

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

Addis Ababa, ETHIOPIA P.O. Box 3243 Telephone: +251-115-517 700 Fax: +251-115517844 Website:
www. au.int

EXECUTIVE COUNCIL
Thirty-Fourth Ordinary Session
07 - 08 February 2019
Addis Ababa, Ethiopia

EX.CL/1130(XXXIV)
Original : English

**ACTIVITY REPORT OF AFRICAN UNION COMMISSION ON
INTERNATIONAL LAW (AUCIL)**

**ACTIVITY REPORT OF THE AFRICAN UNION COMMISSION
ON INTERNATIONAL LAW (AUCIL)
(June to December 2018)**

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 June to December 2018. It is to be noted that the last reporting period of the AUCIL was from 30 July to 1 June 2018. This report, covering the period from 1 June to 30 December 2018 is prepared with the view to regularize the reporting period of all organs. It also aims to bring some pertinent issues to the attention of the Policy Organs.
2. The Report is divided into three (3) Sections. **Section one** deals with the activities undertaken during the above-mentioned period; **Section two** addresses the offer of the Government of Equatorial Guinea to host the AUCIL; **Section three** addresses the challenges faced by AUCIL while **Section four** enumerates recommendations.
3. 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.
4. 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.
5. 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

6. The AUCIL Members current composition is as follows:

	Name	Country	Date Elected or reelected/Decision	Term
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
	Amb. Juliet Semambo KALEMA	Uganda	Jan 2015 Assembly/AU/Dec.550(XXIV)	5 year Term
7	Sindiso H. SICHONE	Zambia	July 2018 Assembly/AU/Dec.701(XXXI)	5 year Term
8	Kevin Ferdinand NDJIMBA	Gabon	July 2018 Assembly/AU/Dec.701(XXXI)	5 year Term
9	Narindra Arivelo RAMANANARIVO	Madagascar	July 2018 Assembly/AU/Dec.701(XXXI)	5 year Term
10	Amb. (Prof.) Cheikh Tidiane THIAM	Senegal	Jan 2015 Assembly/AU/Dec.550(XXIV)	5 year Term

7. It will be recalled that the Central African Region did not submit a female candidate for election during the July, 2018 Summit. Accordingly, Assembly vide decision Assembly/AU/Dec.701(XXXI) decided, *inter alia*:

“that the election of one (1) Female Member of the African Union Commission on International Law, from the Central Region shall take place in February 2019 during the Thirty-Fourth Ordinary Session of the Executive Council.”

8. The Commission would like to inform the Executive Council that the following candidate has been received by the Commission from the Member States from the Central African Region.

NAME	COUNTRY	REGION	Gender
Tomassa Bisia ELA NCHAMA	Equatorial Guinea	Central	F

SECTION I

ACTIVITIES OF AUCIL

III. STATUTORY MEETINGS

9. One statutory meeting was held during the reporting period, i.e the 16th Ordinary Session held from 26 November - 7 December 2018 in Addis Ababa, Ethiopia. At this session, the swearing in of three (3) new Members, namely Sindiso H. SICHONE (Zambia); Kevin Ferdinand NDJIMBA (Gabon); Narindra Arivelo RAMANANARIVO (Madagascar) took place.
10. The AUCIL also conducted its 7th Forum on International Law from 10 to 11 December 2018 under the theme "Management of Natural resources in Africa".

IV. PROGRESSIVE DEVELOPMENT AND CODIFICATION OF INTERNATIONAL LAW

11. As part of its mandate under Article 5 and 6 of the AUCIL Statute, the AUCIL undertook various studies through the appointed Special Rapporteurs. In particular, the following were conducted:

a) The Contribution of the AUCIL to the outcomes of the reforms as directed by Eleventh Extraordinary Session of the Assembly

12. The AUCIL takes note of the AU Policy organs observations, which highlights the need for a proper process of assessment of the Organs, followed by a consultative process, similar to what has been done on the Reform of the Commission, with a view to considering proposals in 2019.
13. The Eleventh Extra-Ordinary Summit vide Ext/Assembly/AU/Dec.1(XI) further mandated "the AU Commission, in collaboration with the RECs, AU organs, relevant continental organizations, to develop a proposal on an effective division of labor among the AU, the RECs, the Member States, and other continental institutions, in line with the principle of subsidiarity, for submission to the First Mid-Year Coordination Meeting in June/July 2019".
14. In implementation of the above stated task, the AUCIL underlines the eminent role that can be played by the AUCIL as enunciated in Article 4 of its Statute and emphasized that more effort needs to be exerted to make sure the reform team, responsible for Unit of the implementation interacts closely with the AUCIL, as an advisory organ of the Union.

b) Studies and legal documents considered by the AUCIL

15. The AUCIL during its 16th Session considered the following:

i. On-going studies:

- a) Study on International Environmental Law – This study will now be undertaken by one of the newly elected commissioners and reported on fully upon its completion – by Comm. Kevin Ferdinand NJIMBA;
- b) Comparative study of the developed jurisprudence of regional integration among the 8 Regional Economic Communities (RECs) in Africa – This study will be finalized by one of the newly elected commissioners and

reported on upon its completion – by Comm. Narindra Arivelo RAMANANARIVO;

- c) Study on the African Mining Vision – Study and codification of comparative mineral and petroleum law in Africa – The finalization of this study will be undertaken by one of the newly appointed commissioners and reported on upon its completion – by Comm. Sindiso H. SICHONE;
- d) Study on the Draft Model Law for the domestication of the African Charter on the Rights and Welfare of the Child – by Comm. Narindra Arivelo RAMANANARIVO;
- e) Study on the Domestication of the Protocol to the African Charter on Human and People's Rights on the Right of Women in Africa – by the soon to be elected Commissioner from Central Africa;

16. The following studies are all being undertaken by the members of the AUCIL, who have undertaken the various studies: These studies are all in their penultimate stage and it is expected that these studies will all be finalized in 2019. Upon said finalization, recommendations will be made to the policy organs of the AU so that AUCIL can work on the draft Conventions which could thereafter be submitted to Member States for consideration through the next STC on Justice and Legal Affairs. A drafting committee for each of these studies has already been formed for these purposes. The studies are:

- a) Study on African Convention Against Slavery – Amb. ISATA highlighted the need for a draft Convention against slavery particularly because most legal instruments addressing the illegality of slavery were drafted without taking into consideration Africa's perspective and the recent events leading to the youth of Africa facing slavery.
- b) Study and draft Continental Convention on Avoiding Double Taxation – Prof GUELDICH in her third study report indicated that drafting an African Convention on the avoidance of double taxation has the objective of harmonizing the laws on taxation within the various legal systems in Africa.
- c) Study on Judicial Cooperation and Mutual Assistance – The fifth and final report on Judicial Cooperation and Mutual Assistance was presented by prof. GUELDICH together with the draft model of African Convention on Judicial Cooperation and Mutual Legal Assistance and a draft model African Convention on Extradition. She underlined the goals of the draft Convention as the development of a common African policy to combat transnational crime through sharing of information at a continental level especially working towards integration under Agenda 2063.
- d) Study on Maritime Piracy: Hon. Kathleen Quartey AYENSU presented her preliminary report on the study piracy and maritime security, a study she took over from a former commissioner, Prof. Lilliane and Justice Solo. She highlighted the recent developments in Africa and the regional mechanisms put in place pertaining to maritime. She noted a new document was

adopted by the AU Assembly in 2014 – the African Integrated Maritime Strategy – advocating a comprehensive approach towards combating piracy and armed robbery at sea. An African Charter on Maritime Security and Safety and Development in Africa (Lome Charter) is also adopted. She recommended as a way forward to immediately link up with the sponsoring AU organ/committee of the Lome Charter and the International Maritime Organization for a status feedback and to harmonize efforts as to what the next steps should be as a practical matter.

- e) Study and Recommendations on the teaching, study and dissemination of International Law: Amb. Juliet Semambo KALEMA presented her preliminary report on the study which she took over from one of the former commissioners of AUCIL, Justice Tembo, on the dissemination of international law and African Union Law. The decision to conduct the study was made in accordance with the mandate given to the Commission under Art. 9 of the AUCIL Statute. The objective of the study is to investigate, explore, examine and analyse the extent to which international law and AU law is being taught by African higher education institutions and to investigate the extent to which international and African law are being applied, interpreted and relied upon by different actors, including legal professionals and government official. In the teaching and study component of her study, she emphasised on the need to develop a curriculum, especially focusing on African Union law, as there is a dearth of teachings in that area. The Special Rapporteur intends to carry out thorough examination of what is meant by African Union Law and how it could be incorporated into a curriculum. She noted that a questionnaire to be filled by universities, in order to assess the existing curriculum on AU law and to identify the gap thereof. The questionnaire will also be helpful in designing modules relevant to various interest groups, including government officials and judges. She concluded by recommending for funding to be made available to implement these programs.

ii. Strategic Plan (2019 to 2022)

17. The AUCIL under the leadership of Justice Ismael HERESI, Vice-Chairperson of the AUCIL finalized its Strategic Plan (2019 to 2022). The main objective of the Strategic Plan is to translate the mission, mandate and function of AUCIL to implementable programmes in connection to Agenda 2063. The Plenary reviewed four sections of the Strategic plan namely: the strategic context of the AUCIL; Key elements of the strategic plan (2019 – 2022); Implementation of the Strategic plan 2019 – 2022; and the Resource aspect of the Strategic Plan 2019 -2022. The Plenary adopted the Strategic Plan as attached hereto.
18. The Strategic Plan 2019 – 2022 highlights the results that AUCIL envisage on achieving over the period of the next three years with Agenda 2063 in mind.

iii. Amendments of the Rules of Procedure of the AUCIL

19. The AUCIL's Rules of Procedure are also under consideration and the said Rules will take into account the on-going developments of the AU Reforms.

c) Celebration of the 10th Anniversary of the AUCIL in 2020

20. The AUCIL will be celebrating its 10th year, since its operationalization in 2010. Prof. Hajer presented a paper at the 16th Ordinary Session of the AUCIL, attached **hereto** that outlined the proposed details for the 10th Anniversary celebration of the AUCIL. The proposed activities include organizing of an International Symposium for the Celebration of the 10th Anniversary; organizing a Moot Court in collaboration with the African Court; award for the best dissertation prize in a theme of International Law; an interactive session with the Permanent Representative Committee, Universities, centres of researches; conducting a training session on African Union law for the public: lawyers, lawyers, doctoral students, professors, etc.; and holding of a joint session with the UNILC.
21. In order to finalize the work, the AUCIL will rely on the support of AU Member States and the AU Commission and wishes to request the support of Member States both in national and international arenas and making the events of 2010 a success, thereby putting the continent in the forefront of contribution related to International Law.

d) The 7th Forum of the African Union Commission on International Law: "The Legal, Political and Socio-Economic Consequences of Migration, the Situation of Refugees and Internally Displaced Persons in Africa"

22. The 7th Forum of AUCIL, chaired by Justice Abdi Hersi, with Hon. Hon. Kathleen Quartey AYENSU was held in Addis Ababa, Ethiopia from 10 to 11 December 2018 under the theme "Management of Natural resources in Africa" addressed four (4) main sub-themes, namely: Legal and Political concepts underlying the management of natural resources in Africa: from traditional to regeneration; the management of natural resources and its current legal challenges; a comparative Survey; the influence of the management of the natural resources on the development of law in Africa and a final Round table on Africa collective future responsibility.
23. The Forum was focused on looking at the global efforts that have been made so far with regards to Natural Resources, particularly, to its depletion and went further to identify what is Africa's agenda in the management of these resources especially as the AU leads the way with Agenda 2063. It is within the context and goals of Agenda 2063 that AUCIL hosted the 7th Forum that examined the prospects for a revised legal order to attain the Agenda 2063 goals of commodity markets and new legal partnerships for exploitation and exploration of natural resources so that the present generation will manage it that future generations will have substantial resources to transform their economies.

e) Cooperation with similar International Bodies Working on International Law

24. As part of its mandate to cooperate and promote under Article 25, the AUCIL undertook various activities in order to enhance its working relationship with international organizations. The AUCIL delegation undertook three main activities:
- i. **73rd session of the United Nations General Assembly Sixth Committee Legal Week in New York, USA** where the AUCIL attended as an observer and further discussed the possible holding of joint sessions with the United Nations International Law Commission (UNILC). Through this mission, Justice Hersi further held a bilateral on the organisation of a joint session with the UNILC President, and attended the discussion of the President in International Court of Justice President.
 - ii. **Celebration of the 70th Anniversary of the United Nations International Law Commission (UNILC) in Geneva, July 2018** where the AUCIL attended as an observer and further discussed the possible holding of joint sessions with the United Nations International Law Commission (UNILC). Prof. Hajer Guidlich also served as an expert at the event organised by UNILC. The AUCIL used this opportunity to learn from the working and research methodologies of the UNILC members as presented at the UNILC event.
 - iii. **Attendance of the 93rd Session of the Inter-American Juridical Committee (IAJC), Rio de Janeiro, Brazil:** Amb. Kalema and Jusitc Barakat were able to contribute towards the subjects under consideration, such as the Immunity of international organisations; binding and non-binding agreements; effectiveness of foreign judicial decisions in light of the Inter-American Convention on the extraterritorial validity of foreign judgments & arbitral awards; Cyber-Security.

SECTION II

THE OFFER OF THE GOVERNMENT OF EQUATORIAL GUINEA TO HOST THE AUCIL

25. The Government of Equatorial Guinea requested the hosting of the AUCIL Organ. The Office of the Legal Counsel has forwarded the request to the Office of the Secretary General for onward transmission of the offer to Member States.
26. In line with the Criteria on Hosting AU Organs, adopted by the 7th Ordinary Session of the Executive Council and endorsed by the 5th Ordinary Session of the Assembly held in Sirte, Libya, on 1-2 and 4-5 July 2005, the AU Policy organs are requested to take a decision on this matter.

SECTION III

CHALLENGES

27. 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. To date, the AUCIL receives its Program budget only from the Euroean Union with no suppot from Member States.
28. There is also a challenge relating to the insufficient staff allocated to the Secretariat. The AUCIL secretariat currently has no Secretary nor permanent Staff members occupying the vacancies of the AUCIL. Resulttanly, the AUCIL has faced various challenges in the smooth running of the administrative work of 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 numerous other enagements, prre-occupying the same Staff Members. Additionnaly, the Acting Secretary of the AUCIL is no longer with the Commission leading to further gaps in the work. It was stated that the lack of a permanent secretariat dedicated to AUCIL is hindering the implementation of the decision made by the plenary regarding the expeditious publication.

SECTION IV

RECOMMENDATIONS

29. In conclusion, the following recommendations are made:
 - a) **AUCIL Secretariat:** Article 21 of the AUCIL Statute provides that the Commission shall provide the necessary means, staff, infrastructure to the AUCIL in order to enable it carry out its duties effectively. AUCIL is currently served by an interim Secretary and two (2) temporary Staff Members within the Office of the Legal Counsel, who are given parallel responsibilities. It is envisaged that the expansion of the Office of the Legal Counsel vide Assembly/AU/Dec.687(XXX) will take due consideration of the need to boost AUCIL's Secretariat. It was observed that the on-going Institutional reform, especially in regards to filling the permanent seats of the AUCIL will be an opportunity to resolve these issues.
 - b) **Additional resources for 2019:** It is to be noted that the AUCIL since its establishment has been receiving funding for its Programm budget from the European Union and only the operational budget (cost for sessions and travel) from Member States. Resultantly, the AUCIL's programmes, such as studies on International Law have suffered from the late release of European Union budgets and an oversee on its work only by a Partner. In order to create ownership of this organ amongst Member States and in line with the with the Union's objective to fully fund its programmes, it is proposed that the initial budget approval of the AUCIL be supplemented with allocation of a supplementary budget to cover the planned activities in the second half of 2019.

- c) **The implementation of the AUCIL's mandate:** In line with the AUCIL's mandate, the Assembly or the Executive Council or any organ may refer to the AUCIL a specific proposal for studies. In this regard, Member States and other bodies of the Union are encouraged to submit a request for studies on pending legal matters, which could benefit from the expertise of the AUCIL. The reform Unit is in particular requested to involve the AUCIL in its work.
 - d) **A standing Agenda item before the STC on Justice and Legal Affairs:** With the view to have a continuous dialogue on the development of International law and in order to address the shortcomings stated by Member States, namely, the lack of sufficient consultation, the AUCIL wishes to propose that the STC's on Justice and Legal Affairs have a standing agenda on progressive development, codification and dissemination of International. The AUCIL would appreciate being provided by States with information on their national legislation and practice, including judicial and executive practice and it is with this in mind that the AUCIL wishes to have a continued interaction with the STC on Justice and Legal Affairs.
30. In conclusion, the Executive Council is requested to endorse the following recommendations:
- i. 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 and the Process of reform, there is an urgent need to provide the AUCIL with an independent and permanent secretariat specially dedicated to the AUCIL and hierarchically depending of the Chairperson of the AUCIL so as to guarantee the advancement of the development of the activities of this organ. In this regard, provisions of the statutes of the AUCIL should be modified and amended.
 - ii. 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:
 - a. 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;
 - b. To commend the AUCIL for the several studies on international law so far finalised;
 - c. 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 with an independent and permanent Secretariat ;

- d. 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;
- e. 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.

**DRAFT DECISION ON THE ACTIVITY REPORT OF THE AFRICAN UNION
COMMISSION ON INTERNATIONAL LAW (AUCIL)
EX.CL/1130(XXXIV)**

The Executive Council,

1. **TAKES NOTE** of the Activity Report of the African Union Commission on International Law (AUCIL) for the period June to December 2018 together with the recommendations contained therein;
2. **RECOGNIZES** the importance of the legal opinions on various issues provided by AUCIL on 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 the several studies on international law so far finalised;
4. **RECALLS** Executive Council Decision EX.CL/Dec. 777(XXIII), which requests that the relevant Sub-committee of the PRC considers strengthening this Organ, including expanding the structure of its Secretariat in accordance with the Executive Council Decision EX.CL/Dec 720(XXI), as well as aligning the grades of the members of the Secretariats of other Organs of the African Union;
5. **EMPHASISES** on the need to implement the provisions of the Statute of the AUCIL requiring the Commission 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 with an independent and permanent Secretariat;
6. **COMMENDS** the theme of the 7th Edition of the Forum as: “The Management of Africa’s Natural Resources” in line with the objectives set under Agenda 2063 and request the AUCIL to disseminate the proceedings of the Forum to all Member States and other relevant bodies;
7. **REQUESTS** the Regional Economic Communities (REC’s) for their collaboration in strengthening the studies on the “Comparative study of the developed jurisprudence of regional integration among the eight (8) Regional Economic Communities (RECs) in Africa;
8. **ENCOURAGES** the AUCIL, within the limits of available resources, to bolster its activities in the development and codification of International Law with specific focus on African Union Law. In this regard, draft conventions should be initiated in areas with specific interest to the African Union;
9. **ALSO ENCOURAGES** Member States and other Organs of the Union to extend necessary support to the AUCIL in the preparation of its Studies by, *inter alia*, providing information AUCIL may need for this purpose on issues of International Law of interest to the African Union.

AFRICAN UNION UNION AFRICAINE

African Union Common Repository

<http://archives.au.int>

Organs

Council of Ministers & Executive Council Collection

2019-02-07

Activity Report of African Union Commission on International Law (AUCIL)

African Union

African Union

<https://archives.au.int/handle/123456789/10099>

Downloaded from African Union Common Repository