ballot by the Assembly from the list referred to in Article 13 (2) of the present Protocol.

The Assembly shall ensure that in the Court as a whole there is representation of the main regions of Africa and of their principal legal traditions.

In the election of the judges, the Assembly shall ensure that there is adequate gender representation.

ARTICLE 15: Term of office

The judges of the Court shall be elected for a period of six years and may be re-elected only once. The terms of four judges elected at the first election shall expire at the end of two years, and the terms of four more judges shall expire at the end of four years.

The judges whose terms are to expire at the end of the initial periods of two and four years shall be chosen by lot to be drawn by the Secretary-General of the OAU immediately after the first election has been completed.

A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of the predecessor's term.

All judges except the President shall perform their functions on a part-time basis.

However, the Assembly may change this arrangement, as it deems appropriate.

ARTICLE 16: Oath of office

After their election, the judges of the Court shall make a solemn declaration to discharge their duties impartially and faithfully.

ARTICLE 17: Independence

The independence of the judges shall be fully ensured in accordance with international law.

No judge may hear any case in which the same judge has previously taken part as agent, counsel or advocate for one of the parties or as a member of a national or international court or a commission of enquiry or in any other capacity. Any doubt on this point shall be settled by decision of the Court.

The judges of the Court shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law.

At no time shall the judges of the Court be held liable for any decision or opinion issued in the exercise of their functions.

ARTICLE 18: Incompatibility

The position of judge of the court is incompatible with any activity that might interfere with the independence or impartiality of such a judge or the demands of the office as determined in the Rules of Procedure of the Court.

ARTICLE 19: Cessation of office

A judge shall not be suspended or removed from office unless, by the unanimous decision of the other judges of the Court, the judge concerned has been found to be no longer fulfilling the required conditions to be a judge of the Court.

Such a decision of the Court shall become final unless it is set aside by the Assembly at its next session.

ARTICLE 20: Vacancies

In case of death or resignation of a judge of the Court, the President of the Court shall immediately inform the Secretary General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.

The Assembly shall replace the judge whose office became vacant unless the remaining period of the term is less than one hundred and eighty (180) days.

The same procedure and considerations as set out in Articles 12, 13 and 14 shall be followed for the filling of vacancies.

ARTICLE 21: Presidency of the Court

The Court shall elect its President and one Vice-President for a period of two years.

They may be re-elected only once.

The President shall perform judicial functions on a full-time basis and shall reside at the seat of the Court.

The functions of the President and the Vice-President shall be set out in the Rules of Procedure of the Court.

ARTICLE 22: Exclusion

If the judge is a national of any State, which is a party to a case, submitted to the Court, that judge shall not hear the case.

ARTICLE 23: Quorum

The Court shall examine cases brought before it, if it has a quorum of at least seven judges.

ARTICLE 24: Registry of the Court

The Court shall appoint its own Registrar and other staff of the registry from among nationals of Member States of the OAU according to the Rules of Procedure. The office and residence of the Registrar shall be at the place where the Court has its seat.

ARTICLE 25: Seat of the Court

The Court shall have its seat at the place determined by the Assembly from among States parties to this Protocol. However, it may convene in the territory of any Member State of the OAU when the majority of the Court considers it desirable, and with the prior consent of the State concerned.

The seat of the Court may be changed by the Assembly after due consultation with the Court.

ARTICLE 26: Evidence

The Court shall hear submissions by all parties and if deemed necessary, hold an enquiry. The States concerned shall assist by providing relevant facilities for the efficient handling of the case.

The Court may receive written and oral evidence including expert testimony and shall make its decision on the basis of such evidence.

ARTICLE 27: Findings

If the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.

ARTICLE 28: Judgment

The Court shall render its judgment within ninety-(90)-days of having completed its deliberations.

The judgment of the Court decided by majority shall be final and not subject to appeal.

Without prejudice to sub-article 2 above, the Court may review its decision in the light of new evidence under conditions to be set out in the Rules of Procedure.

The Court may interpret its own decision.

The judgment of the Court shall be read in open court, due notice having been given to the parties.

Reasons shall be given for the judgment of the Court.

If the judgment of the court does not represent, in whole or in part, the unanimous decision of the judges, any judge shall be entitled to deliver a separate or dissenting opinion.

ARTICLE 29: Notification of judgment

The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the Member States of the OAU and the Commission.

The Council of Ministers shall also be notified of the judgment and shall monitor its execution on behalf of the Assembly.

ARTICLE 30: Execution of judgment

The States Parties to the present Protocol undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution.

ARTICLE 31: Report

The Court shall submit to each regular session of the Assembly, a report on its work during the previous year. The report shall specify, in particular, the cases in which a State has not complied with the Court's judgment.

ARTICLE 32: Budget

Expenses of the Court, emoluments and allowances for judges and the budget of its registry, shall be determined and borne by the OAU, in accordance with criteria laid down by the OAU in consultation with the Court.

ARTICLE 33: Rules of procedure

The Court shall draw up its Rules and determine its own procedures. The Court shall consult the Commission as appropriate.

ARTICLE 34: Ratification

This Protocol shall be open for signature and ratification or accession by any State Party to the Charter.

The instrument of ratification or accession to the present Protocol shall be deposited with the Secretary-General of the OAU.

The Protocol shall come into force thirty days after fifteen instruments of ratification or accession have been deposited.

For any State Party ratifying or acceding subsequently, the present Protocol shall come into force in respect of that State on the date of the deposit of its instrument of ratification or accession.

The Secretary-General of the OAU shall inform all Member States of the entry into force of the present Protocol.

At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol. The Court shall not receive any petition under article 5 (3) involving a State Party, which has not made such a declaration.

Declarations made under sub-article (6) above shall be deposited with the Secretary-General, who shall transmit copies thereof to the State parties.

ARTICLE 35: Amendments

The present Protocol may be amended if a State Party to the Protocol makes a written request to that effect to the Secretary-General of the OAU. The Assembly may adopt, by simple majority, the draft amendment after all the State Parties to the present Protocol have been duly informed of it and the Court has given its opinion on the amendment.

The Court shall also be entitled to propose such amendments to the present Protocol, as it may deem necessary, through the Secretary-General of the OAU.

The amendment shall come into force for each State Party, which has accepted it thirty days after the Secretary-General of the OAU has received notice of the acceptance.

ANNEX III

Excerpts from the Interim Rules of the African Court on Human and Peoples' Rights

PART III. JURISDICTION

ARTICLE 26 - Jurisdiction

1. Pursuant to the Protocol, the Court shall have jurisdiction:
 - a) to deal with all cases and all disputes submitted to it concerning interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the States concerned;
 - b) to render an advisory opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject of the opinion is not related to a matter being examined by the Commission;
 - c) to promote amicable settlement in cases pending before it in accordance with the provisions of the Charter;
 - d) to interpret a judgment rendered by itself; and
 - e) to review its own judgment in light of new evidence in conformity with Rule 67 of these Rules.
 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.
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PART IV. CONTENTIOUS PROCEDURE

⊕ Chapter I - GENERAL PROVISIONS

RULE 27: Phases of Proceedings

1. The procedure before the Court shall consist of written, and if necessary, oral proceedings.
2. The written procedure shall consist of the communication to the Court, the parties, as well as the Commission, as appropriate, of applications, statements of the case, defences and observations and of replies if any, as well as all papers and documents in support, or of certified copies thereof.
3. The oral proceedings shall consist of a hearing by the Court of representatives of parties, witnesses, experts, or such other persons as the Court may decide to hear.

RULE 28: Representation

Every party to a case shall be entitled to be represented or to be assisted by legal counsel and/or by any other person of the party's choice.

RULE 29: Relations between the Court and the Commission

1. In a case brought before the Court by the Commission under article 5(1)(a) of the Protocol, the Commission shall, together with its report, also transmit to the Court all

such documents that are pertinent to the proceedings. The Court may, if need be, hear one or several members of the Commission.

2. Where pursuant to article 6 (1) of the Protocol, the Court decides to solicit the opinion of the Commission on the admissibility of a case, it shall transmit to the Commission a copy of the pertinent sections of the case file indicating the time limit within which it wishes to receive the opinion.
3. Where the Court decides to transfer a case to the Commission pursuant to article 6 (3) of the Protocol, it shall transmit to the Commission a copy of the entire pleadings so far filed in the matter.
4. In accordance with article 33 of the Protocol, the Court shall consult the Commission, as appropriate, on all procedural issues relating to the relationship between the two institutions.

RULE 30: Legal Costs

Unless otherwise decided by the Court, each party shall bear its own costs.

RULE 31: Legal Assistance

Pursuant to article 10 (2) of the Protocol, the Court may, in the interest of justice and within the limits of the financial resources available, decide to provide free legal representation and/or legal assistance to any party.

RULE 32: Cooperation of the States

1. The States Parties to a case have the obligation to cooperate so as to ensure that all notices, communications or summonses addressed to persons residing in their territory or falling under their jurisdiction are duly executed.
2. The same rule shall apply to any proceeding that the Court decides to conduct or order in the territory of a State Party to a case.
3. When the performance of any of the measures referred to in the preceding paragraphs requires the cooperation of any other State, the President shall request the government concerned to provide the requisite assistance.

➔ Chapter II - WRITTEN PROCEEDINGS

RULE 33: Access to the Court

1. Pursuant to the provisions of articles 5 and 34 (6) of the Protocol, the following are entitled to submit cases to the Court:
 - a) The Commission;
 - b) The State Party which has lodged an application to the Commission;
 - c) The State Party against which an application has been lodged at the Commission;
 - d) The State Party whose citizen is a victim of a human rights violation;
 - e) An African Intergovernmental Organization;
 - f) An individual or a Non-Governmental Organization which has observer status before the Commission provided the requirements of article 34(6) of the Protocol are met.
2. In accordance with article 5(2) of the Protocol, a State Party which has an interest in a case may submit a request to the Court to be permitted to join in accordance with the procedure established in Rule 53 of these Rules.

RULE 34: Commencement of Proceedings

1. The Applicant shall file in the Court Registry, one (1) copy of the application containing a summary of the facts of the case and of the evidence intended to be adduced. The said application shall be signed by the Applicant or by his/her representative.
The Registrar shall acknowledge receipt of the application.
2. Any application addressed to the Court shall give clear particulars of the Applicant and of the party or parties against whom such application has been brought. The application shall also contain the names and addresses of the persons designated as the Applicant's representatives.
3. The application shall be written in one of the official languages of the Court, and the original forwarded to the Court Registry.
4. The application shall specify the alleged violation, evidence of exhaustion of local remedies or of the inordinate delay of such local remedies as well as the orders or the injunctions sought. All applications filed by individuals and Non-Governmental Organizations shall meet the other admissibility conditions as set out in article 56 of the Charter and Rule 40 of these Rules.
5. Any Applicant who on his/her own behalf or on behalf of the victim wishes to be granted reparation pursuant to article 27(1) of the Protocol shall include the request for the reparation in the application in accordance with sub-rule 4 above. The amount of the reparation and the evidence relating thereto may be submitted subsequently within the time limit set by the Court.
6. The Registrar shall effect service of the application on the other party by registered post together with a request to acknowledge receipt.

RULE 35: Transmission of Applications

1. Upon the receipt of an application filed in accordance with article 5(1) and (3) of the Protocol, the Registrar shall transmit a copy thereof together with any annexes, to the President and other Members of the Court.
2. Unless otherwise decided by the Court, the Registrar shall forward copies of the application where applicable to the:
 - a) State Party against which the application has been filed, in accordance with Rule 34 (6) of these Rules;
 - b) State Party whose citizen is a victim of the alleged violation;
 - c) State Party against which an application has been filed at the Commission;
 - d) Commission;
 - e) Individual or legal entity or the Non-Governmental Organization that has filed an application at the Commission by virtue of article 55 of the Charter.
3. The Registrar shall also inform the Chairperson of the African Union Commission and through him/her, the Executive Council of the African Union, and all the other States Parties to the Protocol, of the filing of the application;
4. In forwarding applications as stipulated in sub-rules 2 and 3 of this Rule, the Registrar shall invite:
 - a) the Respondent State Party to indicate, within thirty (30) days of receipt of the application, the names and addresses of its representatives;
 - b) any other State Party that may wish to intervene in the proceedings under article 5(2) of the Protocol, to inform the Registrar accordingly, within the time stipulated in Rule 53;

- c) if applicable, the Commission to forward to the Registrar, within thirty (30) days the names and addresses of its representatives;
- d) if applicable, the individual or legal entity or the Non-Governmental Organization that has filed an application at the Commission under article 55 of the Charter, to set out, within thirty (30) days, if he/she/it wishes to participate in the proceedings before the Court and in the affirmative, the names and addresses of his/her/its representatives.

RULE 36: Registration and Transmission of Pleadings

1. All pleadings received by the Registrar shall be registered and a copy thereof transmitted to the other party.
2. The Registrar shall acknowledge receipt of all such pleadings.

RULE 37: Time Limit for Reply

The State Party against which an application has been filed shall respond thereto within sixty (60) days provided that the Court may, if the need arises, grant an extension of time.

RULE 38: Dismissal of Application without Merit

Whenever the Court finds that there is no merit in an application, it shall dismiss such application giving reasons for its decision, and may not have to summon the parties to the hearing, provided its decision and the reasons thereof are communicated to all the parties.

RULE 39: Preliminary Examination of the Competence of the Court and of Admissibility of Applications

1. The Court shall conduct preliminary examination of its jurisdiction and the admissibility of the application in accordance with articles 50 and 56 of the Charter, and Rule 40 of these Rules.
2. Pursuant to sub-rule 1 of this Rule, the Court may request the parties to submit any factual information, documents or other material considered by the Court to be relevant.

RULE 40: Conditions for Admissibility of Applications

Pursuant to the provisions of article 56 of the Charter to which article 6(2) of the Protocol refers, applications to the Court shall comply with the following conditions:

1. disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
2. comply with the Constitutive Act of the Union and the Charter;
3. not contain any disparaging or insulting language;
4. not be based exclusively on news disseminated through the mass media;
5. be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
6. be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and
7. not raise any matter or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union.

RULE 41: Filing of Documents

The Court may, before the commencement of or during the course of the proceedings, call upon the parties to file any pertinent document or to provide any relevant explanation. The Court shall formally note any refusal to comply.

➔ Chapter III - ORAL PROCEEDINGS**RULE 42: Fixing of the Date of Hearing**

When the case is ready for hearing, the President shall, after consulting the parties or the representatives of the Commission, if applicable, fix the date of the hearing. The Registrar shall notify them accordingly.

RULE 43: Public Hearings

1. Cases shall be heard in open court.
2. However, the Court may, of its own accord or at the request of a party, hold its hearings in camera if, in its opinion, it is in the interest of public morality, safety or public order to do so.
3. Whenever the Court orders that any proceedings shall not be conducted in public, the Court shall give one or more of the reasons specified in sub-rule 2 of this Rule as the basis of its decision. The parties or their legal representatives shall be permitted to be present and heard in camera.

RULE 44: Conduct of Hearings

The Presiding Judge shall conduct the hearing. He/she shall prescribe the order in which the representatives of the parties and where applicable, the representatives of the Commission, are to be heard.

RULE 45: Measures for Taking Evidence

1. The Court may, of its own accord, or at the request of a party, or the representatives of the Commission, where applicable, obtain any evidence which in its opinion may provide clarification of the facts of a case. The Court may, inter alia, decide to hear as a witness or expert or in any other capacity any person whose evidence, assertions or statements it deems likely to assist it in carrying out its task.
2. The Court may ask any person or institution of its choice to obtain information, express an opinion or submit a report to it on any specific point.
3. The Court may, at any time during the proceedings, assign one or more of its Members to conduct an enquiry, carry out a visit to the scene or take evidence in any other manner.

RULE 46: Witnesses, Experts and Other Persons

1. The Registrar shall issue summons to any witness, expert or other person the Court decides to hear.
2. After verification of his/her identity and before giving evidence, every witness shall take the following oath or make the following solemn declaration: "I swear/solemnly declare upon my honour and conscience that I will tell the truth, the whole truth and nothing but the truth."

The oath or solemn declaration shall be recorded.

3. After verification of his/her identity and before carrying out his/her task, every expert shall take the following oath or make the following solemn declaration: “I swear/solemnly declare that I will discharge my functions as expert on my honour and conscience.”

The oath or solemn declaration shall be recorded.

4. The oath or declaration referred to in sub-rules 2 and 3 of this Rule shall be taken or made before the Court.
5. The Court shall rule on any challenge arising from an objection to a witness or expert.

RULE 47: Questions Put During Hearings

1. The Presiding Judge, or any Judge, may put questions to the representatives of the parties, and if applicable, the representative of the Commission, the witnesses, experts, and other persons appearing before the Court.
2. The witnesses, experts and other persons who appear before the Court may be examined by the representatives of the parties, and if applicable by the representatives of the Commission. The persons referred to in this paragraph may be subjected to cross-examination, followed by a re- examination.

RULE 48: Verbatim Record of Hearings

1. The Registrar shall be responsible for making a verbatim record of each hearing. The verbatim record shall include the:
 - a) composition of the Court at the hearing;
 - b) list of the persons appearing before the Court;
 - c) text of statements made, questions put and answers given;
 - d) text of any decision delivered by the Court during the hearing.
2. The representatives of the parties, and the representatives of the Commission, if applicable, shall receive the verbatim record of their arguments, statements or evidence, in order that they may, under the responsibility of the Registrar, make corrections, provided that such corrections do not affect the substance of what was said. The Registrar shall fix the time-limits granted for this purpose.
3. Once corrected, the verbatim record shall be signed by the President and the Registrar; and shall then constitute a true reflection of the proceedings.

RULE 49: Recording of Hearings

The proceedings of the hearing shall be recorded and such recordings shall be conserved in the archives of the Court.

RULE 50: New Evidence

No party may file additional evidence after the closure of pleadings except by leave of Court.

➡ Chapter IV - SPECIFIC PROCEDURES

RULE 51: Interim Measures

1. Pursuant to article 27(2) of the Protocol, the Court may, at the request of a party, the Commission or on its own accord, prescribe to the parties any interim measure which it deems necessary to adopt in the interest of the parties or of justice.

2. In case of extreme urgency, the President may convene an extraordinary session of the Court to decide on measures to be taken. He/she may, in this regard, and by all reliable means, enlist the views of the Members not present.
3. The Court shall duly notify the parties to the case, the Commission, the Assembly, the Executive Council and the African Union Commission of the aforesaid interim measures.
4. In the Annual Report submitted by the Court to the Assembly pursuant to article 31 of the Protocol, the Court shall disclose the interim measures it ordered during the period under review. In the event of non-compliance with these measures by the State concerned, the Court shall make all such recommendations as it deems appropriate.
5. The Court may invite the parties to provide it with information on any issue relating to implementation of the interim measures adopted by it.

RULE 52: Preliminary Objections

1. Any party served with the application may raise preliminary objections to any part or parts thereof.
2. Preliminary objections shall be raised at the latest before the date fixed by the Court for the filing of the first set of pleadings to be submitted by the party who intends to raise the objections.
3. The submission of preliminary objections shall not cause the proceedings on the substantive case to be suspended unless the Court so decides. In any case, the Court shall rule on the objections or incorporate its ruling in its decision on the substantive case.
4. Every preliminary objection shall set out the facts and the law on which the objection is based as well as the submissions and a list of the documents in support, if any; it shall also specify any evidence which the party intends to produce. Certified copies of all supporting documents shall be attached.
5. Where a party raises a preliminary objection, the Court shall invite the other party to submit, its written observations in reply before ruling on the preliminary objection, the Court may decide to invite the parties to submit further observations in writing.
6. Before deciding on the preliminary objection, the Court may, on the request of a party, or of its own accord, decide to hold a hearing if it deems it necessary.
7. The Court shall give reasons for its ruling on the preliminary objection.

RULE 53: Intervention

1. An application for leave to intervene, in accordance with article 5 (2) of the Protocol shall be filed as soon as possible, and, in any case, before the closure of the written proceedings.
2. The application shall state the names of the Applicant's representatives.
It shall specify the case to which it relates, and shall set out:
 - a) the legal interest which, in the view of the State applying to intervene, has been affected;
 - b) the precise object of the intervention; and
 - c) the basis of the jurisdiction which, in the view of the State applying to intervene, exists between it and the parties to the case.
3. The application shall be accompanied by a list of the supporting documents attached thereto and shall be duly reasoned.
4. Certified copies of the application for leave to intervene shall be communicated forthwith to the parties to the case, who shall be entitled to submit their written observa-

tions within a time-limit to be fixed by the Court, or by the President if the Court is not in session. The Registrar shall also transmit copies of the application to any other concerned entity mentioned in Rule 35 of these Rules.

5. If the Court rules that the application is admissible, it shall fix a time limit within which the intervening State shall submit its written observations. Such observations shall be forwarded by the Registrar to the parties to the case, who shall be entitled to file written observations in reply within the timeframe fixed by the Court.
6. The intervening State shall be entitled, in the course of the oral proceedings, if any, to present its submissions in respect of the subject of the intervention.

RULE 54: Joinder of Cases and Pleadings

The Court may at any stage of the pleadings either on its own volition or in response to an application by any of the parties, order the joinder of interrelated cases and pleadings where it deems it appropriate, both in fact and in law.

RULE 55: Judgments in Default

1. Whenever a party does not appear before the Court, or fails to defend its case, the Court may, on the application of the other party, pass judgement in default after it has satisfied itself that the defaulting party has been duly served with the application and all other documents pertinent to the proceedings.
2. Before acceding to the application of the party before it, the Court shall satisfy itself that it has jurisdiction in the case, and that the application is admissible and well founded in fact and in law.

RULE 56: Out-of-Court Settlement

1. Parties to a case may settle their dispute amicably at any time before the Court gives its judgment.
2. Any settlement between the parties shall be reported to the Court, which shall render judgment limited to a brief statement on the facts and the solution adopted.
3. However, the Court may, having regard to its discretion under the Protocol, decide to proceed with a case notwithstanding the notice of such amicable settlement.

RULE 5: Amicable Settlement Under the Auspices of the Court

1. Pursuant to article 9 of the Protocol, the Court may promote amicable settlement of cases pending before it. To that end, it may contact the parties and take appropriate measures to facilitate amicable settlement of the dispute, based on respect for human and peoples' rights as recognized by the Charter.
2. Any negotiations entered into with a view to reaching an amicable settlement shall be confidential and without prejudice to the parties' observations in the proceedings before the Court. No written or oral communication and no offer of concession made as part of such negotiations shall be mentioned or referred to in the proceedings before the Court.
3. In the event of an amicable settlement of a case, the Court shall render a judgment, which shall be limited to a brief statement of the facts and of the solution adopted.
4. However, pursuant to its discretion under the Protocol, the Court may decide to proceed with the hearing of the application notwithstanding the notice of amicable settlement.

RULE 58: Discontinuance

Where an Applicant notifies the Registrar of its intention not to proceed with the case, the Court shall take due note thereof, and shall strike the application off the Court's cause list. If at the date of receipt by the Registry of the notice of the intention not to proceed with the case, the Respondent State has already taken measures to proceed with the case, its consent shall be required.

➔ Chapter V - JUDGMENTS OF THE COURT**RULE 59: Decision of the Court**

1. Upon the conclusion of the hearing of a case, the Court shall close the proceedings for its deliberations and judgment.
2. The decision of the Court shall be rendered by the Court within ninety (90) days from the date of completion of the deliberations.

RULE 60: Court's Deliberations

1. The deliberations of the Court shall be held in camera and shall remain confidential.
2. Only Judges who were Members of the Panel that heard the case shall participate in the deliberations of the Court.
3. The decision of the Court shall be made by a majority of the Members of the Panel present.
4. In the event of a tied vote, the Presiding Judge shall have a casting vote.
5. Any Member of the Court who heard the case may deliver a separate or dissenting opinion.

RULE 61: Judgment

1. In accordance with article 28(6) of the Protocol, every judgment of the Court shall state the reasons on which it is based.
2. The judgment shall indicate the names of Judges who have taken part in the deliberations.
3. The judgment shall be signed by all the Judges and certified by the Presiding Judge and the Registrar. It shall be read in open Court, due notice having been given to the parties.
4. Subject to article 28(3) of the Protocol, the judgment of the Court shall be final.
5. The judgment of the Court shall be binding on the parties.

RULE 62: Contents of Judgments

A judgment shall contain:

- a) the date on which it was delivered;
- b) the names of the parties;
- c) the names of the representatives of the parties;
- d) a summary of the proceedings;
- e) the submissions of the parties, and as may be required, those of the Commission's representatives;
- f) a statement of the facts of the case;
- g) the legal grounds;
- h) the operative provisions of the judgment;
- i) the decision, if any, on costs;

- j) the number of Judges constituting the majority;
- k) a statement as to the authentic text of the judgment.

RULE 63: Judgment on Reparation

The Court shall rule on the request for the reparation, submitted in accordance with Rule 34 (5) of these Rules, by the same decision establishing the violation of a human and peoples' right or, if the circumstances so require, by a separate decision.

RULE 64: Notification of Judgment

1. In accordance with article 29 of the Protocol, the Court shall duly notify the parties to the case, the Commission, the Assembly, the African Union Commission and any person or institution concerned of the judgment by certified true copies thereof.
2. The Executive Council shall also be notified of the judgment and shall monitor its execution on behalf of the Assembly.
3. The original copy of the judgment, duly signed and sealed, shall be conserved in the archives of the Court.

RULE 65: Publication of Judgments

Final judgments of the Court shall be published in accordance with Rule 25(2)(i), under the authority of the Registrar.

RULE 66: Application for Interpretation of a Judgment

1. Pursuant to article 28(4) of the Protocol, any party may, for the purpose of executing a judgment, apply to the Court for interpretation of the judgment within twelve months from the date the judgment was delivered unless the Court, in the interest of justice, decides otherwise.
2. The application shall be filed in the Registry. It shall state clearly the point or points in the operative provisions of the judgment on which interpretation is required.
3. Upon the instruction of the Court, the Registrar shall transmit the application for interpretation to any other parties concerned and shall invite them to submit their written comments, if any, within the time limit established by the President. The President shall also fix the date for the hearing of the application, in the event the Court decides to hold one. The Court's decision shall take the form of a judgment.
4. When considering an application for interpretation, the Court shall be composed of the same Judges who delivered judgment on the substantive case. However, where it is not possible for any Judge to participate in the proceedings, such Judge shall, if necessary, be replaced.
5. An application for interpretation shall not stay the execution of the judgment unless the Court decides otherwise.

RULE 67: Request for Review of a Judgment

1. Pursuant to article 28(3) of the Protocol, a party may apply to the Court to review its judgment in the event of the discovery of evidence, which was not within the knowledge of the party at the time the judgment was delivered. Such application shall be filed within six (6) months after that party acquired knowledge of the evidence so discovered.
2. The application shall specify the judgment in respect of which revision is requested, contain the information necessary to show that the conditions laid down in sub-rule

- 1 of this Rule have been met, and shall be accompanied by a copy of all relevant supporting documents. The application as well as the supporting documents shall be filed in the Registry.
3. Upon the instructions of the Court, the Registrar shall transmit a copy of the application to any other party/parties concerned and shall invite them to submit written observations, if any, within the time limit set by the President. The President shall also fix the date of the hearing should the Court decide to hold one. The Court shall rule on the admissibility of such application and its decision shall take the form of a judgment.
 4. If the application is declared admissible, the Court shall, after consultation with the parties, determine the time limit for all future proceedings on the substance of the application it may deem necessary.
 5. An application for review shall not stay the execution of a judgment unless the Court decides otherwise.
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PART V: ADVISORY PROCEDURE

RULE 68: Request for Advisory Opinion

1. Requests for advisory opinions pursuant to article 4 of the Protocol may be filed with the Court by a Member State, by the African Union, by any organ of the African Union or by an African Organization recognized by the African Union. The request shall be on legal matters and shall state with precision the specific questions on which the opinion of the Court is being sought.
2. Any request for advisory opinion shall specify the provisions of the Charter or of any other international human rights instrument in respect of which the advisory opinion is being sought, the circumstances giving rise to the request as well as the names and addresses of the representatives of the entities making the request.
3. The subject matter of the request for advisory opinion shall not relate to an application pending before the Commission.

RULE 69: Transmission of Request for Advisory Opinion

Subsequent to the receipt of a request for advisory opinion, the Registrar shall transmit copies thereof to Member States, the Commission and to any other interested entity.

RULE 70: Written Submissions

1. The Court shall establish the time limit for the filing of written submissions by States Parties and by any other interested entity.
2. Any other States Parties may submit written submissions on any of the issues raised in the request. Any other interested entity may be authorized by the Court to do the same.

RULE 71: Oral Proceedings

After consideration of the written submissions, the Court shall decide whether or not there should be oral proceedings, and if so, shall fix a date for such hearing.

RULE 72: Application of Provisions Relating to Contentious Procedure

The Court shall apply, *mutatis mutandis* the provisions of Part IV of these Rules to the extent that it deems them to be appropriate and acceptable.

RULE 73: Advisory Opinion

1. The delivery of an advisory opinion shall take place in open Court. However, where the circumstances so require, the Court may decide otherwise.
2. Pursuant to article 4(2) of the Protocol, the Court's advisory opinion shall be accompanied by reasons, and any Judge who has participated in the hearing of an advisory request shall be entitled to deliver a separate or dissenting opinion.

ANNEX IV

Protocol on the Statute of the African Court of Justice and Human Rights

Adopted on 1st July 2008

➔ Chapter I - MERGER OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS AND THE COURT OF JUSTICE OF THE AFRICAN UNION

ARTICLE 1: Replacement of the 1998 and 2003 Protocols

The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, adopted on 10 June 1998 in Ouagadougou, Burkina Faso and which entered into force on 25 January 2004, and the Protocol of the Court of Justice of the African Union, adopted on 11 July 2003 in Maputo, Mozambique, are hereby replaced by the present Protocol and Statute annexed as its integral part hereto, subject to the provisions of Article 5, 7 and 9 of this Protocol.

ARTICLE 2: Establishment of a single Court

The African Court on Human and Peoples' Rights established by the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights and the Court of Justice of the African Union established by the Constitutive Act of the African Union, are hereby merged into a single Court and established as "The African Court of Justice and Human Rights".

ARTICLE 3: Reference to the single Court in the Constitutive Act

References made to the "Court of Justice" in the Constitutive Act of the African Union shall be read as references to the "African Court of Justice and Human Rights" established under Article 2 of this Protocol.

Chapter II - TRANSITIONAL PROVISIONS

ARTICLE 4: Term of Office of the Judges of the African Court on Human and Peoples' Rights

The term of office of the Judges of the African Court on Human and Peoples' Rights shall end following the election of the Judges of the African Court of Justice and Human Rights. However, the Judges shall remain in office until the newly elected Judges of the African Court of Justice and Human Rights are sworn in.

ARTICLE 5: Cases Pending before the African Court on Human and Peoples' Rights

Cases pending before the African Court on Human and Peoples' Rights, that have not been concluded before the entry into force of the present Protocol, shall be transferred to the Human Rights Section of the African Court of Justice and Human Rights on the understanding that such cases shall be dealt with in accordance with the protocol to the ACHPR on the establishment of the African Court on Human and Peoples' Rights.

ARTICLE 6: Registry of the Court

The Registrar of the African Court on Human and Peoples' Rights shall remain in office until the appointment of a new Registrar for the African Court of Justice and Human Rights.

ARTICLE 7: Provisional validity of the 1998 Protocol

The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights shall remain in force for a transitional period not exceeding one (1) year or any other period determined by the Assembly, after entry into force of the present Protocol, to enable the African Court on Human and Peoples' Rights to take the necessary measures for the transfer of its prerogatives, assets, rights and obligations to the African Court of Justice and Human Rights.

Chapter III - FINAL PROVISIONS

ARTICLE 8: Signature, Ratification and Accession

1. The present Protocol shall be open for signature, ratification or accession by Member States, in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission of the African Union.
3. Any Member State may, at the time of signature or when depositing its instrument of ratification or accession, or at any time thereafter, make a declaration accepting the competence of the Court to receive cases under Article 30 (f) involving a State which has not made such a declaration.

ARTICLE 9: Entry into force

1. The present Protocol and the Statute annexed to it shall, enter into force thirty (30) days after the deposit of the instruments of ratification by fifteen (15) Member States.
2. For each Member State which shall ratify or accede to it subsequently, the present Protocol shall enter into force on the date on which the instruments of ratification or accession are deposited,

3. The Chairperson of the Commission shall inform all Member States of the entry into force of the present Protocol.

ANNEX V

Statute of the African Court of justice and Human Rights

➔ Chapter I - GENERAL PROVISIONS

ARTICLE 1: Definitions

In this Statute, except otherwise indicated, the following shall mean:

- “African Charter” means the African Charter on Human and Peoples’ Rights;
- “African Commission” means the African Commission on Human and Peoples’ Rights;
- “African Committee of Experts” means the African Committee of Experts on the Rights and Welfare of the Child;
- “African Intergovernmental Organisations” means an organisation that has been established with the aim of ensuring socio-economic integration, and to which some Member States have ceded certain competences to act on their behalf, as well as other sub-regional, regional or inter-African Organisations;
- “African Non-Governmental Organizations” means Non-Governmental Organizations at the sub-regional, regional or inter-African levels as well as those in the Diaspora as may be defined by the Executive Council;
- “Agent” means a person mandated in writing to represent a party in a case before the Court;
- “Assembly” means the Assembly of Heads of State and Government of the Union;
- “Chamber(s)” means a Chamber established in accordance with Article 19 of the Statute.
- “Constitutive Act” means the Constitutive Act of the African Union;
- “Commission”: means the Commission of the Union;
- “Court” means the African Court of Justice and Human Rights as well as its sections and chambers;
- “Executive Council” means the Executive Council of Ministers of the Union;
- “Full Court” means joint sitting of the General Affairs and Human Rights Sections of the Court;
- “Human Rights Section” means the Human and Peoples’ Rights Section of the Court;
- “Judge” means a judge of the Court;
- “Member State” means a Member State of the Union;
- “National Human Rights Institutions” means public institutions established by a state to promote and protect human rights;

- “President” means the President of the Court elected in accordance with Article 22(1) of the Statute;
- “Protocol” means the Protocol to the Statute of the African Court of Justice and Human Rights;
- “Registrar” means the person appointed as such in accordance with Article 22 (4) of the Statute;
- “Rules” means the Rules of the Court;
- “Section” means the General Affairs or the Human Rights Section of the Court;
- “Senior Judge” means the person defined as such in the Rules of Court;
- “States Parties” means Member States, which have ratified or acceded to this Protocol;
- “Statute” means the present Statute;
- “Union” means the African Union established by the Constitutive Act;
- “Vice President” means the Vice President of the Court elected in accordance with Article 22 (1) of the Statute.

ARTICLE 2: Functions of the Court

1. The African Court of Justice and Human Rights shall be the main judicial organ of the African Union.
2. The Court shall be constituted and function in accordance with the provisions of the present Statute.

🔗 Chapter II - ORGANIZATION OF THE COURT

ARTICLE 3: Composition

1. The Court shall consist of sixteen (16) Judges who are nationals of States Parties. Upon recommendation of the Court, the Assembly, may, review the number of Judges.
2. The Court shall not, at any one time, have more than one judge from a single Member State.
3. Each geographical region of the Continent, as determined by the Decisions of the Assembly shall, where possible, be represented by three (3) Judges except the Western Region which shall have four (4) Judges.

ARTICLE 4: Qualifications of Judges

The Court shall be composed of impartial and independent Judges elected from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurists-consults of recognized competence and experience in international law and /or, human rights law.

ARTICLE 5: Presentation of Candidates

1. As soon as the Protocol to this Statute enters into force, the Chairperson of the Commission shall invite each State Party to submit, in writing, within a period of ninety (90) days, candidatures to the post of judge of the Court.
2. Each State Party may present up to two (2) candidates and shall take into account equitable gender representation in the nomination process.

ARTICLE 6: List of candidates

1. For the purpose of election, the Chairperson of the Commission shall establish two alphabetical lists of candidates presented as follows:
 - i) List A containing the names of candidates having recognized competence and experience in International law; and
 - ii) List B containing the names of candidates possessing recognized competence and experience in Human Rights law.
2. States Parties that nominate candidates possessing the competences required on the two lists shall choose the list on which their candidates may be placed.
3. At the first election, eight (8) Judges shall be elected from amongst the candidates of list A and eight (8) from among the candidates of list B. The elections shall be organized in a way as to maintain the same proportion of judges elected on the two lists.
4. The Chairperson of the Commission shall communicate the two lists to Member States, at least thirty (30) days before the Ordinary Session of the Assembly or of the Council, during which the elections shall take place.

ARTICLE 7: Election of judges

1. The Judges shall be elected by the Executive Council, and appointed by the Assembly.
2. They shall be elected through secret ballot by a two-thirds majority of Member States with voting rights, from among the candidates provided for in Article 6 of this Statute.
3. Candidates who obtain the two-thirds majority and the highest number of votes shall be elected. However, if several rounds of election are required, the candidates with the least number of votes shall withdraw.
4. The Assembly shall ensure that in the Court as a whole there is equitable representation of the regions and the principal legal traditions of the Continent.
5. In the election of the Judges, the Assembly shall ensure that there is equitable gender representation.

ARTICLE 8: Term of Office

1. The Judges shall be elected for a period of six (6) years and may be re-elected only once. However, the term of office of eight (8) judges, four (4) from each section, elected during the first election shall end after four (4) years.
2. The Judges, whose term of office shall end after the initial period of four (4) years, shall be determined for each section, by lot drawn by the Chairperson of the Assembly or the Executive Council, immediately after the first election.
3. A Judge, elected to replace another whose term of office has not expired, shall complete the term of office of his predecessor.
4. All the Judges except the President and the Vice-President, shall perform their functions on a part-time basis.

ARTICLE 9: Resignation, Suspension and Removal from Office

1. A Judge may resign his/her position in writing addressed to the President for transmission to the Chairperson of the Assembly through the Chairperson of the Commission.
2. A Judge shall not be suspended or removed from office save, where, on the recommendation of two-thirds majority of the other members, he/she no longer meets the requisite conditions to be a Judge.

3. The President shall communicate the recommendation for the suspension or removal of a Judge to the Chairperson of the Assembly through the Chairperson of the Commission.
4. Such a recommendation of the Court shall become final upon its adoption by the Assembly.

ARTICLE 10: Vacancies

1. A vacancy shall arise in the Court under the following circumstances:
 - a) Death;
 - b) Resignation;
 - c) Removal from office.
2. In the case of death or resignation of a Judge, the President shall immediately inform the Chairperson of the Assembly through the Chairperson of the Commission in writing, who shall declare the seat vacant.
3. The same procedure and consideration for the election of a Judge shall also be followed in filling the vacancies.

ARTICLE 11: Solemn Declaration

1. After the first election, the Judges shall, at the first session of the Court and in the presence of the Chairperson of the Assembly, make a Solemn Declaration as follows:

“ I Do solemnly swear (or affirm or declare) that I shall faithfully exercise the duties of my office as Judge of the African Court of Justice and Human Rights of the African Union impartially and conscientiously, without fear or favour, affection or ill will and that I will preserve the integrity of the Court.”
2. The Chairperson of the Assembly or his/her duly authorized representative shall administer the Solemn Declaration.
3. Subsequently, the Solemn Declaration shall be made before the President of the Court.

ARTICLE 12: Independence

1. The independence of the judges shall be fully ensured in accordance with international law.
2. The Court shall act impartially, fairly and justly.
3. In performance of the judicial functions and duties, the Court and its Judges shall not be subject to the direction or control of any person or body.

ARTICLE 13: Conflict of Interest

1. Functions of a Judge are incompatible with all other activities, which might infringe on the need for independence or impartiality of the judicial profession. In case of doubt, the Court shall decide.
2. A Judge shall not exercise the function of agent, or counsel, or lawyer in any case before the Court.

Article 14: Conditions Governing the Participation of Members in the Settlement of a Specific Case

1. Where a particular judge feels he/she has a conflicting interest in a particular case, he/she shall so declare. In any event, he/she shall not participate in the settlement of

- a case for which he/she was previously involved as agent, counsel or lawyer of one of the parties, or as a member of a national or international Court or Tribunal, or a Commission of enquiry or in any other capacity.
2. If the President considers that a Judge should not participate in a particular case, he/she shall notify the judge concerned. Such notification from the President shall, after agreement by the Court, exclude that Judge from participating in that particular case.
 3. A Judge of the nationality of a State Party to a case before the full Court or one of its Sections shall not have the right to sit on the case.
 4. Where there is doubt on these points, the Court shall decide.

ARTICLE 15: Privileges and Immunities

1. The Judges shall enjoy, from the time of their election and throughout their term of office, the full privileges and immunities extended to diplomatic agents in accordance with international law.
2. The Judges shall be immune from legal proceedings for any act or omission committed in the discharge of their judicial functions.
3. The Judges shall continue, after they have ceased to hold office, to enjoy immunity in respect of acts performed by them when engaged in their official capacity.

ARTICLE 16: Sections of the Court

The Court shall have two (2) Sections; a General Affairs Section composed of eight (8) Judges and a Human Rights Section composed of eight (8) Judges.

ARTICLE 17: Assignment of matters to Sections

1. The General Affairs Section shall be competent to hear all cases submitted under Article 28 of this Statute save those concerning human and/or peoples' rights issues.
2. The Human Rights Section shall be competent to hear all cases relating to human and/or peoples rights.

ARTICLE 18: Referral of matters to the Full Court

When a Section of the Court is seized with a case, it may, if it deems it necessary refer that case to the Full Court for consideration.

ARTICLE 19: Chambers

1. The General Affairs Section and the Human Rights Section may, at any time, constitute one or several chambers. The quorum required to constitute such chambers shall be determined in the Rules of Court.
2. A judgment given by any Section or Chamber shall be considered as rendered by the Court.

ARTICLE 20: Sessions

1. The Court shall hold ordinary and extraordinary sessions.
2. The Court shall decide each year on the periods of its ordinary sessions.
3. Extraordinary sessions shall be convened by the President or at the request of the majority of the Judges.

ARTICLE 21: Quorum

1. A quorum of nine (9) Judges shall be required for deliberations of the Full Court.
2. A quorum of six (6) Judges shall be required for the deliberations of the General Affairs Section.
3. A quorum of six (6) Judges shall be required for the deliberations of the Human and Peoples' Rights Section.

ARTICLE 22: Presidency, Vice-Presidency and Registry

1. At its first ordinary session after the election of the judges, the full Court shall elect its President as well as the Vice-President from the different lists for a period of three (3) years. The President and the Vice-President may be re-elected once.
2. The President shall preside over all sessions of the full Court and those of the Section to which he/she belongs; in the event of being unable to sit, the President shall be replaced by the Vice president for the full Court and by the most Senior Judge for the sessions of his/her Section.
3. The Vice-President shall preside over all sessions of the section to which he/she belongs. In the event of being unable to sit, the Vice-President shall be replaced by the most Senior Judge of that Section.
4. The Court shall appoint a Registrar and may provide for the appointment of such other officers as may be necessary.
5. The President, the Vice-President and the Registrar shall reside at the seat of the Court.

ARTICLE 23: Remuneration of Judges

1. The President and the Vice-President shall receive an annual salary and other benefits.
2. The other Judges shall receive a sitting allowance for each day on which he/she exercises his/her functions.
3. These salaries, allowances and compensation shall be determined by the Assembly, on the proposal of the Executive Council. They may not be decreased during the term of office of the Judges.
4. Regulations adopted by the Assembly on the proposal of the Executive Council shall determine the conditions under which retirement pensions shall be given to the Judges as well as the conditions under which their travel expenses shall be paid.
5. The above-mentioned salaries, allowances and compensation shall be free from all taxation.

ARTICLE 24: Conditions of Service of the Registrar and Members of the Registry

The salaries and conditions of service of the Registrar and other Court Officials shall be determined by the Assembly on the proposal of the Court, through the Executive Council.

ARTICLE 25: Seat and Seal of the Court

1. The Seat of the Court shall be same as the Seat of the African Court on Human and Peoples' Rights. However, the Court may sit in any other Member State, if circumstances warrant, and with the consent of the Member State concerned. The Assembly may change the seat of the Court after due consultations with the Court.

2. The Court shall have a seal bearing the inscription “The African Court of Justice and Human Rights”

ARTICLE 26: Budget

1. The Court shall prepare its draft annual budget and shall submit it to the Assembly through the Executive Council.
2. The budget of the Court shall be borne by the African Union.
3. The Court shall be accountable for the execution of its budget and shall submit report thereon to the Executive Council in conformity with the Financial Rules and Regulations of the African Union.

ARTICLE 27: Rules of Court

1. The Court shall adopt rules for carrying out its functions and the implementation of the present Statute. In particular, it shall lay down its own Rules.
2. In elaborating its Rules, the Court shall bear in mind the complementarity it maintains with the African Commission and the African Committee of Experts.

➔ Chapter III - COMPETENCE OF THE COURT

ARTICLE 28: Jurisdiction of the Court

The Court shall have jurisdiction over all cases and all legal disputes submitted to it in accordance with the present Statute which relate to:

- a) the interpretation and application of the Constitutive Act;
- b) the interpretation, application or validity of other Union Treaties and all subsidiary legal instruments adopted within the framework of the Union or the Organization of African Unity;
- c) the interpretation and the application of the African Charter, the Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, or any other legal instrument relating to human rights, ratified by the States Parties concerned;
- d) any question of international law;
- e) all acts, decisions, regulations and directives of the organs of the Union;
- f) all matters specifically provided for in any other agreements that States Parties may conclude among themselves, or with the Union and which confer jurisdiction on the Court;
- g) the existence of any fact which, if established, would constitute a breach of an obligation owed to a State Party or to the Union;
- h) the nature or extent of the reparation to be made for the breach of an international obligation.

ARTICLE 29: Entities Eligible to Submit Cases to the Court

1. The following entities shall be entitled to submit cases to the Court on any issue or dispute provided for in Article 28:
 - a) State Parties to the present Protocol;
 - b) The Assembly, the Parliament and other organs of the Union authorized by the Assembly;

- c) A staff member of the African Union on appeal, in a dispute and within the limits and under the terms and conditions laid down in the Staff Rules and Regulations of the Union;
- 2. The Court shall not be open to States, which are not members of the Union.

The Court shall also have no jurisdiction to deal with a dispute involving a Member State that has not ratified the Protocol.

ARTICLE 30: Other Entities Eligible to Submit Cases to the Court

The following entities shall also be entitled to submit cases to the Court on any violation of a right guaranteed by the African Charter, by the Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, or any other legal instrument relevant to human rights ratified by the States Parties concerned:

- a) State Parties to the present Protocol;
- b) the African Commission on Human and Peoples' Rights;
- c) the African Committee of Experts on the Rights and Welfare of the Child;
- d) African Intergovernmental Organizations accredited to the Union or its organs;
- e) African National Human Rights Institutions;
- f) Individuals or relevant Non-Governmental Organizations accredited to the African Union or to its organs, subject to the provisions of Article 8 of the Protocol.

ARTICLE 31: Applicable Law

- 1. In carrying out its functions, the Court shall have regard to:
 - a) The Constitutive Act;
 - b) International treaties, whether general or particular, ratified by the contesting States;
 - c) International custom, as evidence of a general practice accepted as law;
 - d) The general principles of law recognized universally or by African States;
 - e) Subject to the provisions of paragraph 1, of Article 46 of the present Statute, judicial decisions and writings of the most highly qualified publicists of various nations as well as the regulations, directives and decisions of the Union, as subsidiary means for the determination of the rules of law;
 - f) Any other law relevant to the determination of the case.
- 2. This Article shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

➡ Chapter IV - PROCEDURE

ARTICLE 32: Official Languages

The official and working languages of the Court shall be those of the Union.

ARTICLE 33: Institution of Proceedings before the General Affairs Section

- 1. Cases brought before the Court by virtue of Article 29 of the present Statute shall be submitted by written application addressed to the Registrar. The subject of the dispute, the applicable law and basis of jurisdiction shall be indicated.

2. The Registrar shall forthwith give notice of the application to the Parties concerned.
3. The Registrar shall also notify, through the Chairperson of the Commission, all Member States and, if necessary, the organs of the Union whose decisions are in dispute.

ARTICLE 34: Institution of Proceedings before the Human Rights Section

1. Cases brought before the Court relating to an alleged violation of a human or peoples' right shall be submitted by a written application to the Registrar. The application shall indicate the right (s) alleged to have been violated, and, insofar as it is possible, the provision or provisions of the African Charter on Human and Peoples' Rights, the Charter on the Rights and Welfare of the Child, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa or any other relevant human rights instrument, ratified by the State concerned, on which it is based.
2. The Registrar shall forthwith give notice of the application to all parties concerned, as well as the Chairperson of the Commission.

ARTICLE 35: Provisional Measures

1. The Court shall have the power, on its own motion or on application by the parties, to indicate, if it considers that circumstances so require any provisional measures which ought to be taken to preserve the respective rights of the parties.
2. Pending the final decision, notice of the provisional measures shall forthwith be given to the parties and the Chairperson of the Commission, who shall inform the Assembly.

ARTICLE 36: Representation of Parties

1. The States, parties to a case, shall be represented by agents.
2. They may, if necessary, have the assistance of counsel or advocates before the Court.
3. The organs of the Union entitled to appear before the Court shall be represented by the Chairperson of the Commission or his /her representative.
4. The African Commission, the African Committee of Experts, African Inter- Governmental Organizations accredited to the Union or its organs and African National Human Rights Institutions entitled to appear before the Court shall be represented by any person they choose for that purpose.
5. Individuals and Non-Governmental Organizations accredited to the Union or its organs may be represented or assisted by a person of their choice.
6. The agents and other representatives of parties before the Court, their counsel or advocates, witnesses, and any other persons whose presence is required at the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties or the smooth functioning of the Court.

ARTICLE 37: Communications and Notices

1. Communications and notices addressed to agents or counsel of parties to a case shall be considered as addressed to the parties.
2. For the service of all communications or notices upon persons other than the agents, counsel or advocates of parties concerned, the Court shall direct its request to the government of the State upon whose territory the communication or notice has to be served.
3. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

ARTICLE 38: Procedure Before the Court

The procedures before the Court shall be laid out in the Rules of Court, taking into account the complementarity between the Court and other treaty bodies of the Union.

ARTICLE 39: Public Hearing

The hearing shall be public, unless the Court, on its own motion or upon application by the parties, decides that the session shall be closed.

ARTICLE 40: Record of Proceedings

1. A record of proceedings shall be made at each hearing and shall be signed by the Registrar and the presiding Judge of the session.
2. This record alone shall be authentic.

ARTICLE 41: Default Judgment

1. Whenever one of the parties does not appear before the Court, or fails to defend the case against it, the Court shall proceed to consider the case and to give its judgment.
2. The Court shall before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 28, 29 and 30 of the present Statute, but also that the claim is well founded in fact and law, and that the other party had due notice.
3. An objection by the party concerned may be lodged against the judgment within ninety (90) days of it being notified of the default judgment. Unless there is a decision to the contrary by the Court, the objection shall not have effect of staying the enforcement of the default judgment.

ARTICLE 42: Majority Required for Decision of the Court

1. Without prejudice to the provisions of Article 50(4) of the present Statute, the decisions of the Court shall be decided by a majority of the Judges present.
2. In the event of an equality of votes, the presiding Judge shall have a casting vote.

ARTICLE 43: Judgments and Decisions

1. The Court shall render its judgment within ninety (90) days of having completed its deliberations.
2. All judgments shall state the reasons on which they are based.
3. The judgment shall contain the names of the Judges who have taken part in the decision.
4. The judgment shall be signed by all the Judges and certified by the Presiding Judge and the Registrar. It shall be read in open session, due notice having been given to the agents.
5. The Parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the Member States and the Commission.
6. The Executive Council shall also be notified of the judgment and shall monitor its execution on behalf of the Assembly

ARTICLE 44: Dissenting Opinion

If the judgment does not represent in whole or in part the unanimous opinion of the Judges, any Judge shall be entitled to deliver a separate or dissenting opinion.

ARTICLE 45: Compensation

Without prejudice to its competence to rule on issues of compensation at the request of a party by virtue of paragraph 1(h), of Article 28 of the present Statute, the Court may, if it considers that there was a violation of a human or peoples' right, order any appropriate measures in order to remedy the situation, including granting fair compensation.

ARTICLE 46: Binding Force and Execution of Judgments

1. The decision of the Court shall be binding on the parties.
2. Subject to the provisions of paragraph 3, Article 41 of the present Statute, the judgment of the Court is final.
3. The parties shall comply with the judgment made by the Court in any dispute to which they are parties within the time stipulated by the Court and shall guarantee its execution.
4. Where a party has failed to comply with a judgment, the Court shall refer the matter to the Assembly, which shall decide upon measures to be taken to give effect to that judgment.
5. The Assembly may impose sanctions by virtue of paragraph 2 of Article 23 of the Constitutive Act.

ARTICLE 47: Interpretation

In the event of any dispute as to the meaning or scope of a judgment, the Court shall construe it upon the request of any party.

Article 48: Revision

1. An application for revision of a judgment may be made to the Court only when it is based upon discovery of a new fact of such nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, provided that such ignorance was not due to negligence.
2. The proceedings for revision shall be opened by a ruling of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the revision admissible on this ground.
3. The Court may require prior compliance with the terms of the judgment before it admits proceedings in revision.
4. The application for revision shall be made within six (6) months of the discovery of the new fact.
5. No application may be made after the lapse of ten (10) years from the date of the judgment.

ARTICLE 49: Intervention

1. Should a Member State or organ of the Union consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene. It shall be for the Court to decide upon this request.
2. If a Member State or organ of the Union should exercise the option offered under paragraph 1 of the present Article, the interpretation contained in the decision shall be equally binding upon it.

3. In the interest of the effective administration of justice, the Court may invite any Member State that is not a party to the case, any organ of the Union or any person concerned other than the claimant, to present written observations or take part in hearings.

ARTICLE 50: Intervention in a Case Concerning the Interpretation of the Constitutive Act

1. Whenever the question of interpretation of the Constitutive Act arises, in a case in which Member States other than the parties to the dispute have expressed an interest, the Registrar shall notify all such States and organs of the Union forthwith.
2. Every State Party and organ of the Union so notified has the right to intervene in the proceedings.
3. The decisions of the Court concerning the interpretation and application of the Constitutive Act shall be binding on Member States and organs of the Union, notwithstanding the provisions of paragraph 1, of Article 46 of this Statute.
4. Any decision made by virtue of this Article shall be made by a qualified majority of at least two (2) votes and in the presence of at least two-thirds of the Judges.

ARTICLE 51: Intervention in a Case concerning the Interpretation of Other Treaties

1. Whenever the question is that of interpretation of other treaties ratified by Member States other than the parties to a dispute, the Registrar shall notify all such States and the organs of the Union forthwith.
2. Every State Party and organ of the Union so notified has the right to intervene in the proceedings, and if it exercises this right, the interpretation given by the judgment shall be equally binding upon it.
3. This Article shall not be applicable to cases relating to alleged violations of a human or peoples' right, submitted by virtue of Articles 29 or 30 of the present Statute.

ARTICLE 52: Costs

1. Unless otherwise decided by the Court, each party shall bear its own costs.
2. Should it be required in the interest of justice, free legal aid may be provided for the person presenting an individual communication, under conditions to be set out in the Rules of Court.

🔗 Chapter V - ADVISORY OPINION

ARTICLE 53: Request for Advisory Opinion

1. The Court may give an advisory opinion on any legal question at the request of the Assembly, the Parliament, the Executive Council, the Peace and Security Council, the Economic, Social and Cultural Council (ECOSOCC), the Financial Institutions or any other organ of the Union as may be authorized by the Assembly.
2. A request for an advisory opinion shall be in writing and shall contain an exact statement of the question upon which the opinion is required and shall be accompanied by all relevant documents.
3. A request for an advisory opinion must not be related to a pending application before the African Commission or the African Committee of Experts.

ARTICLE 54: Service of Notice

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all States or organs entitled to appear before the Court by virtue of Article 30 of the present Statute.
2. The Registrar shall also, by means of a special and direct communication, notify any State entitled to appear before the Court or any Intergovernmental Organization considered by the Court, or should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.
3. Should any such State entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such State may express the desire to submit a written statement or to be heard, and the Court shall decide.
4. States and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other States or organizations in the form, to the extent, and within the time limits which the Court, or should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due course communicate any such written statements to States and organizations having submitted similar statements.

ARTICLE 55: Delivery of Advisory Opinion

The Court shall deliver its advisory opinion in open court, notice having been given to the Chairperson of the Commission and Member States, and other International Organizations directly concerned.

Article 56: Application by Analogy of the Provisions of the Statute Applicable to Contentious Cases

In the exercise of its advisory functions, the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

➔ Chapter VI - REPORT TO THE ASSEMBLY

ARTICLE 57: Annual Activity Report

The Court shall submit to the Assembly, an annual report on its work during the previous year. The report shall specify, in particular, the cases in which a party has not complied with the judgment of the Court.

➔ Chapter VII - PROCEDURE FOR AMENDMENTS

ARTICLE 58: Proposed Amendments from a State Party

1. The present Statute may be amended if a State Party makes a written request to that effect to the Chairperson of the Commission, who shall transmit same to Member States within thirty (30) days of receipt thereof.
2. The Assembly may adopt by a simple majority, the proposed amendment after the Court has given its opinion on it.

ARTICLE 59: Proposed Amendments from the Court

The Court may propose such amendments to the present Statute as it may deem necessary, to the Assembly through written communication to the Chairperson of the Commission, for consideration in conformity with the provisions of Article 58 of the present Statute.

ARTICLE 60: Entry into Force of Amendments

The amendment shall enter into force for every State which has accepted it in conformity with its Constitutional laws thirty (30) days after the Chairperson of the Commission is notified of this acceptance.

ANNEX VI

Standard format of an application to the African Court on Human and Peoples' Rights.

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

P.O Box 6274 Arusha, Tanzania, Tel: +255 27 2050111; Fax: +255 27 2050112

APPLICATION FOR (Advisory Opinion, Reparation, Compensation etc)

APPLICANT
(Full Name of Applicant)

DESIGNATION
(Whether State Party, Individual, IGO, NGO etc)

ADDRESS
(place to which process can be delivered or applicant can be contacted. Physical, box, telephone, email, fax etc)

STATUS
(Capacity in which claim is brought. State Party on behalf of citizen, Organ, Signatory etc)

REPRESENTATIVE
(Name and address of agent/representative, attorneys etc)

RESPONDENT
(Full names of Respondent)

SUMMARY
(Brief explanation of the facts, the alleged breaches of the relevant Human Rights laws)

APPLICATION IN DETAIL
(Detailed traverse of the facts and issues of law supported by relevant evidence, documentary or otherwise, including evidence of exhaustion of local remedies)

PRAYER
(Succinct presentation of the relief sought)

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The FIDH wishes to thank all those who actively contributed to the realisation of this guide, including **Judge Modibo Tounty Guindo**, **Poulaine Kimani**, **Claire Constant**, the team of the International Justice Desk of FIDH and to the translators **Brian Edwards**, **Lizzie Rushing** and **Nathalie Tomlinson**.

This guide was realized with the support of the Democratic Governance mission of the French Ministry of Foreign and European Affairs. The opinions expressed in this document are those of FIDH only.

Publication: This report is published in French and in English.

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International Federation for Human Rights

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FIDH represents 164 human rights organisations on 5 continents

Keep your eyes open

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Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

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Training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

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Permanent lobbying before intergovernmental bodies

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FIDH
represents **164**
human rights organisations
on **5 continents**



Article 1: All human beings are born free and equal

in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. **Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.**

Article 3: Everyone has

the right to life, liberty and security

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- FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

- A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

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International Federation for Human Rights

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