



Group photo

Background

On June 27 2014, the AU Summit adopted in Malabo, six new legal instruments, including The Protocol on the Statute of the African Court of Justice and Human and Peoples' Rights (International Crimes Protocol), which, once into force, will expand the jurisdiction of the African Court to cover international crimes.

It is on this backdrop that Konrad Adenauer Stiftung under the auspices of its Rule of Law Program for Sub Saharan Africa in conjunction with the Pan African Lawyers Union deemed it important to convene a key stakeholders' forum to discuss the progress, successes, challenges and prospects of the current and future African Court; as well as the current and future strategies to support the African Human Rights system and ensure protection and promotion of human rights and end to impunity in Africa.

Summary

The two-day Pan African Conference was held on 9 and 10 October 2014, in Arusha, Tanzania, under the theme: “Current Role and Proposed Evolution of the African Court: Keys for a Comprehensive Engagement of the African Human Rights System”. The objective of the forum was to *inter alia*:

- Reflect on the emerging African Human Rights System;
- Reflect on the progress, prospects and challenges of the existing African Court; and
- Reflect on the progress, prospects, challenges and way forward for the future African Court with international criminal jurisdiction; and
- Identify avenues to support the current and future Court.



Mr. Elijah Banda, President PALU
making his opening remarks



Dr. Arne Wulff, Director, KAS, Rule of Law
making his welcome remarks

The conference discussed *inter alia*,

- The overall ‘ecosystem’ of the African Institutions with which African citizens and their governments are pursuing various goals of mutual interest, in particular, the African Governance Architecture (AGA);
- The case load of the African Court on Human and Peoples’ Rights; the emerging jurisprudence from the Court; the challenges of Art 34(6) of the protocol establishing the Court (Declarations on direct access by individuals) as well as other challenges facing the Court today;
- The provisions of the new Protocol with particular emphasis on the immunity clause;
- Immunity under international law, practice –vs- theory

The key speakers at the conference included Hon. Justice Gerard Niyungeko, Judge African Court on Human and Peoples’ Rights and former President of the Court; Dr. Robert Eno, the Registrar of the African Court; Mr. Hassan Jallow, UN Under Secretary General and the Chief Prosecutor, International Criminal Tribunal for Rwanda/Mechanism for International Criminal Tribunals (ICTR/MICT); Mr. Tom Bahame Nyanduga, Former Commissioner at the African Commission on Human and Peoples’ Rights; Dr. George Mukundi, Head of the African Governance Architecture (AGA) Secretariat among others.



Justice Gerard Niyungeko



Dr. Robert Eno, Registrar



Mr. Hassan Jallow

At the end of the deliberations, a Solemn Declaration of Support for the African Human Rights System was signed by African Bar Leaders and delivered to the African Court on Human and Peoples' Rights.



Delegates at the handing over ceremony



Justice Niyungeko & Dr. Eno receiving the Declaration



Justice Niyungeko addressing the delegates in the Court



Group photo outside the African Court Buildings

SOLEMN DECLARATION OF THE AFRICAN LEGAL PROFESSION AND AFRICAN CIVIL SOCIETY ARUSHA, FRIDAY 10TH OCTOBER 2014

We African Legal Professionals and Representatives of Civil Society Organizations convened in Arusha, Tanzania on 9 and 10 October 2014, and agreed:

Preamble

- **Conscious** of the fact that the respect for the Rule of Law and Human Rights is a condition precedent for sustainable development in Africa
- **Noting** the continued efforts towards democratization by the African Union and its Member States and their commitment to silence the guns and end conflict in Africa by 2020
- **Acknowledging** the developments in the African Governance, Human Rights, Peace and Security Architectures over the last twenty years
- **Regretting** that, despite these developments, the continent is still afflicted with the scourge of conflict, deficits of democracy and governance, violations of human or peoples' rights

- **Expressing** solidarity with the countries and peoples' faced by Ebola and emphasizing the importance of mainstreaming human rights best practices in managing Ebola
- **Recognizing** the year 2016 will be the year of Human Rights in Africa and the need to ensure victims of human rights violations receive justice
- **Recalling** the important role lawyers and civil society organizations have played in the democratization process in Africa
- **Determined** to encourage lawyers associations and broader civil society play a more eminent and proactive role in the human rights mechanisms and processes of the African Union and Regional Economic Communities

HEREBY RESOLVE AND RECOMMEND AS FOLLOWS ...

African Governance Architecture (AGA)

- Acknowledging that the African Charter on Democracy Elections and Governance (ACDEG) is a consolidation of democratic ideals spanning over 25 years of Declarations, Decisions, Policy Positions and actions of the AU and its Member States.
- Noting the desire of the AU and its Member States for AGA to be a major turning point in the management and assessment of governance on the Continent.
- Calling for universal ratification of ACDEG within the next twelve (12) months.
- Demand that the AU specify and institutionalize the role of African citizens and CSOs within AGA
- Confirming our preparedness to work with the various organs of AGA in achieving a more prosperous and democratic Africa.

The African Human Rights System, within AGA

- Noting that the African Court, African Commission and African Committee of Experts on the Rights and Welfare of the Child are the three key Human Rights Mechanisms under the Human Rights and Transitional Justice Cluster of AGA
- Noting the process to institutionalize regular meetings of these bodies and urging the continuation of the same.
- We commit to support, in particular, the Special Mechanisms of the Office of the Chairperson of the African Union Commission, African Commission on Human and Peoples' Rights (AComHPR) and the African Charter on the Rights and Welfare of the Child (ACERWC)
- Urging the rapid finalization of the Transitional Justice Framework

African Court on Human and Peoples' Rights (AfCHPR)

- Noting that to date the Court has disposed of 23 applications and significantly contributed to human rights jurisprudence.



- Regretting that the Court faces some challenges, including insufficient human, technical and financial resources.
- Regretting, specifically, that the Court does not have adequate resources to operationalize its Legal Aid Scheme.
- Commit to deploying citizen and civil society creativity to provide additional resources for the Court's Legal Aid Scheme

African Court of Justice and Human and Peoples' Rights (ACJHPR)

- Acknowledge that, after fifty years of independence in Africa, the Member States have accepted the principles of individual criminal responsibility and corporate criminal liability for a broad range of international and transnational crimes, in addition to State responsibility for violations of human and peoples' rights, including grave violations thereto
- Further acknowledge that the Member States have also accepted the principle for peaceful settlement of any disputes amongst them and interpretation of the law of the African Union through an independent judicial mechanism
- Regretting the fact that a possibility of an impunity gap exists with the broad wording of the immunity clause
- Urging AU Member States to revisit the immunity clause to further align it with Article 4(h) and progressive developments in international law.
- Commit to work for speedy ratification of the Protocol.

African Regional Economic Communities (RECs) and other African Regional Organizations (ROs)

- Recognizing the role of RECs as building blocks of the AU and eventually African Economic Community and the need to foster, consolidate and promote closer cooperation and collaboration between these bodies.
- Noting further the Protocol on Relations between the AU and the RECs specifically Article 30 on harmonization of mechanisms for promotion of peace, security and stability.
- Restating that respect for human rights and democratic values are important tenets in fostering mutual trust necessary for increased and deepened integration.
- Noting the 2010 Forum of AU and REC bodies tasked with dealing with human rights issues and encouraging reinstitution of the Forum.

Civil Society in general (including the legal profession)

- Commit ourselves to working toward for universal ratification of the key human rights Treaties and Protocols as well as ACDEG by 2016.
- Commit ourselves to working towards universal deposit of Article 34(6) Declarations by 2020.



- Undertake to participate actively in the state reporting process under the African Governance Architecture including by submitting alternative reports.
- Undertake to organizing a pledging conference for support to the AU Human Rights bodies.
- Make full use of the available AU and REC mechanisms in preventing and redressing human rights abuses including by appreciate the broad range of non-judicial processes available to redress rights violations including truth seeking, memory and memorials and institutional reform.

The African legal profession in particular

- Noting the unfavorable trend of restricting civil society space, commit to defending civil society spaces and voices.
- Implementation of the Decisions of the African Human Rights Mechanisms
- Working with national Parliaments and national Judiciaries to ensure these

Pan African Lawyers Union (PALU)

- Institutionalize
 - Annual Council Meeting
 - Annual Conference
- Peer review at the annual Council Meeting and Triennial General Assembly on the measures that the regional and national lawyers' associations are taking, to implement the commitments made in this Declaration
- Develop, in a consultative manner, Principles and Guidelines on the role of the regional and national lawyers' associations in the promotion and protection of human rights and combatting impunity on the continent
- Commit to hold a Conference, for its members on the state of law, peace and security in Africa within the next twelve months
- Commit to hold a Conference, for its members on the state of democracy, elections and governance in Africa within the next twenty-four months

Regional Lawyers' Associations (RLAs)

- Urge the RLAs to be more active
- Support to regional CSO formations
- Ensure that the principles of ACDEG and of human rights treaties are reflected in the jurisprudence of the national courts

National Lawyers' Associations (NLAs)

- Urge the NLAs to be more active
- Support to national CSO formations
- National Audits for ACDEG and AGA



- Ensure that the principles of human rights treaties are reflected in the jurisprudence of the national courts
- Ensure that the principles of ACDEG are reflected in the jurisprudence of the national courts, especially in areas of elections and constitutional reform

Financing Development and Human Rights

- Urgently finalize and commit to adopting a sustainable financing mechanism for the African Union.