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**ACTIVITY REPORT OF THE AFRICAN UNION COMMISSION ON
INTERNATIONAL LAW (AUCIL)
(JULY 2011 - JUNE 2012)**

ACTIVITY REPORT OF THE AFRICAN UNION COMMISSION ON INTERNATIONAL LAW

I. INTRODUCTION

1. The Statute of the African Union Commission on International Law (hereinafter referred to as the AUCIL) was adopted by the 12th Ordinary Session of the Assembly of the African Union held in Addis Ababa, Ethiopia from 1-4 February 2009.

2. At the 13th Ordinary Session of the Assembly in Sirte, Libya in July 2009, the Assembly vide Decision Assembly/AU/Dec. 249 (XIII), appointed the eleven members (11) of AUCIL as elected by the 15th Ordinary session of the Executive Council. In addition, , five (5) of them were appointed for a three-year term and the remaining six (6) for a five-year term of office pursuant to the provisions of Article 12 of the Statute of the AUCIL. In accordance with Decision **EX.CL/Dec.579(XVII) adopted during the 17th Ordinary Session of the Executive Council in July 2010**, Council decided that the Members of AUCIL be authorized to effectively complete their mandate as from the date they commenced their work, i.e. May 2010.

3. Since the last reporting period, AUCIL could only convene one session due to inadequate budgetary provisions in its 2011 budget. However, following the approval of the 2012 budget by the Executive Council, AUCIL has been allocated slightly increased funds to undertake its activities and to convene two (2) ordinary sessions as stipulated in its Statute. It is to be noted that the funds allocated to AUCIL for its operational budget still remain insufficient to convene its two ordinary sessions in good conditions.

4. Further, since its establishment, AUCIL had not received any budgetary provisions for the funding of its various studies and programme activities. However, in the 2012 budget, AUCIL has been allocated some funds for carrying out some studies and some programme activities. However, other studies and programme activities did not receive any funding, and therefore those activities remain stalled.

II. BACKGROUND

5. In its previous Activity Report, the Executive Council was informed that Mr. Nkurunziza Donatien (Burundi) who was elected in July 2009 for a term of three (3) years ceased to exercise his functions as a Member of AUCIL following his resignation. Accordingly, by virtue of decision Assembly/AU/Dec.377 (XVII) adopted during the 17th Ordinary Session of the Assembly in June 2011 in Malabo, Equatorial Guinea, **Prof. Makenga Bonaventure Mpassi**, was appointed by the Heads of State and Government for a **one (1)-year term**, being the remainder of the term of Mr. Donatien who resigned.

6. The AUCIL also wishes to draw the attention of the Executive Council that **Mrs. Lillian Mahiri-Zaja (Kenya)** who was elected in July 2009 for a term of three (3) years has also resigned and has therefore ceased to exercise her functions as a Member of AUCIL.

7. The AUCIL wishes to draw the attention of the Executive Council that there is currently no women Member of AUCIL contrary to Article 3 of AUCIL that stipulates that *'the composition of the AUCIL shall reflect and respect.... equitable gender*

representation. *The Executive Council is invited to take note of this anomaly in electing a candidate to fill the vacancy during its next session in January 2013.*

8. Accordingly the current composition of AUCIL is as follows:

NO	NAME	COUNTRY	GENDER	TERM OF OFFICE
1.	Mr. Makenga B. Mpasí	DRC	Male	1 year from July 2011
2.	Mr. Rafaâ Ben ACHOUR	Tunisia	Male	3 years from July 2009 (now from May 2010)
3.	Mr. Kholisani SOLO	Botswana	Male	" " " " "
4.	Mr. Atanazio K. TEMBO	Malawi	Male	" " " " "
5.	Mr. Ebenezer APPREKU	Ghana	Male	5 years from July 2009 (now from May 2010)
6.	Mr. Minelik Alemu GETAHUN	Ethiopia	Male	" " " " "
7.	Mr. Filali KAMEL	Algeria	Male	" " " " "
8.	Mr. Adelardus KILANGI	Tanzania	Male	" " " " "
9.	Mr. Blaise TCHIKAYA	Congo	Male	" " " " "
10.	Mr. Cheikh Tidiane THIAM	Senegal	Male	" " " " "
11.	VACANT	N/A	N/A	

III. MANDATE

9. The mandate of the AUCIL falls under five (5) broad categories, namely the progressive development of international law, codification of international law, contribution to the objectives and principles of the Union, the revision of treaties, and encouraging the teaching, study and dissemination of international law.

IV. ACTIVITIES

10. The present Report covers the period July 2011 - June 2012. It is divided into two (2) sections. Section one (1) deals with the activities undertaken during the Fourth Ordinary Session while section two (2) contains the recommendations of the AUCIL.

SECTION I The Fourth Ordinary Session

11. The Fourth Ordinary Session of the African Union Commission on International Law (AUCIL) was held at the Headquarters of the African Union Commission in Addis Ababa, Ethiopia from 4 – 14 April 2012.

12. The Session was initially chaired by the outgoing Chairperson of AUCIL, Prof. Blaise Tchikaya who after welcoming Members to Addis briefed them on the inter-sessional activities in which the Bureau represented AUCIL in the following meetings:

- i) The 19th Ordinary Session of the Executive Council and the 17th Ordinary Session of the Assembly held in Malabo, Equatorial Guinea, from 23 to 28 June and from 30 June to 1 July 2011 respectively. AUCIL was represented by the Chairperson Prof. Blaise Tchikaya and one member Prof. Kamel Filali. The Chairperson presented to the Executive Council and the Summit the Activity Report of AUCIL for the period July 2010 to June 2011, and the work done so far by the Special Rapporteurs on the matters of international law identified by AUCIL. The two representatives of AUCIL also attended the election of the new member of AUCIL Prof. Makenga B. Mpasu (Democratic Republic of Congo);
- ii) Meeting of the PRC Sub-Committee on Administrative, Budgetary and Financial Matters on the consideration of the 2012 Budget submissions - October 2011, Addis Ababa, Ethiopia. AUCIL was represented by its Chairperson Prof. Blaise Tchikaya and one member Prof. Adelardus KILANGI. The two representatives of AUCIL prepared in collaboration with the Secretariat, the draft budget of the Commission for 2012 and defended before the above-mentioned PRC Sub-Committee;
- iii) University Symposium held in Toronto, Canada in August 2011 was attended by the Chairperson;
- iv) Recruitment of the Secretary of AUCIL: Interviews were conducted in September 2011. AUCIL was represented to the interviews by its Vice-chairperson, Judge Atanzio K. TEMBO and its Rapporteur General Mrs. Lillian Mahiri-Zaja;
- v) Conference on the Promotion of the African Court on Human and Peoples' Rights, 9 – 11 March 2011, Lilongwe, Malawi. AUCIL was represented by its Chairperson, Prof. Blaise Tchikaya. He made a presentation on AUCIL and the role of the latter in facilitating and developing the work of the Court;
- vi) The 20th Ordinary Session of the Executive Council and the 18th Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, from 23 to 27 January and from 29 to 30 January 2012 respectively. AUCIL was represented by its Chairperson, Prof. Blaise Tchikaya and its Vice-chairperson, Judge Atanzio K. TEMBO. The representatives of AUCIL had a number of meetings with representatives of other AU organs, AU member States, and partners in order to give more visibility to AUCIL and its activities. In the margins of the Summit, the Chairperson had a meeting with the Deputy-Prime Minister and Minister of Foreign Affairs of Georgia who expressed the wish of her country to establish cooperation with AUCIL.

13. One of the highlights of the session involved the election of a new bureau upon the expiry of the two (2) year mandate of the previous one. Accordingly, the following members were elected to the Bureau for a two (2) year term as follows:

- **Chairperson** - Prof. Adelardus Kilangi (TANZANIA);
- **Vice Chairperson** - Prof. Kamel Filali (ALGERIA); and
- **General Rapporteur** - Prof. Makenga B. Mpasi (DRC).

14. During the session, Members were informed of the resignation of the only WOMAN member, Mrs. Lillian Mahiri-Zaja and the appointment of a new member, Prof. Makenga B. Mpasi who incidentally was attending his first session.

15. During the session, the following issues were discussed:

- i) 2013 AUCIL Budget Proposals;
- ii) Decision of the Executive Council on the Harmonization of Remunerations for Elected Officials of the AU Organs;
- iii) The role of the Secretariat in the functioning of AUCIL;
- iv) The approved budget for 2012;
- v) Various studies that had stalled due to lack of funding and the need for supplementary budget for 2012;
- vi) Establishing a Forum of Experts of International Law and African Union Law and;
- vii) Initiatives by Prof. Camto and Judge Yusuf Abdulqawi for the rejuvenation of the African Society of International law and the African Foundation of International Law, respectively;
- viii) Proposal on establishing an AUCIL Yearbook of International Law;
- ix) Proposal on establishing an AUCIL Journal of International Law;
- x) Developing a training curriculum and training package on African Union law and regional integration law in Africa for teaching in African universities;
- xi) Running joint training programme between the AUCIL and the Codification Division of the UN Office for Legal Affairs on international law in Africa;
- xii) Update on the AUCIL Website and equipping it with data on international law materials;
- xiii) Modalities for conducting a visit to the United Nations International Law Commission in Geneva Switzerland;

- xiv) Modalities for conducting a visit to the Inter-American Commission on International Law in Rio de Janeiro, Brazil;
- xv) The AU budgeting process and financial accountability issues in AUCIL activities;
- xvi) Proposal from the International Committee of the Red Cross (ICRC) for collaboration with AUCIL on matters of international humanitarian law Proposal from the United Nations High Commissioner for Refugees (UNHCR) for collaboration with AUCIL on matters of refugees and internal displacement;
- xvii) Expression of interest from the Republic of Georgia for collaboration with the AUCIL;
- xviii) Expression of interest from the Institute of Security Studies based in South Africa for collaboration.

16. As part of its mandate on the conducting of studies on legal matters of interest to Union, the following Reports of Special Rapporteurs were discussed:

- i) Preliminary Report on issues of Piracy in Africa – Mrs. Lillian B. Mahiri-Zaja;
- ii) Report of the Special Rapporteur on the Study, Findings and Recommendations on the Harmonization of Ratification Procedures in AU – Prof. Rafâa Ben Achour;
- iii) Developments regarding the study on the application of the Principle of Universal Jurisdiction – Prof. Kamel Filali;
- iv) Preliminary report of the Special Rapporteur on the Revision of OAU/AU Treaties – Mr. Ebenezer Appreku;
- v) Second Preliminary Report on the “Research and Appropriate Studies on the Juridical Basis for Reparations for Slavery and other related matters Inflicted on the African Continent” – Prof. Blaise Tchikaya;
- vi) Presentation and consideration of the Study Report and draft Model Law on IDPs (Kampala) Convention) – Amb. Minelik Alemu Getahun;
- vii) Report on the ‘study and recommendations on “Teaching, Study and Dissemination of International Law and African Union Law’ – Justice Atanzio Kafaya Tembo;
- viii) Preliminary study on Working Methods, Competences, Future Programmes of Work, and Strengthening the Capacity of AUCIL – Justice Kholisani Solo;

- ix) Presentation of the Preliminary reflections on the Change of Power in Africa: Case of Mali, Prof. Makenga Mpasí.

17. The meeting adopted the following decisions:

- i) Approving the AUCIL budget proposal for 2013 with some slight changes;
- ii) The Secretariat to AUCIL, despite having responsibilities in the Office of the Legal Counsel of the AU, should be allowed to devote more time to the work of AUCIL;
- iii) For AUCIL studies that did not receive funding in the 2012 budget, attempts should be made to secure a supplementary budget. These are: Preliminary report of the Special Rapporteur on the Revision of OAU/AU Treaties; study, findings and recommendations on the harmonization of procedures for ratification of treaties in the African continent; study, findings and recommendations on delimitation and demarcation of boundaries in Africa; and, Study, findings and recommendations on working methods, competences, future programs of work and strengthening the capacities of the AUCIL;
- iv) The AUCIL Special Rapporteurs, whose preliminary reports were considered in the 4th Ordinary session and have secured funding in the 2012 budget, should proceed to detailed work. These are: Study, findings and recommendations on the crime of piracy in Africa; Study, findings and recommendations on promoting the teaching, study and dissemination of international law and African Union law in the African Continent;
- v) Prof. Kamel Filali was appointed to replace Mrs. Lillian Mahiri-Zaja as Special Rapporteur on the study on piracy;
- vi) AUCIL Studies whose preliminary reports were considered in the past Ordinary Sessions, but were stalled due to lack of funding, and which have now secured budgetary provision for 2012 should continue to detailed work. These are: Study, findings and recommendations on the immunity of state officials under the Rome Statute of the International Criminal Court (ICC), and Study, findings and recommendations on international environmental law in Africa;
- vii) One study should be worked on further and translated into the second working language of AUCIL and then proceed to consultation stage. This is: Study and drafting of Model Law on the Kampala Convention on IDPs in Africa;
- viii) The preliminary reflection on the Change of Power in Africa: Case of Mali should be further worked on with the view to develop it into a full-fledged AUCIL study;

- ix) To organize a Forum of Experts of International Law and African Union Law in Addis Ababa, Ethiopia, in October 2012;
- x) To develop training curriculum on African Union Law and Regional Integration Law in Africa;
- xi) The AUCIL to participate in initiatives by Prof. Camto and Judge Yusuf Abdulqawi relating to the rejuvenation of the African Society of International law and the African Foundation of International Law, respectively;
- xii) To launch the AUCIL Yearbook of International Law before December 2012;
- xiii) To launch the AUCIL Journal of International Law before December 2012;
- xiv) To establish four Working Groups namely, Working Group 1: AUCIL Forum of Experts of international Law, Working Group 2: Developing Training Curriculum on African Union Law and Regional Integration Law in Africa, Working Group 3: Publications, Working Group 4: AUCIL Database. It was agreed that every Working Group undertake the necessary activities relating to its mandate and report to the next Ordinary session scheduled for October 2012;
- xv) The joint training programme between the AUCIL and the Codification Division of the UN Office for Legal Affairs on international law in Africa to continue, but the training content should reflect more on international law in Africa, African Union Law and Regional Integration Law in Africa;
- xvi) Visits to the International Law Commission and to the Inter-American Commission of International Law should initially focus on institutional and capacity building;
- xvii) All proposals and expressions of interest for collaboration with the AUCIL by various institutions should be reciprocated, and the Chairperson should undertake necessary communications and discussions as appropriate;
- xviii) Holding the 5th ordinary Session of AUCIL in October 2012.

SECTION II
Recommendations

18. Following the deliberations and conclusions during the Fourth Ordinary Session, the AUCIL makes the following recommendations to the Executive Council:
- a) Take Note of the Activity Report of the African Union Commission on International Law (AUCIL) for the period July 2011 to June 2012;
 - b) Also note the election of a new Bureau composed of the Chairperson, Vice-Chairperson and General Rapporteur of AUCIL;
 - c) Recognise the necessity to improve the financial capacity and the support structure of AUCIL in order to allow it to fulfil its responsibilities in accordance with its Statute and objectives;
 - d) Request the AUCIL to enlarge its activities by undertaking studies in the development of international law in particular, African union law including identifying domains in the field of international law of interest to the African Union and subsequently conduct studies;
 - e) Encourage Member States and other AU organs as key players to engage more with the AUCIL in matters of international law, as the organ created specifically for the purpose of codification and development of international law in Africa.

2012

Activity report of the African Union commission on international law (AUCIL) (July 2011 - June 2012)

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