

of Experts on the Rights and Welfare of the Child into one institution. Pending the completion of this process, consideration should be given to both the Commission and the Committee of Experts sharing a common Secretariat on an interim basis.

- d. In partnership with the Southern African Development Community Lawyers' Association (SADC LA) and other appropriate partners, to urgently seek an Advisory Opinion from the African Court on Human and Peoples' Rights with regard to the situation facing the SADC Tribunal, bearing in mind that the same fate could befall any of the other Courts or tribunals of the RECs or other African international judicial or quasi-judicial institutions, thus further impeding access to justice in Africa.

PRIORITIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN AFRICA

11. We commit to, through PALU and all our other academic or institutional affiliations, actively seek the realization and enforcement of economic, social and cultural rights, including through actively engaging parliaments and creatively using courts and tribunals at national, regional and continental levels.

ORGANIZATIONAL DEVELOPMENT OF THE PAN AFRICAN LAWYERS UNION (PALU) AND ITS CONSTITUENT BAR ASSOCIATIONS AND LAW SOCIETIES

12. The Colloquium, and especially PALU members present, requested the Executive Committee to ensure that the following institutional,

membership and programmatic measures are undertaken:

- a. Formulation of a Strategic Plan for PALU, with clearly articulated Vision, Mission and measurable programmatic and other interventions;
- b. Inclusion, in this Strategic Plan, of programmes, policies and activities that will:
 - i. Build or strengthen the capacity of regional lawyers' associations in Africa, especially forging strong links with the Arab Lawyers' Union, and ensuring the emergence of a vibrant regional lawyers' association for Central Africa;
 - ii. Enhance the contribution of regional and national lawyers' associations in public interest litigation, pro bono provision of legal aid services, and in formulating or updating Codes of Legal Practice, Conduct, Ethics and Etiquette;
 - iii. Promote a broad understanding of the African Governance, Human Rights and Peace and Security Architecture, and the use, in appropriate cases, of African international courts and tribunals;
 - iv. Promote a broad understanding of transitional justice in Africa, especially in the area of socio-economic justice;
 - v. Monitor the ratification, domestication and implementation

of AU and REC legal instruments, and compliance with Decisions and Recommendations of African international courts and tribunals;

- vi. Prioritize the ratification and domestication of the African Charter on Democracy, Elections and Governance (ACDEG), and the Protocols setting up and enhancing the jurisdiction of the African Court on Human and Peoples' Rights;
 - vii. Build a comprehensive database of African lawyers and institutions, which highlights their respective areas of expertise, especially in relation to various African international organizations and mechanisms;
 - viii. Build a comprehensive database of research and publications of a legal or human rights nature on the continent, so that they can be easily available for law- and policy-makers, scholars, researchers, practitioners and activists;
 - ix. Establish a Journal and also a Newsletter.
- c. Consideration of a follow-up Colloquium specifically examining how the AU and

its Member States have implemented the provisions of Article 4 of the Constitutive Act of the African Union, which among other things, provides the right and obligation of the AU to "intervene in a Member State pursuant to a Decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity."

- d. Formulation of a research, documentation and advocacy programme on the legal aspects of the financing of the AU and the RECs; in particular, the feasibility of establishment of Trust Funds for African international courts and tribunals, and for public interest litigation in Africa.

13. The Colloquium, and especially PALU members present, requested the Executive Committee to continue to work closely with AU organs and institutions in fostering a people-centred and principled integration, and in particular with the African Union Commission on International Law (AUCIL), in its mandate of codification and progressive development of African law and legal norms.

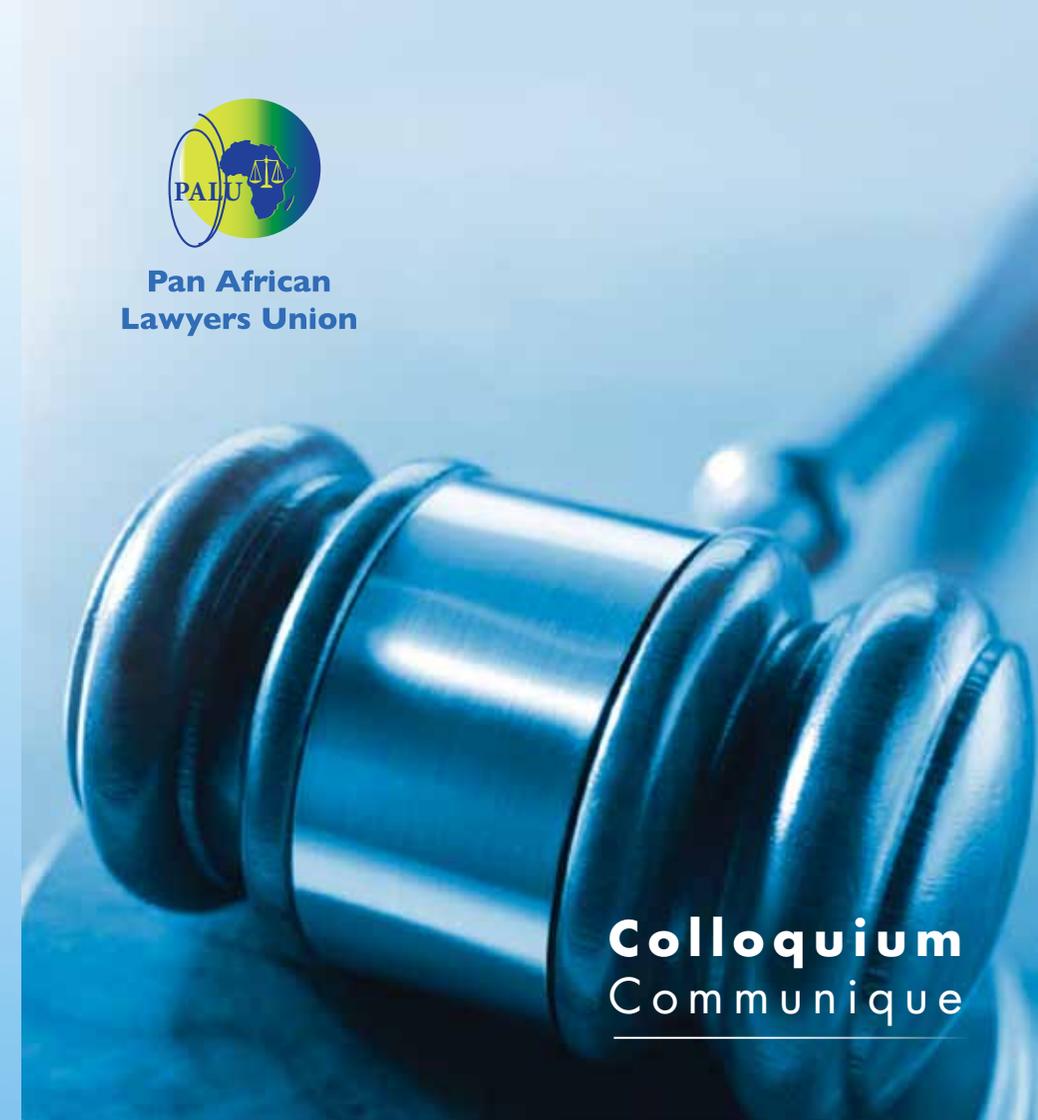
14. The Colloquium, and especially PALU members present, requested the Executive Committee to take measures to institutionalize the Colloquium in the annual activity calendar of PALU.

Done at Arusha, in the United Republic of Tanzania, this 26th day of July 2011.

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**Pan African
Lawyers Union**



**Colloquium
Communique**

COMMUNIQUE OF THE INAUGURAL COLLOQUIUM OF LEGAL SCHOLARS ON THE AFRICAN HUMAN RIGHTS SYSTEM, CONVENED BY THE PAN AFRICAN LAWYERS UNION, IN ARUSHA, UNITED REPUBLIC OF TANZANIA

Legal scholars and practitioners, including representatives of African academic institutions, bar associations, law societies and legal and human rights organizations gathered in Arusha, United Republic of Tanzania on 25th and 26th July 2011, to among other things, reflect on recent developments in the African human rights system, in the regional economic communities (RECS) and generally on the state of democracy, rule of law, peace and security, and human and peoples' rights on the African continent, have made and adopted the following Communique:

Participants at the Colloquium acknowledged recent, positive developments in the emerging African architecture for the promotion and protection of human and peoples' rights, democracy, good governance, the just rule of law and peace and security, such as the role of the national governments, the Assembly of Heads of State and Government and other organs and institutions of the African Union (AU) in formulating and adopting several Treaties, Protocols, Declarations and Decisions on the above issues. They also noted that, in several instances, these legal instruments have led to the establishment or reinvigoration of a number of implementation or enforcement mechanisms or frameworks which we, as African citizens, need to engage robustly. In particular, they celebrated the role that African activists and civil society organizations, academic and professional institutions, and their friends, have

played in advocacy and activism, and holding leaders and institutions to account.

Notwithstanding these, participants observed that there remain significant challenges in matching political will or rhetoric with positive action that will guarantee to all persons in Africa a life of dignity and hope, and an environment for local and international enterprise and investment. Mindful that many African governments have, in the recent past, as before, engaged in actions that run contrary to African and international law, and that violate the rights of their citizens, often times including violations and crimes of a serious and massive magnitude and scale, the participants reaffirmed their own commitment to the Constitutive Act of the African Union, the African Charter on Human and Peoples' Rights and its Protocols, the African Charter on the Rights and Welfare of the Child, and other regional, continental and international human rights instruments. On specific issues, they adopted the following conclusions and recommendations:

MASSIVE AND SERIOUS VIOLATIONS OF HUMAN AND PEOPLES' RIGHTS

1. The right of African and other citizens to freely assemble, associate and express themselves, including through peaceful demonstrations, is guaranteed under African human rights and international law and is non-negotiable and non-derogable.
2. In this regard, we condemn in the strongest terms the excessive use of force, extra-judicial executions, torture, arbitrary arrests

and detentions, incitement including through criminal speech of high government officials, and other human rights violations, clearly illegal under national and international law, that was recently meted out on peaceful demonstrators and activists in Malawi, and, before that, in the Great Socialist People's Libyan Arab Jamahiriya.

3. With further regard to the situation in Malawi, we call upon the African Union's Peace and Security Council and the African Commission on Human and Peoples' Rights to immediately activate remedial action, as provided for in their founding Protocol and Charter, respectively, and we expect that this will form the subject of serious discussion at the subsequent meetings of the AU organs.
4. With further regard to the situation in the Great Socialist People's Libyan Arab Jamahiriya, we:
 - a. Acknowledge the steps recently taken by the AU in establishing a mechanism to pursue a peaceful, negotiated, long-term political settlement that respects the wishes and democratic aspirations of the people of Libya;
 - b. Note, with disappointment, the failure of the conflict early warning mechanism of the AU, which disabled it from acting to prevent the escalation of violence, in view of the earlier events in Tunisia and Egypt;
 - c. Further note that this was contrary to the clear values of the AU under the Constitutive Act of the African Union and resulted in the marginalization of the AU in the process leading to and immediately following United Nations Security Council Resolution 1973 (2011);

- d. Condemn the abuses that have been carried out, clearly illegal under international law, by certain countries under the auspices of the North Atlantic Treaty Organization in the guise of implementing the said United Nations Security Council Resolution 1973 (2011).
 - e. Request African countries, under the umbrella of the AU, to take appropriate remedial steps under international law, including seeking an Advisory Opinion from the International Court of Justice on the implementation of United Nations Security Council Resolutions 1970 and 1973 (2011).
5. Most importantly, we wish to remind African countries, the AU and its Regional Economic Communities (RECs) that it is only when they faithfully and promptly honour and implement the commitments made under the various AU and REC Treaties and Protocols that "external interference" and/or violation of international laws and norms on the continent can be avoided.

INDEPENDENCE OF INTERNATIONAL COURTS AND TRIBUNALS, AND OTHER INSTITUTIONS IN AFRICA

6. While much remains to be done, African citizens and their governments have already ~~begun to see and reap the benefits of~~ principled, people-centered and rules-based regional and continental integration.
7. For these efforts to be sustainable, African States must live up to the commitments they voluntarily made, towards an international rule of law, with separation of powers and institutional balance between the organs and

institutions making up the AU and its RECs as clearly articulated in the Constitutive Act of the African Union (2002); the African Charter on Human and Peoples' Rights (1981); the African Charter on Democracy, Elections and Governance (2007); the Protocol on Relations between the AU and the RECs (2008), and many other instruments.

8. We are gravely concerned at various decisions and actions of some governments, and the apparent inability of the organs and institutions of the AU and the RECs to halt or remedy these, such as:
 - a. The generally poor record of the African States in complying with Decisions or Recommendations of the various judicial or quasi-judicial bodies at continental and regional levels;
 - b. The appalling record of African States towards universal ratification of the 1998 Protocol establishing the African Court on Human and Peoples' Rights, and deposit of Declarations enabling direct access (by citizens and Civil Society Organizations) to that Court, at a time when the same States are calling for "African solutions to African problems";
 - c. The failure of the Assembly of Heads of State and Government of the AU, in two consecutive sessions, to adopt the Report of the African Commission on Human and Peoples' Rights, which, among other things, has left several litigants whose cases had been concluded by the Commission in limbo;

d. The attacks on the independence, jurisdiction and effective operations of the courts of the RECs, such as on the East African Court of Justice (in 2007), the ECOWAS Community Court of Justice (in 2009) and, most recently and most far-reaching, the suspension of the SADC Tribunal (from 2010 and continuing).

9. It is against international law and the spirit of African solidarity to put African citizens in a situation where they are bound by the various Treaties, Protocols, Declarations and Decisions made under the ambit of the AU and the RECs, yet have no recourse through an independent and impartial tribunal, when their rights, guaranteed under the said instruments, are violated.
10. In light of the above, the Colloquium requests the Pan African Lawyers Union: -
 - a. To constitute a high-level Panel to engage in dialogue with the AU, RECs and high government officials towards an international rule of law, separation of powers and institutional balance at the AU and in all its RECs;
 - b. The said Panel will specifically engage the above institutions and officials with regard to expediting the adoption of the Reports of the African Commission on Human and Peoples' Rights;
 - c. In addition, the Panel should specifically engage the above institutions and officials to explore the possibility of rationalizing or merging the African Commission on Human and Peoples' Rights (the Banjul Commission) and the African Committee