



Occasional Paper

The African Court on Human and Peoples' Rights

**Presentation, analysis and commentary :
The Protocol to the African Charter on Human
and Peoples' Rights, establishing the Court**

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Foreword

The Association for the Prevention of Torture (APT) is an international non-governmental organisation based in Geneva, whose mandate is the prevention of torture and other cruel, inhuman or degrading treatment. It also seeks to be one of the mainsprings in the thinking on the prevention of serious human rights violations in general. More specifically, it works to strengthen the implementation of international standards and principles banning torture and to promote mechanisms for monitoring and applying these standards.

The APT is convinced that the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights is an important step in building up the African system for the protection of human rights. For, without a proper legal framework, prevention is practically impossible. A judicial mechanism of this kind will exert a dissuasive power and hence have a preventive effect, and thus also be a means of combating impunity.

The APT believes, however, that the adoption of the Protocol is but a first step. It still remains for the Court to be effectively set up, for it to be able to function independently, and for it to develop its own jurisprudence.

It would be of little use to have adopted the text today if it were to be another ten or fifteen years before the Court is actually established. It is in this perspective that the APT plans to launch a campaign for the ratification of the Protocol, beginning in the year 2000.

In preparation of this campaign, the APT deems important to inform the public of the existence of the Protocol and of its content. This is the very purpose of this brochure.

Included in annex are the full text of the Protocol and a comparative table including two other regional human rights jurisdictions (the Inter-American Court of Human Rights and the European Court of Human Rights).

Introduction

The African system for the protection of human rights has recently taken on a new mechanism, the African Court on Human and Peoples' Rights. The Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as the Protocol) was adopted on 9 June 1998 at the Summit of Heads of State and Government in Ouagadougou, Burkina Faso.

The process of drawing up the Protocol was initiated at the Summit of Heads of State and Government of the OAU (Organisation of African Unity) in Tunis in June 1994. A resolution¹ adopted at this Assembly requested the Secretary General of the OAU to convene a meeting of government experts to examine ways of enhancing the efficiency of the African Commission on Human Rights and to consider in particular the question of the establishment of an African Court on Human and Peoples' Rights.

A draft Protocol, prepared by the OAU Secretariat, was submitted to a meeting of government experts in Cape town, South Africa, in September 1995.

The Cape Town meeting was followed by a number of intermediary meetings, until the meeting of Ministers of Justice in December 1997 at which the draft Protocol was adopted, before being ratified by the Summit of Heads of State and Government in Ouagadougou.

The Protocol shall come into force 30 days after fifteen instruments of ratification or accession have been deposited. As of 01 October 2000, it had been ratified by four countries only, Senegal, Burkina Faso, Gambia and Botswana.

¹ Resolution N° AHG 230 (xxx), see doc. OAU/LEG/EXP/AFC/HPR, September 95

I Jurisdiction of the Court

In accordance with articles 3 and 4 of the Protocol, the Court is empowered to act both in a judicatory and an advisory capacity.

A. Judicatory power

The provisions of article 5 refer to the Court's competence *ratione personae* – that is, personal jurisdiction – and comprise two types of jurisdiction: compulsory and optional.

As regards the Court's compulsory jurisdiction, article 5, para. 1, states that the following are entitled to submit cases to the Court:

- the African Commission on Human and Peoples' Rights;
- the State Party which has filed a complaint to the Commission;
- the State Party against which the complaint has been filed;
- the State Party whose citizen is a victim of a human rights violation;
- African Intergovernmental Organisations for issues concerning them.

Matters may also be referred to the Court by a State Party acting as a third party intervener, if it considers that it has an interest in a case in which it was initially not involved (article 5, para. 2).

Article 5, para. 3, provides for an optional jurisdiction in relation to cases submitted by individuals or non-governmental organisations (NGOs) with observer status before the African Commission on Human and Peoples' Rights. In order for the Court to be able to receive individual petitions, the State against which the complaint has been lodged must first have recognized the competence of the Court to receive such communications pursuant to article 34, para. 6 of the Protocol.

APT Commentary

With this final provision, the African system is fully in line with the procedural law of other human rights systems which also restricts the individual's right of access to international human rights organs. Whether at the level of the United Nations or other regional systems for the protection of human rights, the right of individual appeal is generally the subject of an optional clause², and the organs' competence to examine individual petitions is made subject to the State's having declared its recognition of this competence.

It would have been more respectful of the rights of the individual if, at the very least, it were incumbent upon the State which does not recognize this competence of the Court to make a declaration to that effect. The new judicial framework established for the African system for the protection of human rights would have been optimum had the individual been granted easy access to the Court. The drafters of the Protocol would have achieved a significant development in international procedural law in the field of human rights had they been able to make the African system progressive in this respect.

Given the nature of article 34, para. 6, we do not think it likely that the States will rush to be the first to declare their recognition of the Court's competence to examine individual petitions.

Consequently, for lack of a significant number of declarations recognizing the Court's competence to examine individual requests, its jurisdiction would basically be reduced to the mere examination of inter-state communications.

² With the adoption and entry into force of Protocol No. 11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European human rights system made considerable progress in protecting the rights of the individual. The Court is assigned a compulsory competence to examine petitions from individuals who have been the victim of human rights violations.

Neither can we imagine that, all of a sudden, the States will awaken from their lethargy, or, rather, their passive complicity³, and cry out in indignation against the human rights violations which are being committed by their neighbours and denounce them before the Court. Under these circumstances, the Court is likely to find itself reduced to the role of a puppet, and the very noble objectives which guided the adoption of the Protocol will be compromised.

In view of the experience of the other regional systems for the protection of human rights, this risk could be overcome only if the African Commission on Human and Peoples' Rights, which is also entitled to submit cases to the Court, were to assert itself as the protector of human rights, adopting a much more proactive stance than heretofore.

As regards the Court's jurisdiction *ratione materiae* – that is, subject matter jurisdiction - the Court is competent to hear all cases concerning the interpretation and application of the African Charter on Human and Peoples' Rights, the Protocol to this Charter, and any other relevant human rights instruments (article 3). The Court, naturally, applies the provisions of the Charter, but also any other pertinent human rights instruments ratified by the States concerned (article 7).

The Court may thus apply the International Bill of Human Rights⁴ and various other international human rights treaties, whether adopted within the framework of the UN, such as the Convention against Torture, or within the framework of specialised institutions, for instance ILO, UNESCO etc.

B. Power to render advisory opinions

In accordance with article 4 of the Protocol, the Court has the power to render an opinion, at the request of a Member State or of an organisation recognised by the OAU, on any legal matter relating to the Charter or any other applicable African human rights instruments.

In general, these advisory opinions are not binding. In practice, however, the opinions of the Court could serve as a reference for a dynamic and progressive interpretation of the African Charter on Human Rights and other human rights conventions.

³ It is, for instance, indicative that since its inception, the African Commission on Human and Peoples' Rights has received no communications from one State against another, while there has been no shortage of opportunities. No State, for instance, dared denounce the Rwandan Government to the Commission in 1994, as it was perpetrating a genocide in full view of the whole world.

⁴ The International Bill of Human Rights comprises the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and its two Protocols as well as the Covenant on Economic, Social and Cultural Rights.

II. Organisation of the Court

A. Composition of the Court and election of the judges

In accordance with articles 11 to 15 of the Protocol, the Court is made up of eleven judges elected by the Member States of the OAU for a six-year term of office which is renewable once only. Only the States Parties to the Protocol may propose candidates. Each State may nominate three candidates, at least two of whom must be their nationals (article 12), but the Court may not comprise more than one national of the same State.

Furthermore, the States Parties must give due consideration to adequate gender representation in the nomination of candidates. When electing the judges, the States must also ensure adequate gender representation and an equitable representation of the main regions of Africa and their principal legal traditions.

The judges of the Court are elected by secret ballot by the Assembly of Heads of State and Government of the OAU (article 14).

In order to guarantee continuity in the working of the Court, article 15 stipulates that the terms of four judges elected at the first election expire after two years, and the terms of four more judges expire at the end of four years, while the terms of the remaining three expire after six years.

The judges perform their functions on a part-time basis, apart from the President of the Court who performs his on a full-time basis, as laid out in article 15, para. 4 and article 21, para. 2.

The Court elects its President and Vice-President for a two-year period, renewable once only. Their functions are to be set out in the Rules of Procedure of the Court (article 21).

APT Commentary

Article 13, para. 23 read in conjunction with article 14 gives the impression that all OAU Member States are entitled to vote in the election of judges of the Court. We trust that, in practice, only those States which are parties to the Protocol will be able to vote. Otherwise, it would be most paradoxical if non-party States could play so important a role in setting up a mechanism which they had not wished to join and which, to say the least, would not concern them as long as they had not ratified the Protocol.

B. Independence of the judges

Although the candidates are presented by the States, the judges are elected in an individual capacity from among jurists of high moral character and of recognised practical, judicial or academic experience in the field of human rights. The judges are therefore not representatives of the States. They undertake to discharge their duties impartially and faithfully (article 16).

In pursuance of article 17, their independence is guaranteed in accordance with international law. They enjoy the diplomatic immunities and privileges necessary for them to discharge their duties.

In order to guarantee their moral independence, the judges may not hear any case in which they have previously taken part in whatever capacity, and must decline to give an opinion in all cases concerning the State of which they are a national.

As far as professional ethics are concerned, the judges may not carry out any activity which is incompatible with the demands of office or which might interfere with their independence or impartiality (article 18).

In disciplinary matters, the judges come under the authority of the Court. Article 19 states that "a judge shall not be suspended or removed from office unless, by the unanimous decision of the other judges of the Court, the judge concerned has been found to be no longer fulfilling the required conditions to be a judge of the Court. Such a decision of the Court shall become final unless it is set aside by the Assembly at its next session."

III Court Procedure

A. Admissibility of cases

Article 6, para. 2, lays down that the Court rules on the admissibility of cases submitted by individuals taking into account the provisions of article 56 of the Charter⁵, which sets forth the conditions for admissibility of communications addressed to the African Commission on Human Rights. These conditions will thus be applicable to cases which are brought before the Court. Regardless of the admissibility of a case on the basis of these conditions, the Court is free to consider it or to transfer it to the Commission (article 6, para.3). The Court may also request the opinion of the Commission before ruling on the admissibility of a case (article 6, para.1).

On the whole, the Protocol does not provide answers to all procedural questions. It does not, for instance, specify by what procedure and under what conditions a case being reviewed by the Commission or sent back to it by the Court can subsequently be referred to the Court. For all these unanswered questions, the Protocol cross-refers to the Rules of Procedure of the Court. Article 8 states that the Court shall lay down the conditions under which the Court shall consider cases, bearing in mind the complementarity between it and the Commission.

APT Commentary

The questions of admissibility and competence are particularly important in all judicial procedures. The Protocol ought to have been more precise regarding the conditions for the consideration of complaints and communications received by the Court. When drawing up its Rules of Procedure, the Court must therefore make certain to clarify all the procedural questions and to specify the criteria for the admissibility of cases. It should also be more explicit as to its relationship and complementarity with the Commission, which are mentioned in articles 2 and 8 of the Protocol.

It could, for instance, draw inspiration from the formula previously used by the European human rights system when the European Commission of Human Rights and the European Court of Human Rights worked in tandem⁶. However, that would also require considerable reform of the present procedure and the working methods of the African Human Rights Commission. The Protocol ought also to have put through this reform and determined the framework for the complementarity between the Court and the Commission, as well as defining the relationship between these two bodies more clearly.

B. Consideration of cases

Article 10 lays down that the Court shall conduct its proceedings in public, unless it is decided, in particular instances, to hold them in camera, in accordance with the conditions established by the Rules of Procedure.

Any party to a case is entitled to be represented by a legal representative of his or her choice. Free legal representation or assistance may be provided where the interests of justice so require.

Article 10 also lays down that, in accordance with international law, any person, witness or representative of the parties who appears before the Court shall be provided with the necessary protection and facilities.

A quorum of at least seven judges is needed for examination of a case. In accordance with article 26, examination of cases submitted to the Court takes place with due hearing of all the parties.

The Court may receive all elements of proof that it considers appropriate, whether oral or written. It may thus examine witnesses during consideration of a case and, if deemed necessary, may hold an enquiry.

During the proceedings, the Court may adopt such provisional measures as it considers necessary in cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons (article 27, para. 2).

⁵ See the provisions of this article in Annex III.

⁶ Since the entry into force of Protocol No. 11 to the European Human Rights Convention on 1 November 1998, the European Court of Human Rights has been the sole, permanent monitoring body of the European human rights system. Previously, all cases began before the Commission, which gave an opinion on the admissibility and on the substance. After this, when the procedure before the Commission had ended, the case was referred to the Court, which was empowered to reach a decision on both the admissibility and the substance of the case.

IV. Court Judgements and their Execution

A. Court judgements

Once the Court has finished examining the case, it deliberates on it, and renders its judgement within 90 days of having ended its deliberations. The judgements of the Court are decided by majority. Each judge is entitled to add his or her separate or dissenting opinion to the majority decision of the Court. The reasons for the judgement must be given, and the judgement is read out in open court, due notice having been given to the parties.

If the Court finds that there has been a violation of a human or peoples' right, it makes appropriate orders to remedy the situation, including the payment of fair compensation or reparation (article 27, para.1).

The judgement of the Court is final and not subject to appeal. The Court may however interpret its own decision and even review it, but this only "in the light of new evidence under conditions to be set out in the Rules of Procedure" (article 28).

B. Execution of Court judgements

Execution of the Court's judgements is basically voluntary. In accordance with article 30, the States Parties to the Protocol undertake to comply with the judgement in any case to which they are parties and to guarantee execution within the time stipulated by the Court.

The Council of Ministers is responsible for monitoring the execution of the Court's judgements, in compliance with the provisions of article 29, para.2.

Furthermore, in a report submitted to each regular session of the Assembly of Heads of State and Government, the Court specifies, in particular, the cases in which a State has not complied with the Court's judgement.

Conclusions

At the prescriptive level, the African system for the protection of human rights is undoubtedly strengthened by the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of the African Court on Human and Peoples' Rights. Nevertheless, the Protocol leaves certain procedural questions open, which will have to be resolved by the Rules of Procedure of the Court.

The effectiveness of the Court will thus, to a certain extent, depend on the skill and clear-sightedness with which these Rules are drawn up.

The credibility of the Court will also depend on the determination shown by the persons elected to the post of judge and who will bear the great responsibility and heavy burden of setting the African human rights Court in motion.

But, above all, the success of the Court will depend on the will of the States to adhere to the Protocol by ratifying it, and then, once the Court has been set up, to endow it with the necessary means for it to be a truly operational court of law.

Support from NGOs, civil society and the entire international community will be essential for this institution which faces so many challenges. This backing will be crucial both in ensuring that the Court is set up quickly and efficiently and that it can work effectively once set up. The APT, for one, will not let it down.

ANNEX I

Comparative Chart of the three regional Courts on Human Rights

	African Court on Human and Peoples' Rights	Interamerican Court on Human Rights	European Court on Human Rights
Judges	Personalities, nationals of the States parties to the Protocol, elected on a personal basis	Personalities, nationals of the States parties to the Interamerican Convention on Human Rights, elected on an individual capacity	Personalities, nationals of the States parties to the European Convention on Human Rights, elected on a personal basis
Number of judges	11	7	Same number as States parties (41)
Election of the Judges	Election by the Assembly of Heads of State and Government of the OAU	Election by the States parties to the Convention at the General Assembly of the OAS	Election by the Parliamentary Assembly of the Council of Europe
Term of Office	Six years, renewable once	Six years, renewable once	Six years, renewable without limitation
Performance of the functions of the Judges	Permanent for the President. During the sessions for the other judges	Permanent for the President. During the sessions for the other judges	Permanent
Power of the Court	Judicatory and advisory	Judicatory (optional) and advisory	Judicatory and advisory
Power <i>ratione personae</i> (Who is entitled to submit cases to the Court ?)	<p style="text-align: center;"><u>Mandatory power</u></p> <ul style="list-style-type: none"> - African Commission on Human Rights - States parties - African Intergovernmental Organisations <p style="text-align: center;"><u>Optional power</u></p> <ul style="list-style-type: none"> - Individuals and NGOs having observer status with the African Commission on Human Rights 	<p style="text-align: center;"><u>Mandatory power</u></p> <p style="text-align: center;">-</p> <p style="text-align: center;"><u>Optional power</u></p> <ul style="list-style-type: none"> - States parties - Interamerican Commission on Human Rights¹ 	<p style="text-align: center;"><u>Mandatory power</u></p> <ul style="list-style-type: none"> - High contracting parties - Individuals, groups of individuals and NGOs claiming to be victims of a violation of a right guaranteed by the European Convention on Human Rights <p style="text-align: center;"><u>Optional power</u></p> <p style="text-align: center;">-</p>
Power <i>ratione materiae</i>	Power bound to the interpretation and implementation of the Charter, the Protocol and any other instrument concerning Human Rights	Power bound to the implementation and interpretation of the Interamerican Convention on Human Rights	Issues concerning the interpretation and implementation of the European Convention on Human Rights and its protocols
Conditions of the hearing	In public. Exceptionally, in camera	In public. Exceptionally, in camera	In public, barring exceptional circumstances
Consideration of cases	Contradictory	Contradictory	Contradictory
Type of decisions	Judgements, decided by majority	Judgements, decided by majority of the judges	Judgements, decided by majority
Possibility of appeal ?	No, but possibility of interpretation or reviewing under certain conditions	No, but request for interpretation possible	Possibility of sending the case to the Grand Chamber
Execution of judgement	Voluntary, supervision of the Council of Ministers	Voluntary	Voluntary, supervision of the Committee of Ministers

¹ Individuals, groups of individuals and NGOs legally recognised are only entitled to submit cases to the Commission, which, if the case arises, at the end of the proceedings, transmits them to the Court for judgement

Annex II

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights

The Member States of the Organization of African Unity hereinafter referred to as the OUA, States Parties to the African Charter on Human and Peoples' Rights:

Considering that the Charter of the Organization of African Unity recognizes that freedom, equality, justice, peace and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples;

Noting that the African Charter on Human and Peoples' Rights reaffirms adherence to the principles of human and peoples' rights, freedoms and duties contained in the declarations, conventions and other instruments adopted by the Organization of African Unity, and other international organizations;

Recognizing that the twofold 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 promotion and protection of human and peoples' rights since its inception in 1987;

Recalling resolution AHG/Res.230 (XXX) adopted by the Assembly of Heads of State and Government in June 1994 in Tunis, Tunisia, requesting the Secretary-General to convene a Government experts' meeting to ponder, in conjunction with the African Commission, over the means to enhance the efficiency of the African Commission and to consider in particular the establishment of an African Court on Human and Peoples' Rights;

Noting the first and second Government legal experts' meetings held respectively in Cape Town, South Africa (September, 1995) and Nouakchott, Mauritania (April, 1997), and the third Government Legal Experts meeting held in Addis Ababa, Ethiopia (December, 1997), which was enlarged to include Diplomats;

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

HAVE AGREED AS FOLLOWS:

Article 1 ESTABLISHMENT OF THE COURT

There shall be established within the Organization of African Unity an African Court on Human and Peoples' Rights hereinafter referred to as "the Court", the organization, jurisdiction and functioning of which shall be governed by the present Protocol.

Article 2 RELATIONSHIP BETWEEN THE COURT AND THE COMMISSION

The Court shall, bearing in mind the provisions of this Protocol, complement the protective mandate of the African Commission on Human and Peoples' Rights hereinafter referred to as "the Commission", conferred upon it by the African Charter on Human and Peoples' Rights, hereinafter referred to as "the Charter".

Article 3 JURISDICTION

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 relevant Human Rights instrument ratified by the States concerned.
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 4 ADVISORY OPINIONS

1. At the request of a Member State of the OAU, the OAU, any of its organs, or any African organization recognized by the OAU, the Court may provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission.
2. The Court shall give reasons for its advisory opinions provided that every judge shall be entitled to deliver a separate or dissenting decision.

Article 5 ACCESS TO THE COURT

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

Article 6 ADMISSIBILITY OF CASES

1. The Court, when deciding on the admissibility of a case instituted under article 5 (3) of this Protocol, may request the opinion of the Commission which shall give it as soon as possible.
2. The Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter.
The Court may consider cases or transfer them to the Commission.

Article 7 SOURCES OF LAW

The Court shall apply the provisions of the Charter and any other relevant human rights instruments ratified by the States concerned.

Article 8 CONSIDERATION OF CASES

The Rules of Procedure of the Court shall lay down the detailed conditions under which the Court shall consider cases brought before it, bearing in mind the complementarity between the Commission and the Court.

Article 9 AMICABLE SETTLEMENT

The Court may try to reach an amicable settlement in a case pending before it in accordance with the provisions of the Charter.

Article 10 HEARINGS AND REPRESENTATION

1. The Court shall conduct its proceedings in public. The Court may, however, conduct proceedings in camera as may be provided for in the Rules of Procedure.
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 protection and all facilities, in accordance with international law, necessary for the discharging of their functions, tasks and duties in relation to the Court.

Article 11 COMPOSITION

1. The Court shall consist of eleven judges, nationals of Member States of the OAU, elected in an individual capacity from among jurists of high moral character and of recognized practical, judicial or academic competence and experience in the field of human and peoples' rights.
2. No two judges shall be nationals of the same State.

Article 12 NOMINATIONS

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

Article 13 LIST OF CANDIDATES

1. Upon entry into force of this Protocol, the Secretary-General of the OAU shall request each State Party to the Protocol to present, within ninety (90) days of such a request, its nominees for the office of judge of the Court.
2. The Secretary-General of the OAU shall prepare a list in alphabetical order of the candidates nominated and transmit it to the Member States of the OAU at least thirty days prior to the next session of the Assembly of Heads of State and Government of the OAU hereinafter referred to as "the Assembly"

Article 14 ELECTIONS

1. The judges of the Court shall be elected by secret ballot by the Assembly from the list referred to in Article 13 (2) of the present Protocol.
2. The Assembly shall ensure that in the Court as a whole there is representation of the main regions of Africa and of their principal legal traditions.
3. In the election of the judges, the Assembly shall ensure that there is adequate gender representation.

Article 15 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 a 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. All judges except the President shall perform their functions on a part-time basis. However, the Assembly may change this arrangement as it deems appropriate.

Article 16 OATH OF OFFICE

After their election, the judges of the Court shall make a solemn declaration to discharge their duties impartially and faithfully.

Article 17 INDEPENDENCE

1. The independence of the judges shall be fully ensured in accordance with international law.
2. No judge may hear any case in which the same judge has previously taken part as agent, counsel or advocate for one of the parties or as a member of a national or international court or a commission of enquiry or in any other capacity. Any doubt on this point shall be settled by decision of the Court au Droit International.

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 decision or opinion issued in the exercise of their functions.

Article 18 INCOMPATIBILITY

The position of judge of the Court is incompatible with any activity that might interfere with the independence or impartiality of such a judge or the demands of the office as determined in the Rules of Procedure of the Court.

Article 19 CESSATION OF OFFICE

1. A judge shall not be suspended or removed from office unless, by the unanimous decision of the other judges of the Court, the judge concerned has been found to be no longer fulfilling the required conditions to be a judge of the Court.
2. Such a decision of the Court shall become final unless it is set aside by the Assembly at its next session.

Article 20 VACANCIES

1. In case of death or resignation of a judge of the Court, the President of the Court shall immediately inform the Secretary General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.
2. The Assembly shall replace the judge whose office became vacant unless the remaining period of the term is less than one hundred and eighty (180) days.
3. The same procedure and considerations as set out in Articles 12, 13 and 14 shall be followed for the filling of vacancies.

Article 21 PRESIDENCY OF THE COURT

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.
3. The functions of the President and the Vice-President shall be set out in the Rules of Procedure of the Court.

Article 22 EXCLUSION

If a judge is a national of any State which is a party to a case submitted to the Court, that judge shall not hear the case.

Article 23 QUORUM

The Court shall examine cases brought before it, if it has a quorum of at least seven judges.

Article 24 REGISTRY OF THE COURT

1. 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
2. The office and residence of the Registrar shall be at the place where the Court has its seat.

Article 25 SEAT OF THE COURT

3. The Court shall have its seat at the place determined by the Assembly from among States parties to this Protocol. However, it may convene in the territory of any Member State of the OAU when the majority of the Court considers it desirable, and with the prior consent of the State concerned.
2. The seat of the Court may be changed by the Assembly after due consultation with the Court

Article 26 EVIDENCE

1. The Court shall hear submissions by all parties and if deemed necessary, hold an enquiry. The States concerned shall assist by providing relevant facilities for the efficient handling of the case.
2. The Court may receive written and oral evidence including expert testimony and shall make its decision on the basis of such evidence.

Article 27 FINDINGS

1. If the Court finds that there has been violation of human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.
2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.

Article 28 JUDGEMENT

1. The Court shall render its judgement within ninety (90) days of having completed its deliberations.
2. The judgement of the Court decided by majority shall be final and not subject to appeal.
3. Without prejudice to sub-article 2 above, the Court may review its decision in the light of new evidence under conditions to be set out in the Rules of Procedures.
4. The Court may interpret its own decision
5. The judgement of the Court shall be read in open court, due notice having been given to the parties.
6. Reasons shall be given for the judgement of the Court.
7. If the judgement of the Court does not represent, in whole or in part, the unanimous decision of the judges, any judge shall be entitled to deliver a separate or dissenting opinion.

Article 29 NOTIFICATION OF JUDGMENT

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

Article 30 EXECUTION OF JUDGMENT

The States parties to the present Protocol undertake to comply with the judgement in any case to which they are parties within the time stipulated by the Court and to guarantee its execution.

Article 31 REPORT

The Court shall submit to each regular session of the Assembly , a report on its work during the previous year. The report shall specify , in particular, the cases in which a State has not complied with the Court's judgement.

Article 32 BUDGET

Expenses of the Court, emoluments and allowances for judges and the budget of its registry, shall be determined and borne by the OAU, in accordance with criteria laid down by the OAU in consultation with the Court.

Article 33 RULES OF PROCEDURE

The Court shall draw up its Rules and determine its own procedures. The Court shall consult the Commission as appropriate.

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Article 34 RATIFICATION

1. This Protocol shall be open for signature and ratification or accession by any State Party to the Charter.
2. The instrument of ratification or accession to the present Protocol shall be deposited with the Secretary-General of the OAU.
3. The Protocol shall come into force thirty days after fifteen instruments of ratification or accession have been deposited.
4. For any State Party ratifying or acceding subsequently, the present Protocol shall come into force in respect of that State on the date of the deposit of its instrument of ratification or accession.
5. The Secretary-General of the OAU shall inform all Member States of the entry into force of the present Protocol.
6. At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol. The Court shall not receive any petition under article 5 (3) involving a State Party which has not made such a declaration.
7. Declarations made under sub-article (6) above shall be deposited with the Secretary General, who shall transmit copies thereof to the State parties.

Article 35 AMENDMENTS

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 simple 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 thirty days after the Secretary-General of the OAU has received notice of the acceptance.

Annex III

Article 56 of the African Charter on Human and Peoples' Rights, concerning the conditions of admissibility of cases.

Article 56

Communication relating to Human and Peoples' Rights referred to in Article 55 received by the Commission, shall be considered if they:

1. Indicate their authors even if the latter request anonymity,
2. Are compatible with the Charter of the Organization of African Unity or with the present Charter,
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,
4. Are not based exclusively on news disseminated through the mass media,
5. Are sent after exhausting local remedies, if any unless it is obvious that this procedure is unduly prolonged,
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the commission is seized with the matter, and
7. Do not deal with cases which have been settled by these states involved in accordance with the principles of the Charter of the United Nations, or the Charter.