Office of the President

PRESENTATION AT THE INTERNATIONAL WORKSHOP ON ENHANCING COOPERATION BETWEEN UNITED NATIONS AND REGIONAL MECHANISMS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

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PANEL 3

ROLE OF UNITED NATIONS, REGIONAL AND SUBREGIONAL JUDICIAL AND QUASI JUDICIAL ORGSNS IN PROMOTING AND PROTECTING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

1. THE AFRICAN HUMAN RIGHTS INSTRUMENT:

The African Union (AU) provides the basis of the African Region whose relevant human rights instrument is the African Charter of Human and
Peoples’ Rights (the Charter). Unlike other human rights instruments, the Charter has civil, political as well as economic, social and cultural rights in one instrument. Specific ESCRs have indeed been spelled out, to wit: the right to work under equitable and satisfactory conditions and to receive equal pay for equal work (Art. 15), the right to enjoy good health (Art. 16), the right to general satisfactory environment favourable to their development (Art. 24) and the right to education (Art. 17).

The Charter is also the only instrument that provides for peoples’ rights.

Art. 22(1) of the Charter specifically provides for Economic, Social and Cultural Rights (ESCRs) of the people in the following terms:

"All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind"
The African Commission of Human and Peoples' Rights (the Commission) created under Art. 30 of the Charter was charged with the promotional and protective roles of human and peoples' rights. However, the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and People's Rights (the Protocol) has created in Art. 1 the African Court on Human and People's Rights (the Court) which complements the protective role of the Commission (Art. 2 of the Protocol).

2. THE COURT:

The Protocol was adopted on 9th June 1998 in Burkina Faso and came into force on 25th January 2004 but became operative in July 2006 when the first judges were sworn-in. The Court comprises eleven Judges, nationals of Member States of the AU, and elected (Art. 11(1)) by the Assembly of the Heads of State and Government (the Assembly) (Art. 14 (1)) for a period of 6 years with a possibility of one re-election (Art. 15 (1)). They are
elected in their individual capacities from among African jurists of proven integrity and of recognized practical judicial or academic competence and experience in the field of human and people’s rights (Art. 11 (1)).

The law applicable by the Court is the Charter but also any other human rights instrument to which the States concerned are parties under Art. 3 (the Protocol). This means that in the case of ESCRs, for instance, the Court can resort to The International Covenant on Economic, Social and Cultural Rights (ICESCR), The Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, The Convention on the Elimination of All Forms of Racial Discrimination, and The Convention on the Rights of Persons with Disabilities. All these provide ESCRs in greater details for the specific categories of individuals.
The jurisdiction of the Court is both contentious (Art. 3) i.e. settling disputes, and Advisory jurisdiction, (Art. 4) and the Court can also make amicable settlements among the parties (Art. 9).

Unlike the Commission which merely sends reports to the State concerned (Art. 52 of the Charter) and make recommendations to the Assembly of the AU (Art. 53 of the Charter), the decisions of the Court are binding and are not subject to appeal.

The Executive Council of the AU is charged with monitoring the execution of the Court judgments on behalf of the Assembly Art. 29(2)).

3. THE ADJUDICATION OF ESCRs BY THE COURT:

To date the Court has received 29 contentious matters of which 23 have been disposed of and 6 are pending. Of these 29 about four matters have been directly on ESCRs or the Court has given provisional measures which pertain to ESCRs.
a) Application No. 003/2011 Urban Mkandawire v. The Republic of Malawi: Mkandawire complained that he was wrongfully dismissed from his teaching post. The application was dismissed because local remedies had not been exhausted. The right to work.

b) Application No. 006/2012, in the Matter of the African Commission on Human and Peoples Rights v. The Republic of Kenya: The Commission made an application on behalf of the Ogiek Community of Kenya that they had been expelled from their lands by the Kenyan Government. The Court ordered provisional measures against the government to protect a violation of the cultural rights of the Ogiek Community. As the matter is *sub judice* then I shall speak no further. Public hearing has been set for November session of the Court.

c) Application No. 004/2013, in the Matter of - Lohé Issa KONATE v. Burkina Faso: Konate was a journalist who was jailed for criminal
defamation and complained that he was denied proper medical attention. The Court ordered provisional measures of medical care while the matter on the freedom of expression was pending. This was the protection of the right to health as guaranteed by the Charter. [Complied with]


e) Request No. 001/2013 by the Social - Economic Rights and Accountability Project (SERAP) a request for the abject poverty existing in African countries and whether that does not violate some provisions of the Charter.
4. **CHALLENGES IN ENFORCING ESCRs:**

There are challenges in the enforcement not only of ESCRs but even other human rights matters by the Court:

i. Lack of ratification of the Protocol - only 28 out of 54 Member States have ratified.

ii. Only 7 States out of the 26 have made the declaration recognizing the competence of the Court to receive cases directly from NGOs and individuals of those States as provided by Art. 34(6) of the Protocol.

iii. The visibility of the Court is blurred, that is, the Court is not known even by the majority of Africans. (even some Ministers)

iv. Enforcement of decisions and orders of the Court rely on political will of the Respondent State (Art. 30 of the Protocol).

v. There have not been many applications or request for advisory opinions because of the above challenges but we are grateful to the Commission to have sent to us
some matters and also the Court draws from their jurisprudence.

5. **STEPS TAKEN BY THE COURT:**

The Court on its part has embarked on some measures to try to address the short comings facing it:

i. It has been conducting sensitization visits to a number of States to persuade them to ratify the Protocol and to make the declaration. The efforts have born some fruits in that Burundi, Cameroon and Benin very recently have ratified the Protocol and Cote d’Voire has made the declaration.

ii. The Court has conducted judicial dialogues in 2010 and 2013 by organizing symposia involving regional, sub-regional and national courts and quasi judicial bodies.

iii. The Court together with the Commission have come up with the idea of celebrating a Human Rights Year and the Assembly
has declared 2016 to be so. That will mark the 10th anniversary of the Court.

iv. There is a plan to hold a continental conference on human and peoples’ rights in April, 2015.

v. It is intended to have a continental conference on the ratification of treaties relating to human rights in February, 2016.

vi. There is a move to collect and publish as much African jurisprudence on human rights as can be available in December, 2016.

6. CONCLUSION: ENHANCING COOPERATION BETWEEN THE COURT AND THE UNO:

   It is my most humble submission that there is a wide room of cooperation between the Court and the UNO:

   i. In the six steps outlined above in paragraph 5, ie sensitization, the holding of the Human Rights Year, research and publication of African human rights jurisprudence etc the Court and
the UN Bodies could work harmoniously together.

ii. Since the law applicable by the Court includes instruments of the UNO then there is room for co-operation in interpretation and application of the human right norms concerned enhancing exchange and dialogue between the Court and the UN Treaty Bodies dealing with ESCRs