

African Union, African Regional Bodies

## Statute on the Establishment of Legal Aid Fund for the African Union Human Rights Organs

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African Union

# Statute on the Establishment of Legal Aid Fund for the African Union Human Rights Organs

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## Preamble

### We, Members States of the African Union:

**RECALLING** the objectives and principles enunciated in the Constitutive Act of the African Union, adopted on 11 July 2000 in Lomé, Togo, in particular the commitment to settle their disputes amicably;

**ALSO RECALLING** the African Union Ministerial Conferences of 1999 in Mauritius and 2003 in Kigali calling for the establishment of a Human Rights Fund in Africa.

**CONSIDERING** Article 3 of the African Charter on Human and Peoples' Rights on equality before the law and equal protection of the law;

**RECALLING** Article 7 of the African Charter on Human and Peoples' Rights on the right to have one's cause heard;

**FURTHER RECALLING** the right to free legal representation as enshrined under Article 10(2) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights;

**MINDFUL** of Declaration 41 of the African Commission on Human and Peoples' Rights on the Right to Fair Trial and Legal Aid in Africa;

**ACKNOWLEDGING** the Principles and Guidelines on the Right to a Fair Trial and Legal Aid in Africa;

**RECALLING** the decision of the African Court on Human and Peoples' Rights at its 25<sup>th</sup> Ordinary Session calling for the formulation and establishment of a legal aid scheme for the Court;

**BEARING IN MIND** Decision (EX, CL/Dec.865 (XXVI) of the Executive Council at its 26th, Ordinary Session authorizing the Court to establish a judicial assistance Fund within the framework of resources already allocated to it and the mobilization of voluntary resources of Member States;

**CONVINCED** that the attainment of the objectives of the African Union requires the creation of a Legal Aid Fund;

**HAVE AGREED AS FOLLOWS:**

## General provisions

### Article 1 – Definitions

In this statute the following definitions shall apply:

"**African Commission**" means the African Commission on Human and Peoples' Rights;

"**Assembly**" means the Assembly of Heads of State and Government of the African Union;

"**Board**" means the Board of Trustees of the Fund;

"**Chairperson**" means the Chairperson of the Board;

"**Charter**" means the African Charter on Human and Peoples' Rights;

"**Commission**" means the African Union Commission;

"**Committee**" means the African Committee of Experts on the Rights and Welfare of the Child;

"**Court**" means the African Court on Human and Peoples' Rights;

"**Executive Council**" means the Executive Council of the African Union;

"**Fund**" means the Legal Aid Fund of Human Rights Organs of the African Union;

"**Human Rights Organs of the African Union**" means the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child and any other body as may be established;

"**Indigent Applicant**" means an applicant for legal assistance who is determined as such by the Fund pursuant to its policy on Legal Assistance;

"**Member**" means member of the Board;

\*"Member State" means a Member State of the African Union;

"**Statute**" means the present Statute;

"**Union**" means the African Union established by the Constitutive Act of the African Union.

## **Article 2 – Establishment and legal capacity of the Legal Aid Fund**

1. The Fund is hereby established as an independent fund of the Union to provide legal assistance to indigent applicants before Human Rights organs of the Union.
2. The Fund shall possess full juridical personality and capacity to contract, acquire and dispose of immovable and moveable property and institute legal proceedings in accordance with African Union rules and regulations.

## **Article 3 – Objectives**

The fund shall have the following Objectives:

- a) To mobilize and receive resources to finance the Legal Aid Scheme of the Human Rights Organs of the African Union;
- b) To foster cooperation and coordination among all relevant stakeholders, notably, Member States, various organs and institutions of the African Union, international organizations, civil society organizations, lawyers associations and the private sector, and within the provision of legal aid; -
- c) To engage in activities and projects that will further the objectives of this Statute.

## **Article 4 – Principles of the Legal Aid Fund**

To achieve its objectives, the Fund shall in the exercise of its functions respect and observe the following principles:

- a) Effective, sustainable, credible and accessible legal aid system;
- b) Availability of resources and a need based legal aid system.

## **Article 5 – Management of the Fund**

1. The Fund shall be managed by a Board of Trustees charged with supervising the operations, financial management, accounting and its treasury.
2. The Board shall:
  - a) provide strategic leadership and oversight of the fund;
  - b) recruit the Secretary of the Fund;
  - c) draw up the required or appropriate operational rules in conformity with the present Statute;
  - d) evaluate the functioning of the Fund;
  - e) manage and oversee the resources and assets of the Fund;
  - f) set up guidelines for the judicious investment of the finances of the Fund;
  - g) manage the Fund in accordance with the African Union Financial Rules and Regulations;
  - h) recruit a manager(s) of investments charged with the management of the Fund's investments, in compliance with the existing Union guidelines on investments;
  - i) Approve the annual report of the Fund for submission to the Chairperson of the Commission;
  - j) Approve the annual budget of the Fund;
  - k) Recruit an external Auditor; and
  - l) Carry out any other duties, which may be necessary or appropriate for the proper functioning of the Fund.
3. In the exercise of its functions, the Fund shall be assisted by a Secretariat.

## **Article 6 – Composition of the Board**

1. The Board shall consist of:
  - a) Five (5) members appointed by the Chairperson of the Commission from the five (5) AU regions taking into account equitable gender balance; and
  - b) One (1) Member representing each of the Human Rights Organs of the African Union.
2. Within sixty (60) days of entry into force of this Statute, the Chairperson of the Commission shall invite each region to submit, in writing, a maximum of five (5) candidates, for consideration for appointment to the Board.
3. Members of the Board where applicable, shall serve in their personal capacity and shall be persons of high moral character, impartiality and integrity and who have recognized competence in one or more of the following areas: legal assistance, fundraising, fund management, banking, commerce and finance and communications or outreach.
4. No two (2) members shall be nationals of the same State.

## **Article 7 – Term of office of members of the Board**

1. Members, other than representatives of Human Rights Organs of the African Union, shall be appointed for a non-renewable period of five (5) years.

2. A member appointed to replace a member whose term of office has not yet expired shall be from the same region and shall hold office for the remainder of the predecessor's term.

### **Article 8 – Remuneration**

Members of the Board of Trustees shall not receive any remuneration for serving on the Board other than reimbursement for eligible expenses associated with attending to the business of the Board in accordance with the AU Financial Rules and Regulations.

### **Article 9 – Resignation, suspension and removal from office**

1. A Board Member may resign by addressing a letter of resignation to the Chairperson of the Board who shall transmit the letter to the Chairperson of the Commission.
2. A Member may be suspended or removed from office on the recommendation of two-thirds of the other Members on the grounds that the member no longer meets the requisite conditions specified in this Statute.
3. The Chairperson of the Board shall bring the recommendation for suspension or removal of a Member from office to the attention of the Chairperson of the Commission. Suspension or removal from office shall be carried out in conformity with the Fund's Rules of Procedure.

### **Article 10 – Vacancies**

1. A seat on the Board shall be vacant under the following circumstances:
  - a) Death;
  - b) Resignation;
  - c) Removal from office in accordance with Article 9 above.
2. In the event of death, resignation or removal from office of a Member, the Chairperson of the Board, through the Chairperson of the Commission, shall immediately inform the Member States in writing. Thereafter, the Chairperson of the Commission shall declare the seat vacant.
3. The same procedure for the appointment of Members shall be followed in filling vacancies.

### **Article 11 – Election of the Chairperson and Vice-Chairperson of the Board**

1. The members of the Board shall elect from among themselves the Chairperson and the Vice Chairperson, who shall serve for a nonrenewable term of two (2) years.
2. The modalities for the election of the Chairperson and the Vice Chairperson as well as their duties shall be defined in the Fund's Rules of Procedure.

### **Article 12 – Sessions of the Board**

1. Board Members shall perform their functions on a part-time basis.
2. The Board shall meet once a year in ordinary session. It may meet in extraordinary sessions at the request of the Chairperson or six (6) of the members, if necessary and subject to the availability of resources.
3. The duration of the sessions shall be determined by the Rules of Procedure of the Fund.



4. Sessions of the Board shall be held at the seat of the Fund, or at any other place to be determined by the members.

### **Article 13 – Quorum**

The quorum for a meeting of the Board shall be five (5) Members, with at least one (1) being a representative of the Human Rights Organs of the African Union.

### **Article 14 – Secretariat of the Fund**

1. The Secretariat shall assist the Board in carrying out its oversight duties as well as be in charge of the day-to-day management and operations of the Fund.
2. The Secretariat shall be headed by a Secretary to the Fund, who may be assisted by other members of staff.
3. The Secretary to the Fund shall:
  - a) Manage the day-to-day operations of the Fund;
  - b) Prepare and submit to the Board the capital and operating annual budget of the Fund;
  - c) Employ staff and engage the services of consultants in accordance with applicable rules;
  - d) Submit to the Board a financial statement of the Fund during the preceding fiscal year as audited by the External Auditor;
  - e) Represent the Fund in relation to third parties; and
  - f) Perform any other functions as may be assigned by the Board from time to time.

### **Article 15 – Code of Conduct**

The Code of Ethics and Conduct of the African Union shall apply to the Fund.

### **Article 16 – Resources of the Fund**

1. The resources of the Fund shall consist of:
  - a) Voluntary contributions of Member States;
  - b) Contributions from African Union partners; and
  - c) Income derived from operations of the Fund or otherwise accruing to the Fund.
2. The Fund shall only accept grants, gifts or other material benefit, which are in conformity with the objectives of the Union.
3. Financing of the Fund shall be governed by considerations of economy, efficiency and cost effectiveness and the need to safeguard the independence and sustainability of the Human Rights Organs of the African Union.

### **Article 17 – Seat**

The Fund shall be located at the seat of the Court.

### **Article 18 – Privileges and immunities**

1. The Fund, its representatives and staff shall enjoy in the territory of each Member State, the privileges and immunities stipulated in the 1965 General Convention on Privileges and Immunities of the Organization of African Unity and other relevant international instruments.
2. The Host Agreement, which shall be concluded between the Fund and Host Country of the seat of the Court shall govern the relations between the Fund and Host Country.

### **Article 19 – Cooperation with Human Rights Organs of the African Union and other institutions of the Union**

1. Upon entry into force of this Statute, the Fund shall enter into an agreement with the Human Rights Organs of the African Union, specifying the mode of cooperation and collaboration between the institutions.
2. The Fund may, if it deems it necessary, consult with any organ or institution of the Union on any subject, which is within the competence of each organ or institution. All documents circulated to Member States by the Fund shall also be circulated to interested organs or institutions of the Union for their information, comments, proposals or necessary action.

### **Article 20 – Cooperation with other institutions**

In order to broaden its operational base, the Fund may consult with intergovernmental international or national organizations, civil society organizations, bar associations and law societies, and any other institution that it may consider relevant, on any subject entrusted to it, if it believes that such procedure might aid it in the performance of its functions.

### **Article 21 – Amendments**

The present Statute may be amended on the recommendation of the Board and upon adoption by the Assembly.

### **Article 22 – Entry into force**

The present Statute and any amendment thereof shall enter into force upon adoption by the Assembly.

**Adopted by the twenty sixth Ordinary Session of the Assembly, held in Addis Ababa, Ethiopia**

**31 January 2016**