

**AFRICAN UNION**

**الاتحاد الأفريقي**



**UNION AFRICAINE**

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**REPORT OF MID-TERM ACTIVITIES OF THE AFRICAN COURT  
ON HUMAN AND PEOPLE'S RIGHTS  
(AfCHPR)**

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**AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS  
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES**

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**MID -TERM ACTIVITY REPORT OF THE AFRICAN  
COURT ON HUMAN AND PEOPLES' RIGHTS**

**1 JANUARY – 30 JUNE 2017**

## MID -TERM ACTIVITY REPORT OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

1 JANUARY – 30 JUNE 2017

### I. INTRODUCTION

1. The African Court on Human and Peoples' Rights (the Court) was established in terms of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol"), adopted on 9 June 1998, in Ouagadougou, Burkina Faso, by the then Organization of African Unity (OAU). The Protocol entered into force on 25 January 2004.
2. The Court became operational in 2006 and is composed of eleven Judges appointed by the Assembly of Heads of State and Government of the African Union. The Seat of the Court is in Arusha, the United Republic of Tanzania.
3. Article 31 of the Protocol provides that "[t]he Court shall submit to each regular session of the Assembly, a report on its work. The report shall specify, in particular, the cases in which a State has not complied with the Court's judgment".
4. This Report is the Mid-Term Activity Report of the Court, submitted in the spirit of the above-cited article. The Report describes the activities undertaken by the Court from 1 January to 30 June 2017, in particular, the judicial, administrative and outreach activities, as well as the implementation of decisions of the Executive Council, relating to the functioning of the Court.

### II. STATUS OF RATIFICATION OF THE PROTOCOL AND THE DEPOSIT OF THE ARTICLE 34(6) DECLARATION, ACCEPTING THE COMPETENCE OF THE COURT TO RECEIVE CASES FROM INDIVIDUALS AND NON-GOVERNMENTAL ORGANIZATIONS (NGOS)

5. As at 30 June, 2017, the Protocol had been ratified by thirty (30) Member States of the African Union, namely: Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Congo, Côte d'Ivoire, Comoros, Gabon, The Gambia, Ghana, Kenya, Libya, Lesotho, Malawi, Mali, Mauritania, Mauritius, Mozambique, Niger, Nigeria, Uganda, Rwanda, Sahrawi Arab Democratic Republic, Senegal, South Africa, Tanzania, Togo and Tunisia. **See Table 1.**
6. During the period under review, the Republic of Tunisia deposited the Article 34(6) declaration.
7. Of the 30 State Parties to the Protocol, only eight (8), namely: Benin, Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Tanzania and Tunisia, have made the declaration

accepting the jurisdiction of the Court to receive cases from individuals and non-governmental organizations (NGOs). **See Table 2.**

<b>Table 1: List of countries that have ratified/acceded to the Protocol</b>				
<b>No.</b>	<b>Country</b>	<b>Date of Signature</b>	<b>Date of Ratification/ Accession</b>	<b>Date of deposit</b>
1.	Algeria	13/07/1999	22/04/2003	03/06/2003
2.	Benin	09/06/1998	22/08/2014	22/08/2014
3.	Burkina Faso	09/06/1998	31/12/1998	23/02/1999
4.	Burundi	09/06/1998	02/04/2003	12/05/2003
5.	Cameroon	25/07/2006	17/08/2015	17/08/2015
6.	Chad	06/12/2004	27/01/2016	08/02/2016
7.	Congo	09/06/1998	10/08/2010	06/10/2010
8.	Cote d'Ivoire	09/06/1998	07/01/2003	21/03/2003
9.	Comoros	09/06/1998	23/12/2003	26/12/2003
10.	Gabon	09/06/1998	14/08/2000	29/06/2004
11.	The Gambia	09/06/1998	30/06/1999	15/10/1999
12.	Ghana	09/06/1998	25/08/2004	16/08/2005
13.	Kenya	07/07/2003	04/02/2004	18/02/2005
14.	Libya	09/06/1998	19/11/2003	08/12/2003
15.	Lesotho	29/10/1999	28/10/2003	23/12/2003
16.	Malawi	09/06/1998	09/09/2008	09/10/2008
17.	Mali	09/06/1998	10/05/2000	20/06/2000
18.	Mauritania	22/03/1999	19/05/2005	14/12/2005
19.	Mauritius	09/06/1998	03/03/2003	24/03/2003
20.	Mozambique	23/05/2003	17/07/2004	20/07/2004
21.	Niger	09/06/1998	17/05/2004	26/06/2004
22.	Nigeria	09/06/2004	20/05/2004	09/06/2004
23.	Rwanda	09/06/1998	05/05/2003	06/05/2003
24.	Sahrawi Arab Democratic Republic	25/07/2010	27/11/2013	27/01/2014
25.	Senegal	09/06/1998	29/09/1998	30/10/1998
26.	South Africa	09/06/1999	03/07/2002	03/07/2002
27.	Tanzania	09/06/1998	07/02/2006	10/02/2006
28.	Togo	09/06/1998	23/06/2003	06/07/2003
29.	Tunisia	09/06/1998	21/08/2007	05/10/2007
30.	Uganda	01/02/2001	16/02/2001	06/06/2001

# of Countries – 55,

# of Signature – 52,

# of Ratification – 30,

# of Deposit - 30

Source: African Union Website.

<b>Table 2: List of State Parties that have Deposited the Article 34(6) Declaration.</b>			
<b>No.</b>	<b>Country</b>	<b>Date of Signature</b>	<b>Date of deposit</b>
1.	Benin	22/05/2014	08/02/2016
2.	Burkina Faso	14/07/1998	28/07/1998
3.	Côte d'Ivoire	19/06/2013	23/07/2013
4.	Ghana	09/02/2011	10/03/2011
5.	Malawi	09/09/2008	09/10/2008
6.	Mali	05/02/2010	19/02/2010
7.	Tanzania	09/03/2010	29/03/2010
8.	Tunisia	13/04/2017	29/05/2017

Source: African Union Website

**Total # Eight (8)**

### **III. OPERATIONS OF THE COURT**

#### ***i) Election and Swearing-in of new Members of the Court***

8. During its 30<sup>th</sup> Ordinary Session held from 25 to 27 January 2017, the Executive Council of the African Union elected Lady Justices Tujilane Rose Chizumila (Malawi) and Chafika Bensaoula (Algeria), who were duly appointed by the 28<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the African Union, held from 30 to 31 January, 2017 in Addis Ababa, Ethiopia..

9. Pursuant to Article 16 of the Protocol and in conformity with Rule 4(2) of the Rules of Court (hereinafter referred to as “the Rules”), the new Judges took oath of office at a public sitting of the Court on 6 March 2017, at the Seat of the Court in Arusha, Tanzania, in accordance with Rule 2(1) of the Rules.

#### ***ii) Current composition of the Court***

10. The current composition of the Court is attached to this Report as **Annex I**.

### **IV. ACTIVITIES UNDERTAKEN BY THE COURT**

11. During the period under review, the Court undertook a number of judicial as well as non-judicial activities.

**i) Judicial Activities**

**12.** The judicial activities relate to the receipt and examination of judicial matters, through, *inter alia*, case management, organisation of public hearings and delivery of judgments, rulings and orders.

**13.** From 1 January to 30 June, 2016, the Court was seized with sixteen (16) new cases. The number of applications registered by the Court since its establishment now stands at one-hundred and fifty (155), while the number of requests for advisory opinion stands at thirteen (13).

**14.** The number of cases disposed of by the Court as at June 2017 now stands at thirty-five (35), including 4 cases transferred to the African Commission on Human and Peoples' Rights (hereinafter referred to as "the African Commission"), in accordance with Article 6(3) of the Protocol, while one-hundred and twenty (120) cases are still pending before the Court. In addition, over 15 cases were received but not registered because they were filed either against non-state actors or non-African States.

**a) Sessions held**

**15.** During the reporting period, the Court held two (2) Ordinary Sessions, as follows:

- i) 44<sup>th</sup> Ordinary Session, from 6 to 24 March , 2017, in Arusha, Tanzania; and
- ii) 45<sup>th</sup> Ordinary Session, from 8 to 26 May, 2017, in Arusha, Tanzania.

**b) Case Management**

**16.** During the period under review, the Court delivered one (1) judgment, issued one (1) Order and (1) Advisory Opinion, examined and deferred 120 Applications and five (5) Requests for Advisory Opinion, for further consideration.

**17.** Table 3 below shows the number of Judgments, and Opinions issued by the Court during this period.

<b>Table 3: Judgments, Rulings and Orders issued (I think we should include those to be delivered at this session)</b>				
<b>No.</b>	<b>Application No.</b>	<b>Applicants</b>	<b>Respondent</b>	<b>Remarks</b>
1.	006/2012	African Commission on Human and Peoples' Rights	Republic of Kenya	Judgment on the Merits
2.	016/2015	General Kanyumba Nyamwasa and Others	Republic of Rwanda	Order on Request for Interim Measures
<b>REQUEST FOR ADVISORY OPINION FINALISED</b>				
1.	Request No. 001/2013: Socio-Economic Rights and Accountability Project (SERAP)			Advisory Opinion

18. All the decisions taken on the above matters have been communicated to the parties, the AU Commission, as well as to all Member States, through the AU Commission, in accordance with Article 29 of the Protocol.

19. The Court is processing the pending matters before it in accordance with the relevant provisions of the Protocol and its Rules.

**c) Public Sittings**

20. From 1 January to 30 June 2017, the Court organised seven (7) public sittings, to hear oral arguments from parties, as well as deliver judgments, orders and rulings.

21. Table 4 below indicates the public sittings organised during the period under consideration.

<b>Table 4 – Public sittings organised from 1 January to 30 June, 2017</b>					
<b>No.</b>	<b>Date of Public Sitting</b>	<b>Purpose of Public Sitting</b>	<b>Application No.</b>	<b>Applicant</b>	<b>Respondent</b>
1.	21 March 2017	Receive oral arguments	012/2015	Anodu Ochieng Anodu	United Republic of Tanzania
2.	22 March 2017	Receive oral arguments	003/2014	Victoire Ingabire Umohoza	Republic of Rwanda
3.	24 March 2017	Ruling on Request for Provisional Measures	016/2015	General Kanyuma Nyamwasa and others	Rwanda
4.		Receive oral arguments	046/2016	APDF & IHRDA	Mali
5.	26 May 2017	Delivery of Judgment	006/2012	African Commission on Human and Peoples' Rights	Republic of Kenya
6.	26 May 2017	Opinion on Request for Advisory Opinion	Request No. 001/2013	Socio-Economic Rights and Accountability Project (SERAP)	NA

**d) Status of implementation of the Judgments of the Court**

22. Under Article 31 of the Protocol, in submitting its Activity Report to the Assembly, the Court "...shall specify, in particular, the cases in which a State has not complied with the Court's judgment". The table below illustrates the extent of implementation of the Court's judgments, orders and rulings:

*i. Implementation of decisions on the merits and orders for reparations*

No.	App. No.	Applicant	Respondent	Date of Judgment/ Order	Order of the Court	Remarks and status of implementation
1.	009 and 011/2011	Tanganyika Law Society and Legal and Human Rights Centre and Reverend Christopher Mtikila	Tanzania	14/6/2013 (Judgment on Merits) & 13/6/2014 (Ruling on Reparations)	<p>(i) Take constitutional, legislative and other measures within a reasonable time to remedy the violations found by the Court and to inform the Court of the measures taken.</p> <p>(ii) Publish the official English summary, of the judgment of 14 June 2013, developed by the Registry of the Court, which must be translated into Kiswahili at the expense of the Respondent State and published in both languages, once in the official Gazette and once in a national newspaper with widespread circulation;</p> <p>(iii) Publish the judgment of 14 June 2013 in its entirety, in English, on an official website of the Respondent State, and remain available for a period of one (1) year.</p> <p>(iv) Submit to the Court, within nine (9) months a report of measures taken to implement the orders.</p>	<p>On 18 January 2016, Tanzania published the judgment of 14 June 2013 on an official government website. On 14 April 2016, the Court sent to the Government, a Revised Summary of the Judgment for purposes of publication in the Official Gazette and a newspaper with wide circulation.</p> <p>The government has not reported on the measures taken to publish the Revised Summary of the judgment. The government has also not taken the constitutional, legislative and other measures to remedy the violations found, as ordered by the Court.</p>
2.	013/2011	Norbert Zongo & Others	Burkina Faso	5/6/2015	<p>(i) Orders the Respondent State, to pay twenty-five (25) million CFAF to each spouse; fifteen (15) million CFA F to each son and daughter; and ten (10) million CFAF to each father and mother concerned;</p> <p>(ii) Orders the Respondent State in addition to pay</p>	<p>The Counsel for the Applicants, by email of 26 May, 2016, informed the Court that Burkina Faso has:</p> <p>(i) paid the Applicants the sum of 233,135,409 (two hundred and thirty three million one hundred and thirty five</p>



					<p>a token sum of one (1) CFAF to the MBDHP;</p> <p>(iii) <i>Orders</i> the Respondent State to pay the Applicants the sum of forty (40) million CFAF being the fees owed to their Counsel;</p> <p>(iv) <i>Orders</i> the Respondent State to reimburse the Applicants the out-of-pocket expenses incurred by their Counsel during their stay at the Seat of the Court in Arusha in March and November 2013, in the amount of three million one hundred and thirty-five thousand, four hundred and five CFAF and eighty cents (3,135,405.80);</p> <p>(v) <i>Orders</i> the Respondent State to pay all the amounts mentioned above within six months (from date of judgment), failing which interest will accrue for delayed payment, calculated at the rate applicable at the Central Bank of West African States (BCEAO), for the entire duration of the delay until full payment of the amounts owed;</p> <p>(vi) <i>Orders</i> the Respondent State to publish within six (6) months of the date of the Judgment: (a) the summary of the Judgment in French drafted by the Registry of the Court, once in the Official Gazette of Burkina Faso and once in a widely read national Daily; (b) the same summary on the website of the Respondent State and retain the publication</p>	<p>thousand four hundred and nine) CFA francs, representing the amounts owed to the beneficiaries of Norbert ZONGO and his three companions;</p> <p>(ii) On 30 March 2015, the Prosecutor General of Faso filed a motion with the Examining Magistrate seeking to reopen proceedings in the Norbert ZONGO case;</p> <p>(iii) on 8 April 2015, an Order to re-open investigations was issued by the Examining Magistrate of the Ouagadougou High Court and in December 2015, three soldiers belonging to the former Presidential Security Regiment (RSP), namely Christophe KOMBACERE (Soldier), Corporal Wamasba NACOULMA and Sergeant Banagoulo YARO were indicted by the Prosecutor for the murder of Norbert ZONGO and his companions.</p> <p>The State has however, not reported on the publication of the summary of the judgment in the Official Gazette, a national daily with a wide readership and on the official website of the Country within a period of 6 months as ordered in the Judgment.</p>
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					<p>on the said website for one year;</p> <p>(vii) <i>Orders</i> the Respondent State to reopen investigations with a view to apprehend, prosecute and bring to justice the perpetrators of the assassination of Norbert Zongo and his three companions; and</p> <p>(viii) <i>Orders</i> the Respondent State to submit to it within six months, effective from date of judgment, a report on the status of compliance with all the Orders contained in the Judgment.</p>	
3.	005/2013	Alex Thomas	Tanzania	20/11/2015	Take all necessary measures, within a reasonable time to remedy the violation found, specifically, precluding the reopening of the defence case and the retrial of the Applicant, and to inform the Court, within six (6) months from the date of the judgment, of measures taken.	The Respondent Applied for interpretation of the judgment and the Court will deliver judgment on the Application in September 2017.
4.	006/2013	Wilfred Onyango Nganyi and 9 Others	Tanzania	18/3/2016	<p>The Respondent to provide legal aid to the Applicants for the proceedings pending against them in the domestic courts.</p> <p>The Respondent to take all necessary measures within a reasonable time to expedite and finalise all criminal appeals by or against the Applicants in the domestic courts</p> <p>The Respondent to inform the Court of the measures taken within six months of this judgment</p>	There has been no report from the Respondent State.

5.	007/2013	Mohammed Abubakari	Tanzania	3 June 2016	Orders the Respondent State to take all appropriate measures within a reasonable time frame to remedy all violations established, excluding a reopening of the trial, and to inform the Court of the measure so taken within six (6) months from the date of this Judgment.	The Respondent Applied for interpretation of the judgment and the Court will deliver judgment on the Application in September 2017
6.	002/2013	ACHPR	Libya	3 June 2016	<p>i) Order the Respondent State to respect all the rights of Mr. Kadhafi as defined by the Charter by terminating the illegal criminal procedure instituted before the domestic courts.</p> <p>ii) Order Libya to submit to the Court on the measures taken to guarantee the rights of Mr. Kadhafi within sixty (60) days from the date of notification of this judgment.</p>	Libya has not inform the Court of the measures it has taken to implement the Court orders.
<b>ii. Implementation of Orders for Provisional Measures</b>						
	001/2015	Armand Guéhi	Tanzania	18/3/2016	<p>(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application;</p> <p>(ii) To report to the Court within 30 days from the date of receipt of the order on measures taken to implement the order.</p>	The Respondent State has notified the Court that it is in consultation with relevant national stakeholders on how to implement the Order of the Court.
	007/2015	Ally Rajabu	Tanzania	18/3/2016	<p>(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application;</p> <p>(ii) To report to the Court within 30 days from the date of receipt of the order on measures taken to implement the order.</p>	The Respondent State has notified the Court that it is unable to implement the Order of the Court.

003/2016	John Lazaro	Tanzania	18/3/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 30 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has notified the Court that it is unable to implement the Order of the Court.
004/2016	Evodius Rutachura	Tanzania	18/3/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 30 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has notified the Court that it is unable to implement the Order of the Court.
015/2016	Habiyalima na Augustono and Another	Tanzania	5/6/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has not sent a Report on the implementation of the Order of the Court.
017/2016	Deogratus Nicolaus Jeshi	Tanzania	5/6/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has not sent a Report on the implementation of the Order of the Court.

018/2016	Cosma Faustine	Tanzania	5/6/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has not sent a Report on the implementation of the Order of the Court.
021/2016	Joseph Mukwano	Tanzania	5/6/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has notified the Court that it is unable to implement the Order of the Court.
024/2016	Amini Juma	United Republic of Tanzania	5/6/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has notified the Court that it is unable to implement the Order of the Court.

**ii) Non-judicial activities**

23. The main non-judicial activities undertaken by the Court during the period under review are described below:

**a) Participation of the Court in the AU Summit**

24. The Court took part in the 33<sup>rd</sup> Ordinary Session of the Permanent Representatives' Committee (PRC), the 29<sup>th</sup> Ordinary Session of the Executive Council, as well as the 28<sup>th</sup> Assembly of Heads of State and Government of the African Union, held in January 2017 in Addis Ababa, Ethiopia.

**b) Implementation of Executive Council Decisions**

*Feasibility study on the establishment of a Trust Fund for the Court*

25. In conformity with Executive Council Decision EX.CL/Dec. 842 (XXV), in which the Council took note “of the recommendation of the Court for the establishment of an Endowment or Trust Fund for the Court” and requested “the Court, in collaboration with the PRC and the AUC, to undertake a feasibility study on the establishment of such a Fund, including in particular the financial implications on Member States assessment...”. The Court is still in consultation with other relevant stakeholders to finalise the study and seeks the approval of the Executive Council for the study to be submitted in January 2018.

**c) Execution of the 2015 budget**

26. The budget appropriated to the Court for 2017 stands at US\$ 10,315,284, comprising \$ 8,709,318 [84. %] from Members States and \$ 1,605,966 [16%] from International Partners. The total budget execution as at end of 30 June 2017 is expected to amount to \$4,641,877, which represents a budget execution rate of 45%. As at 30 May 2017, the Court had received subvention for the first two quarters amounting to, US\$ 4,052,620.77 from Members States and EUR 725 952, 60 from Partners.

**V. PROMOTIONAL ACTIVITIES**

27. The Court undertook a number of promotional activities, aimed at raising awareness among stakeholders, about its existence and activities. The activities undertaken included, inter alia, sensitization visits and seminars, as well as participation in meetings organised by other stakeholders.

**a) Sensitization visits**

28. The Court undertook a sensitization visit to the Arab Republic of Egypt (9-11 April, 2017) and the Republic of Tunisia (12-14 April, 2017), to encourage the former to ratify the Protocol and make the Article 34(6) Declaration and the latter, which has already ratified the Protocol, to make the Declaration.

29. The delegation of the Court, led by its President, met and held fruitful discussions with high-ranking government officials from the two countries, including the President of the Republic of Tunisia and the Foreign Ministers of both countries.

30. While the Egyptian authorities undertook to take necessary measures to ratify the Protocol, the President of the Republic of Tunisia signed the declaration and handed a copy of the same to the President of the African Court. The African Court, in collaboration with the government of Tunisia and the Tunisia Bar Association also organized a half-day Sensitization Seminar for human rights stakeholders in the country.

**b) Other promotional activities**

31. In addition to the above activities, the Court also participated in a number of events organized by other stakeholders, including:

- Participation by the Vice President at the ASEAN Intergovernmental Commission on Human Rights (AICHR) Judicial Colloquium on the Sharing of Good Practices Regarding International Human Rights Law, from 13 – 15 March 2017, in Kuala Lumpur, Malaysia;
- Participation of the President at the Annual International Symposium of “Constitutional Courts as Guardians of Fundamental Rights” and the 55<sup>th</sup> Anniversary of the Constitutional Court of the Republic of Turkey, from 25 – 28 April 2017 in Ankara and İstanbul, Turkey.

## VI. PARTICIPATION IN AU INITIATIVES

**32.** The Court was invited to, and participated in a number of AU initiatives, including, *inter alia*:

N°	Training Activity	Funding Institution	Participant	Date and Venue
1.	Development of the Draft Ten-Year Action Plan on the Promotion and Protection of Human Rights	AUC	Registrar/AGA Programme Officer	22-23 February, 2017, Banjul, The Gambia
2.	First Session of Conference of State Parties for the African Union Convention for the Protection and Assistance to Internally Displaced Persons in Africa	AUC	President of the Court/Senior Legal Officer	3-5 April, 2017, Harare, Zimbabwe
3.	Meeting of the Internal Programming and Budget Committee	AUC	Registrar/Head of Finance and Administration	26-27 April, 2017, Addis Ababa, Ethiopia
4.	High-Level Meeting on the Establishment of the Hybrid Court for South Sudan	AUC	Head of Legal Division	4 - 5 May 2017, Addis Ababa, Ethiopia

## VII. NETWORKING

### *Relations with the African Commission on Human and Peoples’ Rights*

**33.** The Court and the African Commission continue to strengthen their relationship and consolidate the complementarity envisaged in the Protocol.

### *Cooperation with external partners.*

**34.** The Court continues to work with relevant stakeholders, including external partners, in the discharge of its mandate. The two principal partners of the Court, namely, the European Commission (EC) and the German International Cooperation (GIZ), continue to support the capacity development as well as outreach programmes of the Court, including sensitization missions, seminars and conferences. Other partners of the Court include the African Capacity Building Foundation (ACBF) and the World Bank.

**35.** The Court has maintained a close working relationship with other relevant stakeholders working on the protection of human rights on the continent, including Bar Associations and Law Societies, National Human Rights Institutions, the Coalition for an Effective African Court and the Pan African Lawyers' Union.

## **VIII. HOST AGREEMENT**

**36.** The current temporary premises being used by the Court have become very small to accommodate the growing number of staff and activities of the Court. Since the submission of the architectural designs for the construction of the permanent premises of the Court by the host government in March 2016, there has been no further development on the construction of the premises.

## **IX. ASSESSMENT AND RECOMMENDATIONS**

### ***i) Assessment***

#### ***a) Positive Developments***

**37.** The Court continues to engage with relevant stakeholders on the continent, including Member States, National judiciaries, organs of the African Union, National Human Rights Commissions, Civil Society Organizations, to enhance its effectiveness and the protection of human rights on the continent. Following the adoption of the Statute on the Establishment of a Legal Aid Fund by the 25<sup>th</sup> Ordinary Session of the Assembly in January 2016, the Court looks forward to the appointment by the Chairperson of the AUC of the Board Members and launching of the Fund. The operationalization of the Fund will enhance access to the Court through the granting of legal assistance to indigent complainants/applicants.

**38.** The Court also looks forward to the establishment of a proper reporting and monitoring mechanism to ensure the effective implementation of its judgments. It should be recalled that the establishment of such a mechanism was approved by the Executive Council at its 26<sup>th</sup> Ordinary Session in January 2015. The mechanism will facilitate the Executive Council's task of monitoring implementation of judgments of the Court, on behalf of the Assembly, provide State Parties with concrete information and guidance on the implementation of the judgments of the Court and assure African citizens and parties that appear before the Court that there is a proper mechanism in place to ensure States' compliance with the Court's judgments.

**39.** The Court has also seen a remarkable increase in the number of cases filed before it. Between January and 30 June 2017, it registered a total of 16 Applications. As the Court continues to receive more applications and deliver judgments, and safeguard its integrity and independence, its visibility and citizens' confidence in it will be enhanced. With these positive indicators, there is good reason to remain optimistic that the number of cases filed before the Court will continue to grow.



40. This increase is a demonstration of the fact that more and more States, NGOs, individuals and the civil society in general are becoming aware of the existence and work of the Court.

41. To sustain this momentum and build the Court as a viable pillar in Africa's quest for socio-economic and political development, Member States and all other stakeholders must play their respective roles, including in particular, ensuring universal ratification of the Protocol and making of the Article 34(6) declaration, facilitating individual and NGOs direct access to it, providing the Court with the necessary human and financial resources, and complying with orders, decisions and judgments of the Court.

### ***b) Challenges***

42. The above positive developments notwithstanding, the Court continues to face a number of challenges, which may endanger the successes recorded thus far and threaten its effectiveness. These challenges include, the low level of ratification of the Protocol, slow rate of deposit of the declaration allowing individuals and NGOs direct access to the Court, lack of awareness of the Court, non-compliance with Court decisions, insufficient resources and the fact that Judges work on a part-time basis.

43. One of the major challenges to the effectiveness of the Court in particular and the protection of human rights in Africa as a whole, is the low level of ratification of the Protocol, and the even lower number of Article 34(6) declarations made and deposited. Almost two decades after the adoption of the Protocol, it has been ratified by only thirty (30) of the fifty-five (55) Member States of the African Union; and of these 30, only eight (8) have deposited the declaration required under Article 34(6) of the Protocol.

44. The fact that only 30 Member States are parties and only 8 have deposited the declaration means that the Court does not have jurisdiction to hear cases from individuals and NGOs, from the vast majority of Member States of the Union, because the States have either not ratified the Protocol or deposited the declaration. Effectively therefore, the Court does not have the capacity to receive cases for alleged human rights violations from a large number of citizens of the Union.

45. Another challenge the Court faces is non-compliance with its decisions. In spite of repeated reminders from the Court and over four Executive Council Decisions, Libya has failed and continues to refuse to comply with the Court Orders for Provisional Measures and Judgment issued in respect of a matter brought against her. The Republic of Faso has also not informed the Court of measures it has taken to full implement the Court Judgment delivered almost two years ago.

46. While welcoming the efforts made by Tanzania to implement some of the Court's judgments, the Court is concerned at the slow pace in ensuring full compliance with the judgments, and the reluctance manifested by Tanzania to comply with Orders for Interim Measures issued by the Court with respect to a number of other cases requiring her not to execute death sentences until the cases before the Court have been heard and determined.

47. From the administrative point of view, inadequate human and financial resources have affected the smooth functioning of the Court. Although the Executive Council approved forty-four (44) new positions for the Registry of the Court in 2012, less than half the positions have been filled due to budgetary constraints.

48. For the Court to be able to discharge its mandate effectively, and assert its independence, it must be empowered to have an independent and uninterrupted source of funding, in the form of, for example, an Endowment or Trust Fund. It is hoped that the study on the establishment of a trust fund commissioned by the Executive Council will go a long way to finding a sustainable solution to this challenge.

49. A further difficulty facing the Court at the moment is the acute shortage of office space. The submission of the architectural designs by the Government of the Host State is an important step towards the construction of the permanent premises for the Court. The Court is however concerned that since the presentation of the designs in 2015, there has been no further development towards the construction of the premises. It is important for the African Union Commission and the Government of the Host State, in consultation with the Court, to hasten the finalization of the designs and commence the construction of the premises.

***ii) Recommendations***

50. Based on the above, the Court submits the following recommendations for consideration and adoption by the Assembly:

- i) The Member States of the Union that have not yet acceded to the Protocol and/or deposited the Declaration under Article 34(6) thereof, should do so as soon as possible;
- ii) The Assembly should extend the time for the submission of the study on the establishment of a Trust Fund for the Court to January 2018;
- iii) The Chairperson of the AUC should take all necessary measures to establish the Legal Aid Fund in accordance with the Statute for Legal Aid Fund for African Union Human Rights Organs, adopted by the Assembly in January 2016;
- iv) The Assembly should invite and encourage all Member States and other relevant human rights stakeholders on the continent to make generous voluntary contributions to the Fund to ensure its sustainability and success;
- v) Member States of the Union should cooperate with the Court and comply with its judgments; and
- vi) The Assembly should authorize the necessary resources to enable the Court to recruit and fill the structure of the Registry approved in January 2012 by the Executive Council.

**ANNEX**  
**LIST OF JUDGES OF THE AFRICAN COURT ON HUMAN AND**  
**PEOPLES' RIGHTS AS AT JUNE 30 2017**

No.	Name	Term		Country
		Duration	Expiry	
1	Justice Sylvain Oré	6	2020	Côte d'Ivoire
2	Justice Ben Kioko	6	2018	Kenya
3	Justice Gérard Niyungeko	6	2018	Burundi
4	Justice El Hadji Guissé	6	2018	Senegal
5	Justice Rafâa Ben Achour	6	2020	Tunisia
6	Lady Justice Solomy Balungi Bossa	6	2020	Uganda
7	Justice Angelo Vasco Matusse	6	2020	Mozambique
8	Lady Justice Ntyam Ondo Mengue	6	2022	Cameroon
9	Lady Justice Marie-Thérèse Mukamulisa	6	2022	Rwanda
10	Lady Justice Tujilane Rose Chizumila	6	2023	Malawi
11	Lady Justice Chafika Bensaoula	6	2023	Algeria

**DRAFT**  
**DECISION ON THE MID-TERM ACTIVITY REPORT OF**  
**THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**  
**Doc. EX.CL/1029(XXXI)**

**The Executive Council,**

1. **TAKES NOTE** of the Mid-Term Activity Report of the African Court on Human and Peoples' Rights (the Court) for the period 1 January – 30 June, 2017, and the recommendations therein;
2. **NOTES** the request by the Court for more time to engage with other stakeholders to finalize the study on the establishment of a trust fund for the Court, and calls on the African Court, in consultation with the PRC and the AUC, to finalize the study and submit same to the January 2018 Session of the Executive Council;
3. **NOTES WITH CONCERN** the insufficient resources allocated to the Court which may affect its independence and effectiveness, and **CALLS ON** the PRC and the AUC to work closely with the Court and provide it with the necessary resources it needs to effectively discharge its mandate without interference, including providing technical assistance, guidance and advise in resource mobilization, in a manner consistent with the nature and mandate of the Court;
4. **WELCOMES** the decision to establish a Legal Aid Fund to provide legal assistance to indigent applicants before African Union Human Rights Bodies, and **URGES** the AUC to take all necessary measures to operationalize the said Fund in 2017, and to this end, **INVITES** and **ENCOURAGES** all Member States of the Union as well as other relevant human rights stakeholders on the continent to make generous voluntary contributions to the Fund to ensure its sustainability and success;
5. **NOTES WITH CONCERN** the continued refusal by Libya to respond to the Orders of Provisional Measures and implement the Judgment of the Court, and **REITERATES** its decisions urging Libya to inform the Court of the concrete measures it has taken to implement the said Orders;
6. **NOTES FURTHER** that, almost two decades after its adoption, only thirty (30) Member States of the African Union have ratified the Protocol and only eight (8) of the 30 State Parties, have deposited the declaration required under Article 34 (6) thereof, allowing individuals and NGOs to bring cases to the Court;
7. **CONGRATULATES** the thirty (30) Member States that have ratified the Protocol, namely; Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Côte d'Ivoire, The Comoros, Congo, Gabon, The Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, South Africa, Sahrawi Arab Democratic Republic, Senegal, Tanzania, Togo, Tunisia and Uganda;

8. **FURTHER CONGRATULATES** the eight (8) State Parties that have deposited the declaration under Article 34(6) of the Protocol, namely: Benin, Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Tunisia and the United Republic of Tanzania;
9. **INVITES** those Member States that have not already done so, to accede to the Protocol and deposit the declaration required under Article 34 (6) of the Protocol;
10. **EXPRESSES ITS APPRECIATION** to the Government of the United Republic of Tanzania for the facilities it has placed at the disposal of the Court, and for the architectural designs for the construction of the permanent premises of the Court submitted to the AUC, and **URGES** the Government of the United Republic of Tanzania and the African Union Commission, in collaboration with the Court to take steps to ensure the expeditious construction of the premises, bearing in mind the structures of the African Court of Justice and Human and Peoples` Rights;
11. **REQUESTS** the Court, in collaboration with the PRC and the AUC, to report at the next Ordinary Session of the Executive Council in January 2018, on the implementation of this Decision.

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2017

# Rapport d'Activité à Mi-Parcours de la Cour Africaine des Droits de l'Homme et des Peuples

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