An African Judicial Network:
Building Community, Delivering Justice

Final Report  December 2017
Author  Dr Tom Gerald DALY

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Introduction: Seizing the Moment
ASPIRATION 3. An Africa of good governance, democracy, respect for human rights, justice and the rule of law

27. Africa shall have a universal culture of good governance, democratic values, gender equality, respect for human rights, justice and the rule of law.

28. We aspire that by 2063, Africa will:

1. Be a continent where democratic values, culture, practices, universal principles of human rights, gender equality, justice and the rule of law are entrenched; and

2. Have capable institutions and transformative leadership in place at all levels.

29. The continent’s population will enjoy affordable and timely access to independent courts and judiciary that deliver justice without fear or favour.

African Union, Agenda 2063: The Africa We Want

The African Union has passed many milestones in recent decades toward greater access to justice and protection of human rights: the adoption of the African Charter on Human and Peoples’ Rights in 1981; the spread of judicial review across African states since the 1990s; the establishment of courts for a variety of regional integration projects; the ratification of the Charter Protocol to establish an African Court on Human and Peoples’ Rights in 1998; the swearing in of the African Court’s first judges in Banjul on 2 July 2006; the Court’s first merits judgment in 2013; and a raft of positive constitutional and judicial reforms in African states.

These milestones have been accompanied by the growth of a variety of international judicial networks across the African Union, primarily linking domestic courts across different regions and spheres of judicial activity. In addition, the first and second African Judicial Dialogues, in 2013 and 2015, have provided a key forum for exchanges and discussion among judges across the African Union. However, there is a clear ‘network gap’ insofar as no dedicated continent-wide network exists to link domestic courts, regional community courts, and the African Court.

The time is ripe to create an African Judicial Network to build on this positive momentum. This report sets out proposals for the design of a continent-spanning network, which will aim to strengthen links and help to foster a meaningful sense of community between judges and courts across the continent, to facilitate communication and increase understanding between courts of different legal traditions and across multiple legal frameworks, and to assist in the achievement of efficient and effective justice systems for all individuals across Africa.

The proposals in this report seek to provide a tailored network for the African context, which derives key lessons, both positive and negative, from other world regions, and which provides ‘added value’ to the valuable networks already extant, rather than displacing them. In this manner, the African Judicial Network can not only provide a central resource and forum for regional and domestic courts across the African Union, but can also serve as a model of cutting-edge best practice for other world regions.
Executive Summary
Summary

The Terms of Reference of this report (see Section 5, below) state that the objective of the African Judicial Network is to create a platform for formal collaboration between courts and other judicial bodies on the African continent.

The envisaged collaboration will be between and among continental, regional and national judicial institutions. It is envisaged that once the formal collaboration is implemented through the proposed judicial network, courts of African Union Member States and African Union Regions will work together in finding solutions to challenges they face in upholding the rule of law and the promotion and protection of human and peoples’ rights. The judicial bodies will also assist one another in various efforts to reform and strengthen their judiciaries. It is also envisaged that the African judicial bodies will share their best practices and jurisprudence with one another in order to ensure that together, they foster respect for the rule of law and the delivery of an accessible, impartial and expeditious justice to the African people.

The need for an African Judicial Network is clear. A review of existing international judicial networks operating across the African Union reveals that despite a striking proliferation of such networks in recent decades, there is at present no continent-wide judicial network to link courts across AU Member States, Regional Economic Communities and the continent-wide African Court on Human and Peoples’ Rights. The African Judicial Dialogue, organised on a biennial basis since 2013, is a valuable forum but cannot address this judicial network ‘gap’ as a stand-alone measure. An African Judicial Network can build on the successes of the African Judicial Network and expand on the activities that the Dialogue supports.

The proposals in this report seek to provide a tailored network for the African context to address this judicial network gap, with the aim of providing practical and valuable assistance to courts across the African Union in fulfilling their mandates to uphold the rule of law, protect rights, and provide efficient access to justice for all individuals across the African Union.

The Consultant’s proposed design for the African Judicial Network derives key lessons, both positive and negative, from other world regions, and which provides ‘added value’ to the
valuable networks already extant, rather than displacing them. In this manner, the African Judicial Network can not only provide a central resource and forum for regional and domestic courts across the African Union, but can also serve as a model of cutting-edge best practice for other world regions.

Draft Statute

A Draft Statute for the proposed African Judicial Network is provided in Appendix A.

Merger of Two Separate Proposals

After the first version of this report was completed (October 2017) the delegates at the Third African Judicial Dialogue in Arusha, Tanzania (9-11 November 2017) decided that the separate proposals for an African Judicial Network (AJN) and an African Centre for Judicial Excellence (AJCE) should be merged. This revised report therefore seeks to make concrete recommendations for merging the two proposals, as well as revising the original proposal for an African Judicial Network in light of feedback received at the Dialogue.

The relevant portion of the final communiqué of the African Judicial Dialogue is as follows:

"On the proposed African Judicial Network and the African Centre for Judicial Excellence"

31. Participants welcomed the initiative of establishing an African Judicial Network and expressed the hope that the network will assist to disseminate not only human rights law but also international criminal law and international humanitarian law.

32. It was agreed that in order to avoid duplication and in cognisance of the budgetary constraints, the African Judicial Network and the African Centre for Judicial Excellence should be merged and the structure developed should be lean and have a modest governance structure.

33. It was noted that these initiatives differ from the Pan African Human Rights Institute whose focus is on the African Union human rights organs whereas, the proposed African Judicial Network and the African Centre for Judicial Excellence will provide a platform for coordination, networking and capacity-building for judiciaries in their administrative and judicial function. It is therefore important that these initiatives be maintained separately.

34. It was agreed to set up a Committee of five Judges to work with the Court and the consultants to finalize the studies."
Recommendations

Recommendation 1:

The most efficient approach would be to subsume the proposed functions of the AJCE within the aegis of the African Judicial Network. Having examined both proposals in detail, and in light of the final communiqué of the Third African Judicial Dialogue in Arusha, Tanzania (9-11 November 2017), this revised report and the Draft Statute attached in Appendix A indicate how this would be achieved in a concrete manner.

Recommendation 2:

It is necessary to tailor the African Judicial Network to the African context and to the specific needs of, and challenges facing, African courts in delivering justice. As set out in Sections 12 and 13 of this report, key aspects of the African context are:

1. The diversity of legal traditions and language;
2. Limited reference to international law in domestic courts;
3. Non-universal acceptance of the jurisdiction of the African Court on Human and Peoples’ Rights;
4. The novel and expanding jurisprudence of the African Court on Human and Peoples’ Rights;
5. The novel and variable nature of regional integration;
6. The risk of ‘judicial network fatigue’;
7. Limited interaction between domestic courts and international courts;
8. Limited communication between international courts;
9. A range of constitutional, judicial and political reforms;
10. Challenges faced by courts in all spheres (including limited human and technical resources); and
11. The asymmetric development of judicial training programmes across the AU and the lack of a judicial training body at the continental level.

Recommendation 3:

The proposed African Judicial Network should provide ‘added value’ to the existing judicial network landscape. It should help to rationalise that landscape, and should not duplicate the activities of existing networks. Care should be taken to avoid adding to ‘judicial network fatigue’ in the rather overcrowded AU judicial network arena.
Recommendation 4:

While no one judicial network model is without its deficiencies, networks in other world regions can provide useful inspiration for the design of an African Judicial Network. The most fruitful approach is to take inspiration from the best aspects of a variety of networks.

Recommendation 5:

The design of an African Judicial Network should be guided by key fundamental principles. It is recommended that the six ‘pillars’ of the Network should be as follows:

1. **‘Added Value’**: see Recommendation 3 above);
2. **Inclusion**: Ensuring, in particular, that the Network’s design and activities pay due regard for balanced representation of African regions, legal traditions, language, and gender;
3. **Understanding**: Bridging the divides that hamper cooperation and knowledge transfer between and among domestic courts from different legal traditions; improving communication between domestic courts and international courts; between international courts themselves; and focusing on the African Charter on Human and Peoples’ Rights as a shared point of reference;
4. **Effectiveness**: Ensuring streamlined, nimble and decisive governance of the Network, with a focused and results-oriented approach;
5. **Flexibility**: Willingness to experiment and adapt the Network as necessary in light of what works and what does not work, as it develops. Responsiveness and adaptability should be core watchwords; and
6. **Incrementalism**: Avoiding the temptation to do too much all at once; developing the Network in planned phases; and remaining focused on priorities and the needs of Network members.

Recommendation 6:

The design of an African Judicial Network must take into account key practical considerations.

1. Courts’ limited resources across the AU;
2. The need to reduce workloads of judges sitting on active Network governance bodies;
3. Remaining mindful of the need to add to participating courts’ capacity rather than being an additional drain on resources (e.g. by facilitating access to case-law and information that many courts cannot achieve on their own);
4. The size of the budget will shape what activities can be pursued;
Even with a relatively modest budget a lot can be achieved by the African Judicial Network as long as committed, able and resourceful individuals are selected to drive the Network forward;

Linguistic diversity across the AU is a major practical challenge for cooperation, which means that translation of documents, databases, intranets etc would have to be factored in and interpretation provided for any form of interaction;

The challenge posed by underutilization of Information, Technology and Communication Systems by continental, regional and national courts, as well as internet access challenges across the AU, suggest that an excessive focus on certain activities (e.g. intranets) would not be productive;

How the African Judicial Network will fit within the overarching AU framework (e.g. will it come within the African Governance Architecture (AGA), which brings together AU organs & Regional Economic Communities working on Democratic Governance and Human Rights?).

Recommendation 7:

Membership of the African Judicial Dialogue should include Full Members and Observers:

**Full Members**

- The highest domestic courts of AU member states.
- The courts of Regional Economic Communities (e.g. ECOWAS, SADC).
- The African Court on Human and Peoples’ Rights.

**Observers**

- The highest domestic courts of states outside the AU, with priority given to states adjacent to the AU (i.e. Mediterranean European and Middle Eastern states).
- International human rights courts outside the AU: especially the Inter-American Court of Human Rights and the European Court of Human Rights.
- International courts operating within the AU, in areas relevant to human rights and the rule of law, e.g. international criminal courts such as the International Criminal Tribunal for Rwanda (ICTR) and Extra-Ordinary African Chambers (CAE) in Senegal.

Recommendation 8:

The governance structure of the Network should be designed to achieve an optimal balance between effectiveness, inclusion, and ‘added value’. Network participants should feel a sense of ownership while not being unduly burdened by the day-to-day management and organisation of activities. The recommended governance organs are:

- **Congress**: Representatives of all Full Member courts, as well as Observer Members (without voting rights);
• **Management Committee**: Composed of judges from the African Court on Human and Peoples’ Rights, courts of Regional Economic Communities, and highest domestic courts, representatives of the African Commission on Human and Peoples’ Rights and African Committee of Experts on the Rights and Welfare of the Child, and court staff from the African Court on Human and Peoples’ Rights;

• **Cross-Network Advisory Group**: Composed of:
  – representatives of the principal existing international judicial networks operating in the African Union; and
  – presidents of courts of Regional Economic Communities;

• **Judicial Training Advisory Group**: Composed of representatives of key judicial training bodies across the African Union, including national and international bodies, as well as selected international judicial training bodies outside the AU. The Advisory Group should contain no more than fifteen members (with at least two national judicial training bodies from each of the five African Union regions).

**Recommendation 9:**

**Additional Network organs can include:**

• **Working Groups**: This report recommends that significant use is made of thematic working groups to focus on specific tasks and develop the Network in an organised manner (e.g. mapping references to the African Charter on Human and Peoples’ Rights in regional community courts and highest domestic courts; and developing a bibliography of African Human Rights Law tailored to judges’ needs).

• **Network Ambassadors**: The nomination of one or more judges, or retired judges, to generally promote and support the activities of the Network and raise its profile can be a useful adjunct to the formal governance bodies

• **Focal Points**: Designation by each member court of a single contact individual to transfer case-summaries to the Network, promote the Network within his/her own court, to disseminate knowledge of the African Charter on Human and Peoples’ Rights and the case-law of the African Court on Human and Peoples’ Rights.

**Recommendation 10:**

**The Network’s activities should be centred around the African Judicial Dialogue, which could be renamed the African Judicial Network Dialogue.** The Ibero-American Judicial Summit provides a useful model for a judicial network that is highly focused and that uses a biennial Summit as a centre of gravity for its activities: a theme is selected for each 18-24 month period between Summits; thematic working groups engage in significant preparation before each Summit; and detailed follow-up is decided at each Summit. The existing African Judicial Dialogue already follows this format to some extent.
Recommendation 11:

A central priority for the African Judicial Network, and one where it can have significant short-term impact, is improving cross-system understanding of the African Charter on Human and Peoples’ Rights. This can be achieved with relatively low budgetary and time commitments, and can be developed over time depending on progress made. Activities such as databases and intranets should only be considered once the Network has had time for the governance bodies to find their feet, to build relationships with courts, and to identify priorities of all members in what they hope to get from the Network.

Recommendation 12:

The Network’s activities should be developed in close cooperation with other relevant activities. Particularly important are: (i) the plan to provide an online human rights course for judiciaries on the website of the African Court on Human and Peoples’ Rights (see paragraphs 27-30 of the final communiqué of the third African Judicial Dialogue); and (ii) the African Union 10-Year Action Plan on Human Rights, which is currently in the development stages (see paragraph 42 of the final communiqué of the third African Judicial Dialogue).

Recommendation 13:

The Network should be developed on a phased basis. This can include a Pilot Phase and possibly two additional phases. The Pilot Phase would span two years, from the end of the Third African Judicial Dialogue in November 2017 until the first African Judicial Network Dialogue (which would have been the Fourth African Judicial Dialogue), presumably to be held in November 2019. The aim would be to construct the essentials of the African Judicial Network, develop effective communication between the governance bodies, and provide time for a consultation and evaluation process before moving to Phases 2 and 3.

Recommendation 14:

Priority activities recommended for the Network are as follows.

- Improving understanding of the African Charter on Human and Peoples’ Rights;
- Producing a user-friendly bibliography of African human rights law, focused on judges’ needs; and
- ‘Mapping’ judicial systems across the African Union.

Recommendation 15:

Depending on the development of the Network, and budgetary resources allocated to the Network, further activities could include:

- Production of a range of model training guides and judicial handbooks;
- A judicial exchange programme to provide a useful way of increasing cross-system knowledge among judges;
• Standard-setting to provide continent-wide normative guidance and model documents concerning issues such as judicial ethics;

• Dissemination of national best practice in e-Justice: the use of information technology in the administration of justice, with particular reference to ensuring speedy access to justice for court users, case-law databases, and electronic filing systems; and

• An ‘Update Report’ on national best practice concerning efficiency of justice more widely (see Ibero-American Judicial Summit p.76).
Acknowledgements
The Consultant wishes to thank the following individuals who provided key assistance in the production of this report. Full responsibility for this report lies with the Consultant. After the first general entry, the list follows alphabetical order.

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Dr Tom Gerald DALY

Dr Tom Gerald DALY, an Irish national, is Associate Director of the Edinburgh Centre for Constitutional Law at Edinburgh Law School, a Fellow of Melbourne Law School, Australia, Co-Convenor of the MLS Constitution Transformation Network, and a consultant on public law, human rights, and democracy-building.

A qualified barrister holding law degrees from the European University Institute (EUI), the Honorable Society of King’s Inns, and the University of Edinburgh, he has previously worked as Executive Legal Officer for the Chief Justice of Ireland (6 years) and as a consultant on International IDEA, Council of Europe, European Union, Global Justice Academy (Edinburgh University) and Irish government projects. Most recently he managed a major €3m Council of Europe project on ‘Strengthening Judicial Ethics in Turkey’.

As a consultant and academic he has worked on projects including analysis of the African, Inter-American and European human rights courts, the highest courts in a variety of states (e.g. Kenya, South Africa, Tanzania, Tunisia, Brazil, Argentina), judicial reform in North Africa and Sri Lanka, Ogaden secession claims in Ethiopia, jury reform in Georgia and Kyrgyzstan, habeas corpus in Uzbekistan, Brexit in the UK, and constitution drafting in the Philippines.

As Executive Legal Officer to the Chief Justice of Ireland from 2005 to 2011 Dr Daly worked with a wide range of international judicial networks and has an in-depth understanding of how they function, including: International Association of Judges (IAJ); World Conference on Constitutional Justice (WCCJ); Venice Commission Joint Council on Constitutional Justice (JCCJ); ACA-Europe; and Franco-British-Irish Committee. He represented the Supreme Court on the Venice Commission JCCJ from 2008-2011 and led organisation of the 2010 Annual Conference of the Network of Presidents of Supreme Judicial Courts of the EU, hosted by the Supreme Court of Ireland.

Dr Daly also has significant and varied experience of both the design and development of various judicial networks, including:

- Commentary on the drafting of the WCCJ Statute.
- Involvement in the development of case-law databases, e.g. the Common Portal of the Network of Presidents of the Supreme Judicial Courts of the EU.
- Designing study visits for judges under ACA-Europe’s EU-wide judicial exchange programme.
- Design of an India-Ireland Judicial Forum to link the Indian and Irish supreme courts.
Dr Daly has published widely, including a recently published book with Cambridge University Press (October 2017) and articles in leading international journals on:

- The roles of domestic and international courts as ‘democracy-builders’.
- The complex interaction between regional human rights courts and domestic courts.
- Regional judicial networks, judicial community, and judicial dialogue in Europe and South America.

Other recent publications include an article on courts as ‘democracy-builders’ in *Global Constitutionalism*, a working paper on the potential of a constitutional court for Sri Lanka for the Centre for Policy Alternatives (CPA), a co-edited collection, *Law and Policy in Latin America: Transforming Courts, Institutions, and Rights* (Palgrave MacMillan, 2017), and a policy report on ‘The Judiciary and Constitutional Transitions’ (International IDEA and the International Development Law Organization (IDLO)).

Forthcoming publications include an entry in the *Max Planck Encyclopaedia of Comparative Constitutional Law* (MPECCoL) on the relationship between the Inter-American Court of Human Rights and domestic Latin American courts and a working paper providing a cross-regional comparison of the first decades of the African, Inter-American, and European regional human rights courts, which reveals that the African Court compares very favourably with its counterparts.

Dr Daly is also a columnist for the *International Journal of Constitutional Law* (I-CONnect) blog, has lectured and presented research at the universities of Edinburgh, Oxford, Cambridge, Melbourne and Copenhagen, and has been an invited speaker at conferences and meetings in Africa, Asia, Europe, South America, and Australia. He speaks English and French, and has significant working knowledge of Portuguese, Spanish, Italian and Irish (Gaelic).
Terms of Reference: Designing an African Judicial Network
Prefatory Note

These Terms of Reference are drawn from the Call for Tenders issued by the Registrar of the African Court on Human and Peoples’ Rights, Dr Robert Eno, on 12 July 2017, titled ‘Consultancy Service to Propose a Model for the Establishment of an African Judicial Network’. The dates for completion of the project, provided below, changed slightly after the Call for Tenders was issued.

Project Objectives

The objective of the project is to create a platform for formal collaboration between courts and other judicial bodies on the African continent. The envisaged collaboration will be between and among national, regional, continental and international courts and national judicial institutions. It is envisaged that once the formal collaboration is implemented through the proposed judicial network, courts of African Union Member States and African Union Regions will work together in finding solutions to challenges they face in upholding the rule of law and the promotion and protection of human and peoples' rights. The judicial bodies will also assist one another in various efforts to reform and strengthen their judiciaries. It is also envisaged that the African judicial bodies will share their best practices and jurisprudence with one another in order to ensure that together, they foster respect for the rule of law and the delivery of an accessible, impartial and expeditious justice to the African people.

Research

To conduct research on the history, structure, mandate and other features of the Latin American, Asian, European and other judicial networks.

Draft Model

To propose a model that would be suitable for African judicial bodies. This draft will be submitted together with a clear proposal that identifies and presents the differences and/or similarities in the models of the continents and/or regions studied as well as their advantages and disadvantages to facilitate discussion on the best model for an African network.
Project Beneficiaries

Project beneficiaries include African judicial bodies and the African Court on Human and Peoples’ Rights.

Project Period

The implementation period of the project is 1 September to 3 November 2017.

Objective of the Consultancy Service

The main objective of the service is to undertake research into judicial networks of different continents/regions, with a view to proposing a model for a network of African judicial bodies. The proposed model and draft statute or other suitable legal instrument(s) for the network will then be sent to the African judicial bodies for comments and inputs before it is finalized.

Other specific objectives include:

i. To develop a draft model for an African judicial network;

ii. To set out clear recommendations on the model being proposed;

iii. To provide the Court with a progress report after the first month of the start of the project;

iv. To provide a brief summary in the progress report, of work done and work that remains to be done;

v. To incorporate comments from the African judicial bodies and finalize the draft model;

vi. To draft the statute or other suitable legal instrument(s) for the establishment of the network;

vii. To facilitate workshops that will be held for validation of the model and statute.
Proposal for an African Centre for Judicial Excellence
Introduction

As indicated in the Executive Summary, a separate proposal has been made to establish an African Centre for Judicial Excellence (ACJE), with specific recommendations made by Ms. Grace KAKAI (Head of Legal Division, African Court on Human and Peoples’ Rights) and presented at the third African Judicial Dialogue in Arusha, Tanzania, on 9 November (in the same panel as the presentation of proposals for the African Judicial Network). This section provides a brief summary of the proposal for the AJCE, identifying the significant overlaps between the two proposals and providing the background for the merger of the two proposals provided in Section 13 of this Report and the Draft Statute for the African Judicial Network, attached in Appendix A.

The ACJE Proposal

The final communiqués of the first and second African Judicial Dialogue (Arusha, Tanzania, 2013 and 2015) recognised the need to institutionalise judicial communication and collaboration beyond the Dialogue itself. One aspect of such institutionalisation is the establishment of a mechanism to facilitate, coordinate and even provide capacity building and judicial exchanges between Member States’ judiciaries. This led to two proposals: (i) the creation of an African Centre for Judicial Excellence; and (ii) the creation of an African Judicial Network. The rationale and proposal for an African Centre for Judicial Excellence (hereinafter, ACJE) was developed by Ms. Grace KAKAI as follows:

Justification

- African judicial institutions require a deliberate investment in continuing judicial education, research support, judicial exchanges and sharing of jurisprudence as well promotion of standards of judicial administration all with a view to making justice more accessible to African citizens.

- The ACJE would provide a forum for judicial practitioners in this regard including by leveraging existing efforts and strengthening current collaborations.

Mandate

- The ACJE will support the cooperation and coordination of the judiciaries of African Union Member States in the elaborated areas.

- The ACJE will develop tools and standards for use by those responsible for the administration of justice and for individual judges towards improving service delivery by the judiciary as a unique public service.
• Leveraging the potential of new information technologies (IT).

• Promotion of mediation and amicable settlement of disputes as well as the incorporation of traditional conflict resolution mechanisms into the justice system.

**Scope of Activities**

1. **Standard setting**
   - Developing qualitative and quantitative criteria for measuring and evaluating excellence in delivery of justice. The ACJE could propose, [in collaboration with the relevant African Union Organs and institutions, to the competent organs of the African Union] the fields where it would be desirable to adopt model guidelines such as on judicial statutes, judicial codes of ethics and charters of rights for the users of the justice system.

2. **Continuing judicial education and exchanges**
   - Providing managers of continuing judicial education with fora to discuss training practices and methodologies, collation of a database of judicial education curricula and materials, hosting online programmes and facilitating in-country education programmes. These fora will also facilitate the coordination of activities of judicial training institutes while respecting their independence.

   - Consolidation of a framework for exchanges between African judges through online discussions or through in-country visits.

3. **Information Resource or Database**
   - Hosting a 'portal' where material on judicial education and otherwise inaccessible jurisprudence would be readily accessible to its stakeholders.

   - The Information Resource or Database would also collate information on the structural, organisational, legislative and the most essential descriptive aspects of Member States’ judicial systems. This would include the development of Judicial Maps of each Member State. The information would be accessible to the general public.

   - Preparation of specific publications on specific topical issues.

**Proposed Governance Structure**

**Design principles**

• The structure should promote internal democracy and foster cooperation among the target groups of the ACJE’s activities.

• Following the recommendations of the Pre-Judicial Dialogue organised on 2 September 2017 at the Court, to prepare for the Dialogue, it was recommended that the composition of the Board of the ACJE should not only be restricted to judicial
institutions or divisions of national judiciaries dealing with human rights issues only, but they should as far as possible, reflect the full array of judicial activity. It was also recommended that the Governance Structure be refined.

**The Board**

The Board is proposed to have [former] members of:

- African Court
- African Commission on Human and Peoples’ Rights
- African Committee on the Rights and Welfare of the Child
- Central African Economic and Monetary Community Court of Justice
- Court of Justice of the Common Market for Eastern and Southern Africa
- East African Court of Justice,
- ECOWAS Court of Justice
- Organization for the Harmonization of Corporate Law in Africa Common Court of Justice and Arbitration
- West African Economic and Monetary Union Court of Justice
- representatives each of from national Judiciaries of the five African Union regions (see the list of regions in Appendix C)

The Board members will serve for a term of 3 years and will act in their representative capacity.

The Board will invite National Judicial Training Institutes and relevant Institutes to become partner or associate members of the ACJE.

**Functions of the Board**

The functions of the Board could include:

- Policy making, strategy and overall development of the ACJE
- Considering and approving the ACJE’s annual report;
- Appointing the Director of the ACJE;
- Adopting the ACJE’s plan of action and management report
- Establishing Working Groups on specific thematic areas
- Concluding Memoranda of Understanding and Cooperation with relevant institutions

**Secretariat and Development of Governance Structures**

- If the ACJE will play a facilitating/liaison role between judicial institutions, the management would be correspondingly small and minimalist. If it will manage programmes and projects, then the secretariat would have a larger staff complement
- Whatever the model, the following positions are likely to be required: Director; Financial Manager; Programme Managers (in the maximalist scenario, dealing with at least Education and Training; Research; Publications; External Liaison); and a Secretary
(Office Manager). The Director will be the head of the Secretariat and the primary interface between the Secretariat and the Board.

- Or have a phased approach, with the core positions (e.g. of Director, Financial Manager, Office Manager and one Programmes Manager) established at the outset and gradual expansion.

**Seat**

- Willingness of a state to host the ACJE in line with AU Criteria for Hosting African Union Organs and Institutions, including making premises and fully operational facilities available and subject to conclusion of a Host Agreement granting the ACJE relevant immunities and privileges.

- There may be an advantage of locating the ACJE in Arusha, Tanzania which is also the seat of the African Court, the East African Court of Justice, the Arusha Branch of the Residual Mechanism for International Criminal Tribunals and the African Institute for International Law. Arusha is considered to be the ‘judicial capital of Africa’. There is also a presence of academic and other institutions such as the Pan African Lawyers’ Union and the East African Law Society which may support the work of the ACJE.

**Funding**

- This being a development from the African Judicial Dialogue which has already been endorsed by the Executive Council as a programme of the African Union, it follows that the ACJE will be funded by the African Union

- There would also be possibility for the ACJE to undertake independent fund-raising.

- African Union Member States would also be encouraged to make voluntary contributions.

**Overlaps between the two Proposals**

It is clear that the two proposals overlap in very significant respects:

- Both proposals envisage a forum for formal collaboration between judges across the African Union, by linking judges of the African Court on Human and Peoples’ Rights, courts of Regional Economic Communities (RECs) and highest domestic courts;

- Both proposals place emphasis on inclusive governance structures that allow for broad representation while also achieving effective daily management;

- Both proposals envisage similar activities focused on standard setting, the development of information resources, and judicial exchanges.

- Both proposals identify Arusha as a potential seat for the proposed body.
• Both proposals envisage core funding from the AU as well as the possibility for additional fund-raising by the proposed body and reception of donations from other sources.
• Both proposals place emphasis on a phased approach to development, rather than a ‘big bang’ approach that establishes all activities and structures of the proposed body at once.

Merging the two Proposals

The Consultant and Ms. KAKAI view the significant level of overlap as highly positive, as both proposals have identified very similar priorities for furthering judicial efficiency across the African Union and furthering understanding between the courts at different levels of the AU. The high degree of overlap also facilitates the merger of the two proposals and the consensus has been to subsume the activities of the proposed African Centre for Judicial Excellence within the proposal for an African Judicial Network.

The greatest divergence between the proposals relates to the more limited focus on judicial training and education in the original proposed design of an African Judicial Network. That focus has been enlarged in this revised proposal.
Methodology
Introduction

The overall methodological thrust of this report is comparative and empirical. In accordance with the Terms of Reference, above, the aim has been to review all relevant international judicial networks worldwide and to analyse their history, structure, mandate and advantages and disadvantages in their operation. However, the methodology has also had a clear normative bent in the sense that it is based on significant reflection on the guiding principles which the Consultant identified as important in carrying out this analysis. This section first sets out the key guiding principles followed by the Consultant, to provide a clear picture of the way in which this project has been approached. The section finishes by listing the specific research methods employed by the consultant in carrying out this analysis.

Principle 1: Practical & Clear

This report seeks to provide proposals for the design of an African Judicial Network which will be effective and useful in practice. This report reflects the focus on practical effectiveness by eschewing academic jargon on international judicial networks in favour of clear and accessible language. For the same reason, the report, while aiming to provide a comprehensive analysis, has employed visual display of key information throughout, to aid the reader. As well as meeting its immediate objectives, the report has also been compiled with the aim of providing a useful resource and reference document for all stakeholders involved in the creation of the African Judicial Network. The appendices provide further material of practical assistance.

Principle 2: Tailored

This report has placed central emphasis on the need to design a judicial network that is closely tailored to the context of the African Union. The Consultant has at all times avoided a ‘cookie cutter’ approach, any propensity to take any one model as a final template, and in particular, has avoided any assumption that the longer-established European judicial networks in particular need to be emulated. The Consultant has approached judicial networks in all other world regions with a spirit of enquiry and a critical eye, alongside continuous reflection on the potential for certain models and solutions to be adopted and adapted in the African context.

The Consultant has borne in mind not only the significant structural differences between the African Union and other world regions as regards continental integration, regional governance, and domestic governance, but also factors such as the wide diversity of legal traditions,
languages, historical experiences, and judicial structures. The aim at all times has been evince a keen sensitivity to context, to avoid any form of Eurocentric universalism or superficial inter-regional comparisons.

The Consultant has taken the view that the African Judicial Network must reflect the best judicial traditions in Africa, and should harness and reflect the spirit of innovation and energy embodied in, inter alia, the innovative jurisprudence of a range of domestic courts, regional courts, and the growing case-law of the African Court on Human and Peoples’ Rights. The key particularities, including advantages and challenges, of the African context are addressed in Section 12 of this report.

**Principle 3: ‘Lessons Learned’**

Design of the African Judicial Network should draw not only on best practice in other world regions, but should also place emphasis on what pitfalls to avoid. The bidder’s experience with a wide array of international judicial networks already provides him with insights into best practice and ‘lessons learned’. The founders of the African Judicial Network are in a good position to learn from the past experiences of other international judicial networks in developing a world-leading network that delivers benefits for Africa’s courts and individuals across Africa.

**Principle 4: Targeted**

The Consultant has taken the view that it is best to take a targeted approach to the analysis of international judicial networks. The aim has been to focus on the most relevant judicial networks rather than providing a repetitive and less detailed review of every international judicial networks, including networks that have little to offer as regards providing a model for the African Judicial Network. The aim at all times has been to seek key inspirations for the design of an African Judicial Network that can make a real difference in building links and judicial community across the African Union.

**Principle 5: Coherent & Complementar**

As mentioned in the Introduction, above, the Consultant has taken the view that the African Judicial Network should be designed with the aim of complementing the raft of existing
continental, sub-regional, and transregional networks which already provide fora for judicial interaction across the African Union. The African Judicial Network should seek to enhance the coherence of the formal structures for judicial interaction across the continent, by building on what already exists and avoiding duplication of activities.

Specific Research Methods

4 main methods were employed in carrying out this study:

1. **Desk-based research**

   Desk-based research, which entailed reading in English, French, Portuguese and Spanish, focused on analysis of international judicial networks’ websites and analysis of scholarship on judicial networks and inter-court relationships, in order to:

   1. Clarify the range of judicial network models extant;
   2. Select the most appropriate and relevant cohort of networks to study in detail; and
   3. Contextualise the judicial networks found in each region against a wider background of regional judicial interaction.

2. **Questionnaires**

   Questionnaires were compiled for selected networks, aimed at obtaining information and insights on the structure, activities and budget of each network. Particular attention was paid to eliciting information on best practice, challenges faced, and lessons learned by each Network.

3. **Sourcing Information through Contacts**

   Additional information was sourced through the Consultant’s global network of courts, judges, judicial associations, scholars, and policy-makers. See the Acknowledgements section for a list of individuals who assisted in the provision of information, research material, and insights.

4. **Analysis and Synthesis**
The desk-based research and information received from selected judicial networks and contacts was compiled and synthesised with a view to providing as coherent an analysis as possible. A process of iterative back-and-forth reflection was maintained in order to review existing material in the light of new information received.

Merging the Two Proposals

The Consultant took the following approach to merger of the proposal for an African Judicial Network (AJN) and an African Centre for Judicial Excellence (ACJE):

1  Feedback

The Consultant took full notes of all feedback received at the third African Judicial Dialogue, from judges and staff members of the African Court on Human and Peoples’ Rights, judges of other courts attending the Dialogue, and experts.

2  Meetings

Specific discussions were held between the Consultant and Grace KAKAI, Head of the Legal Division of the African Court, to identify points of convergence between the two proposals and chart a possible way forward.

3  Textual Analysis

The Consultant analysed the detailed text of each proposal and identified all convergences and divergences between the two proposals, with particular attention paid to the proposed composition of governance bodies and the activities of each proposed body.
Review: Judicial Networks Worldwide
A Growing Global Web of Networks

Recent decades have witnessed a global proliferation of judicial networks. This reflects four key trends: the rise in judicial power at the domestic level; the spread of international courts; the growth of regional integration projects; and globalisation more broadly.

The Rise of Domestic Judicial Power

Since the 1970s there has been a remarkable proliferation in all world regions of domestic courts with powers of ‘strong’ judicial review, i.e. the power to strike down statutes. In many (although not all) cases a constitutional court has been established or the supreme court’s powers have been amplified in the context of constitutional reforms aimed at a more democratic system of governance. It has been calculated that courts with strong judicial review powers exist in over 80 per cent of UN states.¹

Such courts are designed to play a more active role in governance, to maintain the separation of State powers, to vindicate fundamental rights, and to guard the Constitution more broadly. As such courts have become more common, there has been a concerted effort to forge networks in order to facilitate peer-to-peer learning and transfer of knowledge among courts.

German-style constitutional courts with concentrated review powers have become increasingly common, with geographical ‘clusters’ in Europe (especially Central and Eastern Europe), West Africa (e.g. Niger, Senegal and Sierra Leone) and East Asia (e.g. Indonesia, South Korea and Taiwan). High-profile constitutional courts are found in South Africa, South Korea, and Colombia. However, in most world regions it is more common to find a supreme court with powers of constitutional review (e.g. Ghana, Brazil, Ireland). It is also increasingly common to find supreme courts with dedicated constitutional chambers (e.g. in the supreme courts of Costa Rica, Paraguay, Estonia, Nepal).

Evidently, other courts beyond constitutional courts and supreme courts play a key role in upholding the rule of law and rights protection, such as highest administrative courts in a variety of states. However, the analysis here is skewed toward courts with clear constitutional review powers, for two reasons: (i) such courts are ordinarily the ultimate guardians of the Constitution at the domestic level; and (ii) such courts tend to be the most active participants in, or targets of, international judicial networks.

The Spread of International Courts

The second central trend spurring the establishment of judicial networks worldwide is the spread of international courts. Since the establishment of the first Central American Court of Justice in 1907, international courts have been established in Europe in the period after World War II, Latin America in the 1970s onward, and in Africa and the Caribbean since the 1990s. Regional integration projects have proliferated with the aim of enhancing economic cooperation between states, developing single markets across a significant geographic area, supporting development, and tackling challenges that cut across state borders.

To date, although regional integration projects have been developed in the Asia-Pacific region (e.g. the Association of Southeast Asian Nations, ASEAN), no international court has been established in the region. In the Pacific, the phenomenon of foreign judges sitting on domestic courts (e.g. judges from Sri Lanka, Australia, and Papua New Guinea in the High Court of Fiji) is viewed as serving some of the same functional purposes as an international court as regards regional integration and the fostering of a regional judicial culture.

Today, international courts include global courts with broad jurisdiction (e.g. the International Court of Justice; ICJ) as well as more specific jurisdiction (e.g. the International Criminal Court; ICC). The most dramatic proliferation of international courts has been at the regional and sub-regional level. Africa is now home to the largest number of international courts in any one world region, including regional community courts (e.g. Southern African Development Community (SADC) Tribunal), a continent-wide human rights court (the African Court on Human and Peoples’ Rights) and specialised international criminal tribunals (e.g. International Criminal Tribunal for Rwanda). Europe is home to the second-largest number of such courts, including the ICJ, ICC and two key regional courts: the Court of Justice of the European Union and the European Court of Human Rights. International courts in Latin America include the Andean Court of Justice (ACJ) and the Central American Court of Justice (CACJ).

Regional human rights courts are a particularly salient example of the global rise in judicial power, the drive toward regional integration, and the forces of globalisation. At present three regional human rights courts exist: the African Court on Human and Peoples’ Rights, which began operating in 2006; the Inter-American Court on Human Rights, which was established in 1979; and the European Court of Human Rights, established in 1959. Within the Arab League, an Arab Court of Human Rights is said to be in the final stages of preparation. Increasing calls have also been made for the establishment of an Asia-Pacific Court of Human Rights. In Africa, the Americas and Europe, these courts provide a continent-wide centre of gravity for the development of a pan-regional approach to human rights protection and good governance, which can only be achieved through meaningful partnership with other regional, sub-regional and domestic courts.
ICC - International Criminal Court
ICJ - International Court of Justice
ITLOS - International Tribunal for the Law of the Sea
WTO - World Trade Organization Dispute Settlement Mechanism

Latin America
ACJ - Andean Court of Justice
CACJ - Central American Court of Justice
IACTHR - Inter-American Court of Human Rights
PRC – Mercosur (Common Market of the South) Permanent Review Court

Europe
BCJ - Court of Justice of the Benelux Economic Union
ECJ - European Communities Court of Justice & Court of First Instance (CFI)
ECTHR - European Court of Human Rights
ECCIS - Economic Court of the Commonwealth of Independent States and the Court of the Eurasian Economic Community
EFTAC - European Free Trade Association Court
ICTY - International Criminal Tribunal for the Former Yugoslavia

Caribbean
CCJ - Caribbean Court of Justice (settles disputes between Caribbean Community (CARICOM) Member States. Also serves as highest court of appeals on civil and criminal matters for the national courts of Barbados, Belize and Guyana)

Global
ICC - International Criminal Court
ICJ - International Court of Justice
ITLOS - International Tribunal for the Law of the Sea
WTO - World Trade Organization Dispute Settlement Mechanism
No international courts are located in the Asia-Pacific region. However, calls have been made for an Asia-Pacific Court of Human Rights.

In addition, no international courts are located in North America. In particular, Canada and the USA have declined to accept the jurisdiction of the Inter-American Court of Human Rights.
The Proliferation of International Judicial Networks

Since the 1990s a range of global, regional, sub-regional, and trans-regional judicial networks, including linguistic networks, have been established. Listed on p.40 are the principal networks, with a particular focus on judicial networks dedicated to human rights, constitutional law, and administrative law.

In all regions networks have been established to serve a variety of purposes. In Africa the proliferation of continental and sub-regional integration projects, including the AU, ECOWAS, the East African Community (EAC) and the Southern African Development Community (SADC), have required domestic courts to co-operate more closely with one another, increased the need for cross-border understanding of judicial systems in other states, and required fora for regional and domestic courts to better understand one another’s mandates, legal frameworks, and operation.

In Latin America a wide variety of international judicial networks have been established since the 1990s, ranging from the highly active and institutionalised Ibero-American Judicial Summit to looser networks such as the Ibero-American Conference of Constitutional Justice. More recently, regional integration projects have developed networks to link judges across member states, such as the MERCOSUR Permanent Forum of Supreme Courts.

Although no international court has been established in the Asia-Pacific region, a number of international judicial networks have developed. Since the 1980s a biennial meeting of Chief Justices of Asia & the Pacific has been held under the auspices of the Law Association for Asia and the Pacific (LAWASIA). In addition, the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) links courts with constitutional review powers and an ASEAN judicial network is currently under development.

In Europe a range of judicial networks has been established to promote exchange and facilitate co-operation between courts as judicial actors within the quasi-federal system of the European Union. Beyond the EU, a variety of international judicial networks have been established, which operate within or have strong links to, the Council of Europe’s Commission for Democracy Through Law (‘Venice Commission’). These include European networks (e.g. Conference of European Constitutional Courts (CECC), networks for other regions (e.g. Union of the Arab Constitutional Councils and Courts (UACCC) and the Conference of Constitutional Control Organs of the Countries of New Democracy (CCCOCND) for Eastern Europe and Central Asia).

A global constitutional court network, the World Conference on Constitutional Justice (WCCJ), was established in 2011 and now links 112 courts across over 100 countries.
Defining an International Judicial Network

This report focuses on formalised judicial networks with the following characteristics:

International The network must aim to connect courts (including quasi-judicial bodies) in different states, connect domestic courts and international courts, or international courts with one another. Networks to connect courts or judges within one state are not considered here.

Structured The network must have at least minimal governance structures.

Regular meetings The network must meet regularly, although this need not be frequent (it can range from multiple meetings a year to biennial meetings). One-off meetings are not included here.

That said, this report avoids an unduly rigid approach and includes reference to semi-formalised regular meetings of judges which do not strictly fit within this definition (e.g. because they lack any formal governance structures).

Networks and Wider Judicial Interaction

It is important to emphasise here that judges and courts interact in a variety of ways. It is possible to view international and regional judicial interaction as a spectrum, from indirect ‘weak’ interaction to more direct ‘strong’ interaction. This ranges from judges’ citation of other courts’ case-law, to voluntary cooperation in transnational litigation, mandatory cooperation under formal regimes (e.g. preliminary references by national courts to supranational courts and mutual cooperation between national courts), face-to-face meetings, and, most intensely, formalised judicial networks.

A leading scholar on judicial interaction, Anne-Marie Slaughter, has used the term “global community of courts” to describe what she views as the “self-aware” construction of a community based on participation in a “common judicial enterprise”, which tends to cut across national boundaries. She refers to international courts becoming less deferential to traditional conceptions of state sovereignty; the notion of ‘judicial comity’ usurping the ‘comity of nations’ as the guiding principle of transnational judicial cooperation; and courts given leeway by national governments to create their own regimes for cooperating in the resolution of
transborder disputes.\(^2\) That said, it is clear that transborder judicial interaction is much more intense in some regions, and between certain courts, than others.\(^3\)

Formalised international judicial networks are a particular sub-set of the range of possible ways to build community and engage in ‘judicial dialogue’, which goes beyond, for instance, \textit{ad hoc} visits to other courts. That said, formalised judicial networks themselves may be viewed as lying across a broad spectrum. Many judicial networks are rather loose arrangements, involving an annual meeting, while others are highly institutionalised, with databases, intranets, sub-bodies and regular meetings throughout the year. Various models and activities of networks are discussed below.

International judicial networks also pursue a variety of different objectives. They can seek to connect a range of domestic courts, domestic courts and international courts, international courts with other international courts, court presidents across a certain region, and also court staff as well as judges. Most judicial networks are simply a form of ‘talking shop’ but some can have a more ambitious agenda to pursue significant harmonisation of domestic law in line with the objectives of a given regional organisation (e.g. as the network ACA-Europe seeks to achieve in the field of administrative law across the EU).

The panel overleaf sets out the main international judicial networks worldwide. This list is not exhaustive. In particular, networks linking judicial councils and judicial training bodies are not included (e.g. European Network of Councils for the Judiciary; ENCJ).


NETWORKS

MAIN INTERNATIONAL JUDICIAL NETWORKS WORLDWIDE

Sub-regional

Southern African Chief Justices Forum *
East African Community (EAC) Chief Justices Forum *
ECOWAS Judicial Platform * (not yet established)
MERCOSUR Permanent Forum
Franco-British-Irish Committee

Transregional

BRICS Justices Forum *
Commonwealth Magistrates’ and Judges’ Network (CMJA) *
Ibero-American Conference of Constitutional Justice

see also linguistic networks

Linguistic

Association des Cours Constitutionnelles ayant en Partage l’Usage du Français (ACCPUF) *
Conference of Constitutional Jurisdictions of the Portuguese-Speaking Countries (CJCPLP) *

Global

International Association of Judges (IAJ) *
International Association of Supreme Administrative Jurisdictions (IASAJ) *
International Association of Refugee Law Judges *
International Association of Women Judges *
World Conference of Constitutional Justice (WCCJ) *

Regional

Africa

Conference of Constitutional Jurisdictions of Africa (CJCA)
African Judicial Network (AJN)

Middle East/ North Africa

Union of the Arab Constitutional Councils and Courts (UACCC) *

Europe/EU

ACA-Europe
Association of European Administrative Judges (AEAJ)
Conference of European Constitutional Courts (CECC)
European Judicial Network (EJN)
Network of Presidents of Supreme Judicial Courts of the EU
Superior Courts Network (European Court of Human Rights)
Venice Commission Joint Council on Constitutional Justice

Eastern Europe /Central Asia

Conference of Constitutional Control Organs of the Countries of New Democracy (CCCOCND)
Ibero-American Judicial Summit
Ibero-American Conference of Constitutional Justice
Latin American Judicial Network
Annual Meeting of Presidents and Magistrates of Courts and Constitutional Chambers of Latin America

Latin America

Latin American Federation of Magistrates
Latin American Network of Judges

Asia-Pacific

Association of Asian Constitutional Courts and Equivalent Institutions (AACC)
Chief Justices of Asia & the Pacific
ASEAN judicial network (under development)

* All organisations marked with an asterisk are international organisations in which African Union states participate.
A VARIETY OF MODELS

The majority of judicial networks have limited budgets and therefore limited activity.

Budgetary constraints, network scope, leadership, and geographic proximity are all limiting factors for an effective judicial network. That said, with effective leadership and ‘buy in’ of participants, a lot can be achieved with even a small budget. A network often slowly develops over time.

The most well-resourced and active networks with complex organisational structures can be found in Latin America and Europe.

EXAMPLES

The World Conference on Constitutional Justice (WCCJ) and the Association of Supreme Administrative Jurisdictions of the EU (ACA-Europe) represent two extremes of judicial network models.

They are compared here for illustrative purposes. Again, it should be emphasised that the more active network is not necessarily better. It all depends on what the network seeks to achieve.

**WCCJ**
- Bureau and secretariat
- Global membership
- Activity focused on facilitating global dialogue
- Biennial meetings
- Occasionally produces position papers, e.g. ‘Seoul communiqué’ from 3rd meeting, on cooperation and establishment of Asian human rights court

**ACA-Europe**
- General Assembly, General Secretariat and Board
- Full members and observer (non-EU) members
- Activity focused on harmonisation of law
- Regular meetings
  - Regular Seminars
  - Biennial Colloquia
- Range of other activities
  - Newsletter
  - 2 case-law databases
  - Intranet
  - Library of admin. law
  - Judicial exchanges
The infographic below displays the main activities carried out by international judicial networks.

The most common activities are meetings and information exchange.

A minority of networks have branched out to databases, intranets and training programmes.

In deciding what activities to focus on for an African Judicial Network, it is important to consider what are the aims and priorities of the Network, what specific ‘added value’ the Network can provide beyond existing networks, what the budget of the Network will be, and that it is best to begin with fewer activities and build capacity over time.

**events**

Conferences, seminars and other meetings are the most common activities. However, they are costly.

**information exchange**

All networks engage in information exchange, which ranges across face-to-face meetings, newsletters, peer-to-peer queries, intranets and databases.

**studies**

As a particular subset of information exchange, some networks compile thematic studies, often on the basis of questionnaires. Such studies are often circulated solely to network members.

**publications**

Publications tend to be produced by highly developed networks, e.g. the Ibero-American Judicial Summit, Joint Council on Constitutional Justice

**training**

A minority of judicial networks engage in judicial training. Training can be minimal, focused on a network’s key information exchange tools or can involve a range of activities e.g. judicial exchanges, tailored courses.

**awareness raising**

The overarching function of many networks is to raise awareness among members of the other members in their network. They also provide a focal point for raising awareness of courts’ activities among political actors and the public, amplifying the capacity of any one court to do so on its own.
Focus:
Latin America & Europe
Why Latin America & Europe?

This section focuses on judicial networks in Latin America and Europe for two reasons:

1. Presence of a Regional Human Rights Court

Both regions contain a regional human rights court similar to the African Court on Human and Peoples’ Rights, i.e. the Inter-American Court of Human Rights and the European Court of Human Rights.

2. Presence of Multiple Regional Integration Projects

Both regions contain multiple regional integration projects, most of which contain at least one court (or in some cases, a more elaborate court system).

Why Not Other Regions?

While judicial networks are found in the Asia-Pacific region and a regional integration project is found in the Caribbean (the Caribbean Community; CARICOM), neither region contains a regional human rights court and judicial networks have not been developed to the same extent as in Latin America and Europe.

Regional Governance in Both Regions

Unlike Africa, where regional and sub-regional integration takes place within the overarching framework of the African Union, regional integration has developed somewhat differently in Latin America and Europe. In Latin America the broadest organization (Organization of American States, OAS, of which the Inter-American human rights system forms part) has long been viewed in many states as an instrument of US hegemony and rival integration projects have spread since the 1990s. In Europe, regional integration is primarily based on two pillars: a pan-regional economic community (the European Union); and a wider community of states (the Council of Europe), which contains a continent-spanning human rights protection system centred on the European Convention on Human Rights and European Court of Human Rights. The following pages provide an analysis of international judicial networks in both Latin America and Europe, placed within the context of the development of regional governance and the rise in domestic and international judicial power in each region.

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The Inter-American Court of Human Rights lies at the apex of the Inter-American system for human rights protection within the Organization of American States (OAS). Almost all Latin American states (including Central American states) have accepted the Court’s jurisdiction.

Member States (Court): 20
Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Rep., Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay

1 ANDEAN COMMUNITY
The Andean Community was modelled on the European Community (now Union). It contains the Andean Court of Justice (ACJ).

Member States: 4
Bolivia, Colombia, Ecuador, Peru

2 MERCOSUR
MERCOSUR (the Common Market of the South) contains the Permanent Review Court, an appellate arbitral body.

Member States: 6
Brazil, Argentina, Paraguay, Uruguay, Bolivia, Venezuela (Venezuela suspended in 2017)

4 SICA
The Central American Integration System (known by the Spanish acronym, SICA) contains the Central American Court of Justice (CACJ).

Member States: 8
Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panamá, Dominican Republic

3 OAS
OTHERS

Other regional integration organisations, such as the Pacific Alliance (states with cross-hatching above); and Bolivarian Alliance (states in stripes above) contain no regional court.

The Inter-American Court of Human Rights lies at the apex of the Inter-American system for human rights protection within the Organization of American States (OAS). Almost all Latin American states (including Central American states) have accepted the Court’s jurisdiction.

Member States (Court): 20
Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Rep., Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay
Overview

Regional political integration projects in Latin America date to the post-independence climate of the nineteenth century, but economic integration bodies first appeared in the 1960s. The first plan, the Latin American Free Trade Association (LAFTA) was left by four northwestern states in 1966–Bolivia, Colombia, Ecuador and Peru—to form the Andean Pact in 1969, which became the Andean Community (CAN) in 1996. LAFTA was replaced by the Latin American Integration Association (ALADI) in 1980, which focuses on assistance for less developed economies as well as free trade (the current members are Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Panama, Paraguay, Peru, Uruguay and Venezuela).

In the Southern Cone, MERCOSUR (the Common Market of the South) was established in 1991 to foster a free trade area between Brazil, Argentina, Paraguay and Uruguay. Venezuela joined in 2012 but the state’s membership was indefinitely suspended in 2017 due to the state’s current democratic crisis. Bolivia joined in 2015. In Central America the Central American Integration System (SICA) was established in 1993, bringing together Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama. Belize joined in 2000 as a full member. The Dominican Republic became an associated state in 2004 and a full member in 2013.

A number of other integration projects have emerged, with differing memberships, purposes, and political leanings (e.g., the Pacific Alliance, whose membership is Chile, Colombia, Mexico and Peru). The Bolivarian Alliance for the Peoples of Our Americas (ALBA in the Spanish acronym) includes two South American states (Bolivia and Venezuela) and Nicaragua in Central America, as well as a number of Caribbean states. However, the Organisation of American States (OAS), the Andean Community, MERCOSUR and SICA remain the key bodies, given that they are the longer-established and most developed organisations.

In South America MERCOSUR and the Andean Community are the key components of the new region-wide integration project, the Union of South American States (UNASUR). Effectively an integration agreement between the two blocs enshrined in a Constitutive Treaty of 2008, if successful, UNASUR would integrate all hispanophone states and Brazil in South America; the first fully-fledged attempt at pan-regional integration, though still operating within the looser, overarching framework of ALADI. At present, UNASUR’s institutional development is in its infancy, its aims are pursued largely through the two constituent blocs, and it has no court.

Judicial Power in Latin America

This section provides an overview of judicial power in Latin America. It does so by examining four key international courts (the Andean Court of Justice, MERCOSUR Permanent Review
Andean Court of Justice

The Court of Justice of the Andean Community, and the Andean Community more broadly, modelled its institutional structure on the European Community (now Union), creating the Court in 1984 to adjudicate suits concerning the direct application of Community law, state noncompliance with community law, preliminary references by national courts seeking interpretation of community law, and challenges to the validity of decisions or actions of community institutions. The founding treaty referred expressly to the doctrine of direct effect, and implicitly, its corollary—the supremacy of community law.

However, the founding treaty afforded greater protection to national sovereignty. In particular, the Court’s jurisdiction was limited to consideration of the meaning of Community law, and it was prohibited from considering the facts of the cases before it, leaving less scope for the expansive rulings that had become a hallmark of the European Court of Justice. Although the Andean Court in its jurisprudence expressly asserted the foundational doctrines of direct effect and supremacy, and the nature of the community as an autonomous legal order, it has been more tolerant of state deviations from Community law, and did not follow the European Court’s expansion of the pre-emptive force of community law, which has left states considerably more freedom to legislate in areas within the Community’s competence, in comparison to EU member states.

As regards the Court of Justice’s relationship with national courts, it has placed weaker constraints on national judges in interpreting Community law, adopting a more deferential posture than the European Court of Justice. Perhaps most importantly, whereas Community law in Europe was constructed on the basis of national courts’ willingness to refer provocative and fundamental questions of law to the European Court of Justice, leading to an unprecedented partnership of national and international judiciaries, this is not the case in the Andean context: some 90 per cent of the references to the Court of Justice concern technical questions regarding the Andean Community’s intellectual property law, and national judges have appeared reluctant to refer questions outside this narrow sphere.  

Thus, although the Andean Court is billed as the “third most active international court” in terms of its docket size (after the European Court of Justice and the European Court of Human Rights), its operation has not led to an expansive body of supranational law and the relationship between national courts and the Court of Justice is rather limited.

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MERCOSUR Permanent Review Court (PRC)

MERCOSUR’s judicial machinery remains at a low level of institutional development, reflecting the development of MERCOSUR as a whole, which remains wedded to intergovernmentalism—or even more narrowly, “interpresidentialism”. The Argentine and Brazilian presidents act as the “natural hegemons”, with Uruguay and Paraguay overshadowed, and Venezuela an uneasy fit in the organisation (until its suspension in 2017); all harbouring different visions for the integration project. This has stifled the development of MERCOSUR institutions: a quasi-executive body and a parliament with “quasi-legislative powers”, established in 2003 and 2005 respectively, have been largely inactive.

The adjudicative organs, established in 2002, consist of ad hoc arbitration tribunals and an appellate arbitral body, the Permanent Review Court (PRC; Tribunal Permanente de Revisión). The PRC has the power to issue decisions in disputes as well as advisory opinions on MERCOSUR norms, when requested by member states, MERCOSUR organs or member state supreme courts. However, it has not been very active.

MERCOSUR member states have been slow to accept the PRC’s jurisdiction and, to date, recourse to these bodies has been rare. The Court has been reluctant to impose sanctions where violations of Community law are found, and even where sanctions are imposed, they are ignored due to the absence of any meaningful enforcement mechanisms. It may be noted that the PRC is a judicial institution in the loosest sense, and is a rather amorphous entity, with membership changing from case to case, and members enjoying mandates of no more than two years. This has left little chance to construct a supranational legal order through a consistent body of jurisprudence. Interpretation of MERCOSUR rules and their relation to national law remains the province of national courts, which do not take a uniform approach to the task.

Central American Court of Justice

The Central American Court of Justice (CACJ) was established within the Central American Integration System (SICA) in 1995, modelled on a predecessor court established in 1907 (but which had ceased to exist in 1918) and drawing inspiration from the European Court of Justice. SICA, and the CACJ Court at its centre, represents a renewed effort to achieve integration, peace, and development in a region that has long attempted to achieve a Central American Federation or Union. The Central American Court Convention established the CACJ as a permanent, full-time court, granted it wide powers and enshrined open standing rules, making

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8 Porrata-Doria Jr., ibid., at 16 et seq.
9 Uruguay was the first full state party to accept the Court’s jurisdiction, in 2007, followed by Argentina and Paraguay in 2008, and finally Brazil in 2012.
10 Porrata-Doria Jr. (n 7) at 33.
it an international tribunal, an arbitral tribunal, a consultative tribunal and, in exceptional circumstances, a constitutional tribunal, with the role of not only adjudicating specific cases but harmonising law across the region and building a Community law.

However, the Court has faced serious challenges. As Guatemala and Costa Rica long failed to ratify the Court’s by-laws, it had to operate during its first decades with fewer judges than envisaged. Proposals by the Central American Presidents to reform the Court, including reducing the number of sittings, number of judges, and adding commercial matters to its mandate, were viewed as potentially hampering the Court’s operation, and it successfully defended itself against such reforms with the aid of five Central American supreme courts. That said, the Court’s active and bold jurisprudence has prompted backlash, exemplified in its judgment in the Nicaragua case of 2005. This concerned the Nicaraguan president’s claim that the National Assembly had exceeded its competences. The National Assembly refused to comply with the CACJ’s judgments, which had ordered provisional measures against the Assembly and declared its actions invalid. The judgments are viewed as having revealed the challenges faced by the Court in acting as an engine of integration. The President of Honduras in the mid-2000s also made moves to remove Honduras from the Court’s oversight.12

Inter-American Court of Human Rights

The Inter-American Court of Human Rights is the most powerful international court in Latin America, with the vast majority of Latin American states (20 states) having acceded to its jurisdiction. Established in 1979 after ratification of the American Convention on Human Rights (ACHR) in 1978, the Court, like the African Court on Human and Peoples’ Rights, has contentious and advisory jurisdiction, the power to order provisional measures, and broad powers to order reparations. Unlike the African or European human rights courts, there is no provision for direct individual petitions to the Court: cases may solely be referred by the Inter-American Commission of Human Rights or State parties.

Although the Court did not issue a merits judgment until 1988 (issuing solely advisory judgments from 1979-1988) to date it has issued over 200 judgments, developing a robust jurisprudence on amnesty laws, forced disappearance, anti-terrorism laws, freedom of expression, and the ‘right to truth’, among others. The Court enjoys a significant international profile and has fostered the evolution of a pan-regional jurisprudence on human rights.

However, the Court has experienced a number of setbacks, including the departure from its jurisdiction of Trinidad and Tobago in 1999 and Venezuela in 2012. Full compliance with its

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judgments is just over ten per cent, and the Court has faced significant backlash from numerous states, especially the neo-Bolivarian governments in Venezuela, Ecuador, and Bolivia. The Court’s functioning has also been hindered by a serious budgetary crisis facing the Inter-American Commission on Human Rights (as the main referral organ to the Court), and the fact that the Court remains a part-time institution. Judges ordinarily meet 8-10 weeks per year, over four ordinary sessions.

**Domestic Courts**

The proliferation of international courts in Latin America coincided with, and was spurred by, a region-wide wave of democratisation across Latin America, from 1978 onward, which entailed successive waves of fundamental constitutional transformation in Latin American states characterised by a central focus on rights protection, an openness to international human rights law in constitutional texts and within national judiciaries, and an enhanced role for domestic courts as governance actors.

The relationship between domestic courts and the Inter-American Court of Human Rights is the most intense and fully-developed in the region, compared to the courts of MERCOSUR, the Andean Community and SICA. Former President of the Inter-American Court Diego García-Sayan suggests that the Inter-American Court’s jurisprudence has revitalised national judiciaries and strengthened the rule of law as a core value in various states: “Increasingly, the highest courts of several countries of the region are taking inspiration from the Inter-American Court’s jurisprudence and supplementing, in a conceptual manner, their national circumstances with certain developments of the Inter-American Court.”

The relationship between the IACtHR and domestic courts has been conditioned by three judicial doctrines across the domestic and Inter-American levels, which have fundamentally transformed and thickened the inter-court relationship:

(i) **The ‘block of constitutionality’ doctrine at the domestic level**, which in a wide array of states tends to characterise constitutional, Inter-American, and universal norms (e.g. the Universal Declaration of Human Rights) as combined parameters for assessing the constitutionality of law and state actions, or – in the stricter sense of a ‘constitutional block’ – according international norms formal constitutional status;

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(ii) **The IACtHR doctrine of conventionality control**, which places an obligation on public authorities in all state parties to the ACHR to interpret any domestic legal norm (e.g. constitution, law, decree, court judgment) in a manner compatible with the ACHR, as interpreted by the IACtHR; and

(iii) **The IACtHR ‘block of conventionality’ doctrine**, which (in a similar manner to the domestic ‘block of constitutionality’ doctrine) extends the legal standards that domestic authorities (including courts) must take into account when carrying out conventionality control by including not only the ACHR but also a range of other treaties and instruments that together comprise the ‘inter-American corpus iuris’ (e.g. Inter-American treaties on torture and violence against women).

This relationship transformation has led scholars to go beyond the language of ‘judicial dialogue’, to speak of the relationship as transcending the courts’ respective spheres and creating a transnational legal space, based on an ‘Inter-Americanization’ of domestic law and the creation of a *ius Constitutionale Commune* or pan-regional common constitutional law.¹⁷

That said, despite a rather harmonious picture painted by a range of scholars, as well as IACtHR judges writing extrajudicially, a closer inspection reveals that the relationship between the IACtHR and domestic courts is affected by significant tensions. These may be divided into three broad categories:

(i) **Inconsistent adherence to Inter-American jurisprudence by domestic courts**, even where courts elaborate formal doctrines recognising the authority of the Inter-American Court’s case-law. Departure from Inter-American case-law is often found in ‘hard cases’ that concern foundational values of the constitutional order (e.g. the right to life and IVF treatment in Costa Rica);

(ii) **Reluctance to engage with IACtHR jurisprudence** (seen in courts such as the Supreme Federal Court of Brazil, which guards its constitutional supremacy and rarely cites IACtHR case-law); and

(iii) **The expression of open hostility** (as seen in calls by the supreme courts of the Dominican Republic and Venezuela for the State to leave the Inter-American Court’s jurisdiction).

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Judicial Networks in Latin America

A number of formal judicial networks exist in Latin America. This section briefly describes the main networks and their activities. It may be noted that some regional organisations have not developed significant international judicial networks. For instance, reflecting the lack of any judicial architecture in the embryonic infrastructure of UNASUR, there does not appear to be any judicial network operating under its aegis. More surprising is the apparent absence of any such network for the Andean Community. That said, there is a relatively intense and overlapping web of judicial networks connecting domestic, sub-regional, and regional courts across Latin America.

One Latin American judicial network is analysed in more detail in the next section (Section 10):

- **Ibero-American Judicial Summit.**

**Latin American Federation of Magistrates (FLAM)**

FLAM brings together national associations of judges in Latin American countries. It was founded in Chile in 1977 by representatives of Argentina, Brazil, Chile, Bolivia, Ecuador, Paraguay, Uruguay, Peru, Costa Rica, Panama, Honduras, and Guatemala.

Its main objectives are: (a) to ensure the permanent, real and effective independence of the Judiciary in all its aspects, as an essential condition of the jurisdictional function; (b) to extend and improve the knowledge and culture of Judges and to strengthen contact between judges of the associated countries; (c) to defend the dignity and prestige of the Judicial Branch and its members; (d) to study common legal problems in order to achieve the improvement of legislation and its uniformity.

**The Latin American Network of Judges (REDLAJ)**

REDLAJ was created in 2006 at the general assembly held at the Judicial School of Spain in Barcelona. It is an international non-profit private body. Its objective is to bring together Latin American Judges to develop judicial cooperation and integration mechanisms based on a framework of trust and pooling of knowledge.

Since its inception, it has annually held judicial cooperation conferences, as well as other specific events on Technology, Judicial Reform, Family Law, Disability and Inclusion. REDLAJ has representatives in 19 countries of South America, Central America, the Caribbean, Mexico and Spain, and has held numerous international events. REDLAJ also cooperates with other networks, such as the Ibero-American Network for International Legal Cooperation and is an observer at the Ibero-American Judicial Summit.
MERCOSUR Permanent Forum

In the MERCOSUR context, there is a Permanent Forum of the Supreme Courts of the trading bloc, established in 2004 and with headquarters in the Brazilian capital, Brasília, which facilitates yearly and ad hoc meetings of judges as well as a judicial exchange programme for member states of MERCOSUR and associated states. Maria Ângela Jardim de Santa Cruz Oliveira, an official at the Brazilian Supreme Court, paints a positive picture of the permanent forum, as linking courts and fostering development of procedure at the Permanent Review Court. However, its activity appears to be quite limited given the low level of activity of the MERCOSUR organs. In addition, it appears aimed at linking the national courts, with little focus on fostering links with the Permanent Review Court itself, and is organised by the Brazilian Supreme Court rather than MERCOSUR itself.

Ibero-American Conference of Constitutional Justice

The main regional network for the region under the ‘Venice Commission’ system is the Ibero-American Conference of Constitutional Justice, which includes most hispanophone states in Latin America, along with Andorra, Portugal and Spain. The Association’s main aims are to promote a “close, continuous, and fluid relationship” between participating courts, information exchange, and networks for knowledge management and exchange of experiences between courts with constitutional review powers in Ibero-American countries. Its principal activity appears to consist mainly of an annual conference.

Inter-American Court networks

The Inter-American Court of Human Rights has not established any dedicated network of its own, within the definition of an international judicial network provided on p.38 above: this is possibly due to budgetary constraints. However, the following activities are notable.

(i) Extraordinary Sessions beyond the Court’s Seat in Costa Rica

Since 2005 the Inter-American Court has held special sessions outside its headquarters in San José Costa Rica. The Court has held such sessions in Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, the Dominican Republic, and Uruguay. Most recently it held a special session in Guatemala in March 2017.

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18 The body is formally known as the ‘Permanent Forum of Supreme Courts of Mercosur countries for judicial matters relevant to Latin-American integration, with a specific emphasis on Mercosur’.
19 See http://bit.ly/2yeBmFZ.
21 Indeed, the judicial exchange programme is even named after a Brazilian supporter of Pan-Americanism: ‘the Joaquim Nabuco exchange program for judges and judicial servants within Mercosur and Associate States’.
This initiative allows the Court to efficiently combine two objectives: (i) to increase judicial activity and (ii) to facilitate the efficient dissemination of the work of the Inter-American Court in particular, and of the Inter-American System for the Protection of Human Rights more generally. During 2015, two special sessions were held in Cartagena de Indias, Colombia, from April 20 to 24 and in Tegucigalpa from 24 to 29 August.

(ii) **Opening Ceremony for the Judicial Year at the Court**

The Court’s 2016 Annual Report states: “The year began with a ceremony to inaugurate the 2016 judicial year attended by a wide range of dignitaries. In addition, an international seminar was held entitled: “San José: the human rights capital,” with the participation of national and international judges, high-level national authorities, experts, lawyers and students, among others.”

(iii) **The President of the Court’s Attendance at a Variety of Meetings**

The Court’s 2016 Annual Report states that the President of the Court attended:

– Visits to a variety of national courts;

– The Ibero-American Judicial Summit;

– The Ibero-American Conference on Constitutional Justice;

– Annual Meeting of Presidents of Latin American high courts organized by the Konrad Adenauer Foundation and the Supreme Court of Justice of the Nation of Mexico; and

– Subcommission for Latin America of the Venice Commission.

(iv) **Dialogue of the IACtHR and International Courts, United Nations protection bodies, national courts and academic institutions**

(v) **Judicial Dialogues in the Inter-American System for the Protection of Human Rights**

Between 25 and 27 February 2015, the event ‘Judicial Dialogues in the Inter-American System for the Protection of Human Rights’ was held at Pompeu Fabra University in Barcelona, Spain. The event was attended by 43 judges from 12 countries in Latin America and highest courts from Europe, as well as the President of the Inter-American Court, Judge Humberto Sierra Porto, Vice-President, Judge Roberto F. Caldas, Judge Diego García Sayán and Judge Alberto Pérez Pérez. In addition, from the conferences that dealt with current issues on the challenges of the Inter-American System for the Protection of Human Rights, workshops and workshops were held to encourage dialogue and discussion among the various participants.
(vi) XXI Annual Meeting of Presidents and Magistrates of Courts, Courts and Constitutional Chambers

The XXI Annual Meeting of Presidents and Magistrates of Courts, Courts and Constitutional Chambers of Latin America was held on 18-20 June 201 in San José, Costa Rica. The meeting was organised by the Inter-American Court and the State Law Program for Latin America of the Konrad Adenauer Foundation. It was attended by 23 judges and magistrates from the courts and constitutional chambers of Latin American states, the Inter-American Court of Human Rights, the Caribbean Court of Justice and the Constitutional Court of Germany, as well as a number of international experts.

This dialogue mainly focused on the following themes: control of conventionality, freedom of expression and access to information, migrant populations, and “state crisis”, among others. It was a private event that seeks frank and confidential, dialogue between national and international magistrates and magistrates and some international experts on complex issues of constitutional, conventional and international scope in Latin America.

The meeting was attended by magistrates from Bolivia, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Mexico, Panama, Paraguay, Peru, Uruguay, Germany, and the Caribbean Court of Justice.

CACJ Activity

The Central American Court of Justice (CACJ), like the IACtHR, has no dedicated international judicial network operating under its aegis. However, it has been active in fostering connections between domestic and international courts across Latin America and beyond. For instance, in 2007 the Court organised the First Summit of International and Regional Courts (the "Summit") in Managua, Nicaragua. The Summit was attended by Presidents or representatives of: the CACJ, the African Court of Human and Peoples’ Rights, the Caribbean Court of Justice, the International Criminal Court, the Andean Court of Justice, the International Tribunal of the Law of the Sea, the Inter-American Court of Human Rights, the International Court of Justice, the European Community Justice Tribunal, and the European Court of Human Rights. Additionally, there were members of the United Nations, the European Community, the Organization of American States (OAS), SICA, and the International Court of Human Rights. Panama, Belize, the Dominican Republic, and the supreme courts of Guatemala, El Salvador, Honduras, Nicaragua, and Costa Rica also participated.

Other Networks

Besides the above bodies, courts in the region tend to be members of bodies that transcend the region: Brazil, for example, is the only South American member of the Conference of Constitutional Jurisdictions of the Portuguese-Speaking Countries (CICPLP). Brazil, Chile, Costa
Rica, Mexico and Peru are full members of the Venice Commission and its Joint Council on Constitutional Justice (Argentina is an observer). Brazil has also fostered a Forum of Supreme Courts of BRICS states (Brazil, Russia, India, China, South Africa), which is at least as developed as the MERCOSUR forum. Brazil also hosted the second congress of the Venice Commission-backed World Conference of Constitutional Justice in 2011. Brazil appears to be the regional leader in the field of this form of ‘judicial diplomacy’.  

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22 See http://www.venice.coe.int/wccj/wccj_e.asp.

Europe
1 COUNCIL OF EUROPE

The Council of Europe has 47 Member States (blue, orange and turquoise in the map) and contains the European Court of Human Rights (ECtHR).

Member States: 47

Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, “The former Yugoslav Republic of Macedonia”, Turkey, Ukraine, United Kingdom

(The sole European country that is not a member is Belarus)

2 EUROPEAN UNION

An economic community that developed additional competences (e.g. on human rights, criminal law). Contains the Court of Justice of the European Union. All EU members are also required to accept the ECtHR’s jurisdiction.

Member States: 28

Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Rep., Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, [UK]

3 EFTA

Free trade organisation with access to the EU single market. Contains EFTA Court.

Member States: 4

Iceland, Liechtenstein, Norway, and Switzerland
Overview

The European experience of pan-regional integration and the rise in domestic and international judicial power centres on two separate and parallel, but interlinked, projects—the European Convention on Human Rights system and the European Union (EU)—which have developed in tandem and whose interaction has become increasingly intense. Since the 1950s these two integration projects have transformed the nature of judicial dialogue, interaction and community in Europe.24

The European Convention system began with establishment of the Council of Europe in 1950 by ten Western European states: Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, and the United Kingdom. The European Convention on Human Rights (ECHR) was adopted in 1950 and ratified in 1953. The European Court of Human Rights was established in 1959 and has undergone multiple institutional reforms in recent decades due to the ECHR system’s expansion from 10 to 47 states, which now span from Iceland in the West to Russia in the East (see below).

The EU began with establishment of the European communities in 1958 by six member states: Belgium, France, Germany, Italy, Luxembourg and the Netherlands. Successive enlargements have brought the number of Member States to 28, from Ireland in the West to Bulgaria in the East (although the United Kingdom is in the process of leaving the Union).

Other regional projects in Europe containing international courts include the European Free Trade Association (EFTA), the BENELUX Union (Belgium, the Netherlands, and Luxembourg) and the Eurasian Economic Union (EAEU) (Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia.

Judicial Power in Europe

Court of Justice of the European Union

From the beginnings of the European Union, with the ratification of the Treaty of Rome establishing the European Economic Community in 1958, the Court of Justice has been a central actor in the construction of the bloc’s legal order. In a succession of landmark decisions, characterising the community as an autonomous legal order transcending public international law, asserting the doctrines of the primacy, direct application of community law, and pre-

24 This report does not consider other post-war European organisations without judicial architecture, such as the Organisation for Economic Co-operation and Development (OECD).
emption, and calibrating the balance of powers between community organs, the Court ‘constitutionalised’ the community’s founding treaties and transformed national courts, private sub-state actors and citizens into agents of integration, in a constructive enterprise that was not within the full control of the member state governments. The Court’s case-law has underpinned, and been formally approved by, a series of treaties; culminating in the present Union, which, under the Treaty of Lisbon (Treaty on the Functioning of the European Union; TFEU) lays claim to a vast range of competences.

**European Court of Human Rights**

Established in 1959, the European Court of Human Rights, after a gradual march of progress in its early decades, truly hit its stride in the 1980s, and became the sole adjudicative organ of the Convention system in the reforms of 1998, with jurisdiction over a vastly expanded membership following the accession of post-Communist and post-Soviet states. Today, the Convention exerts a strong influence on national legal orders through the requisite domestic ‘incorporation’ of the Convention, and use of the European Court’s case-law as a legal standard for State activity and judicial interpretation of domestic law.

It is easy to overlook the challenges the Court faced in building its authority. The Court was not established until 1959 due to delays in state accession to its jurisdiction and until recognition of the Court’s jurisdiction by Italy and France in 1973 and 1974 respectively, West Germany and the United Kingdom were the only large Western European states subject to its oversight. (Even then, strong British resistance to submitting to the Court was overcome in 1966 solely on policy advice that it would have little impact on British law.26)

For its first two decades the Court’s impact in Europe was muted. In contrast to the voluminous jurisprudence produced by the domestic courts (e.g. constitutional courts in West Germany and Italy) and the European Court of Justice by the mid-1970s, the ECtHR had issued very few decisions: its annual judgments only exceeded single figures in 1981. However, by the 1980s the Court had developed three key doctrines which enhanced its standing and power in Europe: (i) ‘evolutive interpretation’, by which the Court interprets the ECHR dynamically ‘in light of present-day conditions’, allowed for progressively expansive readings of Convention rights; (ii) the principle that Convention rights should be ‘practical and effective’, which precludes states from relying on the existence of purely formal rights guarantees in domestic law; and (iii) the ‘margin of appreciation doctrine’, by which the Court calibrates the extent to which a state is to be afforded discretion on a rights matter, with the determination often based on the extent to which there is European consensus on the matter (as assessed by the Court).

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The Court and the ECHR underwent a profound transformation in the 1990s, as existing state parties recognised an expansion of the Court’s authority and as Turkey and post-Communist states began to accede to its jurisdiction. The Court by the mid-1990s characterised the ECHR system as a pan-regional “constitutional instrument of European public order (ordre public)”\(^{27}\); the decision-making role of the Committee of Ministers within the system fell into desuetude; and the system’s burgeoning caseload led to Protocol No.11 to the ECHR. This dissolved the European Commission on Human Rights, made the court the sole adjudicative organ of the system, and made individual petition compulsory. Incorporation of the ECHR in national legal orders accelerated and the \textit{res interpretata} effect of the Court’s judgments was increasingly recognised, extending their application beyond the parties to any specific case and obliging states to comply with the Convention as interpreted by the Court.

However, the Court has faced serious challenges since 2000, including: a serious case-load crisis that has been only partially addressed and has recently worsened due to political crises in a range of states (e.g. Turkey, Hungary); adjudicative challenges related to the more serious human rights violations on its docket from newer state parties (e.g. torture in Turkey, forced disappearance in Croatia) and the maintenance of a coherent jurisprudence addressing an extremely diverse set of states; political backlash from states including the UK, the Netherlands, Russia, and Hungary; a declining level of compliance with its judgments, with partial compliance virtually the new normal; and the European Court of Justice’s 2014 decision blocking EU accession to the ECHR system.

Other International Courts

Given the economic focus of the European Free Trade Association (EFTA), the EFTA Court’s jurisdiction is confined to economic matters. The Court interprets the Agreement on the European Economic Area (EEA) as regards EFTA States that are party to the Agreement. Although it issues important decisions within its remit, the EFTA Court (unlike the ECJ) has not recognised the principles of direct effect and primacy of EFTA law, and domestic courts of last resort are under no treaty obligation to refer questions of interpretation to the Court. The Benelux Union Court has similarly expressed that it is not a supranational court and has emphasised the intergovernmental nature of cooperation in the Benelux Union. The Court of Justice of the Eurasian Economic Union (EAEU), established in 2015, has been accorded weak powers and has struggled to carve out a significant role for itself in the Union.\(^{28}\)

Domestic Courts

Domestic judicial power has developed significantly in Europe since the end of World War II. Constitutional courts, supreme courts, and highest administrative courts now tend to play a significant role in governance, although this is not universal: courts play a less pronounced role

\(^{27}\) \textit{Loizidou v Turkey}, App. no 15318/89, Grand Chamber Judgment, 23 March 1995, para. 75.

in states such as the UK, Denmark, Norway and the Netherlands. Constitutional courts are common in the region, found in Western European states such as Germany, Spain and Italy, and almost universal in the post-Communist states of Central and Eastern Europe (the one exception being Estonia, where the supreme court has a constitutional chamber).

With the rise of the EU and ECHR regional systems domestic courts have become ‘European’ courts, in the sense that they apply EU law and request definitive interpretations of EU law from the Court of Justice under the preliminary reference procedure (Article 267, TFEU); and when they apply norms of the ECHR. The Court of Justice and the European Court of Human Rights, in turn, have become ‘constitutional’ courts, as the judicial arms of the ‘constitutionalised’ orders of the EU and the ECHR system. The two separate regional orders have engaged in extensive cooperation to minimise divergences in their separate bodies of law, although the ultimate step—accession of the EU itself to the European Convention system—remains uncertain.

These developments, in the post-war decades, have gradually acclimatised domestic apex courts to the sharing of judicial supremacy. In the EU, they are required to operate in a pluralist context where neither they nor the Court of Justice can control the overall legal space.29 Threats arising from profound normative conflict, epitomised in the German Federal Constitutional Court’s line of Solange case-law30 and the Görgülü case,31 which asserted the Court’s role as ultimate guardian of fundamental rights as against the Court of Justice and the ECtHR, respectively, have not impeded the development of either regional system. Courts in newer member states, strongly influenced by German law,32 have also adopted a “relatively balanced attitude” toward European integration and the principle of supremacy of EU law.33 In the European Convention context, it has been suggested that a “fruitful dialogue has developed between the Strasbourg institutions and domestic courts whose respective case law mutually support and enrich each other”;34 and the Strasbourg Court has shown itself willing to accommodate and respond to occasional challenges to its jurisprudence by domestic courts.35

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That said, the complex inter-court relationship in Europe, across the regional and domestic levels, requires continuous and careful management. The scholar Nico Krisch, for instance, has analysed how interaction between constitutional courts and regional courts in Western Europe operates, not as a ‘constitutional’ order with a clear hierarchy, but as a plural legal order characterised by heterarchy, in which judicial strategy and judicial politics across the system divide allow the overall system to function without undue friction.36

Judicial Networks
Judicial Networks in Europe

The above regional developments have been accompanied by a dramatic proliferation of judicial networks, particularly since 2000. As discussed on p.37, the Council of Europe’s Venice Commission has fostered the development of a range of networks to further the Council’s fundamental mandate of promoting democracy, human rights and the rule of law across Europe. In the smaller geographic territory covered by the European Union, the progressive expansion of EU competences, particularly the aim of creating an Area of freedom, security and justice, has required increasingly intense engagement between national courts across the bloc, through mutual cooperation and mutual assistance in transnational cases, concerning criminal matters (e.g. extradition) and civil matters (e.g. child protection).

The Court of Justice of the European Union and the European Court of Human Rights, in particular, participate in a variety of European and global networks primarily aimed at linking domestic courts, including: the Association of the Councils of State and Supreme Administrative Jurisdictions (ACA-Europe); the Network of the Presidents of the Supreme Judicial Courts of the EU; and the European Network of Councils for the Judiciary (ENCJ); and global organisations such as the International Association of Supreme Administrative Jurisdictions (IASAJ). Although they have not established a formal judicial network, the two courts have been required to meet regularly in the past decade to discuss the prospect of EU accession to the European Convention on Human Rights. However, accession has stalled since a negative European Court of Justice ruling on the draft accession agreement in 2014 (Opinion 2/13 of 18 December 2014).

The Consultant, while working at the Supreme Court of Ireland for over six years, has had extensive experience of, and interaction with, all major European judicial networks. These networks foster dialogue on substantive issues, and a pan-regional sense of community, by facilitating regular meetings of judges; conferences on selected themes; databases which collect national case-law under one roof and make foreign case-law more accessible; ongoing information exchange; thematic questionnaires; and even an EU-wide judicial exchange programme. The formal EU bodies and the Venice Commission lead the pack, being the best-resourced and with the most extensive networks and activities. Indeed, in the EU context, “judicial integration” can run ahead of state-driven integration. It has been observed, for instance, that member state disagreement on the harmonisation of national law in order to create a regional area of security, freedom and justice has been partly “balanced” by the activity of judicial networks.


Council of Europe Networks

Two Council of Europe judicial networks are analysed in depth in the next section (Section 10):

- **Joint Council on Constitutional Justice (JCCJ):** A transregional network of constitutional courts from 61 states, as well as participation of European Court of Human Rights and European Court of Justice.

- **Superior Courts Network (SCN):** European network linking European Court of Human Rights and highest domestic courts.

**European Court of Human Rights (ECtHR)**

Like the Inter-American Court of Human Rights, the ECtHR engages in a range of activities that are not formal judicial networks but which aim to link the Court with domestic courts. Thus, as well as the formalised Superior Courts Network (see above), activities include:

- Events at the Court
- Opening of the Judicial Year
- ‘Dialogue between Judges’ seminar
- Other Seminars & Lectures

**Conference of European Constitutional Courts (CECC)**

Established in Dubrovnik (Croatia) in 1972, the Conference of European Constitutional Courts links representatives of 40 European constitutional courts (including supreme courts with constitutional review powers).

The Conference engages in a variety of activities: it organises congresses at regular intervals; and it promotes information exchange among its members concerning the constitutional review function. Overall, it provides a forum for the participants to share opinions on institutional, structural and practical problems facing constitutional courts across Europe. A core focus of the CECC is to assist in strengthening the independence of constitutional courts as an essential element of the guarantee and implementation of democracy, the rule of law and the protection of human rights.

The chairmanship of the CECC rotates every three years, and can only be held by a court that is a full member of the Conference.

**Consultative Council of European Judges (CCJE)**

The Consultative Council of European Judges was established in 2000 by the Committee of Ministers, (the executive organ of the Council of Europe) as an advisory body of the Council of
Europe for issues related to the independence, impartiality and competence of judges. It is the first body within any international organisation worldwide to be composed exclusively of judges. It remains a unique institution in the European landscape of judicial bodies.

The CCJE’s main activity is the adoption of Opinions concerning issues related to the judiciary, such as judges’ status and the exercise of their functions. These Opinions are provided to the Committee of Ministers. Specific requests may be sent by Council of Europe member States asking the CCJE to examine particular problems concerning the status or situation of judges in a given state. The CCJE addresses selected themes and topics and, when necessary, visits the affected country to discuss ways of improving the existing situation of judges. Its recommendations may relate to reform of the legislative framework, the institutional framework and/or judicial practice.

**Conference of Constitutional Control Organs of the Countries of New Democracy (CCCOCND)**

Although it is not formally a Council of Europe network, the CCCOCND has a cooperation agreement with the Venice Commission and is one of the regional groupings of constitutional courts whose establishment has been promoted by the Venice Commission. Since 2011 it has been one of the regional groups included as a constituent element of the Bureau of the World Conference on Constitutional Justice.

The CCCOCND began in 1997 as the Constituent Conference of Constitutional Control Organs of Countries of Young Democracy, with the participation of delegations from Armenia, Belarus, Georgia, Kazakhstan, Moldova, Russia, Tajikistan and Ukraine. The body’s mission and activities were set out in a Joint Communiqué issued at the Constituent Conference, which recognises the importance of constitutional review to the development of democratic processes and the rule of law in countries undergoing political transition. The communiqué states, inter alia, the aim to strive for maximum use of consultative cooperation and information exchange in addressing shared topics concerning constitutional justice. The Conference has a dedicated website containing links to participating courts’ websites and access to selected publications concerning constitutional review. The Conference also organises periodic meetings and

**EU Networks**

In the EU, a number of formal networks have been established to pursue EU justice goals, such as the European Judicial Network (EJN), as well as other organisations aimed at fostering a greater sense of judicial community, such as the Network of Presidents of Supreme Judicial Courts of the EU and the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU (ACA-Europe).
One EU network is analysed in detail in the next section (Section 10):

- **ACA-Europe**: The Association of Councils of State and Supreme Administrative Jurisdictions of the European Union.

**Network of Presidents of Supreme Judicial Courts of the EU**

The Network of Presidents of the Supreme Judicial Courts of the EU (hereinafter ‘Network of Presidents’ or ‘Network’) was established in 2004 at the French Cour de Cassation (supreme court) with the financial support of the European Commission (the executive/bureaucratic arm of the EU).

The Network provides a forum through which EU institutions can request the opinions of supreme courts and seeks to bring EU and domestic courts closer by encouraging discussion and the exchange of ideas.

The Network has a range of activities, including:

- Colloquia and conferences
- The Common Portal database: This is a meta-search engine of domestic case-law, launched in April 2007, and allows judges to simultaneously search multiple case-law databases. The members of the Network have access to the full version (which provides rapid, albeit rough, translations of foreign judgments. The public has access to a ‘lite’ version without the translation function.
- Judicial Exchange programme.
- Newsletter.

**European Judicial Network (EJN)**

The European Judicial Network in criminal matters (EJN) is a network of national contact points whose purpose is to facilitate judicial cooperation in criminal matters, especially with regard to combating serious crime. The EJN was created by the EU in 1998 to fulfil an EU Action Plan to Combat Organised Crime adopted in 1997. In 2008 the EJN's legal basis was strengthened and it has been an active body.

The EJN is composed of Contact Points in the EU Member States. These are nominated by each Member State from central authorities in charge of international judicial cooperation and the judicial authorities or other bodies with specific responsibilities relating to international judicial cooperation.
The EJN Contact Points carry out their role by establishing direct contacts between competent authorities and by providing the legal and practical information necessary to prepare an effective request for judicial cooperation or to improve judicial cooperation in general. In addition, the EJN Contact Points engage in the organisation of training sessions on judicial cooperation.

There are two types of EJN Contact Points: each Member State nominates (i) a 'National Correspondent', who has a coordinating role; and (ii) a 'Tool Correspondent', who ensures that relevant national information required for the EJN website is provided and updated, including the electronic tools of the EJN.

The EJN is administered by a Secretariat located at the EU's justice body (Eurojust) in The Hague, which has overall responsibility for the operation and continuity of the Network.

**Other Networks**

The above list of networks is not exhaustive. A host of other organisations aiming to connect judges across the EU and the European Economic Area (EEA) operate outside the formal aegis of the EU. These include the Association of European Competition Law Judges (AECLJ), the Association of European Administrative Judges (AEAJ), the European Association of Labour Court Judges, the EU Forum of Judges for the Environment and the European Judges and Prosecutors Association.

Beyond this, European courts participate in a variety of other judicial networks, such as:

- **Transnational networks** that transcend Europe or which are components of a transnational organisation.
  
  e.g. European Association of Judges and its parent organisation, the International Association of Judges (IAJ), and other bodies such as the International Association of Supreme Administrative Jurisdictions (IASAJ).

- **Linguistic networks** based on a shared language, e.g.
  
  - Hispanophone Ibero-American Conference of Constitutional Justice;
  
  - Lusophone Conference of Constitutional Jurisdictions of the Portuguese-Speaking Countries (CJCPLP);
  
  - Francophone Association des Cours Constitutionnelles ayant en Partage l’Usage du Français (ACCPUF).

- **Smaller groups of states within Europe**
  
  e.g. Franco-British-Irish Judicial Committee, which links judges from the three states.
In-Depth Review of 4 Selected Networks
Networks Selected for In-Depth Review

Four international judicial networks have been selected for in-depth analysis. These are:

- Ibero-American Judicial Summit (Latin America)
- Joint Council on Constitutional Justice (Global/Transregional)
- Superior Courts Network (Council of Europe)
- ACA-Europe (EU)

Rationale for the Selection

It will be noted here that three of the four main networks selected for analysis here are located in Europe. This is not due to a Euro-centric approach in the review conducted but, rather, is due to a variety of factors:

- The need to analyse networks with a diversity of approaches, governance structures and activities;
- The focus on a ‘lessons learned’ approach, which seeks to draw key lessons from long-established and well-developed judicial networks;
- The common issue facing Europe and Africa regarding diversity of legal systems and language, which is not as significant an issue in Latin America;
- The budgetary constraints facing the Inter-American Court of Human Rights, which has impeded it from establishing a network run by the Court;
- The lack of any regional human rights court(s) in the Asia-Pacific region;
- The lack of any meaningful comparator at the global level; and
- The limited relevance of many transregional judicial networks.

It will be seen below that no one network is without its deficiencies. Again, in crafting an African Judicial Network key lessons can be gleaned from the deficiencies of the Latin American and European networks, as well as the positive aspects of such networks.
Ibero-American Judicial Summit

Courts Linked

Highest domestic courts of Ibero-America – Representatives of international courts such as the Inter-American Court of Human Rights also attend Summits.

Aim

The Ibero-American Judicial Summit was established in 1990 and its overarching purpose is to provide a structure for cooperation, agreement and peer-to-peer learning among the highest courts of Ibero-America, which spans Latin America, Spain and Portugal. The Summit seeks to capitalise on the shared cultural heritage of Ibero-American states in order to strengthen the judiciary, and in doing so, to strengthen democratic governance and respect for diversity.

Governance

The governance bodies of the Ibero-American Judicial Summit are the Permanent Secretary’s office (currently the responsibility of the General Council of the Judiciary of Spain). Its function is to coordinate and assist the pro-tempore office, which falls to the countries that host the successive ‘editions’ of the Summit (see below) and which are also responsible for organising events. There is also a national coordinator for each country to guarantee permanent contact between the institution and the two offices: the permanent secretary’s office and the pro-tempore secretary’s office. Governance texts are the internal ‘Rules of Operation’ and the Statute of the National Coordinator.

Unlike the secretariats of many other judicial networks, the functions of the Permanent Secretary’s Office are set out in detail. These are set out on the Summit’s website as follows:

- Ensuring the regular organisation of the successive meetings of the summit as agreed at each Summit edition and as set out in the Rules of Operation.
- Permanently monitoring the fulfilment of the decisions, recommendations, projects and declarations adopted at each Summit, coordinating or supervising, where applicable, the activities carried out by the ad hoc commissions constituted for the monitoring or preparation of technical projects related to specific decisions, recommendations, projects and declarations.
- Carrying out or supporting the procedures aimed at finding finance for the summit’s projects, meetings and other activities.
- Helping the pro tempore secretary’s office to organise each edition of the summit, providing information and support.
- Filing the documentation prepared at the summits and keeping a permanently updated list of the individuals appointed as national coordinators.
• Providing and maintaining an exclusive website of the Ibero-American Judicial Summit to provide open information about the summit’s activities and results, as well as an exclusive work and communication area for the members.

• Setting up coordination mechanisms with the Ibero-American Summit of Heads of State and Government, which brings together the heads of state and government of Latin America and the Caribbean and the European Union, as well as with other conferences whose geographical scope or content coincides fully or in part with those of this summit or whose decisions may condition the objectives assumed as part of their projects, programmes or declarations.

**Membership**

The Summit links judges from Member States of the Ibero-American Community of Nations. These are 23 members in total: Andorra, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Puerto Rico, Paraguay, Peru, Portugal, Spain, Uruguay, Venezuela.

The Rules of Operation automatically confer full membership of the Summit on the supreme court (or courts) and councils of the judiciary of any new Member State of the Ibero-American Community. Courts are represented by the court president or his/her substitute.

**Activities: Summit**

The Summit is highly institutionalised, engages in a wide array of activities and is highly results-oriented.

• **Summit Editions:** The ‘editions’ of the Summit are the basis of the organisation’s activity. Each edition lasts for approximately 18-24 months and focuses on a theme adopted at the preceding plenary council. The theme for the XIXth Edition is "Modernization, public trust in justice, new technologies and transparency" and the related Summit meeting will take place in Quito, Ecuador in April 2018.

• **Working Groups:** Prior to each Summit meeting, 2-3 preparatory meetings are held at different locations and working groups are established to make preparations for specific discussions at the meeting. For instance, one of the recommendations made by the XVIIIth Summit (Asunción, Paraguay, 2016) was that steps should be taken to ensure that judicial decisions are expressed in clear and inclusive language that can be understood by court users. A Working Group was set up before the Summit, on “Justice and Clear Language: For the Citizen’s Right to Understand Justice.” Its purpose was to generate a policy for using simple and understandable judicial language, particularly for the benefit of individual court users.

• **Research:** Working Groups engage in significant research. For instance, the second preparatory meeting of the clear language Working Group included the presentation of an analysis of over 100 judicial sentences from Spain, Colombia, Chile, Uruguay, Mexico, Paraguay, Guatemala and El Salvador.
• **Follow-up activities:** Summit meetings lead to concrete activities. In the case of the clear language initiative above, the Summit will lead to the publication of a Pan-Hispanic Legal Dictionary to be adapted to the countries of Latin America.

• **National Best Practice:** The Summit draws on national best practice. For example, the clear language initiative in 2016 included presentation of a “Glossary of Legal Terms” issued by the Chilean courts. The 60-page publication addresses and explains the most frequently used terms in legal decisions in Chile.

• **Update Report:** The Update Report is a document issued every two years, presented to the Plenary Assembly of each edition of the Ibero-American Judicial Summit. The aim of the Report is to gather relevant information on interesting experiences, implemented in Ibero-American judicial systems since the adoption of the Statute of the Ibero-American Judge (May 2001) and the Charter of Rights of Persons before Justice (November 2003), which in some way seek to implement, develop or are inspired by the contents of the Statute or the Charter.

• **Commissions:** Successive summits have also led to the establishment of thematic Commissions. The current commissions are:
  - Commission for Coordination and Monitoring
  - Judicial Ethics Committee
  - Commission for the Follow-up of the Rules of Brasilia
  - Commission on Gender and Access to Justice
  - Environmental Justice Commission
  - Commission for Quality for Justice
  - MARC-TTD Commission

• **Normative Texts:** The Summit has adopted a range of normative texts, including: Ibero-American Judge’s Statute (2001); Ibero-American Code of Judicial Ethics (2006); Ibero-American Charter of Victims’ Rights (2012); Protocol on International Judicial Cooperation (2014).

• **Research Publications:** The Summit has also produced a range of research publications, including: ‘Brasilia Rules on Access to Justice for Vulnerable Persons’; ‘Globalisation, the Rule of Law State and Legal Certainty’; and ‘Judicial Ethics’.

• **Ibero-American Judicial Map:** The Summit website contains a useful compilation of information on the judicial systems of Member States.

• **Website:** The Summit’s website provides a useful one-stop-shop repository of information, publications, and resources produced under the aegis of the Summit.
• **Social Media:** The Summit contains a blog for Summit participants and also makes use of Twitter: (i) the Secretariat Twitter account tweets information about the Summit; and (ii) the Judiciary Twitter gathers tweets from participating courts.

• **Forums:** The Summit also contains a number of online forums.

**Budget**

The Consultant was unable to obtain specific information on the Summit’s budget.

**Advantages**

The Summit model has a wide range of advantages:

**Clear and representative governance:** The governance bodies allow for the participation of members across the Summit. Detailed rules in the Rules of Operation and the Statute of the National Coordinator appear to assist in achieving a clear allocation of competences.

**Results-focused:** The Summit model of focusing on a specific theme for a set period of 18-24 months appears to provide a level of focus that leads to concrete results in terms of the elaboration of normative texts and thematic publications.

**Mindful of national practice:** The Summit places emphasis on not only mapping national best practice but also in charting whether its initiatives and normative texts have an impact at national level.

**Citizen-focused:** The Summit’s activity is admirably citizen-focused and emphasises the judge’s role as a servant of the people.

**Disadvantages**

**Complexity:** Although it does not seem to be a significant problem for the Summit, as a model for a new Network the Summit is quite complex.

**Ibero-American map:** Although it compiles a lot of useful information, the Ibero-American map is not very user-friendly and could be improved.

**Website:** The Ibero-American website as a whole may be viewed as requiring an update.
Joint Council on Constitutional Justice

Prefatory Note

In the interests of transparency it should be noted that the Consultant has significant links with the Joint Council on Constitutional Justice (JCCJ): He represented the Supreme Court of Ireland on the JCCJ from 2008-2011. He has also been a Consultant Editor of the JCCJ’s main flagship publication since 2009; the *Venice Commission Bulletin on Constitutional Case-Law*.

Courts Linked

Constitutional courts – European Court of Human Rights – European Court of Justice.

Aim

The Joint Council on Constitutional Justice was established in 2001. Its purpose is to link courts with responsibility for constitutional justice and to provide a platform for the sharing of case-law and other information between courts.

Governance

The Council is composed of members of the Venice Commission and the liaison officers, appointed by the constitutional courts that are members of the Council. The Council has a double presidency and its meetings are co-chaired. One of the chairs is a member of the Venice Commission, elected by the Commission at a plenary session. The other is a liaison officer, elected by the liaison officers during the meetings of the JCCJ. The mandates of the co-chairs run for two years each. The Council also has a well-resourced Secretariat.

Membership

Although it began as a European body, the JCCJ is now a transregional body that links courts across all world regions through expansion of the Venice Commission’s membership beyond the 47 European member states to 14 non-European states in Africa, Latin America, and Asia in particular. The geographical scope of the JCCJ covers the 61 Venice Commission member states, associate member states (Belarus), observer states (e.g. Canada) and states or entities with a special cooperation status equivalent to that of an observer state (South Africa, Palestinian National Authority). Within the JCCJ, all participating courts – whether from member or observer states – benefit from the same type of cooperation. The European Court of Human Rights, the Court of Justice of the European Union and the Inter-American Court of Human Rights also participate in the Joint Council.

There are various types of membership:

- Full member
Activities

The purpose of the JCCJ is to shape the tools provided by the Venice Commission that enable the exchange of information and cross-fertilisation between courts. These tools are:

- **The Bulletin on Constitutional Case-Law**
  The *Bulletin* is a quarterly hard copy publication of the Venice Commission, which contains summaries of important judgments handed down by constitutional courts participating in the JCCJ. Liaison officers are integral to drafting and sharing these case-summaries, which are then edited to ensure that they can be understood by an international audience (e.g. by explaining unusual features of the domestic system). The *Bulletin* was initially the sole activity of the Joint Council, but activities have expanded over time.

- **The CODICES constitutional case-law database**
  The CODICES database provides access to *Bulletin* case-summaries from all constitutional courts participating in the JCCJ. These can be searched through a Systematic Thesaurus and an Alphabetical Index, both of which set out a wide range of keywords. The database also provides access to: constitutions of participating states; and case summaries for the *Bulletin*, which are in the process of editing.

- **The Venice Forum** is a private platform through which constitutional courts can seek information on constitutional law from other courts. There are now three dimensions to the Venice Forum:
  - **The “Classic” Venice Forum**: This is a system based on e-mails that are shared on a restricted website, on which liaison officers can safely exchange information regarding pending cases before their courts.
  - **The Newsgroup**: The Newsgroup is used by JCCJ liaison officers and the Secretariat to inform all liaison officers about, inter alia, new appointments to participating courts, important judgments, conferences or accesses to the World Conference on Constitutional Justice (WCCJ). Liaison officers are alerted every Friday of any items added to the Newsgroup during the week.
  - **Constitutional Justice Media Observatory**: The Observatory contains a selection of media articles related to constitutional justice. This selection is sent on a weekly basis, by e-mail, to liaison officers and Venice Commission members who have registered with the Secretariat. The articles featured in the Observatory are also
archived on the Venice Forum website, where they can be accessed by country or by date. It is possible for liaison officers to add to any information provided by the court concerned or to seek removal of an article.

Other Activities

The Joint Council also:

- Steers co-operation with regional and linguistic groups and the World Conference on Constitutional Justice (WCCJ);
- Follows the activities of the Venice Commission in the field of constitutional justice (e.g. the issuance of opinions); and
- Has started to expand the constitutional justice library in Strasbourg into an electronic library.

The Limits of Openness

In 2010 the Venice Commission to a proposal by a German constitutional law professor to add to the “Classic” Venice Forum by establishing a parallel Venice-Monnet Web-Forum. The aim was to facilitate and promote academic exchange between JCCJ participants and academics. The new forum allowed constitutional court representatives to send constitutional law queries not only to other court representatives on the Joint Council and members of the Venice Commission more widely, but also to approved scholars. Discussion would concern constitutional law, including human rights law, with a focus on constitutional justice.

The Venice-Monnet Web-Forum did not develop as planned, largely due to reticence among the Joint Council members as regards communicating with external researchers. The Consultant attended the first Joint Council meeting at which the new forum was proposed, and, while maintaining the confidentiality of the meetings, it can be said that many concerns related to anonymity and misuse of shared data (it should be emphasised that this did not relate to any suspicion of the German scholar who proposed the new forum, but was a more generalised concern).

Budget

The JCCJ does not have a separate budget within the Venice Commission and was unable to provide budget details.

Advantages

There are many advantages to the structure and functioning of the JCCJ.

Efficient secretariat: The Secretariat of the JCCJ is a streamlined and efficient body that is very capably managed.
Representative governance: The double presidency system seeks to ensure adequate representation of both the Venice Commission as an organisation and the constitutional court liaison officers as a cohort.

Clear ‘added value’: As a former liaison officer within the JCCJ, the Consultant would offer that the Council provides a very useful forum for connecting with other courts with constitutional jurisdiction, gaining access to information on constitutional case-law and practice, and for providing a sense of community with other constitutional courts.

Disadvantages

Time commitment: The principal disadvantage of the JCCJ system is that it can require a significant time commitment on the part of the liaison officers. This is not a problem for well-resourced courts with many staff, but for smaller and under-resourced courts (such as the Supreme Court of Ireland during the Consultant’s tenure at that court) drafting case-summaries for the Bulletin and answering queries from other courts through the ‘classic’ Venice Forum can be burdensome. For instance, in 2015, 34 queries concerning constitutional law were sent by courts to the other participating courts through the ‘classic’ Venice Forum.

Engagement by participants: Although the general level of engagement of liaison officers in the JCCJ is high, the JCCJ has occasionally experienced problems with the engagement of some liaison officers. There is also variable engagement with different activities: compared to the high level of engagement in producing Bulletin summaries and responding to queries through the ‘classic’ Venice Forum, there has been a rather low engagement with the Newsgroup, for instance.

Limited connection to international courts: It may also be said that, although representatives of the European Court of Human Rights and the European Court of Justice participate in some JCCJ activities, the body does not establish a strong connection between domestic courts and these international courts.
Superior Courts Network (SCN)

Courts Linked

European Court of Human Rights (ECtHR) – highest domestic courts of States subject to the jurisdiction of the ECtHR.

Aim

In 2015 the European Court of Human Rights established the Superior Courts Network (SCN) in order to provide a practical and useful forum for the effective exchange of information between the Court and the highest courts of the Contracting States on the Court’s case-law, Convention law and practice, and relevant domestic practice regarding the Convention.

The overall aim of the SCN is to enrich dialogue and the implementation of the Convention. (As such, it closely mirrors the overarching purposes of the proposed African Judicial Network.) The SCN builds on the European Court’s existing practice of arranging visits to domestic courts.

Pilot Basis

The Network was officially launched in October 2015 and proceeded initially on a trial basis with a limited number of courts, including the highest courts of the European Court’s host state (France).

The trial period with two French superior courts took eight months. During this period, the Network focused on exploring which information could be most usefully exchanged, how to manage the exchange of said information, and how to develop the relationship between the ECtHR and the national superior courts.

Building on the (informal) feedback of French courts and lessons learned from the trial phase, the Jurisconsult drew up two formal documents: the Cooperation Charter and the Operational Rules of the Network.

Governance Structure

The SCN Network is governed/managed by the ECtHR, under the Jurisconsult’s authority. The governance structure is less formal than that of the JCCJ, discussed above, and has two dimensions: (i) the general management under the Jurisconsult by a team of staff, and (ii) the additional support and activity of a retired ECtHR judge, appointed by the President of the ECtHR to act as a driving force.

1. **SCN Team**

   The SCN Team comprises five key individuals, none of whom work full-time for the SCN:
   
   - Mr Lawrence Early, Jurisconsult (who I understand is entrusted with overall management)
• Ms Anna Austin, Deputy Jurisconsult
• Ms Onur Andreotti, Lawyer, Research and Library Division, SCN Principal Administrator
• Ms Rachael Kondak, Lawyer, Research and Library Division, SCN Support Team
• Ms Rodica Gonta, Assistant, Directorate of the Jurisconsult, SCN Administrative Assistant, Webmaster)

The principle administrator (Ms Andreotti) coordinates a group of 20 Registry focal points (the majority of whom work within the Jurisconsult Directorate) and works currently with two assistants for the SCN Intranet, one assistant within the Research Division on comparative work, under the direct supervision of the Deputy Jurisconsult and the Jurisconsult at the last resort.

Additional staff may be required for specific tasks (such as the organisation of the SCN Forum; see below).

The SCN team collaborates closely with other parts of the Court Registry: mainly with the Research Division but also the IT Service; the case-law Information Division; visitors and press services for events and communications, as required.

2 Justice Mark Villiger as a Key Driving Force

Justice Mark Villiger, former Judge of the European Court of Human Rights, acts as SCN Adviser to the President. He has played an integral role in establishing and developing the SCN.

Justice Villiger, as a former Judge, was requested by the then President of the ECtHR in 2015 to act as his liaison on the SCN. Mr Villiger provides input to the management of the SCN and acts as the high-level external contact of the SCN. In this role he has made several public speeches and has chaired relevant meetings as well as the Focal Points Forum.

Main Activities

With the Pilot phase having been deemed a success, the Network now engages in two key activities:

1 Dedicated Intranet: Launched in June 2016 to facilitate direct dialogue between the Court and domestic courts.

The SCN Intranet website is accessible by national focal points, Registry focal points and the Registry administration team. There are also two levels of access for national members of the SCN:

(i) Full accessibility (all members)

– to the information regularly shared by ECHR (see below) and
– to the “country pages” with contact information of the national focal points, links to the national law data bases as well as to documents related to the ECHR
Convention that have been shared by member courts (This facilitates the information sharing and interaction between the member superior courts).

(ii) **Limited accessibility (national focal point(s) of a given country only)** to the “country forum” where the exchanges between FP take place, mainly on comparative research requests and formal research requests.

**Moderation:**

The exchanges between national member courts are not moderated by the Court. The SCN is mainly designed and operated as a **bilateral** exchange platform (ECtHR with each of the member superior courts).

**The types of documents regularly shared by the EtCHR:**

- Case-Law Updates (CLUs) which are short notes prepared by the Jurisconsult and made available to all member superior courts on the date of delivery of decisions and judgments of jurisprudential significance. The CLUs concern therefore some Chamber cases and all Grand Chamber cases. They are designed to highlight the jurisprudential significance and any other noteworthy aspects of the relevant judgment.

- “Weekly Updates”: These are weekly tables containing the Jurisconsult’s selection of noteworthy judgments/decisions which have been delivered during the week.

- Research reports on ECHR case-law,

- Thematic lists of selected case-law, as useful reference points.

**Examples of documents shared by national superior courts (with all members, ad hoc basis):** Selected rulings of member courts related to the ECHR; case-law updates or memos; “bulletins d’information” with information on national law related to the Convention. These documents need to be drafted in English or French.

2 **SCN Focal Points Forum:** Organised as an opportunity to meet and exchange and further enhance the ongoing dialogue between SCN members. The first meeting was held on 16 June 2017.

**Additional Activities**

The SCN envisages the extension of activities to thematic conferences, seminars and trainings, of three types:

- **Online trainings on the use of HUDOC** (the ECtHR case-law database) and other publicly available ECHR research material are offered to SCN members;

- **Thematic web-Conferences on ECHR case-law** may be requested by SCN members;
• The SCN plans to include in the format of the regular SCN Focal Points Forum a seminar/workshop on substantive ECHR case-law matters.

Membership

Highest domestic courts in any Contracting Party to the European Convention on Human Rights may apply for membership of the SCN by sending an expression of interest to the President of the European Court. To date, 60 courts from 33 states have joined.

Budget

The SCN does not have a separate budget within the ECtHR and was unable to provide information on the cost of its activities.

Advantages

There are many advantages to the way in which the Superior Courts Network has been established, the nature of its governance, and the activities it undertakes.

Pilot basis: The decision to establish the Network on a trial basis appears sensible and allowed for a spirit of experimentation in crafting the Network’s focus and activities.

Efficient governance: The governance structure, by following an informal model, appears to be efficient and flexible.

Tailored activities: The activities undertaken appear to be carefully tailored to the Network’s mission of facilitating the effective exchange of information between the ECtHR and the highest courts of the Contracting States on the Court’s case-law, Convention law and practice, and relevant domestic practice regarding the Convention.

Disadvantages

Representative governance: That the governance of the Network rests entirely within the ECtHR might be viewed as problematic insofar as domestic courts have no place in the formal structures of the Network and governance can appear rather ‘top-down’. That said, the individuals responsible for governance appear to favour consultation and seem responsive to the feedback received from participating domestic courts.

Limited utility as a model: It is also clear that the type of governance that the SCN enjoys is possible only for a particularly well-resourced court with high staffing levels. While this is not a disadvantage of the SCN as such, it does serve to limit its utility as a model in this respect.

Reticence of members: At the beginning of their membership, some members have been reluctant to use the Intranet, in particular the country forum and preferred e-mail exchanges. The SCN has indicated that it aims to improve and adapt the system following their feedback and to encourage them to use the SCN Intranet.

Problematic membership application process: The procedure established for members to accede to the SCN appears flawed insofar as it leaves the initiative entirely in the hands of the
highest domestic courts. The result to date has been that some states are overrepresented in the Network (some having even 3 or 4 courts as Network members) while many have not acceded to the Network.

Among the 47 ECtHR Member states, there are:

- 16 Member States that have not joined the Network: Andorra, Azerbaijan, Belgium, Bulgaria, Denmark, Estonia, Finland, Iceland, Ireland, Liechtenstein, Malta, Norway, Republic of Moldova, Sweden, Switzerland, United Kingdom.
- 19 Member states with multiple courts represented: Albania, Armenia, Belgium, France, Germany, Greece, Hungary, Lithuania, Luxembourg, Moldova, Monaco, Montenegro, Netherlands, Poland, Portugal, Slovenia, "The Former Yugoslav Republic of Macedonia", Turkey, Ukraine.

Overall Reflections

The SCN provided the following illuminating overall reflections concerning the Network in their questionnaire response:

The mission of the Network being information and knowledge sharing, on the Court’s side, keeping the exchanges rich and fluid is essential. Our experience shows that this is almost an every-day work: the quality and regularity of the personal contacts (of focal points) is key to build up a Network which is also a community. Trustful relationships are obviously the precondition of all. People need to feel that they are listened and that they are actors of the development of the Network as a professional cooperation tool. They need to be able to ask questions to their ECHR counterparts with ease. A sensible balance between formality (for the scope of questions and replies) and informality (for the relationship) needs to be kept.

On the place of SCN within the Registry work, clear processes, good communication and coordination with relevant colleagues (mainly Registry lawyers) is essential. Choices are to be made for giving well-focused information on SCN, this new and sui generis tool which may have relevance with their work, without bombarding them with too much information.

Concerning all exchanges outside of the ECHR Registry (relevant Council of Europe bodies, other European Networks), a particular attention needs to be brought to possible duplications, complementarities and the need to avoid “network fatigue”.

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39 Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, “The former Yugoslav Republic of Macedonia”, Turkey, Ukraine, United Kingdom.
ACA-Europe

Courts Linked

The Court of Justice of the EU and highest domestic administrative courts.

Aim

ACA-Europe was established in 1998, building on regular colloquia of administrative courts in previous decades. The Association’s statute states that its aim is “to promote within its financial limits exchanges of views and experience on matters concerning the jurisprudence, organisation and functioning of its Members in the performance of their judicial and/or advisory functions, particularly with regard to Community Law.”

Governance

The Association’s governance structure includes: a General Assembly (GA), General Secretariat and Board. The GA is composed of the European Court of Justice and highest administrative courts across Europe. The Board is composed of judges from the ECJ as well as judges from the highest administrative courts across the EU.

Membership

The Association’s membership includes full members (from EU states), invited non-EU members (Norway and Switzerland), and observer members from states in EU accession negotiations (Montenegro, Serbia, Turkey).

Activities

The Association carries out a wide range of activities. Specific activities are:

- **Colloquia** (held every 2 years)
- **Seminars** (held regularly on selected themes)
- **Newsletter**
- **Transversal Analysis** (cross-country analysis aimed at enhancing comparative understanding of, and enhancing, the implementation of EU law)
- **Reflets** (a periodic publication on ‘Legal Developments of Interest to the European Union’, which provides analysis of, *inter alia*, relevant judgments of domestic courts and the European Court of Human Rights)
- ‘**Tour of Europe’** (Information on each member state’s judicial system, similar to the Ibero-American Judicial Summit’s ‘Ibero-American Judicial Map’. The ACA-Europe version provides an interactive map, which is very user-friendly)
• **Case-law databases**
  
  – **Jurifast**: contains the references and the full text:
    
    a) of the “preliminary files” with:
      
      - the preliminary question submitted to the Court of Justice of the European Union
      - the Court's answer to this question
      - the national decision(s) following this answer
    
    b) of other national decisions on the interpretation of European Union law (decisions without reference).
  
  – **Dec.Nat**: contains
    
    a) national case law regarding EU law and
    
    b) the reference to annotations and comments in books and articles related to national decisions and judgements delivered under the preliminary ruled procedure by the CJEU concerning those matters.

• **ACA Forum** (a dedicated intranet to facilitate communication between the member courts on matters within the Association’s activities)

• **Library of European administrative law** (a short bibliography containing key texts)

• **Judicial exchanges** (which facilitates visits by judges from member courts of the Association to other member courts of the Association)

**Budget**

The Consultant has been unable to obtain budget information for ACA-Europe.

**Advantages**

ACA-Europe’s model has a significant number of advantages.

**Representative governance**: The governance structures permit a wide representation of Network members, including real collaboration between domestic and international judges, and the inclusion of observers.

**Range of activities**: The range of activities is among the widest of any judicial network worldwide. Meetings tend to be very efficiently organised.

**High-quality website**: The Association has an attractive, well-developed and user-friendly website. The ‘Tour of Europe’ feature on the Association’s website provides a useful interactive map of judicial systems across the EU.

**Innovative judicial exchange programme**: The Association has pioneered an EU-wide judicial exchange programme to foster peer-to-peer learning by judges, the benefits of which the
Consultant has witnessed first-hand (in organising judicial visits to the Supreme Court of Ireland under the exchange programme).

**Disadvantages**

**Bureaucratic governance:** The Consultant’s experience of interacting with ACA-Europe while at the Supreme Court of Ireland from 2005-2011 is that, although having introduced key innovations, its processes are highly bureaucratic.

**Limited use of the ACA-Forum:** The ACA-Forum (intranet), at least in the Consultant’s experience, was not widely used and was not adapted to the needs of domestic courts.

**Database confusion:** The existence of two separate databases tended to cause confusion among participants in the Network.

**Civil law/common law divide:** The Association is also dominated by courts in the civil law tradition and struggles to accommodate the very different approach to administrative law in common law states.

**Limited library:** The library of administrative law is extremely short.
LESSONS LEARNED

GOVERNANCE

There are a wide array of governance models. Smaller executive bodies based in one institution may be more efficient, but are less formally representative. That said, a responsive 'in-house' executive body can function so as to give a greater voice to participating courts in the development of the network. An excessively rigid or bureaucratic approach should be avoided.

RETICENCE

Courts can be reticent to participate in network activities. This can arise due to a lack of time or lack of familiarity with the tools and platforms used by the network. Care should be taken to consider the staffing levels and workloads of participating courts when designing network activities.

COMMUNICATION

Communication is key. The executive body of the network should seek to build good communication with participating courts and be responsive to feedback, both negative and positive. The quality and regularity of personal contact with participants is key to building a Network which is also a community. A good balance should be struck between formality and informality. Clear communication within the network’s executive and other governance organs is also essential.

TRAINING

If special tools are developed by a network (e.g. a dedicated intranet or case-law database), training will be needed to ensure that all court representatives are able to participate. Training may need to be periodic due to turnover of court representatives.

‘NETWORK FATIGUE’

A concern for all networks is adding to participants' 'network fatigue'. Care should be taken to avoid duplication of activities carried out by other networks and to ensure coherence and complementarity between different networks.
LESSONS LEARNED

It is not necessarily the case that more activities make a better network. This depends entirely on the network’s objectives and the nature of the courts participating. Attempting to engage in too many activities may have negative effects. There should be a ‘business case’ for engaging in each activity, clearly linked to the network’s objectives. Similarly, network activities should not duplicate activities by other organisations (e.g. databases and publications produced by academic bodies). The multi-year thematic focus of the Ibero-American Judicial Summit appears to provide a significant level of focus.

Networks should not be afraid to experiment with different activities. Limited success of an activity can still be a fruitful learning experience (as seen in the JCCI’s Venice Commission-Jean Monnet Forum to link scholars and court representatives).

The Venice Commission-Jean Monnet Forum experience underscores that there are limits to how open judges and other court representatives may be to interacting with non-judicial actors. The importance of open, frank, and honest communication between judges should be an overriding priority when balanced against the principle of openness.

Establishing a network on a trial basis allows for a spirit of experimentation and flexibility in crafting a network’s activities. It also gives the governance organs time to find their feet and provides time to build ‘buy in’ and commitment of participating courts and potential participants. Beyond pilot trials, many networks’ activities tend to expand over time.

The network should be careful to manage the admission of members and the procedure for applying for membership. As the SCN experience shows, leaving it open to courts in member states to decide on applying for membership, with few restrictions or guidelines, can lead to incomplete and unbalanced membership in the network, and is hard to reverse.
Overview:
Existing Judicial Networks in the AU
Introduction

A comprehensive review of existing international judicial networks lies beyond the scope of the Terms of Reference for this report. Nevertheless, this section provides a brief snapshot of these networks in order to provide a useful basis for the proposals for an African Judicial Network in Section 13 below. The main insight offered by this snapshot is that, at present, no continent-wide judicial network exists in the African Union to link domestic courts, regional courts, and the African Court on Human and Peoples’ Rights.

Principal International Judicial Networks

The principal international judicial networks are:

- Conference of Constitutional Jurisdictions of Africa (CCJA)
- West African Jurists Association (WAJA)
- East Africa Judges and Magistrates Association
- East African Community (EAC) Chief Justices Forum
- ECOWAS Chief Justices Forum
- Southern African Chief Justices Forum (SACJF)

Other Relevant Activities

In addition, although it is not a formalised network (lacking governance structures, in line with the definition of an international judicial network above) the African Judicial Dialogue has been held on a biennial basis since 2013. The Third African Judicial Dialogue (at which this report was presented) took place Arusha, Tanzania, on 9-11 November 2017.

Beyond the African Judicial Dialogue, regional courts and the African Court on Human and Peoples’ Rights (in a similar manner to the Inter-American and European human rights courts) engage in a range of other activities to interact with domestic courts, including country visits and sensitisation missions.

It may be noted that a previous organisation, also known as the African Judicial Network and which was established in the early 2000s, appears to be defunct (a website for the Network, listed in various online sources as http://ajn.rti.org, is no longer accessible).
**AFRICAN UNION**

**MAIN REGIONAL ORGANISATIONS & COURTS**

The African Union contains a complex configuration of eight separate, but often overlapping, regional economic communities. The advantage in Africa is that, compared to Latin America and Europe, all integration projects come under one roof: the AU itself. The only international court operating at the AU level is the African Court on Human and Peoples’ Rights.

**COURTS & NETWORKS**

Six of the eight regional economic communities have courts. The two communities that do not have a court are CEN-SAD and IGAD. The ECCAS court is not yet operational.

International judicial networks have been established which serve the regions covered by the EAC, ECOWAS and SADC.
4 TYPES OF NETWORK

1 Regional (Continent-Wide)

There are two main judicial networks that span the entire continent:

- Conference of Constitutional Jurisdictions of Africa (CCJA)
- Constitutional Judges’ Working Group – African Network of Constitutional Lawyers (ANCL)
- African Judicial Dialogue (not technically a network but included here for relevance)

2 Sub-Regional

There are four principal networks within sub-regional integration projects. Two of the four connect chief justices across the Member States of the given organisation or area:

- East African Community (EAC) Chief Justices Forum
- Southern African Chief Justices Forum (SACJF)
- East Africa Judges and Magistrates Association (E AJMA)
- West African Jurists Association (WAJA)

3 Transregional/Global

As suggested in Section 8 above, African courts also participate in a number of wider international judicial networks:

- BRICS Justices Forum
- Commonwealth Magistrates’ and Judges’ Network (CMJA)
- International Association of Judges (IAJ)
- International Association of Supreme Administrative Jurisdictions (IASAJ)
- Union of the Arab Constitutional Councils and Courts (UACCC)
- Venice Commission Joint Council on Constitutional Justice (JCCJ)
- World Conference of Constitutional Justice (WCCJ)

4 Linguistic

African courts also participate in a number of networks for courts sharing a common language; namely, French and Portuguese.

- Association des Cours Constitutionnelles ayant en Partage l’Usage du Français (ACCPUF)
- Conference of Constitutional Jurisdictions of the Portuguese-Speaking Countries (CJCPPLP)
REGIONAL NETWORKS

African Judicial Dialogue (AJN)

Objective: Although not technically a judicial network under the definition above, the African Judicial Network has been organised on a biennial basis since 2013 to help realise the potential for valuable cross fertilization of jurisprudence between continental, regional institutions, and domestic courts across the African Union, with a particular focus on the application and interpretation of the African Charter on Human and Peoples’ Rights, other continental and regional human rights instruments and domestic constitutions.

Membership: The AJN does not have a formal membership system but it is the sole forum in the African Union that brings together courts across all governance levels and legal frameworks across the Union.

Activities: The three dialogues held to date have focused on structured discussion of selected themes. The theme of the Third Dialogue, held in Arusha (Tanzania) on 9-11 November 2017 was 'Improving Judicial Efficiency in Africa'.

Conference of Constitutional Jurisdictions of Africa

Links all highest constitutional review courts. The CCJA has signed a Memorandum of Understanding with the African Union on 2 April 2015.

Members: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Côte d’Ivoire, Congo, Djibouti, DRC, Egypt, Ethiopia, Gabon, Ghana, Gambia, Guinea, Guinea-Bissau, Equatorial Guinea, Kenya, Madagascar, Mali, Mauritania, Mozambique, Namibia, Niger, Nigeria, SADR, Rwanda, São Tomé, Senegal, Seychelles, Sierra Leone, South Africa, Sudan, Swaziland, Tanzania, Togo, Zambia, Zimbabwe
SUB-REGIONAL NETWORKS

Southern African Chief Justices Forum (SACJF)
Activities: Annual conference, thematic conferences, meetings of court staff
Members: Angola, Botswana, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe

EAC Forum of Chief Justices
Activities: The forum has been operating an annual conference of Chief Justices since 2005.
Members: Burundi, Kenya, Rwanda, South Sudan, Tanzania, and Uganda

ECOWAS Judicial Platform
Activities: The ECOWAS Court of Justice has been canvassing since 2013 for the creation of a regional platform to bring together judges from ECOWAS Member States and aid the develop of Community law.
ECOWAS Members: Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo
East African Magistrates’ and Judges’ Association (EAMJA)

Activities: The East African Magistrates’ and Judges’ Association (EAMJA) draws membership from the organizational bodies representing magistrates and judges in Kenya, Tanzania, and Uganda. Established in 2000, EAMJA has organised various activities concerning judicial issues of sub-regional concern. The EAMJA has been granted observer status with the East African Community (EAC), which has promised support for the EAMJA. An additional project is publication of The East African Judicial Journal.

Members: Kenya Magistrates and Judges Association, Judges and Magistrates Association of Tanzania, Uganda Judicial Officers Association

West African Jurists Association (WAJA)

Activities: WAJA was established in 2016 by jurists from West Africa. The Association aims to provide a platform for judges and lawyers from the region to further contribute towards the consolidation of democracy, the rule of law and respect for human rights in West Africa. Other objectives include the promotion of the harmonisation of the legal texts of the Community in the spirit of Article 3(2) a of the 1993 ECOWAS Revised Treaty and defend the principle of the independence of the judiciary.

Members: Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo
Commonwealth Magistrates’ and Judges’ Network (CMJA)
Links courts across the Commonwealth.
African Members: Current members on the elected council for the regions West Africa and East, Central and Southern Africa are Ghana, Lesotho, Kenya, Zambia, Nigeria, Malawi

Union of Arab Constitutional Courts & Councils (UACCC)
Links courts across North Africa and the Middle East.
African Members: Algeria, Egypt, Libya, Morocco, Mauritania, Sudan, Tunisia

Venice Commission Joint Council on Constitutional Justice (JCCJ)
Transregional judicial network linking courts in Europe, Latin America, Asia and Africa. (See previous section)
African Members: Algeria, Morocco, Tunisia. South Africa has special status within the Venice Commission and participates in some JCCJ activities.
BRICS Judicial Forum

Links top judges across the BRICS states (Brazil, Russia, India, China, South Africa).

African Members: South Africa is the sole African state that participates in this network.

GLOBAL NETWORKS

International Association of Supreme Administrative Judges (IASAJ)

Links highest administrative courts worldwide.

African Members: Algeria, Angola, Benin, Burkina Faso, Burundi, Central African Republic, Cameroon, Cape Verde, Chad, Côte d’Ivoire, DRC, Egypt, Gabon, Gambia, Guinea, Kenya, Madagascar, Mali, Morocco, Mauritania, Mozambique, Niger, Rwanda, Senegal, Togo, Tunisia

International Association of Judges (IAJ)

Links courts worldwide.

African Members: There are 18 members in the African Group of the IAJ - Algeria, Benin, Cameroon, Côte d’Ivoire, DRC, Egypt, Guinea, Lesotho, Mali, Mauritania, Morocco, Mozambique, Niger, São Tomé and Príncipe, Senegal, South Africa, Togo, Tunisia
GLOBAL NETWORKS (cont’d)

International Association of Women Judges (IAWJ)

Links female judges worldwide.
African Chapters: Botswana, Cameroon, Ghana, Kenya, Malawi, Nigeria, South Africa, Tanzania, Uganda, Zambia, Zimbabwe

International Association of Refugee Law Judges (IARLJ)

Links judges with responsibility for refugee law.
Nationality of IARLJ members (NOTE: many members are simply listed as ‘African Chapter’): Algeria, Benin, Burundi, Cameroon, Côte d’Ivoire, Guinea-Bissau, Kenya, Libya, Malawi, Morocco, Mozambique, Nigeria, Sierra Leone, Somalia, South Africa, Sudan, Togo, Tunisia, Uganda, Zimbabwe

World Conference of Constitutional Justice (WCCJ)

Links 112 courts with constitutional jurisdiction across the world.
African Members: Algeria, Angola, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, DRC, Côte d’Ivoire, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Guinea, Guinea Bissau, Kenya, Madagascar, Mali, Mauritania, Morocco, Mozambique, Namibia, Niger, São Tomé & Principe, Senegal, South Africa, Swaziland, Tanzania, Togo, Uganda, Zambia
**Linguistic Networks**

**Association des Cours Constitutionnelles ayant en Partage l’Usage du Français (ACCPUF)**

Links courts worldwide from Francophone states.

African Members: Burkina Faso, Burundi, Central African Republic, Cameroon, Cape Verde, Chad, Comoros, Congo, Côte d’Ivoire, Djibouti, DRC, Egypt, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Madagascar, Mali, Morocco, Mauritania, Mauritius, Mozambique, Niger, Rwanda, Senegal, Seychelles, Togo, Tunisia

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**Conference of Constitutional Jurisdictions of the Portuguese-Speaking Countries (CJCPLP)**

Links courts worldwide from Lusophone states.

African Members: Angola, Cape Verde, Guinea Bissau, Mozambique, São Tomé & Principe
A Tailored Approach for the African Context
Introduction

The Terms of Reference for this report emphasises the need for a model of an African Judicial Network “that would be suitable for African judicial bodies”. This section briefly canvasses several key features of the African context, and particularly the nature and organisation of judicial power on the continent, that should shape the design of the African Judicial Network. Evidently, this cannot be a comprehensive or exhaustive conspectus of the particularities of the African context. The aim here is simply to draw out the most salient features which point toward key priorities, positives and challenges to bear in mind when designing the Network.

It may be noted here that the Final Communiqué of the Second African Judicial Dialogue (Arusha, Tanzania, 4-5 November 2015) noted that discussions had identified a wide range of challenges for courts across the AU:

i. Lack of awareness about African human rights mechanisms in general and specifically the African Court and its jurisprudence by national Courts;

ii. Lack of access to the African Court due to low ratification and deposit of the declaration;

iii. Lack of codification/domestication of international instruments into national law;

iv. The challenge of adequate funding and provision of human and technical resources for continental, regional and national courts;

v. The challenge of implementation of decisions of continental and regional courts;

vi. The lack of information and access to international instruments and decisions of international courts by national courts and vice versa; and


This section considers these aspects but reformulates them in the light of their relevance to the establishment of an African Judicial Network. In doing so, this section attempts to identify positive points as well as challenges.

11 Key Features of the African Context

1 Diversity of Legal Traditions and Language
One of the most common observations regarding the African Union legal space is its diversity. The continent is three times bigger than Europe and history, tradition, and language have shaped legal systems that differ greatly from state to state, even from neighbour to neighbour. The most evident cleavage is between common law states and civil law states, but even here the labels ‘common law’ and ‘civil law’ hide much nuance within the legal traditions of each state, such as the place of customary law in a variety of states. As the Consultant has witnessed up close, being a common lawyer in the civil law-dominated European Union, bridging this divide takes significant effort to move beyond caricatures of other legal traditions and developing a comparative understanding of how other legal systems operate in practice, not just on the face of their written law.

The diversity of the African legal space is one clear dividing line between the African Union and Latin America. It has been observed that a range of factors facilitate judicial communication in Latin America: most states belong to the civil law tradition (albeit with significant borrowing from common law states, especially the US); share a language (Spanish; Brazil being the key exception); have ratified the American Convention on Human Rights (ACHR); have accepted the jurisdiction of the Inter-American Court of Human Rights; and, as one observer puts it, have a shared common heritage of 200 years of constitutionalism, which is evidenced in the similar breadth and scope of rights recognized in their constitutions and the mechanisms they have created for their protection. Lastly, they have opened their constitutional law to international human rights law, especially to the inter-American corpus iuris [i.e. the ACHR and allied Inter-American treaties, as discussed on p.52] 40

2 Limited Recourse to International Law in Domestic Courts

The final observation above regarding the marked openness to international law in Latin America is another point of divergence in the African context. Killander and Adjolohoun have observed that the highest domestic courts across AU Member States refer relatively rarely to international law in their judgments, especially in civil law systems despite a formally monist constitutional structure. 41 Although they discern a greater willingness to refer to international treaties in common law courts, it remains quite limited. In common law states, constitutional provisions expressly promoting reference to international law are also rare (e.g. the constitutions of Burundi, Malawi, Kenya, South Africa). Unlike Europe, where incorporation of the ECHR into domestic law has become universal (although with varying levels of intensity and supremacy), references to the African Charter in domestic constitutions is rare but growing; examples include the Constitutions of Angola and Guinea.

Perhaps most relevant is that domestic courts tend not to refer to the jurisprudence of the African Court on Human and Peoples’ Rights or the courts of regional integration communities.

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Ramadi Dinokopila has recently observed that despite increasing reference to the decisions of the African Commission on Human and Peoples’ Rights, there is little evidence of the use of the jurisprudence of other regional and sub-regional courts or bodies such as the African Court and the African Children’s Committee. This is perhaps owing to the fact Africa’s supranational courts and tribunals, apart from the African Commission, are relatively young compared to their European counterparts. 42

This means that one of the key means of engaging in international ‘judicial dialogue’ – domestic citation of international courts’ case-law – is not yet a feature of the African regional legal space. However, it does suggest that the reticence may be more firmly rooted in a lack of information on international courts’ case-law at the domestic level rather than principled objection to citing their jurisprudence.

3 Non-Universal Acceptance of African Court’s Jurisdiction

To date, 30 of the AU’s 55 Member States have accepted the jurisdiction of the ACtHPR by ratifying the relevant Additional Protocol to the African Charter on Human and Peoples’ Rights (hereinafter, ‘African Charter’). Nine Member States have made the special declaration required to permit petitions by individuals and recognised NGOs to the Court, although Rwanda withdrew its declaration in 2016. It is important to emphasise that this is a very healthy ratification rate compared to the ratification rate for the European and Inter-American human rights courts during their first decade of operation. See the Infographic on p.113.

The African Court’s outreach activities are having an impact on ratification rates: sensitisation missions to Benin, Chad, and Tunisia have prompted ratification of the Court Protocol (and in Tunisia, the special declaration required to permit individual and NGO petitions).43 Most recently, the government of Guinea Bissau pledged to ratify the Court Protocol during a sensitisation mission by the African Court in mid-August 2017.44 Although the non-universal ratification of the African Court Protocol tends to impede the elaboration of a pan-regional sensibility and approach to the delivery of justice to citizens, the African Judicial Network can provide an additional tool for disseminating information concerning the African Court and encouraging further ratifications.

4 Novel and Expanding African Court Jurisprudence

Even among the 30 AU Member States that have recognised the African Court’s jurisdiction, it is important to recognise that the Court only delivered its first merits judgment in 2013, in the landmark decision of Mtikila v. Tanzania.45

In the intervening years the Court has steadily built a growing corpus of robust jurisprudence protective of the rights contained in the African Charter on Human and Peoples’ Rights and other international human rights treaties (e.g. the International Covenant on Civil and Political Rights (ICCPR)). In its first twelve merits judgments the Court found violations of rights to free association, to participate freely in government, freedom of expression, fair trial and equal protection of the law, as well as the rights to non-discrimination, culture, religion, property, natural resources and development. The Court has softened the impact of so-called ‘clawback clauses’ in the African Charter and has clearly stated its power to order damages and order investigations where necessary. The Court handed down 10 new judgments on 28 September 2017, comprising four advisory opinions, three interpretations of previous judgments, and three new judgments in contentious cases on due process, the right to liberty, and access to justice. In November 2017 the Court issued its judgment in Ingabire v. Rwanda concerning imprisonment of the applicant for crimes including spreading genocide ideology, complicity in acts of terrorism, sectarianism, and terrorism in order to undermine the authority of the State. The Court’s website lists some 100 pending cases.

As seen in the case of the Inter-American and European human rights courts, it can be expected that domestic courts’ familiarity with the African Court’s case-law will improve over time. With 120 cases pending before the African Court, its case-law is set to expand significantly in the coming years. There is a clear need to make the Court’s case-law as accessible as possible to domestic courts, and to regional courts. Possible means of doing so are addressed in the next section, on the design of an African Judicial Network.

5 Novel and Variable Nature of Regional Integration

The nature of regional integration in the African Union presents both an opportunity and a challenge. Challenges are presented by the fact that many regional projects are relatively young, the sheer number of regional integration projects, the way in which they overlap (with many states members of more than one organisation), the differing mandates and objectives of the eight communities, the differing jurisdiction of regional courts and the variable levels of activity of regional courts, and amendments made to regional courts’ mandates (e.g. expansion of the ECOWAS Court of Justice’s jurisdiction to human rights violations in 2005, and the reverse in the case of the SADC Tribunal). At one extreme, the East African Community aims

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49 See K.J. Alter, L.R. Helfer & J.R. McAllister, ‘A New International Human Rights Court for West Africa: The ECOWAS Community Court of Justice’ (2013) 107 American Journal of International Law 737; and G. Erasmus,
to become a full political federation. At the other extreme are communities that provide looser forums for intergovernmental co-operation. In short, regional integration across the continent is asymmetric, multi-speed, and of variable intensity.

A key unifying force amidst such diversity is the African Charter on Human and Peoples’ Rights, which has been ratified by all AU Member States except South Sudan and Morocco. The Charter, and other AU-wide treaties such as the African Charter on Democracy, Elections, and Governance, provide a useful focal point for the elaboration of a pan-regional approach to the rule of law, human rights, and the provision of efficient and effective justice to every person on the continent.

Justice Dean Spielmann, who has served on both the Court of Justice of the EU and the European Court of Human Rights, recently described the less complex configuration of regional authority in Europe (as regards human rights protection) as follows:

“The European edifice of fundamental rights’ protection is not a pyramidal construction with a unique supreme court on top of it. It is a sophisticated “multi-level” protection model which involves three main actors: the national courts, the ECtHR and the CJUE. All three of them interact simultaneously over an overlapping legal space. As it has rightly been observed by Andreas Voßkuhle, the president of the Federal Constitutional Court of Germany, Europe’s judicial structures should be thought in terms not of “pyramid” but of a “mobile”, a kinetic sculpture which consists of an ensemble of balanced parts which are not revolving around their own axes, but are instead constantly engaged in a dialogue triggered by the movements of the other parts.

If we transport this metaphor to the African Union, the mobile is a more elaborate structure, containing far more actors and complexity. Yet, the principle remains unchanged: the achievement of a meaningful pan-regional judicial approach to the delivery of justice and rights protection requires all courts, across different spheres of activity, to work together in a spirit of comity, conceive of themselves as engaged in a common project, and actively seek to manage their relationships in a practical manner that achieves the best result for the citizen. That so many regional integration projects are relatively new, rather than being a hindrance, presents a real opportunity to forge common protection and interpretation of the African Charter, without the encumbrances of decades of case-law or accreted doctrine.

6 Risk of ‘Judicial Network Fatigue’

It is clear from the preceding section that there is now a complex array of judicial networks in which courts across the AU participate. These are generally aimed at connecting domestic

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50 Provided for in Article 5(2) of the EAC’s founding treaty. See EAC website, ‘What is a Political Federation?’
51 See the ratification table at http://www.achpr.org/instruments/achpr/ratification/.
courts across certain sectors of activity (e.g. constitutional law, administrative law), or for reasons of community membership, legal tradition, or language. This proliferation raises the risk, especially for domestic courts, of ‘network fatigue’. This is a central factor to bear in mind when designing an African Judicial Network: the Network should help to rationalise the judicial network landscape rather than adding another layer of complexity.

7 Limited Interaction between Domestic Courts and International Courts

Despite the proliferation of international judicial networks, links and fora for communication between domestic courts and international courts remain underdeveloped. Interaction remains often ad hoc, and depends on the initiative of individual domestic judges and regional judges (e.g. former Chief Justice Wood of Ghana building links with the ECOWAS Court of Justice and suggesting institutional reforms such as satellite offices in each Member State).

The recently appointed Chief Justice of Ghana, Honourable Lady Justice Justice Sophia A.B. Akuffo, was instrumental in expanding the participation of national courts in the African Judicial Dialogues starting from 2013, during her tenure as the President of the African Court on Human and Peoples’ Rights. This developed from the October 2010 Colloquium of African Human Rights Institutions which brought together the Regional Courts and the three African Union human rights organs. The East African Court of Justice also has Registries hosted in courts of partner states and this has enhanced linkages between it and the national courts and raised awareness of the EACJ among partner states’ courts. It should also be recalled that there is a formal preliminary reference system between national courts and the EACJ concerning interpretation of the EAC Treaty.

That said, there is a clear need for more institutionalised, stable and continent-wide interaction and communication between domestic courts and international courts.

8 Limited Communication between International Courts

Beyond the underdeveloped communication between domestic courts and international courts across the African Union, it appears that there is rather limited communication between international courts themselves. There are a variety of possible explanations for this: the differing mandates of regional courts; the differing vintages of regional courts; geographic distance; and possibly budgetary constraints. Whatever the root cause, or causes, there is a clear need to enhance communication between international courts across the African Union. The African Judicial Dialogue, although a highly useful forum for communication, is an insufficient mechanism to achieve this as a stand-alone measure.

9 A Range of Constitutional, Judicial and Political Reforms

Alongside the new and developing landscape of regional adjudication, states across the AU have been engaging in profound constitutional, judicial and political reforms in recent years.

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In the past decade new constitutions have been adopted in states as diverse as Angola, Côte d’Ivoire, Egypt, Guinea, Kenya, Madagascar, Morocco, Niger, Somalia, South Sudan, Tunisia, and Zimbabwe. Constitution drafting processes have been taking place in Burkina Faso and Libya. Political transition in Gambia has spurred talk of a new constitution. Constitutional revisions have also been widespread (e.g. Namibia 2010; Gabon and Seychelles 2011; Equatorial Guinea and Mauritania 2012; South Sudan 2013; Rwanda 2015). While not all constitutional reforms have been positive, many have strengthened democratic institutions and expanded rights protection. Some reform processes have stalled: in Tunisia, for instance, the envisaged establishment of a constitutional court has been blocked by a lack of political agreement on the legislation required to bring the court into being.

This all presents a challenge for the construction of a pan-regional space, insofar as domestic courts are preoccupied with interpreting new texts and constructing a new jurisprudence, while new domestic frameworks present an epistemic challenge for regional and continental courts in achieving sufficient understanding of the new domestic dispensation due to the limited utility of domestic case-law under the previous constitution, and the time-lag for scholarly analysis of new constitutions and laws to appear.

Again, this can be viewed in a more positive light; as opening up an opportunity to construct a jurisprudence in the domestic and international spheres that is more harmonious, congruent, and focused on the protection of rights, especially rights guaranteed in the African Charter on Human and Peoples’ Rights. This is a project that requires a very long-term commitment by all actors in the system, and the realisation of useful tools to facilitate communication and to manage points of disagreement and divergences in interpretation, which are inevitable.

10 Challenges Faced by Courts in All Spheres

Beyond the adjudicative challenges discussed above, courts across all spheres of the multi-level AU governance framework face a raft of challenges in pursuing their functions, which echo challenges faced by courts in other world regions (although they are far from universal). These include practical challenges: insufficient resources in terms of budgets and staffing levels; inadequate courtroom facilities; and deficiencies in the realm of technology (required for, e.g. electronic case-management systems). These issues are considered in more depth in Section 13.

More widely – and mirroring the experience in Latin America and Europe above – courts face the challenges of low visibility and often low public support, which is particularly acute in the case of international courts. Courts of all stripes face the threat of political backlash against assertive adjudication, in the context of inconsistent or insufficient acceptance of the formal authority conferred on courts by constitutions and international treaties, as well as serious political crises. Some regional courts in the African Union have had their jurisdiction narrowed and domestic courts have faced the threat of having their powers reviewed.
11 Asymmetric Development of Judicial Training Programmes across the AU and the Lack of a Judicial Training Body at the Continental Level

A study by Honourable Justice Dr. Menberetsehai Tadesse on the provision of continuing judicial education across the AU, presented at the third African Judicial Dialogue (Arusha, Tanzania, 9-11 November) revealed that while judicial training has become common across the AU, the scope and nature of such training varies widely, as does the size and budget of different judicial training bodies. Some training programmes focus more on judicial skills, others on substantive legal education, although many offer both. As regards substantive legal education, it appears that a clear gap across the continent is training in public international law, international human rights law, and more specifically, the African Charter on Human and Peoples’ Rights and case-law of the African Court on Human and Peoples’ Rights.

Ending on a Positive Note

The above notwithstanding, the region-wide trend is clear: the continental mood is geared toward greater integration. There is real positive momentum toward an enhanced role for courts in upholding the rule of law and delivering justice to individuals and communities across Africa. The rigorous, robust and inventive jurisprudence of a range of domestic and international courts underscores a spirit of judicial energy and innovation and points the way toward a new pan-regional understanding of the judicial role.
11 KEY FEATURES OF THE AFRICAN CONTEXT

- Diversity of Legal Traditions and Language
- Limited Reference to International Law in Domestic Courts
- Non-Universal Acceptance of the African Court’s Jurisdiction
- Novel and Expanding African Court Jurisprudence
- Novel and Variable Nature of Regional Integration
- Risk of ‘Judicial Network Fatigue’
- Limited Interaction between Domestic Courts and International Courts
- Limited Communication between International Courts
- A Range of Constitutional, Judicial and Political Reforms
- Challenges Faced by Courts in All Spheres (including limited human, technical, infrastructural and IT resources)
- Asymmetric Development of Judicial Training Programmes across the AU and the Lack of a Judicial Training Body at the Continental Level
THE AFRICAN COURT AT A GLANCE

30 STATE PARTIES

1. Algeria  
2. Benin  
3. Burkina Faso  
4. Burundi  
5. Cameroon  
6. Chad  
7. Comoros  
8. Congo  
9. Côte d’Ivoire  
10. Gabon  
11. Gambia  
12. Ghana  
13. Kenya  
14. Lesotho  
15. Libya  
16. Malawi  
17. Mali  
18. Mauritania  
19. Mauritius  
20. Mozambique  
21. Niger  
22. Nigeria  
23. Rwanda  
24. SADR  
25. Senegal  
26. South Africa  
27. Tanzania  
28. Togo  
29. Tunisia  
30. Uganda

11 JUDGES

The Court formally began operating, and the first judges were sworn in, in 2006.

1 DECADE

JURISDICTION

The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples’ Rights, (the Charter), the Protocol and any other relevant human rights instrument ratified by the States concerned. (Article 3 of the Additional Protocol to the Banjul Charter on the Establishment of the Court).

POWERS

The Court has contentious jurisdiction, advisory jurisdiction, the power to order relief where a rights violation is found, and can order provisional measures where necessary.

12 MERITS JUDGMENTS

Mtikila v Tanzania  
Zongo v Burkina Faso  
Konaté v Burkina Faso  
Thomas v Tanzania  
Onyango et al. v Tanzania  
Abubakari v Tanzania  
APDH v. Côte d’Ivoire  
African Commission v. Kenya  
Onyachi v. Tanzania  
Jonas v. Tanzania  
Onyachi v. Tanzania  
Ingabire v. Rwanda
Proposed Design: African Judicial Network
Introduction:
The Need for an African Judicial Network

As set out in Section 5, above, the Terms of Reference of this report state that the objective of the African Judicial Network is to create a platform for formal collaboration between courts and other judicial bodies on the African continent. The envisaged collaboration will be between and among national, regional, continental and international courts and national judicial institutions. It is envisaged that once the formal collaboration is implemented through the proposed judicial network, courts of African Union Member States and African Union Regions will work together in finding solutions to challenges they face in upholding the rule of law and the promotion and protection of human and peoples' rights. The judicial bodies will also assist one another in various efforts to reform and strengthen their judiciaries. It is also envisaged that the African judicial bodies will share their best practices and jurisprudence with one another in order to ensure that together, they foster respect for the rule of law and the delivery of an accessible, impartial and expeditious justice to the African people.

The need for an African Judicial Network is clear. Although stronger judicial bodies and a range of judicial networks have proliferated across the African Union, as Charles Fombad recently observed:

Although there are many fora where judges from different countries meet, with the exception of the Judges' Working Group in the African Network of Constitutional Lawyers (ANCL), these have often been along regional lines and have provided scant opportunity for judges from different legal traditions to actually mix. One would expect that, as the numerous regional and continental tribunals in Africa become more active, the process of internationalization through cross-jurisprudential fertilization will be intensified. This will be particularly so where national constitutional courts, whose decisions are subject to review by these tribunals, will inevitably have to take into account the jurisprudence of these tribunals... Ultimately, it depends on the attitude of the judges.54

The time is ripe to create an African Judicial Network to build on the positive reforms of recent decades and to address this ‘network gap’ at the continental level. This section sets out recommendations for the design of a continent-spanning network, which will aim to strengthen links and help to foster a meaningful sense of community between judges and courts across the continent, to facilitate communication and increase understanding between courts of different legal traditions and across multiple legal frameworks, and to assist in the achievement of efficient and effective justice systems for all individuals across Africa.

The proposals in this report seek to provide a tailored network for the African context, which derives key lessons, both positive and negative, from other world regions, and which provides

‘added value’ to the valuable networks already extant, rather than displacing them. In this manner, the African Judicial Network can not only provide a central resource and forum for regional and domestic courts across the African Union, but can also serve as a model of cutting-edge best practice for other world regions.

The discussion in the report thus far can be summarised as follows:

- **At present, there is a broad array of international judicial networks in which courts at all levels of the AU participate.** This reflects the proliferation of international judicial networks globally, but it is particularly acute in the AU due to, *inter alia*, the wide diversity of legal systems and the unparalleled proliferation of intra-African international courts, compared to other world regions.

- **There is currently no dedicated judicial Network that brings together domestic, sub-regional, and regional courts across the African Union.** The African Judicial Dialogue is currently the only true pan-regional forum for courts in the AU. However, it is a biennial meeting, is not formally institutionalised, and cannot meet the networking needs of courts across the AU as a stand-alone activity.

- **The proposed African Judicial Network should provide ‘added value’ to the existing judicial network landscape.** It should help to rationalise that landscape, and should not duplicate the activities of existing networks. Care should be taken to avoid adding to ‘judicial network fatigue’ in the rather overcrowded AU judicial network landscape.

- **While no one judicial network model is without its deficiencies, networks in other world regions, such as Latin America and Europe, can provide useful inspiration for the design of an African Judicial Network.** The most fruitful approach is to take inspiration from the best aspects of a variety of networks.

- **It is necessary to tailor the African Judicial Network to the African context and to the specific needs of, and challenges facing, African courts in delivering justice.** As set out in the previous section, 11 key aspects of the African context are:

  1. Diversity of legal traditions and language
  2. Limited reference to international law in domestic courts
  3. Non-Universal acceptance of the African Court’s jurisdiction
  4. Novel and expanding African Court jurisprudence
  5. Novel and variable nature of regional integration
  6. Risk of ‘judicial network fatigue’
  7. Limited interaction between domestic courts and international courts
  8. Limited communication between international courts
  9. A range of constitutional, judicial and political reforms
  10. Challenges faced by courts in all spheres (including limited resources)
This section sets out the suggested guiding design principles of an African Judicial Network, as well as specific recommendations for the governance structures, activities, establishment, and development of this Network. The section ends with discussion of key issues that need to be considered in the decision on the final form the African Judicial Network will take.

Six Pillars of an African Judicial Network

It is considered important to begin recommendations for the design of an African Judicial Network with a statement of fundamental guiding principles. It is suggested that the design of the Network should rest on six ‘pillars’. The meaning of each is described below:

1. **‘Added Value’**
2. Inclusion
3. Understanding
4. Effectiveness
5. Flexibility
6. Incrementalism

As discussed below, these design principles need to be balanced against one another in order to achieve the best possible outcome for a dynamic, responsive and effective Network that serves the needs of participating courts and the wider objective of improving the efficiency of justice across the AU.

1. **‘Added Value’**

As discussed in the ‘Methodology’ section and the introduction to this section, the African Judicial Network should be carefully crafted, taking into consideration the existing landscape of international judicial networks in which courts across the AU participate. Addressing five dimensions of ‘added value’ will help to guide the design of the Network:

1. **Hub**: Conceiving of the African Judicial Network as a ‘hub’ for existing networks rather than a stand-alone network operating parallel to these networks.
2. **Furthing coherence**: focusing on how the African Judicial Network can function so as to rationalise and render more coherent the existing patchwork of judicial networks.
3. **Avoiding duplication**: Abiding by a core principle to avoid duplication of activities already carried out successfully under the aegis of other networks. The
African Judicial Network should enhance rather than displace the activities of existing networks.

4 Continental Scope: Reflecting on how the continent-wide nature of the African Judicial Network will affect its operation and how this can allow it to address matters that cannot be addressed by existing networks.

5 Building on What Exists: Taking care to build on the successful African Judicial Dialogues, and more generally, repurposing existing activities by bringing them within the African Judicial Network.

2 Inclusion

Inclusion must be a core guiding principle of the African Judicial Network. The African Judicial Dialogue organised by the African Court on Human and Peoples’ Rights already takes an inclusive approach by inviting domestic courts from all AU states, as well as courts of sub-regional communities, as well as other international courts (e.g. the Inter-American and European human rights courts).

The African Judicial Network should follow this inclusive approach to its membership, with reference to the following principles:

1 **Representation:** The Network should be designed, and carry out its activities, with due regard for balanced representation of African regions, legal traditions, language, and gender.

2 **Observers:** Where considered useful, care should be taken to permit participation of selected courts in observer states in the Network’s activities. This is particularly important in the case of geographically proximate states adjacent to the AU.

3 **Non-judicial participation:** Where considered appropriate and helpful, the participation of non-judicial court staff, academics and NGOs should be facilitated.

3 Understanding

It is evident from Sections 11 and 12 of this report that significant barriers are in place which prevent courts across the AU from working together in finding solutions to challenges they face in upholding the rule of law and the promotion and protection of human and peoples’ rights, and in sharing information on reforms to improve judicial efficiency. A core objective of the African Judicial Network must be to improve understanding across the AU judicial space, with particular focus on five dimensions:

1 **Placing emphasis on the African Charter on Human and Peoples’ Rights as a focal point** and centre of gravity in promoting shared understanding across the courts of the AU, helping to build bridges in the face of significant diversity between states and regional communities, as discussed in Section 12. Enhancing courts’ knowledge of the African Charter, and its interpretation by
the African Court on Human and Peoples’ Rights, should therefore be a central objective of the African Judicial Network.

2 **Bridging the divides that hamper cooperation** and knowledge transfer between and among domestic courts from different legal traditions.

3 **Enhancing communication between domestic courts and international courts** in the AU. This should not be approached merely as a technical issue (e.g. domestic courts in the EAC focusing solely on the EAC Court of Justice). It should also be approached as an opportunity for peer-to-peer learning, with domestic courts from different communities sharing experiences of negotiating the development of Community law. It should also focus on how international courts can better communicate with domestic courts, in terms of not only issuing judgments, but also in explaining their case-law and, more widely, in their practical and face-to-face interactions with domestic courts.

4 **Enhancing communication among the international courts across the AU.** Despite differences in their functions and mandates, the existing courts of sub-regional bodies and the African Court face many similar challenges in carrying out their functions and they have much to learn from one another.

5 **Relationships:** In approaching the objective of increasing understanding across the multi-level judicial space of the AU, the Network should not simply focus on black-letter law, jurisprudence, or judicial practice. It should pay central attention to greater understanding as being based on building a criss-crossing community of inter-court relationships as well as knowledge.

### 4 Effectiveness

Achieving an effective Network requires consideration of a range of issues, and at times will need to be balanced against other guiding principles. Effectiveness may be considered across three dimensions:

1 **Governance:** The executive organs of the Network should be streamlined, nimble, capable of efficient decision-making, and focused on the needs of all participants in the Network.

2 **Activities:** All activities of the Network should be carefully designed and framed in a way that requires a clear ‘business case’ for the activity and sets out a clear plan for how the activity is expected to assist courts in the Network. The Network should be highly results-focused.

3 **Focus:** The objectives and activities of the Network should have a clear thematic focus that runs through preparatory activities, meetings and other ‘flagship’ activities, and follow-up measures. It is better to carry out fewer activities effectively than attempt to do too much at once.

4 **Balancing against other principles:** The need for effective management and activities may cut against other guiding principles. In particular, excessive focus
on inclusiveness should be avoided in order to avoid a bloated management team. Similarly, the need for frank and open communication between judges across the Network will limit the inclusion of non-judicial actors (court staff, academics, NGOs).

5 Flexibility

The Network must be willing to experiment and adapt itself as necessary in light of what works and what does not as it develops. Responsiveness and adaptability should be core watchwords. Care should be taken to obtain feedback on Network activities from participants and to engage in periodic Network-wide and grassroots consultations to assess the Network’s functioning and achievement of its objectives, as well as ensuring that the Network’s governance organs are attuned to the needs of different stakeholders within the Network.

Care should be taken to avoid a rigid, bureaucratic approach to management, governance, and development of the Network. In addition, the Statute of the Network should be drafted in a manner that allows for considered amendments to the governance, administration and activities of the Network in light of changing circumstances, ‘lessons learned’, and the development of the Network over time. At a practical level, the need for a flexible structure should be reflected in a flexible and open mindset by those selected to manage and govern the Network.

6 Incrementalism

It is always tempting to set out a very ambitious strategy for a new body. However, this can easily lead to an insufficient focus on priorities, an ineffective hyperactivity, or a rigid adherence to a pre-prepared plan. As discussed in Sections 9 and 10, the general tendency in international judicial networks is to develop over time, often expanding activities as the Network develops.

It is recommended that the best of all approaches is to plan for the development of the Network in clear phases, starting with a pilot phase. This has the advantage of allowing the Network to focus on core priorities in the short term, to build ‘buy in’ and participation in the Network, and to maintain a flexible approach to the Network’s development, while also setting out an indicative ‘road map’ for the Network in the medium term, which will provide a more defined sense of purpose.

Key Practical Considerations

It is important to keep seven key practical considerations in mind in developing the scheme and form of the Network.

1 Court resources: The Consultant, having worked for over six years in an understaffed Supreme Court, is keenly aware of the pressure international judicial cooperation can
place on already overworked judges and court staff. Many courts participating in the African Judicial Network face challenges related to insufficient human and technical resources, including the African Court on Human and Peoples’ Rights itself, which has limited staff, and whose President is the sole judge based full-time at the Court’s seat in Arusha. This consideration underlies the recommendation below to establish a Management Committee to perform executive and administrative functions, rather than a separate executive board and secretariat.

2 **Reduction of workloads:** The above notwithstanding, judges and court staff selected to sit on the governing bodies of the Network should have their workloads reduced to an appropriate degree, to ensure that they can commit adequate time and energy to the Network’s activities.

3 **Assisting judges in their work:** The above considerations raise again the importance of the AJN providing ‘added value’ compared to existing judicial networks. Rather than being an unwanted drag on judges’ time, the Network should be conceived as a way to add to courts’ capacity, e.g. by facilitating access to case-law and information that many courts cannot achieve on their own. In short, the Network should aim to make judges’ lives easier, not harder.

4 **Budget:** The Budget for the African Judicial Network has not been settled. It is expected that it can be drawn from the budget for the African Centre for Judicial Excellence, but it will nevertheless require specific fundraising. This consideration underlies the recommendation below to take a phased approach to development of the Network, as well as a focus on activities that are cost-effective but have high potential impact.

5 **Energy and commitment:** It is important to emphasise that even with a relatively modest budget a lot can be achieved by the African Judicial Network if it can harness the energy and enthusiasm for reform across the AU. As long as committed, able and resourceful individuals are selected to drive the Network forward, much can be achieved (see the section on governance structure, below).

6 **Language diversity:** A major practical challenge for cooperation is the linguistic diversity across the AU, which means that translation of documents, databases, intranets etc would have to be factored in and interpretation provided for any form of interaction.

7 **Technology:** As discussed at the start of Section 12, the Second African Judicial Dialogue recognised the underutilization of Information, Technology and Communication Systems by continental, regional and national courts as a key challenge in the delivery of access to justice across the continent. This must be borne in mind in considering other international judicial networks as models, which often place emphasis on dedicated intranets, databases and other forms of information technology. The author notes that the Final Communiqué of the Second African Judicial Dialogue (Arusha, Tanzania, 2015) called on the African Union to promote and mainstream technology in justice service delivery by the continental, regional and national judicial institutions. Initiatives such as the African Internet Exchange System (AXIS) project, which supports
the establishment of a continental African internet infrastructure, may also be noted. However, this is a medium-term aim. The answer is not to eschew any focus on technology, but to take a careful approach and to craft tools that are most suited to these internet access challenges. Technology remains a key to overcoming issues (such as the fact that all judges of the African Court bar the President sit on the Court part-time), by facilitating cooperation between individuals on governance bodies to be managed remotely.

8 The Network’s place within the AU: A final practical consideration is how the African Judicial Network will fit within the overarching AU framework. For example, will the Network come within the African Governance Architecture (AGA), which brings together AU organs & Regional Economic Communities working on Democratic Governance and Human Rights? This need not be decided immediately, but should be kept in mind.

Statute

A draft Statute for the African Judicial Network has been provided in Appendix A to this report.

Membership

In the light of the discussion above, membership of the African Judicial Network should include Full Members and Observers:

Full Members

- The highest domestic courts of AU member states.
- The courts of Regional Economic Communities (e.g. ECOWAS, EAC, SADC).
- The African Court on Human and Peoples’ Rights.

Observers

- The highest domestic courts of states outside the AU (with priority given to states adjacent to the AU, i.e. Mediterranean European and Middle Eastern states).
- International human rights courts outside the AU: especially the Inter-American Court of Human Rights and the European Court of Human Rights.
- International courts operating within the AU, in areas relevant to human rights and the rule of law, e.g. international criminal courts such as the International Criminal Tribunal for Rwanda (ICTR) and Extra-Ordinary African Chambers (CAE) in Senegal.
Managing Membership

Drawing a clear lesson from the Superior Courts Network (SCN), membership of the African Judicial Network should be managed by the Network itself on an invitation basis. This is to avoid the scenario in the SCN where applications for membership have been left to the initiative of individual courts, which has left the SCN with unbalanced and partial representation across the ECHR system. It is vital to build on the broad participation of courts across Africa in the first and second African Judicial Dialogues. As regards highest domestic courts, it is recommended that Network membership should be opened to courts with constitutional review powers first, with a maximum of two courts represented for each AU member state. Possible expansion to other courts (e.g. highest administrative courts) can be considered as the Network develops.

Governance Structure

As Sections 9 and 10 make clear, a variety of different governance models exist: some are run by one main management body that combines executive and administrative roles, while others have more elaborate governance structures including some form of executive board, secretariat and general assembly/congress.

In light of the discussion above, the governance structure of the Network should be designed to achieve an optimal balance between effectiveness, inclusion, and ‘added value’, with a view to a Network where participants feel a sense of ownership while not being unduly burdened by the day-to-day management and organisation of activities. There should be a very clear allocation of responsibilities between the governance organs and particular attention should be paid to efficient communication between the different bodies.

Reflecting the particular configuration of judicial bodies and judicial networks in the African Union, this report recommends the establishment of two central governance bodies: one streamlined body, fusing executive and administrative roles, tasked with day-to-day management; and one much larger Congress to provide oversight and to deliberate and decide on major issues (e.g. approval of a Draft Schedule of Activities, amendment of the Network’s Statute). In addition, it is recommended that two advisory committees should be established to represent existing judicial networks and court presidents.

- Congress
- Management Committee
- Cross-Network Advisory Group
- Judicial Training Advisory Group

Congress

Composition
It is recommended that the Congress will consist of:

- One representative of each court admitted as a Full Member to the African Judicial Network.
- Observer Members will be entitled to attend meetings of the Congress but will not be entitled to vote.
- The President of the African Court on Human and Peoples’ Rights and the President of the highest court in the state hosting the next African Judicial Network Dialogue will be co-presidents of the Congress.

Responsibilities
The Congress will:

- Convene once every two years at the African Judicial Network Dialogue.
- Decide on any proposed amendments to the Network Statute.
- Approve the Draft Schedule of Activities for the following year (prepared by the Management Committee).

Management Committee

Composition
It is recommended that the management Committee would consist of a maximum of 12 members:

- Co-chair: A Judge (or retired Judge) of the African Court on Human and Peoples’ Rights nominated by the President of the Court and serving for a term of two years, which may be renewed;
- Co-chair: A Judge (or retired Judge) from the highest domestic court of the host state for the next African Judicial Network Dialogue, nominated by the president of the highest domestic court of the host state and serving until the Dialogue has taken place;
- A Judge (or retired Judge) from two of the regional community courts, nominated by the respective president of each regional community court and serving for a term of two years, which may be renewed once. Courts should be selected on the basis of adequate representation of different regions and legal traditions across the AU;
- Two judges (or retired judges) from highest domestic courts of AU Member States that are Full Members of the African Judicial Network, elected by the Congress and serving for a single term of two years. Courts should be selected on the basis of adequate representation of different regions and legal traditions across the AU;
- One representative of the African Commission on Human and Peoples’ Rights, nominated by the Chairperson of the Commission for a term of two years, which may be renewed;
• One representative of the African Committee of Experts on the Rights and Welfare of the Child, nominated by the Chairperson of the Committee for a term of two years, which may be renewed;

• A senior member of staff of the Registry of the African Court on Human and Peoples’ Rights, nominated by the Registrar and serving for a period of indefinite duration;

• Up to three additional members of staff of the African Court on Human and Peoples’ Rights, nominated by the Registrar and serving for a period of indefinite duration.

Responsibilities

The Management Committee will be responsible for:

• Day-to-day management of the African Judicial Network.

• Elaboration of short-term and medium-term priorities for the Network.

• Coordinating communication between the constituent bodies of the Network, partner organisations, and external networks beyond the AJN scheme.

• Production of a Draft Schedule of Activities for each two-year period between Congress meetings, for approval by the Congress at each African Judicial Network Dialogue.

• Publicity of the Network (alongside Network Ambassadors; see below).

Cross-Network Advisory Group

In order to avoid duplication of activities, enhance communication across different existing judicial networks, build understanding across various divides (e.g. regarding legal traditions), and realise the Network’s role as a pan-African ‘hub’ it is recommended that a Cross-Network Advisory Group should be established to provide a one-stop-shop contact for the African Judicial Network’s governance bodies (and especially the Management Committee).

Composition

• One representative from each of the principal judicial networks in which African Courts operate, nominated by the appropriate governing authority of that network, i.e.
  – Conference of Constitutional Jurisdictions of Africa (CCJA)
  – Constitutional Judges’ Working Group – African Network of Constitutional Lawyers (ANCL)
  – East African Community (EAC) Chief Justices Forum
  – Southern African Chief Justices Forum (SACJF)
  – East Africa Judges and Magistrates Association (EAJMA)
  – West African Jurists Association (WAJA)
  – Union of the Arab Constitutional Councils and Courts (UACCC)
  – World Conference of Constitutional Justice (WCCJ)
– Association des Cours Constitutionnelles ayant en Partage l’Usage du Français (ACCPUF)
– Conference of Constitutional Jurisdictions of the Portuguese-Speaking Countries (CJCPLP)
– International Association of Women Judges – Chapters in AU states
– International Association of Refugee Law Judges – African Chapter
– Commonwealth Magistrates’ and Judges’ Network

(It will be noted that some networks have been excluded here either due to having a single member (i.e. BRICS Justice Forum) or because they have substantially overlapping membership with other networks included in the list (e.g. IASAJ)).

• The Presidents of all regional community courts in the AU should be *ex officio* members of this advisory group.

**Responsibilities**

The Advisory Group can operate to provide a more regular contact between the AJN Management Committee and the variety of existing judicial networks and bodies across the AU, leaving the Congress to address only the most high-level decisions for the Network.

**Judicial Training Advisory Group**

In order to enhance communication across different existing national and international bodies dedicated to judicial training and education, and to avoid the duplication of activities of such bodies, a Judicial Training Advisory Group should be established to provide guidance to the Management Committee and Congress. The Advisory Group should be composed of one representative from selected judicial training and education bodies.

**Composition**

The Advisory Group should be composed of no more than 15 representatives. Representatives should be selected with due regard for the representation of the five African Union regions, diverse legal traditions, language, and gender. At least two national judicial training bodies should be represented from each of the five regions of the African Union (see Appendix C).

**Responsibilities**

The Advisory Group can operate to provide a more regular contact between the AJN Management Committee and the variety of existing judicial training and education bodies across the AU, leaving the Congress to address only the most high-level decisions for the Network.

This Advisory Group should also assist the African Judicial Network to map the state of judicial education across the AU, identify priorities for judicial training and education suited to the objectives of the African Judicial Network, and identifying models of best practice at the national and sub-regional levels.
Designated Contact

To ensure that communication between the Management Committee Congress, Cross-Network Advisory Group, and Judicial Training Advisory Group is as efficient as possible, each body should designate one individual to act as a Designated Contact for the entire body.

Network ‘Ambassadors’

As seen in the Superior Courts Network example, the nomination of one or more judges, or retired judges, to generally promote and support the activities of the Network and raise its profile can be a useful adjunct to the formal governance bodies.

Focal Points

As the Network develops, it may be desirable for each Full Member to designate an individual to act as a Focal Point for the Full Member’s communication with the Network, promote the Network’s activities, and disseminate information concerning the Network. The Focal Point should ideally be a Registrar (or equivalent) of the court.

Establishment, Development & Activities

As discussed above, and drawing on the development of the ECtHR’s Superior Courts Network in particular, the African Judicial Network should take an incremental approach to its establishment and development, adding activities over time, rather than attempting to set out a grand plan from the outset and seeking to do too much all at once. It is recommended that the Network is initially established on a pilot basis, and that its activities are developed in clear phases. This strikes a balance between an ambitious approach and the need for experimentation, flexibility, and the development of ownership of the Network by all participants.

Summit Model: The African Judicial Dialogue as the Centre of Gravity for the Network’s Activities

The Ibero-American Judicial Summit, analysed in detail in Section 10, provides a useful model for a judicial network that is highly focused and that uses the biennial Summit as a centre of gravity for its activities: a theme is selected for each 18-24 month period between Summits; thematic working groups engage in significant preparation before each Summit; and detailed follow-up is decided at each Summit.

The African Judicial Dialogue already operates in many ways along these lines: a theme is selected in advance; reports are prepared for selected sub-topics; and Final Communiqués of the Dialogue can recommend the establishment of committees, e.g. the Second African Judicial Dialogue in 2015 recommended the establishment of a committee to administer a
questionnaire to African Union Member States and compile a comprehensive report on the state of judicial education in Africa to be prepared within a period of 12 months to be submitted to African Union Member States and to be deliberated at the Third African Judicial Dialogue. The African Judicial Network can continue this approach but expand and deepen it.

It is therefore recommended that the African Judicial Dialogue is retained on a biennial basis but brought under the aegis of the AJN and renamed the ‘African Judicial Network Dialogue’. The Dialogue can double as the biennial meeting of the Congress of the Network.

Activities

As discussed in Section 12 and earlier in this section, African courts face a range of challenges in upholding the rule of law, protecting rights and delivering justice. Some of these are structural challenges (e.g. human and technical resources, under-use of information technology, challenges in achieving implementation of judgments). It is recommended that a central priority for the African Judicial Network, and one where it can have significant short-term impact, is improving cross-system understanding of the African Charter on Human and Peoples’ Rights. This can be achieved with relatively low budgetary and time commitments, and can be developed over time depending on progress made. Activities such as databases and intranets should only be considered once the Network has had time for the governance bodies to find their feet, to build relationships with courts, and to identify priorities of all members in what they hope to get from the Network.

Phase 1: Pilot Phase

2017-2019

It is recommended that the Pilot Phase spans two years, from the end of the Third African Judicial Dialogue in November 2017 until the first African Judicial Network Dialogue, presumably to be held in November 2019. The aim would be to construct the essentials of the African Judicial Network, develop effective communication between the governance bodies, and provide time for a consultation and evaluation process before moving to Phase 2.

Establishment

Establishment of the Network would involve, in sequence:

- Adopting the Statute of the Network.
- Drafting a Schedule of Activities by the Management Committee.

Participation

Drawing inspiration from the initial pilot phase of the ECtHR Superior Courts Network, participation in the Pilot Phase of the Network should be limited. It is recommended that participants could include:
• One domestic court from Tanzania, as the host state of the African Court on Human and Peoples’ Rights;

• One regional community court; and

• Four domestic courts from states across the AU, having due regard for balanced representation of regions, legal traditions, and language.

Meetings

It is recommended that:

• The Management Committee meets at least four times per year.

• The African Judicial Dialogue is retained on a biennial basis but brought under the aegis of the AJN and renamed the ‘African Judicial Network Dialogue’ (see above).

• The Dialogue will serve as the biennial meeting of the Congress of the Network.

• The Cross-Network Advisory Group organises a meeting at the time of the AJN Dialogue (or, alternatively, at the time of the World Congress on Constitutional Justice (WCCJ) biennial meeting).

Activities

Working Group 1: ‘Improving Understanding of the African Charter on Human and Peoples’ Rights’

A Working Group should be established to focus on three specific tasks:

• Improving knowledge of the African Charter on Human and Peoples’ Rights, and case-law of the African Court on Human and Peoples’ Rights, across all Network member courts;

• Mapping references by courts across the African Union to the African Charter (and African Court case-law).

• Mapping training on the African Charter (and African Court case-law) by judicial training bodies and courts across the African Union.

The Working Group could focus on the following priorities in its work:

• The production of Case-Law Updates by the African Court on Human and Peoples’ Rights for dissemination to other courts in the Network;

• The gathering of case summaries from regional community courts and highest domestic courts, which interpret or make reference to the African Charter on Human and Peoples’ Rights (and African Court case-law). Initially case summaries would be sought solely from the small group of courts selected to participate in the Pilot Phase;

• Seeking to identify best practice in the delivery of judicial training in the AU on the African Charter and on international human rights law more generally.

There are a number of online bibliographies concerning the African human rights system and additional resources (e.g. African Human Rights System Research Guide, ACtHPR monitor). However, these resources are aimed at a general audience. This working group would consider the production of a useful bibliography on the African Charter on Human and Peoples’ Rights, and case-law of the African Court on Human and Peoples’ Rights, which is targeted at the specific needs of judges and courts in the African Union.

Consultation and Feedback

It is recommended that during the final 6 months of Phase 1 a consultation process is conducted to obtain feedback useful to the assessment of the AJN and to determine priorities and needs of stakeholders for Phase 2.

Phase 2: Building Understanding, Knowledge & Visibility

2019-2021

Assuming that the Pilot Phase is completed successfully, and subject to the priorities identified through the consultation process, it is recommended that the Network is placed on a permanent footing, and that Phase 2 is implemented for the period between the end of the first African Judicial Network Dialogue (November 2019) and the second African Judicial Network Dialogue (November 2021).

In light of the analysis in Section 12, it is recommended that Phase 2 concentrates on expansion of activities aimed at building cross-system knowledge and understanding of the different judicial frameworks for upholding the rule of law and protecting human rights, in two ways:

Website

It is recommended that the Management Committee works establishes a website for the Network during Phase 2. Initially the website will be relatively modest, including e.g. the Statute, list of member courts, information on the governance bodies, contact information, links to the website of each member court, and the bibliography produced by Working Group 2. However, its content will expand over time as Network activity expands. Good examples are the websites of the IASAJ (http://www.iasaj.org/) and IARLJ (https://www.iarlj.org/).

Expansion of Working Groups

Working Group 1: ‘Improving Understanding of the African Charter on Human and Peoples’ Rights’

This Working Group could build on its activities in the Pilot Phase in 2 ways:

- **Case summaries:** Gathering case summaries from all member courts in the Network, which interpret or make reference to the African Charter on Human and Peoples’ Rights (and African Court case-law).

• **Model training documents:** Producing model judicial training documents concerning the African Charter on Human and Peoples’ Rights, and international human rights law more broadly.


This working group would revise and update the bibliography produced during the Pilot Phase.


It is recommended that a third Working Group is established in order to map the judicial systems of the 55 AU Member States, the regional communities containing judicial bodies, and the African Court on Human and Peoples’ Rights. The aim would be to build cross-system knowledge and understanding of the judicial systems at each level, and to construct a useful resource for all courts across the AU judicial space.

The Working Group could start with a selected group (e.g. 12 AU Member States, 3 regional communities, and the African Court on Human and Peoples’ Rights for the first year) and expand to cover more states and courts over time. This idea is inspired by the ‘Ibero-American Judicial Map’ on the Ibero-America Judicial Summit website, and the ‘Tour of Europe’ on the ACA-Europe website. The ‘Tour of Europe’ might prove a particularly useful reference in its use of interactive maps as visual aids.

Care should be taken by the Working Group to build on, and make use of, existing resources on judicial systems across the AU, e.g.

• AfricanLII
• ACThPR Monitor website
• African Union Law website (contains access to the African Law Library and African Court Research Initiative, and African International Courts and Tribunals, among others)
• Centre d’Études Juridiques Africaines

**Working Group 4: ‘Judicial Training’**

This key Working Group could be established to build on the limited training resources developed by Working Groups 1-3 by considering and planning for a more expanded range of judicial training activities, including:

• **Judicial Education Portal:** Hosting a ‘portal’ where material on judicial education would be readily accessible to its stakeholders.

• **Forum:** Providing managers of continuing judicial education with fora to discuss training practices and methodologies, collation of a database of judicial education
curricula and materials, hosting online programmes and facilitating in-country education programmes. These fora will also facilitate the coordination of activities of judicial training institutes while respecting their independence.

- **National best practice in e-Justice:** developing knowledge and training on best practice the use of information technology in the administration of justice, with particular reference to ensuring speedy access to justice for court users, case-law databases, and electronic filing systems.

**Nomination of Network Ambassador(s)**

One or more Network Ambassadors (see above) could be appointed to help drive the Network’s development, publicise its activities, and increase the Network’s visibility across the African Union.

**Consultation and Feedback**

As with Phase 1, it is recommended that during the final 6 months of Phase 2 a consultation process is conducted to obtain feedback useful to the assessment of the AJN and to determine priorities and needs of Network stakeholders for Phase 3.

**Phase 3: Case-Law Database, Judicial Training & Focal Points**

**2021-2023**

Assuming that Phase 2 proceeds successfully, and subject to the priorities identified through the consultation process, it is recommended that Phase 3 is implemented for a further period of two years, the completion of which may be considered the end of the initial construction phase of the Network. The Network will, naturally, develop incrementally after this period.

With the objective of further deepening and broadening judicial engagement across the AU judicial space, it is recommended that the Network develops three further activities:

**Expansion of Working Groups**

**Working Group 1: ‘Improving Understanding of the African Charter on Human and Peoples’ Rights’**

Depending on the progress made during Phase 1 and 2, this Working Group could expand its activity to consider:

- The production of a more formal periodical publication containing relevant case summaries, along the lines of the ACA-Europe Reflets or the Venice Commission Bulletin on Constitutional Case-Law.

- The establishment of a database providing access to case summaries and links to full judgments of member courts of the Network concerning the African Charter.

At present, there is no dedicated resource gathering together references by domestic courts and regional community courts to the African Charter on Human and Peoples’ Rights, case-law of the African Court on Human and international human rights law
more broadly. A dedicated case-law database, somewhat similar to the Dec.Nat database of ACA-Europe, could provide a useful single resource for domestic court judges when using the African Charter as an interpretive guide in adjudication and when engaging with African Court case-law.

- The formalisation of the relationship with Network member courts through the designation by each court of a single individual Focal Point to transfer case-summaries to the Network, promote the Network within his/her own court, to disseminate knowledge of the African Charter on Human and Peoples’ Rights and the case-law of the African Court on Human and Peoples’ Rights.


This working group could:

- Revise and update the bibliography produced during the Pilot Phase.
- Consider the establishment of an electronic library on the Network website (similar to the electronic library developed by the Joint Council on Constitutional Justice – see p.80).


This Working Group could expand its activity to consider:

- The creation of an interactive map within the Network website through which website users can access data collected on the judicial system of each court.

**Working Group 4: ‘Judicial Training’**

This key Working Group could expand the range of judicial training activities, with possibilities including:

- **Production of further model training guides and judicial handbooks**: This could build in particular on the guide and handbook produced by Working Group 1 in Phase Two.

- **A judicial exchange programme** to provide a useful way of increasing cross-system knowledge among judges. Exchanges could initially be organised on a limited pilot basis, and could be of two types:

  - Domestic court and regional community court judges spending 2-week research stays at the African Court on Human and Peoples’ Rights.

  - Domestic court judges spending 2-week research stays at other domestic courts. This could be particularly useful for courts to learn from courts recognised as adopting best practice as regards efficient judicial processes (e.g. case management, use of technology, drafting of judgments, organisation of courts staff).

If the pilot judicial exchange programme is successful, it could be expanded to include court staff.
• **Standard-setting** to provide continent-wide normative guidance and model documents concerning issues such as judicial ethics.

• **An ‘Update Report’** on national best practice in the efficiency of justice more widely (see information on the Ibero-American Judicial Summit at p.76).

**Beyond Phase 3 (2023 onwards)**

Depending on progress made in Phases 1, 2 and 3, and other factors such as budget allocation, the Network could continue to expand its activities from 2023 onwards, although the focus should remain on getting a core range of activities delivered to a high standard rather than expansion simply for its own sake.

**Final Comments**

This report has set out the case for a dedicated African Judicial Network to facilitate courts across the AU judicial space to seek solutions to challenges they face in upholding the rule of law and the promotion and protection of human and peoples’ rights, and in sharing information on reforms to improve judicial efficiency. It is evident that existing international judicial networks in which courts across the AU participate are not fully meeting this need. A dedicated body is required to connect courts and to serve as a continental ‘hub’ for judicial interaction across a variety of legal frameworks. This report has made a range of recommendations as to the aspects of the African context that drive the need for a continental network, the form such a network could take, its establishment and activities, and sticking points such as courts’ capacities and resources to participate fully in, and build, such a network.

Perhaps more important than any one of these considerations is Charles Fombad’s observation quoted at the start of this section: much of the proposed Network’s success and the prospect of courts working together as partners in a common project rests on judicial attitudes as much as budgetary and other resources. Ultimately, building and managing the overlapping spheres of authority between domestic courts, sub-regional courts, and the African Court is about relationships. The African Judicial Network should provide not only a way for judges across different legal spheres to build good interpersonal relationships in the short-term, but also to build strong institutional relationships that transcend the terms of specific judges. Cooperation and openness must be written into the spirit and structures of adjudication across all spheres, but this requires first the development of comparative understanding and knowledge within all courts in the system, especially knowledge of the African Charter on Human and Peoples’ Rights as a shared reference point for all courts. The African Judicial Network, if appropriately designed and developed, would be a significant step in this direction.
THE AFRICAN JUDICIAL NETWORK RECOMMENDATIONS

NECESSITY
A continent-wide network is needed to fill a significant ‘judicial network gap’

GUIDING PRINCIPLES
‘Added Value’ – Inclusion – Understanding – Effectiveness – Flexibility - Incrementalism

PRACTICAL CONSIDERATIONS
Court resources – Reduction of workloads – Assisting judges in their work – Budget – Energy and commitment – Technology – Network’s place within the AU

NETWORK ORGANS
Congress
Management Committee
Cross-Network Advisory Group
Judicial Training Advisory Group
+ Working Groups
+ Network Ambassador(s)
+ Contact Points

‘SUMMIT MODEL’
Organising activities around the biennial African Judicial Network Dialogue

ACTIVITIES
Activities focused on short-term challenges, high impact with low budget implications

PHASED DEVELOPMENT
Pilot Phase – Phase 2 – Phase 3 – Further development
Appendices
STATUTE
OF THE
AFRICAN JUDICIAL
NETWORK

Draft 2.0
November 2017
PREAMBLE

We, the Presidents and Representatives of the participating courts of the Third African Judicial Dialogue, meeting in Constituent Congress on 8, 9 and 10 November 2017 in Abidjan, Côte d'Ivoire,

- Recalling that the Constitutive Act of the African Union enshrines the commitment of Heads of State and Government of the Union “to promote and protect human and peoples’ rights, to consolidate institutions and democratic culture, to promote good governance and the rule of law”
- Recalling that the African Charter on Human and Peoples’ Rights recognises fundamental human rights as stemming from the attributes of human beings which justifies their national and international protection
- Recalling the commitment to good governance, democratic culture and the protection of human rights in other African Union instruments, including the African Charter on Democracy, Elections and Governance
- Recalling the human rights enshrined in United Nations instruments including the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights
- Recalling the aspiration expressed in the Agenda 2063 programme of the African Union that the continent’s population “will enjoy affordable and timely access to independent courts and judiciary that deliver justice without fear or favour”
- Recalling that the Final Communiqué of the Second African Judicial Dialogue in Arusha, Tanzania, on 4-5 November 2015 encouraged greater collaboration between existing judicial forums for dialogue and the African Judicial Dialogue
- Recalling that the Final Communiqué of the Second African Judicial Dialogue in Arusha, Tanzania, on 4-5 November 2015 supported the establishment of a Continental Network of African Judiciaries
- Recognising the proliferation of a variety of international judicial networks operating across the African Union which operate on a partial, sub-regional and trans-national basis, but which do not provide a continent-wide network
- Recognising the diversity in legal traditions and judicial systems across the African Union
- Convinced that a formal continent-wide network is needed to provide for effective collaboration between courts and other judicial bodies on the African continent

DO HEREBY ADOPT THIS STATUTE:
ARTICLE 1
ESTABLISHMENT & SEAT

1. There is hereby established, within the framework of the African Union, an association to be known as the African Judicial Network, with the designated abbreviation AJN.

2. The seat of the African Judicial Network shall be in Arusha (Tanzania).

ARTICLE 2
OFFICIAL AND WORKING LANGUAGES

1. The official languages of the AJN shall be the official languages of the African Union.

2. The working languages of the African Judicial Network are Arabic, English, French and Portuguese.

ARTICLE 3
OBJECTIVES

1. The African Judicial Network will facilitate collaboration between and among continental, regional and national judicial institutions across the African Union.

2. The African Judicial Network will facilitate the African Court on Human and Peoples’ Rights, courts of African Union Member States, and African Union Regions to work together in finding solutions to challenges they face in upholding the rule of law and the promotion and protection of human and peoples' rights.

3. The African Judicial Network will provide a forum for participating judicial bodies to assist one another in efforts to reform and strengthen their judiciaries.

4. The African Judicial Network will provide a forum for participating judicial bodies to share their best practices and jurisprudence with one another in order to ensure that together, they foster respect for the rule of law and the delivery of accessible, impartial and expeditious justice to the African people.

5. The African Judicial Network will also provide a forum for linking the many existing international judicial networks in which courts of the African Union participate, and for linking judicial training and education bodies across the African Union.
ARTICLE 4
ACTIVITIES

SUB-ARTICLE 4.1
REALISATION OF OBJECTIVES

The African Judicial Network may seek to achieve the above objectives through a variety of means, including:

(a) Meetings, conferences and other events;
(b) Information exchange between members;
(c) Thematic studies;
(d) Disseminating questionnaires;
(e) Establishing databases;
(f) Establishing web-based communications and intranets;
(g) Publications;
(h) Exchange programmes;
(i) Continuing judicial education and training;
(j) Standard-setting;
(k) Liaison with external judicial networks and other relevant associations.

SUB-ARTICLE 4.2
AFRICAN JUDICIAL NETWORK DIALOGUE


2. The African Judicial Network Dialogue will be the core activity of the African Judicial Network and will form the basis for the African Judicial Network’s principal activities.

3. The African Judicial Network Dialogue shall be held once every two years.

4. The location of the next Dialogue shall be decided at each biennial Dialogue.

SUB-ARTICLE 4.3
NON-DUPLICATION

1. The African Judicial Network shall avoid as much as possible duplication of activities carried out by other international judicial networks within the African Union.
2. The assessment of what constitutes duplication of activities rests with the organs of the African Judicial Network.

ARTICLE 5
MEMBERSHIP

1. The African Judicial Network shall be composed of Full Members and Observer Members.

2. All final decisions as to membership rest with the Congress of the African Judicial Network.

3. The Management Committee may accord provisional membership to any court fulfilling the criteria for membership, subject to subsequent approval of the decision by Congress.

4. Exceptionally, the Congress may admit a member that does not fulfil the criteria for membership or create additional categories of membership, provided that this is in pursuance of the overall objectives of the African Judicial Network, set out in Article 3.

SUB-ARTICLE 5.1
FULL MEMBERS

1. The following are entitled to be Full Members of the African Judicial Network:

   (a) The highest domestic courts of African Union member states;
   (b) The courts of Regional Economic Communities of the African Union;
   (c) The African Court on Human and Peoples’ Rights.

2. Full Members have voting rights.

SUB-ARTICLE 5.2
OBSERVER MEMBERS

1. The following are entitled to be Observer Members of the African Judicial Network:

   (a) The highest domestic courts of states outside the African Union.
   (b) International courts within the African Union, which are not entitled to be Full Members of the African Judicial Network.
   (c) International courts outside the African Union.

2. Observer Members do not have voting rights.
**Sub-Article 5.3**
**Termination or Withdrawal of Membership**

Membership may be terminated by:

(a) Notice of withdrawal by a member court to the African Judicial Network;
(b) Exclusion decided by the Congress.

**Article 6**
**African Judicial Network Organs**

The organs of the African Judicial Network are:

(a) Congress;
(b) Management Committee;
(c) Cross-Network Advisory Group; and
(d) Judicial Training Advisory Group.

**Sub-Article 6.1**
**Congress**

1. The Congress is the supreme organ of the African Judicial Network. It is composed of all member courts of the African Judicial Network, including Full Members, Observer Members, and any additional categories of member created by the African Judicial Network.

2. The Congress shall be convened once every two years, or at least once every three years, at the African Judicial Network Dialogue.

3. At each meeting, the Congress will decide the venue of the next African Judicial Network Dialogue.

4. All members of the African Judicial Network shall be invited to attend the African Judicial Network Dialogue.
5. The quorum for a valid meeting of Congress is a simple majority of its members. Unless otherwise indicated, the Congress shall take decisions by consensus. If necessary, the Congress shall make decisions by a simple majority of the members present.

6. The Congress shall have two co-presidents. One president shall be the president of the highest domestic court of the host state for the next African Judicial Network Dialogue. The second president shall be the President of the African Court on Human and Peoples’ Rights.

7. Congress shall be responsible for the following:

(a) Adopting the Statute of the African Judicial Network;
(b) Deciding on any amendments to the Statute of the African Judicial Network;
(c) Adopting any secondary rules for the organisation of the African Judicial Network or the African Judicial Network Dialogue;
(d) Deciding on applications for membership of the African Judicial Network;
(e) Deciding on termination of membership of the African Judicial Network;
(f) Deciding on the composition of, and applications for inclusion in, the Cross-Network Advisory Group and the Judicial Training Advisory Group;
(g) Determining the Schedule of Activities of the African Judicial Network for the next two years;
(h) Considering and adopting the financial statement submitted by the Management Committee;
(i) Adopting the budget estimate for the next two years;
(j) Approving nominations to the Management Committee;
(k) Considering, and where appropriate, deciding on, all items submitted Management Committee;
(l) Approving proposals made by the Management Committee concerning the appointment of members of ad hoc committees;
(m) Deciding on the acceptance of any donations or other contributions offered to the African Judicial Network;
(n) Adopting any formal agreement or memorandum of understanding with any judicial network or other organisation; and
(o) Deciding on any dispute relating to the interpretation of this Statute.

8. Congress may, at its discretion, provide approval of any matter within its responsibility retrospectively.

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**Sub-Article 6.2 Management Committee**

1. The Management Committee is the executive and administrative organ of the African Judicial Network. It shall be composed of the following:
(a) A Judge (or retired Judge) of the African Court on Human and Peoples’ Rights nominated by the President of the Court and Peoples’ Rights and serving for a term of two years, which may be renewed;

(b) A Judge (or retired Judge) from the highest domestic court of the host state for the next African Judicial Network Dialogue, nominated by the President of the highest domestic Court and serving until the Dialogue has taken place;

(c) A Judge (or retired Judge) from two of the regional community courts, nominated by the respective Presidents of these Courts and serving for a term of two years, which may be renewed once. The regional community courts should be selected on the basis of adequate representation of different regions and legal traditions across the AU;

(d) Two judges (or retired judges) from highest domestic courts of AU Member States that are Full Members of the African Judicial Network, elected by the Congress and serving for a single term of two years. The highest domestic courts should be selected on the basis of adequate representation of different regions and legal traditions across the AU;

(e) One representative of the African Commission on Human and Peoples’ Rights, nominated by the Chairperson of the Commission for a term of two years, which may be renewed;

(f) One representative of the African Committee of Experts on the Rights and Welfare of the Child, nominated by the Chairperson of the Committee for a term of two years, which may be renewed;

(g) A senior member of staff of the Registry of the African Court on Human and Peoples’ Rights, nominated by the Registrar and serving for a period of indefinite duration;

(h) Up to three additional members of staff of the African Court on Human and Peoples’ Rights, nominated by the Registrar and serving for a period of indefinite duration.

2. The Management Committee shall be responsible for the following:

(a) Day-to-day management of the African Judicial Network;

(b) Drafting the Statute of the African Judicial Network;

(c) Submitting reports to Congress concerning proposed amendments to the Statute;

(d) Drafting any secondary rules for the organisation of the African Judicial Network or the African Judicial Network Dialogue;

(e) Drafting a Schedule of Activities for the next two years, to be approved at each biennial meeting of Congress;

(f) Organising, in partnership with the Host State, the African Judicial Network Dialogue;

(g) Setting the agenda for the African Judicial Network Dialogue;

(h) Setting the theme of the African Judicial Network Dialogue, in consultation with the Members/Congress, the Cross-Network Advisory Group, and the Judicial Training Advisory Group;
(i) Receiving applications for membership, making provisional decisions concerning membership, and submitting full membership’s application to Congress;
(j) Making provisional proposals and decisions on the composition of, and applications for inclusion in, the Cross-Network Advisory Group and the Judicial Training Advisory Group;
(k) Proposing members of ad hoc working groups for approval by Congress;
(l) Proposing Network Ambassadors. The Management Committee may also appoint Network Ambassadors on a provisional basis subject to subsequent approval by Congress;
(m) Compiling a financial statement to be submitted to each meeting of Congress;
(n) Preparing a budget estimate for the next two years for submission to Congress;
(o) Referring any other relevant matters to Congress concerning the African Judicial Network;
(p) Receiving communications concerning any donations or other contributions offered to the African Judicial Network;
(q) Communicating with members of the African Judicial Network, and with other organs and bodies of the African Judicial Network, including the Cross-Network Advisory Group, ad hoc working groups, and Network Ambassadors;
(r) Implementing the decisions and resolutions of the Congress; and
(s) Taking any action or decision required for the proper functioning of the African Judicial Network, with due regard to the views of the members of the African Judicial Network.

3. The Management Committee may, at its discretion, invite any organisation to the African Judicial Network Dialogue that is not a member of the African Judicial Network, or any other individual person.

**Sub-Article 6.3**

**Cross-Network Advisory Group**

In order to enhance communication across different existing judicial networks, and to avoid the duplication of network activities, a Cross-Network Advisory Group shall be established to provide guidance to the Management Committee and Congress. The Advisory Group shall be composed of:

(a) One representative from each of following judicial networks, nominated by the appropriate governing authority of that network:

i. Conference of Constitutional Jurisdictions of Africa (CCJA);
ii. Constitutional Judges’ Working Group – African Network of Constitutional Lawyers (ANCL);
iii. East African Community (EAC) Chief Justices Forum;
iv. Southern African Chief Justices Forum (SACJF);

v. East Africa Judges and Magistrates Association (EAJMA);

vi. West African Jurists Association (WAJA);

vii. Union of the Arab Constitutional Councils and Courts (UACCC);

viii. World Conference of Constitutional Justice (WCCJ);

ix. Association des Cours Constitutionnelles ayant en Partage l'Usage du Français (ACCPUF);

x. Conference of Constitutional Jurisdictions of the Portuguese-Speaking Countries (CJCPLP);

xi. Commonwealth Magistrates’ and Judges’ Network.

xii. One of the Africa representatives of the International Association of Women Judges; and


(b) The Presidents of all courts of Regional Economic Communities in the AU shall be *ex officio* members of the Advisory Group.

**SUB-ARTICLE 6.4**

**JUDICIAL TRAINING ADVISORY GROUP**

1. In order to enhance communication across different existing national and international bodies dedicated to judicial training and education, and to avoid the duplication of activities of such bodies, a Judicial Training Advisory Group shall be established to provide guidance to the Management Committee and Congress.

2. The Advisory Group shall be composed of no more than fifteen representatives of selected judicial training and education bodies across the African Union, including national and international bodies. Representatives should be selected with due regard for the representation of the five African Union regions, diverse legal traditions, language, and gender equality.

3. At least two national judicial training bodies shall be represented from each of the five regions of the African Union.

4. The final decision as to the composition of the Judicial Training Advisory Group rests with the Management Committee and the Congress.

**ARTICLE 7**

**AD HOC WORKING GROUPS**
1. The African Judicial Network may establish one or more ad hoc working groups to address selected themes and topics coming within the objectives of the African Judicial Network.

2. Each working group shall have adequately clear and detailed Terms of Reference.

3. An ad hoc working group may include participation of individuals who are not judges, including non-judicial court staff, academic experts, or other experts, as appropriate.

4. An ad hoc Working Group may, at the African Judicial Network’s discretion, be styled as a Working Group, Sub-Committee, Commission, or by other nomenclature.

ARTICLE 8
NETWORK AMBASSADORS

1. The African Judicial Network may, at its discretion, nominate one or more judges, including retired judges, from within the African Union to act as a Network Ambassador. Judges may come from any court eligible to be a Full Member of the African Judicial Network.

2. Network Ambassadors will be responsible for promotion of the African Judicial Network and its activities.

3. Judges or retired judges nominated to act as Network Ambassadors shall be of high standing, competent and hold appropriate knowledge of human rights protection and of the African Charter on Human and Peoples’ Rights in particular.

4. The term of a Network Ambassador’s service shall be decided by consultation between the Management Committee and the nominated Ambassador, and may be terminated at the initiative of either of the parties.

5. The Management Committee may nominate Network Ambassadors on a provisional basis. All nominations must be approved by the Congress.

ARTICLE 9
FOCAL POINTS

1. Each court that is a Full Member of the African Judicial Network may designate an individual to act as a Focal Point for the Full Member’s communication with the Network, promote the Network’s activities, and disseminate information concerning the Network.

2. The Focal Point should ideally be a Registrar (or equivalent) of the court.
ARTICLE 10
BUDGET

1. The African Judicial Network’s budget shall be provided by the African Union.

2. The African Judicial Network may, at its discretion, engage in additional fundraising for its activities.

3. Members of the African Judicial Network may, at their discretion, provide donations to the African Judicial Network.

ARTICLE 11
FINANCIAL PROVISIONS

1. The operating costs of the seat of the African Judicial Network shall be part of its budget.

2. The cost of organizing the African Judicial Network Dialogue shall be supported by the member court of the host country with financial assistance from the African Judicial Network.

3. The African Judicial Network shall be responsible for travel expenses and other costs of individuals engaged in African Judicial Network activity, including members of the Management Committee, ad hoc working groups, and Network Ambassadors.

4. Travel and subsistence expenses of the representative of each member court shall be the responsibility of the member court represented.

5. Travel expenses and subsistence allowances of members of the Executive Bureau performing an ad hoc task during a session of the Executive Bureau are supported by the Conference.

ARTICLE 12
RATIFICATION & AMENDMENT OF THIS STATUTE

1. This Statute shall become effective upon its adoption by the Constituent Congress of the African Judicial Network. The Statute shall be provided in four originals in the Arabic, English, French, and Portuguese languages. Each text shall be equally valid.
2. Any Full Member of the African Judicial Network may table amendments to this Statute in the form of written proposals submitted to the Management Committee. The Management Committee, the Cross-Network Advisory Group, and the Judicial Training Advisory Group may also table amendments in the form of written submissions.

3. The Management Committee, following consideration of submitted amendments, shall prepare a report and submit it to the Congress for a vote.

4. Amendments may be adopted by a supermajority of two-thirds (2/3) of Congress members.

Approved in [PLACE] on [DATE].
QUESTIONNAIRE
THE ACTIVITIES, STRUCTURE, AND BUDGET OF THE ECTHR SUPERIOR COURTS NETWORK (SCN)

PROJECT: DESIGN OF AN AFRICAN JUDICIAL NETWORK FOR THE AFRICAN COURT ON HUMAN AND PEOPLES’ RIGHTS

Explanatory Note
This questionnaire is intended to elicit key information on the activities, structure, and budget of the Superior Courts Network (SCN) established by the European Court of Human Rights, to aid the process of designing an African Judicial Network for the African Court on Human and Peoples’ Rights. The African Judicial Network (AJN) will link the African Court with the highest domestic courts across the African Union State Parties that have accepted the Court’s jurisdiction, as well as courts of other regional organisations (e.g. East African Court of Justice, ECOWAS Court of Justice). A 'lessons learned' approach is central to crafting an African Judicial Network. Therefore, the questions overleaf are not only aimed at finding out what has worked to date in building the Superior Courts Network, but also what has not worked. More information on the African Judicial Network project is provided in Appendix A. Background information on the African Court is provided in Appendix B.

Documents

I. Questionnaire (overleaf)
II. Appendix A: Information on African Judicial Network Project (attached to this document)
III. Appendix B: Key Information on the African Court (appended separately)
QUESTIONNAIRE
THE ACTIVITIES, STRUCTURE, AND BUDGET OF THE ECTHR SUPERIOR COURTS NETWORK (SCN)

Guidance
Please enter responses in the grey boxes below. The box will expand to accommodate your response. A full and detailed response to each question is appreciated. All responses will be subject to strict confidentiality. Please direct any questions or requests for clarification to Dr Tom Gerald Daly, TGD Consultancy, at tgdconsultancy@gmail.com.

Understanding of the Superior Courts Network (SCN)
From analysing the Superior Court Network’s webpages, including rules and factsheets, my understanding is as follows:

In 2015 the European Court of Human Rights established the Superior Courts Network (SCN) in order to provide a practical and useful forum for the effective exchange of information between the Court and the highest courts of the Contracting States on the Court’s case-law, Convention law and practice, and relevant domestic practice regarding the Convention.

The overall aim of the SCN is to enrich dialogue and the implementation of the Convention. (As such, it closely mirrors the overarching purposes of the proposed African Judicial Network.) The SCN builds on the European Court’s existing practice of arranging visits to domestic courts.

The Network was officially launched in October 2015 and proceeded initially on a trial basis with a limited number of courts, including the highest courts of the European Court’ host state (France). Deemed a success, the Network now engages in two key activities:

- Dedicated Intranet: Launched in June 2016 to facilitate direct dialogue between the Court and domestic courts.
- SCN Focal Points Forum: Organised as an opportunity to meet and exchange and further enhance the ongoing dialogue between SCN members. The first meeting was held on 16 June 2017.

Highest domestic courts in any Contracting Party to the European Convention on Human Rights may apply for membership of the SCN by sending an expression of interest to the President of the European Court. To date, 60 courts from 33 states have joined.
A. ACTIVITIES

1. Does the SCN engage in any additional activities beyond the two core activities (Intranet and SCN Focal Points Forum), or plan to expand the range of activities? (e.g. thematic conferences/seminars, training, judicial exchanges, publications)

2. Can you provide more information on the dedicated Intranet? (e.g. who can access it, whether communication is moderated by the Court, whether it facilitates solely European Court-domestic court communication or also communication between domestic courts, what sort of information is shared, whether courts have been reluctant to use it. Screenshots of the interface would also be helpful, if possible).

3. Can you provide more information on the SCN Focal Point Forum? (e.g. how frequent will meetings be held? Will all meetings be held in Strasbourg? Is it expected that they will focus on the kinds of practical training and working sessions carried out at the first meeting in June 2017?)

4. Is there any formal link between the SCN and the European Court’s pre-existing practice of arranging visits to domestic courts? Is there any plan to bring such visits within the SCN framework?

5. In designing and establishing the SCN, was significant thought given to how it would work alongside existing judicial networks in the region covered by the European Convention? (e.g. Joint Council on Constitutional Justice, judicial networks under the Venice Commission umbrella such as Conference of European Constitutional Courts (CECC)).

6. It is understood that the SCN was initially established on a trial basis. How long was this trial period? Was a formal evaluation carried out at the end of the trial period? If so, please describe the evaluation process, including whether it included feedback from participating courts.
B. STRUCTURE

7. What is the governance framework of the SCN? Does it bear any similarity to the co-presidency model of the Venice Commission’s Joint Council on Constitutional Justice (JCCJ), which includes a president nominated by the Venice Commission in plenary, and a court liaison officer elected by the liaison officers on the Joint Council?

8. Regarding the SCN team, which members of the team work full-time? What is the division of responsibilities?
(The participants list from the June 2017 SCN Focal Points Forum lists the following: Mr Lawrence Early, Jurisconsult (who I understand is entrusted with overall management) Ms Anna Austin, Deputy Jurisconsult Ms Onur Andreotti, Lawyer, Research and Library Division, SCN Principal Administrator Ms Rachael Kondak, Lawyer, Research and Library Division, SCN Support Team Ms Rodica Gonta, Assistant, Directorate of the Jurisconsult, SCN Administrative Assistant, Page Master)

9. I am aware that Mr Mark Villiger, former Judge of the European Court of Human Rights, acts as SCN Adviser to the President. What, precisely, has been his role in establishing and developing the SCN?

10. Does the SCN include, or plan to include, other European courts (e.g. European Court of Justice)?

11. Does the SCN include, or plan to include, any non-European courts, whether domestic or regional (e.g. courts in states neighbouring Council of Member States, e.g. Belarus, Kazakhstan, or Inter-American and African regional human rights courts)?

12. If the European Court of Human Rights was designing the SCN again, would it structure the SCN differently or organise its membership differently? If yes, what would changes would be made, and why?
C. BUDGET

13. What is the annual budget of the SCN?

14. What is the source of the SCN’s budget?

15. Can you provide a breakdown of the annual budget according to each activity of the SCN?

16. Can you indicate the number of personnel dedicated to working on the SCN, including full-time and part-time personnel, and the percentage of the budget allocated to personnel?

17. Has the SCN experienced any budgetary difficulties?

18. Is the SCN budget protected for a multi-year period?

D. OVERALL REFLECTIONS & ADDITIONAL MATERIALS

19. Can you offer any advice, reflections, or ‘lessons learned’ regarding the design and functioning of the SCN, or challenges faced by the SCN to date, which have not been covered in the responses above?

20. Can you provide any supporting materials alongside your questionnaire response, which might be useful in the process of designing the African Judicial Network (AJN)? This request is aimed at obtaining materials that are not publicly available on the SCN’s webpages.
Appendix C
African Union Regions

1. West Africa, Fifteen (15) Member States:

Benin, Burkina Faso, Cape Verde, Cote d’Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

2. East Africa, Thirteen (14) Member States:

Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Mauritius, Rwanda, Seychelles, Somalia, South Sudan, Sudan, Tanzania and Uganda.

3. Southern Africa, Ten (10) Member States:

Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe.

4. Central Africa, Nine (9) Member States:

Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of Congo, Equatorial Guinea, Gabon and Sao Tome & Principe

5. Northern Africa, Six (7) Member States:

Algeria, Egypt, Libya, Mauritania, Morocco, Saharawi Arab Democratic Republic and Tunisia.
FINAL OUTCOME OF THE THIRD AFRICAN JUDICIAL DIALOGUE “IMPROVING JUDICIAL EFFICIENCY IN AFRICA”

Monday, 20 November 2017 13:42

9-11 November 2017 Arusha, The United Republic of Tanzania


2. The overall objective of the Third African Judicial Dialogue was to explore ways of enhancing judicial efficiency in Africa.

3. The specific objectives of the Dialogue were to:

i. Examine the state of judicial education in Africa;
ii. Explore ways and means to establish a model African judicial network;
iii. Brainstorm on the use of IT in the judiciary and possible opportunities and challenges to e-justice in Africa; and
iv. Identify practical and normative challenges to accessing and using decisions of regional courts by national courts in Africa.

4. The Dialogue was attended by over 150 participants, including representatives of Member States of the African Union, current and former judges of the African Court, Chief Justices and Judges of national, regional judicial institutions, academics, media personalities, human rights practitioners, civil society organizations and resource persons.

5. The following Member States were represented: Algeria, Benin, Burkina Faso, Burundi, Cape Verde, Comoros, Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Libya, Mozambique, Rwanda, Sahrawi Republic, Sao Tome and Principe, Senegal, South Sudan, Sudan, Swaziland, The Gambia, Togo, Tunisia, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

6. The following African Union and other institutions were also represented in the Dialogue: African Union Commission, African Committee of Experts on the Rights and Welfare of the Child, African Union Administrative Tribunal, AU - Advisory Board on Corruption, ECOWAS Community Court of Justice, UN Mechanism for International Criminal Tribunals, Legal and Human Rights Centre – Tanzania, Pan African Lawyers Union, Pan African Postal Union, the German Development Corporation, Crimson Logic – Singapore, Synergy International Systems – USA.
7. The Dialogue was held in the working languages of the African Union, that is, Arabic, English, French and Portuguese, to allow for easy communication, active participation and constructive exchange during the discussions.

Opening Ceremony

8. The Opening Ceremony of the Dialogue was graced by the presence of the Guest of Honour, Honourable Justice Ferdinand Wambali, Principal Judge of the High Court of the United Republic of Tanzania, who delivered the Keynote and Opening Speech, on behalf of the government of the United Republic of Tanzania.

9. Statements were also delivered at the Opening Ceremony by Honourable Justice Sylvain Oré, President of the Court, Mr. Calixte Mbari, on behalf of the Chairperson of the African Union Commission H.E. Mr. Moussa Faki Mahamat and the Commissioner for Political Affairs, H.E. Minata Samate Cessouma, Honourable Justice Dr Matilde Monjane de Almeida, Representative of the Judiciary of Mozambique, Dr Clement Julius Mashamba, Member of the African Committee of Experts on the Rights and Welfare of the Child and Ms Karin Pluberg, representative of German International Cooperation, (GiZ).

10. In her statement, Ms. Karin Pluberg, stated that the different levels of judicial systems need to work hand in hand to guarantee the protection of citizens’ rights and to do so in a harmonized way. She proposed that the judiciaries need to incorporate digital solutions and make use of new technologies in order not to lose the connection to, especially, the young generation. Ms Pluberg advised that the African Governance Architecture (AGA) at the African Union level, has developed policies and guidelines for a transparent communication for all governance institutions, including those with a human rights protection mandate that could serve as a basis for discussion. She concluded that there is a need to ensure that the four main factors that affect the performance of the judiciary, that is, (i) employees, (ii) efficient structures and procedures, (iii) public trust and (iv) harmonised application of the law, are adequately addressed.

11. The representative of the Chief Justice of Mozambique, Honourable Justice Dr Matilde Monjane de Almeida stated that justice must be swift, accessible and inclusive in order to meet the demands of the population. She noted that justice should be concerned with human rights, focusing on the rights of women and children, among other categories of vulnerable people. She highlighted the challenges in achieving this goal as being the lack of human resources, material, financial and judicial infrastructure; the lack of training, excessive bureaucracy; computer or technological constraints of magistrates and legal experts, and corruption in the judiciary. Honourable Justice de Almeida proffered that in order to overcome the shortcomings, it is necessary to provide more and better training for magistrates and legal experts and motivate them; construction of more court premises or creation of mobile courts and putting in place mechanisms for the evaluation of magistrates and legal experts. 

12. Dr. Clement Julius Mashamba, speaking on behalf of the Chairperson of the African Committee of Experts on the Rights and Welfare of the Child, Professor Benyam Mezmur, stated that the Judicial Dialogue is an important forum for enhancing the protection of children’s rights since it provides a forum for national and international judiciaries to interact. He provided the example of the amicable settlement that the Committee engaged in with the Republic of Malawi regarding the constitutional amendment to bring the age of majority in line with the African Charter on the Rights and Welfare of the Child as well the discussions with Kenya on implementation of a decision rendered by the Committee on the Nubian Children’s case.
13. In his remarks, Honourable Justice Sylvain Ore, President of the Court welcomed all participants to Arusha and thanked them for coming despite the change in the dates and venue of the Dialogue and their busy work schedules. He also thanked the Government of the United Republic of Tanzania for sending a representative to officiate the Dialogue. He highlighted that the Government of Cote d’ Ivoire informed the Court of insurmountable organisational constraints it faced and that is why it could not host the Dialogue in Abidjan.

14. The President of the Court indicated that the theme is a very relevant one, given the socio-political changes happening in Africa and emphasised the need for delivering efficient justice. He stated that with the pre-eminence of the Dialogue, other regions, such as Asia are drawing inspiration from it on how to structure their Judicial Dialogues. He affirmed that this is in line with the principle that justice, by its very nature is universal and indivisible. He concluded his remarks with a call for action that the participants should ensure the implementation of the conclusions that will be adopted.

15. Speaking on behalf of H.E. the Chairperson of the African Union Commission, Mr. Calixte Mbani recalled that the Dialogue is an important forum for exploring the state of judicial education in Africa and for achieving one of the aspirations of Agenda 2063. He emphasised that despite the year 2016 being declared the year of human rights with a special focus on women’s rights, women still suffer many challenges and the dialogue is a forum for strengthening linkages between national and continental judiciaries. He stated that the Department of Political Affairs of the African Union Commission, is spearheading the drafting of an action plan for the human rights decade to strengthen the protection of human rights protection in Africa. There is also a Policy on Transitional Justice that is to be presented to the Special Technical Committee on Justice and Legal Affairs for consideration. He emphasised that the judiciaries are a key component for following up on implementation of international human rights standards. He concluded by stating that the Department of Political Affairs will work with all stakeholders in Africa to ensure the protection of human rights for all.

16. Honourable Justice Ferdinand Wambali, Principal Judge of the High Court of Arusha delivered the keynote speech on behalf of the Government of the United Republic of Tanzania. He appreciated that the gathering represented the legal luminaries of the continent. He recalled Tanzania’s long history of fighting oppression, injustice and discrimination, adding that the testament to this is the fact that Tanzania hosts several international judicial and human rights bodies. He stated that the landmark judgments issued by the African Court are offering renewed hope and optimism to all Africans.

17. He stated that the agenda indicates that this is a continuation of the second Judicial Dialogue and that the focus should be on improving efficiency and reforming the judiciary in a holistic manner. He highlighted a number of questions that the Dialogue should consider, including:

   i. How can performance of judicial systems be enhanced to meet the needs of citizens?
   ii. How can access to justice be maximized?
   iii. How can judiciaries be made more responsive?
   iv. How can judicial officers be enabled to keep up to date?
   v. Are judiciaries delivering as they are currently instituted?
   vi. He noted that there are two important studies to be considered during the dialogue, which seemingly offer the answers to these questions. He also stated that it is imperative that the meeting considers the effect of technology on justice and strive to catch up with the developments.
18. He concluded by calling on the participants to savour the natural wonders that Tanzania has to offer in the form of its national parks and the highest mountain in Africa and officially declared the dialogue open.

19. Following the opening ceremony, presentations were delivered on the following themes:

i. The study on the state of judicial education in Africa;
ii. The launch of an online human rights course for African judiciaries;
iii. The establishment of an African Judicial Network;
iv. The establishment of an African Centre for Judicial Excellence;
v. Implementing ICT in judiciaries and justice delivery;
vi. Security and Risk Factors in Judicial Information Systems; and
vii. Practical and normative challenges to accessing and using decisions of regional courts by national courts in Africa

20. The Third African Judicial Dialogue also considered the African Union Draft 10 Year Action Plan for the promotion and protection of human rights, presented by the Consultant, the Pan African Lawyers’ Union (PALU).

21. After three days of extensive, frank and constructive deliberations, the participants concluded as follows:

On the state of judicial education in Africa
22. Member States that have not yet responded to the questionnaire were urged to do so to facilitate the finalisation of the study;

23. In order to improve the existing judicial education, there should be ownership and commitment, provision of assistance in the establishment of institutions, strengthening institutionalization and autonomy of training institutions, including the already existing institutions, and enhancing networking.

24. To set up a Committee of five Judges drawn from the five African Union regions, taking into account the different legal systems on the continent, to work with the Court and the consultant to finalise the study within twelve months.

25. The Committee should make concrete recommendations on the promotion and consolidation of judicial education in Africa, taking into account existing initiatives in Africa.

26. The Committee to transmit its report to all national judiciaries within twelve (12) months, indicating the steps that need to be taken by expected national judiciaries and the deadline therein.

On the proposal to launch an online human rights course for African judiciaries

27. Participants welcomed the initiative and proposed that the content of the course be expanded to include African human rights law and jurisprudence, and public international law, and that consideration be given as to whether to include the judgments of Supreme and Constitutional Courts relating to human rights.

28. Set up a Committee of five Judges and lawyers to work with the Court to operationalize the course within 12 months.
29. The moderators of the course should include current and former Members of African Union Human Rights Organs and Regional Courts as well as other recognised experts.

30. Participants were encouraged to apply for the course being offered by UNESCO in conjunction with the University of Pretoria on the international and regional standards on freedom of expression and the safety of journalists.

On the proposed African Judicial Network and the African Centre for Judicial Excellence

31. Participants welcomed the initiative of establishing an African Judicial Network and expressed the hope that the network will assist to disseminate not only human rights law but also international criminal law and international humanitarian law.

32. It was agreed that in order to avoid duplication and in cognisance of the budgetary constraints, the African Judicial Network and the African Centre for Judicial Excellence should be merged and the structure developed should be lean and have a modest governance structure.

33. It was noted that these initiatives differ from the Pan African Human Rights Institute whose focus is on the African Union human rights organs whereas, the proposed African Judicial Network and the African Centre for Judicial Excellence will provide a platform for coordination, networking and capacity-building for judiciaries in their administrative and judicial function. It is therefore important that these initiatives be maintained separately.

34. It was agreed to set up a Committee of five Judges to work with the Court and the consultants to finalize the studies.

On implementing ICT in judiciaries and justice delivery

35. It was observed that information technology has provided many opportunities for the judiciary around the world to streamline their work and improve their efficiency. In Africa, some countries are also taking advantage of IT and have already begun to use it in their judicial institutions. However, many countries still do not have basic IT facilities and they are yet to benefit from the technology.

36. It was noted that implementing ICT strategies require law reform, adequate technical infrastructure, sustainable funding, effective change management, continuing awareness raising and training. All these factors need to be taken into account when designing an ICT strategy for judiciaries.

37. Considering that undertaking ICT reforms is a long-term process, they should be implemented in phases which accommodate changing technologies and operating frameworks and involving all actors in the justice and law and order sector.

On Security and Risk Factors in Judicial Information systems

38. It was acknowledged that security of data is a main concern for many institutions implementing ICT strategies, including judiciaries. All measures should be put in place to ensure that the systems used are secured.

39. Other risk factors to consider and mitigate are:
i. Low commitment to project implementation- there is need to have champions with an active interest in implementing the project, preferably at the highest leadership level;
ii. Lack of retention of qualified staff;
iii. Unclear responsibilities – there should be a clear action plan with clearly defined roles and functions of all actors
iv. Delays in the review and approval of deliverables
v. Delays in providing data and documentation
vi. Continually changing technologies and procedural rules
vii. Resistance to change
viii. Legal conflicts arising from obsolete procedural laws

On the practical and normative challenges to accessing and using decisions of regional courts by national courts in Africa

40. It was acknowledged that many judicial officials do not reference or use the jurisprudence of regional courts due to many factors:

i. Lack of awareness and lack of access to the decisions
ii. The legal system – the monist and dualist influence
iii. Lack of academic courses tailored to regional and continental law and jurisprudence
iv. Interpretation approaches applied tend to limit the application of these standards.

41. In order to address these challenges, it was proposed that:

i. Enhance access to databases on relevant regional jurisprudence through better designed websites and regular law reports
ii. Publish pleadings on all matters filed, similar to the approach of the International Court of Justice
iii. Have a more purposive approach to interpretation of human rights provisions in the national constitutions particularly referencing applicable international standards and jurisprudence, while taking in account, the local context.

On the 10 Year Action Plan on the Promotion and Protection of Human Rights in Africa

42. In addition to the above presentations, the meeting considered the draft 10 Year Action and Implementation Plan on the promotion and protection of human rights in Africa 2017- 2026 presented by the consultant, the Pan-African Lawyers’ Union (PALU).

Closing Ceremony

43. The Honourable Chief Justices and Judges were informed that a venue for the next Fourth African Judicial Dialogue, which will be held in 2019, has not been decided and any country willing to host it should express its willingness to do so. The Registry will provide more information in this regard.

44. The participants expressed their appreciation to the Government and people of the United Republic of Tanzania for their hospitality and the facilities placed at their disposal to ensure the success of the Third African Judicial Dialogue.

45. The participants thanked the African Court as host and convener of the Third African Judicial Dialogue.
46. Participants expressed their appreciation for the support received from GIZ, World Bank, European Union and the African Union Commission through the African Union Leadership Academy and the Department of Political Affairs in the organization and hosting of the Third African Judicial Dialogue.

47. The Dialogue was officially closed by Honourable Justice Ben Kioko, the Vice-President of the African Court.