

Conclusions of the Continental Judicial Dialogue with National Judiciaries

18-20 November, 2013

Arusha, Tanzania

1. The African Court on Human and Peoples' Rights (the Court), with financial support from the German International Cooperation (GIZ) and the European Union (EU), organized a Continental Seminar on Judicial Dialogue with National Judiciaries from 18 to 20 November 2013, in Arusha, the United Republic of Tanzania.
2. The overall purpose of the Dialogue was to initiate judicial dialogue between national judiciaries and regional and continental courts and quasi-judicial institutions, with a view to exploring ways and means of ensuring cooperation and coordination, including the sharing of jurisprudence, information and best practices, towards enhanced protection and promotion of human rights in Africa.
3. The Dialogue was attended by a total of 74 participants, including 10 Judges of the African Court, 30 Chief Justices, Presidents of Supreme and Constitutional Courts and representatives of national judiciaries, from twenty-seven (27) African countries, 3 Judges of the International Criminal Tribunal for Rwanda and the Mechanism for International Criminal Tribunals, 4 Judges from the Courts of Regional Economic Communities being the East African Court of Justice and the Community Court of the Economic Community of West African States, 5 African Union Organs, 2 academic institutions being Makumira University and Open University of Tanzania) and 6 Observers (GIZ, World Bank, Konrad Adenauer Foundation, Pan African Lawyers' Union, East African Law Society and the Coalition for an Effective African Court).
4. The countries represented at the Seminar were: Algeria, Benin, Burkina Faso, Burundi, Chad, Comoros, Côte d'Ivoire, Democratic Republic of Congo, Egypt, Ghana, Kenya, Lesotho, Liberia, Malawi, Mali, Namibia, Niger, Rwanda, Sahrawi Arab Democratic Republic, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Swaziland, Tanzania, Togo and Uganda.

5. In addition to the Court, other African Union Organs and African Union affiliated institutions attended the Dialogue, including the African Commission on Human and Peoples' Rights, the African Union Commission on International Law, the African Union Advisory Board on Corruption and the African Institute of International Law.

6. The Opening Ceremony of the Dialogue was graced with the presence of His Excellency Mizengo Kayanza Peter Pinda, Prime Minister of the United Republic of Tanzania, representing His Excellency Dr. Jakaya Mrisho Kikwete, President of the United Republic of Tanzania, who delivered the keynote speech.

7. Two other speeches were delivered during the opening ceremony, from Honourable Lady Justice Sophia A. B. Akuffo, President of the African Court, and Honourable Justice Mohamed Chande Othman, Chief Justice of the United Republic of Tanzania. The opening ceremony was moderated by Honourable Justice Bernard M. Ngoepe, Vice President of the Court.

8. In his welcome remarks, Honourable Justice Ngoepe indicated that despite being from different countries and institutions, "the issues and challenges facing us are universal", noting that the judicial function is the last bastion in the defence of individuals. He stated that the timing, programme and environment of the Dialogue is meant to encourage "frank and open discussion towards better protection of human rights in Africa".

9. In his address, the Chief Justice of Tanzania noted that never in the recent history has Tanzania been honoured with the visit of so many Chief Justices, Presidents and representatives of Supreme, Constitutional and High Courts of Continental and Regional Courts and quasi-judicial institutions of our continent, with the objective of sharing common experiences. He indicated that Judges exercise the same role, that of being the ultimate line of defence of individuals; the best guarantee of peace and stability within and among states, and in doing this, are guided by their national Constitutions, the regional, continental and international human rights treaties they have ratified and customary international law. He concluded that the Dialogue will offer an opportunity to learn about the experiences of the different Courts in this regard.

10. In her statement, the President of the Court noted that one of the most important outcomes of the African continent-wide human rights system of norms is its impact on national constitutions, practically all of which contain human rights provisions that in essence are aligned to the African Charter. She stated that "it is therefore essential that the objective of these norms be enhanced through harmonized jurisprudence and application, so as to assure the optimal protection of human rights throughout the continent, and this objective demands that judges all over the continent take on, collectively, their role as guarantors of human rights". She stated further that though this dialogue is with specific focus on collaboration towards enhancing human rights protection at the various levels, "we trust that it will lay the groundwork for future dialogue on the overall transformational role that judicial institutions can and ought to

play in African Union Member States and their regional and continental institutions”.

11. She decried the lack of access to the Court, stating that direct access to the Court for individuals and NGOs is only possible when a State, in addition to ratifying the Protocol establishing the Court, makes a specific declaration allowing them such access. The President requested the Prime Minister to consider how Tanzania might, during the upcoming Summit of the African Union, scheduled for January 2014, champion wider ratification of and/or accession to the Protocol by the twenty eight (28) African Union Member States that have not yet done so, as well as encourage the remaining Member States to file the Article 34(6) declaration.

12. In declaring the Dialogue open, the Prime Minister of the United Republic of Tanzania, in his keynote address, said that Tanzania is one of the twenty-six (26) African Union Member States which have ratified the Protocol and is one of only seven (7) Member States to have deposited the declaration allowing individuals and NGOs, direct access to the Court. He informed the participants that Tanzania will continue to champion, at both the East African Community and the African Union, the call for African Union Member States to ratify and/or accede to the Protocol, and make the declaration allowing individuals and NGOs direct access to the Court.

13. On the objectives of the Dialogue the Prime Minister indicated that it is important to share lessons on the African Court and African Commission on Human and Peoples' Rights, as these two institutions complement each other in the protection of human and peoples' rights. He added that “the complementarity between them should be enhanced and supported, more so in view of the African Union Policy organs' decision to merge the African Court of Human Rights with the African Court of Justice to create the African Court of Justice and Human Rights, whose jurisdiction will be extended to international crimes.” He lauded the Court's sensitization campaign and stated that the efforts of the Court to go out of its seat and directly sensitize its constituency are to be applauded, adding that “this Seminar on Dialogue with National Judiciaries should therefore be a continuation of these efforts at judicial cooperation at different levels, including on how to set up centers of excellence or research hubs in that regard, including on alternative dispute resolution”.

14. Presentations were made on the following themes:

- i) Interactions between National and International Courts
- ii) Procedure and practice in application of continental and regional human rights instruments by national courts where the experiences of Mali, South Africa, Togo and Tanzania were shared
- iii) Implementation and non-implementation of decisions of the Community Court of Justice of the Economic Community of West African States, certain examples with respect to national jurisdictions and Experiences on the implementation of decisions and recommendations of continental and regional human rights institutions by national courts

- iv) The advisory jurisdiction of regional and continental courts/quasi-judicial institutions vis-à-vis national institutions
- v) The African Human Rights System
- vi) The relationship between the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights –including general presentations on the African Court and the African Commission.

15. The presentations were followed by a panel discussion bringing together representatives from the African Union Commission on International Law, the African Institute of International Law, the African Commission, the African Court, Judiciary of Rwanda and the World Bank, to discuss the theme “*Practical Cooperation*”.

16. During the discussions that followed the presentations and the panel discussion, several questions were raised, views expressed and challenges identified on a wide range of issues, notably:

- i) the lack of awareness about the African human rights mechanisms in general and the relationship between the African Court and the African Commission in particular;
- ii) the lack of access by individuals and NGOs to the Court;
- iii) the potential duplication of mandates between the African Court and Regional Courts;
- iv) the lack of codification/domestication of international instruments into national law;
- v) the problem of judicial conservatism;
- vi) the lack of information and access to international instruments and decisions of international Courts by national Courts and vice versa;
- vii) the underutilization of the advisory jurisdiction of the continental and regional courts;
- viii) the lack of awareness about the African Court and its jurisprudence by national Courts;
- ix) the lack of access to the African Court due to low ratification and deposit of the declaration¹; and
- x) the lack of political will and sensitization by certain African States to ratify the treaties and conventions they have concluded and to enforce the decisions of continental and regional courts.

17. Following the frank and constructive discussions on, *inter alia*, the challenges and shortcomings identified, the participants affirmed their commitment to the promotion

¹ States that have ratified the Protocol are Algeria, Burkina Faso, Burundi, Cote d'Ivoire, Comoros, Congo, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, South Africa, Senegal, Tanzania, Togo, Tunisia and Uganda and of these States only Burkina Faso, Côte d'Ivoire, Ghana, Mali, Malawi, Rwanda and Tanzania

and protection of human and peoples' rights within the framework of the African Charter on Human and Peoples' Rights, the normative cornerstone of the African Human Rights system, and other relevant regional, sub-regional and international human rights instruments.

18. The participants expressed the view that the promotion and protection of human rights is better served when there is collaboration and a good working relationship between the national Courts and International Courts.

19. The participants noted that the primary responsibility for the promotion and protection of human rights rest with States, through national institutions and in particular, national Courts, and international tribunals only serve to supplement national efforts.

20. Participants observed that rooted in this relationship is the principle of exhaustion of local remedies, which recognizes the primacy of national judiciaries as the guarantors of national laws and the protection of human rights at domestic level.

21. To this end, the participants underscored the need to set up adequate and sustainable systems for legal aid and/or assistance at all levels, with particular attention being paid in this regard to vulnerable groups such as children, women, refugees and internally displaced persons.

22. Participants agreed that their various institutions form an integral and critical part of the African human rights promotion and protection system and that the co-existence of these institutions at the continental, sub-regional and national level is a condition *sine qua non* to a coordinated and enhanced promotion and protection of human and peoples' rights on the continent.

23. The participants concurred that the incorporation of regional, continental and international law and jurisprudence within the domestic jurisdictions enhances the protection and promotion of human rights and that in this regard therefore, there is a need to share criteria, practices, rulings and judgments that have taken into account regional, continental and international law.

24. The participants expressed satisfaction that the Dialogue had provided an invaluable forum for sharing experiences and information and encouraging cooperation among national, regional and continental courts and quasi-judicial institutions with a view to developing a consistent African human rights jurisprudence, as well as examining the challenges that confront Judges, Commissioners and other human rights experts in the protection of human rights in Africa. To this end, it was agreed to hold the Dialogue regularly, preferably once every two years, with it being hosted in different African Union Member States.

25. The participants welcomed the establishment of the African Union Commission on International Law as this Commission would help clarify the settled standards and

practice of international law, including human rights law, on the continent. The participants also noted the establishment of the African Institute of International Law and resolved to explore possibilities of working with the Institute where its mandate and that of participating institutions converge. The participants agreed that the Court should collaborate with the African Union Commission on International Law and the African Institute of International Law in the implementation of their mandates.

26. The participants welcomed the initiative of undertaking joint commemorative activities such as on African Human Rights Day and to have the African Union declare 2016 the African Year of Human Rights as this will be an opportunity for the African people and leaders, as well as African institutions, in partnership with the international community, to review current initiatives towards human rights on the continent, with a view to strengthening them and, where necessary, launching new initiatives.

27. Based on the above, the participants made the following recommendations:

- i) States should be sensitized on the need to domesticate international human rights instruments in their domestic legislation;
- ii) The participants undertook to sensitise and encourage their states on the need to ratify the Protocol on the Court and to make the declaration and to advise State Parties to the Protocol to utilise the advisory jurisdiction of the Court.
- iii) The African Court and the African Commission should develop and host a database of national judiciaries, and exchange, on a regular basis international instruments, decisions and other relevant information, that would enable national Courts effectively discharge their function,
- iv) National and regional judges should in future rely on international case law in dealing with human rights cases brought before them;
- v) Civil society and academic institutions should encourage relevant national and international bodies to utilize the advisory jurisdiction of regional and continental courts, as this is a useful tool for standard setting on human rights in a non-contentious manner;
- vi) To foster closer collaboration among the institutions, in particular: staff exchange, joint databases, joint programmes/discussions, continent-wide training of Judges were also proposed.
- vii) Human rights education should be incorporated into the education curriculum from the primary to the tertiary levels of education.
- viii) Participants urged states that have not yet done so, to ratify the Protocol establishing the Court and make the declaration under Article 34(6) thereto.
- ix) Participants urged states to respect the judgments, decisions and recommendations of international and regional courts.
- x) The African Union, should adopt a decision to institutionalise the dialogue on a regular basis and provide resources in this regard.

28. With regard to a long-term approach, the participants agreed on the need to establish an African Centre of Judicial Excellence to lead action on distilling best practices and developing standards for the various areas of administration of justice, including on court room technology, case management and alternative dispute resolution. To this end, the Registry of the African Court was mandated as the temporary Secretariat, to coordinate future collaboration among participating institutions.

29. The participants thanked the African Court as host and convener of the Dialogue. A special appreciation was extended to the German International Cooperation as the main sponsor and the European Union as co-sponsor, for making the holding of the Dialogue possible, and for their expressed continued support to the strengthening of institutions for the protection of human rights in Africa.

30. The participants expressed their appreciation to the government and people of the United Republic of Tanzania for their hospitality and the facilities placed at their disposal to ensure the success of the Dialogue.