

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

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**REQUEST FOR ADVISORY OPINION**

**No. 002/2012**

**BY PAN AFRICAN LAWYERS' UNION AND SOUTHERN  
AFRICAN LITIGATION CENTER**

**ORDER**

**The Court composed of:** Sophia A.B. AKUFFO, President; Fatsah OUGUERGOUZ, Vice-president; Gérard NIYUNGEKO; Bernard M. NGOEPE, Augustino S.L. RAMADHANI, Duncan TAMBALA, Elsie N. THOMPSON, Sylvain ORE, El Hadji GUISSSE, Ben KIOKO, and Kimelabalou ABA – Judges; and Robert ENO- Registrar,

**In the Matter of a**

**REQUEST FOR ADVISORY OPINION**

**PAN AFRICAN LAWYERS' UNION AND SOUTHERN AFRICAN LITIGATION CENTER**

After deliberations,  
makes the following Order:

1. By letter dated 23 November, 2012 and received at the Registry of the Court on the same day, the Pan African Lawyers' Union and the Southern African Litigation Center (hereinafter referred to as 'the Authors'), requested the Court for an advisory opinion.
2. In their request, the Authors requested the Court to give its opinion on: "(a) whether the decision of the Southern African Development Community (SADC) Summit of Heads of State to suspend the Tribunal and terminate the term of office of duly elected Judges is consistent with the African Charter on Human and Peoples' Rights (the Charter), the Protocol on the relations between the AU and RECs, the Treaty Establishing the African Economic Community, the SADC Treaty, the SADC Protocol and general principles on the rule of law; (b) whether the decision violates institutional independence of the SADC Tribunal and the personal independence of its Judges as provided for under Article 26 of the African Charter, the UN Principles on the Independence of the Judiciary and

Value 1 of the Bangalore Principles of Judicial Conduct 2002; (c) whether the decision violates the right to access to justice and effective remedies for SADC citizens as guaranteed under Articles 3 and 7 of the African Charter, Articles 18 and 19 of the Tribunal Protocol and UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; and (d) whether the decision-making process undertaken in the review of the SADC Tribunal jurisdiction are in compliance with Article 23 of the SADC Treaty".

3. By letter dated 23 November 2012, the Registry acknowledged receipt of the request.
4. By email sent on 5 December, 2012, the Registry inquired from the African Commission on Human and Peoples' Rights (hereinafter referred to as the Commission) whether the subject matter of the Request was related to any matter pending before the Commission.
5. By letter dated 5 December, 2012, the Commission confirmed that there was a matter pending before it "dealing with the suspension of the SADC Tribunal".
6. By letter dated 10 January, 2013, the Registry transmitted the letter of the Commission to the Authors and drew their attention to Rule 68(3) of the Rules of Court which provides that 'the subject matter of the request for advisory opinion shall not relate to an application pending before the Commission'.
7. As at the date of this Order the Authors have not responded or otherwise reacted to the Registry's letter of 10 January, 2013, transmitting the letter of the Commission to them.

## 8 Now Therefore

- (i) The Court finds that the request by the Pan African Lawyers' Union and the Southern African Litigation Center relates to a matter pending before the Commission
- (ii) The Court also notes that the said Authors have not responded to the Court's letter transmitting the letter of the Commission on the matter
- (iii) The Court notes that under Article 4(1) of the Protocol and Rule 68(3) of the Rules of Court, the subject matter of a request for advisory opinion shall not relate to a matter being examined by the Commission

### THE COURT, unanimously:-

Orders that the Request for Advisory Opinion, made by the Authors, be and the same is hereby declined as it relates to a matter pending before the African Commission on Human and Peoples' Rights

Done at Arusha this fifteenth day of March in the year Two Thousand and Thirteen, in English and French, the English text being authoritative

Signed:

Justice Sophia A.B. AKUFFO, President

Robert ENO, Registrar

