Lost (or Found) in Transition? The Anatomy of the New African Court of Justice and Human Rights

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I. Introduction

The African Court on Human and Peoples’ Rights (ACtHPR) has been in transition for several years now. The locus of this transition has been an attempt to merge the Court with the African Court of Justice (ACJ),1 created in 2003, into a single judicial institution. Established slightly over a decade ago by a Protocol to the African Charter on Human and

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* The views expressed here are personal.

Peoples’ Rights, the ACtHPR was finally elected in 2006, two years after its constitutive Protocol came into force. Three years later, it is yet to commence its operations.

When it commences its work, it will only be for a transitional period since the African Union (AU) adopted a Protocol in July 2008 to merge the Court with the ACJ. The Protocol, which replaces the constitutive protocols creating these two Courts, establishes a new African Court of Justice and Human Rights, with features of the ACtHPR and the ACJ, all in a single judicial institution.

While the merger is a significant development in the institutionalization of human rights in Africa, some have pointed to the potential pitfalls of the merger, or at least some elements of the new Protocol. Yet others have also questioned the procedural legality, in light of the law of treaties, and the haste with which the merger was transacted. Even more critical is the attrition of some provisions in the instruments which the new Protocol replaces and the failure by the AU to re-examine the normative and institutional problems of the African Char-

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4 Article 1, the African Court of Justice and Human Rights.
