

AFRICAN UNION

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THE EXECUTIVE COUNCIL

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EX/CL/241 (VIII)

REPORT OF THE CHAIRPERSON ON ELECTIONS OF THE
JUDGES OF THE AFRICAN COURT ON HUMAN AND
PEOPLES' RIGHTS

**REPORT OF THE CHAIRPERSON ON ELECTIONS OF THE JUDGES OF THE
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**

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 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. The election of the judges of the Court was put on hold due to Decision **Assembly/AU/Dec.45 (III)** of the Third Ordinary Session of the Assembly held in Addis Ababa, Ethiopia in July 2004, to the effect that the African Court on Human and Peoples' Rights and the Court of Justice should be integrated into one Court.

2. However, in July 2005 during its Fifth Ordinary Session held in Sirte, Libya, the Assembly decided by virtue of decision **Assembly/AU/Dec.83 (V)**, that pending the merger, all necessary measures for the functioning of the Human Rights Court shall be taken, including particularly the election of the judges, the determination of the budget and the structure of the Registry, as well as the seat of the Human Rights Court.

II. COMPOSITION OF THE COURT

3. Article 11 of the Protocol stipulates that the Court is composed of "eleven (11) judges nationals of Member States, elected in an individual capacity...". In addition, no two (2) judges may be nationals of the same State.

III. REQUIREMENTS FOR APPOINTMENT

4. 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.

5. In addition, Article 18 stipulates that "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 in 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."

IV. TERM OF OFFICE

6. The term of office of the judges, in conformity with Article 15 of the Protocol, shall be six (6) years. The terms of four (4) judges elected at the first election shall expire at the end of two (2) years, and the terms of four (4) more judges shall expire at the end of four (4) years. However, in view of the decision

Assembly/AU/Dec.83(V), the term of all the judges elected shall expire upon the establishment of the merged court or as may be clearly defined in the legal instrument effecting the merger.

7. The Commission of the African Union vide its Note Verbale reference BC/OLC/66.5/28/Vol.VI dated 25 August 2005, requested States Parties to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights to submit nominees for the office of judge of the Court. In addition, States Parties, which had submitted candidates were requested to confirm in writing the nominations submitted previously to the Commission.

8. Further, the Commission noted 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.

V. ELECTION OF THE JUDGES OF THE COURT

9. Article 14 stipulates that "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".

10. The judges of the Court shall be elected by secret ballot by the Executive Council at its next ordinary Session scheduled in January 2006, by virtue of delegation of power by the Assembly in accordance with Article 9 (2) of the Constitutive Act of the African Union.

11. 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, West (3), Central (2), East (2), South (2) and North (2).

12. Furthermore, in the election of the judges, the Executive Council shall ensure that in the Court 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.

VI. CANDIDATURES SUBMITTED

13. The following table sets out the candidatures received in alphabetical order, the regions, countries as well as the main legal traditions. It has been assumed that all Member States have some form of applicable African Customary Law in place:

No.	Name	Region	Country	Main Legal Tradition
1.	Mr. Abdurhman Mohamed ABOUTOUTA (Dr. Prof.)	North	Libya	Islamic Law and Custom/ Civil Law
2.	Mrs. Sophia A.B. AKUFFO (Hon. Justice)	West	Ghana	Common Law

3.	Mrs. Domitille BARANCIRA	Central	Burundi	Civil Law
4.	Mr. M'Pèrè DIARRA	West	Mali	Civil Law
5.	Mr. Hamdi Faraj FANOUSH	North	Libya	Islamic Law and Custom
6.	Mr. Modibo Tounty GUINDO	West	Mali	Civil Law
7.	Mr. El Hadji GUISSSE	West	Senegal	Civil Law
8.	Mr. G.W. KANYIEHAMBAMBA (Justice Dr.)	East	Uganda	Common Law
9.	Mrs. Kelello Justina MAFOSO-GUNI	South	Lesotho	Roman Dutch Law
10.	Mr. MELEDJE Djedjro (Prof.)	West	Côte d'Ivoire	Civil Law
11.	Mr. Jean MUTSINZI	East	Rwanda	Civil Law
12.	Mr. Bernard Makgabo NGOEPE	South	South Africa	Roman Dutch Law
13.	Mr. Gérard NIYUNGEKO	Central	Burundi	Civil Law
14.	Mr. Fatsah OUGUERGOUZ	North	Algeria	Islamic Law and Custom/Civil Law
15.	Mr. Timothy Adepoju OYEYIPO (Hon. Justice)	West	Nigeria	Common Law
16.	Mr. Jean Emile SOMDA	West	Burkina Faso	Civil Law

14. The list of nominations is attached as Annex I.

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

No.	Name	Region	Country	Main Tradition	Legal
1.	Mr. Abdurhman Mohamed ABOUTOUTA (Dr. Prof.)	North	Libya	Islamic Law and Custom/	Civil Law
2.	Mrs. Sophia A.B. AKUFFO (Hon. Justice)	West	Ghana	Common Law	
3.	Mrs. Domitille BARANCIRA	Central	Burundi	Civil Law	
4.	Mr. M'Pèrè DIARRA	West	Mali	Civil Law	
5.	Mr. Hamdi Faraj FANOUSH	North	Libya	Islamic Law and Custom	
6.	Mr. Modibo Touny GUINDO	West	Mali	Civil Law	
7.	Mr. El Hadji GUISSSE	West	Senegal	Civil Law	
8.	Mr. G.W. KANYIEHAMBA (Justice Dr.)	East	Uganda	Common Law	
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10.	Mr. MELEDJE Djedjro (Prof.)	West	Côte d'Ivoire	Civil Law	
11.	Mr. Jean MUTSINZI	East	Rwanda	Civil Law	
12.	Mr. Bernard Makgabo NGOEPE	South	South Africa	Roman Dutch Law	
13.	Mr. Gérard NIYUNGEKO	Central	Burundi	Civil Law	
14.	Mr. Fatsah OUGUERGOUZ	North	Algeria	Islamic Law and Custom/Civil Law	
15.	Mr. Timothy Adepaju OYEYIPO (Hon. Justice)	West	Nigeria	Common Law	
16.	Mr. Jean Emile SOMDA	West	Burkina Faso	Civil Law	

CURRICULUM VITAE OF CANDIDATES

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