Speech by the Tanganyika Law Society delivered on behalf of the Executive Committee of the Coalition for An Effective African Court on Human and People’s Rights at the Africa Day Celebrations held at the Mnazi Mmoja Grounds, Dar es Salaam On 25th May, 2011

Honourable Mathias Chikawe – Minister of State for Good Governance in the Office of the President,

Honourable Justice Gerard Niyungeko – President of the African Court on Human and People’s Rights,

Your Excellency, Mrs. Fatma Ndangiza – High Commissioner for Rwanda,

Your Excellency, Mr. Ibrahim Mukiibi – High Commissioner for Uganda,

Ms. Rhoda Masaviru, Secretary General – Pan African Postal Union

Your Excellencies, Members of the Diplomatic Corps present,

Distinguished Guests,

Ladies and Gentlemen,

I am humbled by the honour bestowed upon the Coalition for an Effective African Court on Human and People’s Rights ("the Coalition") to participate in this momentous occasion where we are celebrating Africa Day under the theme of “Africa at 50: Accelerating Youth Empowerment for Sustainable Development”.


For those of you who may not be familiar with the work of the Coalition, we envisage a continent where victims of human rights violations have access to justice.

The Coalition believes in access to justice for all, particularly individuals, and an independent judicial body and therefore, has the mission to ensure that the African Court on Human and Peoples’ Rights (the African Court) is effective, accessible and credible through training, education, information documentation and dissemination, research, advocacy, lobbying and networking. In light of the complimentary relationship between the African Commission on Human and Peoples’ Rights (the African Commission) and the African Court, the Coalition aims to ensure that the African Commission is strengthened.

The Coalition is a network of individuals, NGOs and national human rights institutions, formed during the first conference for the promotion of the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights (the Protocol) in Niamey, Niger in May 2003.

The Coalition has a membership of some 300 NGOs and individuals. Chaired by the East Africa Law Society with its Secretariat in Arusha, Tanzania, the Executive Committee of the Coalition enjoys membership of nine (9) African organizations including the Tanganyika Law Society – to which I am the Chief Executive Officer - and the International Commission of Jurists, naming those based within the Eastern African region.
The key purpose for its establishment is to have an effective and independent African Court in order to provide redress to victims of human rights violations and strengthen the human rights protection system in Africa. Despite progressive developments at the African Union (AU) aimed at strengthening democracy and human rights, the continent continues to face challenges in these areas: civil wars, weak state institutions, social and economic pressures and unconstitutional changes of government are ever present.

So included in the objectives of the Coalition are to (1) have full ratification of the protocol establishing the African Court by all 53 member states of the AU; (2) enhance transparency in the nomination and election of judges; (3) promote direct access by individuals to take cases directly to the African Court; (4) provide a platform for sustainable civil society participation in the work of the African Court; (5) provide technical support to the African Court; (6) develop capacity for litigation; and (7) publicise developments on the African Court.

At a time when Africa has and continues to witness a series of uprisings, spawned – by in large - by the manifestation of the frustrations of an unemployed and marginalized youth, it is of great significance that the organizers focused the theme of this milestone celebration on the empowerment of youth and duly recognized the importance of sensitizing the public on the African Court as a venue for recourse when human rights have been disenfranchised.

Now, I am certain that the President of the African Court will speak on the accessibility, jurisdiction and composition among other things
about the African Court, as well as the Court’s successes and the challenges facing it, but it is of import in this address to bring your attention to other matters concerning the Court. For example, with regard to accessing the Court, inter-governmental organisations, organs of the AU, the African Commission and AU States may file human rights cases (arising from the African Charter on Human and People’s Rights as well as any other relevant human rights instruments ratified by the States concerned) at the Court, as well as NGOs with observer status at the African Commission and whose states have accepted their competence to litigate. Also of import is knowledge that the decisions of the African Court are binding on State Parties.

Currently, the African Court has seven contentious cases and one request for advisory opinion pending before it. To date, it has considered and decided **ONLY TWO** cases. The first case was against the Government of Senegal, which was dismissed on admissibility. The second matter against the Libyan Government was an order for provisional measures. With regard to the second matter, the Coalition brought to the attention of the African Commission in April 2011 the failure of the Government of Libya to implement the order for provisional measures, issued by the African Court on 25th March 2011. The Coalition urged the African Commission to remind the Government of Libya of its obligations under the African Charter and its commitments under the Protocol. Implementation of the provisional measures is still pending.

So although binding, enforcement of the decisions of the African Court may still prove to be a challenge. Another challenge includes
direct access to the Court by individuals and Civil Society Organizations.

State Parties **MUST FIRST** make a declaration in terms of Article 34(6) to permit direct petitioning by individuals and NGOs to the Court. Currently, **ONLY** Burkina Faso, Ghana, Mali, Malawi and Tanzania are the States out of 26 (of 53) States that have already ratified the Protocol, to have made the declaration. But for a Court to be effective it must be accessible to victims of human rights violations. And the victims are, in the majority of the cases, individuals and communities. **Therefore, more States must ratify the Protocol as well as deposit the Article 34 (6) declaration.**

Another limitation to having access to the Court is the exhaustion of local remedies requirement, which may delay access to the Court as a result of delayed justice caused by case backlogs common to the Judiciaries of many African jurisdictions.

When viewed in totality, these challenges look even more significant when evaluated against the current consideration by the African Union Summit to expand the jurisdiction of the African Court of Justice on Human and People’s Rights – the next genesis or phase of the African Court integrated with the African Court of Justice of the AU - to include international crimes, such as crimes against humanity and genocide: a move that some are applauding and for which others are lamenting.
So at 50, Africa is still coming of age. Not in the sense that the Continent and us citizens can now - with satisfaction - rest on our laurels but in the sense that we should celebrate our achievements only as weighed against the challenges and burdens that we still carry, with a view to timely and effectively addressing those challenges – in this case, human rights, violations of which are often perpetrated with impunity.

With African nations having celebrated their independence since 1847 for the case of Liberia to as early as 1997 for the case of Djibouti and now with dawning of a Southern Sudanese State, it is imperative that African States, Heads of State, African institutions and us citizens pay greater attention to respecting, upholding and enforcing the Rule of Law amidst the myriad of challenges that we continue to face with a view to enhancing the AU goals of greater citizen participation, democracy, and good governance among several others.

And where there is need to seek an advisory opinion or the settlement of a dispute, States should be willing to submit to the jurisdiction of the African Court and should also be willing to have their citizens (individually or through NGOs) access the same.

If for nothing else, for justice, peace and security. And ultimately, for a better Africa.

**Thank you for listening.**