

AFRICAN UNION

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**THE MANDATORY APPLICATION OF THE PRINCIPLE OF
GEOGRAPHICAL REPRESENTATION IN ALL AFRICAN UNION
ORGANS WHICH HAVE ELECTED MEMBERS**
(Item Proposed by the Republic of Chad)

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Introduction

1. Chad, like many other Member States of the African Union, has observed that the principle of geographical representation enshrined in the Constitutive Act of the African Union as one of the cardinal principles underpinning the African Union, is not mandatorily and systematically applied in the composition of certain organs.

2. The need for the participation of all Member States, regions and components of Africa in the creation of a common vision of a united and strong Continent, in order to strengthen solidarity and unity among the peoples of Africa, is spelt out in the first paragraph of the Preamble of the Constitutive Act of the African Union. Furthermore, in the same Preamble, the importance of taking all necessary measures to strengthen **common** institutions and provide them with the necessary powers and resources to enable them to discharge their respective mandates effectively is underscored. In addition, Article 3, paragraph a) of the Constitutive Act lists, among other objectives, the achievement of greater **unity and solidarity between the African countries and the peoples of Africa**.

3. The participation of all States in the creation of a common vision of a united and strong Continent, the strengthening of common institutions and the achievement of greater unity and solidarity between States cannot be accomplished without the mandatory application of the principle of geographical representation of all regions of Africa in the organs and institutions of the African Union. The mandatory application of this principle is justified on the legal as well as political level: in addition to the relevant provisions mentioned above, Article 4, paragraphs a) and c) of the Constitutive Act, stipulates that the Union shall function, in accordance, *inter alia*, with the principles of “sovereign equality and interdependence among Member States of the Union”; and the “participation of the African peoples in the activities of the Union”. These two principles eloquently establish the absolute need for the involvement and effective participation of all Member States in the activities of the Union on an equal basis. Consequently, the principle of their geographical representation at all levels and in all the organs and institutions is essential from every perspective.

4. Against this background, the principle of geographical representation is applied in the composition of virtually all AU organs and institutions, with the exception of a few which will be considered below.

I. Examples of organs and institutions in which the principle of geographical representation is strictly respected. The following, among others, can be mentioned:

- the Bureau of the Assembly which is made up of five members on the basis of one representative per region (Rule 15, paragraph 1 of the Rules of Procedure of the Assembly);
- the Bureau of the Executive Council which is composed of five members on the basis of one member per region (Rule 16 of the Rules of Procedure of the Executive Council);
- the AU Commission, composed on the basis of two representatives per region (Article 6, paragraphs 2, 13 and 14 of the Statutes of the African Union Commission);
- the Bureau of the Permanent Representatives' Committee (PRC); Rule 11 of the Rules of Procedure of the Permanent Representatives Committee;
- the composition of the Pan-African Parliament, made up of five representatives per State (Article 14 of the Protocol Establishing the Pan-African Parliament);
- the Peace and Security Council (Article 5, paragraph 2 of the Protocol relating to the establishment of the Peace and Security Council of the African Union).

II. Non-application of the principle of geographical representation in some organs

5. Despite the clear provisions mentioned above, there are exceptions to the application of the principle of geographical representation in the composition of certain organs, as shown in the different decisions of the Assembly attached hereto. This is the case, *inter alia*, in the following organs, the list of which is not exhaustive:

- **The African Court on Human and Peoples' Rights**

6. Since inception, the different compositions of this Court, reveal that due to the lack of application of the principle of geographical representation, some regions are either completely absent or under-represented compared to others. The pretext put

forward for such an imbalance is that the judges are elected in an individual capacity (Article 11, paragraph 1)¹, and this without taking into consideration Article 14, paragraph 2 of the Charter which stipulates that “The Assembly shall ensure that in the Court as a whole there is representation of the main regions of Africa and of their principal legal traditions”.

7. Most fortunately, the Protocol to the Statute of the African Court of Justice and Human Rights (composed of 16 members), adopted in Sharm El Sheikh in July 2008, attempts, should it enter into force, to correct this imbalance. Thus, in its Article 3, paragraph 3, it specifies that “each geographical region of the Continent, as determined by the Decisions of the Assembly shall, where possible, be represented by three (3) judges, except the Western Region which shall have four (4) judges”.

- **The African Commission on Human and Peoples’ Rights**

8. In this Commission composed of eleven (11) members, the principle of geographical representation has never been observed on the pretext that its members serve in their personal capacity (Article 31, paragraph 2 of the African Charter on Human and Peoples’ Rights). The different compositions of this organ reveal the patent inequity in the representation of the five regions.

- **The Committee on the Rights and Welfare of the Child**

9. In its present composition, this Committee made up of eleven members, has no representative from Central Africa, and this, despite the fact that the region presented candidates who met the set criteria. No principle or argument justifies such a practice in an inter-governmental organization like the African Union. The election of members of an organ in a personal capacity, on the basis of competence and integrity², is not incompatible with the principle of geographical representation, the spirit of which emerges in the composition of all organs of the Union.

- **The African Union Advisory Board on Corruption**

10. This organ, whose eleven (11) members are elected in a personal capacity³, is also an exception to the principle of geographical representation. Its composition also

¹ Protocol to the African Charter on Human and Peoples’ Rights on the establishment of an African Court on Human and Peoples’ Rights of 9 June 1998, which entered into force on 25 January 2004.

² Article 33 of the African Charter on Human and Peoples’ Rights.

³ Article 22, paragraph 3 of the African Union Convention on Preventing and Combating Corruption.

shows that some regions are over-represented to the detriment of others. Yet, Article 22, paragraph 2 of the Convention Establishing the Board, stipulates that "...In the election of members of the Board, the Executive Council shall ensure adequate gender representation and **equitable geographical representation**". Consequently, in the absence of a contradiction between serving in a personal capacity and the principle of geographical representation, the non-application of this principle seems to stem from an inadequate interpretation of the texts rather than from the provisions of the Convention.

- **The African Union Commission on International Law**

11. The observations made on the above-mentioned organs which do not respect the principle of geographical representation are also valid for the African Union Commission on International Law (AUCIL). Despite Article 3, paragraph 3 of the Statute of the said Commission which stipulates that "The composition of the AUCIL shall reflect and respect **the principles of equitable geographical representation**, the principal legal systems of the Continent and equitable gender representation", its composition (11 members), is not in keeping with the spirit of the stated principles.

III. Exceptions to the principle of geographical representation

12. The mandatory application of the principle of geographical representation in the composition of all AU organs does not mean there cannot be exceptions to the rule. As with all general rules, exceptions can be made to the application of the principle in the following cases:

- When none of the Member States of a given region have either ratified and/or adhered to a legal instrument relating to an organ which has elected members;
- When, at the time of election of members of an organ, Member States of a region that have been duly notified of vacant positions, did not present candidates.

IV. Financial implications

13. The mandatory application of the principle of geographical representation in African Union organs whose members are elected does not have any financial implications and merely requires the adoption of a decision by the Assembly requesting the African Union Commission to ensure compliance with the principle in the composition of all organs of the Union.

Conclusion:

14. In view of the foregoing, the application of the principle of geographical representation in the organs of the Union should be made mandatory by an Assembly decision so as to ensure that all regions of the Continent can be equitably involved and represented on an equal footing as required by the principles of the African Union set out above.

15. Should Chad's proposal be accepted, the Commission should take into account the application of the principle of geographical representation in the elaboration of the legal instruments currently under consideration on the transformation of the AU Commission into an Authority.

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