

AFRICAN UNION
الاتحاد الأفريقي



UNION AFRICAINE
UNIÃO AFRICANA

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EX.CL/195 (VII)
Annex I

**DRAFT PROTOCOL ON THE INTEGRATION OF THE
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS AND
THE COURT OF JUSTICE OF THE AFRICAN UNION**

**DRAFT PROTOCOL ON THE INTEGRATION OF THE AFRICAN COURT
ON HUMAN AND PEOPLES' RIGHTS AND THE COURT OF JUSTICE
OF THE AFRICAN UNION**

The Member States of the African Union, States Parties to the Protocol on the Establishment of the African Court on Human and Peoples' Rights and the Protocol of the Court of Justice of the African Union:

CONSIDERING that the Constitutive Act established the Court of Justice of the African Union as the principal judicial organ of the Union;

NOTING that the Protocol on the Establishment of the African Court on Human and Peoples' Rights entered into force on 25 January 2004;

RECALLING Decision Assembly/AU/Dec.45 (III) adopted by the Third Ordinary Session of the Assembly of the Union meeting in Addis Ababa, Ethiopia from 6 to 8 July 2004 to integrate the African Court on Human and Peoples' Rights and the Court of Justice of the African Union into one court, and requesting the Chairperson of the Commission to work out the modalities for implementing that decision;

RECALLING FURTHER Decision EX.CL/162 (VI) of the Executive Council at its Sixth Ordinary Session held in Abuja, Nigeria from 24 to 28 January 2005 referring the recommendations of the Commission and the PRC on the integration of the courts, as well as the draft legal instrument prepared by the Commission, to a meeting of the PRC and Government Legal Experts for finalisation and submission to the Seventh Ordinary Session of the Executive Council in July 2005, without prejudice to the operationalisation of the African Court on Human and Peoples' Rights as far as possible;

REAFFIRMING the commitment of the Union to the strengthening and enhancement of the protection of human and peoples' rights in Africa;

RECOGNIZING that the integration of the two courts will enhance their capacity to attain the objectives of the two courts and of the Union as a whole;

FURTHER RECOGNISING that the decision to integrate the two courts was based on the need to rationalise the judicial structures of the Union and to make them more efficient and effective; and

FIRMLY CONVINCED of the urgent need for the early operationalisation of the Court of Justice and Human Rights of the African Union that is created by the integration of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union;

HAVE AGREED AS FOLLOWS:

Article 1: DEFINITIONS

In this Protocol, unless otherwise specifically stated:

“Assembly ” means the Assembly of Heads of State and Government of the Union;

“Chamber” means a Chamber of the Court established in accordance with this Protocol and the Rules of Court;

“Commission” means the Commission of the Union;

“Court” means the court established in terms of article 2 of this Protocol;

“Court of Justice” means the Court of Justice of the African Union;

“Division” means a Division of the Court established in accordance with this Protocol and the Rules of Court;

“Human Rights Court” means the African Court on Human and Peoples' Rights;

“President” means the person or persons elected as such in accordance with this Protocol;

“Regions” means the geographical regions into which the continent of Africa, at any time, is divided in accordance with a decision of the Assembly;

“Rules of Court” means the Rules made under Articles 33 and 58 respectively of the Protocols on the Human Rights Court and the Court of Justice;

“Vice-President” means the person or persons elected as such in accordance with this Protocol.

ARTICLE 2: ESTABLISHMENT OF THE COURT

1. Article 1 of the Protocol on the Human Rights Court and Article 2 paragraph (1) of the Protocol of the Court of Justice are deleted and substituted with the following provision:

“The Court of Justice and Human Rights of the African Union hereby established shall function in accordance with the provisions of the Protocol on the Court of Human Rights and the Protocol of the Court of Justice.”

2. Article 2 paragraph (2) of the Protocol of the Court of Justice is amended to read as follows:

“2. The Court shall be the principal judicial organ of the Union and shall be committed to the promotion of justice and protection of human and peoples’ rights in Africa.”

3. Article 2 of the Protocol of the Court of Justice is amended by the insertion after paragraph 2 of the following provision:

“3. The Court shall be constituted by a Specialized Human and Peoples’ Rights Judicial Division established under this Protocol and any other Judicial Division established by decision of the Assembly after obtaining the opinion of the Court or upon recommendation of the Court and which shall operate under the provisions of this Protocol.”

ARTICLE 3: COMPOSITION

1. Article 3 paragraph 1 of the Protocol of the Court of Justice (Composition) is amended to read as follows:

- “1. The Court shall consist of fifteen (15) judges who are nationals of States Parties, at least seven (7) of whom shall have competence in human and peoples’ rights.”
2. Article 3 of the Protocol of the Court of Justice is amended by the insertion, after paragraph 1 as amended in paragraph 1 above and with consequential re-numbering of the subsequent paragraphs, of the following provision:

 - “2. In the composition of the Court, the Assembly shall ensure that there is equal gender representation.”
3. Article 11 of the Protocol on the Human Rights Court is deleted.

ARTICLE 4: QUALIFICATIONS

Article 4 of the Protocol of the Court of Justice (Qualifications) is deleted and substituted with the following provision:

- “1. The Court shall be composed of impartial and independent Judges elected in an individual capacity from among jurists of high moral character.
- “2. A judge of the Court shall possess the necessary practical, judicial or academic qualifications required in his or her country for appointment to the highest judicial offices, or shall be a jurist of recognized competence and experience in the field of international law and/or human and peoples’ rights.”

ARTICLE 5: SUBMISSION OF CANDIDATES

Article 12 paragraphs 1 and 2 of the Protocol on the Human Rights Court and Article 5 paragraphs 2 and 3 of the Protocol of the Court of Justice are deleted and substituted with the following provision:

“Each State Party may nominate up to two (2) of its nationals as candidates possessing the required qualifications stipulated in this Protocol, at least one (1) of whom shall be a woman.”

ARTICLE 6: TERM OF OFFICE

Paragraphs 1 and 2 of Article 15 of the Protocol on the Human Rights Court are deleted and substituted with the following provision:

- “1. The Judges shall be elected for a period of six (6) years and may be re-elected only once. The term of five (5) Judges elected at the first election shall expire at the end of four (4) years and the other Judges shall serve the full term.
2. The Judges whose terms are to expire at the end of the initial period of four (4) years shall be chosen by lot to be drawn by the Chairperson of the Assembly after the first election has been completed.”

ARTICLE 7: OATH OF OFFICE

Article 16 of the Protocol on the Human Rights Court is deleted and substituted with the following provision:

- “1. Before taking up his or her duties each Judge shall, in open court, take the following oath:

‘I,.....,do solemnly swear (or affirm or declare) that I shall faithfully exercise the duties of my office as Judge of the Court of Justice and Human Rights of the African Union impartially and conscientiously, without fear or favour, affection or ill-will and that I will preserve the secrecy of the deliberations of the Court.’
2. The oath of office shall be administered by the Chairperson of the Assembly or his or her duly authorised representative.”

ARTICLE 8: PRESIDENCY OF THE COURT

Article 10 of Protocol of the Court of Justice is deleted and substituted with the following provision:

- “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 reside at 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 9: RESIGNATION, SUSPENSION AND REMOVAL FROM OFFICE

1. Article 11 of the Protocol of the Court of Justice is amended to read as follows:

a) in paragraph 1:

“A judge may resign his or her position in writing addressed to the President for transmission to the Chairperson of the Assembly. The resignation shall take effect thirty (30) days after notification to the Chairperson of the Assembly.”

b) in paragraph 3:

“The President shall communicate in writing, the resignation or the recommendation for suspension or removal of a judge to the Chairperson of the Assembly and the Chairperson of the Commission.”

c) in paragraph 4:

“A recommendation of the Court to suspend a Judge shall become final unless set aside by the Assembly and a recommendation to remove a judge shall take effect upon its endorsement by the Assembly.”

2. Article 19 of the Protocol on the Human Rights Court is deleted and substituted with Article 11 of the Protocol of the Court of Justice as amended in paragraph 1 of this Article.

ARTICLE 10: VACANCIES

1. Article 12 of the Protocol of the Court of Justice is amended by the insertion after paragraph 2, with consequential re-numbering of the subsequent sub-paragraphs, of the following provision:

“3. 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.”

2. Article 20 of the Protocol on the Human Rights Court is deleted and replaced by Article 12 of the Protocol of the Court of Justice as amended above.

ARTICLE 11: INDEPENDENCE

1. Article 13 paragraph 2 of the Protocol of the Court of Justice is amended to read as follows:

“2. No Judge may participate in the decision of any case in which he or she has an interest or where he or she 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 commission of inquiry, or in any other capacity.”

2. Article 17 paragraph 2 of the Protocol on the Human Rights Court is amended to read as follows:

“2. No judge may hear any case in which the same judge has an interest or where he or she 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.”

ARTICLE 12: QUORUM

1. Article 16 paragraph 1 of the Protocol of the Court of Justice is amended to read as follows:

“1. The full Court shall sit except where it is expressly provided otherwise in this Protocol or by the Rules of Court.”

2. Article 16 paragraph 2 of the Protocol of the Court of Justice is amended to read as follows:

“2. The Court shall only examine cases brought before it, if it has a quorum of at least seven (7) Judges.”

3. Article 16 of the Protocol of the Court of Justice is amended by the insertion, after paragraph 2 as amended in paragraph 2 of this article, with consequential re-numbering of the subsequent sub-paragraphs, of the following provision:

“3. The quorum for a specialized judicial Division shall be set out in the Rules of Court.”

4. Article 16 of the Protocol of the Court of Justice is amended by the insertion, after paragraph 3 and with consequential re-numbering of the subsequent sub-paragraphs, of the following provision:

“4. The Court may, in accordance with the Rules of Court, establish Special Chambers.”

5. Paragraph 3 of the Protocol of the Court of Justice shall become paragraph 5.

ARTICLE 13: SIGNATURE AND RATIFICATION OR ACCESSION

1. Subject to the provisions of paragraph 2 of this article, this Protocol shall be open for signature and ratification or accession by States Parties to the Protocol on the Human Rights Court and the Protocol of the Court of Justice in accordance with their respective constitutional procedures.

2. A Member State that has not ratified either the Protocol on the Human Rights Court or the Protocol of the Court of Justice may do so only provided that, at the time of ratification or accession to this Protocol, it makes a declaration in writing that its ratification or accession shall be taken to also amount to ratification of or accession to either of the protocols aforesaid, as the case may be.

3. The instruments of ratification shall be deposited with the Chairperson of the Commission.

4. Any Member State acceding to this Protocol after its entry into force shall deposit the instrument of accession with the Chairperson of the Commission.

5. A State making a declaration under paragraph 4 of this article shall deposit such declaration with the Chairperson of the Commission, who shall transmit copies thereof to the States Parties.

ARTICLE 14: ENTRY INTO FORCE

1. This Protocol shall provisionally enter into force thirty (30) days after being signed by at least fifteen (15) Member States.

2. It shall finally enter into force thirty (30) days after the deposit of the instrument of ratification by fifteen (15) Member States.

ARTICLE 15: SAVINGS

In the event of any inconsistency between the provisions of this Protocol and any provision of the Protocol on the Human Rights Court or the Protocol of the Court of Justice, the provisions of this Protocol shall, to the extent of the inconsistency, take precedence.

ARTICLE 16: REVIEW OF THE PROTOCOL

The Assembly may, at such intervals and in such manner as it may deem fit, provide for a review of the functioning of the Court and for the elaboration of a single legal instrument relating thereto, provided that the review aforesaid shall be carried out not more than six (6) years after the entry into force of this Protocol.