

COALITION FOR AN EFFECTIVE AFRICAN COURT  
ON HUMAN AND PEOPLES' RIGHTS

## A GUIDE

# THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Second Edition



September 2008

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*Coalition for an Effective African Court on Human and Peoples' Rights  
No 64 Haile Selassie Road, P.O. Box 16769, Arusha, Tanzania  
Website: [www.africancourtcoalition.org](http://www.africancourtcoalition.org)  
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and Open Society Initiative for East Africa  
for the realisation of this publication.*

## WHY THE GUIDE?

The Coalition for an Effective African Court on Human and Peoples' Rights (the Coalition) was formed in May 2003 to advocate for an effective, efficient, independent and credible African Court on Human and Peoples' Rights (the Court).

A key objective of the Coalition is to raise awareness on the Court and key developments at the African Union (A.U.) affecting it. In achieving this goal, the Coalition produced a *Guide to the Protocol on the African Court on Human and Peoples' Rights* (2005). This is a revision of the 2005 Guide. It summarises the key provisions of the Protocol establishing the Court and key developments affecting it since its establishment.

## THE CREATION OF THE COURT

The Assembly of Heads of State and Government of the Organisation of African Unity (now the African Union) adopted the Protocol to the African Charter on Human and Peoples' Rights (the Protocol) in Ouagadougou, Burkina Faso, on 10 June 1998. The Comoros deposited the required 15<sup>th</sup> instrument of ratification on 25 December 2003 resulting in the Protocol coming into effect on 25 January 2004.

## NOTES

This image shows a single sheet of cream-colored paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no text or other markings on the paper.

*Key elements of the new Protocol:*

- The African Court of Justice and Human Rights will be an A.U. organ.
- The judges and the registrar of the African Court on Human and Peoples' Rights will continue to serve until the judges to the new court are elected and a registrar appointed.
- The Protocol will come into force after fifteen states have ratified it. The Protocol establishing the African Court on Human and Peoples' Rights will remain in force for one year after the entry into force of the protocol creating the new court.
- The new court shall consist of 16 judges from across Africa.
- The court shall have two sections: one on human rights and the other on general matters. Each section shall have 8 judges.
- The new court will interpret the Constitutive Act of the A.U., the African human rights legal instruments, A.U. treaties, and all decisions, directives of organs of the A.U.
- States Parties, A.U. institutions such as the African Commission on Human and Peoples' Rights and the African Committee on the Rights and Welfare of the Child, national human rights institutions and inter-governmental bodies accredited to the A.U. may all bring cases to the court.
- Individuals and non-governmental organisations can petition the court directly only if a State Party has made a declaration allowing for this.
- Decisions are binding. Failure for states comply will result in a referral to the Assembly of Heads of State and Government of the A.U. The Union can impose sanctions for failure to comply with the court's decisions.
- The new court will be located in Arusha, Tanzania - the seat of the African Court on Human and Peoples' Rights.

**PROTOCOL ON THE ESTABLISHMENT OF AN AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**

**As of July 2008**

<b>Ratified States</b>	<b>Not yet ratified States</b>
Algeria	Angola
Burkina Faso	Benin
Burundi	Botswana
the Comoros	Cameroon
Cote d'Ivoire	Cape Verde
Gabon	Central African Republic.
The Gambia	Chad
Ghana	Congo
Kenya	Democratic Republic of the Congo
Lesotho	Djibouti
Libya	Egypt
Mali	Equatorial Guinea
Mauritania	Eritrea
Mauritius	Ethiopia
Mozambique	Guinea
Niger	Guinea-Bissau
Nigeria	Liberia
Rwanda	Madagascar
Senegal	Malawi
South Africa	Namibia
Tanzania	Sahrawi Arab Democratic Republic
Togo	Sao Tome & Principe
Tunisia	Seychelles
Uganda	Sierra Leone
	Somalia
	Sudan
	Swaziland
	Zambia
	Zimbabwe

## **THE PURPOSE FOR THE COURT**

The primary objective for the creation of a human rights court is to complement and reinforce the mandate of the African Commission on Human and Peoples' Rights (African Commission) and to ensure the protection of the rights set out in the African Charter on Human and Peoples' Rights (African Charter). The Court is the highest authority that can interpret the African Charter in case of complaints that the provisions of the Charter have been violated.

## **SOURCES OF LAW**

The Court shall interpret the provisions of -

- the African Charter;
- the African Charter on the Rights and Welfare of the Child;
- the Protocol to the African Charter on the Rights of Women, and
- any other relevant human rights instruments ratified by African states.

## **THE COMPOSITION OF THE COURT**

The Court consists of 11 judges. At least seven judges shall consider a case.

Nationals of the 53 member states of the African Union (A.U.) can be judges of the Court. The A.U. guidelines on nominations and elections of judges state that the court should have the following number of judges for each region of Africa: Eastern (2), Northern (2), Central (2), Western (3) and Southern Region (2). No two judges can be from the same country.

## **THE CREATION OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS**

The A.U. at the July 2004 Summit decided to integrate the African Court on Human and Peoples' Rights and the Court of Justice provided for under the Constitutive Act of the African Union. A Protocol to the Constitutive Act establishing the Court of Justice was adopted in 2003, but never entered into force.

A new Protocol to the Statute on the African Court of Justice and Human Rights was adopted by the Executive Council of the A.U. at its 13th Ordinary session in Sharm-el-Sheikh, Egypt on 28 June 2008.

The Protocol is a single legal instrument merging the African Court on Human and Peoples' Rights and the Court of Justice of the A.U. It includes key elements from both the protocols establishing its predecessors.

## **ACCOUNTABILITY**

The Court submits an annual report to the Assembly of the A.U. Since the Court began operating, its reports to the A.U. have largely dealt with administrative issues related to setting up of offices in Arusha, Tanzania and the recruitment of staff.

## **BUDGET**

The A.U., in consultation with the Court, shall determine the Courts' expenses, the judges' allowances and emoluments, and the budget of the Registry.

In its first year, 2006-2007, the Court received a budget of US\$ 2,378,750 from the A.U.

## **THE HEADQUARTERS OF THE COURT**

The seat of the Court is in Arusha, Tanzania.

2nd Floor, Ngorongoro Wing,  
Arusha International Conference Centre,  
P.O. Box 6274, Arusha, Tanzania

Tel : + 255 27 205 0111

Fax : + 255 27 205 0112

The Assembly of Heads of State and Government must ensure that there is a balance between men and women on the Court. Unfortunately the first bench (as noted below) was composed of two women and nine men.

The Court elects its own president and vice-president.

The president of the Court serves on a full-time basis. The other judges serve on a part-time basis.

The Court shall appoint a registrar and other staff.

## **QUALIFICATIONS**

Court judges should be jurists of high moral character, and should have recognised practical, judicial and academic experience in the field of human and peoples' rights.

The judges that compose the Court should have experience in one of the following legal traditions: civil, common, Islamic, and African customary law. Judges must also have experience in human and peoples' rights.

## **INDEPENDENCE AND IMPARTIALITY**

The Court shall be independent and impartial.

No judge may hear a case in which he/she has been a party as a counsel or adviser involved in any capacity on the case.

A judge cannot be someone who is closely linked to a government such as a legal advisor, a director in a ministry or a diplomatic representative.

## **NOMINATION AND APPOINTMENT PROCESS**

Only a state that has ratified the Protocol creating the Court can nominate a candidate to be a judge to the Court.

A state that has ratified the Protocol can nominate up to three candidates. At least one of those should be a woman.

The nominations must be submitted to the A.U. Commission (the Office of the Legal Counsel) two months before the next A.U. Summit. There are two A.U. Summits each year - January and July.

The A.U. Commission shall send a list of all candidates to member states of the A.U. at least 30 days before the next ordinary session of the Assembly of Heads of State and Government.

The Executive Council of the A.U. (a body made up of Foreign Affairs ministers) elects the judges by secret ballot. The Assembly of Heads of State and Government appoints the elected judges.

## **TENURE OF JUDGES**

Ordinarily, the judges serve a six-year term. They can serve a maximum of two consecutive terms.

The president of the Court is elected by the other judges for a two-year term, and may be re-elected for another two years.

The first president of the Court is Gérard Niyungeko of Burundi whose term as president began in July 2006. His deputy is Modibo Tounty Gouindo of Mali.

## **ENFORCEMENT**

The States Parties are legally bound to comply with the decision of the Court.

The Court will transmit its decisions to the A.U.

The Executive Council of Ministers of the A.U. shall monitor a state's compliance with a decision.

## **ADVISORY OPINIONS**

The Court can also give advisory opinions on the interpretation of the African Charter and the other human rights treaties upon request by the following:

- A member state of the A.U.;
- The organs of the African Union. These include the Assembly of A.U., the Peace and Security Council, the Pan-African Parliament, the African Union Commission, the Permanent Representatives Committee (this is made up of the ambassadors to the A.U. headquarters in Addis Ababa, Ethiopia); the Specialised Technical Committees of the A.U. (not yet established), the Economic, Social and Cultural Council (the civil society body); and the financial institutions (also not yet established);
- Any African organisation recognised by the African Union. These include the Regional Economic Communities and organisations that have observer status at the A.U.
-

## HEARING OF CASES

Hearings of cases take place in public. The rules of procedure determine those instances where cases shall be held in private.

Legal representatives may represent parties before the Court.

In the interests of justice, the Court may provide free legal representation.

## DECISIONS

The Court may do the following:

- Facilitate and approve an amicable settlement;
- Find that there is a violation of human or peoples' rights;
- Order that the violator make a payment of fair compensation or reparation; and
- Decide on a provisional measure in order to avoid irreparable harm to the person in urgent matters.

The Court shall deliver decisions within ninety days from the end of deliberations.

The Court shall inform parties to the case as to when the decision shall be delivered.

The decision of the Court shall be final with no opportunity of appeal.

## THE JUDGES: 2006 - 2012

In the first six years of the Court, which began in July 2006, the terms of office were staggered to allow for smooth transition when new judges are elected. Four judges served a two-year term and four other judges are serving a four-year term.

<b>Judge</b>	<b>Term</b>
Gérard Niyungeko (Burundi)	2006-2012 (President 2006-2008)
Modibo-touny Gouindo (Mali)	2006-2012
Jean Mutsunzi (Rwanda)	2006-2012
Fatsah Ouguergouz (Algeria)	2006-2010
Hamdi Faraj Hanoush (Libya)	2006-2010
Kellelo, Justina Mafoso-Guni (Lesotho)	2006-2010
El Hadji Guisse (Sénégal)	2006-2010
Sophia Akuffo (Ghana)	2006-2008 ; 2008-2014
Bernard Ngoepe (South Africa)	2006-2008 ; 2008-2014
Jean Somda (Burkina Faso)	2006-2008
George Kanyiehamba (Uganda)	2006-2008
Githu Muigai (Kenya)	2008-2014
Joseph Mulenga (Uganda)	2008-2014

The terms of Justices Akuffo, Ngoepe, Somda and Kanyiehamba expired in July 2008 after serving their two-year terms. The Executive Council of the A.U., at its 13th Ordinary session in Sharm-el-Sheikh, Egypt, in June 2008 re-elected Judges Sophia Akuffo and Bernard Ngoepe. They elected two new judges, Githu Muigai, a practising lawyer and academic from Kenya and Joseph Mulenga, a judge at the East Africa Court of Justice and Supreme Court of Uganda.

## VACANCIES AND SUSPENSION OF JUDGES

A seat may become vacant either by resignation or death.

Judges can unanimously decide to suspend a fellow judge. This will occur where the judge is no longer fulfilling the required conditions to be a judge. The Assembly of the A.U. may set aside the suspension.

The Assembly of the A.U. elects a candidate to occupy the vacancy for the remainder of the term.

The seat shall not be filled if the remaining period of the term is less than 180 days.

## RULES OF PROCEDURE

The elected judges draft and adopt the Rules of Procedure. Included in the Rules are the following: the relationship between the Court and the African Commission on Human and Peoples' Rights, procedures for filing cases, and the proceedings of the Court.

The first bench adopted its Rules of Procedure in June 2008. These rules may need to be revised to be in line with the Rules of Procedure of the African Commission. The Commission is reviewing its own rules to make provision for its special relationship with the Court.

## WHAT CAN THE COURT DO?

The Court can consider complaints of violations of the African Charter and other African human rights treaties that are brought before it by states, organisations and individuals that have standing to do so. The Court can only consider complaints against states that are parties to the Protocol establishing it. The Court can also give advisory opinions on human rights matters.

## WHO CAN TAKE A CASE BEFORE THE COURT?

The following entities can take cases before the Court:

- The African Commission on Human and Peoples' Rights;
- States that were complainants or respondents to a complaint before the African Commission on Human and Peoples' Rights;
- States that have an interest in a case;
- African inter-governmental organisations; and
- Non-governmental organisations with observer status at the African Commission on Human and Peoples' Rights and ordinary individuals – but only when the state against which the complaint is lodged has made a declaration allowing individuals or non-governmental organisations direct access to the Court. As of July 2008 only one state party, Burkina Faso, had made the declaration allowing for direct access.

Parties must have exhausted all local remedies before taking cases to the Court.