

AFRICAN UNION

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**EXECUTIVE COUNCIL**  
**Thirty-First Ordinary Session**  
**27 June – 1 July 2017**  
**Addis Ababa, ETHIOPIA**

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**ACTIVITY REPORT OF THE AFRICAN UNION COMMISSION  
ON INTERNATIONAL LAW (AUCIL)  
FOR THE PERIOD JULY 2016 TO JUNE 2017**

**ACTIVITY REPORT OF THE AFRICAN UNION COMMISSION  
ON INTERNATIONAL LAW (AUCIL)  
(July 2016- June 20167)**

**I. INTRODUCTION**

1. The activity report of the African Union Commission on International Law (AUCIL) outlines the activities of the AUCIL within the period of July 2016- June 2017. The Report is divided into three (3) Sections. **Section one** deals with the activities undertaken during the above-mentioned period; **Section two** contains the challenges faced by AUCIL while **Section three** enumerates its recommendations.

2. The AUCIL was created in 2009 as an independent advisory organ in accordance with article 5(2) of the AU Constitutive Act. The Statute of the AUCIL was adopted by the 12th Ordinary Session of the Assembly of the African Union held in Addis Ababa, Ethiopia from 1 to 4 February 2009. The AUCIL started work on 3rd May 2010 the effective date for the term of office of the pioneer members of AUCIL.

3. The mandate of the AUCIL falls under three (3) broad categories, namely (i) the progressive development of international law, (ii) the codification of international law; and (iii) the teaching, study, dissemination and wider appreciation of international law. These can be realised through: revision of treaties, carrying out studies on matters of interest to the Union and its Member States and encouraging the teaching, study, dissemination and wider appreciation of international law.

4. In accordance with Article 21 of the AUCIL Statute, the African Union Commission is tasked with providing the necessary means, staff and infrastructure to the AUCIL Secretariat to enable it to carry out its duties effectively. Accordingly, the Secretariat of the AUCIL currently forms part of the Office of the Legal Counsel (OLC), which is under the Office of the Bureau of the Chairperson of the African Union Commission.

**II. CURRENT COMPOSITION**

5. The AUCIL Members current composition is as follows:

	<b>Name</b>	<b>Counrty</b>	<b>Date Elected/Decision</b>	<b>Term</b>
1	Amb. (Prof.) Sebastião Da Silva ISATA	Angola	Jan 2015 Assembly/AU/Dec.550(XXIV)	5 year Term
2	Justice Abdi Ismael HERSI	Djibouti	Jan 2015 Assembly/AU/Dec.550(XXIV)	5 year Term
3	Prof. Hajer GUELDICH	Tunisia	Jan 2015 Assembly/AU/Dec.550(XXIV)	3 year Term
4	Hon. Kathleen Quartey AYENSU	Ghana	Jan 2017 Assembly/AU/Dec.634(XXVIII)	3 year Term
5	Dr Mohamed BARAKAT	Egypt	Jan 2015 Assembly/AU/Dec.550(XXIV)	5 year Term

	Name	Country	Date Elected/Decision	Term
6	Amb. Juliet Semambo KALEMA	Uganda	Jan 2015 Assembly/AU/Dec.550(XXIV)	5 year Term
7	Prof. Daniel Makiesse MWANAWANZAMBI	Democratic Republic of Congo	Jan 2013 Assembly/AU/Dec.471(XX)	5 year Term
8	Prof. Boniface Obinna OKERE	Nigeria	Jan 2013 Assembly/AU/Dec.471(XX)	5 year Term
9	Justice Naceesay SALLA- WADDA	The Gambia	Jan 2013 Assembly/AU/Dec.471(XX)	5 year Term
10	Amb. (Prof.) Cheikh Tidiane THIAM	Senegal	Jan 2015 Assembly/AU/Dec.550(XXIV)	5 year Term
11	Justice Kholisani SOLO	Botswana	Jan 2013 Assembly/AU/Dec.471(XX)	5 year Term

### III. ELECTION OF THE BUREAU

6. Pursuant with Rule 4 of the AUCIL Rules of Procedure, the Bureau of the AUCIL shall be composed of the Chairperson; the Vice-Chairperson; and the General Rapporteur.

7. Accordingly, at its 12<sup>th</sup> Ordinary Session held from 21 November to 2 December 2016 in Accra, Ghana, the AUCIL plenary elected the following members of the Bureau:

- i. Amb. (Prof.) Sebastião Da Silva ISATA as the Chairperson;
- ii. Justice Abdi Ismael HERSI as the Vice-Chairperson; and
- iii. Prof. Hajer GUELDICH as the Rapporteur General.

### IV. DEMISE AND REPLACEMENT OF A MEMBER

8. It is with great sadness that the AUCIL received the news of the passing of Mr Ebenezer Appreku, a Ghanaian national and a twice-elected Member of AUCIL, having been first elected in 2009 and re-elected in 2015. On behalf of the AUCIL Members and Secretariat, we wish to express our profound gratitude for his life and work. In his capacity as a Member of the AUCIL, he conducted various studies and lectured on behalf of AUCIL with a view to developing international law within and outside the continent.

9. Following the untimely death of Mr. Appreku, the 28<sup>th</sup> Ordinary Session of the Assembly, which took place in January 2017 in Addis Ababa, Ethiopia elected Hon. Kathleen Quartey Ayensu, a Ghanaian national, veteran and international lawyer to serve for the remainder of Mr Appreku's term. During the 13<sup>th</sup> Ordinary Session of the AUCIL in April 2017 in Addis Ababa, Ethiopia, the OLC administered the oath of office for Hon. Kathleen Quartey Ayensu.

### V. STATUTORY MEETINGS

10. Two statutory meetings were held during the reporting period, namely: (i) the 12<sup>th</sup> Ordinary Session held from 21 November to 2 December 2016 in Accra, Ghana; and (ii) the 13<sup>th</sup> Ordinary Session held from 3 to 13 April 2017 in Addis Ababa, Ethiopia.

11. The AUCIL also conducted its 5<sup>th</sup> Forum on International Law from 5 to 6 December 2016 in Accra, Ghana.

## SECTION I ACTIVITIES OF AUCIL

12. As stated above and in line with the Statute of the AUCIL, this report will address the activities of the AUCIL in three Sections; i.e. (the contribution of this organ towards (i) progressive development and codification of international Law; and (ii) Teaching, study and dissemination of International Law; and (iii) other activities of the AUCIL.

### I. PROGRESSIVE DEVELOPMENT AND CODIFICATION OF INTERNATIONAL LAW

13. As part of its mandate under Article 5 and 6 of the AUCIL Statute, the AUCIL undertook various studies through the appointed Special Rapporteurs. The following studies were considered during the sessions:

**a) *Preliminary Report on the Study on Judicial Cooperation and Mutual Legal Assistance, by Prof. Hajer Gueldich***

14. The Special Rapporteur, Prof. Hajer Gueldich presented her concept note and preliminary report, in which she noted the growing sophistication and international phenomenon in criminal activities within the continent. Therefore, the creation of an area of freedom and security in its own right requires progress in the creation of a common judicial area. It is with this in mind that the Special Rapporteur proposed the development of a study and a draft Convention on the judicial cooperation among AU Member States. This is also in line with Articles 3 and 4 of the Constitutive Act of the African Union, which outlines the need to accelerate the political and socio-economic integration of the continent and promote international cooperation and development in all areas of human activity.

15. In order to achieve these objectives, and in consideration of the outburst of international private relations beyond national borders and in the face of a phenomenon of increased globalisation in all fields between the States of the world, the Special Rapporteur decided to develop a common legal framework in the form of an African Convention on judicial cooperation and mutual assistance, in order to meet all these new needs at the continental level.

16. The Special Rapporteur also prepared a questionnaire to be submitted to the Member States and the Regional Economic Communities.

**b) *Preliminary Report on the Study on non-double taxation, by Prof. Hajer Gueldich***

17. The Special Rapporteur, Prof. Hajer Gueldich presented her concept note and highlighted the serious consequences of double taxation on the exchange of goods

and services and on the movement of capital, technology and people within the continent.

18. Consequently, the Special Rapporteur highlighted that an African continental Convention on avoiding double taxation will have the merit of defining the aimed taxes and also defining the resident eligible to the advantages on the scale of the African continent; reducing often the amounts of tax to hold on the interests, dividends and fees paid by a resident; defining the circumstances in which the income of the physical persons living in a country will be imposed in the other country, in particular the salaries, the income of self-employed persons and the other income; planning exemptions of certain types of taxes and supplying methodological frame for the execution and the resolution of the disputes in taxation matters.

**c) *Study and Draft Model Law for the Domestication of the African Union Convention on Preventing and Combatting Corruption, by Justice Abdi Ismael Hersi***

19. The Special Rapporteur, Justice Ismael Abdi Hersi presented his concept note and preliminary report on the development of a model law on corruption on the continent, pursuant to the African Union Convention on Preventing and Combating Corruption. Justice Hersi highlighted the scale and negative impact of corruption in African states. He stressed that the model law will thus allow the adoption of pre-existing national legislation to the requirements of the Convention, or elaborates *ex nihilo*, new legislation covering, at least, the scope of the Convention. He explained that one of the methodologies for collecting data will be a questionnaire that will be distributed to Member States.

20. Following the member's comment, it was agreed that the Special Rapporteur will present the study for its second reading and questionnaire at the upcoming Session.

**d) *Study of Comparative Constitutional Law - An Assessment of Constitutionalism in Africa, by Amb. (Prof.) Sebastião Da Silva Isata***

21. The Special Rapporteur in his concept note noted that the study seeks to engage in a comprehensive assessment of the record of constitutionalism in African countries over the past three decades and further addressing the governance challenges in African countries. It will further assess whether the various constitutional models provide a viable framework for achieving the important goals of African societies and operate within the precepts of constitutionalism.

22. He noted that in particular, the study aims to evaluate and assess the operation of constitutionalism and the steps taken to implement constitutionalism; the operation of separation of powers; independence of the judiciary; democracy and whether the goal of free and fair elections is being realised; adherence to the legality principle and observance of the rule of law. Further, the study would explore the extent to which the constitution fosters a sense of national identity.

**e) Comparative study of the developed jurisprudence of regional integration among the 8 Regional Economic Communities (RECs) in Africa - the Case of Southern African Development Community (SADC), by Amb. (Prof.) Sebastião Da Silva Isata**

23. The Special Rapporteur, Amb. (Prof.) Sebastião Da Silva Isata presented his concept note to the AUCIL Plenary. He indicated that the study intends to analyse SADC standards, organisational structures and jurisprudence in a comparative perspective by conducting an inventory of the laws of SADC, analyse the challenges to integration and identify means for strengthening regulatory framework. The work of the SADC tribunal will also be addressed as well as inter-institutional relations and peace and security issues. While the Special Rapporteur will be addressing the SADC experience, other members will also review the other Regional Economic Communities, and thus a harmonised structure will be developed.

**f) Study and a Draft Model Law for the domestication of the Protocol to the African Charter on Human and People's Rights on the Right of Women in Africa, by Justice Naceesay Salla- Wadda**

24. The Special Rapporteur, Justice Naceesay Salla-Wadda noted that the study aims to assist the domestication of the Protocol to the African Charter on Human and People's rights on the Rights of Women in Africa otherwise known as the Maputo Protocol. She noted that the Protocol on the Rights of Women in Africa is a supplementary Protocol to the African Charter on Human and People's Rights. In her study, she outlined that the aim is to develop a draft model law on the basis of the said Protocol upon which member states to the Charter and Protocol may use as a model or format in the enactment of a national/domestic legislations in respecting their treaty obligations to sign up to, ratify and domesticate this Protocol on the Right of Women.

25. The Special Rapporteur noted that the Maputo Protocol faces various challenges related to culture and religion. For instance, she highlighted that Article 14 on reproductive health rights of women, allowing women to make informed choices to control their fertility and which further allows women the right to choose whether to produce any children has been strongly opposed by religious movements in many African Countries. It is therefore the aim of this study to mediate the gaps between the existing laws in African Countries and the international standard that the Protocol aims to set.

26. The Special Rapporteur also prepared a questionnaire to be submitted to Member States and the Regional Economic Communities.

**g) Study of the Developed Jurisprudence of East African Community (EAC), by Amb. Juliet Semambo Kalema**

27. The Special Rapporteur noted that the aim of this study is to develop a comprehensive report on the developed jurisprudence of the East African Community (EAC). This will offer an opportunity to assess the progress made by the regional economic communities towards the achievement of the AU objectives, as outlined in the Constitutive Act, notably that of "political and social-economic integration of the continent".

28. In conducting this study, she noted that it will examine the legal basis for EAC cooperation and integration. This will involve an analysis/examination of the legislative and judicial systems applied in the partner states as well as the body of Community Law (the Treaty, protocols, EALA Acts, International Conventions and Protocols) in order to gain an understanding of how supportive these systems are to the development of Community jurisprudence and enhance the integration process in the continent.

29. The Special Rapporteur also prepared a questionnaire to be submitted to the Member States and the Regional Economic Communities with the view to conducting a continental analysis.

***h) Concept Note on the study on the implementation of the African Mining Vision – African Mining and Petroleum Law, by Prof. Daniel Makiesse Mwanawanzambi***

30. The Special Rapporteur, Prof. Daniel Makiesse Mwanawanzambi, presented his concept note on the study on the implementation of the African Mining Vision. The Special Rapporteur noted that, in keeping with the AUCIL's mission, he intends to identify the current realities and regulatory requirements for mining and petroleum in Africa and subsequently, identify potential avenues of a consecutive law for the African regulation of mines and oil so that the African States can have and integrate a normative framework into a common policy to appropriate these abundant resources in a continent where the population remains very poor.

***i) Comparative study of the developed jurisprudence of regional integration among the 8 Regional Economic Communities (RECs) in Africa - the Case of Arab Maghreb Union (UMA) by Prof. Hajer Gueldich***

31. The Special Rapporteur, Prof. Hajer Gueldich presented the First report on the developed jurisprudence on UMA attached hereto. In her first report, the Special Rapporteur addressed the genesis of the UMA, its objective, an organisational and structural aspect of the UMA; institutional and legal achievements. She also addressed the constraints in the Maghreb regional towards integration.

32. The Special Rapporteur also prepared a questionnaire to be submitted to the Member States and the Regional Economic Communities with the view to conducting a continental analysis.

***j) Study and Draft Model Law for the domestication of the African Charter on the Rights and Welfare of the Child by Prof. Boniface Obinna Okere***

33. The Special Rapporteur, Prof. Boniface Obinna Okere presented his Concept Note related to the development of a Model Law for the domestication of the African Charter on the Rights and Welfare of the Child. The Special Rapporteur noted that the study aims to assist States Parties in harmonising their laws and related

administrative regulations in Africa so as to develop a common approach to child protection through the development of a Model Law.

34. The Model Law will guide law makers in translating the obligations under the Charter into detailed national legislations. It will also assist policy makers, judicial officers, administrators and researchers in the application of the African Charter on the Rights and Welfare of the Child.

## II. TEACHING, STUDY AND DISSEMINATION OF INTERNATIONAL LAW

35. Pursuant to Article 4 of the AUCIL Statute, one of the objectives of the AUCIL is:

*“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.”*

36. Accordingly, the AUCIL undertook the following activities:

**a) *The 5<sup>th</sup> Forum of the African Union Commission on International Law: “The Role of Africa in Developing International Law”***

37. The 5<sup>th</sup> Forum of AUCIL, chaired by Prof. Obinna Okere, with Dr. Mohamed Barakat as Rapporteur, was held in Accra, Ghana, from 5 – 6 December 2016 immediately following the end of 12th ordinary Session. The theme of the 5th Forum was “The Role of Africa in Developing International Law”

38. The objectives of the Forum was, among others, to survey the methods in which Africa has engaged and is continuously interacting with international law-making processes; examine the practice of African States in their interactions with each other, and with other states in the international community; investigate the role played by African states in international organizations in the context of development and codification of new rules of international law; analyze ways of progressively contributing to the development of international law in Africa; and identify the challenges in which Africa has contributed to the development of international law.

39. The topics addressed by the Forum were:

- a) The institutional framework of the contribution of Africa in developing international law;
- b) The role of African regional institutions, in particular, the RECs and regional Courts are playing in developing international law;
- c) Contributions of Africans in international jurisdictions;
- d) Courses on international law given by Africans;
- e) The contribution of Africa to the development of international trade and investment.



40. The speakers presenting on the various topics were eminent scholars and legal experts from esteemed institutions and international organisations. The forum was attended by over 120 participants constituting of African Union Member States, International Organizations and Universities. The Keynote of this Forum was addressed by H.E. Judge Abdulqawi Yusuf, Vice-President of the International Court of Justice. The Forum highlighted on the key roles played by the African States towards the development of International law. This served as capacity building for young academicians as it allowed them to interact with international law experts both from the continent and African diaspora and served as a platform for the AUCIL to increase its visibility.

41. Speakers at the Forum further submitted their articles on international law, following which the AUCIL is undertaking its preparation for the publication of these articles on contemporary subjects of international Law. This allows the Member States and African scholars to have access to the writing of international law experts in the field.

The AUCIL wishes to note that objectives of Agenda 2063 is to ensure the existence of a platform where International Law was discussed. To this end, given the intertwined nature of international law, and its ability to address various fields, the AUCIL would, therefore, wish to make its call to all AU Organs and the AUC to for a continued partnership among our bodies in order to achieve the set goals during this Forums.

**b) *The First International Law Seminar for African Universities, Accra, Ghana from 15 to 26 August 2016***

42. Bearing in mind the importance of higher learning and research and in enhancing their knowledge on contemporary issues of International and African Union Law, the AUCIL in close collaboration with the Government of Ghana, African Institute of International Law (AAIL), United Nations Office of Legal Affairs, Codification Division, provided a two-weeks training for African professors, lecturers and researchers within the law faculty of an academic institution. The Seminar was held from 15 to 26 August 2016 in Accra, Ghana. The AUCIL was also represented by Ambassador Kalema, Member of the AUCIL.

43. The seminar provided high-quality training by leading scholars and practitioners from different regions and legal systems on a broad range of core subjects of international law, such as African Union Law and Institutions; International Human Rights Law; Regional Integration; International Trade Law; International Investment Law; and International Criminal Law. The interactive nature of the training further allowed the participants to share experiences and exchange ideas on international law and domesticating the various principles within their jurisdictions.

**III. OTHER ACTIVITIES OF THE AUCIL**

44. Other activities and incidents that took place during the reporting period are as follows:

**a) *Consideration of the Draft Rules of Procedure of the AUCIL***

45. With respect to its Rules of Procedure, the AUCIL Plenary had before it the proposed amendments to its rules of Procedure. Accordingly, the Plenary at its 13th session had before it a new draft proposed by Prof. Gueldich. The draft contained suggestions for the addition and amendments of several articles which addressed the objectives of the AUCIL; organizational structure; decision-making process; terms of reference for the AUCIL Members; budget; AUCIL's contribution to International Law and African Union Law; etc.

46. The proposed draft was examined and deliberated at length by the Plenary. The outcome was a draft fifty articles of Rules of Procedure which members were to review further during the recess and deliberate as a second reading during the next session.

47. To this end, Prof. Hajer Gueldich, Rapporteur General of the AUCIL proposed a draft which contained suggestions for the addition and amendments of several articles

48. As a result of its consideration, the AUCIL adopted on first reading a set of 50 draft articles. The AUCIL decided, to make the necessary amendments and have a second reading at its upcoming session.

**b) *Development of the AUCIL Webpage, the 2nd yearbook and 3rd journal of the AUCIL***

49. In further fulfilment of article 9 of AUCIL statute, AUCIL has finalized building up the electronic database of its web page, where African experts and the Member States will have access to international law materials. The AUCIL wishes also to further encourage Member States to make use of the available information and assist the AUCIL in further strengthening the availability of materials on African Law and International Law within their respective jurisdiction.

50. The AUCIL has also finalized the drafts of its yearbooks and Journals. The late receipt of funds in 2016, however, did not allow the AUCIL to finalize these projects.

**IV. COOPERATION WITH SIMILAR INTERNATIONAL BODIES WORKING ON INTERNATIONAL LAW**

51. As part of its cooperation and promotion mandate under Article 25, the AUCIL undertook various activities in order to enhance its working relationship with international organizations. Accordingly, the AUCIL attended the 71st Session of the 6th Committee of the United Nations on Legal Affairs. AUCIL was represented by the Prof. Boniface Obinna Okere, Justice Naceesay Salla-Wadda and the Secretariat.

52. AUCIL provided technical support to some delegations attending the 6th Committee of the UNGA. The attendance of this meeting allowed the AUCIL to learn both from the practice of International systems and regional institutions, such as the EU which was represented at this meeting. Informal meeting on capacity building was also held. As a result, the UN Codification Division and treaty Section was able to

assist the AUCIL in building concrete projects in the development of International Law during the presence of its Staff Members in Addis Ababa in Feb 2017.

53. At the invitation and expense of the International Committee of the Red Cross (ICRC), AUCIL designated Hon. Kathleen Quartey Ayensu to assist in the 21st Course in International Humanitarian Law (IHL) for Humanitarian Professionals and Policy Makers held in Kenya.

54. The Commissioner made two presentations: i) Reflections from AUCIL which introduced the AUCIL, informed about the upcoming 6th Forum, discussed recent IHL interventions within ECOWAS as a case study, and touched on international criminal enforcement procedures; and ii) a second presentation was made by the Commissioner on War in Cities, focusing on African cities and imparting lessons to be learnt from the experiences of some African countries."

55. The AUCIL could not attend the 67th Session of the International Law Commission (ILC) in Geneva, Switzerland and the 88th Regular Session of the Inter-American Juridical Committee (IAJC) in Rio De Janeiro, Brazil due to the late release of funds.

#### **V. ATTENDANCE TO OTHER RELATED MEETINGS**

56. The AUCIL Members and the Secretariat also attended the following meetings:

- a) The 33<sup>rd</sup> Ordinary Session of the Permanent Representatives Committee (PRC), 30<sup>th</sup> Ordinary Session of the Executive Council and the 28<sup>th</sup> Ordinary Session of the Assembly in January 2016 in Addis Ababa, Ethiopia. AUCIL was represented by Amb. (Prof.) Sebastião Da Silva Isata, Chairperson of the AUCIL; Justice Abdi Ismael Hersi, Vice-Chairperson; and Prof. Boniface Obinna Okere, Member of AUCIL and the Secretariat.
- b) The Extraordinary Summit of the African Union on Maritime Security and Safety and Development. The AUCIL was represented by its Secretariat;
- c) 59th Ordinary Session of the African Commission on Human and Peoples' Rights, from 21 – 28 October 2016 in Banjul. The AUCIL was represented by its Secretariat.

#### **VI. VISIT TO EQUATORIAL GUINEA**

57. At the invitation of H.E. President Obiang Nguema, President of the Republic of Equatorial Guinea, an AUCIL Delegation led by Its Chairperson, Amb. (Prof.) Sebastiao Isata visited Malabo from 24 to 28 March 2017. The delegation was in Equatorial Guinea to discuss issue related to support for the work of the AUCIL.

58. However, after duly noting the challenges and financial constraints experienced by this Organ, President Obiang Nguema offered assistance and proposed that his country is also willing to host the Headquarters of AUCIL and provide the

administrative and logistic support necessary to facilitate its work. The AUCIL delegation thanked the President for the offer and reiterated the procedures for such a decision, which required a decision of the Assembly of Heads of State and Government.

59. Recalling a previous informal expression of interest from Ghana a while ago to host the AUCIL, Members requested that Hon. Kathleen Quartey Ayensu inquire as to the status and revert, upon her return to Ghana.

**VII. BRIEFING NOTE ON THE TREATMENT METTED OUT TO COMMISSIONER MOHAMED BARAKAT BY THE ETHIOPIAN AUTHORITIES**

60. The AUCIL wishes to express its serious concern regarding the treatment meted out to a member of the AUCIL, Justice Mohamed Barakat, while attending the 13th Ordinary Session of the AUCIL that took place in Addis Ababa from 3 to 13 April 2017.

61. On Monday, 10 April 2017 after attending the day's session, Justice Barakat returned to the Sheraton Hotel where the AUCIL members were staying only to have realized that his room searched was searched in his absence and was later accosted by officials of the Host Country who went on to confiscate his personal belongings - official Egyptian Passport and cell phone. He was subsequently interrogated at the immigration office and told that he was called in for a questioning because of the suspicious travel he undertook to Afghanistan and Egypt. He was not allowed to return to the Sheraton hotel that day and his passport not returned as at the time of the preparation of this report.

62. In the belief that the issues had been resolved the Session duly closed. Many days after Members' departure from Addis Ababa, the Members were shocked to learn that Commissioner Mohamed Barakat was prevented from leaving Ethiopia by the Ethiopia authorities. AUCIL Members were further informed that all efforts by the Commission to ascertain from the host country a full explanation for the situation had proved futile.

63. The Commission immediately wrote to the Ministry of Foreign Affairs to raise concerns about the treatment in light of the privileges and immunities that Commissioner Barakat enjoys as an elected official of the African Union. However, he was only permitted to leave the country after the intervention of the Permanent Representative Committee, the Egyptian Embassy and the Commission after spending an extra two (2) weeks in Addis Ababa at his own expense.

64. Notwithstanding the foregoing, the AUCIL wishes to record its deep appreciation to the Commission and the Permanent Representative Committee for their prompt and persistent action to resolve and secure the release of Commissioner Barakat.

65. The AUCIL wishes to register its serious objection to the treatment meted out to one of its members as it has the potential to seriously undermine the ability of the members of this Organ to carry out their mandate. This action by the Ethiopian

authorities is clear violation of the African Union Convention of Privileges and Immunities of the African Union of 25 of October 1965, to which the Ethiopian Government is a Party. The AUCIL considers that these actions do not constitute an incentive to the work of the AUCIL and hinders the spirit of brotherhood and fraternity, which has guided the Pan Africanist agenda of the founding fathers of African Union.

## **SECTION II CHALLENGES**

66. While the AUCIL was established in 2009 and started operations in 2010, it started receiving limited budgetary provisions for the funding of its various studies and programme activities only in 2012. Although slightly alleviated in 2013, 2014, 2015 and 2016 the funds allocated to AUCIL for the implementation of its programme activities remain under the minimum required level. Additionally, the late release of the Program budget for the year 2016 hindered the implementation of various activities such as the publications of the AUCIL Yearbook, Journal and attendance of the statutory sessions of the International Law Commission (ILC) and the Inter-American Juridical Committee (IAJC).

67. There is also a challenge relating to the insufficient staff allocated to the Secretariat. The AUCIL secretariat lacks adequate human and other administrative resources to undertake research activities needed to effectively assist in the various studies being conducted by the AUCIL. The Secretariat which is assisting the AUCIL mainly in administrative and research functions, is part of the Structure of the Office of the Legal Counsel which has huge responsibilities in serving all other departments of the African Union Commission and other bodies of the African Union generally, hence depriving the Secretary of AUCIL of the human resources necessary to more effectively service the activities and support the Studies of the AUCIL to enable it to more effectively discharge its mandate .

68. In turn, this also affects the synergy between the AUCIL with other organs, structures and departments of the African Union. This may ultimately undermine the importance and the place of the AUCIL in the African integration agenda and in the progressive development and codification of international law.

69. Another related matter is also the absence of visibility of the AUCIL. There is insufficient communication about the potential of the AUCIL to contribute to enhancing the quality and coherence of the legal instruments adopted by the African Union. It is hoped that the development of the AUCIL Website will allow the Member States, departments and partners to make use of the available information and work towards resolving the shortcomings of our continental legal advisory body. Lack of an information and knowledge base, such as the physical or electronic library, which is necessary for carrying out its work, also impedes the work of the AUCIL.

## **SECTION III RECOMMENDATIONS**

70. With the view to fulfilling its mandate and to allow AUCIL to work efficiently and meet the expectations of the African Union and its member States and given the on-going restructuring process at the African Union Commission, there is an urgent need

to provide the AUCIL Secretariat with a Division with sufficient human resources in the proposed new structure of the Office of the Legal Counsel so as to guarantee the advancement of the development of the activities of this organ.

71. In order to enhance the work and activities of AUCIL on codification and progressive development of international law in accordance with its Statute, and with the view to allow its cooperation with other international organisations, AUCIL appeals and requests the Executive Council to endorse the following recommendations:

- i) To emphasise the importance of the legal studies on international law carried out by AUCIL at the request of the Policy Organs of the Union and its member States, as well as those initiated by itself on matters of International Law of interest to the African Union and its member States;
- ii) To commend the AUCIL for the several studies on international law so far finalised;
- iii) To take note, underscore and ensure the importance of implementing the provisions of the Statute of the AUCIL requiring the AUC to provide the necessary means, staff and infrastructure to the AUCIL Secretariat to enable it carry out its duties effectively, and request the Commission to provide the AUCIL Secretariat with a Division with sufficient human resources in the proposed new structure of the Office of the Legal Counsel;
- iv) To encourage the AUCIL, within the limits of available resources, to bolster its activities in the development and codification of International Law with a specific focus on African Union Law. In this regard, draft conventions should be initiated in areas of specific interest to the African Union;
- v) To encourage Member States and other Organs of the Union to extend necessary support to and work with the AUCIL in the preparation of its Studies by, *inter alia*, providing information that AUCIL may need for this purpose on matters of international law of interest to the African Union.
- vi) To request Member States to abide by their obligations under the African Union Convention of Privileges and Immunities of the African Union of 25 of October 1965.

**DRAFT DECISION ON THE ACTIVITY REPORT OF THE AFRICAN UNION  
COMMISSION ON INTERNATIONAL LAW (AUCIL)  
Doc. EX.CL/1032(XXXI)**

**The Executive Council,**

1. **TAKES NOTE** of the Activity Report of the African Union Commission on International Law (AUCIL) for the period 30 July 2016 to 30 June 2017 together with the recommendations contained therein;
2. **EMPHASIZES** the importance of the legal studies on international law carried out by AUCIL at the request of the Policy Organs of the Union and its member States, as well as those initiated by itself on matters of International Law of interest to the African Union and its member States;
3. **COMMENDS** the AUCIL for its efforts towards the realisation of one of the aspirations of Agenda 2063, in order to achieve “an Africa of good governance, democracy, respect for human rights, justice and the rule of law” and underscore the need to collaborate with the African Governance Architecture of the African Union on this matter;
4. **FURTHER ENCOURAGES** Member States, other Organs and departments of the Union to extend necessary support to and work with the AUCIL in the preparation of its Studies and draft instruments by, *inter alia*, providing information that AUCIL may request or need for this purpose in the field of international law and the African Union Law;
5. **ENCOURAGES** the AUCIL, within the limits of available resources, to bolster its activities aimed at facilitating the harmonization of Legal instruments of the Union in order to effectively contribute to the progressive development of International Law its Codification and dissemination of African Union Law;
6. **REQUESTS** the Commission to consider allocating additional resources to the Budget of the African Union Commission on International Law to enable it to conduct its research studies and discharge its mandate more effectively;
7. **TAKES NOTE** and underscore the importance of the Statute of the African Union Commission on International Law (AUCIL) which requires the African Union Commission (AUC) to provide the necessary means, staff and infrastructure to the AUCIL Secretariat to enable it carry out its duties effectively, and request the Commission to provide the AUCIL Secretariat with a Division with sufficient human resources in the proposed new structure of the Office of the Legal Counsel;
8. **ALSO TAKES NOTE** of the visit of the AUCIL delegation to Equatorial Guinea and the offer of the President to host its Headquarters and the interest of the Republic of Ghana and Egypt to host this Organ and **RECALLS** that hosting of any AU Organ shall be undertaken in accordance with the Criteria for Hosting AU Organs adopted by the Executive Council at its 7<sup>th</sup> Ordinary Session in July 2005;

9. **ENCOURAGES** the AUCIL to hold its yearly international law Forum with close collaboration with the African political leadership, the private sector, academia and civil society to discuss developments and constraints of International Law as well as measures to be taken to realise the Aspirations and goals of Agenda 2063;
10. **NOTES** with concern the treatment meted out towards an elected member of the AUCIL from the Arab Republic of Egypt and **CALLS UPON** the Federal Democratic Republic of Ethiopia to ensure that similar incidents do not occur in the future, and prejudice the work of the African Union, its Organs as well as the relationship amongst Member States;
11. **FURTHER CALLS UPON** the Federal Democratic Republic of Ethiopia to abide by its obligations under the Agreement between the African Union and the Federal Democratic Republic of Ethiopia on the Headquarters of the African Union and the African Union Convention of Privileges and Immunities of the African Union of 25 October 1965 and the principles of International Law;
12. **DECIDES** to remain seized of the matter and **REQUESTS** the Commission to report on the compliance of Privileges and Immunities and the implementation of the Host Agreement by the Federal Democratic Republic of Ethiopia through the PRC.



2017

# Rapport d'Activité de la Commission de l'Union Africaine sur le Droit International (CUADI) au Titre de la Période allant de Juillet 2016 à Juin 2017

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