

AFRICAN UNION

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**REPORT ON THE ACTIVITIES OF THE AFRICAN COURT
ON HUMAN AND PEOPLES' RIGHTS**

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

ACTIVITY REPORT OF THE AFRICAN COURT ON HUMAN
AND PEOPLES' RIGHTS

**ACTIVITY REPORT OF THE AFRICAN COURT ON HUMAN
AND PEOPLES' RIGHTS FOR THE PERIOD
1 JANUARY TO 31 DECEMBER, 2015**

I. INTRODUCTION

1. The African Court on Human and Peoples' Rights (the Court) was established under 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), which was 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. The Court, which became operational in 2006, is composed of eleven Judges and has its Seat in Arusha, United Republic of Tanzania.

2. 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".

3. The present Report, submitted in conformity with Article 31 of the Protocol, describes the activities undertaken by the Court from 1 January to 31 December, 2015.

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 NGOs

4. As at 1 December 2015, the Protocol had been ratified by twenty nine (29) Member States of the African Union, namely: Algeria; Benin, Burkina Faso; Burundi; Cameroon; 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*.

5. For the period under review, only the Republic of Cameroon ratified the Protocol. Of these 29 States Parties to the Protocol, only seven (7), namely: Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Rwanda and Tanzania, have made the declaration accepting the jurisdiction of the Court to receive cases from individuals and non-governmental organizations (NGOs). See *Table 2*.

Table 1: List of countries that have ratified/acceded to the Protocol

No.	Country	Date of Signature	Date of Ratification or 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.	Cameroon	25/07/2006	17/08/2015	17/08/2015
6.	Congo	09/06/1998	10/08/2010	06/10/2010

7.	Cote d'Ivoire	09/06/1998	07/01/2003	21/03/2003
8.	Comoros	09/06/1998	23/12/2003	26/12/2003
9.	Gabon	09/06/1998	14/08/2000	29/06/2004
10.	The Gambia	09/06/1998	30/06/1999	15/10/1999
11.	Ghana	09/06/1998	25/08/2004	16/08/2005
12.	Kenya	07/07/2003	04/02/2004	18/02/2005
13.	Libya	09/06/1998	19/11/2003	08/12/2003
14.	Lesotho	29/10/1999	28/10/2003	23/12/2003
15.	Malawi	09/06/1998	09/09/2008	09/10/2008
16.	Mali	09/06/1998	10/05/2000	20/06/2000
17.	Mauritania	22/03/1999	19/05/2005	14/12/2005
18.	Mauritius	09/06/1998	03/03/2003	24/03/2003
19.	Mozambique	23/05/2003	17/07/2004	20/07/2004
20.	Niger	09/06/1998	17/05/2004	26/06/2004
21.	Nigeria	09/06/2004	20/05/2004	09/06/2004
22.	Rwanda	09/06/1998	05/05/2003	06/05/2003
23.	Sahrawi Arab Democratic Republic	25/07/2010	27/11/2013	27/01/2014
24.	Senegal	09/06/1998	29/09/1998	30/10/1998
25.	South Africa	09/06/1999	03/07/2002	03/07/2002
26.	Tanzania	09/06/1998	07/02/2006	10/02/2006
27.	Togo	09/06/1998	23/06/2003	06/07/2003
28.	Tunisia	09/06/1998	21/08/2007	05/10/2007
29.	Uganda	01/02/2001	16/02/2001	06/06/2001

of Countries – 54, # of Signature – 52, # of Ratification – 29, # of Deposit - 29
Source: African Union Website.

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

Source: African Union Website

Total # Seven (7)

III. Composition of the Court

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

IV. Activities undertaken by the Court

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

i) Judicial Activities

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

9. From 1 January to 31 December, 2015, the Court registered twenty-seven (27) applications and two (2) requests for advisory opinion. The number of applications registered by the Court since its establishment now stands at fifty-nine (59), while the number of requests for advisory opinion has increased to ten (10). The number of cases the Court has disposed of as at December 2015 now stands at 23; 4 cases transferred to the African Commission in accordance with Article 6(3) of the Protocol, while 32 cases are pending. In addition, over 10 cases were received but not registered because they were filed either against non-state actors or non-African States.

a) Sessions held in 2015

10. During the reporting period, the Court held four (4) ordinary sessions and one (1) extraordinary session, as follows:

- i) 36th Ordinary Session held from 10 to 28 March, 2015 in Arusha, Tanzania;
- ii) 37th Ordinary Session held from 18 May to 6 June 2015 in Arusha, Tanzania;
- iii) 38th Ordinary Session held from 31 August to 18 September 2015 in Arusha, Tanzania;
- iv) 39th Ordinary Session held from 9 to 20 November, 2015 in Arusha, Tanzania; and
- v) 7th Extra-ordinary Session held from 23 to 27 November 2015 in Arusha, Tanzania.

b) Case Management

11. During the period under review, the Court disposed of three (3) Applications and two (2) Requests for Advisory Opinion, examined and deferred thirty-two (32) Applications and three (3) Requests for Advisory Opinion, for further consideration. This brings to twenty-seven (27) the total number of Applications and to seven (7) the total number of Requests for Advisory Opinion finalized by the Court.

12. Table 3 below shows the number of Applications and Requests for Advisory Opinion finalized by the Court during this period.

No.	Application No.	Applicant	Respondent	Date received	Date of Judgement/ Ruling
1.	013/2011 (Application for reparations)	Beneficiaries of the late Norbet Zongo- Abdoulaye Nikiema, Ernest Zongo, Blaisellboudo and <i>Mouvement Burkinabé des Droits de l'Homme et des Peuples</i>	BurkinaFaso	11/12/2011	28/03/2015
2.	005/2013 (Judgment)	Alex Thomas	Tanzania		
3.	019/2015 (Order)	Femi Falana	African Commission on Human and Peoples' Rights		
REQUESTS FOR ADVISORY OPINION FINALIZED					
1.	Request No. 001/2014	Coalition on International Criminal Court & 3 others			
2.	Request No. 001/2015	Coalition on International Criminal Court & 3 others			

13. 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.

14. The Court thus has a total of thirty-two (32) applications in contentious matters and three (3) requests for advisory opinion pending before it, which it is processing in accordance with the relevant provisions of the Protocol and the Rules.

c) Public Sittings

15. From January to December 2015, the Court organised four (4) public sittings, to receive oral arguments from parties, as well as deliver judgments.

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

No.	Date of Public sitting	Purpose of public sitting	Application	Applicant	Respondent
1.	28 March 2015	Delivery of judgment on reparations	013/2011 (Application for reparations)	Beneficiaries of the late Norbet Zongo- Abdoulaye Nikiema, Ernest Zongo, Blaise Ilboudo and <i>Mouvement Burkinabè des Droits</i>	BurkinaFaso

				<i>de l'Homme et des Peuples</i>	
2.	21 May 2015	Receive oral arguments	006/2013	Wilfred Onyango & 9 others	Tanzania
3.	22 May 2015	Receive oral arguments	007/2013	Mohamed Abubakari and others	Tanzania
4.	20 November 2015	Delivery of Judgment	005/2013	Alex Thomas	Tanzania

d) Status of the Execution of the Judgments of the Court

17. 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".

18. During the period under review, the Court made orders in Application 013/2011 - Beneficiaries of the late Norbet Zongo-Abdoulaye Nikiema, Ernest Zongo, Blaise Ilboudo and *Mouvement Burkinabè des Droits de l'Homme et des Peuples*, and gave the Respondent State six (6) months within which to report on the implementation of the Orders. The timeline given to the Burkina Faso is still running.

19. Libya has continued to refuse to comply with the Order of the Court in respect of Application 002/2013 – African Commission on Human and Peoples' Rights v. Libya. It should be recalled that at the 27th Ordinary Session of the Executive Council held in Johannesburg, South Africa, in June 2015, the Court reported on Libya's continuous refusal to comply with the Court's Order of Provisional Measures issued on 15 March, 2013 with respect to the said case. The Executive Council, in its decision EX.CL/Dec.888(XXVII), reiterated the need for all 'Member States to cooperate with the Court in the implementation of its decisions'. On 31 July 2015, the Court issued a second order, in the wake of reports that the alleged victim had been sentenced to death. In the said Order, the Court, inter alia, recalled Executive Council decisions Nos. EX.CL/Dec.806(XXIV); EX.CL/Dec.842(XXV); EX.CL/Dec.865 (XXVI); and EX.CL/Dec.888(XXVII); and ordered Libya "to take all necessary measures to preserve the life of Mr. Saif Gaddafi and refrain from taking any action that may cause irreparable harm to the victim and jeopardize the case before the Court".

20. As at 1 December, 2015, the Court had not received any response from Libya to indicate the measures taken to comply with the Orders.

21. In its Mid-term Report submitted to the 27th Ordinary Session of the Executive Council in June 2015 in Johannesburg, South Africa, the Court expressed concern about Tanzania's partial compliance with its Judgment delivered in June 2013. Tanzania had undertaken to fully comply with the said judgment, but as at 1 December 2015, the Court had not been informed of the measures Tanzania had taken to comply with the same.

ii) Non-judicial activities

22. 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 Summits*

23. The Court took part in the 29th Ordinary Session of the Permanent Representatives' Committee (PRC), from 23 to 24 January, 2015, the 26th Ordinary Session of the Executive Council, from 25 to 27 January, 2015, as well as the 24th Assembly of Heads of State and Government of the African Union, held from 30 to 31 January, 2015, in Addis Ababa, Ethiopia; as well as the 30th Ordinary Session of the PRC, from 7 to 8 June, 2015, the 27th Ordinary Session of the Executive Council, from 11 to 13 June, 2015, and the 25th Assembly of Heads of State and Government of the African Union, held from 14 to 15 June, 2015, in Johannesburg, South Africa.

b) *Implementation of Executive Council Decisions*

24. During its 27th Ordinary Session held in June 2015, the Executive Council, in its decision EX.CL/Dec.888(XXVII), requested the Court, in collaboration with the Commission and the PRC, 'to undertake a study on the impact of Article 34 (6) of the Protocol on the protection of human rights on the continent and submit that study to the 29th ordinary Session of the Executive Council in June/July 2016', and for the Court to 'actively be engaged in the preparations of the celebration of the 2016 African Year of Human Rights as well as the Commemoration of the 10th Anniversary of the African Court during the June/July 2016 Summit, in collaboration with the Commission, the ACHPR, the PRC and other Organs'.

25. At its 25th Ordinary Session held in June 2014, the Executive Council, in Decision EX.CL/Dec.842 (XXV), **requested the Court, in collaboration with the PRC and the AUC, to undertake a feasibility study on the establishment of a Trust Fund, including in particular, the financial implications on Member States assessment and submit a report to the June 2015 session of the Executive Council**'. In May, 2015, the Court informed the Chairperson of the African Union Commission that consultations were still on-going amongst the relevant organs, and requested that the study be submitted to the Executive Council in June, 2015.

26. The Court is currently working on the study on the impact of Article 34 (6) of the Protocol on the protection of human rights on the continent, as well as the study on the establishment of a Trust Fund for the Court, and after due consultations with the Commission and the PRC, will submit the said studies to the Executive Council.

27. With respect to the celebration of 2016 as African Year of Human Rights with focus on the rights of women, the Court has been working closely with relevant organs of the Union to ensure a successful celebration, and in September 2015, hosted a Consultation between the PRC and African Union Organs with human rights mandate, to discuss, among other things, how to ensure a successful celebration of 2016.

c) *Execution of the 2015 budget*

28. The budget appropriated to the Court for 2015 stood at US\$10,057,058 comprising \$8,176,154 [81.3%] from Members States and \$1,880,904 [18.7%] from International Partners.

29. The total projected budget execution for 2015 amounts to 7,830,638.00 which represents a budget execution rate of 77.86%.

30. This level of execution comprises \$.6,659,026 from the Member States funded budget representing an 81.44% execution level and \$.1,171,612 under the donor funded budget which is a 62.28% execution level.

V. Staff recruitment and development

a) Staff Recruitment

31. As at December 2015, of the 90 positions on the approved structure of the Registry, 60 positions had been filled (including short-term and fixed term staff). The recruitment exercise for other positions has been delayed due to lack of funds.

b) Staff development

32. 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. Table 5 below indicates the training activities undertaken during this period.

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 Development on new trends in the practice of Human Rights for Judges	GIZ	Judges of the Court and Legal Officers	12 - 13 March 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

33. During the period under consideration, the Court undertook a number of promotional activities, aimed at raising awareness among stakeholders, about its existence. The activities undertaken included, inter alia, sensitization visits and seminars, as well as participation in seminars and conferences organised by other stakeholders.

a) *Sensitization visit*

34. During the period under consideration, the Court undertook one (1) sensitization visit to the Kingdom of Lesotho.

35. The aim of the visit was to raise public awareness among human rights stakeholders in the Kingdom, and to encourage it to make the declaration required under Article 34(6) of the Protocol, as it has already ratified the Protocol.

36. During the sensitization visit, the delegation of the Court met with high-ranking government officials, including the Prime Minister of Lesotho. In collaboration with the government, the Court also organised a half-day seminar for human rights stakeholders in the country, bringing together government officials, human rights NGOs, the National Human Rights Institution, lawyers, religious personalities and the media.

37. The government of the Kingdom of Lesotho undertook to consider making the declaration required under Article 34(6) of the Protocol.

b) *Continental Judicial Dialogue*

38. During its 24th Ordinary Session held in January 2014, the Executive Council, by Decision EX.CL/Dec. 806(XXV) accepted to institutionalize, within the AU, a Continental Judicial Dialogue to be held on a biennial basis. The first Dialogue after this decision was held from 4 to 6 November 2015, in Arusha, Tanzania, hosted by the African Court, in collaboration with the Government of the United Republic of Tanzania.

39. The Dialogue was attended by a total of 197 participants, including 10 Judges of the African Court, 109 Chief Justices, Presidents of Supreme and Constitutional Courts and representatives of national judiciaries, from 45 African Union Member States; the President, Prosecutor and Registrar of the International Criminal Tribunal for Rwanda/ the Mechanism for International Criminal Tribunals, the President of the Trial Chamber and Prosecutor of the African Extraordinary Chambers in Senegal, 9 Judges from the Courts of Regional Economic Communities, being the Common Market for East and Southern Africa Court of Justice, the East African Court of Justice, the Community Court of the Economic Community of West African States, 3 academic institutions, being the African Centre for International Law Practice, Tumaini University Makumira and the Rajiv Gandhi National University of Law; and 7 Observers (World Bank, EU, GiZ, Pan African Lawyers' Union, the Office of the High Commissioner for Human Rights – East Africa Regional Office, East African Law Society and the Coalition for an Effective African Court).

40. The countries represented at the Judicial Dialogue were: Algeria, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Niger, Nigeria, Republic of Congo, Rwanda, Sahrawi Arab Democratic Republic, Seychelles, Sierra Leone, Somalia, Sudan, South Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

41. In addition to the African Court, other African Union Organs represented at the Dialogue were; the Permanent Representatives Committee (represented by its Chairperson), the African Union Commission, the African Union Commission on International Law, the Pan African Parliament and the African Union Advisory Board on Corruption.

42. The Final Communiqué of the Dialogue is attached to the present Report as Annexure II.

c) *Other promotional activities*

43. In addition to the foregoing activities, the Court also participated in a number of promotional activities organized by other stakeholders. Below is a list of other promotional activities the Court was engaged in during the period under consideration:

- i) Multi-Disciplinary Congress on Human Rights, 28 February 2015, Punjab, India;
- ii) The 1st Colloquium of the African Court Coalition, 12 March 2015, Arusha, Tanzania;
- iii) Meeting of PAP Committee on Justice and Human Rights, 16 March 2015, Midland, South Africa;

- iv) Conference on the role of NHRIs in monitoring implementation of decisions on communications of the African Human Rights Bodies, 19-20 April 2015, Banjul, The Gambia;
- v) Opening ceremony of the 56th ordinary session of the Banjul Commission, 21 April 2015, Banjul, The Gambia;
- vi) The 1st Regional Conference of the Civil Societies of the Countries with issues before the ICC, 4 May, 2015, Kinshasa, DRC;
- vii) Meeting on Protection of Human Rights - EU Priorities and Challenges, 26 May 2015, Brussels, Belgium;
- viii) The AU Regional Consultative meeting for Eastern Africa for the development of the Common African Position on the World Humanitarian Summit, 29 July 2015, Arusha, Tanzania;
- ix) Workshop for Tanzanian Judges on International Humanitarian Law and Human Rights, 20 August 2015, Arusha, Tanzania;
- x) Meeting of the PRC on Peace and Security, 26 August 2015, Addis Ababa, Ethiopia;
- xi) Opening ceremony of the 1st Ordinary Session of the 4th Legislature of PAP, 05 October 2015, Midrand, South Africa;
- xii) Colloquium on African Court on Human and Peoples' Rights, 8 October 2015, Johannesburg, South Africa;
- xiii) Conference on the Day against Impunity for journalists, 9 -11 October 2015, San Jose, Costa Rica;
- xiv) Workshop on Regional and Sub-Regional Courts, 20-23 October 2015, Strasbourg, France;
- xv) Conference on Judicial Persecution of Human Rights Defenders to be held in Pretoria, South Africa, from 16-17 July 2015; and
- xvi) International Congress on Constitutional Law, International Courts and Reconciliation, Bogota, Colombia from 23 to 25 September 2015.

d) Participation in AU Initiatives

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

- i) Consultation with the PRC on the African Charter on Democracy, Governance and Elections, from 3 to 5 September 2015 in Arusha, Tanzania, during which the implementation of the decision to declare 2016 as African Year of Human Rights with focus on the Rights of Women, was discussed;
- ii) The Inaugural Meeting of African Governance Architecture (AGA) and Platform's Clusters on Constitutionalism and Rule of Law and Human Rights and Transitional Justice, organized by the Department of Political Affairs (DPA) of the African Union Commission (AUC), in collaboration with the Government of Algeria and International IDEA was held in Algiers, People's Democratic Republic of Algeria from 2 to 5 August 2015;
- iii) Workshop to validate the Study on the Establishment of a Pan-African Human Rights Institute, from 20 to 22 July 2015 in Nairobi, Kenya.

VII. 10th Anniversary of the Court

45. The African Court will commemorate its Tenth (10th) Anniversary in July 2016. As the premier judicial organ of the Union, a number of activities have been earmarked to commemorate this auspicious occasion, including an address to the 27th Assembly of Heads of State and Government of the Union in June 2016. The 10th Anniversary will also be an opportunity for the Court to take stock of its activities for the first decade of its existence, including the successes, weaknesses and challenges facing the Court in particular, and the African judicial system as a whole.

VIII. Networking

46. Meeting with the Inter American Court of Human Rights: As part of its networking initiative aimed at benchmarking and sharing experiences, the Court hosted a six-member delegation from the Inter-American Court of Human Rights, which included the President and Vice President of the Court, from 2 to 3 November 2015. It should be recalled that Judges of the African Court had also visited the Inter-American Court in 2009 and 2012.

47. Relations with the African Commission on Human and Peoples' Rights: The Court and the African Commission continue to strengthen their relationship and consolidate the complementarity envisaged in the Protocol. During the period under review, the Seventh Meeting of the Bureaux of the two institutions took place in Nairobi, Kenya on 25 July 2015, and the 4th Annual Meeting between the two institutions took place at the same venue from 27 to 28 July 2015. During these meetings, the two institutions discussed ways and means of strengthening their relationship in a bid to enhance the promotion and protection of human rights on the continent.

48. Cooperation with external partners: 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 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), *l'Organization Internationale de la Francophonie* (OIF) and the World Bank.

49. 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.

IX. Host Agreement

50. The current premises being used by the Court have become very small to accommodate the growing number of staff. The Government of the host State has submitted to the African Union Commission (AUC), through the Court, architectural designs for the construction of the permanent premises of the Court. The said designs were discussed between architects from the Government of the host State and those from the African Union Commission in August, 2015.

X. Assessment and Recommendations

i) Assessment

51. During the period under review, the Court made progress in the protection of human rights on the continent.

a) Positive Developments

52. 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 and presented to the Specialized Technical Committee (STC) on Justice and Legal Affairs in November 2015. It is envisaged that the Legal Aid Fund, which is supposed to facilitate legal assistance for indigent complainants/applicants who appear before any African organ with human rights mandate, will become operational in the first half of 2016.

53. In its Decision EX.CL/Dec.865(XXVI) in January 2015, the Executive Council accepted the proposal of the Court to institutionalize a Continental Judicial Dialogue, to be held biennially, to bring together national, regional and continental judicial and quasi-judicial bodies on the continent. This regular consultation of judicial institutions on the continent is a forum for exchange of views, information and best practices on the protection of human rights and access to justice at national, regional and continental levels. The first edition of this Dialogue was held in Arusha, Tanzania from 4 to 6 November, 2015, and it brought together, for the first time, under the auspices of the African Union, a total of 197 participants, including 10

Judges of the African Court, 109 Chief Justices, Presidents of Supreme and Constitutional Courts and representatives of national judiciaries, from 44 African Union Member States.

54. The success of the Dialogue was evident from the large participation of judicial officers from across Africa, the constructive and frank discussions, exchange of views and best practices on the wide range of Dialogue themes, including access to justice, sharing of information and jurisprudence, use of technology in administration of justice, establishment of special courts to enhance protection of human rights and access to justice, judicial reforms, etc.

55. 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), 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. This mechanism will be incorporated within the general framework of revision of the Rules of Procedure of the Policy Organs of the African Union. The establishment of such a mechanism will facilitate the Executive Council's task of monitoring implementation of the judgment of the Court, on behalf of the Assembly, provide States Parties with concrete information and guidance on the implementation of the judgments of the Court and assure African citizens and parties who appear before the Court that there is a proper mechanism in place to ensure States' compliance with the Court's judgments. This mechanism can, however, only succeed if all the relevant stakeholders, in particular, Member States manifest their complete support towards it.

56. The Court has also seen a remarkable increase in the number of cases filed before it. In 2015, the Court registered a total of 27 Applications, twice as many as the Applications registered from the inception of the Court in 2006 up to 2014. As the Court continues to receive 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 increase.

57. The 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. It is also an illustration of the fact that the visibility of the Court has been enhanced through the sensitization visits initiated four years ago.

58. 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 requisite declaration, providing the Court with the necessary human and financial resources, and complying with orders, decisions and judgments of the Court.

59. There has also been an increasing use of the Court's advisory jurisdiction. To date, the Court has received 10 Requests for Advisory Opinion, from individuals, NGOs, an AU organ and a Member State of the Union.

60. The work of the Court is increasing at a very fast rate, and clearly, there is reason to believe that in the future there will be need to consider engaging Judges on a full-time basis.

b) Challenges

61. The above positive scenario notwithstanding, the Court continues to face a number of challenges, which may jeopardize its effectiveness and the advances already made. These challenges include, the low level of ratification of the Protocol, slow rate of deposit of declarations, lack of awareness of the Court, non-compliance with its decisions, insufficient resources and the fact that Judges work on a part-time basis.

62. 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. Seventeen (18) years after the adoption of the Protocol, it has been ratified by only twenty-nine (29) Members of the African Union; and of these 29, only seven (7) have made the declaration required under Article 34(6) of the Protocol, recognizing the competence of the Court to receive cases from individuals and NGOs.

63. The fact that only 29 Member States are parties and only 7 have made the declaration means that the Court does not have the jurisdiction to hear cases against almost half the Member States of the Union because the States have either not ratified the Protocol or made the declaration. Effectively therefore, the Court does not have the legal capacity to receive cases for alleged human rights violations from a large number of citizens of Member States of the African Union.

64. This low level of ratification and declaration has been raised repeatedly at the level of both the PRC and Executive Council, and at every occasion which the latter has adopted the Activity Report of the Court, it 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”. During its 27th Ordinary Session held in June 2015, the Executive Council in its Decision EX.CL/Dec.888(XXVII) , requested “the AfCHPR, in collaboration with the Commission and the PRC, to undertake a study on the impact of Article 34 (6) of the Protocol on the protection of human rights on the continent and submit that study to the 29th ordinary Session of the Executive Council in June/July 2016”. The Court, in collaboration with the AUC and the PRC, will present the said study in June 2016.

65. It should be recalled that the year 2016 has been declared African Year of Human Rights with focus on the Rights of Women. This celebration will provide an opportunity for the

continent to take stock of the progress made, as well as the challenges encountered in the field of human rights over the years, with a view to ensure 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. 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 African 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.

66. Another challenge the Court faces is non-compliance with its decisions. In spite of repeated reminders from the Court and over three Executive Council Decisions, Libya has failed to comply with the Court orders issued in respect of a matter brought against it. The Court remains concerned that Tanzania has also not fully complied with a Judgment of the Court delivered more than two (2) years ago, relating to amendment of its laws to conform with international human rights standards.

67. 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 ten (10) 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 scheduled to be completed by 2018. The uncertainty regarding the availability of funds may further delay the filling of these positions and seriously impact on the Court's ability to effectively discharge its mandate.

68. 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 or endowment fund commissioned by the Executive Council will go a long way to finding a sustainable solution to this challenge.

69. 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 permanent premises for the Court. 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

70. 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 acceded to the Protocol establishing the Court and/or made the Declaration under Article 34(6) thereof,

should do so before January 2016, as urged in 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 African Year of Human Rights with focus on the Rights of Women in Africa;
- iii) The Court should work closely with the PRC and the AUC to finalize the study on establishment of a Trust Fund and submit a report to the June 2016 Ordinary Session of the Executive Council, specifying in particular, the sources of the fund, sustainability, the benefits, and its impact on Member States' assessed contributions;
- iv) Member States of the Union should cooperate with the Court and comply with its decisions;
- v) The Assembly of the Union may wish to 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;
- vi) 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
- vii) The Assembly may wish to adopt, as part of the celebration of 2016 as African Year of Human Rights 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 DECEMBER 2015

No.	Name	Term		Country
		Duration	Expiry	
1	Justice Augustino S. L. Ramadhani (President)	6	2016	Tanzania
2	Justice Elsie Nwanwuri Thompson (Vice-President)	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

ANNEX II



SECOND AFRICAN JUDICIAL DIALOGUE
"CONNECTING NATIONAL AND INTERNATIONAL JUSTICE"
NGURDOTO MOUNTAIN LODGE ARUSHA, TANZANIA
4 - 6 NOVEMBER 2015



THE WORLD BANK
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FINAL COMMUNIQUÉ/ OUTCOMES OF THE
2ND AFRICAN JUDICIAL DIALOGUE ON THE THEME
"CONNECTING NATIONAL AND INTERNATIONAL JUSTICE"

4-6 NOVEMBER 2015

ARUSHA, THE UNITED REPUBLIC OF TANZANIA

1. The African Court on Human and Peoples' Rights (the African Court), in collaboration with the World Bank, the European Union (EU) the German Cooperation (GiZ) and the Judiciary of Tanzania, organized under the auspices of the African Union, the 2nd African Judicial Dialogue on the theme "Connecting National and International Justice", from 4-6 November, 2015, in Arusha, Tanzania.
2. The overall purpose of the Judicial Dialogue was to provide participants with a forum to discuss and share experiences between continental, regional and national courts, particularly in the application and interpretation of the African Charter on Human and Peoples' Rights and other continental and international human rights instruments, as well as enhance access to justice on the continent.
3. The specific objectives of the Dialogue were to:
 - i) Promote procedural reforms and innovations that enhance access to justice and ensure protection of human and peoples' rights;
 - ii) Examine whether and how the establishment of special court divisions can contribute to enhancing access to justice and the protection of human and peoples' rights;
 - iii) Assess approaches to incorporating technology in court processes to enhance access to justice and protection of human rights;
 - iv) Examine recent trends and developments in human rights jurisprudence on the continent;
 - v) Encourage the adoption of quality management systems for courts as a means to ensure quality justice;
 - vi) Develop and assess formats, methodologies and resources for continuing judicial education;

- vii) Share experiences and best practises of other regional blocs on ensuring compliance with decisions of international courts through national courts; and
- viii) Share the approaches of other regions in setting up continental judicial networks, with a view to adopting the best methodology for the establishment of a judicial network in Africa.

4. The Dialogue was attended by a total of 197 participants, including 10 Judges of the African Court, 109 Chief Justices, Presidents of Supreme and Constitutional Courts and representatives of national judiciaries from 44 African Union Member States, the President, Prosecutor and Registrar of the International Criminal Tribunal for Rwanda/ the Mechanism for International Criminal Tribunals, the President of the Trial Chamber and Prosecutor of the African Extraordinary Chambers in the Courts of Senegal, 9 Judges from the Courts of Regional Economic Communities being the Common Market for East and Southern Africa Court of Justice, the East African Court of Justice, the Community Court of the Economic Community of West African States, 3 academic institutions being the African Centre for International Law Practice, Tumaini University Makumira and the Rajiv Gandhi National University of Law and 7 Observers (World Bank, EU, GiZ, Pan African Lawyers' Union, the Office of the High Commissioner for Human Rights – East Africa Regional Office, East African Law Society and the Coalition for an Effective African Court).

5. The countries represented at the Judicial Dialogue were: Algeria, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Niger, Nigeria, Republic of Congo, Rwanda, Sahrawi Arab Democratic Republic, Seychelles, Sierra Leone, Somalia, Sudan, South Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

6. In addition to the African Court, other African Union Organs represented at the Dialogue were; the Permanent Representatives Committee (represented by its Chairperson), the African Union Commission, the African Union Commission on International Law, the Pan African Parliament and the African Union Advisory Board on Corruption.

7. The Opening Ceremony of the Judicial Dialogue was graced with the presence of His Excellency Mizengo Kayanda Peter Pinda, the Prime Minister of the United Republic of Tanzania, who delivered the Keynote Speech.

8. Statements were also delivered at the Opening Ceremony by Her Excellency Dr. Aisha L. Abdullahi, Commissioner for Political Affairs, African Union Commission, Mr. Hassane Cisse, Director, Governance, World Bank, Justice Godfrey G. Chidyausiku, the Chief Justice of Republic of Zimbabwe, Justice Mohammed Chande Othman, the Chief Justice, United Republic of Tanzania and Justice Augustino S. L. Ramadhani, President of the African Court.

9. In the statement of Her Excellency Dr. Abdullahi delivered on her behalf by Dr. Khabele Matlosa, Director – Department of Political Affairs of the African Union Commission, she reiterated the commitment of the African Union to the promotion and protection of human

rights on the African Continent. She stressed the 8 aspirations voiced by African stakeholders consulted during the development of Agenda 2063, Africa's continental roadmap for development. She also observed that the aspirations of Africans are being actualized through the implementation of the Human Rights Strategy for Africa and the evolving Transitional Justice Policy Framework.

10. In his statement, Mr. Cisse noted the close link between development and human rights, observing that justice can be used as a tool to eradicate poverty. He observed that the World Bank recognized that effective judiciaries could play an important role in contributing to peace and security on the continent. Mr. Cisse concluded by noting that the Judicial Dialogue would improve knowledge of the participants, access to justice, links between judiciaries and strengthen judicial independence.

11. In his statement of support, Justice Chidyausiku thanked the African Court and the United Republic of Tanzania for hosting the Dialogue observing that it provided a forum for discussion on common challenges as well as an opportunity to fashion shared solutions. He concluded by wishing the participants meaningful discussions.

12. In the statement of Justice Othman delivered on his behalf by Justice Stella Mugasha, Judge of the Court of Appeal of Tanzania, Justice Othman observed that many of the themes of the Dialogue were relevant to African countries. Justice Othman observed that judicial reform was a continuous and long term process which was dependent on an interlocking engagement with the government, law enforcement agencies and the public. He concluded that the Judicial Dialogue provided an opportunity to find solutions that were reflective of the diverse social, economic and cultural contexts.

13. In his statement, Justice Ramadhani welcomed participants to the Judicial Dialogue, noting that the event was made possible by the recommendation of the 1st Judicial Dialogue which called for the institutionalization of a Continental Judicial Dialogue. Justice Ramadhani observed that the thrust of the Judicial Dialogue was to enhance knowledge linkages between the African Court and regional and national courts. He called on participants to address the challenges of the low number of ratifications of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights and the low number of declarations allowing direct access to the African Court. Justice Ramadhani concluded by expressing gratitude to the Department of Political Affairs, the Judiciary of Tanzania, partners and sponsors who assisted in organizing the Judicial Dialogue.

14. In his Keynote Speech, His Excellency Mizengo Kayanza Peter Pinda noted that litigation before continental and regional courts in Africa was steadily growing and that there was great potential for valuable cross fertilization of jurisprudence between continental, regional and national courts. He reiterated Tanzania's commitment to the letter and spirit of all human rights instruments she was a party to and pledged to ensure full compliance with the provisions of the legal instruments. He urged participants to develop a roadmap of how to implement existing best practises in the development and management of judiciaries and wished participants fruitful deliberations.

15. Presentations were delivered on the following themes:

- i) Theme I: Judicial Reforms:
 - a) Sub-Theme on Procedural reforms/innovations in judicial processes that enhance access to justice and ensure protection of rights
 - b) Sub-Theme on Creation of Special Court Divisions
 - c) Sub-Theme on Incorporation of Technology in Court Processes
- ii) Theme II: Recent Developments and Trends on Human Rights Jurisprudence;
- iii) Theme III: Continuing Judicial Education and Management of Judicial Institutions:
 - a) Sub Theme on Continuing Judicial Education;
 - b) Sub-Theme on Quality Management Systems for Courts.
- iv) Theme IV: Experiences from other Continents:
 - a) Sub Theme on Compliance with decisions of regional courts/mechanisms through national courts;
 - b) Sub-Theme on the Creation of Continental Judicial Networks.

16. The presentations were followed by plenary and concurrent group discussions. During the discussions, several questions were raised, views expressed and challenges identified on a wide range of issues, notably:

- i) the lack of awareness about African human rights mechanisms in general and specifically the African Court and its jurisprudence by national Courts;
- ii) the lack of access to the African Court due to low ratification and deposit of the declaration;
- iii) the lack of codification/domestication of international instruments into national law;
- iv) the challenge of adequate funding and provision of human and technical resources for continental, regional and national courts;
- v) the challenge of implementation of decisions of continental and regional courts;
- vi) the lack of information and access to international instruments and decisions of international Courts by national Courts and vice versa; and
- vii) the underutilization of Information, Technology and Communication Systems by continental, regional and national courts.

17. After three days of extensive and constructive deliberations, the participants agreed as follows:

On Judicial Reforms

Sub-Theme on Procedural reforms/innovations in judicial processes that enhance access to justice and ensure protection of rights

- *Called on judiciaries on the Continent to implement measures to review rules of procedure and relax requirements for access and standing specifically for public interest and human rights cases; and*
- *Urged judiciaries to implement simplified and user-friendly court procedures, including through development of application forms, waiving of filing fees and provision of mobile courts.*

Sub-Theme on Creation of Special Court Divisions

- *Encouraged the creation of special court divisions to enhance consideration of matters for specific groups by developing specialized adjudication divisions or procedures to enhance access to justice and enhanced judicial efficiency.*

Sub-Theme on Incorporation of Technology in Court Processes

- *Reiterated that technology was absolutely necessary for economic and social development and that it was a universally acceptable principle;*
- *Stressed that the incorporation of technology would promote good governance, elimination of corruption, transparency, rule of law and access to justice;*
- *Called on the African Union to promote and mainstream technology in justice service delivery at the continental, regional and national judicial institutions;*
- *Called for the development of strategies to incorporate technology in justice delivery based on a needs assessment of all African Union Member States;*
- *Urged the promotion of the digitization of court records and judgements to enhance judicial operations and to better facilitate access to information for court users; and*
- *Encouraged the integration of technology-based case management processes, including through e-filing, use of mobile applications, receiving evidence and testimony through video link and conducting proceedings through video conferencing technology.*

On Recent Developments and Trends on Human Rights Jurisprudence

Theme III: Continuing Judicial Education and Management of Judicial Institutions

Sub Theme on Continuing Judicial Education

- *Called for the establishment of a committee to administer a questionnaire to African Union Member States and compile a comprehensive report on the state of judicial education in Africa to be prepared within a period of 12 months to be submitted to African Union Member States and to be deliberated at the 3rd African Judicial Dialogue;*
- *Called for the need to mainstream human rights and specifically the African Human Rights system in continuing judicial education programmes;*

- *Recommended the establishment of a training institution for judicial excellence in Africa; and*
- *Called on participating institutions to establish a staff exchange programmes.*

Sub-Theme on Quality Management Systems for Courts

- *Recommended the creation of special funding mechanisms to be managed by the judiciary that would be responsible for the salaries and emoluments of judges and registry staff;*
- *Called for the establishment of independent oversight mechanisms such as Judicial Administration Councils and Judicial Service Commissions;*
- *Urged African Union Member States to decentralize judicial administration while maintaining coordinated reporting systems;*
- *Proposed the undertaking of background checks for candidates for appointment to the judiciary in order to verify their credentials;*
- *Called on judicial systems to require regular declaration of assets as a way to curb corruption;*
- *Urged the development of systems for monitoring the technical soundness of judgments and for sanctioning non-compliance with the set standards.*
- *Called for the development of a participatory judges' evaluation system involving their peers and the public;*
- *Recommended the development of systems of rewarding good performance;*
- *Promoted the use of mechanisms for obtaining feedback from the public on the reforms they wish implemented as this will enhance transparency and increase public confidence in the judiciary; and*
- *Called on judiciaries to implement measures to supervise the volume and quality of work of judges.*

On Experiences from other Continents

Sub Theme on Compliance of decisions of regional courts/mechanisms through national courts

- *Called on African Union Member States to achieve universal ratification of key human rights instruments;*
- *Underscored the need for African regional courts with concurrent and/or overlapping jurisdiction to regularly exchange information and establish a joint case database; and*
- *Requested the African Court to convene a continental conference to discuss implementation of decisions of regional courts/ mechanisms through national courts.*

Sub-Theme on the Creation of Continental Judicial Networks

- *Encouraged greater collaboration between existing judicial forums for dialogue and the African Judicial Dialogue;*

- *Underscored the need for the establishment of the African Centre for Judicial Excellence as a forum of training and research excellence for judiciaries in Africa;*
- *Supported the idea to establish a Continental Network of African Judiciaries under the auspices of the African Union to bring together superior courts of African Union Member States;*
- *Tasked the African Court, supported by a steering committee from regional groups composed of representatives of the judiciary and bar associations to develop a draft model for the African Judicial Network within 6 months; and*
- *Requested the support of the African Union, African private sector, philanthropists and other partners to support the establishment of the network.*

18. The participants expressed their appreciation to the Government and people of the United Republic of Tanzania for their hospitality and the facilities placed at their disposal to ensure the success of the Judicial Dialogue.

19. Recognized the initiative of the African Union to institutionalize the dialogue and expressed the wish for the Judicial Dialogue to be held biennially and on a rotational basis among the different regions of the continent.

20. The participants thanked the African Court as host and convener of the Judicial Dialogue under the auspices of the African Union.

21. Participants expressed their appreciation for the support received from the World Bank, EU and GIZ in the organization and hosting of the 2nd African Judicial Dialogue.