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COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

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International Day to End Impunity for Crimes against Journalists

"Strengthening Judiciary system and African Courts to protect Safety of Journalists and End Impunity"

Seminar

10 September, 2016

Arusha, Tanzania

Opening statements by

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President of the African Court on Human and Peoples' Rights

1. It gives me immense pleasure to deliver these opening remarks to this distinguished audience of honorable judges, journalists, lawyers and other eminent personalities around the globe in this very important conference on *“Strengthening Judiciary system and African Courts to protect Safety of Journalists and End Impunity”*.
2. As the immediate former President of the African Court on Human and Peoples’ Rights and a Tanzanian national let me take this opportunity on my own behalf and on the behalf of the African Court to welcome you warmly to Tanzania generally and in particular to this beautiful city of Arusha. Some people call Arusha the Geneva of Africa because she is not only the seat of the African Court but also the hostess of other judicial institutions like the East African Court of Justice.
3. I thank God that you have made it safely here and some of you from very faraway places. We say in Kiswahili: KARIBUNI SANA, that is, you are warmly welcome. Please feel at home. Let me implore you to find time to visit some tourist attractions like Lake Manyara the only place you will find tree climbing lions; Ngorongoro Crater, the largest natural crater in the world; Tarangire National Park; and of course, the mighty Kilimanjaro.
4. The conference is to commemorate the International Day to End Impunity for Crimes Against Journalists (IDEI). The UN General Assembly by Resolution A/RES/68/163 at its 68th Session in 2013 proclaimed 2nd November as the International Day to End Impunity

for Crimes Against Journalists. So the Conference should have been held sometime in end of October or early November but has been held now to accommodate the request of the African Court. So we thank dearly UNESCO, the organizers, and other sponsors of this conference for that.

5. This is the third Conference. In 2014 UNESCO co-organized an inter-regional dialogue at the European Court of Human Rights in Strasbourg, France. A second Conference was held last year in San Jose, Costa Rica, and I was very lucky to participate in that one. I talked to the UNESCO organizers requesting this year's Conference to be held here in Arusha and at this time.
6. This inter-regional dialogue is of its kind. Not only are we commemorating the International Day to End Impunity for Crimes Against Journalists but we are also celebrating the African Year of Human Rights with Special Emphasis on Women Rights as the AU declared this Year 2016 to be so. But also this is the tenth anniversary since the African Court began its operations in November, 2006.
7. Thus the theme of this third inter-regional dialogue of *"Strengthening Judiciary system and African Courts to protect Safety of Journalists and End Impunity"* could not have come at a more opportune moment in the human rights history of this continent.

8. It is intended in this conference to raise awareness and share good practices among judges and other relevant players on key international and regional standards on freedom of expression, freedom of press, safety of journalists and how to combat impunity on crimes against journalists in Africa.

9. On the African scene there are a number of instruments which guarantee freedom of expression. There are, for instance:

a. **Article 9 of the African Charter on Human and Peoples' Rights¹**

"1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinion within the law"

b. **Articles 2 (10) and 17(3) of The African Charter on Democracy, Elections and Governance²**

"2 (10) Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs"

"17 (3) Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections".

¹ Adopted by the Assembly of the then OAU on June 1981

² Adopted by the Assembly of the AU on January 2007

- c. **The ECOWAS Treaty:** which is the treaty for the Economic Community of West African States and it guarantees freedom of expression in Articles 66 even more elaborately.³
- d. **The SADC Protocol on Culture, Information and Sports:**
This Protocol is for the Southern African Development Community and was signed in 2000 in Blantyre, Malawi, by the SADC Member States. Freedom of expression is guaranteed under Article 20 as follows:
“State Parties shall take necessary measures to ensure the freedom and independence of the media”.
- e. Moreover, almost all national constitutions have provisions regarding freedom of speech.

10. Apart from these instruments the African Commission on Human and Peoples’ Rights, which has been created under Article 30 of the

³ “66. In order to involve more closely the citizens of the Community in the regional integration process, Member States agree to co-operate in the area of information.

To this end they undertake as follows:

- a) to maintain within their borders, and between one another, freedom of access for professionals of the communication industry and for information sources;
- b) to facilitate exchange of information between their press organs; to promote and foster effective dissemination of information within the Community;
- c) to ensure respect for the rights of journalists;
- d) to take measures to encourage investment capital, both public and private, in the communication industries in Member States;
- e) to modernize the media by introducing training facilities for new information techniques; and
- f) to promote and encourage dissemination of information in indigenous languages, strengthening co-operation between national press agencies and developing linkages between them.

African Charter on Human and Peoples' Rights, has in October, 2002, adopted under Article 9 of that Charter:

The Declaration of principles on freedom of expression in Africa:

These principles reaffirm the fundamental freedom of expression as an individual human right, a cornerstone of democracy and a means of ensuring respect for all human rights and freedoms. The principles provide guidelines on the freedom of expression.

11. The Pan African Parliament has also adopted a resolution on 18 October, 2012, titled **Press Freedom for Development and Governance: Need for Reform.**
12. The instruments, the declaration and the resolution that I have cited and others which I have not referred to guarantee freedom of expression but I dare say that what is seriously required is instruments to guarantee the safety of the journalist themselves in the performance of their work.
13. On the contrary most countries have provisions for the punishment of journalists who go astray in the course of their duties by criminalization of defamation.
14. The African Court has developed jurisprudence on freedom of expression and the rights of journalists in the case of **Lohe Issa**

Konate v. Burkina Faso⁴. Lohé Issa Konaté, is a contributing editor for a weekly newspaper *L' Ouragan* and was found guilty of criminal defamation after he had written several articles against the prosecutor of Burkina Faso. He was sentenced to a jail term of 12 months and was also ordered to pay a fine of CFA F1.5 million (equivalent to US \$ 3000).

15. The African Court held that:
 - i. Criminalizing defamation is valid; but
 - ii. Custodial sentences for criminal defamation is invalid and that fines are sufficient remedies.

16. That decision may go a long way to ameliorate the fate of journalists who may be prosecuted for criminal defamation.

17. However, a number of journalists have been killed or maimed in the execution of their duties. There are instances where the perpetrators of these killings or tortures or mistreatment of journalists have been brought to book and punished.

18. In Tanzania, for example, a journalist by the name of Daudi Mwangosi was killed in a Police action of dispersing a crowd of people in a rally on 2 September, 2012, in Mufindi District, Iringa Region. A Police Constable, Pacificus Clleophance Simon, was found guilty of manslaughter for having thrown a tear gas canister which exploded

⁴ Application No 004/2013

and caused the death of the deceased journalist. On 27 July, 2016, Pacificus was sentenced to a jail term of 15 years.

19. I must confess that the authorities, both investigators and the judiciary, took speedy actions as the whole matter took slightly less than 4 years from the event on 2/9/2012 to sentencing 27/07/2016. Normally such cases in Tanzania take not less than 5 years but that has also been so because of the follow up by the press.

20. However, there are cases where perpetrators of crimes against journalist have not been brought to book to date. For example, the owner of a Swahili weekly, *MWANA HALISI*, and himself a journalist called Saed Kubenea, now a Member of Parliament, had acid thrown on to his face and it was only the quick action by some benefactors and also the Government that saved his eye sight. Five people were prosecuted but were acquitted for lack of evidence though an eye witness who is also a journalist and who was affected by the acid, though not as seriously as Saed, was not called to testify. Another journalist, Absolum Kibanda, of a daily paper *MTANZANIA* was seriously maimed but nobody has been brought to book.

21. The African Court in the case of **The Beneficiaries of the late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo and Blaise Ilboudo and the Burkinabe Human and Peoples' Rights Movement v. Burkina Faso**⁵ dealt with such

⁵ Application No 013/2011

incidents of complacency. Norbert Zongo was an investigating journalist and the Director of the weekly magazine called *Le Independent*. He investigated the death of one David Ouedraogo who was the chauffeur of Francois Compaore, a brother and adviser of President of the Republic of Burkina Faso. Consequently he published a series of articles. He and his three companions were murdered in 1998.

22. The beneficiaries of the slain journalists came to the African Court complaining that the Burkinabe authorities not only failed to investigate, arrest the culprits and bring them to book but also frustrated their efforts of those who were keen to do so.

23. The African Court held that the Respondent State:

- a. Failed to take appropriate measures to guarantee respect for the rights of the slain journalists; and
- b. Did not shown due diligence in seeking out, investigating, prosecuting and putting to trial the killers of Norbert Zongo and his companions.

24. The African Court went further to order the Respondent State to seek out, investigate, prosecute and put to trial the killers of Norbert Zongo and his companions. That decision goes a long way to fight against impunity to perpetrators of crimes against journalists.

25. Apart from what the African Court has done the recommendation

of the African Commission in **Article 19 v. Eritrea**⁶ is also very relevant. About 18 journalists in Eritrea were detained without trial and the Complainants, Article 19, alleged that Eritrea was acting in violation of the African Charter.

26. The Commission held that Eritrea was in violation of Articles 1, 5, 6, 7(1), 9, and 18 of the African Charter and recommended:
- a. Reparation of 10 million CFA Francs per parent of the detainees and 3,135,405 CFA Francs
 - b. The immediate release and or a speedy and a fair trial of the journalists.

27. I have just tried to whet your appetites in what we have on the African scene but more can and should be done. I wish you fruitful deliberations. We are eagerly awaiting the conclusions and recommendations of this seminar.

I declare the conference open.

I thank you for your kind attention

⁶ Communication No 275 of 2003