

**Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights. OAU/LEG/MIN/AFCHPR/PROT.1 rev.2(1997).**

The Member States of the Organization of African Unity, 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 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 and freedoms 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 Charter on Human and Peoples' Rights is to ensure on the one hand promotion and on the other protection of Human and Peoples' Rights, freedoms and duties,

Recognizing further, the efforts of the African Commission on Human and Peoples' Rights in the protection and promotion of human and peoples' rights since its inception in 1987,

Recalling Resolution 230 (XXX) adopted by the Assembly of Heads of State and Government requesting the Secretary-General to convene as a government experts' meeting to ponder, in conjunction with the African Commission, over the means to enhance the efficiency of the African Commission in considering particularly the establishment of an African Court of Human and Peoples' Rights,

Firmly convinced that the attainment of the objectives of the African Charter on Human and Peoples' Rights requires the establishment of an African Court of Human and Peoples' Rights to complement and reinforce the mission of the African Commission on Human and Peoples' Rights,

***Have agreed as follows:***

***Article 1 Establishment of the Court***

There shall be established an African Court of Human and Peoples' Rights ("Court") whose jurisdiction and functioning of which shall be governed by the present Protocol.

***Article 2 Relationship between the Commission and the Court***

The Court shall complement the protective mandate of the African Commission on Human and Peoples' Rights ("Commission") conferred upon it by the African Charter on Human and Peoples' Rights ("Charter").

***Article 3 Jurisdiction***

1. 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 African human rights Convention.

2. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by decision of the Court.

#### ***Article 4 Advisory opinions***

1. At the request of a Member State of the OAU any of its organs, or an African organization recognized by the OAU, the Court may provide an opinion on any legal matter relating to the Charter or any African human rights instrument.

2. The court shall give reasons for its advisory opinions provided that every judgment shall be titled to deliver a separate or dissenting opinion.

#### ***Article 5 Seizure of 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

#### ***Article 6 Exceptional jurisdiction***

1. Notwithstanding the provisions of Article 5, the Court may, on exceptional grounds, allow individuals, non-governmental organizations and groups of individuals to bring cases before the Court, without first proceeding under Article 55 of the Charter.

2. The Court will consider such a case, taking into account the conditions enunciated in Article 56 of the Charter.

3. The Court itself may consider the case or refer it to the Commission.

#### ***Article 7 Sources of law***

In its deliberations, the Court shall be guided by the provisions of the Charter and the applicable principles stipulated in Articles 60 and 61 of the Charter.

#### ***Article 8 Conditions for considering communications***

1. The Court shall not consider a matter before it originating under the provisions of Article 9 of the Charter until such time as the Commission has prepared a report in terms of Article 52 of the Charter.

2. The Court may not consider a case originating under the provisions of Article 55 of the Charter until the Commission has considered the matter and prepared a report or taken a decision.

3. The Court may deal with a case only if the matter is brought before it, within three months, after the submission of the report of the Commission to the Assembly of Heads of States and Government.

4. Having accepted a case as stipulated in the above provisions, the Court may, by a two-thirds majority of its members decide to reject it if, after due consideration, the Court establishes the existence of one of the grounds of inadmissibility in Article 56 of the Charter.

#### ***Article 9 Hearings and presentations***

1. The Court shall conduct its proceedings in public. The Court may however conduct proceedings in camera, in cases where it is satisfied it is in the interest of justice.

2. 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.

3. Any person, witness, or representative of the parties, who appears before the Court, shall enjoy the immunities and privileges in accordance with international law necessary for the discharging of their functions, tasks and duties in relation to the Court.

#### ***Article 10 Composition***

1. The Court shall consist of eleven judges, nationals of the 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.

2. No two judges shall be nationals of the same State.

#### ***Article 11 Nominations***

States Parties to the Charter may each propose up to three candidates, at least two of whom shall be nationals of that State. States Due consideration shall be given to adequate gender representation in the nomination process.

#### ***Article 12 List of candidates***

1. Upon the entry into force of this Protocol, the Secretary-General of the OAU shall request each State Party to the Charter to present, within 90 days of such a request, its nominees for membership of the Court.

2. The Secretary-General of the OAU shall prepare a list in alphabetical order of the candidates presented and transmitted 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 ("Assembly").

### **Article 13 Elections**

1. The judges of the Court shall be elected by secret ballot by two-thirds majority of votes of the members present and voting in the Assembly from the list referred to in Article 12(2) of the present Protocol.
2. States Parties shall ensure that in the Court as a whole there is representation of the main regions of Africa and of their principal legal traditions.
3. Due consideration shall be given to adequate gender representation during the election process.
4. The same procedure as set out in Articles 11, 12, and 13(1), (2) and (3) shall be followed for the filling of vacancies.

### **Article 14 Term of office**

1. 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.
2. 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.
3. 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.
4. The expiration of their term notwithstanding, judges shall continue to hear cases part heard by them.

### **Article 15 Independence**

1. The independence of the judges shall be ensured. The Court shall decide matters before it impartially, on the basis of fact and in accordance with the law, without any restrictions, undue influence, inducement, pressure, threat or interference, direct or indirect, from any quarter for any reason.
2. No judge may hear a 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.
3. 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.
4. At no time shall the judges of the Court be held liable for any decisions or opinions issued in the exercise of their functions.

### ***Article 16 Incompatibility***

The position of judge of the Court is incompatible with any other 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. Any doubt on this point shall be settled by decision of the Court.

### ***Article 17 Cessation of office***

1. A judge shall not be suspended or removed from office unless, by the unanimous decision of other members of the Court, the judge concerned has been found to be no longer fulfilling the required conditions to be a judge of the Court.
2. Such a judgment of the Court shall be final and take effect immediately.

### ***Article 18 Presidency of the Court***

1. The Court shall elect its President and one Vice President for a period of two years. They may be re-elected only once.
2. The President shall perform judicial functions on a full-time basis and shall reside at the seat of the Court.

### ***Article 19 Right to hear cases***

If a judge is a national of any of the State parties to a case submitted to the Court, that judge shall retain the right to hear the case.

### ***Article 20 Quorum***

The Court will examine cases brought before it in principle by seven judges. However, the Court may establish, if the need arises, two chambers consisting of five judges each.

### ***Article 21 Registry of the Court***

1. The Court shall appoint its own Registrar and other staff of the registry according to the Rules of Procedure.
2. The office and residence of the Registrar shall be at the place where the Court has its seat.

### ***Article 22 Seat of Court***

1. The court shall have its seat at the place determined by the Assembly. However, it may convene in the territory of any Member State of the OAU when a majority of the Court consider it desirable, and with the prior consent of the State concerned.
2. The seat of the Court may be changed by the Assembly after due consultation with the Court.

### ***Article 23 Evidence***

1. As far as possible, after due consideration, the Court will 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.
2. The Court may receive written and oral evidence and other representations including expert testimony and it shall make a decision on the basis of such evidence and representations.

### ***Article 24 Findings***

1. If the Court finds that there has been a violation of a human or peoples' right, it shall, order an appropriate measure to remedy the violation.
2. The Court may also order, that the consequences of the measure or situation that constituted the breach of such right be remedied and that fair compensation or reparation be paid or made to the injured party.
3. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems necessary.

### ***Article 25 Judgment***

1. The judgment of the Court taken by majority shall be final and not subject to appeal.
2. The judgment of the Court shall be read in open court, due notice having been given to the parties.
3. Reasons shall be given for the judgment of the Court.
4. If the judgment of the Court 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 26 Execution of judgment***

The States Parties to the present Protocol undertake to comply with the judgment in any case to which they are parties and to guarantee its execution.

### ***Article 27 Notification of judgment***

1. The parties to the case shall be notified of the judgment of the Court and shall be transmitted to the Member States of the OAU.
2. The Council of Ministers shall also be notified of the judgment and shall monitor its execution on behalf of the Assembly.

### ***Article 28 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 the State has not complied with the Court's judgment.

### ***Article 29 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 bearing in mind the Independence of the Court.

### ***Article 30 Rules of procedure***

The Court shall draw up its Rules and determine its own procedures.

### ***Article 31 Ratification***

1. The Protocol shall be open for signature and ratification or adherence by any State Party to the Charter.
2. The instrument of ratification or adherence to the present Protocol shall be deposited with the Secretary-General of the OAU.
3. The Protocol shall come into effect one month after eleven instruments of ratification or adherence have been deposited.
4. For any State Party ratifying 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 adherence.
5. The Secretary-General shall inform all Member States of the OAU of the entry into force of the present Protocol.

### ***Article 32 Amendments***

1. 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 two-thirds majority, the draft amendment after all the States Parties to the present Protocol have been duly informed of it and the Court has given its opinion on the amendment.
2. 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.
3. The amendment shall come into force for each State Party which has accepted it, one month after the Secretary-General of the OAU has received notice of the acceptance.