

Reference: **BC/OLC/66.5/502.18**

The African Union Commission presents its compliments to the Permanent Missions all Member States to the African Union and has the honour to refer to the membership of the African Court on Human and Peoples Rights (AfCHPR).

The Commission has the honour to inform the esteemed Permanent Missions that the terms of office of the following Judges of the AfCHPR shall expire in June-July 2018:

NO.	NAME	COUNTRY	TERM OF OFFICE
1.	Mr. Gerard NIYUNGEKO	Burundi	Re-elected in July 2012 for a 6 year term
2.	Mr. El Hadj GUISSSE	Senegal	" " " "
3.	Mr. Ben KIOKO *	Kenya	Elected in July 2012 for a 6 year term

\* *The last Judge is eligible for re-election, only once.*

Additionally, the Commission has the honour to further inform Member States that **Ms. Solomy Balungi BOSSA (Uganda)**, who was elected in June 2014 resigned on 26 February 2018 and ceased to exercise the functions of a Judge of the African Court.

Consequently, the Commission would like to draw the attention of the esteemed Permanent Missions that the election and appointment of the **four(4) new members/Judges** will be conducted during the 33<sup>rd</sup> Ordinary Session of the Executive Council and the 31<sup>st</sup> Ordinary Session of the Assembly, respectively, scheduled for June-July 2018, in Nouakchott, Mauritania.

Against the above, the Commission would like to invite **STATES PARTIES** to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol) to submit their **candidatures/nominations accompanied by curricula vitae (CVs) of the candidates IN A SEALED ENVELOPE ADDRESSED AND DELIVERED TO THE OFFICE OF THE LEGAL COUNSEL, AU COMMISSION, ON OR BEFORE 30 APRIL 2018.** Furthermore, **the CVs should not be more than three (3) pages, single-spaced and should be submitted at least in two (2) working languages of the Union.** A model format of the CVs is attached hereto for ease of reference. Additionally, the CVs should also be submitted in soft copies (Word format).

In this regard, the Commission would also like to draw the attention of the esteemed Permanent Missions to the following specific provisions of the Protocol:

Article 11 of the Protocol provides:

- “1. The Court shall consist of eleven judges, nationals of Member States of the OAU (AU), elected in an individual capacity from among jurists of high moral character and of recognized practical, judicial or academic competence and experience in the field of human and peoples’ rights.
2. No two judges shall be nationals of the same State.” Therefore, no candidates must be nominated from Member States that already have judges in the African Court on Human and Peoples’ Rights, namely, **Algeria, Cameroon, Cote d’Ivoire, Malawi, Mozambique, Rwanda and Tunisia.**

It should be recalled that the effective functioning of the Court will also require judges with irreproachable integrity, established competence and experience in the area of human rights.

Article 12 of the Protocol provides that *each State Party may propose up to three (3) candidates, at least two (2) of whom must be its nationals.*

Article 14 of the Protocol states that:

- “2. The Assembly shall ensure that in the Court as a whole there is representation of the main regions of Africa and of their principal legal traditions.
3. In the election of the judges, the Assembly shall ensure that there is adequate gender representation.”

Article 15 of the Protocol states that:

- “3. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of the predecessor’s term.”

State Parties to the Protocol are also reminded to ensure adequate gender representation in their nominations and to bear in mind the above provisions as well as decision EX.CL/907 (XXVIII) adopted by the Executive Council during the January 2016 on the Modalities on the Implementation of the Criteria of Equitable Geographical and Gender Representation in AU Organs and Institutions. Paragraph 2 of the said Decision reads as follows:

- i) The regional representation, where applicable, shall be East (2), Central (2), North (2), South (2) and West (2), except in cases in which a region which has been duly informed has not presented candidates;
- ii) Where applicable, one (1) seat shall be a floating seat and will rotate among the five (5) regions;
- iii) At least one (1) member from each region should be a woman;
- iv) The modalities shall become effective immediately.

In light of the above, the Commission would like to inform the Permanent Missions that the regional and gender representation at the AfCHPR after the end of the terms of the three (3) Judges and the resignation of one (1) Judge, will be as follows:



**a) Regional representation**

Central	:	One (1)
East	:	One (1)
North	:	Two (2)
South	:	Two (2)
West	:	One (1)

**b) Gender representation**

Female Judge	:	Four (4)
Male Judges	:	Three (3)

In view of the foregoing, State Parties to the Protocol **from the Central, Eastern and Western Regions** are kindly requested to submit their candidatures/nomination to the Office of the Legal Counsel as per the above-stated requirements and deadline as follows:

- **Central Region:** One (1) Male Candidate,
- **Eastern Region:** Two candidates: One (1) Female and one (1) Male Candidate, and
- **Western Region:** One (1) Female Candidate.

**The Commission would like to remind States Parties to the Protocol that the floating seat is currently occupied by Judge Marie-Theresa MUKAMULISA (Female) (Rwandan) from the Eastern Region who was elected for a term of six (6) years in July 2016.**

The candidates nominated should have experience in more than one of the principal legal traditions of Africa (Civil Law, Common Law, Islamic Law and Custom and African Customary Law).

Accordingly, member states should request nominees to complete detailed biographical information indicating judicial, practical, academic, activist, professional and other relevant experience in the field of Human and Peoples' Rights. Such biographical information should also include information on political and other associations relevant to determining questions of both eligibility and incompatibility. In addition, nominees should submit statements indicating how they fulfill the criteria for eligibility contained in the Protocol.

The Commission further wishes to draw the attention of the esteemed Permanent Missions to Article 18 of the Protocol on incompatibility. The Article provides as follows:

*“The position of judge of the court is incompatible with any activity that might interfere with the independence or impartiality of such a judge or the demands of the office, as determined in the Rules of Procedure of the Court.”*

In addition, Rule 5 (2) of the Rules of Court provides as follows:


*“In particular, the Members of the Court may not hold political, diplomatic or administrative positions or function as government legal advisors at the national level.”*

As a guide for member states in interpreting the question of incompatibility, the Advisory Committee of Jurists on the establishment of the Permanent Court of International Justice (now the International Court of Justice (ICJ)) had pointed out that: *“(A) member of government, a Minister or under-secretary of State, a diplomatic representative, a director of a ministry, or one of his subordinates, or the legal adviser to a foreign office, though they would be eligible for appointment as arbitrators to the Permanent Court of Arbitration of 1899, are certainly not eligible for appointment as judges upon our Court.”*<sup>1</sup>

Taking note of the mandatory guidelines outlined above emanating from the provisions of the Protocol, member states may wish to also consider whether or not to apply the following additional factors submitted to the AU Commission by Civil Society Organizations:

- a) The procedure for nomination of candidates should be at the minimum that for appointment to the highest judicial office in the State Party;
- b) State Parties should encourage the participation of civil society, including Judicial and other State bodies, bar associations, academic and human rights organizations and women's groups, in the process of selection of nominees;
- c) State Parties should employ a transparent and impartial national selection procedure in order to create public trust in the integrity of the nomination process.

The Commission would like to draw the attention of the esteemed Permanent Missions to the fact that the Commission would be unable to process any submission that does not comply with the above-mentioned mandatory requirements.

The African Union Commission avails itself of this opportunity to renew to the Permanent Missions of all Member States the assurances of its highest consideration. 

Addis Ababa, 26 March 2018

To: **Permanent Missions of all Member States  
of the African Union  
Addis Ababa**

<sup>1</sup> See PCIJ/Advisory Committee of Jurists. *Procès-Verbaux of the Proceedings of the Committee. June 16-July 24 1920*, 693, 715-716 (1920)