

AFRICAN UNION

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**REPORT OF THE 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

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

JANUARY – JUNE 2015

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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, which became operational in 2006, is composed of eleven Judges and has its seat 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-Year Activity Report of the Court, submitted in the spirit of the above-cited article. The Report describes the work undertaken by the Court during the period January to June 2015, in particular, the judicial, administrative and promotional activities undertaken by the Court, 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 declaration accepting the competence of the Court to receive cases from individuals and NGOs

5. As at the end of May 2015, the Protocol had been ratified by twenty-eight (28) Member States of the African Union, namely: Algeria, Benin, Burkina Faso, Burundi, Congo, Côte d'Ivoire, The 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. Of these 28 State Parties to the Protocol, only seven, namely: Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Rwanda and Tanzania, have deposited the declaration accepting the jurisdiction of the Court to deal with cases from individuals and non-governmental organizations (NGOs) **See Table 2.**

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

of Countries – 54, # of Signature – 52, # of Ratification – 28, # of Deposit - 28

Source: African Union Website (www.au.int)

No.	Country	Date of Signature	Date of deposit
1.	Burkina Faso	14/07/1998	28/07/1998
2.	Côte d'Ivoire	19/06/2013	23/07/2013
3.	Ghana	09/02/2011	10/03/2011
4.	Malawi	09/09/2008	09/10/2008
5.	Mali	05/02/2010	19/02/2010
6.	Rwanda	22/01/2013	06/02/2013
7.	Tanzania	09/03/2010	29/03/2010

Total # Seven (7)

Source: African Union Website

III. Current composition of the Court

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

IV. Activities undertaken by the Court

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

i) Judicial Activities

9. The judicial activities undertaken by the Court related to the receipt and handling of judicial matters, in particular, case management, organisation of public hearings and delivery of judgments, rulings and advisory opinions.

10. From January to June, 2015, the Court received eight (8) new applications. The number of applications received by the Court since its establishment now stands at forty (40), while the number of requests for advisory opinion stands at eight (8).

a. Case Management

11. The Court continues to manage the applications and requests for advisory opinion that are pending before it.

12. During the period under review, the Court disposed of one (1) application and two (2) requests for advisory opinion. This brings to twenty-six (26) the total number of applications and to seven (7) the total number of requests for advisory opinion, finalized by the Court (**See Table 3**).

13. Table 3 below shows the matters disposed of by the Court during this period.

No.	Application No.	Applicant	Respondent	Date Received	Date of Ruling/Opinion/Order
1	013/2011	The Beneficiaries of Late Nibert Zongo, Ernest Zongo, Blaise Ilboudo, Abdoulaye Nikiéma and the Burkinabè Human and Peoples' Rights Movement (MBDHP) Vs. Burkina Faso (Application for Reparations)	Burkina Faso	07/06/2014	5/06/2015
Requests for Advisory Opinion finalised					
2	Request No. 001/2013		Socio-Economic Rights and Accountability Project	19/03/2013	5/06/2015

3	Request No. 001/2014	Coalition on the International Criminal Court, Legal Defence & Assistance Project, Civil Resources Development and Documentation Centre.	28/03/2014	5/06/2015
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14. All the decisions taken on the above matters have been communicated to the Parties, the AU Commission and to all Member States, through the AU Commission, in accordance with Article 29 of the Protocol.

15. The Court has a total of fifteen (15) contentious applications, including one (1) application for reparation and 1 for review, as well as one (1) request for advisory opinion pending before it, which it is processing in accordance with the relevant provisions of the Protocol and the Rules of Court.

16. Table 4 below shows the matters pending before the Court as at June 2015.

Table 4 - Pending Matters					
No.	Application No.	Applicant	Respondent	Date received	Remarks
1.	006/2012	African Commission on Human and Peoples' Rights	Republic of Kenya	18/05/2012	The Court held a public hearing on this matter on 27 and 28 November 2014. The Court has engaged the parties in a proposed amicable settlement, in accordance with Rule 57 of the Rules of Court.
2.	002/2013	African Commission on Human and Peoples' Rights	Libya	31/01/2013	The Court has notified the Applicant of the Respondent's continued refusal to respond to the Application.
3.	006/2013	Wilfred Onyango Nganyi & 9 Others	The United Republic of Tanzania	23/07/2013	The public hearing of the matter was held on 21 May 2015.
4.	007/2013	Mohamed Abubakari	The United Republic of Tanzania	08/10/2013	The public hearing of the matter was held on 22 May 2015.

5.	001/2014	Association pour la Protection des Droits de l'Homme	Côte d'Ivoire	12/07/2014	Pleadings are still open
6.	002/2014	Faustin Uwintije	Rwanda	06/08/2012	Pleadings are still open
7.	003/2014	Ingabire Victoire Umuhoza	Rwanda	03/10/2014	Pleadings have been closed
8.	001/2015	Armand Guehi	The United Republic of Tanzania	10/12/2014	Pleadings are still open
9.	002/2015	Anciens travailleurs de Morila	Mali	29/12/2014	Pleadings are still open
10.	003/2015	Kennedy Owino	The United Republic of Tanzania	05/01/2015	Pleadings are still open
11.	004/2015	Andrew Ambrose Cheusi	The United Republic of Tanzania	13/01/2015	Pleadings are still open
12.	005/2015	Thobias Mang'ara Mango and Shukurani Masegenya Mango	The United Republic of Tanzania	06/02/2015	Pleadings are still open
13.	006/2015	Nguza Viking and John Nguza	The United Republic of Tanzania	11/02/2015	Pleadings are still open
14.	007/2015	Ally Rajabu & 4 Others	The United Republic of Tanzania	26/03/2015	Pleadings are still open
15.	008/2015	Shukurani Masegenya Mango & 6 Others	The United Republic of Tanzania	08/04/2015	Pleadings are still open

Application for Review and Reparation

	No.	Applicant	Respondent	Date Received	Remarks
16.	001/2014	Frank David Omary (Review)	The United Republic of Tanzania	30/06/2014	Application for Review of Court Ruling
17.	004/2013	Lohé Issa Konaté (Reparation)	Burkina Faso	09/01/2015	Application for reparation

Requests for Advisory Opinion

	Request	Author	Date Received	Remarks
	Request 002/2014	Request for Advisory Opinion - Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO)	19/06/2014	The Request communicated to Member States and AU Organs

Table 5 – Cases where the Court has no jurisdiction

	Applicant	Respondent	Date received	Remarks
1	Bendjal Karim	France	05/01/2015	The Respondent not a of the AU
2	Chie Miyazaki	Japan	18/02/2015	The Respondent not a Party of the AU

b. Sessions held

17. During the period under consideration, the Court held two (2) Ordinary Sessions as follows:

- a) 36th Ordinary Session, held from 9 to 27 March, 2015, in Arusha, The United Republic of Tanzania; and
- b) 37th Ordinary Session, held from 18 May to 5 June, 2015, in Arusha, The United Republic of Tanzania.

c. Public Hearings

18. From January to June 2015, the Court organised two (2) public hearings, to receive oral arguments from parties.

19. Table 6 below indicates the public hearings organised during the period under consideration.

Table 6 – Public Hearings organized

No.	Date of Public Hearing	Purpose of public hearing	Application	Applicant	Respondent	Remarks
1.	21 May 2015	Receive oral arguments from the parties	006/2013	Wilfred Onyango Nganyi and 9 others	The United Republic of Tanzania	Both parties were represented by Counsel and made oral arguments.

2.	22 May 2015	Receive oral arguments from the parties	007/2013	Mohamed Abubakari	The United Republic of Tanzania	Both parties were represented by Counsel and made oral arguments.
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d. Compliance with Orders of the Court

20. 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”.

21. During the 24th, 25th and 26th Ordinary Sessions of the Executive Council, the Court reported on Libya’s continued non-compliance with the Court’s Order of Provisional Measures issued on 15 March, 2013. The Executive Council, in Decisions EX.CL/Dec.806(XXIV), EX.CL/Dec.842(XXV) and EX.CL/Dec.865(XXVI), adopted during its Twenty-Fourth, Twenty-Fifth and Twenty-Sixth Ordinary Sessions, respectively, urged Member States to commit unconditionally to, and comply with judgments rendered, by the Court.

22. To date, over two (2) years since the order was issued, and the Application sent to Libya, the latter has neither indicated the measures it has taken or intends to take to implement the Order, nor has it responded to the Application itself.

23. On 23 June 2014, the Court delivered a Ruling in respect of an Application for reparation submitted by the Applicant in relation to Application 011/2011 - *Reverend Christopher R. Mtikila v United Republic of Tanzania*. The Application for Reparation followed the Judgment on *Consolidated Application Nos. 009/2011 Tanganyika Law Society v Tanzania and 011/2011 Christopher Mtikila v Tanzania* which was delivered on 14 June 2013.

24. In the Ruling, the Court held as follows:

“

1. *That the Judgment of the Court of 14 June 2013 in Consolidated Applications Nos. 009 of 2011 Tanganyika Law Society and The Legal and Human Rights Centre v The United Republic of Tanzania and 011 of 2011 Reverend Christopher R. Mtikila v The United Republic of Tanzania constitutes per se a sufficient form of reparation for non-pecuniary damages.*
2. *The Applicant’s claims for pecuniary damages, having not been proved, are hereby dismissed.*
3. *The Applicant’s claims for legal costs having not been proved, are hereby dismissed.*
4. *The State is hereby ORDERED to submit to the Court, within six months starting from the date of this Ruling, a report on the measures it has taken in compliance with the Judgment of the Court of 14 June 2013 in Consolidated*

Applications Nos. 009 of 2011 Tanganyika Law Society and The Legal and Human Rights Centre v The United Republic of Tanzania and 011 of 2011 Reverend Christopher R. Mtikila v The United Republic of Tanzania.

5. *The State is hereby ORDERED to issue the publications indicated in paragraph 45 of this Ruling, within a period of six (6) months from the date of this Ruling. These publications are:*
 - i. *the official English summary developed by the Registry of the Court, of the Judgment of the Court of 14 June 2013 which must be translated to 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;*
 - ii. *the Judgment of the Court 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.*
6. *Within nine (9) months of the date of the Ruling, the State shall submit to the Court a report describing the measures taken under paragraph 5 above.*
7. *In accordance with Rule 30 of the Rules of Court, each Party shall bear its own costs."*

25. The Respondent was ordered to submit a report on the measures it has taken in compliance with the Judgment of the Court in *Consolidated Application Nos 009/2011 Tanganyika Law Society v Tanzania and 011/2011 Christopher Mtikila v Tanzania* which was delivered on 14 June 2013. This was to be done within six months from the date of the ruling which was 13 June 2014.

26. By Note Verbale dated 14 April 2015 received at the Registry on 17 April 2015, the Respondent filed (out of time) a report on measures taken by the Respondent to implement the Court's Ruling.

27. Regarding taking constitutional, legislative and all other necessary measures within a reasonable time to remedy the violations found by the Court, the Respondent states that this is a matter that is currently being considered through the Constitutional Review process which was already underway when the Consolidated Applications and the Application for Reparations were heard and determined. The constitutional review process has been conducted within the framework of The Constitutional Review Act, Cap 83 and more recently, The Constitutional Review Act, Cap 83, Revised Edition, 2014. Under this legal framework, the Constitutional Review Commission has been spearheading the process, including coordinating and collecting public opinion on issues to be covered under the constitution, through various *fora*.

28. The Respondent contends that the issue of participation in public affairs and independent candidacy is being considered under the review process. Article 33(1) of the First Draft of the New Constitution, 2013 (First Draft) mirrors the provisions of Article 13(1) of the Charter. Article 117(1)(c) of the First Draft provides that a candidate for elections as a member of Parliament can be proposed by a party or be an independent candidate. Similar provisions with respect to a candidate for election as President are set out in Article 75(g).

29. The Second Draft of the New Constitution (22 January 2014), maintained the aforementioned provisions in Articles 34(1), Article 125(1) (c) and 79(1)(f), respectively. The Second Draft was debated and voted upon by the Constitutional Assembly, resulting in the Proposed Constitution of October 2014. Again, these respective provisions were maintained under Articles 43(1), 140(1)(c) and 88(1)(f). The Proposed Constitution was scheduled to be subjected to a referendum on 30 April 2015 but as voter registration was not completed on time and is currently on-going, the new referendum date will be duly announced. The Respondent maintains that these matters will be settled once the outcome of the referendum is known and undertakes to keep the Court informed of developments in this regard.

30. The Respondent was also ordered to publish the official English Summary developed by the Registry of the main Judgment in *Consolidated Application Nos. 009/2011 Tanganyika Law Society v Tanzania and 011/2011 Christopher Mtikila v Tanzania* as well as the Kiswahili translation thereof in the official gazette and in a national newspaper with widespread circulation. The Respondent has not reported on the measures taken to comply with this order.

31. In addition, the Respondent was ordered to publish within six months of the date of the ruling of 13 June 2014, the entire judgment in *Consolidated Application Nos. 009/2011 Tanganyika Law Society v Tanzania and 011/2011 Christopher Mtikila v Tanzania* on an official website of the State and for it to remain available for a period of one year. The Respondent has not reported on the measures taken to comply with this order.

32. In the view of the Court, there has not been substantial compliance with the decision of the Court.

ii). Non-judicial activities

33. 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 Assembly Sessions

34. The Court took part in the 29th Ordinary Session of the Permanent Representatives' Committee (PRC) from 21 to 23 January, 2015; the 26th Ordinary Session of the Executive Council from 27 to 28 January, 2015, as well as the 24th Assembly of the Union, held from 30 to 31 January, 2015 in Addis Ababa, Ethiopia.

b) Implementation of Executive Council Decisions

35. At its 25th Ordinary Session held in June 2014, the Executive Council, in Decision EX.CL/Dec.842(XXV), **took note** of the recommendation of the Court for establishment of an Endowment or Trust Fund for the Court and “**REQUEST[ED]** 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 and submit a report to the June 2015 session of the Executive Council”. Following this decision by the Executive Council, the Court in consultation with AUC and the PRC prepared the feasibility study which is annexed hereto for consideration by the Policy Organs.

36. In its decision on the 2014 Activity Report of the African Court on Human and Peoples’ Rights, the Executive Council:

“1. TAKES NOTE of the 2014 Activity Report of the African Court on Human and Peoples’ Rights (the Court), and the recommendations therein as well as the studies undertaken by the Court, in particular:

- i) The implementation of a concrete mechanism for reporting and follow-up;*
- ii) The institutionalization of a continental judicial Dialogue;*
- iii) The establishment of a Judicial Fund;*
- iv) The 2016 Concept Note as African Year of Human Rights with particular emphasis on Women's Rights.*

2. AUTHORIZES the Court to carry out the activities proposed within this framework of the resources already allocated to it and through mobilization of voluntary resources of Member States. APPEALS to Member States to make voluntary contributions within this framework.”

c) Execution of the 2015 budget

37. The budget allocated to the Court for 2015 stands at US\$10,057,060, comprising Member States’ funded component of \$8,176,154(81.3%) and the Donor funded component of \$1,880,906 (18.7%).

38. The total projected budget execution for the first half of 2015 amounts to \$4,742,516, which represents a budget execution rate of 47.2%. This is mainly because the main programmes under the EU and the GIZ support programmes have not yet started.

39. This level of execution comprises \$4,088,088 from the Member States funded budget representing a 50.0% execution level and \$654,428 under the Donor funded budget which is a 34.8% execution level.

Presentation of the 2016 budget

40. During its 36th Ordinary Session held in March 2015, the Court considered and adopted its draft budget for the 2016 financial year, and submitted it to the AUC for onward transmission to the PRC Advisory Sub-Committee on Administrative, Budgetary and Financial Matters (hereinafter referred to as “the Sub-Committee”).

41. The Court participated in the Second Meeting of the Internal Planning and Budgeting Committee (IPBC) from 1 to 2 April, 2015, in Addis Ababa, Ethiopia, to discuss and consolidate the 2016 budget of the Union, and also participated in the Partners’ Consultation on the 2016 Budget of the African Union from 16 to 17 April, 2015, in Addis Ababa, Ethiopia.

42. The 2016 Draft Budget of the Court was presented to the Sub-Committee of the PRC on 17 May 2016, at a retreat held in Mekelle, Ethiopia. The 2016 proposed budget of the Court stands at US\$12,013,984, comprising US\$9,662,498 being Member States’ contribution (for the operational budget) and US\$2,351,486 being partners’ funds (for the programme budget).

V. *Staff recruitment and development*

a. *Staff Recruitment*

43. As at April 2015, of the 90 positions on the approved structure of the Registry, 56 had been filled (among which 9 positions were filled by the temporary staff) . In May 2015, the Court completed the recruitment process to fill an additional 7 professional positions and the successful candidates are expected to assume duty as from July 2015. The recruitment process to fill the remaining positions is on-going, and has been staggered to run up to 2018, subject to the availability of funds.

b. *Staff development*

44. During the period under consideration, Judges and staff of the Registry participated in a number of training activities, aimed at enhancing their capacity to ensure higher productivity.

45. Table 7 below indicates the training activities undertaken during this period.

Table 7 – Training activities undertaken in 2015				
N°	Training Activity	Funding Institution	Participants	Date and Venue
1.	Round Table on Legal Protection of Reproductive Rights in Africa organized by the Center for Reproductive Health	Center for Reproductive Health	Judges of the Court and Legal Officers	7 March 2015, Arusha, Tanzania
2	Continuing Professional	GIZ	Judges of the	12 - 13 March

	Development on new trends in the practice of Human Rights for Judges		Court and Legal Officers	2015, in Arusha, Tanzania
3.	Review workshop for Course Materials on Course on Establishing the Rule of Law in post conflict environments, Kofi Annan International Peacekeeping Training Centre	GIZ	One Principal Legal Officer	10 - 12 March 2015 , Accra, Ghana
4.	Retreat with the African Commission on Human and People's Rights on Reproductive health rights organized by Africa Alliance for Women's Reproductive Health and Rights (IPAS)	IPAS	One Legal Officer	24 - 26 March 2015, Nairobi, Kenya
5	Design and implementation of HR Policies	Member States	Senior HR Officer and HRO	7 - 17/04/2015, Arusha, Tanzania
6.	Language courses (Arabic, English, French and Kiswahili)	Member States	On-going (all staff)	Arusha, Tanzania

VI. Promotional activities undertaken by the Court

46. During the period under consideration, the Court undertook a number of promotional activities aimed at raising awareness among stakeholders about its existence.

47. The Court was also visited by a number of dignitaries and institutions, notably, the President of the Federal Republic of Germany H.E. Joachim Gauck who visited the Court on 5 February 2015 as part of his five-day official visit to the United Republic of Tanzania.

VII. Participation in AU Initiatives

- 48.** The Court was invited to, and participated in a number of AU initiatives, including:
- i. Finalization of the Concept Paper on the Declaration of 2016 as Africa Year of Human Rights with focus on the rights of women in Africa on 14 March, 2015, in Addis Ababa, Ethiopia;
 - ii. Address to a session of the Committee on Justice and Human Rights of the Pan African Parliament (PAP) by the President of the Court in Midrand, South Africa on 16 March 2015;

- iii. The First Technical Meeting of the African Governance Architecture (AGA) Platform, from 30 to 31 March, 2015, in Johannesburg, South Africa.

VIII. Participation in other stakeholders' initiatives

49. The Court also undertook sensitization activities by making presentations at seminars and conferences organised by stakeholders and partners, as follows:

- i. the 19 Commonwealth Law Conference held from 12 to 16 April in Glasgow, Scotland, attended by the Vice President of the Court;
- ii. a Conference on the Maputo Protocol organized by the Centre for the Rights to Reproduction, on 23 February in Nairobi, Kenya, attended by the Deputy Registrar..

IX. *Relation between the Court and the African Commission on Human and Peoples' Rights*

50. The Court and the African Commission continue to engage with each other, to strengthen their relationship and consolidate the complementarity envisaged in the Protocol. Hence, during the period under review, the two institutions discussed ways and means of strengthening their working relation in a bid to enhance the promotion and protection of human rights on the continent. The two institutions continue to collaborate in a number of initiatives, including the celebration of 2016 as Africa Year of Human Rights with focus on Women's Rights, the establishment of a Pan-African Human Rights Institute and a Joint Publication of Human Rights in Africa.

51. Apart from the above, the Court was represented at the 56th Ordinary Session of the African Commission, held in Banjul, The Gambia, in April/May 2015.

X. *Cooperation with External Partners*

52. The Court continues to work with 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 building as well as the outreach programmes of the Court, including training of staff, sensitization missions, seminars and conferences. Other partners of the Court include the United Nations Development Programme (UNDP) and the *Organisation Internationale de la Francophonie* (OIF).

XI. *Host Agreement*

53. In its 2014 Activity Report submitted to the 26th Ordinary Session of the Executive Council, the Court indicated that the Host Government had submitted to the Court, architectural designs of the proposed permanent premises for the Court's comments. The

Court is in contact with the relevant services of the AUC for assistance to study the designs and make appropriate comments that would be communicated to the Host Government.

54. While waiting for the construction of the permanent premises, the Court and the Host Government remain seized with the matter to ensure a conducive working environment for staff and Judges.

XII. Assessment and Recommendations

i) Assessment

55. During the period under review, the Court continued to make significant progress in the protection of human rights on the continent.

a. Positive Developments

56. The Court continues to engage with relevant organs within the African Union to enhance its effectiveness and the protection of human rights. In collaboration with the PRC and other stakeholders the Court developed a Statute on the Establishment of a Legal Aid Fund which was adopted by the Executive Council in January 2015.

57. The Executive Council, through Decision on the 2014 Activity Report of the African Court on Human and Peoples' EX.CL/Dec.865(XXVI), also accepted the proposal of the Court to institutionalise the Continental Judicial Dialogue and hold it biennially. This Dialogue will bring together national, regional and continental judicial and quasi-judicial bodies on the continent. This regular consultation of judicial institutions on the continent will provide a forum for exchange of views, information and best practices on the protection of human rights at national, regional and continental levels.

58. To further enhance the human rights protection system on the continent, the Court, in collaboration with the PRC and the AUC, and in conformity with Executive Council Decision EX.CL/Dec.806(XXIV), also developed a concrete reporting, monitoring and implementation mechanism, to ensure compliance with the judicial decisions of the Court. The said mechanism was approved by the Executive Council at its 26th Ordinary Session in January 2015.

59. The operationalization of the above initiatives will go a long way to assist indigent Applicants to access the Court and enhance its effectiveness, in particular, and the African human rights system as a whole.

60. The Court continues to receive an increasing number of cases. During the period under review, it received a total of eight (8) cases, the largest number it has received in half a year since its establishment almost ten years ago.

61. The increase in the number of cases is a demonstration of the fact that more and more States, NGOs, individuals and the civil society in general are becoming increasingly aware of the existence and work of the Court. It is also an illustration of the fact that the visibility of the Court has been enhanced through the sensitization visits the Court initiated four years ago.

The judgments that the Court has delivered over the past few years have demonstrated the Court's independence, impartiality and credibility as the judicial arm of the Union.

62. There has also been an increasing use of the Court's advisory jurisdiction. To date, the Court has received eight (8) requests for advisory opinion, from individuals, NGOs, an AU organ and a Member State of the Union. While one of the requests was withdrawn, the majority were struck out as they did not fulfil the requirements set by the Court.

63. The Court has however provided an opinion on a request submitted by the African Committee of Experts on the Rights and Welfare of the Child, in which the Committee was seeking the Court's opinion, on, among other things: "*Whether the Committee, as an 'African Intergovernmental Organization', is included within the meaning of Article 5 (1) (e) of the Protocol*".

64. In its opinion, the Court noted that "the Committee as a body or institution is not "intergovernmental" in the sense that it is not composed of government representatives", and as such, the Committee cannot bring cases to the Court alleging violations of human or children's rights under Article 5 (l) (e) of the Protocol in the capacity of an "intergovernmental" organisation.

65. Following this opinion, the Committee wrote to the Court requesting that the Court propose to the AU Policy organs under Article 35(2) of the Protocol, the inclusion of the Committee as one of the entities entitled to submit cases before the Court.

b. Challenges

66. The above positive scenario notwithstanding, the Court continues to face a number of challenges which may jeopardise its effectiveness. These challenges include, among others, the low level of ratification of the Protocol, slow rate of deposit of declarations and insufficient resources.

67. One of the major challenges to the effective protection of human rights in Africa is the low level of ratification of the Protocol establishing the Court, and the even lower number of declarations made under Article 34(6) of the Protocol. Eighteen (18) years after the adoption of the Protocol, it has been ratified by only twenty-eight (28) Members of the African Union, and of these 28, only seven (7) have made the declaration required under Article 34(6) of the Protocol recognising the competence of the Court to receive cases from individuals and NGOs.

68. The fact that only 28 Member States are parties and only 7 have deposited the required declaration means that the Court does not have the jurisdiction to hear cases against half the Member States of the Union because the States have not ratified the Protocol. Effectively therefore, the Court does not have the legal capacity to receive cases for alleged human rights violations from the greater majority of citizens of the Member States of the African Union, because they have either not ratified the Protocol or made the declaration.

69. This matter has been raised repeatedly at the level of both the PRC and Executive Council, and at every occasion it has adopted the Activity Report of the Court, the Executive

Council has urged those Member States that have not already done so, to ratify the Protocol and make the declaration. During its 25th and 26th Ordinary Sessions, held in June 2014 and January 2015, respectively, the Executive Council went a step further to “[**URGE**] Member States that have not yet ratified/acceded to the Protocol on the Court to do so, and **REQUEST[ED]** them to make a declaration in accordance with article 34 (6) of the Protocol before 1 January 2016”.

70. It should be recalled that the year 2016 has been declared as Africa Year of Human Rights with focus on the Rights of Women. In Decision EX.CL/Dec.842(XXV) adopted in June 2014, the Executive Council took note “of the Concept Paper on the Declaration of 2016 as Africa Year of Human Rights with particular focus on the rights of women, **DECLARE[D]** 2016 as Africa Year of Human Rights with particular focus on the rights of women, on the basis of the Concept Paper” and “**REQUEST[ED]** the Court, in collaboration with the PRC, the African Union Commission, the African Commission on Human and Peoples’ Rights and all other relevant stakeholders on the continent, as well as relevant partners, to ensure the effective celebration of 2016, to enhance the promotion and protection of human rights on the continent”.

71. The year 2016 marks a veritable watershed in the continental human rights trajectory. It is:

- i. the 35th Anniversary of the adoption of the African Charter in 1981;
- ii. the 30th Anniversary of the entry into force of the African Charter in 1986;
- iii. the 29th Anniversary of the operationalization of the Commission in 1987 (in 2016 the Commission will be one year shy of its 30th Anniversary);
- iv. the 13th Anniversary of the adoption of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol) in 2003 ushered in a new thinking in addressing gender inequality and the rights of women in Africa; and
- v. the 10th Anniversary of the operationalization of the African Court.

72. The celebration will provide an opportunity for the continent to take stock of the progress made, as well as challenges encountered in the field of human rights over the years, with a view to ensuring better coordination of human rights instruments and institutions, consolidate the gains already made over the years in the area of human rights in general and the rights of women in particular, and move towards the establishment of a true human rights culture on the continent.

73. Universal ratification of the Protocol establishing the Court and depositing of the declaration during this auspicious celebration will further manifest the commitment of AU Member States to the theme of 2016 as Africa Year of Human Rights, as well as to the importance of human rights as a critical pillar in the socio-economic and political development of the continent.

74. Another challenge the Court faces is non-compliance with its decisions.

75. Although Libya has reacted to the Court’s Order of Provisional Measures of 15 March 2013, with respect to Application 002/2013 – African Commission on Human and Peoples’

Rights v Libya, it has failed to indicate the concrete measures it has taken to implement the said Order.

76. The Court remains concerned that Tanzania has also not fully complied with a Judgment of the Court delivered almost two (2) years ago.

77. From the administrative point of view, the 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, only eight (8) of the positions have been filled due to budgetary constraints. Recruitment for the remaining positions has been staggered over the next four (4) years, and is earmarked to be completed in 2018. The uncertainty regarding the availability of funds may further delay the filling of these positions and seriously impact on the ability of the Court to effectively discharge its mandate.

78. 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.

79. A further difficulty facing the Court at the moment is the acute shortage of office space. The Court welcomes the submission of the architectural designs by the Host Government and avails itself, in collaboration with the AUC, to work with the Government for expeditious construction of the permanent premises.

80. While expressing its gratitude to the Government of the United Republic of Tanzania for hosting the Court, the Host State is yet to address the challenges the Court is facing in having to operate from temporary premises and calls on the Government of the United Republic of Tanzania to expedite the construction of the permanent premises. The Court also appreciates the support from all its collaborating partners in this regard.

ii) Recommendations

81. The Court submits the following recommendations for consideration by the Assembly of the Union:

- i. The Member States of the Union that have not yet ratified/acceded to the Protocol establishing the Court and/or made the declaration under Article 34(6) thereof, should do so before **January 2016**, in conformity with Executive Council Decisions EX.CL./Dec.842(XXV) of June 2014 and EX.CL/Dec.865(XXVI) of January, 2015;
- ii. Member States should initiate activities at national level and in collaboration with other States to celebrate 2016 as Africa Year of Human Rights with focus on the Rights of Women in Africa;
- iii. The Court, in collaboration with the PRC and AUC, should undertake a study on the impact of Article 34(6) of the Protocol on the protection of human rights on the

continent, and submit the study to the Executive Council at its Ordinary Session in June 2016;

- iv. The Court should work closely with the PRC and the AUC to finalise the study on the establishment of a Trust Fund and submit a report to the June 2016 Ordinary Session of the Executive Council;
- v. Member States of the Union should cooperate with the Court and comply with the decisions of the Court;
- vi. The Assembly of the Union may wish to authorise the necessary resources to enable the Court to recruit and fill the structure of the Registry approved in January 2012 by the Executive Council;
- vii. As part of the Tenth (10th) Anniversary of the Court, the President of the Court should be invited to address the Assembly during the June 2016 Session of the Assembly; and
- viii. The Assembly may wish to adopt, as part of the celebration of 2016 and commemoration of the 10th Anniversary of the African Court, a declaration on the Commemoration of the 10th Anniversary of the Court.

ANNEX I

**LIST OF JUDGES OF THE AFRICAN COURT
ON HUMAN AND PEOPLES' RIGHTS
AS AT JUNE 2015**

N°	Name	Term		Country
		Duration	Expiry	
1	Justice Augustino S. L. Ramadhani	6	2016	Tanzania
2	Justice Elsie Nwanwuri Thompson	6	2016	Nigeria
3	Justice Gérard Niyungeko	6	2018	Burundi
4	Justice Fatsah Ouguergouz	6	2016	Algeria
5	Justice Duncan Tambala	6	2016	Malawi
6	Justice Sylvain Oré	6	2020	Côte d'Ivoire
7	Justice El Hadji Guissé	6	2018	Senegal
8	Justice Ben Kioko	6	2018	Kenya
9	Justice Rafâa Ben Achour	6	2020	Tunisia
10	Justice Solomy Balungi Bossa	6	2020	Uganda
11	Justice Ângelo Vasco Matusse	6	2020	Mozambique

2015

Report of the activities of the African commission on human and people's rights (ACHPR)

Mid-term activity report of the African court on human and
peoples' rights January – June 2015

African Union

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