

STRATEGIC PLANNING DOCUMENT FOR THE COALITION FOR AN EFFECTIVE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

2008 – 2010

I. Vision

The Coalition for an Effective African Court on Human and Peoples' Rights (the Coalition) envisages a continent where victims of human rights violations have access to justice.

II. Mission

The Coalition's mission is to ensure that the African Court on Human and Peoples' Rights (and the African Court of Justice and Human Rights) is effective, accessible and credible through training, education, information documentation and dissemination, research, advocacy, lobbying and networking.

Further, the Coalition will ensure that the process of creating the African Court of Justice and Human Rights will result in an entity with a clear mandate and effective capacity to protect human and peoples' rights. The Coalition believes in access to justice for all, particularly individuals and an independent judicial body.

In light of the complimentary relationship between the African Commission on Human and Peoples' Rights (African Commission) and the African Court on Human and Peoples' Rights (African Court), the Coalition aims to ensure that the African Commission is strengthened.

III. Background to the establishment of the Coalition

The Coalition, which comprises African and international non-governmental organisations (NGO), individuals and national human rights institutions in Africa, was formed during the first conference on the promotion of the protocol to the African Charter on Human and People' Rights creating the African Court in Niamey, Niger in May 2003.

The initiative began as a loose network with two secretariats housed at Alliances for Africa (Lagos) and the Human Rights Institute of South Africa (Johannesburg) in 2004. It comprised a Management Committee made up of representatives from nine NGOs, namely the Arab Centre for the Independence of the Judiciary and the Legal Profession (north Africa focal point); Foundation for Human Rights Initiative (east Africa focal point); Association pour les Droits de l'homme et l'univers Carcéral (central Africa focal point); Legal Assistance Centre (southern Africa focal point); the International Centre for the Legal Protection of Human Rights (INTERIGHTS – AU Liaison), Rencontre Africaine pour le Defence de Droits de l'Homme (RADDHO) (west Africa focal point); Open Society Justice Initiative (AU liaison); Cape Verdean Association of Women Lawyers (Portuguese-speaking Africa advisor); Institute for Human Rights and Development in Africa (focal point for national human rights institutions).

The Coalition has been able to influence processes at the African Union (AU) and the African Commission to ensure an effective human rights protection regime in Africa. At the outset, the Coalition concentrated its efforts on the enforcement of the protocol creating the African Court. Placing an emphasis on states parties' making a declaration allowing NGOs followed this and individual's direct access to the African Court and ensuring the independence and effectiveness of the African Court through engagement in the nominations process. The Coalition has held advocacy meetings with government officials in several countries to impress upon them the importance of direct access for NGOs to the African Court and the integrated African Court of Justice and Human Rights. The Coalition continues to engage in activities to raise public awareness on the African Court, and on the issues of ratification. It held seminars in Kampala, Uganda (2004); Johannesburg, South Africa (2004); Brazzaville, the Congo (2006); and Cairo, Egypt (2006).

The Coalition has also engaged in the process towards the creation of the African Court of Justice and Human Rights. It has made submissions to governments and the AU Commission on the proposed merger of the African Court on Human and Peoples' Rights and the Court of Justice of the AU. A number of the Coalition's suggestions were incorporated in the draft of the single legal instrument establishing the African Court of Justice and Human Rights. The Coalition remains one of the few initiatives engaged on the merger issue.

It is through the advocacy of the Coalition that processes to make the African Court functional were put in place while the discussions on the merger proceed.

The Coalition has accessible information on developments relating to the African Court on the Internet. In addition, this information is distributed widely at AU events such as the AU Summits and the sessions of the African Commission on Human and Peoples' Rights. The Coalition has a website: www.africancourtcoalition.org, which provides current and historical information on the African Court. The site receives over 1 000 hits daily, and it is increasing. The Coalition also publishes a quarterly newsletter, *Do it Right*, in English and French in hard copy and electronic format. The Coalition has also worked to broaden its membership across Africa, through its five geographic focal points.

The Coalition will become a fully-fledged organisation based in Arusha, Tanzania by end 2007.

IV. Critical issues: Background on the African Court

The establishment of the African Court and the negotiations on a single legal instrument establishing an African Court of Justice and Human Rights guide the work of the Coalition. Further, in light of the pivotal role of the African Commission as litigant before the African Court, the review of the Commission's rules of procedure

- *Establishment of the African Court on Human and Peoples' Rights*

The effective protection of human and peoples' rights in Africa has always been limited by the absence of an effective judicial institution with supra-national oversight of the conduct of African states. When the African Charter on Human and Peoples' Rights was adopted in 1981, it provided for the African Commission, which could receive and consider complaints on violations under the African Charter. However, the African Commission could not give binding decisions. As a result, notwithstanding the best efforts of the African Commission to develop a body of law and practice for the protection of human and peoples' rights and the prevention of further violations, most governments in Africa have routinely defied or ignored the Commission's decisions and recommendations.

The African Court was created through a Protocol under the African Charter adopted in June 1998 by the Organisation of African Unity Heads of State and Government. The protocol makes provision for an eleven-member African Court with members that have expertise in human and peoples' rights to complement the protective work of the Africa Commission. It provides that the Protocol will enter into force once the 15th instrument of ratification has been deposited at the AU Commission. The protocol came into force on 25 January 2004; a month after the Comoros deposited its instrument of ratification. As of June 2007, twenty-three states had ratified the protocol.¹

The Assembly of Heads of State and Government elected the eleven judges to the African Court in January 2006.² The President of the Court serves full time on the African Court, while the remaining judges serve on an ad-hoc basis - that is when the Court is in session.

Since their election, the judges have met five times (July, September, December and March) in Addis Ababa, Ethiopia, the seat of the AU Commission and the temporary seat of the African Court. At the African Court's second meeting, the judges selected the president and deputy of the Court; and they are Gérard Niyungeko and Modibo T Guindo respectively. The fourth meeting of the African Court took place in March 2007, where issues such as the draft Rules of Procedure were considered.

For the most part of 2007, the members of the African Court were preoccupied with drafting the Rules of Procedure of the African Court, designing the structure of the registry, and recruitment of staff and logistical arrangements regarding the headquarters in Arusha, Tanzania. The Assembly of Heads of State and Government approved an amount of US\$2,333,750 for the African Court for the year at the January 2007 AU Summit. This is a third of what the African Court requested from the AU.

¹ These states are: Algeria, Burkina Faso, Burundi, the Comoros, Cote d'Ivoire, Gabon, the Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, South Africa, Senegal, Tanzania, Togo, and Uganda.

² The members of the African Court on Human and Peoples' Rights are: Fatsah Ouguergouz (Algeria), Gerard Niyungeko (Burundi), Jean Emile Somda (Burkina Faso), Sophia Akuffo (Ghana), Hamdi Faraj Hanoush (Libya), Kellelo Justina Mafoso-Guni (Lesotho), Modibo Tounty Gouindo (Mali), Jean Mutsinzi (Rwanda), El Hadji Guisse (Senegal), Bernard Ngoepe (South Africa), and George Kanyiehamba (Uganda).

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As of June 2007 there was no permanent staff for the African Court. An intern in the office of the Legal Counsel was providing additional support to the Court. There are, however, plans to recruit two consultants and confirm the appointment of a personal secretary to the judge. During the AU Summit in Accra in June 2007, the AU approved the recruitment of 46 staff, and the establishment a registry.

The rules of procedure for the African Court and recruitment of staff were discussed by members at their sixth session held in Arusha, Tanzania from 17 – 28 September 2007. The adoption of the Rules of Procedure and the establishment of the registry should enable the African Court to begin operations.

Key issues that will affect the effectiveness of the African Court include the availability of adequate resources and skilled personnel; the establishment of a good working relationship between the African Court and the AU and other regional institutions for the protection of human rights, especially the African Commission on Human and Peoples' Rights; and the compliance by governments with judgements.

- The creation of an African Court of Justice and Human Rights

In June 2004, the Assembly of Heads of State and Government decided to integrate the African Court on Human and Peoples' Rights and the Court of Justice of the African Union. This followed a concern on the growing number of regional institutions that the AU could not afford to support financially.

The Algerian foreign minister and former president of the International Court of Justice, Mohammed Bedjaoui prepared an initial draft, which was discussed in Algiers, Algeria in November 2005. The ambassadors at the AU Commission met in Addis Ababa, Ethiopia from 15- 19 May 2006 to discuss the draft single legal instrument integrating the human rights and justice courts.

Key outstanding issues in the negotiation of a single legal instrument are: direct access by individuals to the new integrated court; the manner in which the new legal instrument will enter into force; the regional representation of judges; jurisdiction of the court regarding matters assigned to it by the Assembly of Heads of State and Government;

In light of the contentious issues the Council of Ministers decided, at the June 2006 AU Summit, that a further meeting of Ministers of Justice and Attorneys General and Permanent Representatives Committee of the AU take place in 2006. However, the meeting was postponed to November 2007.

-The revision of the rules of procedure of the African Commission

The African Commission will be the main litigant taking cases to the African Court. Furthermore, the protocol establishing the African Court emphasises the special relationship between it and the African Commission. The African Commission has begun to review its rules of procedure. In particular, the African Commission needs to address of whether it will be taking cases directly to the African Court, or if cases will be

taken on behalf of victims. Also, while, the African Court has original jurisdiction, the question arises whether practically, the Court will serve as an “appeal” forum.

V. Programme goals and objectives

The Coalition seeks to:

- Promote the ratification of texts relating to the African Court by all member states of the AU;
- Pending the establishment of the African Court of Justice and Human Rights, promote the rights of individuals and organisations to refer matters directly to the African Court by encouraging states to make the declaration as stipulated in Article 34 (6) of the protocol creating the African Court; and similar provisions in the single legal instrument establishing the African Court of Justice and Human Rights;
- Advocate for an independent and credible African Court including a transparent process for the nomination and election of judges to the African Court, which guarantees and equitable representation of the African judicial systems and gender parity in the nomination and election of judges; and
- Provide technical support for entities wishing to make use of the African Court to protect human and peoples’ rights.
- To contribute to the strengthening of the human rights system.

Short-term goals

The Coalition believes that with the African Court now up and running, there should be a greater awareness of the existence of the Court, building capacity within civil society to take cases to the Court and encouraging direct access. In order to achieve these goals, following are the Coalition’s objectives:

- Promoting the rights of individuals and NGOs to refer matters directly to the African Court by encouraging states parties to make the declaration under Article 34 (6);
- Promoting the ratification of the Protocol establishing the African Court by all African states;
- Ensuring that an effective human rights court is created from the process of merging the African Court on Human and Peoples’ Rights and the Court of Justice of the AU;
- Provide technical support to entities wishing to make use of the African Court to protect human and peoples’ rights;
- Facilitate co-operation between the African Court and the African Commission;
- Raising awareness on the role and function of the African Court; and
- Provide technical support to the African Court.

Long-term goals

Now that the African Court is established, the Coalition will explore ways to strengthen the relationship between the African Court and other entities in order to strengthen its effectiveness and the human rights regime in Africa. To this end the Coalition will seek to do the following:

- Contribute to developing co-operation between the African Court and sub-regional judicial bodies;
- Contribute to developing co-operation between the African Court and the AU to ensure enforcement of judgements; and
- Strengthening civil society organisations in their engagement with the human rights protection system in Africa.

V. Programme activities

Documentation

The dissemination of information is an important strategy to ensure that the message of the Coalition reaches policy-makers in the decision-making process, partners and actors who seek to engage in the African human rights legal system. Furthermore, dissemination of information effectively means a broadening knowledge within civil society, particularly public interest litigation and human rights NGOs on the African Court. It is, in part, through their engagement that the African Court will be strengthened.

The Coalition will produce three types of documents: awareness raising information on the African Court; advocacy-related documents; and documents that will generate debate and explore legal issues relevant to the protection of human and peoples' rights

- Awareness raising information

The Coalition intends to publish and disseminate information on the African Court; key developments at the AU and sub-regional courts relating to the African Court; to publish the decisions of the African Court; and publish general information on the sub-regional judicial bodies such as the East African Court of Justice and the Economic Community of West African States Court of Justice in light of their mandate on human rights issues at sub-regional issues.

A quarterly newsletter will be published in the official AU languages. The newsletter will contain short informative articles on activities of the Coalition, the developments at a continental level, which have an impact on the African Court. There will be an opportunity to have an opinion piece on an issue relevant to the human rights protection system. At sub-regional level, there will be electronic newsletters containing in particular, information pertaining to the African Court in the countries of that region. The newsletter will be disseminated to Coalition members, law societies, the judiciary in the different sub-regions and donors.

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The Coalition will also use existing media outlets, such as the radio and newspapers, to raise awareness on the African Court. Members will be encouraged to engage with the media. Also, the Coalition will sponsor articles for publication in strategic newspapers across Africa.

Press releases and positions papers as tools will be used to transmit the Coalition's view on a particular issue pertaining the African Court. List serves will also be used in this regard to keep the membership updated on developments on the African Court.

-Background information/resource material

The Coalition will re-produce key legal instruments such as the protocol creating the African Court for dissemination at seminars and workshops. Information in plain-language format on how to access the African Court will also be produced in all the AU languages as well as one indigenous African language, in particular Kiswahili. These publications will be distributed widely nationally, regionally and internationally.

The Coalition will also be proactive in initiating debate on various topics relating to the protection of human and peoples' rights through discussion papers.

Monitoring

The Coalition, through the secretariat and the focal points, will monitor developments at the AU, sub-regional and national level that have a bearing on the African Court. These developments include budget debates by the AU, enforcement of judgements at national level and the AU, ratification of the protocol establishing the African Court (and the new African Court on Human and Peoples' Rights) at AU and national level, nominations and elections processes at national and AU level, and monitoring judgements at sub-regional courts that have a bearing on human rights. Monitoring of these developments will contribute to the advocacy strategy of the Coalition. It will assist in providing information for the electronic bulletin.

Advocacy

The Coalition will conduct advocacy and lobbying on key issues relating to the African Court at the AU and country level. Key areas of engagement will include the nominations process, monitoring the enforcement of judgements, aspects relating to the functioning of the court, universal ratification of the protocol establishing the African Court, ensuring greater access for individuals and NGOs to the African Court and the creation of the African Court of Justice and Human Rights.

Written submissions, attending AU Summits and the sessions of the African Court and the African Commission, attending AU meetings relating to the African Court of Justice and Human Rights and engaging with governments will be some of the strategies adopted. Submissions will be published in all AU languages.

Focal points, in addition to attending events at AU level, will also attend summits and pre-summit civil society activities of the Regional Economic Communities in order to

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raise awareness on the African Court, to recruit members from the sub-region and raise key issues relating to the protection of human and peoples' rights.

Capacity building on litigation

The pool of skills to take cases to the African Court remains thin. The Coalition proposes to respond to this deficit by creating a skilled pool of lawyers who can undertake focused litigation at the African Court, and to provide litigation support services to other users of the Court upon request.

With the African Court now functional, the Coalition will establish a litigation and capacity building unit the functions of which shall include the following:

- Undertaking casework before the African Commission and Court as a matter of last resort;
- Providing assistance to those who wish to file cases before the African Court;
- Building capacity at national level so that legal representatives have the ability to present complainants adequately before the African Court and;
- Building effective litigation partnerships with lawyers working to protect human rights before national and regional courts.

Internship programme

An effective African Court requires the support and participation of skilled personnel within and outside the Court. Around Africa, however, limited resources continue to plague those institutions, both national and regional, charged with promoting and protecting human and peoples' rights.

It is against this background that the Coalition believes it should establish an internship programme. Also, it will be important, particularly for members of the Coalition to be exposed to the African human rights protection system at work. Those persons that participate in the programme will acquire skills in the filing and processing of cases before the Court. This not only provides much needed support for the Court, but also builds capacity within organisations on the continent in order to interact with the African Court.

The Coalition proposes that initially, the internships will run for a six-month period. The Coalition intends to begin with one or two interns. Eventually, the African Court should take full ownership and management of the programme. The programme will begin end 2008 once the African Court has begun considering cases.

Seminars and workshops

It is important to provide a forum for debate, information sharing, and building capacity on the emerging human rights court and most immediately the integration of the Court and the Court of Justice of the AU. Seminars are an opportunity for the broader

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membership to debate issues on the African human rights protection system, and to build consensus on the Coalition's position on AU policies relevant thereto.

Seminars and workshops will be convened for awareness raising on the African Court; training on procedures of the African Court; and for advocacy purposes.

The secretariat will collaborate closely with focal points to convene seminars and workshops, which bring together civil society organisations and government officials, on the implications of the court and litigation challenges for lawyers. Media professionals are an important sector to invite to such activities, as they are instrumental in publicising the work of the African Court and activities of the Coalition.

Support for and liaison with sub-regional judicial bodies

In light of the concurrent jurisdiction on human rights matters, the Coalition shall develop co-operation with sub-regional economic and political communities such as the Southern African Development Community (SADC), East African Community, and the Economic Community of West African States (ECOWAS). The Coalition aims to work with and support the strengthening of existing sub-regional judicial bodies. While this is not an immediate objective, the Coalition should use fora such as seminars to engage the sub-regional groupings on the issues of co-operation on human rights matters.

The Coalition believes that there should be close co-ordination between the jurisprudence of the Court, and the jurisprudence of the emerging regional courts and tribunals in Africa, such as the COMESA Court of Justice, ECOWAS Court of Justice, the East African Court of Justice, and the SADC Tribunal. This is because these courts also have jurisdiction to interpret and apply the African Charter. The existence of these regional courts is also proof that African countries have accepted the reality of regional judicial supervision of national governments.

As part of this liaison, members of these Courts will be invited to participate in the regional and national ratification meetings. We have invited the participation of judges of regional courts in all the ratification meetings so far organised by the Coalition. We propose to continue this practice. The Coalition will work with regional networks of lawyers and NGOs in identifying cases that may be suitable for filing in regional courts. Where choice of forum issues arise, the Coalition will contribute to decision making on appropriate forum between regional courts and the Court. Ultimately, the Coalition proposes to facilitate exchange of jurisprudence between the Court and other regional courts. For this purpose, the coverage of the proposed internship programme of the Coalition will extend to sending interns to the other regional courts whose competence extends to human rights issues in Africa.

IV. Management goals and objectives

The Coalition in its evolution from a loose network to a fully-fledged organisation will undergo important institution building processes. The Executive Committee and the

General Assembly constitute key policy-making bodies of the Coalition. The Advisory Committee also plays an important role in providing guidance on strategic issues. The secretariat, which will be located in Arusha, Tanzania, will be responsible for overall coordination of the Coalition. The secretariat will work with the focal points in order to ensure the implementation of the broad aims and objectives of the Coalition. To this end, the Coalition seeks, in the short term, to:

- Raise seed money and programme funding to support the new office and programmes;
- Recruit of the secretariat staff of the Coalition;
- Constitute a General Assembly in order to convene its first meeting;
- Establish all the organs of the Coalition; and
- Strengthening focal points and membership.

In the long-term, the Coalition will need to develop a funding strategy to sustain its activities over the next three years. Furthermore, the Coalition will need to involve members in its activities given that the membership is the key constituency.

V. Management activities

Establishing the secretariat's office

In the formative months from registration, the Coalition will be concentrating on establishing a secretariat with staff. The Coalition will need to recruit staff, which will be based the secretariat's offices in Arusha. It will also be important for the Coalition to re-launch itself given its changed status from a loose network to a membership-based organisation.

In the interim period leading to the General Assembly meeting, that is from October 2007 – March 2008, the present secretariat will source funds in order to ensure that office space is found in Arusha as well as other logistical arrangement associated with the establishment of an office. These funds will also be used to prepare for the General Assembly, a critical event in the formation and sustainability of the organisation.

Strengthening focal points

Focal points will be responsible for implementing programmes of the Coalition at sub-regional levels. Recruiting membership, undertaking advocacy on the ratification of the protocol establishing the African Court and raising awareness on the African Court are some of the activities of the focal point. The focal points will play an important role in identifying capacity building needs for their sub-regions. Focal points will also be responsible for raising funds to facilitate the implementation of their activities. The secretariat will provide support in this regard.

Technical and financial support is required for focal points to do their work effectively. In so doing, focal points may establish an African Court desk officer who will be responsible for activities relating to the Court and the Coalition. The desk officer will be

the contact person with the secretariat. Focal points will be encouraged to undertake study tours to other focal points in order to exchange best practices and sharing of experiences. The information learnt will be used to improve advocacy at sub-regional level, and enhance membership participation in the activities of the Coalition. Also, the executive secretary will be required to provide support to focal points through on-site visits to review activities and management matters. On-going email and telephone communication will be conducted.

Communications

While the Coalition through its engagement with the AU has become a source of information on the Court and indeed AU processes, this information is not reaching a wider audience. The reach of the Newsletter is limited with a specific purpose. In order to sensitise the public outside of the mailing list and generate debate about developments on and relevance of the Court, the information at the secretariat should be packaged in a manner that can be absorbed by the general public. The information must be both current and distilled in a format that will have wide appeal.

A communications officer will assist the Coalition in packaging this material for the media and also devising strategies whereby information on the African Court and the Coalition reaches a wider audience. The person will ensure that, in being informed constantly on international justice issues, matters on the Court are covered by the media. These matters may include nomination of judges. This person may also write opinion pieces when required on critical international justice issues, or assist members of the Coalition including focal points to place opinion pieces in strategic newspapers across the continent. This person will be required to work closely with media houses across Africa and foreign bureaus based in Africa. Where required, this person may attend AU events in order to ensure coverage in the print media and interviews on developments in the media on the Court and related matters. In short, this person will act as the interface between the advocacy work of the Coalition and the public.

Fundraising

Given the newly registered Coalition, the secretariat will need to develop a funding strategy to sustain the staffing compliment, and activities of the Coalition. It will be critical for the Coalition to attract funds that can run for a long period of time, such as a three-year grant.

Governance or Governing Bodies

The Coalition is a membership-based institution. The members form the General Assembly, which is the principal policy-making organ. Members need to be informed of and involved in the activities of the Coalition. Managing a culturally and linguistically diverse group will be a challenge for the secretariat.

The secretariat will, through a dedicated staff member, work to broaden its membership and keep it engaged on key activities of the Coalition.

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In the interim period, the Coalition will work towards holding its first General Assembly as a registered entity in March 2008. The General Assembly will allow for the election of an Executive Committee and other key organs of the Coalition. Also, following the election of an Executive Committee, a recruitment process for a Secretary (formerly referred to as the co-ordinator) will begin.