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**EXECUTIVE COUNCIL**

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**EX.CL/445 (XIII)**

**REPORT OF THE AFRICAN COURT ON HUMAN  
AND PEOPLES' RIGHTS**

## ACTIVITIES REPORT OF THE COURT FOR 2007

### INTRODUCTION

1. The African Court on Human and Peoples' Rights was established by the Protocol to the African Charter on Human and Peoples' Rights concluded between Member States of the Organization of African Unity (OAU) meeting in Ouagadougou, Burkina Faso, on 9 June 1998. This Protocol entered into force on 25 January 2004.

The first Members of the Court were elected by the Executive Council of the African Union and appointed by the Assembly of Heads of State and Government at its session held in Khartoum, The Sudan, in January 2006. The Members took the oath of office on 2 July 2006 at the Assembly of Heads of State and Government session held in Banjul, The Gambia, and assumed duty on the same day. The list of Members of the Court together with their respective nationality and the duration of their tenure is annexed to this Report.

The Seat of the Court is Arusha, United Republic of Tanzania.

2. In accordance with Article 31 of the Protocol establishing the Court:

*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.*

This Report has been compiled in accordance with the terms of the above-mentioned Article. It covers not only the major activities carried out by the Court in 2007, but also an evaluation of the period and the recommendations arising from the evaluation. The report will, however, first analyze the status of ratification of the Protocol establishing the Court, and accessions to the declaration accepting the Court's competence to receive cases from individuals and non-governmental organizations, in accordance with Article 34 (6) of the Protocol.

### **I. STATUS OF RATIFICATION OF THE PROTOCOL ESTABLISHING THE COURT AND ACCESSIONS TO THE DECLARATION ACCEPTING THE COURT'S COMPETENCE TO RECEIVE CASES FROM INDIVIDUALS AND NON-GOVERNMENTAL ORGANIZATIONS**

3. According to the information published on the African Union Website, the twenty-four (24) States which have so far ratified the Protocol establishing the Court are: Algeria, Burkina Faso, Burundi, Côte d'Ivoire, The Comoros, Gabon, The Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, Senegal, South Africa, Tanzania, Togo, Tunisia and Uganda.

It is noteworthy, by way of comparison, that all fifty-three Member States of the African Union have ratified the African Charter on Human and Peoples' Rights which the Court is specifically charged to complement and reinforce. From these figures, one can easily measure the wide difference between the number of States that have ratified the African Charter on Human and Peoples' Rights and those that have ratified the Protocol.

4. According to the information obtained from the African Union Commission, of the 24 Member States that have ratified the Protocol, only Burkina Faso has issued the declaration accepting the Court's competence to entertain cases from individuals and non-governmental organizations. Here again, there is a wide gap between the number of States that have ratified the Protocol and the number that have acceded to the aforementioned declaration.

5. The limited number of States that have ratified the Protocol and the extremely limited number that have issued the above-mentioned declaration, have in turn significantly limited access to the Court for individuals and non-governmental organizations, despite the fact that the Charter which the Court has the responsibility to complement and reinforce, also protects human and peoples' rights.

## **II. ACTIVITIES OF THE COURT IN 2007**

### **A) Sessions of the Court**

6. In 2007, the Court held its forth, fifth, sixth and seventh ordinary sessions, as well as its first extra-ordinary session.

The forth ordinary session was held in Addis Ababa, Ethiopia, from 19 to 28 March 2007. On that occasion, the Court in particular considered the following issues: the Decisions of the policy organs of the African Union concerning the Court; the procedure for recruitment of a Registrar; the question of the Seat of the Court and the Draft Rules of Court.

The fifth ordinary session of the Court was similarly held in Addis Ababa, Ethiopia, from 4 to 13 June 2007. At that session, the Court considered, among other things, the question of the Seat of the Court; the issue of approval of the Draft Structure of the Registry and the system of remuneration for the Judges by the policy organs of the African Union; the question of recruitment of a Registrar and the staff of the Court Registry; the Draft Rules of Court and consultation of the Court on the "Union Government" project.

The Court held its sixth session in Arusha, Tanzania, from 17 to 28 September 2007. On that occasion, its deliberations focused mainly on: the Decisions of the Accra Assembly of the Union concerning the Court; the issue of the Seat of the Court; the question of recruitment of a Registrar and the other staff of the Registry; the issue of the duration of the tenure of Members of the Court and the Draft Rules of Court.

As for the seventh session, it was held in Dar-es-Salaam, Tanzania, from 3 to 14 December 2007. The Court considered, *inter alia*, its Draft Budget for the 2008 financial year; the issue of recruitment of the staff of the Registry and other support staff; matters relating to implementation of the Host Agreement and finalization of the Draft Rules of Court.

The first extra-ordinary session of the Court was convened in Arusha, Tanzania, from 29 October to 9 November 2007, specifically to continue consideration of the Draft Rules.

**B) Submission of Issues for consideration by the Policy Organs of the African Union**

*1) Budget Proposals of the Court for 2007*

7. On 5 January 2007, the President of the Court transmitted to the African Union Commission the Budget Proposals of the Court for the 2007 financial year.

A delegation of the Court subsequently proceeded to Addis Ababa, Ethiopia, to present and defend this Draft Budget before the policy organs of the African Union, which were in session between 22 and 30 January 2007.

The Permanent Representatives' Committee (PRC) Advisory Sub-Committee on Administrative, Budgetary and Financial Matters, however, indicated that it could not consider the Draft Budget of the Court, given the fact that the Draft Structures submitted by the Court had not been previously examined by the PRC Sub-Committee on Structures. It then decided that the Court should be authorized to utilize in 2007, the appropriation for 2006 which stood at US\$ 2,250,000.

The delegation of the Court argued before the PRC and the Executive Council that the block allocation recommended for the Court for 2007 should, at least, be twice the appropriation for 2006, since this allocation was meant to cover the six months during which the Court functioned in 2006, whereas the Court was, with this recommended block allocation, expected to function for the entire twelve months of 2007.

In the end, the Assembly of Heads of State and Government acceded to the Court's request and agreed to double its budget in relation to that of 2006. Furthermore, the policy organs of the Union decided to grant 5.5% across the board increase to the budgets of all the organs of the Union in relation to the preceding year's budgets.

The result was that the block appropriation for the Court for the 2007 financial year rose to US\$ 4, 747, 500 (four million, seven hundred and forty-seven thousand, five hundred US dollars), that is:  $US\$ 2, 250, 000 \times 2 = US\$ 4, 500,000 + 5.5\% (US\$ 247, 500)$ .

*2) Draft Structure of the Registry and Draft Decision on the System of Remuneration and Benefits for Members of the Court*

8. By letter dated 21 December 2006, the President of the Court forwarded to the African Union Commission, the Draft Structure of the Court Registry. In the same vein, by letter dated 27 December 2006, the President of the Court transmitted to the Commission the Draft Decision on the System of Remuneration and Benefits for Members of the Court.

Unfortunately, the Sub-Committee on Structures was not able to meet in January 2007 to consider the two documents.

The delegation of the Court raised this issue before the PRC and the Executive Council, and requested the two organs to find appropriate solution thereto, to enable the Court to continue to function and, in particular, to recruit the Registry staff and remunerate its Members.

It was finally at the January 2007 session of the Assembly that a provisional solution was found to the two problems as *per* Assembly Decision AU/Dec.144 (VIII) on the Activities Report on the African Court on Human and Peoples' Rights for 2006.

According to that Decision, the Assembly, among other things, requested the PRC Sub-Committee on Structures and the Advisory Sub-Committee on Administrative, Budgetary and Financial Matters to consider as soon as possible the Draft Structure of the Registry of the Court and the proposed remuneration and benefits of the Court, and submit appropriate recommendations thereon to the PRC. The Assembly also decided that the recommendations of the PRC be applied with immediate effect, temporarily, pending final decision by the policy organs at their next ordinary session scheduled for July 2007.

9. Following that decision, the Bureau of the PRC Sub-Committee on Structures met on 9 February 2007 and decided to programme consideration of the Draft Structures submitted by the Court and the Commission respectively, for 19 March 2007. However, the meeting did not take place.

At its 4<sup>th</sup> Session held in Addis Ababa, Ethiopia, from 19 to 28 March 2007, the Court was informed that the meeting of the PRC Sub-Committee on Structures would finally take place on 2 April 2007. Again, the meeting did not take place.

On 3 April 2007, the President of the Court addressed a letter to the Chairperson of the Sub-Committee on Structures, expressing the Court's concern over the delays in considering the above-mentioned documents submitted by the Court, and requesting the Committee to meet at the earliest possible opportunity.

The meeting finally took place on 12 April 2007, with a delegation of the Court in attendance to present and defend the two documents. The Sub-Committee on Structures adopted the recommendations contained in a report that it subsequently submitted to the PRC.

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

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

Concerning the remuneration system for other Members of the Court, the Sub-Committee recommended that it should be adopted as presented by the Court.

10. On 16 May 2007, the President of the Court addressed to the Chairperson of the PRC a letter transmitting a document containing the observations of the delegation of the Court on the Sub-Committee's recommendations. The document welcomed the fact that the Sub-Committee had recommended adoption of a system of remuneration for Members of the Court who would be sitting on part-time basis. It however proposed, *inter alia*, a revisit of the initial recommendations of the Court on the Structure of the Court Registry and the salary status of the President of the Court. In the same correspondence, the President

of the Court requested the PRC Chairperson to, as quickly as possible, programme a meeting exclusively for consideration of the two documents presented by the Court, to enable the latter to commence recruitment of Registry staff and to have a remuneration base for Members of the Court.

11. The PRC could only meet on 25 June 2007 in Accra, Ghana, to examine the report of the Sub-Committee on Structures. It endorsed the whole of the recommendations of the Sub-Committee, in terms of both the Draft Structure of the Court Registry and a system of remuneration and benefits for Members of the Court.

Regarding the meeting of the Executive Council held from 28 to 29 June 2007, the delegation of the Court had prepared and submitted an interim report designed to supplement the African Union Commission Report on, among other things, the issue of approval by the PRC Sub-Committees and by the PRC itself of the Draft Structure of the Court and the Draft Decision on a system of remuneration and benefits for Members of the Court. The delegation of the Court took the opportunity to present this report, but the Executive Council did not consider it and did not take any specific decision in that regard. It simply endorsed the recommendations of the PRC and adopted a decision in that respect.

### 3. *Activities Report of the Court for 2006*

12. By letter dated 17 January 2007, the President of the Court transmitted to the African Union Commission the activities report of the Court for 2006.

Pursuant to Article 31 of the 9 June 1998 Protocol establishing the Court, the annual Activities Report of the Court was submitted to the Assembly of Heads of State and Government. The President of the Court presented the Report with emphasis on the activities implemented or undertaken during the 6 months of 2006 during which it functioned, the difficulties encountered and pertinent recommendations.

Presentation of the Report resulted in Assembly Decision Assembly/AU.Dec.144(VIII) by which the Assembly, *inter alia*, expressed its satisfaction at the progress achieved regarding the commencement of the activities of the Court.

## C) **The Question of the Seat of the Court**

13. By the same Decision Assembly/AU.Dec.144 (VIII) on the Report of the African Court on Human and Peoples' Rights for 2006, the Assembly of Heads of State and Government of the African Union requested "the Commission, in close cooperation with the African Court, to actively engage the host country, the United Republic of Tanzania, with a view to securing the swift installation of the Court at its Headquarters in Arusha". The activities carried out by the Court in pursuance of this Decision covered identification of the Seat of the Court, conclusion of the Host Agreement and effective installation of the Court at its Seat.

### 1. *Identification of the Seat of the Court*

14. Further to the afore-mentioned Assembly Decision, the Ministry of Foreign Affairs and International Cooperation of the United Republic of Tanzania, by Note Verbale dated 14 February 2007, informed the African Union Commission that Tanzania was ready to

host a delegation of the Court and finalize the Host Agreement for signature, to facilitate installation of the Court in Arusha.

By another Note Verbale dated 23 February 2007, the Embassy of Tanzania in Addis Ababa informed the Commission about Tanzanian Government's proposal that the mission led by the President of the Court could take place in the first week of March 2007; and requested the latter to transmit to Government the precise date it would like to undertake the mission.

After several exchange of correspondence, it was agreed that the mission would take place from 14 to 18 March 2007. The delegation of the Court comprising three of its Members accompanied by three officials of the Commission, finally proceeded on the mission on the date indicated. After a visit to the premises proposed for provisional Seat of the Court (a floor at the Arusha International Conference Centre), the delegation of the Court intimated to their hosts that the space was too small to accommodate the initial services of the Court, and requested that a larger space be provided.

**15.** At the 4<sup>th</sup> Session of the Court which was held in Addis Ababa, Ethiopia, from 19 to 28 March 2007, the Court requested its President to address to the Government of the United Republic of Tanzania, through the African Union Commission, a memorandum on the issue of the Seat of the Court spelling out the needs of the Court with respect to its Seat, the residence of its President, accommodation for other Members of the Court and the residence of the Registrar.

By letter dated 5 April 2007, the President of the Court transmitted this memorandum to the Chairperson of the Commission, requesting him to forward same to the Tanzanian Government. Apart from an inventory of needs, the memorandum expressed the hope of the Court that the buildings to accommodate the Seat of the Court and serve as residences and accommodation would be made available to it as quickly as possible; that another visit to view the buildings would be programmed for May 2007; that the Host Agreement would be concluded as speedily as possible; and that the next session slated for 4 to 13 June 2007 would be able to take place at the Seat of the Court in Arusha, Tanzania.

**16.** By Note Verbale dated 17 April 2007 addressed to the African Union Commission, the Ministry of Foreign Affairs and International Cooperation of the United Republic of Tanzania invited an official team of the Commission and the Court to undertake, as quickly as possible, a mission to inspect a new infrastructure proposed for the Seat of the Court.

This new mission finally took place from 2 to 3 May 2007. The new site proposed for the Seat of the Court is a property in a rural setting, some 10 km from the city of Arusha, but on the major highway between Arusha and the Kilimanjaro International Airport. All the buildings on this property used to serve as a hotel and contain a number of villas. The Tanzanian delegation indicated that the existing buildings would serve as provisional Seat of the Court, that another site had been set aside for the definitive Seat of the Court, and that the permanent structures of the Court would be constructed on that property. It further stated that the Government was ready to acquire adjoining property for possible extension of the area allocated for the Court depending on its needs. The delegation also gave the assurance that the Government was poised to release the necessary funds to carry out all the re-construction work on the buildings, which would entail adapting the existing structures to the functional needs of the Court. It handed to the President a series of site

plans and subsequently forwarded to the Court a panorama of photographs of the site for the Secretariat of the Court.

After preliminary consultation with Members of the Court, the President by letter dated 18 May 2007, informed the African Union Commission that Members of the Court had accepted the offer of the new site and had expressed the hope that the next session of the Court due to take place from 4 to 13 June 2007 would be in Arusha, as this would enable them to visit the site and confirm their acceptance of the proposal.

**17.** In the meantime, by Note Verbale of 21 May 2007 addressed to the African Union Commission, the Tanzanian Ministry of Foreign Affairs expressed concern at the delay on the part of the African Union Commission in communicating its approval of the infrastructure proposed for the Seat of the Court. The Tanzanian Foreign Ministry also suggested that negotiation and signing of the Host Agreement should take place in Dar-es-Salaam or in Addis Ababa during the first week of June 2007.

## **2. *Negotiation and Conclusion of the Host Agreement***

**18.** With regard to the Host Agreement, at the 4<sup>th</sup> Session of the Court held in Addis Ababa, Ethiopia, from 19 to 28 March 2007, Members of the Committee on the Seat of the Court considered the Draft Host Agreement prepared by the African Union Commission. They made amendments thereto and formulated Annexes, which did not feature in the initial version. The Draft Host Agreement was subsequently finalized in April 2007.

By letter dated 18 May 2007, the President of the Court transmitted to the Chairperson of the African Union Commission the Draft Host Agreement elaborated by the African Union Commission as amended and complemented by the Court.

In a Note Verbale of 6 June 2007, the African Union Commission forwarded to the Government of the United Republic of Tanzania the Draft Host Agreement containing proposals by the Court, accepting that the conclusion and signing of the Agreement could take place early in June 2007.

**19.** In the meantime, Members of the Court, from 9 to 10 June 2007, visited the new site proposed for the Seat of the Court, as well as the villas to serve as official residence of the President of the Court. At its 5<sup>th</sup> session which ended on 13 June 2007 in Addis Ababa, Ethiopia, Members of the Court confirmed their acceptance of the new site proposed for the Seat of the Court under conditions suggested by the Tanzanian delegation on 3 May 2007. They also accepted the offer of a provisional residence for the President of the Court which they visited on 10 June 2007, pending immediate construction by the Tanzanian Government of a new official residence for the President of the Court, according to the commitment made by Tanzanian delegation during the visit of 2-3 May 2007.

By letter of 18 June 2007, addressed to the Chairperson of the African Union Commission and copied to the Ambassador of the United Republic of Tanzania to Ethiopia, the President of the Court briefed the recipients on all the decisions and recommendations of the 5<sup>th</sup> Session of the Court regarding the Seat of the Court.

**20.** By another letter also dated 18 June 2007, the President of the Court transmitted to the Chairperson of the African Union Commission, the Court's appreciation for the



Commission's acceptance of the Court's amendments to the Draft Host Agreement. He expressed the hope that the Host Agreement would be concluded as quickly as possible and that the Court would be represented on the occasion of the conclusion and signing of this Agreement.

In a Note Verbale dated 12 July 2007 addressed to the Tanzanian Government, the African Union Commission informed the latter that the date proposed for negotiation of the Host Agreement, that is 17 to 20 July 2007 in Addis Ababa, Ethiopia, was convenient to the Commission.

After exchange of correspondence and several postponements due to unavailability of the delegations concerned, the Tanzanian Government and the African Union Commission finally agreed on the dates, 27 to 30 August 2007. Negotiations between the two parties' delegations effectively took place as scheduled, with a delegation of the Court in attendance. The Agreement was negotiated from 27 to 29 August 2007, and was initialed on the last day of the negotiation. It was finally signed on 31 August 2007.

3. *Effective Installation of the Court at its Seat*

a) *Relocation of the services of the Court to Arusha and their provisional installation in the buildings of the Arusha International Conference Centre (AICC)*

**21.** Since November 2006, the services of the Court have been operating from Addis Ababa in the premises provided by the African Union Commission.

Following the announcement of the imminent negotiation and signing of the Host Agreement in July 2007, the President of the Court, by letter dated 20 July 2007, informed the competent departments of the Commission that the services of the Court would move on 18 August 2007 and that it was needful to take appropriate measures, both administrative and financial, to accompany the relocation.

By Note Verbale of 6 August 2007, the Court officially informed the Tanzanian Government that the President and services of the Court would move to Arusha on 18 August 2007, and requested the Government to place in readiness the provisional offices of the Court at the Arusha International Conference Centre, as well as the residence of the President of the Court.

By Note Verbale dated 14 August 2007, the Tanzanian Government requested the Court to postpone the movement slated for 18 August 2007 to the end of the same month, to enable it to make the necessary arrangements for installation of the President of the Court.

By Note Verbale of 14 August 2007, the Court informed the Tanzanian Government that, in accordance with its request, the President and services of the Court would move to Arusha at the end of the month, and precisely on 31 August 2007. The services of the Court effectively relocated from Addis Ababa to Arusha on the specified date.

**22.** With regard to temporary support staff, the Commission on 11 September 2007 transferred a Finance Officer to assist the Court with its financial operations. Earlier, it had dispatched a delegation to help the Court to launch the process of recruitment of local staff; and to assist the Ministry of Foreign Affairs and International Cooperation in the

procurement of furniture and equipment for the temporary Offices of the Court and the residence of its President.

**23.** As for the offices of the Court, its services first operated from a hotel, and then were installed provisionally in rooms on the ground floor of a wing of the AICC complex, pending furnishing and equipment of the similarly provisional offices on the second floor of the same building.

The Tanzanian Government on 15 November 2007 delivered to the Court the first consignment of furniture and equipment. The offices of the Court were thus installed with effect from 19 November 2007 in the afore-mentioned provisional premises. With respect to word processing and office equipment, the Court was informed that the requisite order had been placed and that delivery was imminent.

**24.** Regarding the residence of the President of the Court, refurbishing work took some time. The same was the case with the provision of furniture and equipment. The latter was delivered only on 15 November 2007. The President of the Court, who had been residing in a hotel all this while, was only able to move to his residence on 19 November 2007.

Both for the offices of the Court and the residence of its President, the Court was made to understand that the Government would in due course embark upon the second phase of procurement of other necessary furniture and equipment.

*b) Refurbishing the Premises of the Provisional Seat of the Court*

**25.** According to the agreement with the Tanzanian Government, the services of the Court were supposed to relocate without delay to the site provided by Government for its provisional Seat in a locality known as *Tengeru*. However, refurbishing work needed to be done on the provisional buildings thus made available to the Court to transform them into functional offices and hearing chambers.

By Note Verbale dated 27 November 2007, the Tanzanian Ministry of Foreign Affairs and International Cooperation informed the African Union Commission that its Government was ready to commence the renovation work, but that it would like to prepare the work in consultation with the Commission. The Ministry therefore proposed that architects appointed by the two parties should meet, and requested the Commission to dispatch one of them to Arusha. As at 31 December 2007, no reaction had been received from the Commission.

*c) Construction of the definitive Seat of the Court, the official residence of the President and that of the Registrar.*

**26.** According to the agreement with the Tanzanian Government, the latter is expected to construct the buildings of the definitive Seat of the Court in the extensions to the site allocated to the Court, the official residence of its President and that of the Registrar at locations to be determined. This construction work has not yet begun.

*d) Other Aspects of Implementation of the Host Agreement*

**27.** The Court submitted a number of other issues relating to implementation of the Host Agreement to the Tanzanian Government. The issues so submitted include: granting entry

facilities into the United Republic of Tanzania to the Judges throughout their tenure; tax and customs exemption; exemption from import and export prohibitions or restrictions; issuance of identity card to the President of the Court and to the Registry staff as well as to Members of their families, etc. The Tanzanian authorities are examining all these issues.

#### **D) Recruitment of the Staff of the Court Registry**

##### *1) Recruitment of Temporary Support Staff*

**28.** At its first ordinary session held in Banjul, The Gambia, from 3 to 5 July 2006, the Court authorized the Office of the Legal Counsel of the African Union Commission to recruit, on its behalf, legal assistants on short-term basis.

The Office of the Legal Counsel effectively embarked upon the process of recruiting two legal experts (obtaining *curricula vitae*; short listing the candidates and preparation of terms of reference and contracts), and subsequently submitted proposals which were accepted by the Court. The legal assistants so recruited assumed duty in January 2007. One of them later resigned in September 2007, and was replaced in November 2007.

Additionally, the President of the Court recruited a Personal Secretary who started work in January 2007.

The Court often enlists the services of Freelance Arabic, English and French Interpreters and Translators, particularly for preparation and servicing of its sessions.

It is these limited or *ad hoc* staff that assisted the Court all through the year 2007.

At its 7<sup>th</sup> ordinary session held in Dar-es-Salaam from 3 to 14 December 2007, the Court authorized its President to recruit, on short-term basis, another legal expert, an expert to take charge of protocol and passages, and general service staff urgently required for the effective functioning of the various services of the Court, pending conclusion of the permanent staff recruitment process.

##### *2) Recruitment of International Staff*

**29.** In accordance with the terms of Article 24 of the Protocol establishing 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.*

At its 4<sup>th</sup> ordinary session which took place in Addis Ababa, Ethiopia, from 19 to 28 March 2007, the Court adopted the procedure for recruitment of Registry staff. The general idea is that recruitment should be conducted under the authority and responsibility of the Court, but with the collaboration and assistance of the relevant departments of the African Union Commission. In keeping with the existing practice in the African Union in matters of recruitment, the Court decided that the recruitment process should be conducted in the following stages : advertisement of vacant positions on the African Union Website and transmission of the advertisements to Embassies in Addis Ababa as well as to Member States' Foreign Ministries; collection of all applications by the appropriate departments of the African Union Commission; short listing of the best candidates with the assistance of a panel of recruitment experts appointed by the African Union Commission; organization of

interviews with the assistance of this panel to recommend the three best candidates; and recruitment decision of the Court sitting in plenary.

By letter dated 2 April 2007, the President of the Court informed the Chairperson of the African Union Commission about this procedure, and solicited the Commission's collaboration in this regard.

**30.** Given the fact that the Structure of the Registry was not adopted by the policy organs of the African Union at the last Summit session in July 2007, the recruitment process could not take off earlier than now.

By letter dated 17 July 2007, the President of the Court transmitted to the competent departments of the African Union Commission vacancy advertisements in respect of twenty-two international posts, with a request that the advertisements be published on the African Union Website and forwarded to all Member States for wide publicity.

By Note Verbale of 18 July 2007, the Court through the African Union Commission addressed the afore-mentioned vacancy announcements to the Ministries of Foreign Affairs of all Member States of the Union as well as to Member States' Embassies in Ethiopia.

Owing to slow administrative procedures and alignment of the translations in the official languages of the African Union, the vacancy announcements were published on the African Union Website only at the end of August 2007. Similarly, the above-mentioned Note Verbale of 18 July 2007 (together with the vacancy announcements) were dispatched to the Foreign Ministries of Member States of the Union and to Member States' Embassies in Ethiopia only in that same period. The deadline for submission of applications was set at 27 October 2007.

**31.** By letter of 29 October 2007, the President of the Court requested the African Union Commission to assist the Court with collecting and filing of applications post by post, and to make available to the Court a panel of four recruitment experts to assist the recruitment committee of Judges in the short listing of candidates. In the same letter, the President of the Court proposed that the short listing meeting take place at the African Union headquarters in Addis Ababa where the applications had been deposited.

By letter dated 5 November 2007, the Director of Administration at the African Union Commission informed the Court that her Department was in the process of collecting applications and that it was the view of the Commission that the recruitment process should be conducted at the Seat of the Court. The Director therefore informed the Court that all the dossiers of candidates would be forwarded to the Court by DHL the following week. Regarding the recruitment experts' panel, she informed the Court that some of the Commission's consultants were busy at the time; but that a list of other consultants would be transmitted to the Court to enable it to contact them directly.

By letter of 6 November 2007, the Chief of Staff of the Bureau of the Deputy Chairperson of the African Union Commission, in turn, contacted the Court transmitting a list of recruitment consultants proposed by the Commission, and informing it about the modalities for providing hospitality and payment of remuneration to the consultants, their terms of reference and the country quota system in force at the African Union Commission.

Pursuant to this series of correspondence, the President of the Court went on to contact all the recruitment consultants proposed by the Commission to ascertain if they would be available for the exercise and to obtain their respective *Curriculum Vitae*. Response was received from six of the eight experts recommended by the Commission.

The Court finally received the candidates' dossiers on 29 November 2007, under cover of a letter from the Director of Administration dated 26 November 2007.

**32.** On the sidelines of the 7<sup>th</sup> ordinary session of the Court held in Dar-es-Salaam from 3 to 14 December 2007, the Court's recruitment committee considered the dossiers of the six consultants recommended by the African Union Commission. Having observed that some regions of the Continent were not represented on this short-list of experts, the committee recommended that the President of the Court request the Commission to provide it with a supplementary list of recruitment experts from among those that had previously worked for the Commission, so as to widen the field of selection of the experts that would assist the Court in the recruitment exercise.

By letter dated 24 December 2007, the President of the Court asked the Commission to urgently transmit to the Court the supplementary list as requested.

### 3) *Recruitment of Local Staff*

**33.** In December 2007, the African Union Commission dispatched to the Court a team of two officials to assist it in the recruitment of local staff. This team was in Arusha from 1 to 11 October 2007.

Under the supervision of the President of the Court and in concert with the staff of the Court, this team finalized the vacancy announcements and got them published in two widely read local newspapers. Also, on 9 October 2007, the President of the Court addressed a Note to the Tanzanian Government, transmitting the post advertisements with a request that they be given the widest possible publicity.

Furthermore, the Director of Administration at the African Union Commission informed the Court that her Department would be able to avail it with only one person to help with short listing of the best candidates. She however suggested that, if need be, the Court could enlist the services of an independent institution competent in recruitment matters, such as the Eastern and Southern African Management Institute (ESAMI) also based in Arusha.

The President of the Court contacted this institution, which confirmed that it had the necessary competence in matters of recruitment. By letter dated 7 November 2007, the President of the Court officially requested the institute to indicate if it would be available to carry out recruitment assignment and to submit its offer in this respect.

By letter dated 30 November 2007, the institute accepted the offer and put forward its fee for the assignment. It also indicated that it was available to start the short listing exercise at the end of the first week of January 2008.

By letter of 24 December 2007, the President of the Court accepted the offer presented by the institute.

**E) Budgetary Matters**

*1) Budget Execution by the Court for 2007*

**34.** The block budget allocation accorded to the Court for the 2007 financial year as per Decision Assembly/AU/Dec.154(VIII) amounted to US\$4,747,500.00. The total expenditure incurred as at 30 November 2007, stood at US\$1, 952,686.58 thus leaving a balance of US\$2,794,813.42. These data represent expenditure percentage and hence execution rate of 41.13%.

The low budget implementation rate may be explained mainly by the following factors. The first is that the Court had not recruited the Registry staff and did not utilize the substantial budget provision for salaries and other staff costs. The reason for is that the Structure of the Registry was approved only in late July 2007, and the recruitment process *per se* was delayed for several reasons (see paragraphs 30 and following paras. above).

The second reason for the low budget implementation was that the services of the Court relocated from Addis Ababa to Arusha, Seat of the Court, only at the end of August 2007. This rather late relocation resulted in delays in the establishment of the offices of the Court and the provision of some of the needed equipment, which, under the terms of the Host Agreement, was not the responsibility of the Tanzanian Government.

The third reason is the fact that the Court had not recruited the Registry staff, a factor that impacted negatively on some of the projects of the Court, like creation of a Library.

This situation should, in principle, no longer reoccur in 2008, as the Structure of Registry has now been approved, the process of staff recruitment has been set in motion and the services of the Court are presently established at its provisional Seat in Arusha.

*2) Preparation of the Budget of the Court for 2008 Financial Year.*

**35.** In October 2007, the relevant services of the Court prepared the draft Budget for 2008. These services, with the assistance of a team of officials sent by the African Union Commission, also prepared a document titled “European Commission (55 million Euros) Support Programme to the African Union – 2008 Preliminary Draft for the African Court on Human and Peoples’ Rights”, which presented the activities of the Court that could be financed under this programme in 2008, together with their estimated cost for budgeting purposes.

The budget proposals of the Court and the 2008 preliminary draft for the African Court on Human and Peoples’ Rights were submitted for comments by Members of the Court, on the sidelines of the first extra-ordinary session of the Court held in Arusha, Tanzania, from 29 October to 9 November 2007.

The two finalized documents in French and English were transmitted to the African Union Commission by letter dated 14 November 2007, while the Arabic and Portuguese versions were forwarded by letter dated 22 November 2007. These two documents are being submitted for the consideration of the policy organs of the African Union during the ongoing Summit.

The Court's budget proposals for 2008 amount to US\$9,049,374. Regarding the draft 2008 budget for the Court under the European Commission Support Programme, its estimated cost is US\$780,000.

#### **F) Draft Rules of Court**

**36.** At its 3<sup>rd</sup> ordinary session held in Addis Ababa, Ethiopia, from 11 to 20 December 2006, the Court embarked upon consideration of its Rules and adopted a number of Rules drafted by the Committee set up at its First Ordinary session which took place in Banjul, The Gambia, from 3 to 5 July 2006. The Court also set up an enlarged Committee with responsibility to continue the preparation of the draft Rules of Court for submission to its next session.

The Committee met in Addis Ababa, Ethiopia, from 20 to 24 February 2007 and adopted a number of Rules.

At its 4<sup>th</sup> ordinary session held in Addis Ababa, Ethiopia, from 19 to 28 March 2007, the Court considered the draft Rules submitted by the Committee and again adopted a number of Rules. It requested the Committee, composition of which had been slightly modified, to continue preparation of the draft Rules for submission to its next session.

Similarly, at its 5<sup>th</sup> ordinary session in Addis Ababa, Ethiopia, from 4 to 13 June 2007, the Court considered the draft Rules submitted by the Committee and again adopted a number of new Rules. It also set up a select committee with responsibility to finalize the complete draft Rules, incorporating both the provisions already adopted and all the new proposals, for submission to the 6<sup>th</sup> session of the Court.

At its 6<sup>th</sup> ordinary session which took place in Arusha, Tanzania, from 17 to 28 September 2007, the Court once again considered part of the draft containing the Rules that it did not previously have the opportunity to consider, and adopted further new Rules. The Court also decided to hold an extra-ordinary session to continue consideration of the draft Rules submitted by the Committee.

The extra-ordinary session was held in Arusha, Tanzania, from 29 October to 9 November 2007 and it enabled the Court to consider virtually all the draft Rules of Court. It requested the select committee, composition of which had been slightly modified, to embark upon finalization and legal tidying up of the entire text.

At its 7<sup>th</sup> extraordinary session in Dar-es-Salaam from 3 to 14 December 2007, the Court considered some of the Rules that it could not discuss at its extra-ordinary session. It requested the Committee to continue with the work of finalization of the Rules to ensure that a final draft was ready for January 2008. It is envisaged that the Court would convene in February or March 2008 to adopt the full text of the Rules.

#### **G) Contribution to the Debate on Union Government**

**37.** By Decision Assembly/AU/Dec.156 (VIII) on the Report of the 9<sup>th</sup> extraordinary session of the Executive Council on proposals relating to the Union Government adopted in Addis Ababa, in January 2007, the Assembly of the Union "requested the Commission and the Regional Economic Communities to undertake regional and continental consultations, respectively, on the *Union Government* project".

Pursuant to that Decision, the African Union Commission by letter dated 27 February 2007, requested the Court's views on the *Union Government* project as part of the wide debate instituted on this issue.

By another letter dated 30 March 2007, the African Union Commission transmitted to the Court two documents titled "Study on Union Government: Towards a United States of Africa" and "Report on the Modalities of Realizing an African Union Government".

At its 5<sup>th</sup> session held in Addis Ababa, Ethiopia from 4 to 13 June 2007, Members of the Court held a brainstorming session on this subject on the basis of the two aforementioned documents. At the end of that session, Members of the Court came up with a number of observations and also raised several issues for consideration in the broad preliminary debate on *Union Government*.

On the occasion of the Assembly of the African Union session held in Accra in July 2007, the delegation of the Court distributed a document titled "Contribution of Members of the Court to the consultation on the *Union Government* project" which it had finalized after the 5<sup>th</sup> session of the Court. This document was part of the set of documents distributed to the Heads of State. However, the delegation of the Court did not have the chance to present it orally to the Assembly. As the debate on the *Union Government* project is not yet closed, it is hoped that those to pursue work on this project will take cognizance of the recommendations of the Court.

#### **H) Participation in the Consultation by the High Level Panel charged to conduct an independent audit of the African Union**

**38.** By letter dated 9 October 2007, the African Union Commission invited the President of the Court for discussion with the high-level panel for audit of the African Union which was operating from Addis Ababa, Ethiopia.

The President of the Court responded to that invitation and indeed held discussion with members of the panel on 22 October 2007 in Addis Ababa, Ethiopia. The discussion focused on issues such as the activities undertaken by the Court since its establishment; the challenges facing the Court and its future programme.

#### **I) Cooperation with External Partners**

**39.** Upon establishment of the Court in Banjul, The Gambia, in July 2006, some institutions spontaneously came up with offers of cooperation with the Court. In 2007, the first institution that entered into cooperation with the Court was Konrad Adenauer Foundation (Germany). This Foundation financed the study tour of Members of the Court to Europe and America in May 2007 where they visited other Human Rights Protection and Promotion Institutions such as the International Court of Justice (The Hague, The Netherlands), the German Federal Constitutional Court (Karsruhe), the European Human Rights Court (Strasbourg, France), the Inter-American Human Rights Court (San José, Costa Rica) and the Inter-American Human Rights Commission (Washington, USA).

**40.** The second institution with which cooperation prospects have reached an advanced stage was the German Cooperation Agency (GTZ). In 2007, this institution informed the Court that it had set aside the sum of 1 million Euros for use by the Court.



At its sixth ordinary session held in Arusha from 17 to 28 September 2007, the Court played host to a GTZ delegation that was visiting to confirm the Court support project and announce the appointment of a resource person with responsibility for the project. The individual appointed will be based in Arusha as from March 2008.

**41.** The third institution which could enter into cooperation with the Court is the European Union under the “European Commission 55 million Euros Support Programme for the African Union”. As indicated earlier (paragraph 35), “a 2008 preliminary project for the African Court on Human and Peoples’ Rights” which detailed the activities of the Court likely to be financed under this programme in 2008, was transmitted to the African Union Commission in November 2007.

**42.** The fourth institution that offered prospects of cooperation with the Court is the United Nations. On 16 November 2006, the United Nations and the African Union signed a Declaration on strengthening United Nations-African Union Cooperation as part of the ten-year African Union capacity enhancement programme.

By letter received in October 2007, the United Nations Liaison Office to the African Union and the Regional Bureau of the United Nations Commission on Human Rights both of which are headquartered in Addis Ababa, addressed an invitation to the Court to participate in the African Union-United Nations Consultative Meeting on Human, Rights Justice and Reconciliation for 2008-2009 due to be held in Bahar Dar, Ethiopia, from 19 to 20 October 2007 as part of implementation of this programme. The objective of the meeting was to identify areas in which the United Nations could enhance the capacities of the various organs of the African Union, as far as human rights are concerned.

The Court responded favorably to this invitation and was represented at the meeting. With respect to 2008-2009, the consultative meeting proposed that support should be extended to the Court towards establishment of a specialized Library as well as reproduction and printing unit.

**43.** Lastly, it is noteworthy that other institutions have also shown their interest in entering into cooperation with the Court but a specific framework is yet to be put in place in this regard. The institutions concerned include such other international jurisdictions as the International Court of Justice, the European Human Rights Court and the Inter-American Human Rights Court. Moreover, the President of the Court participated in the First Meeting of International and Regional Courts of Justice, which took place in Managua, Nicaragua, from 4 to 5 October 2007. One of the resolutions adopted at the meeting was to create a mechanism to facilitate communication and information exchange between these international jurisdictions and to make preparations for a second similar meeting at a venue to be determined as quickly as possible.

Some other international organizations may also be cited in this regard. On the occasion of the study tour of Members of the Court to Europe and America in May 2007, international bodies such as the World Bank expressed their readiness to provide direct or indirect support to the Court.

Next are governmental institutions such as the Danish Human Rights Institute and the Royal Swedish Government which have similarly expressed readiness to enter into cooperation with the Court.

Also to be mentioned are some academic institutions in Africa and America which have already contacted the Court to offer their services particularly in the field of training of the Registry staff and research.

Finally, mention was made of non-governmental organizations such as the African Coalition for an effective African Court on Human and Peoples' Rights and the McArthur Foundation both of which have also contacted the Court for possible cooperation arrangement.

### **III. EVALUATION AND RECOMMENDATIONS**

#### **A) Evaluation**

44. The Court would like, first and foremost, to express gratitude to the policy organs of the African Union and, in particular the Assembly of Heads of State and Government of the Union for the support they have extended to the Court, especially for making available to it the financial resources required for its functioning in 2007. The Court expresses its appreciation for all the special attention accorded to it by the Assembly of the Union towards its effective establishment and operationalization.

The Court also hereby thanks the African Union Commission for the several forms of assistance it has continued to extend to the Court pending establishment of its structures.

The Court further thanks the Government of the United Republic of Tanzania, host country of the Court, for its tireless efforts at ensuring the Court's installation at its Seat in Arusha.

45. The various support and resources made available to the Court enabled it to make substantial progress in the process of its operationalization. For example, it has been able, thanks to this support, to undertake the following activities:

- convening four ordinary sessions and an extra-ordinary session;
- presentation of its budget proposal for 2007 for consideration by the policy organs of the African Union;
- presentation to the policy organs of the Union the draft Structure of the Registry as well as the draft remuneration system for Members of the Court;
- identification of the site for the Seat of the Court in agreement with host country's Government;
- finalization of the Host Agreement and participation in Host Agreement negotiation between the African Union Commission and the Government of the United Republic of Tanzania;
- effective installation of its services at its Seat in Arusha;
- embarking upon the process of recruiting the Registry staff, both international and local;
- continued consideration of the draft Rules of Court which is currently at finalization stage;
- preparation of its budget proposals for 2008;
- participation in the debate on *Union Government*;
- participation in the consultation conducted by the high-level panel for independent audit of the African Union; and

- continued contact with the external partners desirous of entering into cooperation with the Court.

**46.** However, even with the above actions, the Court was faced with a number of difficulties which eroded the momentum of its activities. For example, on the question of the Structures of the Court, this action was first hampered by the delay in approving the Structures, given that the approval came only in July 2007. Besides, the Court runs the risk of being constrained by the limited number of positions approved for its operation and the low-level grade of the positions.

On the question of the salary status of Members of the Court, the approved level affects the status of the Court in general, that is to say, the position and place of the Court within the institutional structure of the African Union; and undermines the principle of balance between the prerogatives of the legislative, executive and judicial organs of the continental organization.

As regards staff recruitment, there has been a delay in launching the process because of the late approval of the Structure of the Court Registry. Besides, the process *per se* has not advanced satisfactorily owing to bureaucratic bottlenecks often beyond the control of the Court.

On the Draft Rules of Court, the relatively slow pace with which the consideration is being conducted may be explained not only by the difficulties inherent in any such exercise that involves crafting a legal text based on the legal systems of different countries, but also by the fact that administrative matters relating to effective take-off of the activities of the Court were often regarded as priorities and placed high on the agenda of its sessions.

As regards the Seat of the Court, whereas progress was made in the process of installing the Court in Arusha, identification of the Seat of the Court and the conclusion of the Host Agreement took some time, thus compelling the Court to operate from Addis Ababa for nearly one year. Then, after the relocation of the Court to Arusha, it had to contend with the problem of the slow pace with which things were being put in place, both in terms of provision of premises and supply of furniture and equipment.

Lastly, it should be mentioned that as long as a significant number of Member States do not ratify the Protocol establishing the Court, and do not subscribe to the declaration accepting the competence of the Court to receive cases from individuals and non-governmental organizations, access to the Court will remain extremely limited, and the system of judicial protection of human and peoples' rights instituted with the establishment of the Court, will not be able to have its full impact.

## **B) Recommendations**

**47.** In view of the aforesaid, the Court requests:

- 1) the Assembly of Heads of State and Government to:
  - approve the Draft 2008 Budget as proposed;
  - ask the Executive Council to speedily re-consider the Structure of the Court Registry, as well as the status and the place the Court should occupy within

the institutional system of the African Union, particularly with the level of remuneration of its Members and other issues relevant to their status;

- make a solemn appeal to Member States of the African Union to ratify the Protocol establishing the Court if they have not already done so, and to issue the declaration accepting the competence of the Court to receive cases from individuals; and

2) the Government of the United Republic of Tanzania, Host Country of the Seat of the Court, and in accordance with the Host Agreement to:

- speed up the process of supplying the Court with all the furniture and equipment required for its normal operation;
- as a matter of urgency, embark upon the work to refurbish the buildings which are to serve as temporary Seat of the Court;
- speedily install the Court at its permanent Seat ; and
- fast track implementation of all the other provisions of the Host Agreement.

**ANNEX: LIST OF THE JUDGES OF THE AFRICAN COURT ON HUMAN AND  
PEOPLES' RIGHTS**

<b>No.</b>	<b>NAME</b>	<b>TERM OF OFFICE</b>	<b>COUNTRY</b>
<b>1</b>	Ms. Sophia A.B. AKUFFO	2	Ghana
<b>2</b>	Mr. Hamdi Faraj FANNOUSH	4	Libya
<b>3</b>	Mr. Modibo Tounty GUINDO	6	Mali
<b>4</b>	Mr. El Hadji GUISSÉ	4	Senegal
<b>5</b>	Mr. George Wilson KANYEIHAMBA	2	Uganda
<b>6</b>	Mrs. Justina Kelello MAFOSO-GUNI	4	Lesotho
<b>7</b>	Mr. Jean MUTSINZI	6	Rwanda
<b>8</b>	Mr. Bernard Makgabo NGOEPE	2	South Africa
<b>9</b>	Mr. Gérard NIYUNGEKO	6	Burundi
<b>10</b>	Mr. Fatsah OUGUERGOUZ	4	Algeria
<b>11</b>	Mr. Jean Emile SOMDA	2	Burkina Faso