

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

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**DRAFT PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS**

REVISIONS UP TO TUESDAY 15TH MAY 2012

**DRAFT PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE STATUTE
OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS**

The Member States of the African Union parties to the Constitutive Act of the African Union;

RECALLING the objectives and principles enunciated in the Constitutive Act of the African Union, adopted on 11 July 2000 in Lome, Togo, in particular the commitment to settle their disputes through peaceful means;

FURTHER RECALLING the provisions of the Protocol on the Statute of the African Court of Justice and Human Rights and the Statute annexed to it adopted on 1 July 2008 in Sharm-El-Sheikh, Egypt;

RECOGNIZING that the Protocol on the Statute of the African Court of Justice and Human Rights had merged the African Court on Human and Peoples Rights and the Court of Justice of the African Union into a single Court;

BEARING IN MIND their commitment to promote peace, security and stability on the continent, and to protect human and peoples rights in accordance with the African Charter on Human and Peoples Rights and other relevant instruments;

FURTHER RECOGNIZING the efforts and contribution of the African Commission on Human and Peoples Rights in the promotion and protection of human and peoples rights since its inception in 1987;

NOTING the steady growth of the African Court on Human and Peoples Rights and the contribution it has made in protecting human and peoples rights on the African continent as well as the progress towards the establishment of the African Court of Justice and Human and Peoples Rights;

FURTHER BEARING IN MIND the complementary relationship between the African Commission on Human and Peoples Rights and the African Court on Human and Peoples Rights, as well as its successor, the African Court of Justice and Human and Peoples Rights;

FURTHER RECALLING their commitment to the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity as well as a serious threat to legitimate order to restore peace and stability to the Member State of the Union upon the recommendation of the Peace and Security Council;

REITERATING their respect for democratic principles, human and peoples rights, the rule of law and good governance;

FURTHER REITERATING their respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities, unconstitutional changes of governments and acts of aggression;

FURTHER REITERATING their commitment to fighting impunity in conformity with the provisions of Article 4(o) of the Constitutive Act of the African Union;

ACKNOWLEDGING the pivotal role that the African Court of Justice and Human and Peoples Rights can play in strengthening the commitment of the African Union to promote sustained peace, security and stability on the Continent and to promote justice and human and peoples rights as an aspect of their efforts to promote the objectives of the political and socio-economic integration and development of the Continent with a view to realizing the ultimate objective of a United States of Africa;

FURTHER RECALLING Assembly Decision Assembly/AU/Dec.213 (XII) adopted by the Twelfth Ordinary Session of the Assembly in Addis Ababa, Federal Democratic Republic of Ethiopia, on 3 February 2009 on the implementation of the Assembly's Decision on the Abuse of the Principle of Universal Jurisdiction;

FURTHER RECALLING Assembly Decision Assembly/AU/Dec.263 (XIII) adopted by the Thirteenth Ordinary Session of the Assembly in Sirte, Great Socialist People's Libyan Arab Jamahiriya, on 3 July 2009 on the transformation of the African Union Commission to the African Union Authority;

FURTHER RECOGNIZING the need to take the necessary measures to amend the legal instruments of the principal organs of the African Union in the light of the aforementioned Assembly Decisions;

CONVINCED that the present Protocol will complement national, regional and continental bodies and institutions in preventing serious and massive violations of human and peoples rights in keeping with Article 58 of the Charter and ensuring accountability for them wherever they occur;

HAVE AGREED to adopt the present amendments to the Protocol on the Statute of the African Court of Justice and Human Rights and the Statute annexed thereto as follows: -

CHAPTER I

In CHAPTER 1 of the Protocol (MERGER OF THE AFRICAN COURT ON HUMAN AND PEOPLES RIGHTS AND THE COURT OF JUSTICE OF THE AFRICAN UNION) the deletion of the existing title, Articles and their provisions in their entirety and the insertion in their place of the following:

“CHAPTER I

GENERAL PROVISIONS

Article 1 **Definitions**

In this Protocol:

“Assembly” means the Assembly of Heads of State and Government of the African Union;

“Chairperson” means the Chairperson of the Assembly;

“Charter” means the African Charter on Human and Peoples Rights;

“Commission” means the Commission of the African Union;

“Court” means the African Court of Justice and Human and Peoples Rights;

“Member State” means a Member State of the Union;

“President” means the President of the Court;

“Protocol” means the Protocol on the Statute of the African Court of Justice and Human Rights;

“Single Court” has the same meaning as the Court;

“Statute” means the present Statute;

“Union” means the African Union established by the Constitutive Act of the African Union;

“Vice President” means the Vice President of the Court.

Article 2 **Organs of the Court**

The Court shall be composed of the following organs:

1. The Presidency;
2. The Office of the Prosecutor;
3. The Registry.

Article 3 **Jurisdiction of the Court**

1. The Court is vested with an original and appellate jurisdiction, including international criminal jurisdiction, which it shall exercise in accordance with the provisions of the Statute annexed hereto.

2. The Court has jurisdiction to hear such other matters or appeals as may be referred to it in any other agreements that the Member States or the Regional Economic Communities or other international organizations recognized by the African Union may conclude among themselves, or with the Union.

Article 4

Relationship between the Court and the African Commission on Human and Peoples Rights

The Court shall, in accordance with the Charter and this Protocol, complement the protective mandate of the African Commission on Human and Peoples Rights.

CHAPTER II

TRANSITIONAL PROVISIONS

Article 5

Term of Office of the Judges of the African Court on Human and Peoples Rights

In Article 4 (Term of Office of the Judges of the African Court on Human and Peoples Rights), replace the existing provision including its title, with:

“Article 4

Term of Office of the Judges of the African Court on Human and Peoples Rights

1. Upon the coming into force of the Protocol on the Statute of the African Court of Justice and Human Rights, the terms and appointment of the Judges of the African Court on Human and Peoples Rights shall terminate.
2. Without prejudice to paragraph 1, the Judges of the African Court on Human and Peoples Rights shall remain in office until the judges of the African Court of Justice and Human and Peoples Rights are sworn in.

Article 6

Pending Cases

At the entry into force of this Protocol, where any matter affecting any State had already been commenced before either the African Court on Human and Peoples’ Rights or the African Court of Justice and Human Rights, if in force, such a matter shall be continued before the relevant Section of the African Court of Justice and Human and Peoples’ Rights, pursuant to such Rules as may be made by the Court.

Article 6bis

Temporary Jurisdiction

At the entry into force of this Protocol, until a Member State ratifies it, any jurisdiction which has hitherto been accepted by such Member State with respect to either the African Court on Human and Peoples’ Rights or the African Court of Justice and Human Rights shall be exercisable by this Court.

Article 7
Registry of the Court

1. The Registrar of the African Court on Human and Peoples Rights shall remain in office until the appointment of a new Registrar for the African Court of Justice and Human and Peoples Rights.
2. The staff of the African Court on Human and Peoples Rights shall be absorbed into the Registry of the African Court of Justice and Human and Peoples Rights, for the remainder of their subsisting contracts of employment.

CHAPTER III

Final Provisions

Article 8
Nomenclature

In the Protocol and the Statute wherever it occurs “African Court of Justice and Human Rights” is deleted and replaced with “African Court of Justice and Human and Peoples Rights.”

Article 9
Signature, Ratification and Accession

1. This Protocol and the Statute annexed to it shall be open for signature, ratification or accession by Member States, in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession to this Protocol and the Statute annexed to it shall be deposited with the Chairperson of the Commission.
3. Any Member State may, at the time of signature or when depositing its instrument of ratification or accession, or at any time thereafter, make a declaration accepting the competence of the Court to receive cases under Article 30 (f).

Article 10
Depository Authority

1. This Protocol and the Statute annexed to it, drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic, shall be deposited with the Chairperson of the Commission, who shall transmit a certified true copy to the Government of each Member State.
2. The Chairperson of the Commission, shall notify all Member States of the dates of deposit of the instruments of ratification or accession, and shall, upon the entry into force of this Protocol, register the same with the Secretariat of the United Nations.

Article 11
Entry into force

1. This Protocol and the Statute annexed to it shall enter into force thirty (30) days after the deposit of instruments of ratification by fifteen (15) Member States.
2. For each Member State which shall accede to it subsequently, this Protocol and Annexed Statute shall enter into force on the date on which the instruments of ratification or accession are deposited.
3. The Chairperson of the Commission shall notify all Member States of the entry into force of this Protocol.

Article 12 **Amendments**

1. This Protocol and the Statute annexed to it may be amended if a State Party to the Protocol makes a written request to that effect to the Chairperson of the Commission. The Assembly may adopt, by simple majority, the draft amendment after all the States parties to the present Protocol have been duly informed of it and the Court has given its opinion on the amendment.
2. The Court shall also be entitled to propose such amendments to the present Protocol or the Statute annexed to it as it may deem necessary, through the Chairperson of the Commission.
3. The amendments shall come into force for each State Party which has accepted it thirty (30) days after the Chairperson of the Commission has received notice of the acceptance.

Adopted by theSession of the Assembly of the African Union held in,, on, 20.....

Annex **Statute of the African Court of Justice and Human and Peoples Rights**

Article 1 **Definitions**

1. In Article 1 of the Statute (Definitions), the deletion from the chapeau of the words “except otherwise indicated, the following shall mean”
2. The insertion of the following words and the definitions ascribed to them:
 - “Chairperson” means the Chairperson of the Commission;
 - “Child” means any person under eighteen years of age;
 - “Court” means the African Court of Justice and Human and Peoples Rights;
 - “Full Court” means the three Sections of the Court sitting together in plenary;
 - “Person” means a natural or legal person;
 - “President” means the President of the Court unless otherwise specified;

“Section” means the General Affairs or Human and Peoples’ Rights or International Criminal Law Section of the Court;

“Statute” means the Statute of the African Court of Justice and Human and Peoples Rights;

“Vice President” means the Vice President of the Court.

Article 2 Composition

In Article 3 of the Statute (Composition), add the following paragraph 4:

- “
4. The Assembly shall ensure that there is equitable gender representation in the Court.
- ”

Article 3 Qualifications of Judges

Article 4 of the Statute (Qualifications of Judges) is replaced with the following:

“The Court shall be composed of impartial and independent Judges elected from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are juris-consults of recognized competence and experience in international law, international human rights law, international humanitarian law or international criminal law.”

Article 4 List of Candidates

Article 6 of the Statute (List of Candidates) is replaced with the following: -

- “
1. For the purpose of election, the Chairperson of the Commission shall establish three (3) alphabetical lists of candidates presented as follows:
 - i. List A containing the names of candidates having recognized competence and experience in International law;
 - ii. List B containing the names of candidates having recognized competence and experience in international human rights law and international humanitarian law; and
 - iii. List C containing the names of candidates having recognized competence and experience in international criminal law.
 2. States Parties that nominate candidates possessing the competences required on the three (3) lists shall choose the list on which their candidates may be placed.
 3. At the first election, five (5) judges each shall be elected from amongst the candidates on lists A and B, and six (6) judges shall be elected from amongst the candidates of list C respectively.
- ”

4. The Chairperson of the Commission shall communicate the three lists to Member States, at least thirty (30) days before the Ordinary Session of the Assembly or of the Council during which the elections shall take place.”

Article 5 Term of Office

Article 8 of the Statute (Term of Office) is replaced with the following: -

“

1. The Judges shall be elected for a single, non-renewable term of nine (9) years. The terms of office of five (5) of the judges elected at the first election shall end after three (3) years, and the terms of another five (5) of the judges shall end after six (6) years.
2. The Judges whose term of office shall end after the initial periods of three (3) and six (6) years shall be determined by lot drawn by the Chairperson of the Assembly or the Executive Council, immediately after the first election.
3. A Judge elected to replace another whose term of office has not expired shall complete the term of office of his or her predecessor.
4. All the Judges, except the President and the Vice President, shall perform their functions on a part-time basis.
5. The Assembly shall, on the recommendation of the Court, decide the time when all the Judges of the Court shall perform their functions on a full time basis.”

Article 6 Structure of the Court

Article 16 of the Statute (Sections of the Court) is replaced with the following: -

“Article 16 Structure of the Court

1. The Court shall have three (3) Sections: a General Affairs Section, a Human and Peoples Rights Section and an International Criminal Law Section.
2. The International Criminal Law Section of the Court shall have three (3) Chambers: a Pre-Trial Chamber, a Trial Chamber and an Appellate Chamber.
3. The allocation of Judges to the respective Sections and Chambers shall be determined by the Court in its Rules. ”

Article 7 Assignment of matters to Sections of the Court

Article 17 of the Statute (Assignment of matters to Sections) is replaced with the following:

**“Article 17
Assignment of matters to Sections of the Court**

1. The General Affairs Section shall be competent to hear all cases submitted under Article 28 of the Statute except those assigned to the Human and Peoples Rights Section and the International Criminal Law Section as specified in this Article.
2. The Human and Peoples Rights Section shall be competent to hear all cases relating to human and peoples rights.
3. The International Criminal Law Section shall be competent to hear all cases relating to the crimes specified in this Statute.”

**Article 8
Revision and Appeal**

Article 18 (Referral of matters to the Full Court) is replaced with the following:

**“Article 18
Revision and Appeals**

1. In the case of the General Affairs Section and the Human and People’s Rights Section, a revision of a judgement shall be made in terms of the provisions of Article 48.
2. In the case of the International Criminal Law Section, a decision of the Pre-Trial Chamber or the Trial Chamber may be appealed against by the Prosecutor or the accused, on the following grounds:
 - (a) A procedural error;
 - (b) An error of law;
 - (c) An error of fact.
3. An appeal may be made against a decision on jurisdiction or admissibility of a case, an acquittal or a conviction.
4. The Appellate Chamber may affirm, reverse or revise the decision appealed against. The decision of the Appellate Chamber shall be final.”

**Article 9
Chambers of the Court**

Article 19 of the Statute (Chambers) is replaced with the following: -

“Chambers of the Court

1. The General Affairs Section, Human and Peoples Rights Section or International Criminal Law Section may, at any time, constitute one or more Chambers in accordance with the Rules of Court.
2. A Judgment given by any Chamber shall be considered as rendered by the Court.”

Article 9 Bis
Powers and Functions of the Chambers of the International Criminal Law Section

After Article 19 of the Statute (Chambers) add the following as Article 19 *Bis*:

“Article 19 Bis
Powers and Functions of the Chambers of the International Criminal Law Section

1. The Pre-Trial Chamber shall exercise the functions provided for in Article 46F of this Statute.
2. In addition, the Pre-Trial Chamber may also at the request of the Prosecutor issue such orders and warrants as may be required for an investigation or prosecution.
3. The Pre-Trial Chamber may issue such orders as may be required to provide for the protection and privacy of witnesses and victims, the presentation of evidence and the protection of arrested persons.
4. The Trial Chamber shall conduct trials of accused persons in accordance with this Statute and the Rules of Court.
5. The Trial Chamber shall receive and conduct appeals from the Pre-Trial Chamber in accordance with Article 18 of this Statute.
6. The Appeals Chamber shall receive and conduct appeals from the Trial Chamber in accordance with Article 18 of this Statute.

Article 10
Quorum

Article 21 of the Statute (Quorum) is replaced with the following:

1. The General Affairs Section of the Court shall be duly constituted by three (3) judges.
2. The Human and Peoples Rights Section of the Court shall be duly constituted by three (3) judges.
3. The Pre-Trial Chamber of the International Criminal Law Section of the Court shall be duly constituted by one (1) judge.
4. The Trial Chamber of the International Criminal Law Section of the Court shall be duly constituted by three (3) judges.
5. The Appellate Chamber of the International Criminal Law Section of the Court shall be duly constituted by five (5) judges.

Article 11
Presidency and Vice Presidency

Article 22 (Presidency, Vice-Presidency and Registry) is replaced with the following: -

**“Article 22
Presidency and Vice Presidency**

1. At its first ordinary session after the election of the Judges, the Full Court shall elect a President and a Vice President of the Court.
2. The President and Vice President shall serve for a period of two (2) years, and may be re-elected once.
3. The President and Vice President shall, in consultation with the Members of the Court and as provided for in the Rules of Court, assign Judges to the Sections.
4. The President shall preside over all sessions of the Full Court. In the event of the President being unable to sit during a session, the session shall be presided over by the Vice President.
5. The President and Vice President shall reside at the seat of the Court.”

**Article 12
Presidency and Vice Presidency**

After Article 22 (Presidency and Vice-Presidency) add the following as Articles 22A and 22B:

**“Article 22A
The Office of the Prosecutor**

1. The Office of the Prosecutor shall comprise a Prosecutor and two Deputy Prosecutors.
2. The Prosecutor and Deputy Prosecutors shall be elected by the Assembly from amongst candidates who shall be nationals of States Parties nominated by States Parties.
3. The Prosecutor shall serve for a single, non-renewable term of seven (7) years.
4. The Deputy Prosecutors shall serve for a term of four (4) years, renewable once.
5. The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the conduct of investigations, trial and prosecution of criminal cases.
6. The Office of the Prosecutor shall be responsible for the investigation and prosecution of the crimes specified in this Statute and shall act independently as a separate organ of the Court and shall not seek or receive instructions from any State Party or any other source.
7. The Office of the Prosecutor shall have the power to question suspects, victims and witnesses and collect evidence, including the power to conduct on-site investigations.
8. The Prosecutor shall be assisted by such other staff as may be required to perform the functions of the Office of the Prosecutor effectively and efficiently.

9. The staff of the Office of the Prosecutor shall be appointed by the Prosecutor in accordance with the Staff Rules and Regulations of the African Union.
10. The remuneration and conditions of service of the Prosecutor and Deputy Prosecutors shall be determined by the Assembly on the recommendation of the Court made through the Executive Council.

Article 22B

The Registry

1. The Registry shall comprise of a Registrar and three Assistant Registrars.
2. The Court shall appoint the Registrar and Assistant Registrars, in accordance with the Staff Rules and Regulations of the African Union.
3. The Registrar shall serve for a single, non-renewable term of seven years.
4. The Assistant Registrars shall serve for a term of four (4) years, renewable once.
5. The Registry shall be headed by a Registrar who, under the direction of the President, shall be responsible for the non-judicial aspects and servicing of the Court. The Registrar shall be the principal administrative and accounting officer of the Court, and shall ensure that proper books of accounts are kept in accordance with the financial rules and regulations of the African Union.
6. The Registrar and Assistant Registrars shall be persons of high moral character, be highly competent in and have extensive practical managerial experience.
7. The Registrar shall be assisted by such other staff as may be necessary for the effective and efficient performance of the functions of the Registry.
8. The staff of the Registry shall be appointed by the Court in accordance with the Staff Rules and Regulations of the African Union.
9. The Registrar shall set up, within the Registry:
 - a. A Victims and Witnesses Unit, which shall provide, in consultation with the Court and the Office of the Prosecutor, as appropriate, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. The Unit personnel shall include experts in the management of trauma.
 - b. A Defence Counsel and Detention Management Unit, which shall provide services to the defence and manage the conditions of detention of suspects and accused persons.
10. The salaries and conditions of service of the Registrar, Assistant Registrars and other staff of the Registry shall be determined by the Assembly on the proposal of the Court, through the Executive Council.

Article 12Bis
Conditions of Service of the Registrar and Members of the Registry

Article 24 of the Statute (Conditions of Service of the Registrar and Members of the Registry) is deleted.

Article 13

Under Chapter III (Competence of the Court) In Article 28 of the Statute (Jurisdiction of the Court), the insertion of a new sub-paragraph (d) as follows, with consequential renumbering of the existing paragraphs (d) to (h).

“ ...

(d) The crimes contained in this Statute, subject to a right of appeal.

...”

Article 14
International Criminal Jurisdiction of the Court

Immediately after Article 28 (Jurisdiction of the Court), the insertion of new Articles 28A, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28I, 28I *Bis*, 28J, 28K, 28L, 28L *Bis*, 28M and 28N **as follows:**

“Article 28A
International Criminal Jurisdiction of the Court

1. Subject to the right of appeal, the International Criminal Law Section of the Court shall have power to try persons for the crimes provided hereunder:
 1. Genocide
 2. Crimes Against Humanity
 3. War Crimes
 4. The Crime of Unconstitutional Change of Government;
 5. Piracy
 6. Terrorism
 7. Mercenarism
 8. Corruption
 9. Money Laundering
 10. Trafficking in Persons
 11. Trafficking in Drugs
 12. Trafficking in Hazardous Wastes
 13. Illicit Exploitation of Natural Resources
 14. The Crime of Aggression
2. The Assembly may extend upon the consensus of States Parties the jurisdiction of the Court to incorporate additional crimes to reflect developments in international law.
3. The crimes within the Jurisdiction of the Court shall not be subject to any statute of limitations.

Article 28 B Genocide

For the purposes of this Statute, 'genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a. Killing members of the group;
- b. Causing serious bodily or mental harm to members of the group;
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. Imposing measures intended to prevent births within the group;
- e. Forcibly transferring children of the group to another group;
- f. Acts of rape that are intended to change the identity of a particular group.

Article 28 C Crimes Against Humanity

1. For the purposes of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack or enterprise directed against any civilian population, with knowledge of the attack or enterprise:

- a. Murder;
- b. Extermination;
- c. Enslavement;
- d. Deportation or forcible transfer of population;
- e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- f. Torture, cruel, inhuman and degrading treatment or punishment;
- g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- i. Enforced disappearance of persons;
- j. The crime of apartheid;
- k. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health.

2. For the purpose of paragraph 1:

- a. 'Attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- b. 'Extermination' includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

- c. 'Enslavement' means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- d. 'Deportation or forcible transfer of population' means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- e. 'Torture' means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- f. 'Forced pregnancy' means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- g. 'Persecution' means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- h. 'The crime of apartheid' means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- i. 'Enforced disappearance of persons' means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

Article 28 D War Crimes

For the purposes of this Statute, 'war crimes' means any of the offences listed , in particular when committed as part of a plan or policy or as part of a large scale commission of such crimes.

- a. Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - i. Wilful killing;
 - ii. Torture or inhuman treatment, including biological experiments;
 - iii. Wilfully causing great suffering, or serious injury to body or health;
 - iv. Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

- v. Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - vi. Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - vii. Unlawful deportation or transfer or unlawful confinement;
 - viii. Taking of hostages.
- b. Grave breaches of the First Additional Protocol to the Geneva Conventions of 8 June 1977 and other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- i. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - ii. Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - iii. Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - iv. Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
 - v. Intentionally launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects which will be excessive in relation to the concrete and direct overall military advantage anticipated;
 - vi. Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
 - vii. Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
 - viii. Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
 - ix. The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
 - x. Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

- xi. Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- xii. Killing or wounding treacherously individuals belonging to the hostile nation or army;
- xiii. Declaring that no quarter will be given;
- xiv. Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- xv. Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- xvi. Compelling the nationals of the hostile party to take part in the operations of war directed against their own State, even if they were in the belligerent's service before the commencement of the war;
- xvii. Pillaging a town or place, even when taken by assault;
- xviii. Employing poison or poisoned weapons;
- xix. Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- xx. Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- xxi. Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict
- xxii. Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- xxiii. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- xxiv. Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- xxv. Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- xxvi. Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
- xxvii. Conscripting or enlisting children under the age of eighteen years into the national armed forces or using them to participate actively in hostilities;
- xxviii. Unjustifiably delaying the repatriation of prisoners of war or civilians;

- xxix. Willfully committing practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination.
 - xxx. Making non-defended localities and demilitarised zones the object of attack;
 - xxxi. Slavery and deportation to slave labour;
 - xxxii. Collective punishments;
 - xxxiii. Despoliation of the wounded, sick, shipwrecked or dead;
- c. In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- i. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - ii. Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - iii. Taking of hostages;
 - iv. The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- d. Paragraph 1 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- e. Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- i. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - ii. Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - iii. Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - iv. Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - v. Pillaging a town or place, even when taken by assault;

- vi. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
 - vii. Conscripting or enlisting children under the age of eighteen years into armed forces or groups or using them to participate actively in hostilities;
 - viii. Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - ix. Killing or wounding treacherously a combatant adversary;
 - x. Declaring that no quarter will be given;
 - xi. Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - xii. Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
 - xiii. Employing poison or poisoned weapons;
 - xiv. Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - xv. Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions
 - xvi. Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies;
 - xvii. Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - xviii. Launching an indiscriminate attack resulting in death or injury to civilians, or an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage;
 - xix. Making non-defended localities and demilitarised zones the object of attack;
 - xx. Slavery;
 - xxi. Collective punishments;
 - xxii. Despoliation of the wounded, sick, shipwrecked or dead
- f. Paragraph 1 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.
- g. Using nuclear weapons or other weapons of mass destruction

“BRACKETED”
[Article 28E *]

The Crime of Unconstitutional Change of Government

- 1. For the purposes of this Statute, ‘unconstitutional change of government’ means committing or ordering to be committed the following acts, with the aim of illegally accessing or maintaining power:**
 - a. A putsch or coup d’état against a democratically elected government;**
 - b. An intervention by mercenaries to replace a democratically elected government;**
 - c. Any replacement of a democratically elected government by the use of armed dissidents or rebels or through political assassination;**
 - d. Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections;**
 - e. Any amendment or revision of the Constitution or legal instruments, which is an infringement on the principles of democratic change of government or is inconsistent with the Constitution;**
 - f. Any substantial modification to the electoral laws in the last six (6) months before the elections without the consent of the majority of the political actors.**
- 2. For purposes of this Statute, “democratically elected government” has the same meaning as contained in AU instruments.**
- 3. [Any act of a sovereign people peacefully exercising their inherent right which results in a change of government shall not constitute an offence under this Article.] ”]**

Article 28F
Piracy

Piracy consists of any of the following acts:

- a. any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private boat, ship or a private aircraft, and directed:
 - i. on the high seas, against another boat, ship or aircraft, or against persons or property on board such boat, ship or aircraft;
 - ii. against a boat, ship, aircraft, persons or property in a place outside the jurisdiction of any State

* This article was bracketed by Ministers of Justice/Attorneys General and referred to the Assembly through the Executive Council for consideration.

- b. any act of voluntary participation in the operation of a boat, ship or of an aircraft with knowledge of facts making it a pirate boat, ship or aircraft;
- c. any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 28 G Terrorism

For the purposes of this Statute, 'terrorism' means any of the following acts:

- A. Any act which is a violation of the criminal laws of a State Party, the laws of the African Union or a regional economic community recognized by the African Union, or by international law, and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:
 - 1. intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
 - 2. disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
 - 3. create general insurrection in a State.
- B. Any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in sub-paragraph (a) (1) to(3).
- C. Notwithstanding the provisions of paragraphs A and B, the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts.
- D. The acts covered by international Humanitarian Law, committed in the course of an international or non-international armed conflict by government forces or members of organized armed groups, shall not be considered as terrorist acts.
- E. Political, philosophical, ideological, racial, ethnic, religious or other motives shall not be a justifiable defence against a terrorist act.

Article 28H Mercenarism

- 1. For the purposes of this Statute:
 - a. A mercenary is any person who:
 - i. Is specially recruited locally or abroad in order to fight in an armed conflict;

- ii. Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation;
 - iii. Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
 - iv. Is not a member of the armed forces of a party to the conflict; and
 - v. Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.
- b. A mercenary is also any person who, in any other situation:
- i. Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:
 1. Overthrowing a legitimate Government or otherwise undermining the constitutional order of a State;
 2. Assisting a government to maintain power;
 3. Assisting a group of persons to obtain power; or
 4. Undermining the territorial integrity of a State;
 - ii. Is motivated to take part therein essentially by the desire for private gain and is prompted by the promise or payment of material compensation;
 - iii. Is neither a national nor a resident of the State against which such an act is directed;
 - iv. Has not been sent by a State on official duty; and
 - v. Is not a member of the armed forces of the State on whose territory the act is undertaken.
2. Any person who recruits, uses, finances or trains mercenaries, as defined in paragraph (1) (a) or (b) above commits an offence.
3. A mercenary, as defined in paragraph (1) (a) or (b) above, who participates directly in hostilities or in a concerted act of violence, as the case may be, commits an offence.

Article 28I **Corruption**

1. For the purposes of this Statute, the following shall be deemed to be acts of corruption if they are of a serious nature affecting the stability of a state, region or the Union:
 - a. The solicitation or acceptance, directly or indirectly, by a public official, his/her family member or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
 - b. The offering or granting, directly or indirectly, to a public official, his/family member or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;

- c. Any act or omission in the discharge of his or her duties by a public official, his/her family member or any other person for the purpose of illicitly obtaining benefits for himself or herself or for a third party;
 - d. The diversion by a public official, his/her family member or any other person, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any property belonging to the State or its agencies, to an independent agency, or to an individual, that such official has received by virtue of his or her position;
 - e. The offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties;
 - f. The offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result;
 - g. Illicit enrichment;
 - h. The use or concealment of proceeds derived from any of the acts referred to in this Article.
2. For the purposes of this Statute "Illicit enrichment" means the significant increase in the assets of a public official or any other person which he or she cannot reasonably explain in relation to his or her income.

Article 28I Bis Money Laundering

1. For the purposes of this Statute, 'Money Laundering' means: any act of –
- i. Conversion, transfer or disposal of property, knowing that such property is the proceeds of corruption or related offences for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the offence to evade the legal consequences of his or her action.
 - ii. Concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property which is the proceeds of corruption or related offences;
 - iii. Acquisition, possession or use of property with the knowledge at the time of receipt, that such property is the proceeds of corruption or related offences

- iv. Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.
2. *Nothing in this article shall be interpreted as prejudicing the power of the Court to make a determination as to the seriousness of any act or offence.*

Article 28J **Trafficking in persons**

For the purposes of this Statute:

1. "Trafficking in persons" means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
2. Exploitation shall include the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
3. The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (1) of this article shall be irrelevant where any of the means set forth in subparagraph (1) have been used;
4. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (1) of this article;

Article 28K **Trafficking in drugs**

1. For the purposes of this Statute, trafficking in drugs means:
 - a. The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of drugs;
 - b. The cultivation of opium poppy, coca bush or cannabis plant;
 - c. The possession or purchase of drugs with a view to conducting one of the activities listed in (a);
 - d. The manufacture, transport or distribution of precursors knowing that they are to be used in or for the illicit production or manufacture of drugs.
2. The conduct described in paragraph 1 shall not be included in the scope of this Statute when it is committed by perpetrators for their own personal consumption as defined by national law.

3. For the purposes of this Article:
 - a. "Drugs" shall mean any of the substances covered by the following United Nations Conventions:
 - a. the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961;
 - b. The 1971 Vienna Convention on Psychotropic Substances.
 - b. "Precursors" shall mean any substance scheduled pursuant to Article 12 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988.

Article 28L **Trafficking in Hazardous Wastes**

1. For the purposes of this Statute, any import or failure to re-import, transboundary movement, or export of hazardous wastes proscribed by the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, adopted in Bamako, Mali, in January 1991 shall constitute the offence of trafficking in hazardous waste.
2. The following substances shall be "hazardous wastes" for the purpose of this statute:
 - a. Wastes that belong to any category contained in Annex I of the Bamako Convention;
 - b. Wastes that are not covered under paragraph (a) above but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the State of export, import or transit;
 - c. Wastes which possess any of the characteristics contained in Annex II of the Bamako Convention;
 - d. Hazardous substances which have been banned, cancelled or refused registration by government regulatory action, or voluntarily withdrawn from registration in the State of manufacture, for human health or environmental reasons.
3. Wastes which, as a result of being radioactive, are subject to any international control systems, including international instruments, applying specifically to radioactive materials are included in the scope of this Convention.
4. Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, shall not fall within the scope of this Convention.
5. For the purposes of this Article, "failure to re-import" shall have the same meaning assigned to it in the Bamako Convention.
6. The export of hazardous waste into a Member State for the purpose of rendering it safe shall not constitute an offence under this Article.

Article 28L Bis
Illicit Exploitation of Natural Resources

For the purpose of this Statute, “Illicit exploitation of natural resources” means any of the following acts if they are of a serious nature affecting the stability of a state, region or the Union:

- a. Concluding an agreement to exploit resources, in violation of the principle of peoples’ sovereignty over their natural resources;
- b. Concluding with state authorities an agreement to exploit natural resources, in violation of the legal and regulatory procedures of the State concerned;
- c. Concluding an agreement to exploit natural resources through corrupt practices;
- d. Concluding an agreement to exploit natural resources that is clearly one-sided;
- e. Exploiting natural resources without any agreement with the State concerned;
- f. Exploiting natural resources without complying with norms relating to the protection of the environment and the security of the people and the staff; and
- g. Violating the norms and standards established by the relevant natural resource certification mechanism.

Article 28M
Crime of Aggression

- A. For the purpose of this Statute “Aggression “ means the use, intentionally and knowingly, of armed force or any other hostile act by a state, a group of States, an organization of States or non-State actor(s) or by any foreign or external entity, against the sovereignty, political independence, territorial integrity and human security of the population of a State Party, which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations or the Constitutive Act of the African Union.
- B. The following shall constitute acts of aggression, regardless of a declaration of war by a State, group of States, organizations of States, or non-State actor(s) or by any foreign entity:
 1. The use of armed forces against the sovereignty, territorial integrity and political independence of any state, or any other act inconsistent with the provisions of the Constitutive Act of the African Union and the Charter of the United Nations.
 2. The invasion or attack by armed forces against the territory of a State, or military occupation however temporary, resulting from such an invasion or attack, or any annexation by the use of force of the territory of a State or part thereof.
 3. The bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State.
 4. The blockade of the ports, coasts or airspace of a State by the armed forces of another State.
 5. The attack by the armed forces of a State on the land, sea or air forces, or marine and fleets of another State.
 6. The use of the armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the African Union Non-Aggression and Common Defence Pact or any extension of their presence in such territory beyond the termination of the agreement.

7. The action of a State in allowing its territory, which it has placed at the disposal of another State to be used by another State for perpetrating an act of aggression against a third State.
8. The sending by ,or on behalf of a State or the provision of any support to armed bands, groups , irregulars , mercenaries and other organized trans-national criminal groups which may carry out hostile acts against a State ,of such gravity as to amount to the acts listed above ,or its substantial involvement therein .
9. Technological assistance of any kind, intelligence and training to another state for use in committing acts of aggression against another State.

Article 28N

Modes of Responsibility

An offence is committed by any person who, in relation to any of the crimes or offences provided for in this Statute:

- i. Incites, instigates, organizes, directs, facilitates, finances, counsels or participates as a principal, co-principal, agent or accomplice in any of the offences set forth in the present Statute;
- ii. Aids or abets the commission of any of the offences set forth in the present Statute;
- iii. Is an accessory before or after the fact or in any other manner participates in a collaboration or conspiracy to commit any of the offences set forth in the present Statute;
- iv. Attempts to commit any of the offences set forth in the present Statute.

Article 15

Entities Eligible to Submit Cases to the Court

In paragraph 1(b) of Article 29 of the Statute (Entities Eligible to Submit Cases to the Court), immediately after the words “The Assembly” insert:

“the Peace and Security Council”

Add a new paragraph (d)

(d) “The Office of the Prosecutor”

Article 16

Other Entities Eligible to Submit Cases to the Court

The deletion of paragraph (f) of Article 30 of the Statute (Other Entities Eligible to Submit Cases to the Court), and the insertion of the following new paragraph:

“(f) African individuals or African Non-Governmental Organizations with Observer Status with the African Union or its organs or institutions, but only with regard to a State that has made a Declaration accepting the competence of the Court to receive cases or applications submitted to it directly. The Court shall not receive any case or application involving a State Party which has not made a Declaration in accordance with Article 9(3) of this Protocol.”

Article 17
Institution of Proceedings before the International Criminal Law Section

UNDER CHAPTER FOUR (PROCEDURE), immediately after Article 34 of the Statute (Institution of Proceedings before the Human Rights Section, the insertion of new Articles 34A and 34B as follows:

“Article 34A
Institution of Proceedings before the International Criminal Law Section

1. Subject to the provisions of Articles 22A and 29, cases brought before the International Criminal Law Section of the Court shall be brought by or in the name of the Prosecutor.
2. The Registrar shall forthwith give notice of the case to all parties concerned, as well as the Chairperson of the Commission.

Article 34B
Institution of Proceedings before the Appellate Chamber

The Court shall define the procedures for appeals in its Rules.”

Article 18
Representation of Parties

In Article 36 of the Statute (Representation of the Parties), the insertion of a new paragraph (6) as follows, with consequential renumbering of the existing paragraph 6:

“

6. A person accused under the international criminal jurisdiction of this Court shall have the right to represent himself or herself in person or through an agent.

.....”

Article 19
Sentences and Penalties

Immediately after Article 43 of the Statute (Judgments and Decisions) the insertion of a new Article 43A as follows:

“Article 43A
Sentences and Penalties under the International Criminal Jurisdiction of the Court

1. Without prejudice to the provisions of Article 43, the Court shall pronounce judgment and impose sentences and/ or penalties, other than the death penalty, for persons convicted of international crimes under this Statute.
2. For the avoidance of doubt, the penalties imposed by the Court shall be limited to prison sentences and/ or pecuniary fines.

3. The sentences and/ or penalties shall be pronounced in public and, wherever possible, in the presence of the accused.
4. In imposing the sentences and/ or penalties, the Court should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
5. In addition to the sentences and/ or penalties, the Court may order the forfeiture of any property, proceeds or any asset acquired unlawfully or by criminal conduct, and their return to their rightful owner or to an appropriate Member State.”

Article 20 Compensation and Reparations to Victims

Article 45 of the Statute (Compensation), including its title, is deleted in its entirety and substituted with the following:

“Article 45 Compensation and Reparations to Victims

1. Without prejudice to the provisions of paragraph (i) of Article 28, the Court shall establish in the Rules of Court principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss or injury to, or in respect of, victims and will state the principles on which it is acting.
2. With respect to its international criminal jurisdiction, the Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.
3. Before making an order the Court may invite and take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.
4. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.”

Article 21 Binding Force and Execution of Judgments

Paragraph 2 of Article 46 of the Statute (Binding Force and Execution of Judgments) is deleted and substituted with the following: -

“

2. Subject to the provisions of Article 18 (as amended) and paragraph 3 of Article 41 of the Statute, the judgment of the Court is final.

3.”

Article 22
Provisions Specific to the International Criminal Jurisdiction of the Court

Under Chapter IV (PROCEDURE), immediately at the end of Article 46 (Binding Force and Execution of Judgments), the insertion of a new CHAPTER IVA and new Articles 46A to 46L as follows:

**“CHAPTER IVA: PROVISIONS SPECIFIC TO THE INTERNATIONAL CRIMINAL
JURISDICTION OF THE COURT**

Article 46A
Rights of Accused

1. All accused shall be equal before the Court.
2. The accused shall be entitled to a fair and public hearing, subject to measures ordered by the Court for the protection of victims and witnesses.
3. The accused shall be presumed innocent until proven guilty according to the provisions of this Statute.
4. In the determination of any charge against the accused pursuant to this Statute, he or she shall be entitled to the following minimum guarantees, in full equality:
 - a. To be informed promptly and in detail in a language that he or she understands of the nature and cause of the charge against him or her;
 - b. To have adequate time and facilities for the preparation of his or her defence and to communicate freely with counsel of his or her own choosing;
 - c. To be tried without undue delay;
 - d. To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
 - e. To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
 - f. To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Court;
 - g. Not to be compelled to testify against himself or herself or to confess guilt.
 - h. To have the judgment pronounced publicly
 - i. To be informed of his /her right to appeal.

Article 46B
Individual Criminal Responsibility

1. A person who commits an offence under this Statute shall be held individually responsible for the crime.

2. **Without prejudice to the immunities provided for under international law**, the official position of any accused person, whether as Head of State or Government, Minister or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
3. The fact that any of the acts referred to in article 28A of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
4. The fact that an accused person acted pursuant to the order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Court determines that justice so requires.

Article 46C **Corporate Criminal Liability**

1. For the purpose of this Statute, the Court shall have jurisdiction over legal persons, with the exception of States.
2. Corporate intention to commit an offence may be established by proof that it was the policy of the corporation to do the act which constituted the offence.
3. A policy may be attributed to a corporation where it provides the most reasonable explanation of the conduct of that corporation.
4. Corporate knowledge of the commission of an offence may be established by proof that the relevant knowledge was possessed within the corporation and that the culture of the corporation caused or encouraged the commission of the offence.
5. Knowledge may be possessed within a corporation even though the relevant information is divided between corporate personnel.
6. The criminal responsibility of legal persons shall not exclude the criminal responsibility of natural persons who are perpetrators or accomplices in the same crimes.
7. For the purpose of this section:

“Corporate culture” means an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or within the area of the body corporate in which the relevant activities take place.

Article 46D **Exclusion of Jurisdiction over Persons under the age of eighteen**

The Court shall have no jurisdiction over any person who was under the age of eighteen (18) years at the time of the alleged commission of a crime.

Article 46E

Temporal Jurisdiction

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Protocol and Statute.
2. If a State becomes a Party to this Protocol and Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Protocol and Statute for that State.

Article 46E *bis* Preconditions to the exercise of Jurisdiction

1. A State which becomes a Party to this Protocol and Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in Article 28A.
2. The Court may exercise its jurisdiction if one or more of the following conditions apply:
 - (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft.
 - (b) The State of which the person accused of the crime is a national.
 - (c) When the victim of the crime is a national of that State.
 - (d) Extraterritorial acts by non-nationals which threaten a vital interest of that State.
3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise

Article 46F Exercise of Jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 28A in accordance with the provisions of this Statute if: -

1. A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party;
2. A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Assembly of Heads of State and Government of the African Union or the Peace and Security Council of the African Union.
3. The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 46G.

Article 46G The Prosecutor

1. The Office of the Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court.

2. The Office of the Prosecutor shall analyze the seriousness of information received. For this purpose, he or she may seek additional information from States, organs of the African Union or United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony.
3. If the Office of the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to a Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of the Court.
4. If the Pre-Trial Chamber, upon examination of the request and supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.
5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation.
6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.

Article 46H

Complementary Jurisdiction

1. The jurisdiction of the Court shall be complementary to that of the National Courts, and to the Courts of the Regional Economic Communities where specifically provided for by the Communities.
2. The Court shall determine that a case is inadmissible where:
 - a. The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable to carry out the investigation or prosecution;
 - b. The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State to prosecute;
 - c. The person concerned has already been tried for conduct which is the subject of the complaint;
 - d. The case is not of sufficient gravity to justify further action by the Court.

3. In order to determine that a State is unwilling to investigate or prosecute in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:
 - a. The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court;
 - b. There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
 - c. The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.
4. In order to determine that a State is unable to investigate or prosecute in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

Article 46I
Non bis in idem

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.
2. Except in exceptional circumstances, no person who has been tried by another court for conduct proscribed under Article 28A of this Statute shall be tried by the Court with respect to the same conduct unless the proceedings in the other Court:
 - a. Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court;
 - b. Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.
3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the Court shall take into account the extent to which any penalty imposed by another Court on the same person for the same act has already been served.

Article 46J
Enforcement of Sentences

1. A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons.
2. Such imprisonment shall be as provided for in a prior agreement between the Court and a receiving State and in accordance with the criteria as set out in the Rules of Court.

Article 46Jbis
Enforcement of fines and forfeiture measures

1. States Parties shall give effect to fines or forfeitures ordered by the Court without prejudice to the rights of bona fide third parties, and in accordance with the procedure provided for in their national law.
2. If a State Party is unable to give effect to an order for forfeiture, it shall take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited, without prejudice to the rights of bona fide third parties.
3. The Court shall determine in its Rules how real or movable property obtained by a State as a result of its enforcement of a judgment or order may be dealt with.

Article 46K
Pardon or Commutation of Sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Court accordingly. There shall only be pardon or commutation of sentence if the Court so decides on the basis of the interests of justice and the general principles of law.

Article 46L
Co-operation and Judicial Assistance

1. States Parties shall co-operate with the Court in the investigation and prosecution of persons accused of committing the crimes defined by this Statute.
2. States Parties shall comply without undue delay with any request for assistance or an order issued by the Court, including but not limited to:
 - a. The identification and location of persons;
 - b. The taking of testimony and the production of evidence;
 - c. The service of documents;
 - d. The arrest, detention or extradition of persons;
 - e. The surrender or the transfer of the accused to the Court.”
 - f. The identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture ,without prejudice to the rights of bona fide third parties.
 - g. Any other type of assistance which is not prohibited by the law of the requested State, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the court.
3. The Court shall be entitled to seek the co-operation or assistance of regional or international courts, non-States Parties or co-operating partners of the African Union and may conclude Agreements for that purpose.

**Article 46M
Trust Fund**

1. The Assembly shall, by a Decision, establish, within the jurisdiction of the Court, a Trust Fund for legal aid and assistance and for the benefit of victims of crimes or human rights violations and their families.
2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.
3. The Trust Fund shall be managed according to criteria to be determined by the Assembly.

**Article 23
Annual Activity Report**

Article 57 of the Statute (Annual Activity Report) is deleted and substituted with the following:

“The Court shall submit to the Assembly an annual report on its work during the previous year. The report shall specify, in particular, the pending and concluded investigations, prosecutions and decisions and the cases in which a party has not complied with the judgment, sentence, order or penalty of the Court.”