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EXECUTIVE COUNCIL

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**ACTIVITY REPORT OF THE AFRICAN UNION COMMISSION
ON INTERNATIONAL LAW (AUCIL)
(MAY 2013- June 2014)**

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EXECUTIVE SUMMARY

1. The activity report of the African Union Commission on International Law (AUCIL) outlines the activities of the Organ within the period of May 2013- June 2014. The Report is divided into two (3) sections. Section one (1) deals with the activities undertaken by AUCIL during the above mentioned period, Section two (2) contains the Challenges faced by AUCIL while Section three (3) enumerates recommendations of the AUCIL.
2. The AUCIL was created in 2009 as an independent advisory organ in accordance with article 5(2) of the AU Constitutive Act.
3. 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 1-4 February 2009. However, the AUCIL started work in April 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 the progressive development of international law, codification of international law, contribution to the objectives and principles of the African Union. these can be realized 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 to Article 21 of the Statute, the African Union Commission is supposed to provide the necessary means, staff and infrastructure to the AUCIL Secretariat to enable it carry out its duties effectively. Accordingly, the Secretariat of the AUCIL is within the Office of the Legal Counsel which is under the Office of the Bureau of the Chairperson of the Commission.

COMPOSITION OF AUCIL

6. Based on the election that was conducted in January 2013 in Addis Ababa Ethiopia, the following is the current list of members of the AUCIL:

- | | | |
|-------|------------------------------|--|
| i) | Rafâa BEN ACHOUR | (Tunisia) |
| ii) | Ebenezer APPREKU | (Ghana) |
| iii) | Kamel Filali | (Algeria) |
| iv) | Minelik ALEMU GETAHUN | (Ethiopia) |
| v) | Adelardus KILANGI | (Tanzania), |
| vi) | Daniel Makiese MWANAWANZAMBI | (Democratic
Republic of Congo),
Vice-chairperson |
| vii) | Boniface OBINA OKERE | (Nigeria) |
| viii) | Naceesay SALLA-WADDA | (Gambia) |
| ix) | Kholisan SOLO | (Botswana) |

- | | | |
|-----|----------------------|-----------|
| x) | Blaise TCHIKAYA | (Congo) |
| xi) | Cheikh Tidiane THIAM | (Senegal) |

The Bureau of AUCIL

7. The current Bureau of AUCIL is composed as follows:

- | | | |
|------|-------------------------------|--------------------|
| i) | Adelardus KILANGI | Chairperson |
| ii) | Daniel Makiesse MWANAWANZAMBI | Vice-Chairperson |
| iii) | Naceesay SALLA-WADDA | General Rapporteur |

SECTION I - ACTIVITIES OF AUCIL

SEVENTH Ordinary SESSION OF AUCIL

8. The AUCIL held its Seventh Session at the Headquarters of the African Union, in Addis Ababa, Ethiopia, from 28 October to 8 November 2013.

9. Central to the work of the AUCIL, the session considered and discussed the following studies:

- i) The study on Harmonization of ratification procedures in AU Member States;
- ii) The proposal by Tunisia on the Establishment of an “International Constitutional Court”;
- iii) The study On the Juridical Basis for reparations for reparations for slavery and other related matters inflicted on the African continent;
- iv) The study of the immunity of State officials under the Rome Statute of the ICC;
- v) The Draft Model Law for the domestication of the African Union Convention on Internally Displaced Persons (the Kampala Convention);
- vi) The study of International Environmental Law in Africa;
- vii) The study on working methods, competences, future programme of work and strengthening the capacity of AUCIL;
- viii) The study on the Legal aspects of Piracy in Africa.

10. AUCIL further considered and discussed on a wide range of legal and administrative issues concerning its work as follows:

- i) The draft AU Financial Rules and Regulations;
- ii) The AUCIL Publications;

- iii) Participation of the AUCIL in the Brainstorming on the International Criminal Court (ICC);
- iv) Proposals 2015 studies and activities.

11. The Session adopted the Study on Harmonization of Ratification Procedures in African Union Member States and cleared for the stage of consultations with members States, hence the need to prepare questionnaires.

12. The Session considered and approved the questionnaire to be used for consultation with AU member States in respect of preparation of a Model Law for consideration of the African Union Convention on Internally Displaced Persons (the Kampala Convention).

13. The Session decided on the theme of the 3rd Edition of the Forum as: "The Codification of International Law at Regional Level in Africa."

THE 2ND African Union Forum of Experts of International Law and African Union Law organized by the AUCIL

14. With a view to facilitating the fulfillment of AUCIL's mandate as well as attaining its objectives, the AUCIL organized the second African Union Forum of Experts of International Law and African Union Law with the theme "**Law of Integration in Africa**". The forum was organized at the Headquarters of the African Union, in Addis, Ethiopia from 11-12 November 2013.

15. The Forum which the AUCIL has agreed to make it annual event, was organized to serve as a platform for the continent of Africa to bring together international and the African Union legal scholars to discuss and interact on matters of interest to Africa through the prism of international law and African Union law with the view of raising awareness on the necessity of accelerating regional integration, enlighten African decision makers on legal implications of regional integration, present the steps already achieved towards the African integration, identifying ways to accelerate regional integration throughout the continent.

16. The Forum was addressed by both the Deputy Chairperson of the African Union Commission Mr. Erasmus Mwencha and the Chairperson of the African Union Commission, Dr. Dlamini Zuma, both of whom briefed it on some of the pertinent challenges facing the African continent that require the invocation of international law, including

- i) The strained relationship between the African Union and the International Criminal Court;
- ii) The need for African international legal scholars to think about the inequities in matters of trade and investment, and the need to use the mineral and other resources of Africa for the development of the continent.

17. In the Forum, the following themes were considered :

- i) Law of Regional Integration in the UMA;
- ii) Law of Regional Integration in the ECOWAS
- iii) Law of Integration in the CEN-SAD
- iv) Law of integration in the SADC
- v) Law of integration in the IGAD
- vi) Legal foundations of Regional Integration
- vii) The Role of the Treaties in Regional Integration

EIGHT ORDINARY SESSION OF AUCIL

18. The AUCIL held its Eight Ordinary Sessions at the Headquarters of the African Union, in Addis Ababa, Ethiopia, from 31 March to 11 April 2014.

19. During this Session, Election of the new Bureau of AUCIL was held resulting in the following:

- i) Re-election of Prof. Adelaradus Kilangi as the Chairperson;
- ii) Election of Prof. Daniel Makiesse Mwanawanzambi as Vice Chairperson;
- iii) Election of Justice Naceesay Salla Wada as General Rapporteur.

20. Regarding the core business of AUCIL, the session considered, discussed and made decisions on the following matters:

- i) In view of promoting the teaching ,study, research, and wider appreciation of international law in Africa, the AUCIL should broaden its publications to include the following:
 - The AUCIL Journal of International Law;
 - The AUCIL Yearbook;
 - The proceedings of the African Union Forum of Experts of International Law;
 - The African Digest of International Law.
- ii) For the study on the Juridical Basis for the reparations for slavery and other related matters inflicted on the African continent. The session agreed that the questionnaires be finalized so that the special Rapporteur can start the process of consultation with African Union members States;
- iii) For the work on preparing a Model Law for the Domestication of the African Union Convention on internally displaced persons (the Kampala Convention) the session directed by the General Rapporteur to take into consideration the comments from consultation with African Union member States and other organizations and ready the document for transmitting to Executive Council, through the AUCIL Bureau;
- iv) For the study on International Environmental Law in Africa, the Session decided that the Special Rapporteur should continue with the study

taking into consideration the comments made by members upon presentation of draft report;

- v) On the proposal from the Republic of Tunisia, the session agreed to prepare a legal opinion on the matter above, whereby the Bureau should work together with members of the Working Group for this matter to reach consensus. When the work is completed, a draft decision will be prepared to accompany the document to the policy organs.

21. Regarding administrative and other matters of AUCIL, the Session considered, discussed and made decisions on the following matters:

- i) To respond to the Note Verbale from the Republic of Tunisia which had requested AUCIL to hold its 8th Ordinary Session in Tunis Tunisia, expressing its regret and apology as the invitation came at a time when preparations for holding the same in Addis Ababa has advanced such that it would be difficult to change, but further indicate its acceptance for the two of its members to attend the International Seminar to be held in the same country;
- ii) To assign AUCIL representatives to various missions, namely: the International Law Commission in Geneva; the Inter-American Judicial Committee in Rio de Janeiro; and the International Law week in New York;
- iii) To assign the study on Comparative Mineral and Petroleum Law in Africa to Special Rapporteur Daniel Makiesse Mwanawanzambi and Boniface Obina Okere;
- iv) To discuss and approve the draft AUCIL budget for 2015;
- v) To discuss new project initiative on the area of mineral and petroleum law in Africa at a later date, but taking into consideration the importance of the matter;
- vi) To send a request to the policy organs of the African Union for strengthening the Secretariat of AUCIL.

INTER- SESSIONAL ACTIVITIES OF THE AUCIL

22. This period between the 6th and 7th Ordinary Sessions, and the 7th and 8th ordinary sessions.

23. During the reporting period the AUCIL conducted a global outreach and performed the following Inter-Session activities:

- i) Participation the 50th Anniversary celebrations of the OAU/AU in May 2013;

- ii) Attendance of the Workshop on International Humanitarian Law (IHL) organized by the International Committee of the Red Cross (ICRC), in June 2013 in Pretoria, South Africa and participating in the training;
- iii) Visit and interactions with the International Law Commission in Geneva, Switzerland in July 2013;
- iv) Visit and interactions with the Inter-American Juridical Committee in Rio de Janeiro, Brazil in August 2013;
- v) Research missions were undertaken to the RECs on the “Comparative study of the developed jurisprudence of regional integration among the eight (8) Regional Economic Communities (RECs) in Africa (ECOWAS, EAC, COMESA, SADC, CEN-SAD, ECCAS, IGAD, and UMA)”
- vi) Study on methods of Work;
- vii) Attendance of the Workshop on International Humanitarian Law (IHL) organized by the International Committee of the Red Cross (ICRC), in Abuja , in November 2013;
- viii) Participation on the brainstorming exercise on Africa and the International Criminal Court organised by the African Union Commission in collaboration with the AUCIL in December 2013;
- ix) Participation in the African Union Summit in January 2014;
- x) Research on OAU/AU Treaties to be reviewed;
- xi) Participation in the Regional Training Course on International Law for Africa in collaboration with the Codification Division of the Office of Legal Affairs of the United Nations in April 2013;
- xii) Presentation of AUCIL budget for 2015 before the PRC Advisory Subcommittee on administrative, budgetary and financial matters in Dar es Salam in May 2014;
- xiii) Preparing legal opinion of AUCIL as per request by the African Court on Human and People’s Right on wheter or not the **African Committee of experts on the Rights and Welfare of Child** has the locus standi to request advisory opinion from or submit cases or disputes to the African Court on Human and People Rights;
- xiv) Preparing legal opinion of AUCIL as per request by the African Court on Human Peoples’ Rights on whether or not systemic and widespread extreme poverty breaches certain provisions of the African Charter, following an application from Socio-economic Rights and Accountability project;

- xv) Translating the 1st issue of the AUCIL Journal of International Law (a Journal of International Law of the African Union Commission on International Law) into other languages of the African Union;
- xvi) Publishing the 2nd and 3rd issues of the AUCIL Journal of International Law (a Journal of International Law of the African Union Commission on International Law);
- xvii) Publishing the proceedings of the 2nd African Union Forum of Experts of International Law and African Union Law.

SECTION II- OBSERVATIONS AND CHALLENGES AFTER 4 YEARS OF OPERATION AUCIL

Budgetary and Administrative

24. 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 and 2014, the funds allocated to AUCIL for the implementation of its programme activities remain under the minimum required level. Hence, the various studies that the AUCIL is doing are moving at a very slow pace because of extremely low funding or complete lack of funding. these studies include:

- i) Study on the principle of intangibility of borders in Africa (delimitation and demarcation of boundaries in Africa) ;
- ii) Study on the system for revision of the OAU/AU Treaties;
- iii) study on the immunity of State officials under the Rome Statute of the International Criminal Court (ICC);
- iv) Study on the Juridical basis for reparations for slavery and other related matters inflicted on the African continent;
- v) Study on International Environmental Law in Africa;
- vi) Study on the Crime of piracy in Africa;
- vii) Study on ways of promoting the Teaching, Study and Dissemination of International Law and African Union Law in the African Continent;
- viii) Study on the proposal by the Republic of Tunisia for establishment of an International Constitutional Court.

25. There is also a challenge that, while in the African Union financial system budgets are approved about one year before, the AUCIL is assigned things to do which have budget implications, but after budgets have been approved. Therefore, in such situations it lacks budget to effectively undertake such activities.

26. There is a challenge relating to the secretariat that while it is supposed to assist the AUCIL mainly in administrative and research functions, the same secretariat is also part 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 it of the time to effectively serve the AUCIL, and on the other side it lacks the research capacity needed to effectively assist in the various studies being conducted by the AUCIL.

27. The Executive Council will recall its various requests to strengthen AUCIL Secretariat and improve financial situation of the AUCIL. The relevant decision reads as follows:

Decision EX.CL/Dec. 579(XVII), 17th Ordinary Session, Kampala, Uganda

“REFERS the proposals on the allowances for the Members of AUCIL and other financial matters as well as matters of an administrative nature, in particular the staffing situation at the Secretariat, to the Permanent Representatives’ Committee through its relevant Sub-Committees;

Decision EX.CL/Dec.720(XXI), 21th Ordinary Session, Addis Ababa, Ethiopia

“RECOGNIZES the need to reinforce the operational capacity of the AUCIL in terms of adequate financial resources and support structures and DECIDES that they should be given due consideration by the relevant Sub-Committees of the PRC”

Decision EX.CL/Dec. 777, 23rd Ordinary Session, Addis Ababa, Ethiopia

“RECALLS Executive Council Decision EX.CL/Dec.720(XXI), which recognized the need to reinforce the operational capacity of the AUCIL in terms of adequate financial resources and support structures and decided that they should be given due consideration by the relevant Sub-Committees of the PRC”

“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 aligning the grades of the members of the Secretariats of other Organs of the African Union”

28. 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, there is an urgent need to provide the AUCIL with a Secretariat so as to guarantee the advancement of the development of the activities of this organ.

SECTION III - RECOMMENDATIONS OF THE AUCIL

29. In order to enhance the work and activities of AUCIL on codification and progressive development of international law in accordance with its Statute, including its cooperation with other international organizations in particular the United Nations, AUCIL exhorts the Executive Council to endorse the following recommendations:

- i) To Emphasize the importance of the various legal studies on various issues carried out by AUCIL at the request of the Policy Organs of the Union and its member States, those initiated by itself because they are about matters of interest to the African Union and its member States that require the analysis and articulation of International Law;
- ii) To take note of the provisions of Article 21 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.
- iii) To recall Executive Council Decision EX.CL/Dec. 777(XXIII), which requests that the relevant Sub-committee of the PRC to ensure that the AUCIL has a viable secretariat which is capable of supporting this organ in its various activities in its central mandate in accordance with the Executive Council Decision EX.CL/Dec 720(XXI)
- iv) To request the relevant Sub-committee of the PRC to consider the proposal to provide the AUCIL with its viable structure of the Secretariat and report to policy organs in June/July 2015;
- v) To Request the African Group in New York through the Commission and also calls upon all United Nations Member States to strongly support provide programme budget for the *United Nations Programme of Assistance in the Teaching, Research, dissemination and wider Appreciation of International Law*, in particular the organization of the *United Nations Regional Course in International Law for Africa* and other similar programmes including the United Nations Audiovisual Library of International Law, as contained in resolutions 66/97, 67/91 and 68/110;
- vi) To encourage 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;
- vii) 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.

2014

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