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**EX.CL/741(XXI)**  
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**REPORT ON THE ELECTION OF THREE (3) JUDGES**  
**OF THE AFRICAN COURT ON HUMAN AND**  
**PEOPLES' RIGHTS (AfCHPR)**

**REPORT ON THE ELECTIONS OF JUDGES OF THE AFRICAN COURT  
ON HUMAN AND PEOPLES' RIGHTS IN JULY 2012**

**I. INTRODUCTION**

1. The Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights (the Protocol) adopted by the 34<sup>th</sup> Session of the Assembly of Heads of State and Government of the OAU in Ouagadougou, Burkina Faso on 9 June 1998 came into force on 25 January 2004, thirty (30) days after the deposit of the instruments of ratification by fifteen (15) Member States, in conformity with Article 34 (3) of the Protocol.

2. Article 11 of the Protocol stipulates that the African Court on Human and Peoples' Rights (AfCHPR) is composed of "*eleven (11) judges, nationals of Member States, elected in an individual capacity...*". In addition, the Article stipulates that no two (2) judges may be nationals of the same State.

3. The first eleven (11) AfCHPR Judges were elected by the Eighth Ordinary Session of the Executive Council and appointed by the Sixth Ordinary Session of the Assembly held in Khartoum, The Sudan in January 2006. Following the casting of lot to determine their respective mandates, as stipulated in Article 15 of the Protocol, the terms of office of the appointed Judges was set as follows:

<b>No.</b>	<b>Name</b>	<b>Term</b>	<b>Country</b>	<b>Region</b>
1.	Ms. Sophia A.B. AKUFFO	2 years	Ghana	Western
2.	Mr. G.W. KANYIEHAMBBA	2 years	Uganda	Eastern
3.	Mr. Bernard Makgabo NGOEPE	2 years	South Africa	Southern
4.	Mr. Jean Emile SOMDA	2 years	Burkina Faso	Western
5.	Mr. Hamdi Faraj FANOUSH	4 years	Libya	Northern
6.	Mrs. Kelello Justina MAFOSO-GUNI	4 years	Lesotho	Southern
7.	Mr. Fatsah OUGUERGOUZ	4 years	Algeria	Northern
8.	Mr. El Hadji GUISSSE	4 years	Senegal	Western
9.	Mr. Jean MUTSINZI	6 years	Rwanda	Eastern
10.	Mr. Modibo Tounry GUINDO	6 years	Mali	Western
11.	Mr. Gérard NIYUNGEKO	6 years	Burundi	Central

## II. TERM OF OFFICE

4. The term of office of the following four (4) Judges elected for two (2) years in January 2006 and sworn in, in July 2006 in Banjul, The Gambia expired in July 2008:

No.	Name	Term	Country	Region
1.	Ms. Sophia A.B. AKUFFO	2 years	Ghana	Western
2.	Mr. G.W. KANYIEHAMBA	2 years	Uganda	Eastern
3.	Mr. Bernard Makgabo NGOEPE	2 years	South Africa	Southern
4.	Mr. Jean Emile SOMDA	2 years	Burkina Faso	Western

5. The following AfCHPR Judges were elected or re-elected for six (6) years by the Thirteenth Ordinary Session of the Executive Council and appointed by the Eleventh Ordinary Session of the Assembly in Sharm El Sheikh, Egypt in July 2008.

No.	Name	Term	Country	Region
1.	Ms. Sophia A.B. AKUFFO	6 years	Ghana	Western
2.	Mr. Githu MUIGAI	6 years	Kenya	Eastern
3.	Mr. Joseph Nyamihana MULENGA	6 years	Uganda	Eastern
4.	Mr. Bernard Makgabo NGOEPE	2 years	South Africa	Southern

6. Following elections in 2008, the membership of the AfCHPR was as follows:

No.	Name	Country	Term of Office
1.	Mr. Hamdi Faraj FANOUSH	Libya	4 years from January 2006
2.	Mrs. Kelello Justina MAFOSO-GUNI	Lesotho	" " " " "
3.	Mr. El Hadji GUISSSE	Senegal	" " " " "
4.	Mr. Fatsah OUGUERGOUZ	Algeria	" " " " "
5.	Mr. Modibo Tounty GUINDO	Mali	6 years from January 2006
6.	Mr. Jean MUTSINZI	Rwanda	" " " " "
7.	Mr. Gérard NIYUNGEKO	Burundi	" " " " "
8.	Ms. Sophia A.B. AKUFFO	Ghana	6 years from July 2008
9.	Mr. Githu MUIGAI	Kenya	" " " " "
10.	Mr. Joseph Nyamihana MULENGA	Uganda	" " " " "
11.	Mr. Bernard Makgabo NGOEPE	South Africa	" " " " "

7. The term of office of the following Judges elected for four (4) years in January 2006 and sworn in, in Banjul, The Gambia in July 2006 expired in July 2010:

No.	Name	Term	Country	Region
1.	Mr. Hamdi Faraj FANOUSH	4 years	Libya	Northern
2.	Mrs. Kelello Justina MAFOSO-GUNI	4 years	Lesotho	Southern
3.	Mr. El Hadji GUISSSE	4 years	Senegal	Western
4.	Mr. Fatsah OUGUERGOUZ	4 years	Algeria	Northern

8. In addition to the above-mentioned four (4) AfCHPR Judges, Mr. Githu MUIGAI from Kenya, who was elected for six (6) years in July 2008, resigned and ceased to exercise the functions of a Judge.

9. Following the elections in July 2010, the membership of the AfCHPR was as follows:

No.	Name	Country	Term of Office
1.	Mr. Modibo Tounty GUINDO	Mali	6 years from January 2006
2.	Mr. Jean MUTSINZI	Rwanda	" " " " "
3.	Mr. Gérard NIYUNGEKO	Burundi	" " " " "
4.	Mr. Sylvain ORE	Côte d'Ivoire	4 years from July 2010
5.	Ms. Sophia A.B. AKUFFO	Ghana	6 years from July 2008
6.	Mr. Joseph Nyamihana MULENGA	Uganda	" " " " "
7.	Mr. Bernard Makgabo NGOEPE	South Africa	" " " " "
8.	Mr. Fatsah OUGUERGOUZ	Algeria	6 years from July 2010
9.	Mr. Augustino S. L. RAMADHANI	Tanzania	" " " " "
10.	Mr. Duncan TAMBALA	Malawi	" " " " "
11.	Ms. Eisie Nwanwuri THOMPSON	Nigeria	" " " " "

### III. ELECTIONS SCHEDULED FOR JULY 2012

10. The term of office of the following three (3) Judges elected by the Eighth Ordinary Session of the Executive Council held in January 2006 and sworn-in in Banjul, The Gambia in July 2006 for a term of six (6) years will expire in July 2012:

No.	Name	Term	Country	Region
1.	Mr. Modibo Tounty GUINDO	6 years	Mali	Western
2.	Mr. Jean MUTSINZI	6 years	Rwanda	Eastern
3.	Mr. Gérard NIYUNGEKO	6 years	Burundi	Central

11. The three (3) members are eligible for re-election, only once with the exception of the Judge from the Republic of Mali in view of the fact that Mali has been suspended from participating in the activities of the Union following the unconstitutional change of government that took place in that country in March 2012. Accordingly, Mali does not have the right to present any candidate.

12. Consequently, the Commission of the African Union, vide its Notes Verbale references BC/OLC/66.5/5689.12 and BC/OLC/66.5/5949.12 dated 24 February and 20 April 2012, respectively, invited the States Parties to the Protocol to submit nominations for the three (3) vacancies that will arise.

13. The Commission informed the State Parties, that each State Party may submit up to three (3) candidates, but only two (2) out of the three (3) candidates submitted can be nationals of that State Party. Further, no two (2) nationals of the same State can be elected AfCHPR Judges.

14. In addition, the Commission drew the attention of State Parties to Article 14 of the Protocol that requires the Assembly to ensure that there is representation of the main regions of Africa and of their principal legal traditions as well as adequate gender representation, respectively. In this regard, the Commission requested State Parties to ensure that at least one (1) of the candidates they nominate is a female, if due consideration of gender is to be meaningful, and that they give preference to candidates with experience in more than one of the principal legal traditions of Africa (Civil Law, Common Law, Islamic Law and Custom and African Customary Law).

### IV. REQUIREMENTS FOR APPOINTMENT

15. Article 11 of the Protocol stipulates that the judges must be jurists of high moral character and of recognized practical, judicial, or academic competence and experience in the field of human and peoples' rights.

16. In addition, Article 18 stipulates "*the position of judge of the Court is incompatible with any activity that might interfere with the independence or impartiality of such judge or the demands of the office, as determined in the Rules of the Court*". In interpreting the question of incompatibility, the Advisory Committee of Jurists on the establishment of the Court of Justice (ICJ) pointed out that "(A)

*member of government, a Minister or under-secretary of State, a diplomatic representative, a director of a ministry, or one of his subordinates, or the legal adviser to a foreign office, though they would be eligible for appointment as arbitrators to the Permanent Court of Arbitration of 1899, are certainly not eligible for appointment as judges upon our Court.”*

## **V. PROCEDURE FOR ELECTION**

**17.** Article 14 stipulates “*the judges of the Court shall be elected by secret ballot by the Assembly from the list referred to in Article 13 (2) of the present Protocol*”.

**18.** The Judges of the Court shall be elected by secret ballot by the Twenty-First Ordinary Session of the Executive Council scheduled for Lilongwe, Malawi in July 2012, by virtue of delegation of power by the Assembly in accordance with Article 9 (2) of the Constitutive Act of the African Union.

**19.** In the election of the Judges, the Executive Council shall ensure that in AfCHPR as a whole, there is representation of the main regions of Africa and of their principal legal traditions in accordance with Article 14 (2). In addition, the Executive Council shall ensure that there is adequate gender representation.

**20.** In order to ensure representation of all the regions of Africa, the AU geographical representation formula should, as far as possible, be used unless the required number cannot be obtained from any of the regions, namely, East (2), Central (2), North (2), South (2) and West (3).

**21.** The geographical representation in the AfCHPR, after taking into account the expiry of the term of office of the three (3) Judges is as follows: East (2), Central (0), North (1), South (2) and West (3).. By virtue of decision Assembly/AU.356 (XVI) the Commission was requested to “ensure the respect of the principle of geographical representation in all African Union organs with elected members, except in cases where a region which has been duly informed has not presented candidates”.. As it is, for the forthcoming elections in July 2012, there is one candidate from the Central Region, two from Eastern Region, one from Southern Region and, two from the Western Region. Accordingly, the Central Region is entitled to have its sole candidate elected in order to maintain its representation in the AfCHPR.

**22.** Further, it should be noted that currently AfCHPR has two (2) women Judges out of eleven judges one of whose mandate will expire in July 2014. This situation is mostly due to the fact that there were very few women candidates submitted by States Parties for the last elections in 2008 and 2010, respectively. Additionally, it should be noted for the elections in Addis Ababa, Ethiopia, there are no female candidates for Judge at the AfCHPR). This means that ideally the election to take place in Lilongwe, Malawi should take these parameters into account.

**23.** The list of nominations to fill the three (3) vacancies is attached hereto as Annex I, and the respective curricula vitae as Annex II.

## **ANNEXES: I. List of Candidates II. Curricula Vitae**

**EX.CL/741(XXI)**  
**ANNEX I**

**CANDIDATURES FOR THE POST OF JUDGES TO THE AFRICAN  
COURT ON HUMAN AND PEOPLES' RIGHTS**

**CANDIDATURES FOR THE POST OF JUDGES TO THE AFRICAN  
COURT ON HUMAN AND PEOPLES' RIGHTS**

<b>N°</b>	<b>NAMES</b>	<b>COUNTRY</b>	<b>REGION</b>
1	Mr. El Hadji GUISSSE	Senegal	Western
2	Mr. Ben KIOKO	Kenya	Eastern
3	Mr. Fafa Edrissa M'BAI	Gambia	Western
4	Mr. Angelo Vasco MATUSSE	Mozambique	Southern
5	Mr. Jean MUTSINZI	Rwanda	Eastern
6	Mr. Gerard NIYUNGEKO	Burundi	Central



**CURRICULA VITAE OF CANDIDATES**

2012

# Report on the election of three (3) judges of the African court on human and peoples' rights (Afchpr)

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