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EXECUTIVE COUNCIL

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

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ON INTERNATIONAL LAW (AUCIL)
(July 2014- June 2015)**

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 July 2014- June 2015. 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. 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 on the 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 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.

4. 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

5. Based on the election conducted during the 26th Ordinary Session of the Executive Council held from 23 to 27 January 2015 in Addis Ababa, Ethiopia, the following is the current list of members of the AUCIL:

- | | | |
|-------|----------------------------------|-----------------------------------|
| i) | Mr. Ebenezer APPREKU | (Ghana) |
| ii) | Mr. Mohamed BARAKAT | (Egypt) |
| iii) | Mr. Sebastião Da Silva ISATA | (Angola) |
| iv) | Mrs. Hajer Gueldich | (Tunisia) |
| v) | Mr. Abdi Ismael HERSI | (Djibouti) |
| vi) | Mrs. Juliet Semambo KALEMA | (Uganda) |
| vii) | Mr. Daniel Makiese MWANAWANZAMBI | (Democratic
Republic of Congo) |
| viii) | Mr. Boniface OBINA OKERE | (Nigeria) |
| ix) | Mrs. Naceesay SALLA-WADDA | (Gambia) |
| x) | Mr. Kholisan SOLO | (Botswana) |

xi) Cheikh Tidiane THIAM (Senegal)

The Bureau of AUCIL

6. Following the non-reelection of the Chairperson of AUCIL, Mr. Adelarudus KILANGI for a second term in January 2015 Summit, the AUCIL at its 10th Ordinary Session held in Addis Ababa, Ethiopia from 13 to 24 April 2015, decided to appoint the Vice-chairperson, Prof. Daniel Makiesse MWANAWANZAMBI as Acting chairperson until the 11th Ordinary Session to be held in October 2015 where election of the Bureau will be organised. Therefore, the current Bureau of AUCIL is composed as follows:

- i) Prof. Daniel Makiesse MWANAWANZAMBI Acting Chairperson
- ii) Justice Naceesay SALLA-WADDA General Rapporteur

SECTION I - ACTIVITIES OF AUCIL

I. Ninth Ordinary Session of AUCIL

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

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

1) Ongoing Studies on the Agenda of AUCIL:

- i) Report on the Study and Draft Model Law on AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (The Kampala Convention);
- ii) Progress Report on the Study on International Environmental Law in Africa;
- iii) Report on the Study on the Juridical basis for reparations for slavery and other related matters inflicted on the African continent;
- iv) Study, Findings and Recommendations on the Revision of OAU/AU Treaties;
- v) Study on Piracy in Africa;
- vi) Study of Comparative Jurisprudence of the 8 Regional Economic Communities in Africa;
- vii) Study on Delimitation and Demarcation of Borders in Africa and Study on the principle of intangibility of Borders in Africa;
- viii) Study on Immunity of State officials under the ICC Statute;

- ix) Development of Training Curriculum and Training Package on Regional Integration and African Union Law;
- x) The African Digest of States practice in International Law.

9. The AUCIL decided to adopt the Report on the Study and Draft Model Law on the AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (The Kampala Convention) for submission to the Policy Organs in January 2016 for consideration and decision. Also, AUCIL decided to continue work on the other studies.

10. The Draft AU Model Law on the Kampala Convention is divided into 14 Chapters and 63 articles. The draft articles are organized to follow the structure of the Kampala Convention covering all aspects of internal displacement: prevention, protection, assistance and durable solution. It also contains provisions for compensation, remedy and penal provisions to prevent arbitrary internal displacement and prosecution of criminal acts against IDPs.

11. The Model Law will help expedite State Parties' implementation of their obligation to "Incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law." It will also assist in the implementation of the Convention as a framework for regional and international cooperation with respect to which the African Union is expected to play a more proactive role in its implementation

2) Other legal and administrative issues:

12. The AUCIL considered other legal and administrative issues mainly:

- i) The AUCIL draft Rules of Procedure;
- ii) The AUCIL Publications: AUCIL Yearbook, AUCIL Journal, and proceedings of the AUCIL Forum on International Law and African Union Law;
- iii) Rationalization of the working methods in order to implement AUCiL activities in conformity with the AU administrative and financial rules and regulations;
- iv) Popularization of AUCIL through exchange with universities and centers of research in international law;
- v) Exchange with the Legal Counsel of the African Union: the OLC and AUCIL decided to establish an annual retreat to discuss the means to improve cooperation and working methods between them on AU legal affairs.

3) Cooperation with similar international bodies working on international law:

i) *AUCIL participation to the 66th Session of the United Nations International Law Commission (UNILC), July 2014:*

The AUCIL delegation made a presentation on AUCIL studies and activities. The UNILC appreciated AUCIL work and showed a special interest in the AUCIL initiative to develop a Digest on AU member States practice in international law. The UNILC also proposed that Special rapporteurs of the two institutions should collaborate when working on similar fields of international law.

ii) *AUCIL participation to 85th Regular Session of the Inter-American Juridical Committee, August 2014:*

The AUCIL delegation made a presentation on AUCIL studies and activities. The two sides agreed to enhance collaboration mainly by exchanging studies in international law developed by the two bodies, publications, and participation in meetings organized by both of them.

iii) *Participation of AUCIL in the International Law Week and the 69th Session of the 6th Committee of the United Nations on legal Affairs, November 2014:*

The AUCIL delegation attended the above two meetings and focused on the consideration of the Report of the 66th Session of UNILC. In that regard, the AUCIL delegation provided to some delegations of the AU member States in UN technical support and advice on legal matters in the said report considered by the 6th UN Committee. As an AU organ and continental body working on international law, AUCIL should be more involved in contributing to the development of international law through, inter alia, the UN 6th Committee and, particularly, by providing advice and support to AU member States on legal matters dealt with at the United Nations.

II. THE 3rd African Union Forum of International Law and African Union Law organized by the AUCIL

13. With a view to facilitating the fulfillment of AUCIL's mandate as well as attaining its objectives, the AUCIL organized the 3rd African Union Forum of Experts of International Law and African Union Law with the theme "**Codification of International Law at the Regional Level in Africa**". The forum was organized at the Headquarters of the African Union, in Addis, Ethiopia from 11-12 December 2014.

14. While the previous Forum of the AUCIL dealt with the African Regional Economic Communities (RECs), under the theme of "Law of Regional Integration in Africa", this 3rd AUCIL Forum had as main objective to contribute to and shape the development of international law by considering further codification of the international law of Africa in fields where there has already been extensive State practice, precedent and doctrine in the African continent.

15. The Forum was attended mainly by scholars, representatives of member States as well as representatives of international organizations such as the European Union, the Commonwealth, the Francophonie and the Asian-African Legal Consultative Organization (AALCO).

16. The Forum considered the following topics:

- i) The Codification of International Law in Africa: Context, Methods and Challenges;
- ii) Relation of the Law of the AU and the Law of the RECs;
- iii) Codification of International law at the African Union: New fragmentation or continuity;
- iv) Codification in the Field of Transitional Justice;
- v) The experience of the Commonwealth on the codification and progressive development of international law;
- vi) Contribution of the Asian-African Legal Consultative Organization to the Codification and Progressive Development of International Law;
- vii) Vision of the United Nations on Codification and progressive development of international law at the regional level.

17. The findings of the 3rd AUCIL Forum will be published as a contribution from this AU organ to the dissemination of international law.

III. United Nations Regional Course in International Law (UNRCIL), Addis Ababa, Ethiopia, 2 to 27 February 2015:

18. In collaboration with the AUCIL, the Codification Division of the United Nations (UN) Office of Legal Affairs organized for the fifth consecutive year the UNRCIL in Addis Ababa, Ethiopia, from 2 to 27 February 2015. The UNRCIL is high quality international law training with lectures by leading international law scholars and practitioners from different countries and legal systems for the benefit of men and women lawyers throughout Africa who have limited opportunities to receive such training. The UNRCIL accommodated Thirty-one (31) participants from twenty-three (23) AU member States. When selecting the participants, due consideration was given to the candidates' qualifications, the relevance of the training to their professional duties and the need for gender balance. They are from ministries of foreign affairs, ministries of justice, the African Union, permanent missions to the United Nations, permanent missions to the African Union and universities.

19. Although the AUCIL and the Office of the Legal Counsel of the African Union are providing a financial support to the UNRCIL, the organisation of this course on a yearly basis is facing serious financial challenges. The Codification Division of the UN Office of Legal Affairs is confronting difficulties to secure sufficient funds from the UN

programme budget to organize each year this course dedicated to Africa. Therefore, a political support from the African Union through the African Group in New York will help in mobilizing UN member States at the level of the UN General Assembly in regarding its successive requests to the Secretary General to provide to the programme budget the resources necessary to ensure the continued effectiveness and further development of the Programme of Assistance, in particular the organization of the UNRCIL for Africa and other similar UN Regional Courses each year.

IV. TENTH ORDINARY SESSION OF AUCIL

20. The AUCIL held its Tenth Ordinary Session at the Headquarters of the African Union, in Addis Ababa, Ethiopia, from 13 to 24 April 2014.

21. The Chairperson of AUCIL, Mr. Adelaradus Kilangi was not reelected for a second term during the January 2015 Summit. He did not attend the 10th Ordinary Session but sent his resignation from the position of AUCIL Chairperson. The AUCIL decided by consensus as follows:

- The Vice-chairperson, Daniel Makiesse MWANAWANZAMBI is appointed Acting Chairperson until the 11th Ordinary Session to be held in October 2015;
- Elections should be organized at the 11th Ordinary Session to elect a Chairperson for the remaining time of the outgoing Chairperson term.

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

- i) **Report on the Study on the Juridical basis for reparations for slavery and other related matters inflicted on the African continent:**
The Study is divided into six (06) sections: The "rhetoric" of disapproval and rejection of slavery; The General obstacles posed by the international law of responsibility; The share of "nulleum crimen, nulla poene sine lege" – no crime without law, no punishment without law; The prescriptive power of time on reparations; The Figures for the reparations; National updates on the juridical regime of transatlantic slavery.

The Study recommends to the Assembly of the Union to adopt a resolution that emphasizes the need for a firm commitment on the part of the 54 Member States. The Conference should support the universal principle according to which any damage presupposes reparation, and in consequence, should accede to reparation for the misdeeds arising from crime against humanity, namely, the enslavement of Africans. AUCIL proposes that a world conference on reparations for the harms inflicted by the transatlantic slavery and its consequences should be organized in 2016. A Special African Union Administrator for African history, slave trade and reparations should be appointed for administrative coverage of

these new commitments and the great periods in the history of African societies.

The AUCIL decided to adopt the Report on the Study on the Juridical basis for reparations for slavery and other related matters inflicted on the African continent for submission to the Policy Organs in January 2016 for consideration and decision.

ii) Consideration of the proposal by Tunisia on the Establishment of an “International Constitutional Court”:

The Decision Assembly/AU/Dec.458(XX) adopted by the 20th Ordinary Session of the Assembly of Heads of State and Government held in Addis Ababa, Ethiopia from 27 to 28 January 2013, tasked the AUCIL to examine the proposal by Tunisia on the establishment of an International Constitutional Court and make recommendations to the Assembly.

The AUCIL examined that proposal during several sessions, adopted an opinion on this matter and made the following recommendations to the Assembly:

- a) Expresses its deep appreciation to the Republic of Tunisia for the Proposal on the establishment of an international Constitutional Court,
- b) Mindful of the fact that there must be the justification to establish such a court and Noting that at the International level there has not been any agreement to establish such a court,
- c) Reiterates its recognition of the importance of the establishment of an International Constitutional Court as an advisory and jurisdictional body responsible for ensuring respect and promotion of democratic principles, human rights and the rules of law. However, what is more essential needed is the mainstreaming of the current efforts which have been mentioned above and are already on the African continent,
- d) Requests that Member States needed to carry out consultation at the national level on the Tunisian proposal,
- e) Requests Member States, RECs AU Organs such the African Court and of the Union, through their respective participatory consultations with the widest involvement of the African peoples,
- f) Mindful of the fact that the current difficulties being experienced with the International Criminal Court is a good reason to show that such a court of an international jurisdiction is not yet so accepted. That

this is more so that since Africa in reality has been sensitive to the issue of its state sovereignty, the perception of an international constitutional court will in reality pose more challenges given that in reality today the greater number of states and people brought before these international tribunals are largely African leaders and Africans,

- g) Noting that the establishment of an International Constitutional Court was not immediately feasible as being too radical or revolutionary, the Assembly may consider the alternative of enlarging the jurisdiction of the already existing Africa Court of Justice to entertain matters of electoral fraud malpractices or unconstitutional changes of government. To achieve this, it would merely suffice to vest the African Court with competence to entertain question of breaches of the rights of the people to democratic governance. By this gradual process and success at the African regional level, the confidence of member states would have been secured and their sensitivity over invasion of their sovereignty assuaged. Success at the international level would give the AU the moral standing to advocate the adoption of a constitutional court later at the international level,
- h) Request the African Union Commission to monitor and report on such consultations and present a progress report to the Assembly of Heads of State and Governments,
- i) Decided that the African Regional Systems for the respect for human rights and rejection and condemnation of unconstitutional changes of Governments be further strengthened and the inclusion in the jurisdiction of the African Court with the competence with regard to the crime of unconstitutional change of Government be expedited,
- j) Advises that it is up to the Assembly of Heads of States to decide, but that there are certainly challenges and difficulties to be addressed in the setting up of such a court,
- k) Reiterates that AUCIL is not unmindful of the difficulties of achieving this objective, but remains ready for further consultations on the subject.

The full report of AUCIL on this matter will be included in its Second Yearbook.

iii) Consideration and Adoption of the Concept Note for The Digest of African States Practice in International Law:

In the framework of its mandate related to the codification and progressive development of international law, the AUCIL decided to develop a Digest of African States practice in international law. The Digest of African States Practice in International Law will assist the African Union and its member States, inter alia, in contributing more effectively in developing the international law, advancing the views of Africa on issues of international law at the universal level, particularly in the fields where a common understanding is not yet reached and enhancing scientific research in international law by Africans and others.

The AUCIL adopted a Concept Note on that project. The Digest will contain the following documents relevant to any topic in international law of particular interest and concern to African States including:

- a) National statements and positions of Governments of African States related to international law,
- b) Jurisprudence or decisions of national courts and tribunals,
- c) Jurisprudence or decisions of regional courts and tribunals established by the African Union or regional organizations or the regional economic communities in Africa (RECs),
- d) Judicial decisions of international courts involving or concerning African States and the reaction of African states to such decisions,
- e) Statements by Governments of Member States of the African Union, at the United Nations and other international organizations,
- f) Resolutions and declarations adopted by African countries.

The AUCIL Secretariat has circulated a Note Verbale to the Ministries of Foreign Affairs of all AU member States inviting them to submit copy of any documents on the six (6) abovementioned areas latest by 31 July 2015. The same request was also addressed to all AU Organs.

iv) Consideration and adoption of the Study Report on the Revision of OAU/AU Treaties:

The Study is divided into seven (7) sections: History of the establishment of the AUCIL; Mandate for the choice of the topic '*revision of OAU/AU Treaties*' for the special rapporteur; Concept of revision/review/amendments; Need for review of OAU/AU Treaties- south Africa's initiative of 2000; Recent AU experts recommendations endorsed by the Executive Council made to member States for the review of OAU/AU Treaties; List of OAU/AU Treaties already revised based on decision of Executive Council of 2004 endorsing recommendations of

Experts meeting; New or recent treaties adopted by Policy organs of the African Union in May 2014.

The Study recommends to the Assembly the following:

- The need for a Legally-binding Instrument to Regulate the Activities of Private Military and Security Companies on the Continent,
- The need to adopt a Comprehensive African Union Covenant on the Rule of Law, Constitutional Democracy and Governance,
- The Need for Revision of the African Charter on the Rights and Welfare of the Child,
- The Need for a Convention on Migration to address regular and irregular migration, human trafficking, Xenophobia and Intolerance,
- The need to amend the African Charter on Democracy, Elections and Governance or the Court of Justice.

The AUCIL decided to adopt the Report on the Study Report on the Revision of OAU/AU Treaties for submission to the Policy Organs in January 2016 for consideration and decision.

- v) **Consideration and adoption of the AUCIL Rules of Procedure:**
The AUCIL concluded its debate on the draft Rules of Procedure and decided to adopt them for submission to the Specialised Technical Committee on Legal Affairs for consideration. Afterward they will be submitted to the Policy Organs in January 2016 for final decision.
- vi) **The 4th Forum of the African Union on International Law and African Union Law:**
The AUCIL adopted the theme: “The challenges of Ratification and Implementation of Treaties in Africa” for the 4th Edition of its Forum to be held back to back to its 11th Ordinary Session to be held in October 2015.
- vii) **On-going Studies under 2013 and 2014 budgets:**
The AUCIL considered the ongoing studies which were not finalized and decided that reports on those Studies should be submitted to the 11th Ordinary Session.
- viii) **Retreat between the Office of the Legal counsel (OLC) and AUCIL:**
The AUCIL has structural and functions relations with OLC. Both of them intervene in the field of legal affairs of the African Union and the AUCIL Secretariat is part of OLC’s Structure. The main objective of the retreat is to explore ways to improve cooperation and working methods between the OLC and AUCIL for the benefit of AU in the field of legal affairs. The AUCIL decided that:

- the retreat be convened in the margins of the 11th Ordinary Session and the 4th Forum of AUCIL and be held in Cairo, Egypt in the framework of the allocated budget,
- the Agenda should include strengthening of the Secretariat capacity,
- informing AUCIL periodically on the on-going legal issues in AU
- improving the working methods between OLC and AUCIL.

ix) Date and Venue of the 11th Ordinary Session:

Having in mind the need for the popularization of AUCIL through, inter alia, holding when possible and the framework of the allocated budget its sessions and Forum in different AU member States, the AUCIL decided to hold its 11th ordinary Session and the 4th edition of the Forum in Cairo, Egypt as follows:

- 11th ordinary Session: from 5 to 16 October 2015,
- 1st Retreat OLC/AUCIL: 10 October 2015, and
- 4th Edition of the Forum: 19 and 20 October 2015.

x) Emoluments and working conditions of the AUCIL members:

The AUCIL considered the issue of emoluments and expressed concern on the long-time taken by the African Union Commission to settle this matter, particularly, after the Ad Hoc Committee established to work on the harmonization of all AU Organs' emoluments has finalised its report. The AUCIL exhorts the Policy Organs to make a decision on this matter in order to provide all AU Organs with the appropriate working conditions for the implementation of their functions.

SECTION II- Challenges faced by AUCIL:

23. 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 and 2015, the funds allocated to AUCIL for the implementation of its programme activities remain under the minimum required level.

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

25. There is a challenge relating to the insufficient number of staff allocated the Secretariat. 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 handle the daily

administrative assignments and undertake research activities needed to effectively assist in the various studies being conducted by the AUCIL.

26. 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.

SECTION III - RECOMMENDATIONS OF THE AUCIL

27. 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 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 finalized;
- iii) To call the Ministries of Foreign Affairs of all AU member States to respond to the communication sent to them by AUCIL in order to submit copy of the documents necessary for the preparation of the **“Digest of African States Practice in International Law”** latest by 31 July 2015;
- iv) To commend the theme of the 4th Edition of the Forum of the African Union on International Law and African Union Law as: **“The challenges of Ratification and Implementation of Treaties in Africa”**, and call upon all member States to be duly represented at this important event organized by AUCIL in October 2015;
- v) Once again requests the African Group in New York through the Commission and also calls upon all United Nations Member States to strongly support the successive requests by the United Nations General Assembly to the Secretary-General to provide to the programme budget for the biennium 2016-2017 and future bienniums the resources necessary to ensure the continued effectiveness and further development of the Programme of Assistance, in particular the organization of the United Nations Regional Course in International Law for Africa and other similar United Nations Regional Courses each year, and for the continuation and further development of the United Nations Audio-visual Library of International Law, as contained in Resolutions 66/97, 67/91, 68/110 and 69/117;

- vi) To take note 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;
- vii) 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;
- viii) 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.

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