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**STATEMENT BY HONOURABLE CHIEF JUSTICE BHEKI M.
C. MAPHALALA**

**OPENING OF THE 2025 JUDICIAL YEAR OF THE
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**

***THEME: “ADVANCING JUSTICE THROUGH
REPARATIONS”***

Arusha, United Republic of Tanzania

3 February, 2025

- 1. His Excellency José Maria Pereira Neves, President of the Republic of Cabo Verde and Guest of Honour together with your delegation**
- 2. Hon. Lady Justice Imani D. Aboud, President of the African Court on Human and Peoples' Rights**
- 3. Her Excellency Dr. Monique Nsanzabaganwa, Deputy Chairperson of the African Union Commission in virtual attendance**
- 4. Hon. Ambassador Shaib Mussa, representing Hon. Mahmoud Thabit Kombo, Minister of Foreign Affairs and East African Cooperation of the United Republic of Tanzania**

- 5. Hon. Jumanne Sagini, Deputy Minister of Constitutional and Legal Affairs representing Hon. Dr. Damas D. Ndumbaro, Minister of Constitutional and Legal Affairs of the United Republic of Tanzania**

- 6. Mr. Marcel Akpovo, Regional Representative for East Africa and to the African Union representing H.E. Volker Turk, United Nations High Commissioner for Human Rights**

- 7. Your Lordships and Your Ladyships Chief Justices of African Union Member States**

- 8. Hon. Paul Christian Makonda, The Regional Commissioner of Arusha**

- 9. Excellencies Members of the Permanent Representatives Committee to the African Union**

- 10. Excellencies Ambassadors and High Commissioners accredited to the United Republic of Tanzania**
- 11. Hon. Justice Modibo Sacko, Vice President of the African Court on Human and Peoples' Rights**
- 12. Hon. Judges of the African Court on Human and People's Rights**
- 13. Hon. Judges of the African Union Member States' Jurisdictions**
- 14. Excellencies Heads of Organs and Institutions of the African Union here present and in virtual attendance**
- 15. Hon. Presidents of International and Regional Courts and Administrative Tribunals here present or in virtual attendance**
- 16. Distinguished Members of the Arusha Administration**

- 17. Distinguished National Focal Points of the African Court from Members States of the African Union here present and those in virtual attendance**

- 18. Distinguished Chairpersons and Members of the National Human Rights Institutions of Members States of the African Union here present and those in virtual attendance**

- 19. Hon. Registrars and Deputy Registrars of the various jurisdictions here present and those in virtual attendance**

- 20. Presidents and Members of Bar Associations here present and those in virtual attendance**

- 21. Distinguished Counsel on the Roster of the African Court and Members of the Legal Profession here present and those in virtual attendance**

22. Members of the Civil Society

23. Distinguished Members of the Academia

24. Members of the Media & the Press Fraternity

25. Ladies and gentlemen

1. It gives me great pleasure to deliver this goodwill message during the Opening of the 2025 Judicial Year of the African Court on Human and Peoples' Rights convened under the theme "***Advancing Justice through Reparations***". I start by taking the opportunity to thank Honourable Lady Justice Imani D Aboud, the President of the Court and the whole Court for the invitation.

2. The subject of reparations for past and ongoing injustices has emerged as a topical human rights issue in the 21st century. This is evidenced by the resurgence and proliferation of reparation claims from various groups globally, including Africa. In Africa, these demands for the redress of historical injustices typically stem from the impact of colonialism, slave trade, discrimination, unlawful dispossession of land, exploitation of natural resources, and the appropriation of cultural heritage.

3. The call for reparations in the specific context for Africa is not a recent phenomenon. It can be traced back to the 1993 Abuja Proclamation and has gained traction through subsequent initiatives such as the 2001 Durban Declaration and the recent 2023 Accra Proclamation on Reparations. These endeavours underscore the pressing need to address the enduring consequences of slavery, colonialism, apartheid, and other forms of discrimination.

4. Your Excellency, Mr. President José Maria Pereira Neves and Distinguished Guests, as part of the African human rights architecture, national courts together with the subregional courts and continental human rights organs should play a pivotal role in this discourse. The national, sub-regional and continental judicial organs are at the vanguard of advancing reparatory justice.

5. For national judiciaries we are encouraged to note two proximate decisions of the African Court and the African Commission on Human and Peoples' Rights (African Commission) dealing with claims for reparations for historical injustices by indigenous populations.

6. In Application No. 006/2012 *African Commission on Human and Peoples' Rights v Republic of Kenya (Ogiek case)*, in the decision

on the merits, rendered in May 2017, the African Court found violations of human rights of the *Ogiek*, an indigenous population in Kenya, contrary to the African Charter on Human and Peoples' Rights (the Charter) and other human rights instruments stemming from historical injustices against them. On 23 June 2022, the African Court rendered the decision on reparations in the matter, awarding various reparations.

7. The African Commission's decision in Communication 588/15 *Minority Rights Group International (MRGI) et Environnement Ressources Naturelles et Développement (ERND) (on behalf of the Batwa of Parc National de Kahuzi-Biega) v Democratic Republic of Congo (DRC)* (Batwa case) relates to claims, by the *Batwa*, an indigenous population in DRC. In its decision rendered in May 2022, the Commission found that there were violations of the rights of the *Batwa*, contrary to the African Charter and made recommendations on various forms of reparation to the *Batwa*.

8. Your Excellency, José Maria Pereira Neves and Distinguished Guests, these decisions are instructive in developing models on reparations for past injustices not only against indigenous populations but also for other groups. The flexible interpretations by the African Court and African Commission reveal their recognition of the intergenerationality of certain injustices and their commitment to ensuring adequate remedies for victims.

9. National judiciaries may have the opportunity to articulate the boundaries of the applicability of comparative jurisprudence on reparations for historical injustices and its limits, to suit the realities of the national and African contexts. This will contribute to developing a unified African approach to reparations for historical or intergenerational injustices and ensure adequate nuances between individual reparations and collective remedies. Above all, strategies must be considered to ensure the effective implementation of these decisions.

10. In addition, the judicial responses to reparations for historical injustices must consider diverse forms of reparations, including monetary and non-monetary, material and moral, and collective and individual. The principles of proportionality and adequacy for the harm suffered must guide remedial orders. This aspect remains crucial, particularly for historical injustices that often face philosophical challenges such as victim identification, agency-liability issues, harm valuation difficulties, and legal constraints such as the statute of limitations and non-retroactivity of laws.

11. As national judiciaries, we join hands with all participants to contribute to the discourse on our shared responsibility to advance justice through reparations and to be a beacon of hope for all those seeking redress.

I thank you and may God bless us all.

M. C. B. MAPHALALA

**CHIEF JUSTICE AND PRESIDENT OF THE SUPREME COURT OF
THE KINGDOM OF ESWATINI AND CHAIRPERSON OF THE
SOUTHERN AND EASTERN AFRICA CHIEF JUSTICES' FORUM
(SEACJF)**