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EXECUTIVE COUNCIL

Twenty-Ninth Ordinary Session

10 – 18 July 2016

Kigali, Rwanda

EX.CL/978(XXIX)

Original: English

**ACTIVITY REPORT OF THE AFRICAN UNION COMMISSION
ON INTERNATIONAL LAW (AUCIL)
FOR THE PERIOD MAY 2015 TO JUNE 2016**

**ACTIVITY REPORT OF THE AFRICAN UNION COMMISSION
ON INTERNATIONAL LAW (AUCIL)
(July 2015- June 2016)**

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 2015- June 2016. The Report is divided into three (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 with 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 currently forms part of the Office of the Legal Counsel which is under the Office of the Bureau of the Chairperson of the African Union 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) Mrs. Hajer Gueldich (Tunisia);
- iv) Mr. Sebastião Da Silva ISATA (Angola);
- v) Mr. Abdi Ismael HERSI (Djibouti);
- vi) Mrs. Juliet Semambo KALEMA (Uganda);
- vii) Mr. Daniel Makiese MWANAWANZAMBI (Democratic Republic of Congo);
- viii) Mr. Boniface OBINNA OKERE (Nigeria);
- ix) Mrs. Naceesay SALLA-WADDA (Gambia);

- x) Mr. Kholisan SOLO (Botswana);
- xi) Mr. Cheikh Tidiane THIAM (Senegal).

THE BUREAU OF AUCIL

6. At its 10th Ordinary Session held in Addis Ababa, Ethiopia from 13 to 24 April 2015, the AUCIL decided to appoint the Vice-Chairperson, Prof. Daniel Makiesse MWANAWANZAMBI as Acting Chairperson until the 11th Ordinary Session scheduled for October 2015 where the election of the Bureau was originally planned to be held. However, at its 11th Ordinary Session held in Cairo, Egypt from 6 to 15 October 2015, the AUCIL appointed Mr. Ebenezer APPREKU as Acting Vice-Chairperson and decided to defer the election of its new Bureau in a future session. Therefore, the current Bureau of AUCIL is composed as follows:

- i) Prof. Daniel Makiesse MWANAWANZAMBI Acting Chairperson;
- ii) Mr. Ebenezer APPREKU, Acting Vice-Chairperson;
- iii) Justice Naceesay SALLA-WADDA General Rapporteur.

SECTION I - ACTIVITIES OF AUCIL:

I. ELEVENTH ORDINARY SESSION OF AUCIL:

7. The AUCIL held its Eleventh Ordinary Session in Cairo, Egypt, from 6 to 15 October 2015.

8. The Agenda adopted by the session was as follows:

- i) Opening Ceremony;
- ii) Consideration and Adoption of the draft Agenda;
- iii) Organization of Work;
- iv) Swearing in of the newly elected members of the AUCIL;
- v) Election of the Chairperson of the AUCIL;
- vi) Briefing by the Bureau on inter-sessional activities;
- vii) Briefing by the Secretariat on the inter-sessional activities;
- viii) Update on the AUCIL Digest of African States Practice in International Law
by Special Rapporteur Mr Ebenezer Appreku;
- ix) Update on the 2nd Editions of the AUCIL Journal of International Law and Yearbook of its Activities;
- x) Update on pending, ongoing and future studies;

- xi) Consideration of the Review of the African Charter on the Rights and Welfare of the Child - by Commissioner Ebenezer APPREKU;
- xii) Study on the African Convention on Judicial Cooperation and Mutual Assistance - by Commissioner Hajer GUELDICH;
- xiii) Informal Consultative Session with the African Commission on Human and Peoples' Rights on the Draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa;
- xiv) Study on the Continental Legal Framework on Migration - by Commissioner Cheikh Tidiane THIAM;
- xv) Study on the Continental Legal Framework on Piracy - by Commissioner Kholisani SOLO;
- xvi) Update on AUCIL Emoluments;
- xvii) Consideration of the draft 2017 AUCIL Budget;
- xviii) Discussion on cooperation with other similar International Organizations and Institutions in the field of International Law;
- xix) Theme and preparation of the 4th Forum of AUCIL;
- xx) Consideration and Adoption of the Report of the 11th Ordinary Session;
- xxi) Any Other Business;
- xxii) Discussion on the Date and Venue of the 12th Ordinary Session;
- xxiii) Closing Ceremony.

9. The following studies have been considered by the session:

A. THE AUCIL DIGEST OF AFRICAN STATES PRACTICE IN INTERNATIONAL LAW

10. The Special Rapporteur on the preparation of the Digest, Mr. Ebenezer Appreku provided update on the preparation of the Digest on the Practice by highlighting the following:

- a) For the benefit of the new members of AUCIL, he recalled the objectives behind the idea and project to publish a Digest, which inter alia, was to encourage African States to record and become more conscious of their often understated but significant contribution to the development of

international law, promote the teaching, study, dissemination and wider appreciation of international law and Africa Union Law on the continent and to encourage and enhance the capacity of legal experts of Member States to actively take part in the debates of the Sixth (Legal) Committee and comment on reports of the International law Commission at the United Nations General Assembly and other international law fora;

- b) The Secretariat facilitated the work by sending official communications to member states and AU Organs to provide material evidence of African State practice in International law;
- c) The secretariat also submitted preliminary information on African positions on the anti-colonial struggle and principle of self-determination, the anti-apartheid struggle and the principle of intangibility of borders;
- d) Five (5) countries and one (1) Au Organ responded namely: Kenya, Tunisia, Rwanda, Ghana, Mauritius and the African Committee on the Rights and Welfare of the Child;
- e) The initial target for circulating the initial draft to the AUCIL members was 7 October and finalization by December but due to insufficient responses and resources this would need to be postponed to the following year;
- f) As a show of commitment, AUCIL members should facilitate the responses from their respective countries;
- g) The study on the Digest was still work-in-progress and as materials were still being collected, a progress report will be submitted in due course;
- h) The eventual structure and content of the First edition of the Digest would depend on the information or inputs that might be provided by States or obtained from other research sources;
- i) When completed the First Edition of the Digest and subsequent editions would be valuable reference source to many African States and scholars;
- j) There was need for adequate budgetary resources to facilitate the research.

11. After his presentation, members made the following comments and observations:

- a) Members should contribute to enrich the data collection process so as to assist the Special Rapporteur in his work and to build the content of the Digest;
- b) Project of this magnitude is rather complex and would require a lot of time to complete;
- c) There is need to establish a mechanism to undertake this kind of research;
- d) Research across the continent and beyond including Universities could be useful partners to provide useful resource for such research;
- e) Each member of the AUCIL should request its Government to provide the necessary support for the project.

12. In his response to the comments and observations, the Special Rapporteur provided the following response:

- a) Indicated that the mechanism is for the Special Rapporteur to collate the data and present a report for review by the Working Group on Publications prior to adoption by the plenary;
- b) A concept paper was developed by the Special Rapporteur which was approved during the 10th Ordinary Session, after which communications were sent to the member states and Organs;
- c) A work plan was developed with ambitious timelines but most member States have delayed in providing the desired information on their State practice;
- d) Highlighted the type of documents that are required for the Digest including decisions of national courts and regional courts, Government statements reflecting their views on international legal issues in the United Nations and other international for a, treaties and African treaties and instruments;
- e) The Digest is not expected to be an encyclopedia of African State Practice but a modest compendium of State Practice in identified topics similar to what is produced by organizations like the United Nations on a periodic basis or cycle;

- f) That the progress of the Digest would also depend on the available of budgetary support to support research assistants etc.

13. After the exchange of views, the Plenary DECIDED that the Special Rapporteur should maintain the impetus towards finalization of the Digest as soon as possible hopefully by end of 2016 and that needed budgetary funds must be made available.

B. CONSIDERATION OF THE REVIEW OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

14. The Special Rapporteur, Mr. Ebenezer Appreku, presented the final study report on the review of the African Charter on the Rights and Welfare of the Child, by providing some background into the mandate of AUCIL on the revision of OAU/AU treaties, which was inspired primarily by the relevant provisions of the AUCIL Statutes.

15. He recalled that the decision to appoint him Special Rapporteur on the Revision of Treaties was decided during the 6th Ordinary Session that held in April 2013. During the 10th Ordinary Session of April 2015, the Plenary considered the recommendations of the Special Rapporteur for the revision of OAU/AU Treaties or conclusion of new treaties relating to, among others, the “need for the revision of the African Charter on the Rights and Welfare of the Child” with a view to submitting proposals for the revision, review or amendment of the African Charter on the Rights and Welfare of the Child by the end of 2015.

16. In undertaking the study, the Special Rapporteur undertook study visits to the AU Headquarters that afforded him the opportunity to consult with various stakeholders, most importantly the African Committee of Experts on the Rights and Welfare of the Child. He undertook desktop research in addition to the study visits, the culmination of which led to the following proposals, among others:

- a) Consequential amendments to the Charter with the current AU terminologies. For example, substituting the terms ‘the Secretary General of the OAU’ with Chairperson of the AU Commission and also OAU with AU wherever those words occur;
- b) Linguistic alignments in all the AU languages to be undertaken during the review by the Specialized Technical Committee on justice and Legal Affairs;
- c) Amend phrases deemed to be derogatory or degrading such as references to ‘handicapped children’ which is the subtitle of Article XIII (13); and
- d) Amend Article XLIII (43) (1) (b) to change the reporting cycle from 3 to 5 years due to low rate of compliance by States parties;

- e) Amendment or revision of Article 42 to have access to the Court to submit cases or disputes to the Court by a decision of the Assembly of Heads of State and Government at its next Summit in January 2016.

17. In concluding, the Special Rapporteur presented the above recommendations for adoption by the Plenary to be accompanied by a draft instrument amending the Charter taking into account the recommendations highlighted above.

18. Following the presentation, the Members made the following comments and observations:

- a) Congratulated the Special Rapporteur for a detailed and succinct presentation;
- b) The African Charter on the Rights and Welfare of the Child is similar to the UN Convention on the Rights of the Child of 1929 and Declarations of the Rights of the Child of the League of Nations of 1924 and the adopted extended form in 1959;
- c) There seems to be no change to the substantive law but only consequential changes based on the transformation of the OAU into the AU;
- d) After deliberations the report of the Special Rapporteur was adopted together with his recommendations for the amendment of the African Charter for the consideration of the Principal organs.

C. STUDY ON THE AFRICAN CONVENTION ON JUDICIAL COOPERATION AND MUTUAL LEGAL ASSISTANCE

19. The Special Rapporteur, Prof. Hajer Gueldich, made her oral presentation by indicating that the study was approved for commencement during the 10th Ordinary Session in April 2015 and that the oral presentation will be followed subsequently by a concept note, preliminary report and subsequent reports in line with the rules and established practice.

20. She gave a brief elaboration of the structure the study will take, which will focus, among others, on the context; objective of the study; fields or areas of the study; existing Legal frameworks; challenges and conclusions.

21. The Special Rapporteur indicated that due to the broad scope of the study, she might decide to focus the study with regard to mutual legal assistance and judicial cooperation on the following two areas:

- a) Criminal/Penal matters; and
- b) Civil matters.

22. She concluded her presentation highlighting some of the possible political, financial and logistic challenges that may be encountered in the course of the study.

23. After the presentation, the Plenary decided that the Special Rapporteur should circulate the written version of her presentation for input by during the inter-sessional period requested a concept note should be submitted, taking into account the comments of members, at the next Ordinary Session.

D. INFORMAL CONSULTATIVE SESSION WITH THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS ON THE DRAFT PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE SPECIFIC ASPECTS OF THE RIGHT TO A NATIONALITY AND THE ERADICATION OF STATELESSNESS IN AFRICA

24. The Ag. Chairperson introduced this agenda item by welcoming the delegation of the African Commission on Human and Peoples' Rights (AfCHPR) led by the Commissioner Maya Sahli, the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons & Migrants in Africa.

25. In her remarks, Commissioner Sahli expressed gratitude to the AUCIL for the warm welcome and the opportunity extended to the ACHPR delegation to exchange views informally on the draft Protocol prior to its consideration by the Specialized Technical Committee on Justice and Legal Affairs scheduled to take place in November 2015 in Addis Ababa, Ethiopia.

26. After a brief introduction of all participants, Commissioner Sahli and a representative of the AfCHPR delegation presented the draft Protocol by highlighting the historical context behind the study that led to the elaboration of the draft Protocol, the method or process by which the study and draft Protocol was considered and the background and principles behind the provisions in the draft Protocol.

27. After the presentations, the members of AUCIL provided comments, observations and inputs to enrich the draft text. In addition to the substantive input that was made, some members provided comments to ensure proper alignment of the linguistic texts, to streamline a number of inconsistencies.

28. The informal consultations and exchange of views between the AUCIL Members and the AfCHPR delegation ended with the understanding that being an informal consultative meeting, the AfCHPR should take the comments as individual views of the AUCIL members and not an endorsement of the draft Protocol as this would be inconsistent with the relevant provisions of their Statutes, Rules and Practice. However,

the AUCIL members advised the AfCHPR to reflect the comments made to ensure that the draft Protocol when presenting its report on the draft Protocol to AU Member States for their consideration and possible adoption.

29. The meeting ended with the Ag. Chairperson and Commissioner Sahli thanking the participants for the very instructive comments and advised both sides to use this as an opportunity for future collaboration between the two Organs.

II. COOPERATION WITH SIMILAR INTERNATIONAL BODIES WORKING ON INTERNATIONAL LAW:

30. Three activities are under this item:

- a) **The 67th Session of the International law Commission (ILC) in Geneva,** Switzerland from 24 to 25 July 2015. Commissioner Kholisani Solo, Commissioner Ebenezer Appreku and the Secretary attended on behalf of the AUCIL and made a presentation on the AUCIL and its activities. The Secretary used the opportunity to hold consultative meetings with the secretariat of the ILC.
- b) **The 87th Regular Session of the Inter-American Juridical Committee (IAJC)** in Rio De Janeiro, Brazil from 5 to 7 August 2015. The Secretary represented the AUCIL, as the Acting Chairperson was unable to attend as originally planned. He made a presentation on the AUCIL and its activities.
- c) ***The 70th Session of the 6th Committee of the United Nations on legal Affair, 2-11 November 2015:***
Owing to unavoidable reasons, Mr Obinna Okere could not represent AUCIL in New York and so Mr. Ebenezer Appreku graciously agreed to represent AUCIL at this meeting dedicated to the consideration of the Report of the 67th Session of United Nations International Law Commission. 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.

III. ATTENDANCE OF OTHER MEETINGS:

31. Three activities are under this item:

- a) **The 25th, 27th and 30th Ordinary Sessions of the Assembly of Heads of State and Government, Executive Council and Permanent Representatives Committee (PRC)** in July 2015 in Johannesburg, South Africa - The Chairperson was accompanied by the General Rapporteur and The Secretary to AUCIL. The highlight of the Summit was the presentation of the annual report of the AUCIL to the Executive Council, which was well received by the member states.
- b) **The Third Regional Seminar on National Implementation of International Humanitarian Law (IHL) organized Seminar organized by the International Committee of the Red Cross (ICRC)** from 19 to 21 May 2015 held in Naivasha, Nairobi. In her presentation, Prof. Hajer Gueldich who represented the AUCIL gave a brief background to the AUCIL and presented the topic "IHL related developments in AU".
- c) **The First Working Group Meeting to Develop the draft Model Law to Combat Illicit Trafficking in Cultural Goods** from 22 to 25 September 2015 in Midrand, South Africa. Chief Justice Mohamed Barakat represented the Bureau on behalf of the AUCIL.

IV. FOURTH (4 TH) AFRICAN UNION FORUM OF INTERNATIONAL LAW AND AFRICAN UNION LAW ORGANIZED BY THE AUCIL:

32. The 4th Forum of AUCIL, chaired by Mr Ebenezer Appreku, with Prof Hajer Gueldich as Rapporteur, was held in Cairo, Egypt, from 19 to 20 October 2015, immediately following the end of 11th ordinary Session. The theme of the 4th Forum was "The challenges of ratification and implementation of treaties in Africa" and its objectives were as follows:

- a) Discuss the causes and dilemma regarding the enthusiasm of African States to negotiate, conclude and adopt the texts of African Union treaties in contrast to their hesitation or delays in ratifying let alone implement the treaties and other instruments by AU Member States at the national and continental levels;
- b) Encourage AU Member States to ratify and implement AU/OAU Treaties and Conventions;
- c) Analyse and explore urgent solutions to the inertia in ratifying and or implementing African Union Treaties to enhance progressive development of international law and its codification and strengthen the legal framework for the political and socio-economic development of the continent.

33. This edition attended by a significant number of delegations from member States, considered the following sub-themes:

- i) The Law of Treaties and the technical notions of signature, accession, adoption, ratification, application, implementation, entry into force of international treaties;
- ii) Hierarchy of sources in International Law, dualism, monism of the internal legal order ;
- iii) The problem of reservations and revision of treaties ;
- iv) Widely ratified instruments (on Peace and Security, Human Rights protection, trade, free trade zone, economic integration)
- v) African instruments not yet ratified or not yet entered into force, obstacles and impediments (Democracy, fight against terrorism, legal cooperation, International Criminal Justice, International Humanitarian law, Human Rights protection, protection of the environment, health, etc.) ;
- vi) Measures to accelerate ratification of treaties and their implementation ;
- vii) Ways to expedite the ratification process after treaties have been adopted by the AU with the aim of accelerating the development of the Continent
- viii) The OAU/AU treaties considered as priorities by the AU Executive Council, Decision EX.CL/Dec. 571 (XVII) (Kampala 25 July 2010).
- ix) Experience of other International Organizations on the ratification of treaties.

SECTION II- CHALLENGES FACED BY AUCIL:

34. 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.

35. 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 more effectively service the activities and support the Studies of the AUCIL to enable it to more effectively discharge its mandate .

36. The AUCIL secretariat lacks adequate human and other administrative resources to undertake research activities needed to effectively assist in the various studies being conducted by the AUCIL.

37. 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

38. 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 appeals and requests 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 take note, underscore and ensure the importance of implementing the provisions of the Statute of the African Union Commission on International Law (AUCIL) requiring 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;
- iv) 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;
- v) 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.

2016

Rapport sur les activites de la commission de l'union africaine sur le droit international (CUADI)

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