

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

SEPARATE OPINION OF VICE-PRESIDENT FATSAH OUGUERGOUZ

I fully subscribe to the decision on the Court's lack of jurisdiction to hear the Application filed against the African Union by Mr. Atabong Denis Atemnkeng. The Protocol establishing the Court indeed provides that only States Parties to the said Protocol may be brought before the Court (see Articles 3 (1), 5 (1, *littera c*)), 7, 26, 30, 31 and 34 (6)). The African Union not being a State entity party to the Protocol, the Court manifestly lacks the jurisdiction to hear this Application. Consequently, I am of the opinion that the Application ought not to have given rise to a judgment *per se* on the basis of Article 52 (7) of the Rules, relating to preliminary objections; it ought to have been dismissed *de plano* by a simple letter from the Registrar (see *mutatis mutandis* my separate opinion attached to the Court's judgment of 26 June 2012 in a similar case namely *Femi Falana v. The African Union*; see also my separate opinion attached to the decision of 30 September 2011 in the case of *Efoua Mbozo'o Samuel v. Pan African Parliament*).

Besides, the fact that the Court manifestly lacks the jurisdiction to hear this Application is clearly exhibited in the relative brevity of the reasons for the judgement (see paragraphs 36 to 40, and more specifically paragraphs 36 and 39).

A handwritten signature in blue ink, reading 'Fatsah Ouguergouz'.

Hon. Fatsah Ouguergouz
Vice President

Robert Eno
Registrar

A handwritten signature in blue ink, reading 'Robert Eno'.

