

Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (2014/)

This Protocol provides the African Court of Justice and Human Rights with criminal jurisdiction. The Protocol was adopted in Malabo, Equatorial Guinea on 27 June 2014. As of August 2016 no state had ratified the Protocol.

Statute of the African Court of Justice and Human Rights (as amended)

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CHAPTER III: Competence of the Court

Article 28: Jurisdiction of the Court

The Court shall have jurisdiction over all cases and all legal disputes submitted to it in accordance with the present Statute which relate to:

- (a) the interpretation and application of the Constitutive Act;
- (b) the interpretation, application or validity of other Union Treaties and all subsidiary legal instruments adopted within the framework of the Union or the Organization of African Unity;
- (c) the interpretation and the application of the African Charter, the Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, or any other legal instrument relating to human rights, ratified by the States Parties concerned;
- (d) The crimes contained in this Statute, subject to a right of appeal.
- (e) any question of international law;
- (f) all acts, decisions, regulations and directives of the organs of the Union;
- (g) all matters specifically provided for in any other agreements that States Parties may conclude among themselves, or with the Union and which confer jurisdiction on the Court;
- (h) the existence of any fact which, if established, would constitute a breach of an obligation owed to a State Party or to the Union;
- (i) the nature or extent of the reparation to be made for the breach of an international obligation.

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.

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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.

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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 29: Entities eligible to submit cases to the Court

1. The following entities shall be entitled to submit cases to the Court on any issue or dispute provided for in Article 28:

(a) State Parties to the present Protocol;

(b) The Assembly, the Peace and Security Council, the Parliament and other organs of the Union authorized by the Assembly;

(c) A staff member of the African Union on appeal, in a dispute and within the limits and under the terms and conditions laid down in the Staff Rules and Regulations of the Union;

(d) The Office of the Prosecutor.

2. The Court shall not be open to States, which are not members of the Union. The Court shall also have no jurisdiction to deal with a dispute involving a Member State that has not ratified the Protocol.

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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.

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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.

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CHAPTER IVA: Provisions specific to the international criminal jurisdiction of the Court

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Article 46A bis: Immunities

No charges shall be commenced or continued before the Court against any serving AU Head of State or Government, or anybody acting or entitled to act in such capacity, or other senior state officials based on their functions, during their tenure of office.

Article 46B: Individual criminal responsibility

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

2. Subject to the provisions of article 46A bis of this Statute, the official position of any accused person 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 actual or constructive knowledge of the relevant information was possessed within the corporation.

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.

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