



TERMS OF REFERENCE

Call for Expression of Interest

Professionalization of African Union staff for rule of law initiatives program

African Court Study

Researchers' Terms of Reference

1. Background

The African Union Commission (AUC) and the American Bar Association with support from the Government of the United States of America are implementing a capacity strengthening program on rule of law. The goal of the program is to strengthen AUC capacity to advise on issues of governance, transnational crime, and peace and security, to propose effective approaches to advancing these AU priorities, and to successfully oversee and implement mechanisms addressing these issues. As part of this program, training, mentorship, capacity building, material support and skills development will be provided to the staff of the AU.

The African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights (ACtHPR) was established on 9 June 1998 by the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (Protocol). The Protocol came into force on 25 January 2004, paving the way for the operationalisation of the ACtHPR. The Court, which was launched on 2 July 2006, is the first continental judicial body of the African Union charged with the protection of human and peoples' rights in Africa. The Court complements the protective mandate of the African Commission on Human and Peoples' Rights (Commission). The Court has its seat in Arusha, in the United Republic of Tanzania.

The decisions of the ACtHPR are final and binding on State Parties to the Protocol. The Court's jurisdiction applies only to States that have ratified the Protocol. To date 31 African States have ratified the Protocol.¹ The Court considers cases and disputes concerning the interpretation and application of the African Charter on Human and Peoples' Rights

¹ See <https://www.african-court.org/wpafc/basic-information/>



(the Charter), the Protocol and any other human rights treaty ratified by the States concerned. The Court also renders advisory opinions on any matter within its jurisdiction. The advisory opinion may be requested by the AU, Member States of the AU, AU Organs and any African organization recognized by the AU.

The ACtHPR also promotes amicable settlement of cases pending before it and can interpret and review its own judgments. In respect of cases brought by NGOs and individuals, Articles 5(3) and 34(6) of the Protocol read jointly requires that the concerned State should have made a declaration recognizing the Court's competence to receive such cases. Furthermore, in accordance with Article 6(2) of the Protocol, applications filed must meet the admissibility requirements set out in Article 56 of the Charter.

2. The Study

The African Court has identified the need to better understand the legal systems of Member States of the Protocol in order to better perform its role of determining the admissibility of applications filed before it. The study will examine the legal systems in African Union Member States drawing examples from States that have made the declarations under Article 34(6) of the Protocol. Out of the 31 State parties to the Protocol, only 10 (Benin, Burkina Faso, Côte d'Ivoire, Gambia, Ghana, Malawi, Mali, Rwanda, Tanzania, and Tunisia) have ever deposited the Declaration under Article 34(6) of the Protocol, accepting the competence of the Court to receive cases directly from individuals and NGOs². Through this direct access, victims of human rights violations who have exhausted local remedies can seek redress for their claims before the Court.

The ACtHPR handles cases involving States with different legal systems and even within these systems some variances exist. Research into individual legal systems to understand the specific procedures available in the State for the exhaustion of local remedies and further refined according to different subject matter disputes is time consuming. This study will provide an in-depth understanding of the different legal systems and judicial processes of Member States. This includes the court structure and the judicial procedures involved in the initiation and resolution of different types of disputes, including all appeals procedures. This will provide a key resource to the ACtHPR, providing specific information to facilitate the analysis on questions of

² 4 States (Rwanda, Tanzania, Benin and Ivory Coast) have since withdrawn their Declarations.



admissibility of applications, therefore lessening time spent on the resolution of cases and enhancing efficiency of the Court.

Objectives and Outcomes of the study

To deepen the Court's understanding of the legal systems and judicial processes of African Union Member States, through a well-researched analysis. The Court's effectiveness in determining applications will ultimately be enhanced.

Methodology

The study will involve desk review of existing reports, documents, online reliable information and databases. The research findings will be presented to the ACtHPR and thereafter comments will be incorporated and the study finalized.

3. Scope of work

The project seeks to engage researchers familiar with the legal systems and judicial processes of African Union Member States. The project will recruit 2 researchers, for common law and civil law systems:

The specific deliverables include the following: -

- a. Develop a comprehensive study on the legal and judicial systems in African Union Member States. Globally, the study will include the common law, civil law and hybrid systems, and how different claims are adjudicated through these systems. This will include an analysis of the legal framework and judicial system/structures. Case studies drawn from States which have made the Declaration under Article 34(6) of the Protocol will be included to shed light on the specificities of the legal and judicial systems and court structures of these States. The study will provide an overview of the judicial structures for first instance and all appellate procedures for different types of disputes within the context of exhaustion of national remedies. With respect to the highlighted States, the research will also include an overview of how human rights claims are adjudicated.
- b. Participate in a meeting to present the study findings and highlights to the ACtHPR.
- c. Update the paper and prepare a final version.

4. Experience required



- a) The researchers will be qualified legal practitioners with masters in law and at least 5 years of relevant experience in conducting legal research, writing and critical analysis; experience authoring published pieces for law journals is an added advantage.
- b) The researchers will also have a strong knowledge of the African human rights system, including the African Court's functions and its jurisprudence
- c) Fluency in at least one of the working languages of the AU, ability to work in another working language will be an added advantage.

5. Activity dates

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| i. Desk review by researchers | 1 -25 March 2021 |
| ii. Submission of study to ABA ROLI/African Court | 16 April 2021 |
| iii. Presentation and feedback from Court on study to researchers | 23 April 2021 |
| iv. Revisions by researchers: | 26 -31 April 2021 |
| v. Second review by African Court/ABA ROLI: | 17- 21 May 2021 |
| vi. Final edits by researchers | 24-28 May 2021 |
| vii. Final consolidated compendium of study: | 4 June 2021 |

6. Application instructions

Interested applicants for Researcher- common law jurisdictions; or Researcher- civil law jurisdictions are invited to send their letters of expression of interest and resumés to Danielle Schmitz at africa-recruitment@abaroli.org by 5:00pm CDT on 26th February 2021. Please specify the position you are applying for in the subject of your email.