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Opening Remarks

By

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Legal Counsel of the African Union (AU)

at

***The 10th Anniversary of the Malabo
Protocol***

**“The Protocol on Amendments to the
Protocol on the Statute of the African
Court of Justice and Human Rights”**

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Addis Ababa, Ethiopia

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Excellencies,

Representatives from Member States,

Distinguished Judges and Commissioners of AU Organs,

Learned Colleagues from academia

Practitioners in the field of international law,

Representatives of CSOs,

Fellow Colleagues from the Pan African Lawyers Union and Atrocities Watch Africa,

All participants joining us online and in person,

Ladies and Gentlemen,

1. It is with immense pleasure that I welcome you all to this momentous occasion, marking the 10th anniversary celebration of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, more commonly known as the **Malabo Protocol**. I wish to extend my sincere gratitude and appreciation to our co-organizers, PALU and AWA, in supporting this timely initiative. Today, we gather not only to celebrate a decade since the adoption of this seminal instrument but also to reflect on its profound implications for justice and accountability across our continent.
2. It should be reiterated that the Malabo Protocol was conceived with a visionary purpose. It extends the jurisdiction of the African Court to cover a wide array of international and transnational crimes, including genocide, war crimes, crimes against humanity, and new categories of crimes such as corruption and the illicit exploitation of natural resources. This Protocol embodies our collective commitment to combat impunity and enhance justice within Africa, ensuring that our mechanisms for accountability are robust and responsive to the needs of our time and context.

Esteemed colleagues,



3. The adoption of the Malabo Protocol on 27 June 2014 was a testament to the AU's commitment to enhancing accountability and justice on the continent. By granting jurisdiction to the pending Merged Court over a broad spectrum of international crimes, the Protocol seeks to establish a regional mechanism that complements and enhances global efforts while asserting African ownership within the international justice landscape.
4. Over the past decade, the AU's Office of the Legal Counsel has been at the forefront of advocating for the ratification of the Malabo Protocol. We have witnessed the recent first, ever ratification by the Republic of Angola, marking a crucial step forward in our journey towards a fully operational African Court of Justice and Human Rights. I take the opportunity to once again congratulate the Government of the Republic of Angola for championing the Cause and urge other Member States to join in this noble quest of improving justice and accountability mechanisms on the Continent.
5. From the low ratification pace and rate, it is clear that much work remains. The Protocol requires the ratification of 15 Member States to enter into force, and we currently stand at only one. Indeed, this new development highlights the importance of sustained advocacy efforts and the need for continued dialogue among stakeholders to overcome the challenges hindering the Protocol's ratification.

Ladies and gentlemen,

6. As we gather to celebrate this milestone, we must also confront the challenges. The AU's commitment to creating a unified jurisdiction has been a long and slow process, marked by significant setbacks and controversies. The 2008, Sharm El Shiekh Protocol, which proposed to merge the African Court on Human and Peoples' Rights with the Court of Justice of the African Union, was a crucial step forward. However, the subsequent adoption of the Malabo Protocol in 2014 has raised concerns about the potential for impunity and the erosion of international criminal justice standards. The Malabo Protocol's Article 46 A bis, which grants immunity to sitting Heads of State and senior officials, has been widely criticized for its incompatibility with Article 27 of the Rome Statute and the principles of the AU itself. This provision, often referred to as the "*impunity clause*," has sparked intense debate about the role of the African Court in addressing international crimes and upholding the rule of law.
7. Despite these challenges, the Malabo Protocol remains an important initiative for enhancing regional accountability and justice in Africa. Its potential to address impunity for serious crimes, including genocide, war



crimes, and crimes against humanity, is significant. However, I must stress that for the protocol to become a reality, it is essential that the AU and its member states reinvigorate discussions and intensify efforts towards its ratification.

Sisters and brothers

8. As we embark on this journey, I am reminded of the words of Nelson Mandela, who once said, "*The greatest glory in living lies not in never falling, but in rising every time we fall.*" As we confront the challenges that lie ahead, let us draw strength from the resilience and determination of the African people, who have consistently shown that even in the darkest of times, there is always hope for a brighter future.
9. In today's high-level dialogue, we will engage with key stakeholders, including representatives from AU judicial bodies, Member States, academia, practitioners and civil society, to collectively chart a path forward. We will explore the challenges that have delayed ratification, discuss strategies to overcome these hurdles, and advocate strongly for the ratification and eventual entry into force of the Malabo Protocol.
10. As we delve into our discussions, I urge you all to bring your expertise, insights, and innovative ideas to the table. Let us work together to harness the transformative potential of the Malabo Protocol, ensuring that it serves as a cornerstone for justice and accountability in Africa.
11. In conclusion, I extend my heartfelt gratitude to each one of you for your unwavering commitment to justice and your participation in this high-level dialogue. Let this anniversary be a catalyst for renewed vigor in our quest to make the Malabo Protocol a living reality, a testament to our dedication to the principles of justice, human rights, and the rule of law.

I thank you all and wish you a fruitful deliberation