

AFRICAN UNION

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Addis Ababa, ETHIOPIA**

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**DRAFT
STATUTE OF THE AFRICAN UNION
COMMISSION ON INTERNATIONAL LAW**

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**Meeting of Ministers of Justice/Attorneys
General on Legal Matters
27 October – 4 November 2008
Kigali, Rwanda**

MinJustice/Legal/2 (II) Rev.3

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As amended by the Conference of Ministers of Justice and Attorneys General held
in Kigali, Rwanda, 3 – 4 November 2008

TABLE OF CONTENTS

| | |
|--|----|
| Preamble | 1 |
| Article 1 : Definitions | 2 |
| Article 2 : Establishment of the African Union Commission on International Law (AUCIL) | 2 |
| Article 3 : Composition | 2 |
| Article 4 : Objectives | 3 |
| Article 5 : Progressive Development of International Law | 3 |
| Article 6 : Codification of International Law | 4 |
| Article 7 : Contribution to Objectives and Principles of the Union | 6 |
| Article 8 : Revision of Treaties | 6 |
| Article 9 : The Teaching, Study and Dissemination of International Law | 6 |
| Article 10 : Candidatures | 6 |
| Article 11 : Election of Members | 7 |
| Article 12 : Term of Office of Members | 7 |
| Article 13 : Resignation, Suspension and Removal from Office | 7 |
| Article 14 : Vacancies | 8 |
| Article 15 : Sessions | 8 |
| Article 16 : Quorum | 8 |
| Article 17 : Election of the Chairperson and Vice-Chairperson of the AUCIL | 8 |
| Article 18 : Remuneration | 9 |
| Article 19 : Rules of Procedure | 9 |
| Article 20 : Languages | 9 |
| Article 21 : Human and Material Resources | 9 |
| Article 22 : Privileges and Immunities | 9 |
| Article 23 : Budget | 9 |
| Article 24 : Cooperation with other Organs of the African Union | 9 |
| Article 25 : Cooperation with other Organizations | 10 |
| Article 26 : Amendments | 10 |
| Article 27 : Entry into Force | 10 |

PREAMBLE

The Member States of the African Union,

BEARING IN MIND the importance of treaties in international relations, notably in the area of maintenance of peace, consolidation and promotion of international law;

RECALLING Decision Assembly/AU/Dec. 66(IV) adopted by the Assembly of the Union in Abuja, Nigeria, in January 2005 reaffirming inter alia the need for the establishment of the African Union Commission on International Law;

FURTHER RECALLING Decision EX.CL/Dec.129 (V) on the establishment of the African Union Commission on International Law adopted by the Fifth Ordinary Session of the Executive Council held in Addis Ababa, Ethiopia in July 2004;

INSPIRED by the common objectives and principles enshrined in the Constitutive Act of the African Union, notably Articles 3 and 4 which underscore the importance of accelerating the socio-economic development of the Continent through the promotion of research in all fields;

ALSO INSPIRED by our common goal to strengthen and consolidate the principles of international law and to remain at the forefront of international legal development, and to continue to work towards maintaining standards in important areas of international law;

ACKNOWLEDGING the contributions of the African Union including the Regional Economic Communities in the promotion of all fields of research with a view to advancing the codification of international law;

DETERMINED to promote the universal values and progressive principles of international law at continental level in the light of the historical and cultural conditions in Africa;

FURTHER DETERMINED to promote in the African continent a culture of respect for emerging international norms and rules which have a potential for eventual crystallization into firm rules of international law;

CONVINCED of the value of the dissemination of, and research in international law, which lies in the ability to foster the creation of an environment that is conducive to the respect for and acceptance of the principles of international law, and the peaceful settlement of conflicts;

REAFFIRMING the collective will to work relentlessly for the development and codification of international law in the African continent;

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

In this Statute, unless otherwise indicated:

«**Assembly**» means the Assembly of Heads of State and Government of the African Union;

«**AUCIL**» means the African Union Commission on International Law;

«**Chairperson**» means the Chairperson of the AUCIL;

«**Chairperson of the Commission**» means the Chairperson of the Commission of the African Union;

«**Commission**» means the Commission of the African Union;

«**Constitutive Act**» means the Constitutive Act of the African Union;

«**Executive Council**» means the Executive Council of Ministers of the African Union;

«**Member**» means a Member of the AUCIL;

«**Member States**» means Member States of the African Union;

«**Peace and Security Council**» means the Peace and Security Council of the African Union;

«**Statute**» means the present Statute of the African Union Commission on International Law;

«**Union**» means the African Union.

Article 2

Establishment of the African Union Commission on International Law (AUCIL)

1. The AUCIL is hereby established as an independent advisory organ of the Union in accordance with Article 5(2) of the Constitutive Act.
2. The structure, objectives and functions of the AUCIL shall be defined in this Statute.

Article 3

Composition

1. The AUCIL shall consist of eleven (11) members of recognised competence in international law, who are nationals of Member States and who shall serve in their personal capacities.

2. No two (2) members shall be nationals of the same State.
3. The composition of the AUCIL shall reflect and respect the principles of equitable geographical representation, the principal legal systems of the Continent and equitable gender representation.

Article 4 Objectives

The AUCIL shall act at the instance of the Policy and other Organs of the Union. It shall have the following specific objectives:

- a) to undertake activities relating to codification and progressive development of international law in the African continent with particular attention to the laws of the Union as embodied in the treaties of the Union, in the decisions of the policy organs of the Union and in African customary international law arising from the practice of Member States;
- b) to propose draft framework agreements, model regulations, formulations and analyses of emerging trends in States' practice to facilitate the codification and progressive development of international law;
- c) to assist in the revision of existing treaties, assist in the identification of areas in which new treaties are required and prepare drafts thereof;
- d) to conduct studies on legal matters of interest to the Union and its Member States;
- e) to encourage the teaching, study, publication and dissemination of literature on international law in particular the laws of the Union with a view to promoting acceptance of and respect for the principles of international law, the peaceful resolution of conflicts, respect for the Union and recourse to its Organs, when necessary.

Article 5 Progressive Development of International Law

1. The AUCIL shall identify and prepare draft instruments and studies in areas which have not yet been regulated by international law in the African continent or been sufficiently developed in the practice of African States.
2. Where the Assembly or the Executive Council or any other organ refers to the AUCIL a specific proposal for study with a view to advancing the progressive development of international law, the AUCIL shall, in general, adopt the following procedure in carrying out its work:
 - a) appoint one of its Members to be Rapporteur;
 - b) circulate a questionnaire to Member States and invite them to supply, within a specified time information relevant to its work;

- c) consult with relevant institutions and experts;
 - d) request where it considers a draft to be satisfactory, the Chairperson of the Commission to issue the draft as an AUCIL document. The Commission shall publicise this document, together with such explanatory and supporting material as the AUCIL considers appropriate. The document shall include any information supplied to the AUCIL in reply to the questionnaire referred to in sub-paragraph c) of this paragraph;
 - e) invite Member States, organs or institutions of the Union to submit their comments on this document within a specified time frame.
3. The Rapporteur and the Members appointed under this Article shall review the draft, taking into consideration the comments by Member States, Organs or Institutions of the Union and shall prepare the final draft with an explanatory report which they shall submit to the AUCIL for finalization.
 4. The AUCIL shall submit the final draft with its recommendations to the Assembly, through the Executive Council, and may on its own motion or at the request of the Organ or Institution of the Union make an interim report to the Organ or Institution that submitted the proposal or draft.
 5. The AUCIL shall also consider proposals and draft multilateral conventions submitted by Member States and Organs of the Union to encourage and facilitate the progressive development of international law and its codification.

Article 6

Codification of International Law

1. The AUCIL shall, with a view to establishing an authoritative statement of international law, be responsible for the codification of international law by way of a systematic and precise formulation of rules of international law in fields where there has already been extensive State practice, precedent and doctrine in the African continent.
2. When the AUCIL considers that codification of a particular area of international law is necessary, it shall study the area and shall submit its recommendations to the Assembly, through the Executive Council.
3. The AUCIL may on its own initiative survey the whole field of international law in the African continent with a view to selecting areas for codification, bearing in mind existing draft codes.
4. The AUCIL shall give priority to requests for codification submitted to it by the Assembly or other Organs of the Union.
5. The AUCIL shall adopt the plan of work it considers appropriate in each case.

6. The AUCIL shall, through the Chairperson of the Commission, address to Member States a detailed request to furnish to it the texts of law, regulations, decrees, judicial decisions, treaties, diplomatic correspondence and any other document relevant to the topic being studied and which it considers necessary.
7. The AUCIL shall prepare its drafts in the form of Articles and shall submit them to the Assembly, through the Executive Council, together with a commentary containing:
 - (a) Adequate presentation of precedents and other relevant data, including treaties, judicial decisions and doctrine;
 - (b) Conclusions defining:
 - i) the extent of agreement on each point in the practice of States and in doctrine;
 - ii) divergencies and disagreements which exist, as well as arguments invoked in favour of each solution.
8. When the AUCIL considers a draft to be satisfactory, it shall request the Chairperson of the Commission to issue it as an AUCIL document. The Commission shall publicize the document with such explanatory material, as it may consider appropriate. The publication shall include any information supplied by AU Member States. The AUCIL shall decide whether the opinions of any relevant institution or individual expert consulted shall be included in the publication.
9. The AUCIL shall request Member States to submit their comments on the AUCIL document for consideration within ninety (90) days.
10. Taking into consideration the comments and observations of Member States, the AUCIL shall prepare a final draft document together with its recommendations and an explanatory report, which it shall submit to the Assembly through the Executive Council.
11. The AUCIL may recommend that the Assembly, through the Executive Council:
 - a) take no action;
 - b) take note of the report;
 - c) adopt the report;
 - d) recommend the draft to Member States with a view to the conclusion of a convention.
12. The Assembly shall, where it considers it appropriate, refer drafts back to the AUCIL for reconsideration or redrafting.
13. The AUCIL shall consider mechanisms for making evidence of customary international law more readily available, through the collection and publication of documents concerning State practice and the decisions of national and

international courts on questions of international law, and shall submit a report of its work in this regard to the Assembly through the Executive Council.

Article 7

Contribution to objectives and principles of the Union

In carrying out its functions on the progressive development of international law and codification of international law, the AUCIL shall contribute to the objectives and principles of the Union as enshrined in Articles 3 and 4 of the Constitutive Act, and in particular to study all legal matters related to the promotion of peace and security in the African continent, the demarcation and delineation of African borders as well as legal matters relating to the political and socio-economic integration of the Continent.

Article 8

Revision of Treaties

1. The AUCIL shall be entitled to propose, if necessary, the revision of OAU/AU Treaties with a view to:
 - a) ensuring harmony between AU treaties and current legal developments;
 - b) ensuring that the process of contributing to the development of international law through encouraging standard-setting by member states continues;
 - c) ensuring that standard-setting within the Union is and remains both relevant and appropriate;
 - d) promoting the harmonization of international obligations.

Article 9

The Teaching, Study and Dissemination of International Law

With a view to encouraging the teaching, study and dissemination of international law and African Union law, in particular, the AUCIL shall co-operate with universities, institutions and other educational and research centres as well as with bar associations and other associations of lawyers.

Article 10

Candidatures

1. Upon coming into effect of this Statute, the Chairperson of the Commission shall invite each Member State to submit, in writing, within ninety (90) days, the names of its candidates, together with their curricula vitae, for election to the AUCIL.
2. Each Member State may nominate a maximum of two (2) candidates taking into account equitable gender representation.
3. The Chairperson of the Commission shall prepare a list in alphabetical order of the names of candidates submitted and shall communicate the list with the

curriculum vitae of each candidate to Member States, at least thirty (30) days before the holding of the session of the Executive Council at which the members are to be elected.

Article 11

Election of Members

The Executive Council shall elect the Members by secret ballot. The election of the Members shall be governed by this Statute and the Rules of Procedure of the Executive Council.

Article 12

Term of Office of Members

1. Members shall be elected for a period of five (5) years and shall be eligible for re-election only once. However, the term of office of five (5) of the members elected at the first election shall expire at the end of three (3) years and they shall be eligible for re-election only once.
2. Members whose terms are to expire at the end of the initial period of three (3) years shall be chosen by a lot drawn by the Chairperson of the Executive Council, immediately after the first elections.
3. A Member to be elected to replace a member whose term of office has not yet expired shall be from the same region.
4. He/she shall hold office for the remainder of the predecessor's term.

Article 13

Resignation, Suspension and Removal from Office

1. A Member may resign by addressing a letter of resignation to the Chairperson who shall transmit the letter to the Chairperson of the Commission.
2. A Member may only be suspended or removed from office on the recommendation of two-thirds of the other Members that the member no longer meets the requisite conditions specified in this Statute and the Rules of Procedure of the AUCIL to continue being a Member.
3. The Chairperson shall bring the recommendation for suspension or removal of a Member from office to the attention of the Executive Council through the Chairperson of the Commission. Suspension or removal from office shall be carried out in conformity with the AUCIL Rules of Procedure.
4. The recommendation shall become final upon its adoption by the Executive Council.

Article 14 Vacancies

1. A seat on the AUCIL shall be vacant under the following circumstances:
 - (a) Death;
 - (b) Resignation;
 - (c) Removal from office in accordance with Article 13 above.
2. In the event of death, resignation or removal from office of a Member, the Chairperson, through the Chairperson of the Commission, shall immediately inform the Member States in writing. Thereafter, the Chairperson of the Commission shall declare the seat vacant.
3. The same procedure for the election of Members shall be followed in filling vacancies.

Article 15 Sessions

1. The Members of the AUCIL shall perform their functions on a part-time basis.
2. The AUCIL shall meet twice (2) a year in ordinary sessions. It may meet in extraordinary sessions at the request of the Chairperson or two thirds of the membership.
3. The duration of the sessions shall be determined by the Rules of Procedure of the AUCIL.
4. Sessions of the AUCIL shall be held at the Headquarters of the Union. However, where the AUCIL is invited to meet elsewhere other than at the Headquarters, that Member State shall be responsible for the expenses over and above what would have been incurred had the meeting been held at the Headquarters.

Article 16 Quorum

The quorum for a meeting of the AUCIL shall be six (6) Members.

Article 17 Election of the Chairperson and Vice-Chairperson of the AUCIL

1. The Members of the AUCIL shall elect from among themselves the Chairperson and the Vice Chairperson, who shall serve for a period of two (2) years. The elected Chairperson and the Vice Chairperson shall be eligible for re-election only once.
2. The modalities for the election of the Chairperson and the Vice Chairperson as well as their duties shall be defined in the AUCIL Rules of Procedure which shall be approved.

Article 18 Remuneration

1. The Members shall be paid emoluments and allowances, which shall be determined by the Assembly.
2. Save for consultants or experts whose conditions of service shall be governed entirely by the terms of their contract, the terms and conditions of service of staff members of the AUCIL shall be in accordance with the African Union Staff Regulations and Rules.

Article 19 Rules of Procedure

The AUCIL shall determine its own rules of procedure for carrying out its functions and submit them to the Executive Council for approval.

Article 20 Languages

The official and working languages of the AUCIL shall be those of the Union.

Article 21 Human and Material Resources

The Commission shall provide the necessary means, staff and infrastructure to the AUCIL Secretariat to enable it carry out its duties effectively.

Article 22 Privileges and Immunities

Members will enjoy, from the date of their election and throughout their term of office, the privileges and immunities applicable to other senior Officials of the Union.

Article 23 Budget

1. The budget of the AUCIL shall form part of the budget of the Union.
2. The AUCIL shall prepare and submit its draft budget to the Union for approval and inclusion in the Union's budget.
3. The Initial Budget of the AUCIL shall be prepared by the Commission.

Article 24 Cooperation with other Organs of the African Union

The AUCIL may if it considers it necessary consult, with any organ of the Union on any subject which is within the competence of that organ. All documents circulated to

Member States by the AUCIL shall also be circulated to relevant organs of the Union for their information, comments and proposals or necessary action.

Article 25

Cooperation with Other Organizations

1. In order to broaden its consultation base, the AUCIL may consult with any inter-governmental, international or national organization that it may *consider* relevant, on any subject entrusted to it, if it believes that such a procedure might aid it in the performance of its functions.
2. For the purpose of distribution of AUCIL documents, the Chairperson of the Commission, after consultation with the AUCIL, shall draw up a list of national and international organizations concerned with questions of international law such as the National Law Reform Commissions. The Chairperson of the Commission shall endeavour to include on this list at least one (1) national organization of each Member State.
3. In order to promote international law on the African continent, the AUCIL shall establish close collaboration with the United Nations International Law Commission.

Article 26

Amendments

1. The present Statute may be amended by the Assembly:
 - i) upon recommendation of the Executive Council after it has obtained the opinion of the AUCIL; or
 - ii) upon the recommendation of the AUCIL.
2. The amendments shall come into effect upon their adoption by the Assembly.

Article 27

Entry into Effect

The present Statute shall come into effect upon its adoption by the Assembly.

2009

Draft statute of the African Union commission on international law

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