

**AFRICAN UNION**  
**الاتحاد الأفريقي**



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**EXECUTIVE COUNCIL**  
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**Addis Ababa, ETHIOPIA**

**EX.CL/1057(XXXII)**

**ACTIVITY REPORT 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**

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

**1 JANUARY – 31 DECEMBER, 2017**

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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), now African Union (AU). The Protocol entered into force on 25 January, 2004.

2. The Court became operational in 2006 and is composed of eleven Judges appointed by the Assembly of Heads of State and Government of the African Union. The Seat of the Court is in Arusha, the United Republic of Tanzania.

3. Article 31 of the Protocol provides that "[t]he Court shall submit to each regular session of the Assembly, a report on its work. The report shall specify, in particular, the cases in which a State has not complied with the Court's judgment".

4. This Report is the Activity Report of the Court, submitted in the spirit of the above-cited article. The Report describes the activities undertaken by the Court from 1 January to 31 December, 2017, in particular, the judicial, administrative and outreach activities, as well as the implementation of decisions of the Executive Council, relating to the functioning of the Court.

**II. Status of ratification of the Protocol and the deposit of the Article 34(6) Declaration, accepting the competence of the Court to receive cases from individuals and Non-governmental organizations (NGOs)**

5. As at 31 December, 2017, the Protocol had been ratified by thirty (30) Member States of the African Union, namely: Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Congo, Côte d'Ivoire, Comoros, Gabon, The Gambia, Ghana, Kenya, Libya, Lesotho, Malawi, Mali, Mauritania, Mauritius, Mozambique, Niger, Nigeria, Uganda, Rwanda, Sahrawi Arab Democratic Republic, Senegal, South Africa, Tanzania, Togo and Tunisia. **See Table 1.**

6. Of the 30 State Parties to the Protocol, only eight (8), namely: Benin, Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Tanzania and Tunisia, have made the declaration accepting the jurisdiction of the Court to receive cases from individuals and non-governmental organizations (NGOs). **See Table 2.**

7. During the period under review, only the Republic of Tunisia deposited the Article 34(6) declaration.

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

# of Countries – 55, # of Signature – 52, # of Ratification – 30, # of Deposit – 30

Source: African Union Website.

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

**Total # Eight (8)**

Source: African Union Website

### **III. Operations of the Court**

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

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

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

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

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

### **IV. Activities undertaken by the Court**

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

#### ***i) Judicial Activities***

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

**13.** From 1 January to 31 December, 2017, the Court was seized with thirty-six (36) new cases. The number of applications registered by the Court since its establishment now stands at one-hundred and fifty-six (160), while the number of requests for advisory opinion stands at twelve (12).

**14.** The number of cases disposed of by the Court as at December 2017 now stands at Forty-one (41), including 4 cases transferred to the African Commission on Human and Peoples' Rights (hereinafter referred to as "the African Commission"), in accordance with Article 6(3) of the Protocol, while one-hundred and fifteen (119) cases are still pending before the Court.

**a) Sessions held**

**15.** During the reporting period, the Court held four (4) Ordinary Sessions and one (1) Extraordinary Session, as follows:

- i) 44<sup>th</sup> Ordinary Session, from 6 to 24 March , 2017, in Arusha, Tanzania;
- ii) 45<sup>th</sup> Ordinary Session, from 8 to 26 May, 2017, in Arusha, Tanzania;
- iii) 46<sup>th</sup> Ordinary Session, from 4 to 22 September, 2017, in Arusha, Tanzania;
- iv) 47<sup>th</sup> Ordinary Session, from 13 to 24 November, 2017, in Arusha; and
- v) 8<sup>th</sup> Extraordinary Session, from 25 to 29 September, 2017, in Arusha, Tanzania.

**b) Case Management**

**16.** During the period under review, the Court delivered eight (8) judgments, issued four (4) Orders and five (5) Advisory Opinions and examined and deferred one-hundred and fifteen (119) Applications for further consideration.

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

**Table 3: Judgments, Rulings and Orders issued**

No.	Application No.	Applicant(s)	Respondent	Remarks
1.	006/2012	African Commission on Human and Peoples' Rights	Republic of Kenya	Judgment on the Merits
2.	016/2015	Kayumba Nyamwasa and Others	Republic of Rwanda	Order on Request for Interim Measures.
3.	003/2015	Kennedy Owino Onyachi and Others	United Republic of Tanzania	Judgment on the Merits
4.	011/2015	Christopher Jonas	United Republic of Tanzania	Judgment on the Merits
5.	009/2016	Mamadou Diakité	Republic of Mali	Ruling on Admissibility
6.	001/2017	Alex Thomas	United Republic of Tanzania	Judgment on Request for Interpretation of Judgment
7.	002/2017	Mohamed Abubakari	United Republic of Tanzania	Judgment on Request for Interpretation of Judgment
8.	003/2017	Actions Pour la Protection des Droits de l'Homme (APDH)	Republic of Cote d'Ivoire	Judgment on Request for Interpretation of Judgment
9.	003/2014	Ingabire Victoire Umuhoya	Republic of Rwanda	Judgment on the merits
10	001/2017	Alfred Agbesi Woyome	Republic of Ghana	Order for Provisional Measures
11	012/2017	Prof. Leon Mugesera	Republic of Rwanda	Order for Provisional Measures
12	016/2017	Dexter Eddie Johnson	Republic of Ghana	Order for Provisional Measures
<b>REQUEST FOR ADVISORY OPINION FINALISED</b>				
Request No. 001/2013: Socio-Economic Rights and Accountability Project (SERAP)			Advisory Opinion	

Request 002/2014: <i>Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO)</i>	Advisory Opinion
Request 002/2015: Centre for Human Rights and Coalition for African Lesbians	Advisory Opinion
Request 001/2016: Federation of Women Lawyers' Kenya, Centre for Human Rights, and Others	Advisory Opinion
Request No. 002/2016: <i>Association Africaine de Défense des Droits de l'Homme, ASADHO</i>	Advisory Opinion

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

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

### c) *Public Sitings*

20. From 1 January to 31 December, 2017, the Court organised nine (9) public sittings, to hear oral arguments from parties, as well as deliver judgments, opinions, orders and rulings.

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

Table 4 – Public sittings organised from 1 January to 31 December, 2017					
No.	Date of Public sitting	Purpose of public sitting	Application No.	Applicant	Respondent
1.	21 March, 2017	Receive oral arguments	012/2015	Anudo Ochieng Anudo	United Republic of Tanzania
2.	22 March, 2017	Receive oral arguments	003/2014	Ingabire Victoire Umohoza	Republic of Rwanda
3.	24 March, 2017	Ruling on Request for Provisional Measures	016/2015	Kayumba Nyamwasa and Others	Rwanda
4.		Receive oral arguments	046/2016	Association pour le Progres et la Defense des Droits des Femmes Maliennes (APDF) &	Mali



				Institute for Human Rights and Development in Africa (IHRDA)	
5.	26 May, 2017	Delivery of Judgment	006/2012	African Commission on Human and Peoples' Rights	Republic of Kenya
6.	26 May, 2017	Opinion on Request for Advisory Opinion	Request No. 001/2013	Socio-Economic Rights and Accountability Project (SERAP)	NA
7.	28 September, 2017	Delivery of Judgment	003/2015	Kennedy Owino Onyachi and Others	United Republic of Tanzania
8.	28 September, 2017	Delivery of Judgment	011/2015	Christopher Jonas	United Republic of Tanzania
9.	28 September, 2017	Delivery of Judgment	009/2016	Mamadou Diakité	Republic of Mali
10.	28 September, 2017	Delivery of Judgment	Application for Interpretation of Judgment 001/2017	Alex Thomas	United Republic of Tanzania
11.	28 September, 2017	Delivery of Judgment	Application for Interpretation of Judgment 002/2017	Mohamed Abubakari	United Republic of Tanzania
12.	28 September, 2017	Delivery of Judgment	Application for Interpretation of Judgment 003/2017	Actions Pour la Protection des Droits de L'Homme (APDH)	Republic of Cote d'Ivoire
13.	24 November, 2017	Delivery of Judgment	003/2014	Ingabire Victoire	Republic of Rwanda

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

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

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

No	App. No.	Applicant	Respondent	Date of Judgment/ Order	Order of the Court	Remarks and status of implementation
1.	009 and 011/2011	Tanganyika Law Society and Legal Human Rights Centre and Reverend Christopher Mtikila	United Republic of Tanzania	14/6/2013 (Judgment on Merits) & 13/6/2014 (Ruling on Reparations)	<p>(i) Take constitutional, legislative and other measures within a reasonable time to remedy the violations found by the Court and to inform the Court of the measures taken.</p> <p>(ii) Publish the official English summary, of the judgment of 14 June 2013, developed by the Registry of the Court, which must be translated into Kiswahili at the expense of the Respondent State and published in both languages, once in the official Gazette and once in a national newspaper with widespread circulation;</p> <p>(iii) Publish the judgment of 14 June 2013 in its entirety, in English, on an official website of the Respondent State, and remain available for a period of one (1) year.</p> <p>(iv) Submit to the Court, within nine (9) months a report of measures taken to implement the orders.</p>	<p>On 18 January 2016, Tanzania published the judgment of 14 June 2013 on an official government website. On 14 April 2016, the Court sent to the Government, a Revised Summary of the Judgment for purposes of publication in the Official Gazette and a newspaper with wide circulation.</p> <p>The government has not reported on the measures taken to publish the Revised Summary of the judgment. The government has also not taken the constitutional, legislative and other measures to remedy the violations found, as ordered by the Court.</p>

2.	013/2011	Norbert Zongo & Others	Burkina Faso	5/6/2015	<p>(i) Orders the Respondent State, to pay twenty-five (25) million CFAF to each spouse; fifteen (15) million CFA F to each son and daughter; and ten (10) million CFAF to each father and mother concerned;</p> <p>(ii) orders the Respondent State in addition to pay a token sum of one (1) CFAF to the MBDHP;</p> <p>(iii) Orders the Respondent State to pay the Applicants the sum of forty (40) million CFAF being the fees owed to their Counsel;</p> <p>(iv) Orders the Respondent State to reimburse the Applicants the out-of-pocket expenses incurred by their Counsel during their stay at the Seat of the Court in Arusha in March and November 2013, in the amount of three million one hundred and thirty-five thousand, four hundred and five CFAF and eighty cents (3,135,405.80);</p> <p>(v) Orders the Respondent State to pay all the amounts mentioned above within six months (from date of judgment), failing which interest will accrue for delayed payment, calculated at the rate applicable at the Central Bank of West African States (BCEAO), for the entire duration of the delay until full payment of the amounts owed;</p>	<p>The Counsel for the Applicants, by email of 26 May, 2016, informed the Court that Burkina Faso has:</p> <p>(i) paid the Applicants the sum of 233,135,409 (two hundred and thirty three million one hundred and thirty five thousand four hundred and nine) CFA francs, representing the amounts owed to the beneficiaries of Norbert ZONGO and his three companions;</p> <p>(ii) On 30 March 2015, the Prosecutor General of Faso filed a motion with the Examining Magistrate seeking to reopen proceedings in the Norbert ZONGO case;</p> <p>(iii) on 8 April 2015, an Order to re-open investigations was issued by the Examining Magistrate of the Ouagadougou High Court and in December 2015, three soldiers belonging to the former Presidential Security Regiment (RSP), namely Christophe KOMBACERE (Soldier), Corporal Wamasba NACOULMA and Sergeant Banagoulo YARO were indicted by the Prosecutor for the murder of Norbert ZONGO</p>
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					<p>(vi) Orders the Respondent State to publish within six (6) months of the date of the Judgment: (a) the summary of the Judgment in French drafted by the Registry of the Court, once in the Official Gazette of Burkina Faso and once in a widely read national Daily; (b) the same summary on the website of the Respondent State and retain the publication on the said website for one year;</p> <p>(vii) Orders the Respondent State to reopen investigations with a view to apprehend, prosecute and bring to justice the perpetrators of the assassination of Norbert Zongo and his three companions; and</p> <p>(viii) Orders the Respondent State to submit to it within six months, effective from date of judgment, a report on the status of compliance with all the Orders contained in the Judgment.</p>	<p>and his companions.</p> <p>The State has also notified the Court on measures it has taken to implement the judgment of the Court.</p> <p>The Respondent submitted copies of the Official Gazette Special <i>Bis</i> No. 07 of 9 November 2015 and the Newspaper Sidwaya of 10 September 2015 Edition Number 7997 (at pages 4, 5, 6 and 7) where the summary of the Judgment were published.</p> <p>In July 2017, the Respondent through the Ambassador in Addis Ababa, Ethiopia, provided information that this summary was published on the website <a href="http://www.sig.bf">www.sig.bf</a> from 19 September 2015</p>
3.	005/2013	Alex Thomas	United Republic of Tanzania	20/11/2015	<p>Take all necessary measures, within a reasonable time to remedy the violation found, specifically, precluding the reopening of the defence case and the retrial of the Applicant, and to inform the Court, within six (6) months from the date of the</p>	<p>The Respondent Applied for interpretation of the judgment and the Court delivered judgment on the Application on 28 September 2017.</p>

					judgment, of measures taken.	
4.	006/2013	Wilfred Onyango Nganyi and 9 Others	United Republic of Tanzania	18/3/2016	<p>The Respondent to provide legal aid to the Applicants for the proceedings pending against them in the domestic courts.</p> <p>The Respondent to take all necessary measures within a reasonable time to expedite and finalise all criminal appeals by or against the Applicants in the domestic courts</p> <p>The Respondent to inform the Court of the measures taken within six months of this judgment</p>	There has been no report from the Respondent State.
5.	007/2013	Mohammed Abubakari	United Republic of Tanzania	3 June 2016	Orders the Respondent State to take all appropriate measures within a reasonable time frame to remedy all violations established, excluding a reopening of the trial, and to inform the Court of the measure so taken within six (6) months from the date of this Judgment.	The Respondent Applied for interpretation of the judgment and the Court delivered judgment on the Application on 28 September, 2017.

6.	002/2013	ACHPR	Libya	3 June 2016	<p>i. Order the Respondent State to respect all the rights of Mr. Kadhafi as defined by the Charter by terminating the illegal criminal procedure instituted before the domestic courts.</p> <p>ii. Order Libya to submit to the Court on the measures taken to guarantee the rights of Mr. Kadhafi within sixty (60) days from the date of notification of this judgment.</p>	Libya has not informed the Court of the measures it has taken to implement the Court orders, in spite the undertaking it made before the PRC in June 2017, to do so.
<p><b>ii. Implementation of Orders for Provisional Measures</b></p>						
1.	001/2015	Armand Guéhi	United Republic of Tanzania	18/3/2016	<p>(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application;</p> <p>(ii) To report to the Court within 30 days from the date of receipt of the order on measures taken to implement the order.</p>	<p>On 13 January 2017, the Respondent informed the Court of its inability to comply with the Order to refrain from executing the death penalty pending determination of the Application, for the following reasons:</p> <p>The Order is overturning the decision of the Court of Appeal of Tanzania. Since this Court is not mandated to quash the decision of the Court of Appeal, it cannot similarly order for provisional measures which stay an order of the Court of Appeal.</p> <p>The sentence of death,</p>

					<p>following a conviction on a charge of murder is provided by Statute and has been deemed constitutional by the Court of Appeal of the Respondent State</p> <p>The International Covenant on Civil and Political Rights recognizes application of the death penalty for serious offences</p> <p>The Respondent was deprived the right to be heard when the Court delivered the Order for Provisional Measures <i>suo motu</i></p> <p>Insufficient Reasons of Extreme Gravity</p> <p>Criminal Review, Application No 008 of 2014 that the Applicant has filed, is awaiting scheduling</p> <p>On 3 April 2017, the Registry forwarded to the Respondent the correspondence sent to the Attorney General of Tanzania on 18 November 2016 to clarify the nature and purpose of the orders; that the effect of the orders is not to overturn the decision of the Court of Appeal, rather to ensure that the Applicant's</p>
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						rights are not jeopardized pending the determination of the Application.
2.	007/2015	Ally Rajabu	United Republic of Tanzania	18/3/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 30 days from the date of receipt of the order on measures taken to implement the order.	<p>The Respondent State notified the Court that it is unable to implement the Order of the Court.</p> <p>Thereafter, the Registry sent a letter to the Respondent dated 18 November 2016 clarifying the nature and purpose of the Orders.</p> <p>The Report on Implementation of the Order is pending</p>
3.	003/2016	John Lazaro	United Republic of Tanzania	18/3/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 30 days from the date of receipt of the order on measures taken to implement the order.	<p>The Respondent State notified the Court that it is unable to implement the Order of the Court.</p> <p>Thereafter, the Registry sent a letter to the Respondent dated 18 November 2016 clarifying the nature and purpose of the Orders.</p> <p>The Report on Implementation of the Order is pending</p>



4.	004/2016	Evodius Rutachura	United Republic of Tanzania	18/3/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 30 days from the date of receipt of the order on measures taken to implement the order.	<p>The Respondent State notified the Court that it is unable to implement the Order of the Court.</p> <p>Thereafter, the Registry sent a letter to the Respondent dated 18 November 2016 clarifying the nature and purpose of the Orders.</p> <p>The Report on Implementation of the Order is pending</p>
5.	015/2016	Habiyalimana Augustono and Another	United Republic of Tanzania	5/6/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	<p>On 12 April 2017, the Registry received the Respondent's report on implementation of the Order for Provisional Measures disputing the authority of the Court to issue the measures without hearing the parties and the need to issue such measures as there is no risk of irreparable harm.</p> <p>On 19 April 2017, the Registry forwarded to the Respondent the correspondence dated 18 November 2016 in which the Registry clarified the nature and purpose of the orders.</p> <p>On 28 June 2017, the Respondent filed the Reports on Implementation of the</p>

						<p>Orders for Provisional Measures for these applications. The Respondent reports that there has been no Compliance with the Orders of the Court to date since stakeholders involved in the administration of criminal justice are still deliberating on the matter based on the following:</p> <p>The Order is overturning the respective decisions of the Court of Appeal dismissing the Applicants' cases</p> <p>The sentence for the offence of murder is provided by statute and has been deemed constitutional by the Respondent's Court of Appeal</p> <p>Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) recognizes application of the death penalty for serious offences.</p> <p>The Respondent was denied the right to be heard as the Court delivered the orders <i>suo motu</i></p> <p>The Respondent exercises a <i>de facto</i> moratorium on the death penalty</p>
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6.	017/2016	Deogratius Nicolaus Jeshi	United Republic of Tanzania	5/6/2016	<p>(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application;</p> <p>(ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.</p>	<p>On 12 April 2017, the Registry received the Respondent's report on implementation of the Order for Provisional Measures disputing the authority of the Court to issue the measures without hearing the parties and the need to issue such measures as there is no risk of irreparable harm.</p> <p>On 19 April 2017, the Registry forwarded to the Respondent the correspondence dated 18 November 2016 in which the Registry clarified the nature and purpose of the orders.</p> <p>On 28 June 2017, the Respondent filed the Reports on Implementation of the Orders for Provisional Measures for these applications. The Respondent reports that there has been no Compliance with the Orders of the Court to date since stakeholders involved in the administration of criminal justice are still deliberating on the matter based on the following:</p> <p>The Order is overturning the respective decisions of the</p>
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						<p>Court of Appeal dismissing the Applicants' cases</p> <p>The sentence for the offence of murder is provided by statute and has been deemed constitutional by the Respondent's Court of Appeal</p> <p>Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) recognizes application of the death penalty for serious offences.</p> <p>The Respondent was denied the right to be heard as the Court delivered the orders <i>suo motu</i></p> <p>The Respondent exercises a <i>de facto</i> moratorium on the death penalty</p>
7.	018/2016	Cosma Faustine	United Republic of Tanzania	5/6/2016	<p>(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application;</p> <p>(ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.</p>	<p>On 12 April 2017, the Registry received the Respondent's report on implementation of the Order for Provisional Measures disputing the authority of the Court to issue the measures without hearing the parties and the need to issue such measures as there is no risk of irreparable harm.</p> <p>On 19 April 2017, the Registry forwarded to the Respondent the correspondence dated 18 November 2016 in which the</p>

						<p>Registry clarified the nature and purpose of the orders.</p> <p>On 28 June 2017, the Respondent filed the Reports on Implementation of the Orders for Provisional Measures for these applications. The Respondent reports that there has been no Compliance with the Orders of the Court to date since stakeholders involved in the administration of criminal justice are still deliberating on the matter based on the following:</p> <p>The Order is overturning the respective decisions of the Court of Appeal dismissing the Applicants' cases</p> <p>The sentence for the offence of murder is provided by statute and has been deemed constitutional by the Respondent's Court of Appeal</p> <p>Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) recognizes application of the death penalty for serious offences.</p> <p>The Respondent was denied the right to be heard as the Court delivered the orders <i>suo</i></p>
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						<i>motu</i> The Respondent exercises a <i>de facto</i> moratorium on the death penalty
8.	021/2016	Joseph Mukwano	United Republic of Tanzania	5/6/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State notified the Court that it is unable to implement the Order of the Court.  Thereafter, the Registry sent a letter to the Respondent dated 18 November 2016 clarifying the nature and purpose of the Orders.  The Report on Implementation of the Order is pending
9.	024/2016	Amini Juma	United Republic of Tanzania	5/6/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State notified the Court that it is unable to implement the Order of the Court.  Thereafter, the Registry sent a letter to the Respondent dated 18 November 2016 clarifying the nature and purpose of the Orders.  The Report on Implementation of the Order is pending

10.	048/2016	Dominick Damian	United Republic of Tanzania	18/11/2016	<p>(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application;</p> <p>(ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.</p>	<p>On 28 June 2017, the Respondent filed the Reports on Implementation of the Orders for Provisional Measures</p> <p>The Respondent's reports that there has been no Compliance with the Orders of the Court to date since stakeholders involved in the administration of criminal justice are still deliberating on the matter based on the following:</p> <p>The Order is overturning the respective decisions of the Court of Appeal dismissing the Applicants' cases</p> <p>The sentence for the offence of murder is provided by statute and has been deemed constitutional by the Respondent's Court of Appeal</p> <p>Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) recognizes application of the death penalty for serious offences.</p> <p>The Respondent was denied the right to be heard as the Court delivered the orders suo motu</p> <p>v. The Respondent exercises a <i>de facto</i> moratorium on the</p>
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						<p>death penalty</p> <p>Registry reiterated to the Respondent the Court's position as elaborated in the document of November 2016 on the Clarification on the Orders for Provisional Measures.</p>
	049/2016	Chrizant John	United Republic of Tazaniza	18/11/2016	<p>(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application;</p> <p>(ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.</p>	<p>On 28 June 2017, the Respondent filed the Reports on Implementation of the Orders for Provisional Measures</p> <p>The Respondent's reports that there has been no Compliance with the Orders of the Court to date since stakeholders involved in the administration of criminal justice are still deliberating on the matter based on the following:</p> <ul style="list-style-type: none"> <li>i. The Order is overturning the respective decisions of the Court of Appeal dismissing the Applicants' cases</li> <li>ii. The sentence for the offence of murder is provided by statute and has been deemed constitutional by the Respondent's Court of</li> </ul>



						<p>Appeal</p> <p>iii. Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) recognizes application of the death penalty for serious offences.</p> <p>iv. The Respondent was denied the right to be heard as the Court delivered the orders suo motu</p> <p>v. The Respondent exercises a <i>de facto</i> moratorium on the death penalty</p> <p>Registry reiterated to the Respondent the Court's position as elaborated in the document of November 2016 on the Clarification on the Orders for Provisional Measures.</p>
12.	050/2016	Crosperry Gabriel and Another	United Republic of Tanzania	18/11/2016	<p>(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application;</p> <p>(ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.</p>	<p>On 28 June 2017, the Respondent filed the Reports on Implementation of the Orders for Provisional Measures</p> <p>The Respondent's reports that there has been no Compliance with the Orders of the Court to date since stakeholders involved in the administration</p>

						<p>of criminal justice are still deliberating on the matter based on the following:</p> <ul style="list-style-type: none"><li>i) The Order is overturning the respective decisions of the Court of Appeal dismissing the Applicants' cases</li><li>ii) The sentence for the offence of murder is provided by statute and has been deemed constitutional by the Respondent's Court of Appeal</li><li>iii) Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) recognizes application of the death penalty for serious offences.</li><li>iv) The Respondent was denied the right to be heard as the Court delivered the orders suo motu</li><li>v) The Respondent exercises a <i>de facto</i> moratorium on the death penalty</li></ul> <p>Registry reiterated to the Respondent the Court's position as elaborated in the document of November 2016</p>
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						on the Clarification on the Orders for Provisional Measures.
13.	052/2016	Marthine Christian Msuguri	United Republic of Tanzania	18/11/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	<p>On 28 June 2017, the Respondent filed the Reports on Implementation of the Orders for Provisional Measures</p> <p>The Respondent's reports that there has been no Compliance with the Orders of the Court to date since stakeholders involved in the administration of criminal justice are still deliberating on the matter based on the following:</p> <ul style="list-style-type: none"> <li>i. The Order is overturning the respective decisions of the Court of Appeal dismissing the Applicants' cases</li> <li>ii. The sentence for the offence of murder is provided by statute and has been deemed constitutional by the Respondent's Court of Appeal</li> <li>iii. Article 6(2) of the International Covenant on Civil and Political Rights</li> </ul>

						<p>(ICCPR) recognizes application of the death penalty for serious offences.</p> <p>iv. The Respondent was denied the right to be heard as the Court delivered the orders suo motu</p> <p>v. The Respondent exercises a <i>de facto</i> moratorium on the death penalty</p> <p>Registry reiterated to the Respondent the Court's position as elaborated in the document of November 2016 on the Clarification on the Orders for Provisional Measures.</p>
14.	051/2016	Nzigiymana Zabron	United Republic of Tanzania	18/11/2016	<p>(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application;</p> <p>(ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.</p>	<p>On 28 June 2017, the Respondent filed the Reports on Implementation of the Orders for Provisional Measures</p> <p>The Respondent's reports that there has been no Compliance with the Orders of the Court to date since stakeholders involved in the administration of criminal justice are still deliberating on the matter based on the following:</p>

						<p>i. The Order is overturning the respective decisions of the Court of Appeal dismissing the Applicants' cases</p> <p>ii. The sentence for the offence of murder is provided by statute and has been deemed constitutional by the Respondent's Court of Appeal</p> <p>iii. Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) recognizes application of the death penalty for serious offences.</p> <p>iv. The Respondent was denied the right to be heard as the Court delivered the orders suo motu</p> <p>v. he Respondent exercises a <i>de facto</i> moratorium on the death penalty</p> <p>Registry reiterated to the Respondent the Court's position as elaborated in the document of November 2016 on the Clarification on the Orders for Provisional Measures.</p>
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15.	053/2016	Oscar Josiah	United Republic Of Tanzania	18/11/2016	<p>(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application;</p> <p>(ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.</p>	<p>On 28 June 2017, the Respondent filed the Reports on Implementation of the Orders for Provisional Measures</p> <p>The Respondent's reports that there has been no Compliance with the Orders of the Court to date since stakeholders involved in the administration of criminal justice are still deliberating on the matter based on the following:</p> <ul style="list-style-type: none"> <li>i. The Order is overturning the respective decisions of the Court of Appeal dismissing the Applicants' cases</li> <li>ii. The sentence for the offence of murder is provided by statute and has been deemed constitutional by the Respondent's Court of Appeal</li> <li>iii. Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) recognizes application of the death penalty for serious offences.</li> <li>iv. The Respondent was</li> </ul>
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						<p>denied the right to be heard as the Court delivered the orders suo motu</p> <p>v. The Respondent exercises a <i>de facto</i> moratorium on the death penalty</p> <p>Registry reiterated to the Respondent the Court's position as elaborated in the document of November 2016 on the Clarification on the Orders for Provisional Measures.</p>
16.	056/2016	Gozbert Henrico	United Republic of Tanzania	18/11/2016	<p>(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application;</p> <p>(ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.</p>	<p>On 28 June 2017, the Respondent filed the Reports on Implementation of the Orders for Provisional Measures</p> <p>The Respondent's reports that there has been no Compliance with the Orders of the Court to date since stakeholders involved in the administration of criminal justice are still deliberating on the matter based on the following:</p> <p>i. The Order is overturning the respective decisions of the Court of Appeal dismissing the</p>

						<p>Applicants' cases</p> <p>ii. The sentence for the offence of murder is provided by statute and has been deemed constitutional by the Respondent's Court of Appeal</p> <p>iii. Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) recognizes application of the death penalty for serious offences.</p> <p>iv. The Respondent was denied the right to be heard as the Court delivered the orders suo motu</p> <p>v. The Respondent exercises a <i>de facto</i> moratorium on the death penalty</p> <p>Registry reiterated to the Respondent the Court's position as elaborated in the document of November 2016 on the Clarification on the Orders for Provisional Measures.</p>
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17.	057/2016	Mulokozi Anatory	United Republic of Tanzania	18/11/2016	<p>(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application;</p> <p>(ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.</p>	<p>On 28 June 2017, the Respondent filed the Reports on Implementation of the Orders for Provisional Measures</p> <p>The Respondent's reports that there has been no Compliance with the Orders of the Court to date since stakeholders involved in the administration of criminal justice are still deliberating on the matter based on the following:</p> <ul style="list-style-type: none"> <li>i. The Order is overturning the respective decisions of the Court of Appeal dismissing the Applicants' cases</li> <li>ii. The sentence for the offence of murder is provided by statute and has been deemed constitutional by the Respondent's Court of Appeal</li> <li>iii. Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) recognizes application of the death penalty for serious offences.</li> <li>iv. The Respondent was</li> </ul>
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						<p>denied the right to be heard as the Court delivered the orders suo motu</p> <p>v. The Respondent exercises a <i>de facto</i> moratorium on the death penalty</p> <p>Registry reiterated to the Respondent the Court's position as elaborated in the document of November 2016 on the Clarification on the Orders for Provisional Measures.</p>
18.	012/2017	Leon Mugesera	Republic of Rwanda	28/09/2017	<p>(i) to allow the Applicant access to lawyers;</p> <p>(ii) to allow the Applicant to be visited by his family members and to communicate with them, without any impediment;</p> <p>(iii) to allow the Applicant access to all medical care required, and to refrain from any action that may affect his physical and mental integrity as well as his health; and</p> <p>(iv) to report to the Court within fifteen (15) days from the date of receipt of this Order, on measures taken to implement this Order.</p>	<p>The Respondent State has not informed the Court of measures it has taken to implement the Order.</p>

19.	016/2017	Dexter Eddie Johnson	Republic of Ghana	28/9/2017	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has not informed the Court of measures it has taken to implement the Order despite the time for doing so having lapsed
20.	001/2017	Alfred Agbesi Woyome	Ghana	24/11/2017	(i) stay the attachment of the Applicant's property and to take all appropriate measures to maintain the status quo and to avoid the property being sold until this application is heard and determined. (ii) report to the Court within fifteen (15) days from the date of receipt of this Order on the measures taken to implement this Order.	The Respondent State has not informed the Court of measures it has taken to implement the Order.

**iii. Non-judicial activities**

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

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

**24.** The Court took part in the 33<sup>rd</sup> and 34<sup>th</sup> Ordinary Sessions of the Permanent Representatives' Committee (PRC), the 29<sup>th</sup> and 30<sup>th</sup> Ordinary Sessions of the Executive Council, as well as the 28<sup>th</sup> and 29<sup>th</sup> Assembly of Heads of State and Government of the African Union, held in January and June 2017 in Addis Ababa, Ethiopia.

**b) Implementation of Executive Council Decisions**

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

**25.** In conformity with Executive Council Decision EX.CL/Dec. 842 (XXV), in which the Council took note “of the recommendation of the Court for the establishment of an Endowment or Trust Fund for the Court” and requested “the Court, in collaboration with the PRC and the AUC, to undertake a feasibility study on the establishment of such a Fund, including in particular the financial implications on Member States assessment...”. During its 31<sup>st</sup> Ordinary Session held in June 2017, the Executive Council requested the Court, in collaboration with the African Union Commission and the PRC, to finalise and submit the study during its 32<sup>nd</sup> Ordinary Session in January 2018.

**26.** In view of the current reform initiatives currently taking place within the African Union, in particular, on alternative sources of financing the Union, the Court would need more time to consult with all relevant stakeholders to ensure that the proposed Trust Fund fits properly within these initiatives.

**c) Execution of the 2017 budget**

**27.** The budget appropriated to the Court for 2017 stood at US\$ 10,315,284, comprising \$ 8,709,318 [84. %] from Members States and \$1,605,966 [16%] from International Partners. The projected total budget execution as at end of December 2017 is \$9,637,731, which represents a budget execution rate of 93.43%. As at November 2017, the Court had received subvention for the four quarters amounting to,

US\$ 8,569,282.23, from Members States and EUR 725 952,60 from EU and USD 153,923.34 from GIZ .

## **V. Promotional activities**

**28.** The Court undertook a number of promotional activities, aimed at raising awareness among stakeholders, about its existence and activities. The activities undertaken included, inter alia, sensitization visits and seminars, organisation of the 3<sup>rd</sup> African Judicial Dialogue, as well as participation in meetings organised by other stakeholders.

### **a) Sensitization visits**

**29.** The Court undertook sensitization visits to the Arab Republic of Egypt (9-11 April, 2017), the Republic of Tunisia (12-14 April, 2017), the Republic of Guinea Bissau (13 – 15 August, 2017), the Republic of Cape Verde (12 – 15 December, 2017), to encourage these countries to either ratify the Protocol and/or make the Article 34(6) Declaration. The delegation of the Court, led by its President, met and held fruitful discussions with high-ranking government officials from these countries, including the President of the Republic of Tunisia, the President of the Republic of Guinea Bissau, the Prime Minister of the Republic of Cape Verde and the Foreign Ministers of all these countries.

**30.** The authorities of Egypt, Guinea Bissau and Cape Verde undertook to take necessary measures to ratify the Protocol, while the President of the Republic of Tunisia signed the Article 34(6) declaration and handed a copy of the same to the President of the African Court. The African Court, in collaboration with the respective governments, also organized half-day Sensitization Seminars for human rights stakeholders in these countries.

### **b) 3<sup>rd</sup> African Union Judicial Dialogue**

**31.** The African Court on Human and Peoples' Rights (the Court), under the aegis of the African Union, in collaboration with the Government of the United Republic of Tanzania, the German Development Cooperation (GIZ), European Union, and World Bank organized the Third African Judicial Dialogue on the theme "*Improving Judicial Efficiency in Africa*", from 9-11 November, 2017, in Arusha, Tanzania. The overall objective of the Third African Judicial Dialogue was to explore ways of enhancing judicial efficiency in Africa. The *specific objectives* of the Dialogue were to:

- i. Examine the state of judicial education in Africa;
- ii. Explore ways and means to establish a model African judicial network;
- iii. Brainstorm on the use of IT in the judiciary and possible opportunities and challenges to e-justice in Africa; and
- iv. Identify practical and normative challenges to accessing and using decisions of regional courts by national courts in Africa.

**32.** The Dialogue was attended by over 150 participants, including representatives of Member States of the African Union, current and former judges of the African Court, Chief Justices and judges of national, regional judicial institutions, academics, media personalities, human rights practitioners, civil society organizations and resource persons.

**33.** The following Member States were represented: Algeria, Benin, Burkina Faso, Burundi, Cape Verde, Comoros, Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Libya, Mozambique, Nigeria, Sahrawi Arab Democratic Republic, Sao Tome and Principe, Senegal, South Sudan, Sudan, Swaziland, The Gambia, Togo, Tunisia, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

**34.** The Dialogue adopted concrete measures on among other things, the promotion of judicial education in Africa, the establishment of an African judicial Network, the use of ICT in effective justice delivery.

**c) *Other promotional activities***

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

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

- iii) Participation of Hon. Lady Justice Tujilane Chizumila at the First West African Sub-Regional Conference, organized by the National Association of Women Judges in Nigeria (NAWJN) and the International Association of Women Judges (IAWJ), from 13 to 15 July, 2017, where she made a presentation on the topic “The Organisation and Functioning of the African Court on Human and People’s Rights”;
- iv) Participation of the President and Vice-President in the Dialogue Programme on Human Rights, Democracy and Rule of Law with law experts from Eastern and Southern Africa, from 08 to 14 October, 2017, in the Hague, Brussels, Luxembourg and Karlsruhe, hosted and sponsored by the Multinational Development Policy Dialogue (Brussels), in cooperation with the Rule of Law Program Sub-Saharan Africa (Nairobi) of Konrad-Adenauer-Stiftung;
- v) Participation of Justice Rafea Ben Achour at the CUMIPAZ (Peace Integration Summit) 2017 held in Panama City, Panama from 12 to 22 October, 2017, where he presented a paper on the theme: "the challenges of international justice detecting warning signals and prevention of genocidal atrocity";
- vi) Participation of the President of the Court at the First International Symposium of the Association of Asian Constitutional Courts and Similar Institutions Secretariat for Research and Development on the topic “Constitutionalism in Asia: Past, Present and Future”, hosted by the Constitutional Court of Korea, from 30 October to 3 November, 2017 in Seoul, South Korea;
- vii) Participation of the Vice President as a trainer in a judicial training course on “African Human Rights System in Comparative Perspective”, for judges from across the continent at the Centre for Human Rights, Faculty of Law, University of Pretoria from 23 to 25 October 2017, sponsored by UNESCO, Denmark and the Centre for Human Rights;
- viii) Participation of Hon. Justice Bensaoula Chafika at the 61<sup>st</sup> Ordinary Session of the African Commission and commemoration of the 30<sup>th</sup> Anniversary of the Commission in Banjul, The Gambia, from 30 October to 5 November, 2017;

- ix) Participation of Justice Rafaa Ben Achour at a Regional Seminar on: "*Development of Regional Mechanisms and Systems for Human Rights*", in Cairo, Egypt from 4 to 5 December, 2017.

## **VI. Networking**

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

**36.** The Court and the African Commission continue to strengthen their relationship and consolidate the complementarity envisaged in the Protocol. During the period under consideration, the bureaux of the two organs held their 10<sup>th</sup> Meeting, while the 7<sup>th</sup> Annual Meeting of the two organs took place in Dakar, Senegal from 8 to 11 August, 2017.

**37.** The Court also took part in the opening ceremony of the 61<sup>st</sup> Ordinary Session of the Commission which coincided with the Commemoration of the 30<sup>th</sup> Anniversary of the establishment of the Commission.

### *Cooperation with external partners.*

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

**39.** The Court has maintained a close working relationship with other 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, Counsels on the Roster of the Court and the Media practitioners working on human rights issues.

## **VII. Host Agreement**

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



41. During the 34<sup>th</sup> Ordinary Session of the PRC, the delegation of the United Republic of Tanzania informed the PRC that the delay was being occasioned by the African Union Commission. However, the AUC informs the Court that it is still awaiting the final design from the government before the construction phase can start at the expense of the host government.

42. During the visit of the Chairperson of the PRC Sub-Committee on Headquarters Agreements to the Registry of the Court on 6 November, 2017, this matter was raised.

### **VIII. Assessment and Recommendations**

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

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

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

44. The Court also looks forward to the establishment of a proper reporting and monitoring mechanism to ensure the effective implementation of its judgments. To this end, the Court, through a Consultancy, undertook a study on a Compliance Monitoring and Enforcement Framework, which was validated at a workshop held in Arusha on 25 November, 2017.

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

**46.** The Court has also seen a remarkable increase in the number of cases filed before it. Between January and December 2017, it registered a total of 36 Applications. As the Court continues to receive more applications and deliver judgments, and safeguard its integrity and independence, its visibility and citizens' confidence in it will be enhanced. With these positive indicators, there is good reason to remain optimistic that the number of cases filed before the Court will continue to grow.

**47.** This increase is a demonstration of the fact that more and more States, NGOs, individuals and the civil society in general are becoming aware of the existence and work of the Court. To bring the Court closer to the population and enhance its visibility, the Court has decided to host one of its four sessions outside its Seat. So far, the sessions of the Court have been held in Dar-es-Salaam, Tanzania, Accra, Ghana, Grand Bay Mauritius and Addis Ababa, Ethiopia.

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

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

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

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

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

**52.** Another challenge the Court faces is non-compliance with its decisions. In spite of repeated reminders from the Court, its undertaking during the 31<sup>st</sup> Ordinary Session of the PRC and over four Executive Council Decisions, Libya has failed and continues to refuse to comply with the Court Orders for Provisional Measures and Judgment issued in respect of a matter brought against her.

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

**54.** The Court welcomes the efforts made by the Burkina Faso to comply with its Judgments, including the payment of compensation to the victims, the reopening of cases and the amendment/repeal of laws to bring them in conformity with international standards.

**55.** From the administrative point of view, inadequate human and financial resources have affected the smooth functioning of the Court. The Court welcomes the approval of the PRC for the recruitment of an additional five (5) staff in 2018.

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

**57.** A further difficulty facing the Court at the moment is the acute shortage of office space. The submission of the architectural designs by the Government of the Host State is an important step towards the construction of the permanent premises for the Court. The Court is however concerned that since the presentation of the designs in 2016, there has been no further development towards the construction of the premises. It is

important for the African Union Commission and the Government of the Host State, in consultation with the Court, to meet on this matter to hasten the finalization of the designs and commence the construction of the premises, including establishing a Joint Task Force on the same.

***ii) Recommendations***

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

- i) The Member States of the Union that have not yet acceded to the Protocol and/or deposited the Declaration under Article 34(6) thereof, should do so as soon as possible;
- ii) The Commission and PRC, in collaboration with the Court, should explore within the internal mechanisms of the Union and taking into account the ongoing reform initiatives, how best a Trust Fund for the Court can be established;
- iii) The Chairperson of the AUC should take all necessary measures to establish the Legal Aid Fund in accordance with the Statute for Legal Aid Fund for African Union Human Rights Organs, and in conformity with the Executive Council Decision;
- iv) The Assembly should invite and encourage all Member States and other relevant human rights stakeholders on the continent to make generous voluntary contributions to the Legal Aid Fund to ensure its sustainability and success;
- v) Member States of the Union should cooperate with the Court and comply with its judgments; and
- vi) Member States should extend open invitations to the Court to host the ordinary sessions of the Court.

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

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

**DRAFT**  
**DECISION ON THE 2017 ACTIVITY REPORT OF THE**  
**AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**

**The Executive Council;**

1. **TAKES NOTE** of the 2017 Activity Report of the African Court on Human and Peoples' Rights (the Court) for the period 1 January – 31 December, 2017, and the recommendations therein;
2. **NOTES** the Request of the Court for more time to consult with relevant stakeholders on the finalisation of the study on the establishment of a Trust Fund for the Court, to take into account the on-going reforms within the Union, in particular, the initiative to secure alternative sources of financing.
3. **REITERATES** its decision calling on the Chairperson of the AUC to take all necessary measures to operationalise the Legal Aid Fund in 2017, and **invites** and **ENCOURAGES** all Member States of the Union as well as other relevant human rights stakeholders on the continent to make generous voluntary contributions to the Fund to ensure its sustainability and success.
4. **NOTES** that, almost two decades after its adoption, only thirty (30) Member States of the African Union have ratified the Protocol and only eight (8) of the 30 State Parties, have deposited the declaration required under Article 34 (6) thereof, allowing individuals and NGOs to bring cases to the Court;
5. **CONGRATULATES** the thirty (30) Member States that have ratified the Protocol, namely; Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Côte d'Ivoire, The Comoros, Congo, Gabon, The Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, South Africa, Sahrawi Arab Democratic Republic, Senegal, Tanzania, Togo, Tunisia and Uganda;
6. **FURTHER CONGRATULATES** the eight (8) State Parties that have deposited the declaration under Article 34(6) of the Protocol, namely: Benin, Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Tunisia and the United Republic of Tanzania;
7. **INVITES** those Member States that have not already done so, to accede to the Protocol and deposit the declaration required under Article 34 (6) of the Protocol.

8. **WELCOMES** the steps taken by the Burkina Faso to comply with the judgments of the Court and encourage all Member States and other relevant stakeholders to emulate the example of Burkina Faso;
9. **NOTES** with concern that in spite of its undertaking during the 31<sup>st</sup> Ordinary Session of the PRC to comply with the judgment of the Court, Libya continues to refuse to report to the Court on measures it has taken to implement the Judgment of the Court, and **REITERATES** its decisions urging Libya to inform the Court of the concrete measures it has taken to implement the said judgment;
10. **ALSO NOTES WITH CONCERN** the refusal of the United Republic of Tanzania and the Republic of Rwanda to comply with orders for provisional measures ordered by the Court, and urges these two countries to take all necessary steps to cooperate with the Court in conformity with Article 30 of the Protocol;
11. **EXPRESSES ITS APPRECIATION** to the Government of the United Republic of Tanzania for the facilities it has placed at the disposal of the Court, and for the architectural designs for the construction of the permanent premises of the Court submitted to the AUC, and **URGES** the Government of the United Republic of Tanzania, the PRC and the African Union Commission, in collaboration with the Court to meet urgently to discuss the finalization of the architectural designs to ensure the expeditious construction of the premises;
12. **DECIDES** to establish a Joint Task Force composed of representatives of the government of the United Republic of Tanzania, the PRC, the Commission and the Court with mandate to mobilise resources towards the construction of the permanent premises of the Court;
13. **REQUESTS** the Court, in collaboration with the PRC and the AUC, to report at the next Ordinary Session of the Executive Council in June/July 2018, on the implementation of this Decision.