20TH PRE-SUMMIT CONSULTATIVE MEETING ON GENDER MAINSTREAMING IN THE AFRICAN UNION

ORGANIZED BY GENDER IS MY AGENDA CAMPAIGN (GIMAC) NETWORK AND FEMMES AFRICA SOLIDARITE (FAS)

ADDIS ABABA ETHIOPIA (9-10 JULY 2012)

THE AFRICAN COURT ON HUMAN AND PEOPLES’ RIGHTS AND ITS ROLE IN THE PROTECTION OF WOMEN’S RIGHTS

BY

JUSTICE GERARD NIYUNGEKO,
PRESIDENT OF THE COURT
1. I am pleased to have been invited to attend a session of this 20th Pre-Summit Consultative Meeting on Gender Mainstreaming in the African Union. I wish to thank Gender is my Agenda Campaign (GIMAC) and Femmes Africa Solidarite for having extended this invitation to me. I also wish to take this opportunity to congratulate your Organizations for their vision in holding, on a regular basis, Pre-Summits on Gender Mainstreaming in the African Union.

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2. The organizers of this seminar have requested me to make a short presentation on the African Court on Human and Peoples Rights and its role in the protection of women’s rights. I will therefore talk about the African Court in general; the specific role of the Court with regard to women’s rights; and how cases can be submitted before it.

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3. As you may be aware, the Court was established by the Protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples Rights, which was adopted in Ouagadougou, Burkina Faso, in June 1998. This Protocol came into force in January 2004.

4. The Court is composed of eleven Judges, elected in their individual capacities from among eminent African jurists and judges of proven integrity, qualifications and experience; having been nominated by individual Member States. The composition is also based on equitable representation of the five African regions, of major legal systems and jurisdictions, and on adequate gender representation. The first Judges of the Court were elected by the Assembly of Heads of State and Government of the African Union in January 2006, and were sworn before the Assembly in July 2006.
5. The Court plays a role both in contentious and in advisory matters.

a) In contentious matters, the jurisdiction of the Court extends to all cases and disputes submitted to it concerning the interpretation and application of the Charter on Human and Peoples' Rights, and any other relevant human rights instrument ratified by the States concerned. The Court renders binding and final decisions. It is the responsibility of the Executive Council of the African Union, on behalf of the Assembly of Heads of State and Government of the Union to ensure that the judgments of the Court are duly executed by the State concerned.

b) In advisory matters, the Court may provide an opinion on any legal matter relating to the Charter, or any other human rights instrument, provided that the subject matter of the opinion is not related to a matter being examined by the African Commission on Human and Peoples' Rights.

6. In terms of achievements, from 2006 to 2008, the first Judges worked mainly on making itself operational from the administrative perspective, and dealt with issues like: budget, structure of the Registry, recruitment of staff; seat of the Court; Rules of procedure, etc.

Starting from the end of 2008, the Court was indeed ready to receive its first cases. But, partly because the Court was not well known, from 2008 to 2010, the Court received and dealt with only one case.

Fortunately, since the beginning of 2011, the Court has started receiving an increasing number of cases. Up to now, the Court has indeed received twenty two cases in contentious matters and three requests for advisory opinions. One can say that the Court has become operational from the judicial perspective as well.

7. Despite these positive developments, the Court is facing three main challenges, which are the following: low rate of ratification of the Protocol establishing the Court (out of the 54 member States of the African Union, only twenty six countries have ratified the Protocol: Algeria, Burkina Faso, Burundi, Cote d'Ivoire, Comoros, Congo, Gabon, the Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, South Africa, Senegal,
Tanzania, Togo, Tunisia and Uganda.); the very low number of countries which have made the special declaration required for individuals and NGOs to access the Court (only five countries have made this special declaration (Burkina Faso, Mali, Ghana, Malawi, Tanzania); and the lack of awareness about the Court by Africans.

* Distinguished Participants, Ladies and Gentlemen

8. Having said all this, let me come now to the very specific role of the African Court with regard to women’s rights.

Generally speaking, the Court is likely to deal with all women rights issues, since, as mentioned above, it has jurisdiction, not only in relation with the African Charter on Human and Peoples’ Rights, but also with regard to any other human rights instruments ratified by the African State concerned, both regional and universal.

9. But more specifically, unlike the African Charter on Human and Peoples’ Rights or the African Charter on the Rights and Welfare of the Child, the Protocol on the rights of women in Africa does not establish a specific Commission or Committee to monitor its implementation by States Parties. Instead, it directly institutes the African Court on Human and Peoples’ Rights as the organ responsible for its interpretation and application. According to Article 27 of this Protocol: “The African Court on Human and Peoples’ Rights shall be seized of interpretation arising from the application or implementation of this Protocol”.

So, when it comes to allegations of violations of women’s rights provided for in this Protocol, the treaty body to be seized of the matter should be the African Court.

10. This very close relationship between the Maputo Protocol on Women’s Rights and the Court explains why the Court is particularly attentive to the issue of women rights. It is in this same vein that the Court has always been present to all international forums dealing with women rights issues, to which it has been invited, like for instance the launching of the African Union Decade for Women, in October 2010 in Nairobi; the African Conference on Women Rights to Land, in May/June 2011, again in Nairobi; and the Training for lawyers on using the
Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, for legal action, which took place in Arusha, in March 2012.

And that is why I could not miss the opportunity you gave me to address you on the Court. And that is why in the future, the Court will, for sure, give the attention they require to issues related to women’s rights which will be submitted to it, both in contentious and in advisory matters, including issues related to violence against women in conflict and post-conflict situations.

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**Distinguished Participants, Ladies and Gentlemen,**

11. While I am saying this, and this is my third and last point, I have to tell you that when it comes to how people can access the Court, and bring cases before it, things get more complicated. Indeed, unlike what happens in municipal jurisdictions, there are many legal requirements which make access to the Court an obstacle course. I will try to summarize them in a chronological manner, so as for you to understand the whole process, and how it can prove very difficult to go through it.

12. When you are planning to bring a case of alleged violations of human rights in general or women’s rights in particular, on behalf of an individual or an NGO, you have first to make sure that the Respondent State has ratified the Protocol establishing the Court. As mentioned earlier, only 26 States members of the African union have so far ratified the Protocol. The updated list of those States can be found on the official Web site of the African Union.

13. The second thing you have to check is whether the Respondent State has made the special declaration by which it accepts the jurisdiction of the Court to deal with cases brought by individuals and NGOs. As mentioned earlier again, only 5 five member States of the African Union have so far made such a declaration.

14. In case you are lodging an application on behalf of a NGO, you have thirdly to make sure that this NGO has observer status before the African Commission on Human and Peoples’ Rights, based in Banjul, The Gambia.
15. Fourthly, before lodging your case, you have to make sure that your application fulfills all the seven conditions of admissibility provided for by Article 56 of the African Charter on Human and Peoples’ Rights. One of these conditions is the exhaustion of local remedies, if any, unless it is obvious that the procedure thereof is unduly prolonged.

16. As you can see, the access to the African Court is problematic, and that is why the Court has undertaken a series of activities aimed at sensitizing member States of the African Union to ratify the Protocol establishing the Court and to make the famous special declaration.

17. You may also know that the other entities which can bring cases before the Court are the African Commission on Human and Peoples’ Rights, the States Parties to the Protocol, and African Intergovernmental Organizations.

Distinguished Participants, Ladies and Gentlemen,

18. When you will be in condition to access the Court, then things will become easier, legally speaking.

Your application will just have to contain or indicate the following:

- A summary of the facts of the case
- Evidence intended to be adduced
- Particulars of the Applicant and of its representatives and particulars of the Respondent
- Alleged violations
- Evidence of exhaustion of local remedies, or of abnormal delays of such remedies
- Orders or injunctions sought
- Signature of the Applicant or of his/her representative.

19. You should also know that the application can be filed simply through an email, provided that the original copy is later on forwarded to the Court Registry.
In terms of costs, there are no filing fees, but, unless the Court decides otherwise, each party will bear its own costs. The Court is planning to set up a legal assistance mechanism.

**Distinguished participants, Ladies and Gentlemen**

**20.** Once the Court is seized of an application, it follows the usual judicial process to deal with it.

First of all, it will consider whether it has jurisdiction or not.

Secondly, if it finds that it has jurisdiction, the Court will deal with the admissibility of the case, especially with regard to the requirement of exhaustion of local remedies.

Thirdly, if the application is found admissible, the Court will consider the merits of the case, and make a judgment.

Before this, the Court may decide to promote amicable settlement of the case concerned.

The procedure before the Court shall consist of written, and if necessary oral proceedings.

**Distinguished Participants, Ladies and Gentlemen**

**21.** There is so much to say about the proceedings before the Court. But I have to stop here, and let me conclude, by engaging you all in your respective capacities to collaborate with the Court in sensitizing Member States of the African Union which have not yet ratified the Protocol establishing the Court, and/or have not yet made the special declaration
to do so, and also in raising awareness about the Court among the African people.

For its part, the Court stands ready to ensure judicial protection of all rights guaranteed to African women in accordance with the Protocol to the African Charter on the Rights of Women in Africa in particular, and all treaties, protocols and declarations adopted by African Union Member States in general, and in this regard I look forward to seeing more women or women 'rights organizations bringing cases of human rights violations before the Court.

I thank you for your kind attention.

Addis Ababa, 10th July 2012