International Journal of Law, Policy and Social Review
www.lawjournals.net
Online ISSN: 2664-6838; Print ISSN: 2664-682X
Received: 05-11-2018; Accepted: 06-12-2018; Published: 06-01-2019
Volume 1; Issue 1; 2019; Page No. 22-27

An overview on the upcoming criminal bench of the African court of justice and human rights

Anteneh Geremew Gemeda
Lecturer and Research Coordination Officer, Debre Markos University, Debre Markos, Ethiopia

Abstract
This paper discusses the basic features of the proposed criminal bench of African Court of Justice and Human Rights. The court has general affair section, human rights section and criminal section. It has the mandate to interpret and apply the AU constitutive act together with other treaties and all subsidiary legal instruments. The court is composed of four organs. Decision of the court is binding on the parties to a dispute. The AU adoption of the protocols of the statute of the court underscores that it is the first time that head of state and governments give immunity in international criminal law. This is against one of the founding principles on which the AU, through its constitutive act is apparently based on "condemnation and rejection of impunity". The criminal section of the court is proposed as a reaction to the perceived partiality in the International Criminal Court. The two courts will exercise the same subject matter jurisdiction at least in relation to Rome statute crimes committed in states which have ratified both the Malabo protocol and the Rome statute.

Keywords: African court, criminal bench, criminal jurisdiction, ICC

1. Introduction
This paper discusses the basic features of the criminal bench of African Court of Justice and Human Rights (hereinafter, ACJHR). Once after all, the adoption of the African Court of Justice in 2003, The African Union's (hereinafter, AU) concern and worry was about the proliferation of courts and lack of financial capacity in the continent [1]. Although the idea was not receptive to the idea, the AU Summit meeting in Sharm EL-Sheikh in 2008 decided that the two courts should be merged under the statute protocol of ACJHR. The AU decided that to adopt this new protocol for the integrated and extended mandate that takes additional criminal jurisdictional law.

2. Jurisdictions of the ACJHR
The statute adopts as provide for two section within the ACJHR dealing respectively the 'General affair and Human right affair' each with eight judges. Each of these sections has pre-trial, trial and appellate chambers. The general affair section has the competence to hear cases of article 28 of the Statute, except that human and people right issues. The Human right section has the competence of hearing human right issues the same power to that of ACHPR.

There are however a few challenges with regard to the merging of the African Court and ACJ of the two courts. The process of replacing one court with another has its own fair share of complexities. From perspectives of, there is a complex task of trying to integrate the two separate courts that have two different protocols and different jurisdiction.

Some scholars argue that initially pointed out that merging the African Court and ACJ would face challenges based on the fact that the two courts have two different jurisdictions; because of they were initially established for two different reasons. The human rights court established to protect and promote human rights, there for its jurisdiction extends all cases and dispute and other human right instruments that have been ratified by the state at issue. The court of justice was established to deal with disputes between states and it has broader which cover all AU treaties and convention, international law and bilateral treaties and convention between the AU member states. As Kidlike argues that the merging of the African Court and ACJ would not such a huge problem with regards to the court's jurisdiction. That is why even though the human right section of the court can handle only human and people right case, the general affair section is not precluding from hearing cases of human right aspects. He argues that the two section of the court share common jurisdiction in some cases .such an example is that the competence of the court of justice to deal with the right to property.

The ACJHR has been given an extensive mandate in its statutes. The court generally merges the jurisdiction of ACJ and the African Court and takes an additional criminal law jurisdiction [2]. Each of these section have pre-trial, trial and appellate chamber. The ACJHR has a jurisdiction on three thematic areas: general affair, human right affair and international crimes. The first are issue previously entertained by ACJ while the second encompasses the current mandate of the ACHPR. Issues relating to the international crimes means the new jurisdiction cover the usual reference to genocide, crimes against humanity and war crimes. The protocol does not stop herewith. It also mandates the court to entertain a number of issues including: genocide, war crimes, crimes of humanity, unconstitutional change of government, piracy, mercenaries', corruption, money laundering, trafficking in person, trafficking in hazardous waste, illicit exploitation of

natural resource, the crime of aggression and inchoate offence.

The entities that are allowed to summit a complaint to the court are state parties to the protocol, AU assembly, peace and Security Council; the parliament and other authorized organs; staff member of AU on appeal and the staff of prosecutor. The protocols on amendments has not increased in individuals and NGOS access to the court unlikely that of African court on human and people right. The statute of the protocol states that "African individual and NGOS "with observer status of the AU or its organ or institution can bring a case to directly to the court but only with regard to state that made declaration accepting the competence of the court to receive cases or application summated to it directly. NGOS or individuals shall not apply or bring a case before court unless states party made a declaration in accordance to Article 9/3of the protocol on amendments.

3. Applicable International Law Instruments

The ACJHR has the mandate to interpret and apply wide ranges of regional and international law instruments. It has innovative and providing comprehensive approach which has no limitation list of treaties and documents. In particular it will have the mandate to interpret and apply the AU constitutive act together with other treaties and all subsidiary legal instruments adopted within the frame work of the union or OAU. It will also apply the African charter and its protocol on the rights of women in Africa, the African charter on the right and welfare of the child and any other legal instruments relating to human right ratified by the state concerned. In addition to its jurisdiction wide range of regional and international law instruments, the ACJHR will has the following jurisdiction; on any question international law, all, acts, decision, regulation and directive of the organ of the AU, all matters provided for in any other agreements that state parties concluded among Themselves or with AU and which confer jurisdiction on the court and existence of any fact if established would constitute a breach of obligation owed to state party or to the union.

Whilst the use of treaties international legal instruments by the ACJHR as sources of applicable law it needs to have interpretative guide maybe appropriate. The ACJHR, particularly the criminal law section will need as a matter of priority its applicable core legal instruments including core elements of crimes, document and rule of procedure and evidence.

4. Institutional Structure of ACJHR

The last proposal of the Malabo protocol restructured the AUs judicial institutional structure. The court shall be composed of four organs; the presidency, office of prosecutor (OTP), registers and defense office. Furthermore, the protocol provides that the court shall have three section; general, human right and criminal section.

The bureau of the court will be composed of president and vice president who will be elected by full court to serve the period of two years being the possibility of re-elected once. The two function on full time basis and will be required to reside at the seat of the court. The rest of the judges will perform their function on part time basis with the AU assembly determine reserving the right to determine when all the judges of the court will serve on full time basis. The OTP will be independent organ of the court composed of prosecutor and two deputy prosecutor who elected by the AU. It will be responsible for investigation and prosecution of the crimes listed in the protocol. The prosecutor will serve for a seven year single termswhile its deputies serve only for four year terms. The prosecutor will have the power to appoint staff OTP subject to the staff rules and regulation laid down by the AU. There numeration and condition of service of the prosecutor and deputies will be determined by the AU on the recommendation of the court through executive council.

The registry will be comprised of registrar and three assistance registrar appointed by the court and assist by such other staff as maybe necessary for effective and efficient performance of the function of the court. Like the prosecutor, the register will serve for a single and non-renewable terms of seven years. The assistance provides for the Establishment by the registrar of victims and witness unit. This unit will be responsible for providing protection measure and security arrangement, counseling and other appropriate assistance to witness and victims who appear before the court. The statute specifically provides that the staff witness and victims unit shall be included in experts in the management of trauma. Sexual violence. The registrar also establishes within the registry of detention management staff that is charged with managing condition of detention of suspects and accused of person. The defiance office will be responsible for protecting the right of accused and suspected and providing support and assistance to any defense counseling appearing before the court. The statute also provides the AU assembly will establish within the jurisdiction of the court fund trust for legal aid and assistance for the benefits of the victim and their families.

5. Nomination, appointment and allocation of judges

The ACJHR will be composed of 16 judges who are nationals of state party to the protocol and elected among persons of high moral character who possess the qualification of required in their respective countries for appointment to the highest judicial office and or juries-consultants of recognized competence and expertise in international law, international human right law international humanitarian law, or in international criminal law. The judges shall be elected by the AU executive counsel and appointed by the AU. The assembly is required to ensure that there is equitable representation of the regions and the principal legal tradition of the continent in the composition of the court. The assembly is also required to ensure equal representation of the gender in the court. For the purpose of election each state party to the protocol may nominate up to two candidates. States are also chose the section of the court which they wish their nominees to be placed if they are elected.

The procedure to allocation of judges to the various section of the court spelled in to two separate provision of the statute Article 16/3 and Article 22/3. The researcher is concerned here that there is apparent conflict with those provisions.Article 16/3 provides that allocation of judges in the three respective section and chambers shall be determined

by the court in its rules. Furthermore Article 22/3 provides that "the president and vice president shall in consultation with member of the court and as provided for in the courts rules assign judges to the section". This may help in ensuring both capacity and independence of those appointed but may need to be matched with an overall appointment mechanism that insures political independence. However, Article16/3 and Article 22/3 aren't in line with Article 6/2 which provides that"the chairperson of the AU commission who will separate out list of candidates into the different section prior to their actual election." This shows that in practice which judge will sit in various section will be determined not by the court but by the AU.

6. Mechanisms of enforcement of courts judgments and financial sources

Once after all of its decision passed it will be enforced. Article 45/1 and 45/2 of the protocol on the on amendments provides that if it is determined that there has been violation of crimes in the statute the court shall establish in the rules of the court principles rehabilitation. The court either up on requestor on its own motion in exceptional circumstance determine the scope and extent of any damage loss or injury to its own international criminal jurisdiction. The court can directly order against the convicted person specifying appropriate reparation or in respect of victims including restitution, compensation, and rehabilitation.

Decision of the court is binding on the parties to a dispute. When the party fail to comply with the judgment the court shall refer the matter to the assembly which shall decide up on the measures to be taken to give effect to that judgment and decided to impose sanction on that state. However there is skepticism about the courts ability to enforce its judgment. It is the concern of chapter five of the thesis. With regard to the financial and funding sources of the court the preamble of the statute of the ACJHR provides that "state parties recall their commitment to take all necessary measures to strength their commitment on institution and to endow them with necessary powers and resources to carry out their mission effectively." The main reason to merge the two courts was lack of financial capacity that caused by proliferation of judicial institution in the continent and to make cost effective. Funding of the court however consider to be as a challenge.

7. Criminal Jurisdiction of the Court

The AU adoption of the protocols of the statute of ACJHR underscores that it is the first time that head of state and governments give immunity in international criminal law. So that the chapter tries to assess the legality of immune head of state and government from the international law principles of individual criminal responsibility; like Rome statute of ICC and customary international law unlike the ACJHR which provides "granting immunity to sitting head of state and government officials from criminal prosecution in the court".

The international criminal section of ACJHR divided onto three chambers: pre-trial chambers, trial, and appellate chamber. Each chamber or section is believed to be having 16 judges who are nationals or member of states to the protocol. According to the statute of Article 28 of the Malabo protocol explicitly mandated to adjudicate crimes of genocide, crimes against humanity, war crimes, the crimes unconstitutional change of government, piracy, terrorism, corruption, money laundering, trafficking in person, trafficking in hazardous waste, trafficking in drugs, illicit exploitation of natural resource, the crime of aggression in its international criminal section. Except for the first four crimes, the rest are new developments in assuming jurisdiction in the ACJHR criminal section.

8. The UN charter and acjhr' proposed criminal jurisdiction

The ACJHR proposed criminal jurisdiction to try international crimes is in conformity with the obligation of African states under the AUand under international law or UN Charter.Even though there is no specific obligation under international law or Un Charter either allowing or prohibiting intergovernmental organization the like AU to establish criminal jurisdiction to try international crimes,deep analysis of Article 52 peace and security are appropriate for region action provided that such arrangements the Charter will answer the question whether the proposed criminal jurisdiction is in line with the Charter or not Article 52 reads: "nothing in the present charter precludes the existence of regional arrangement or agencies for dealing with such matter relating to the maintenance international or agencies or and their activities are consistent with purposes and principles of the UN [3].

The AU considers itself as regional organization within the meaning of above provision. However there is dual criteria to determine whether the organization is regional or not. First the organization should play in the maintenance of international peace and security as is appropriate action for regional and the objective of the organization and its activities should be compatible with the purposes and principles of the UN [4].

Girmachew argues that can be characterized as regional organization under Article 52/1 of the UN charter since the AU plays a role in the maintenance of peace and security in Africa and observes the purposes and principles of the UN [5].

One of fundamental question that needs to be answered in addition is whether the prosecution of international crimes in Africa fall with the scope of the provision specifically with in the "the maintenance of international peace and security" It can be recalled that the situation in Darfur Sudan is referred by the UNSC resolution 1593 acting under chapter seven [6] to the ICC for investigation after the report of international commission inquiry on Darfur Sudan which characterized the conflict having crimes against humanity and war crimes. It can also be recalled the UNSC can pass a resolution under chapter seven when it considers a situation as international peace and security. For instance the Resolution 1593 the UNSC decided that refer the situation in Darfur Sudan by determining that the situation in Sudan continued constitute a threat to international peace and security. Furthermore, the preamble to the Rome statute specifically recognized international crimes to be a threat to international peace and security [7]. With this analysis it can be concluded that the existence of international crimes of Genocide, war crimes, crimes against humanity and crimes of aggression as basis for regional organization like AU to take appropriate action such

as intervention and prosecution of international crimes. Hence, the proposed criminal jurisdiction is in line with UN charter.

9. AU's Constitutive Act and the ACJHR Proposed Criminal Jurisdiction

The other multilateral treaty that must be observed in light of the proposed criminal jurisdiction of the ACJHR is the AU constitutive act. The question that posed here is that whether the constitutive act of the AU grants the power to establish a criminal jurisdiction to try international crimes. The AU constitutive act grants the AU assembly to establish any organ of the union. The court of justice and human rights is established as court of the union, hence the extensive jurisdiction of the ACJHR can be said that in line with the constitutive act.

Furthermore among the principles and objectives of the AU regional integration, peace and security, protection of human rights and respect to democracy and rule of law can be mentioned. It is important to consider that any consideration whether or not to expand the jurisdiction of ACJHR must be governed by the obligation under taken by the state parties to the constitutive act of the union to promote and protect human and people rights in accordance with the ACJHR and other relevant human right instruments.

AS mentioned the second chapter, the ACJHR will have the wide jurisdiction to entertain matters arising from instruments that are ratified by the states and any matters arising from international law. Most African states are state parties to major international instruments that specifically define crimes and put an obligation on them to prosecute and punish such international crimes. Furthermore the prosecution of crimes is considered to be to have evolved the rule of customary international law (jus conges norm) that applies to every state without the need to show that African states are a party on instrument. Once operational, ACJHR will have automatically jurisdiction over international instruments that African states are party to. Hence it can be argued that the proposed jurisdiction of the ACJHR to try international crimes in line with the constitutive act of the AU.

11. Individual Criminal responsibility under international law

One of the founding principles on which the AU, through its constitutive act is apparently based on "condemnation and rejection of impunity" Indeed each of the decision of the AU assembly with the ICC has contained a clause reaffirming the commitment to fight against impunity that of July 2012 is typical [8]. Paradoxically, however, commitment is qualified; head of state and government officials are to enjoy immunity. Article 46/A of the Malabo protocol [9] reads:

> *"No charges shall be Commenced or continued before the court against any serving AU head of state or government or any acting or entitled to act in such capacity or other state official based on their function during tenure office."*

It would appear that ensuring immunity for head of state and senior state official is the primary reason for the establishment the expanded court. The dominative view among African leaders as reflected in the position of the AU is that head of state and senior state official must be accorded absolute immunity [10].

International law imposes right and duties not only on states but also on individual .Nothing the concern that international law produced no punishment for actors with in sovereign states who committed offence against the law of nations and the law of war [11]. The Nuremberg judgment held that "crimes against international law were committed by men and not abstract entities" and that international law could only be enforced by punishing individuals who committed such crimes. Article 7 of the Nuremberg charter provided that "the official position of the defendant do not exempt that individual from criminal responsibility [12]. This includes head of state or responsible officials or government.

The Nuremberg charter has since become part of international law. In 1946 its principles were adopted by the UNGA resolution 95 [13]. These principles have also been adopted in the statutes of previous international tribunals and hybrid courts such as ICTR, ICTY and SCSL and the Genocide Convention [14]. Article 25 of the Rome statute reflects these principles of customary international law with regard to individual criminal responsibility [15]. It provides that in individual who commits crimes within the jurisdiction of the court shall be held individually responsible and liable for the punishment in accordance to the statute.

Despite this established customary international law a sitting head of state has never faced proceeding before an international court. For instance one could argue that, however though the ICC proceeding against Kenyatta and Ruto do not violate the principles of head of state immunities with regard to individual criminal responsibility, though they are still in office. The well-known arrest warrant case Belgium vs. DRC by ICJ held that Belgium could not exercise jurisdiction over the ministries of foreign affair because the rule that governed the jurisdiction of national courts were not the same as that of that governed the jurisdiction of international courts or tribunals [16]. The court did, however that state immunity from jurisdiction did not equate to impunity with respect to crimes committed by that individual.

Indeed, while African states themselves have failed seriously to embrace the exercise of universal jurisdiction against high ranking officials whether in or out of the office charged the commission of international crimes it was the use of universal jurisdiction against senior Rwandese official's a decade ago that sparked the initial call for an African court with jurisdiction over international crimes. The ICC's indictment of Al Basher and latter Uhuru Kenyatta and Ruto further provoked sufficient outrage to form the basis for the charge by some African leaders that ICC was biased against Africa. In 2012 the AU assembly endorsed a request for an advisory opinion from ICC on the question of immunities "under international law head of state and senior state official from

the statutes that are not parties to the Rome statute. At its extraordinary summit in October 2013, the assembly formally decided that

> *"No charges shall be commenced or continue before any international tribunal or court against any AU head of state and senior government officials or anybody acting or entitled to act in such capacity during their tenure office* [16]. "]

Finally the decision of the 22nd ordinary session of the assembly in January 2014 called on the AU state parties to the Rome statute to support amendments to Article 27 of precluded prosecution of HOSG [17].

Traditionally, international law differentiates between personal immunity (rationed personae) and functional immunity (rationale material).Personal immunities attach to the head of state and or senior state officials for such time as s/he is in office. The rule is to the effect that such person cannot be tried for any reason including international crimes by court of another state. Functional immunities may be invoked by sitting or former head of state senior state official in respect of state official. Obviously an international crime can never be an official act. On the contrary Article 46/A bis of ACJHR deal with personal immunity. In terms of customary international law, however personal immunity may only be raised against indictments for international crimes before national of another state: developments in international human rights law and international criminal law have barred plea of personal immunity before international tribunal.

More importantly, the legal implication of Article 46 A of the protocol amendments and Article 27 of the Rome statute are in paradox. The decision to grant immunity for sitting head of state and senior government officials in the ACJHR can be considered to be attempting to shield presidents from prosecution when they are alleged to have committed human right violation, war crimes, genocide and aggression.

Article one of the Rome statute provides that the court can exercise its jurisdiction based on the principles of complementarily. The ICC is considered to be the last resort court. Therefore the court is supposed to only investigate a case when domestic courts have failed to exercise jurisdiction over individual who is alleged to have committed a crime provided for the Rome statute.

Rome statute can be read to mean that it can be exercise its jurisdiction over national members of states regardless of the official capacity ,when domestic courts has failed to act. In Belgium vs. Senegal had referred the case against Hassene Habre to the AU in 2006 in an attempt to delay prosecution and extradition to Belgium, the ICJ However held that Senegal's referral of The matter to the AU could not justify Senegal's delays in complying with its obligation under Article 7/1 of the torture convention.

One can therefore ,argues that the African courts provision to grant immunity to sitting head of state and senior state official will have no bearing on the ICC'S ability to exercise jurisdiction when domestic courts of state that had ratified the Rome statute has failed to prosecuted an individual who alleged to have committed international crimes in Africa. That is because that state has accepted the jurisdiction of ICC to prosecute individuals in that circumstance. As stated before the adoption of this protocol by member states to the Rome statute would cause them to indirect Conflict and breach Article 27. The next sub-section come up with whether or the principles of complimentarily principle apply between the ACJHR and Rome statute of international criminal court.

11. The Criminal Jurisdiction of ACJHR and ICC

The international criminal section of the ACJHR and the ICC will exercise the same subject matter jurisdiction at least in relation to Rome statute crimes committed in states which have ratified both the Malabo protocol and the Rome statute .However, given the immediate political circumstance that accelerated the proposal to establish the ACJHR, which makes no reference nor the ICC and the Rome statute. The protocol fails to clarify how the two courts will function together in terms of cooperation, and surrender of suspects. Unfortunately, the ACJHR statute provides a complementarily principles relationship with between the ACJHR one the one hand and national courts and Regional courts communities on the other hand. Though its relationship is desirable and necessary the protocol of the ACJHR statute does no for see its relation with ICC.

According to Garth Abraham 'ICC remained the pinnacle court for the continent'; matters should be referred to the ICC when African courts face limitation. He denotes that 'the additional He adds that article 46 of the ACJHR which address complementarily jurisdiction 'relies only layer of complimentarily added by the African court would necessitate an amendment to the Rome statute which currently only compliments with the national mechanism with complimentarily vis-à-vis national courts and for courts of regional economics communities "where specifically provided by the communities. It failed to make reference to the ICC.Accordingly, the reasonable interpretation of this exclusion can be that conscious snub by the AO born out when considering the manner in which the amending statute deals with immunities.

Besides, Amnesty International argues that the amendment statute of the ACJHR does not in any way over ride the obligation undertaken by the states that have ratified the Rome statute. The obligation of these states to coop rate with ICC will continue regardless of the Malabo protocol and the establishment of criminal section of ACJHR determination of the admissibility of cases before ICC will continue to be made by ICC irrespective of whether an ICC member states ratifies or not the Malabo protocol. Currently, there is no legal reason that the ICC would defer to the ACJHR unless it were legitimately acting to bring those suspected of Rome statute crimes to justice .In addition the fact that the Malabo protocol grants immunity to the large categories of person

who have no immunities under international law specifically the Rome statute .This means that the ACJHRs jurisdiction would not affect the admissibility of question before ICC in all cases involving such suspects.

References

1. AU protocol on the Statute of ACJ, http://www.au.ifvnt/en/defualtfiles/protocol-statute-of-African-Court-of-Justice -and human rights.pdf accessed on, 2019, 34
2. Ghetnet Metiku, *The African Court of Justice and Human Rights*, at http://www.slideshare.net/gmgiorgis/african-court-of-justice-and-human-right accessed 12 July 2019, p.5
3. The United Nation Charter, 1945, Article 52
4. The Protocol of Establishment of Peace and Security Council in Africa adopted July 2000 and entered in to force December 2003, Article 17 (2)
5. Constitutive Act, Article 17 (1), Coalition for an Effective Court on Human and People Right Darfur consortium and other organizational implications in the African Court of Human and People Right being empowered to try International Crimes such as Genocide, Humanity, War crimes and Aggression.
6. Constitutive Act Art 3(f) and (e); The African Union Mission in Somalia (AMISOM) is a Regional Peace keeping operated by the African Union to conduct Peace support operation in Somalia to stabilize the security situation < http://www.africa-union.org/root/au/auc/departments/psc/amisom/amisom.htm > (Accessed 09 October 2016, p.23.
7. United Nation Security Council Resolution s/RES/1593, 31 march, 2005, para.5
8. A decision on the Implementation of the decision of International Criminal Court /ICC/EX./CL/73/(XX)Assembly/AU/DEC/419,AThttp://www.au.int/en/sites/defualtl/file/Assembly/%20AU%DEC%20416-44920 –E FINAL –PDF-ACCESSED 23 July 2016, Para 3
9. AU, Decision on the Implementation of the Decisions of the International Criminal Court (ICC),EX.CL/731(XXI)'Assembly/AU/Dec.419,http://www.au.int/en/sites/default/files/Assembly%20AU%20Dec%20416-449%20(XIX)%20_E_Final.pdf, accessed, 2016, 12
10. AU, *The Report, the Draft Legal Instruments and Recommendations of the Specialized Technical Committee on Justice and Legal Affairs*, *op. cit*., Article 46 A *bis*.
11. International Military Tribunal Judgment of 1 October 1946. The Trial of German Major War Criminals. Proceedings of the International Military Tribunal sitting at Nuremberg, Germany. Part 22, 22 August 1946 – 1 October 1946, Para. 446
12. The International Military Tribunal, (1945) Article 6(a)-(c)
13. Affirmation of the Principles of International Law Recognized by the Charter of the Nuremberg Tribunal A/Res/1/95, 11 December 1946
14. The 1949 Versailles Treaties: 1945 Charter of the Military Tribunal at the Nuremberg: Statutes of Yugoslavia and Rwanda ALL has Articles of which expressed that Individual Criminal Responsibility exist irrespective of that Individual Official Capacity.
15. Rome Statute of International Criminal Court, Article 27
16. *Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v Belgium)* Judgment I.C.J. Reports 2002, 3, 56
17. AUDecisiononAfrica'sRelationshipwithInternationalCriminalCourtICC/EXT/ASSEMBLY/AU/DEC/,HTTP://www.iccnow.org/documents/Ext-Assembly-AU-/DEC-DED-12 Oct, 2013 –pdf file accessed 12 August 2016, p.87
18. On 22 November 2013, Kenya submitted proposed amendments to the Rome Statute in accordance with Article 121 of the Rome Statute which provides that after the expiry of seven years from the entry into force of this Statute, any State Party may propose amendments thereto. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall promptly circulate it to all States Parties. Kenya proposed amendments to Article 27 to exempt sitting heads of state and their duties exemption from prosecution during their current terms of office (Submission by the Republic of Kenya on Amendments to Rome Statute of the International Criminal Court for Consideration by the Working Group on Amendments.C.N.1026.2013.TREATIESXVIII.10. 14 March 2014)