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CONSTITUTION OF THE AFRICAN NETWORK OF CONSTITUTIONAL LAWYERS

African constitutional scholars, lawyers and activists, aware of the growing importance of constitutional law in the development of the continent, and motivated by the desire to fulfil their rightful role in the management of the development of democracy on the continent have agreed to form the African Network of Constitutional Lawyers (ANCL), the organisation and operation of which is determined by the present Constitution.

SECTION I

NAME, OBJECTIVES AND ACTIVITIES

Article 1: Name

- (1) African constitutional scholars and lawyers hereby create an association called the African Network of Constitutional Lawyers (ANCL).
- (2) The ANCL is a regional network of the International Association of Constitution Law (IACL).
- (3) The ANCL is a body corporate, having separate legal personality distinct from that of its members and office bearers; and accordingly, it continues to exist notwithstanding changes from time to time in its membership composition. It may own assets; incur liabilities; enter into contracts and other commitments; and sue or be sued, in its own name.

Article 2: Objectives

The objectives of the ANCL are -

- (1) to stimulate the development of the study of constitutional law on the continent;
- (2) to act as a forum for the exchange of information and ideas between members of the ANCL and between the ANCL and other partner organisations with a view to improving the understanding of African constitutional systems;
- (3) to promote human and peoples' rights on the continent including civil, political, economic, social, cultural rights;
- (4) to examine and compare the problems and phenomena common to African and foreign constitutional systems;
- (5) to anticipate African constitutional problems and to propose solutions capable of resolving them;

- (6) to provide a 'task force' of constitutional experts who could be called on to give advice on African constitutional problems; and
- (7) to develop a constitutional and democratic conscience on the continent.

Article 3: Activities

To realize these objectives, the ANCL shall -

- (1) maintain a website as a focal point for interaction and sharing information;
- (2) host conferences at which ANCL members and others will present papers on and discuss selected themes in constitutional law, constitutionalism, the rule of law, good governance and the protection of human rights in Africa;
- (3) establish international focus groups to undertake research on matters that are of critical significance to the strengthening of democracy and constitutionalism and the protection of rights in Africa;
- (4) publish the proceedings of the conferences and other research undertaken under the auspices of the ANCL;
- (5) promote the objectives of the International Association of Constitutional Law (IACL) and establish relationships with other associations, organisations and institutions with objectives similar to those of the ANCL; and
- (6) undertake any other activity aimed at advancing the objectives identified in Article 2 above.

SECTION II MEMBERSHIP

Article 4: Members

- (1) Any African constitutional scholar, judge, lawyer, and members of civil society with research and/or teaching interest in constitutional law may be admitted as an individual member of the ANCL.
- (2) Institutes and national associations of constitutional law, law or bar societies and associations, and non-governmental organisations, whose objectives are compatible with those of the ANCL, may also become members.
- (3) Non-Africans may be admitted as associate members.
- (4) The ANCL may bestow honorary membership on individuals who have been of service to it.

Article 5: Membership applications and fees

- (1) Applications for membership are sent to the Secretary General. The final decision membership is taken by the Executive Committee or its sub-committee constituted for that purpose.
- (2) Members who have paid their subscription fees in full are entitled to take part and be kept informed of the activities of the ANCL.
- (3) Membership fees, determined by the General Assembly, are payable annually.
- (4) Membership fees shall be used to advance the objectives of the ANCL.

SECTION III
ORGANISATION AND FUNCTIONING

Article 6: Organs of the ANCL

(1) The organs of the ANCL are the General Assembly; the President; Five Vice Presidents; the Secretary General; the Deputy Secretary General, the Treasurer, the Executive Committee; and the Secretariat.

(2) There shall be an Electoral Committee of the ANCL which shall be elected by the General Assembly at the end of each conference. The Electoral Committee shall consist of a minimum of three and maximum of five members and shall recommend policy on elections and serve as the election overseers at the conference. Their mandate will end at the end of each conference when a new Electoral Committee is elected.

(3) There shall be five regional caucuses of the ANCL. These shall comprise of North Africa, Southern Africa, East Africa, West Africa and Central Africa. North Africa shall comprise (6 countries) Egypt, Libya, Tunisia, Algeria, Morocco and Western Sahara. West Africa shall comprise (18 countries) Benin, Burkina Faso, Cape Verde, Chad, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo. Central Africa shall comprise (6 countries) Cameroon, Central African Republic, Congo, Democratic Republic of Congo, Equatorial Guinea, Gabon, and São Tomé and Príncipe. East Africa shall comprise (15 countries) Eritrea, Ethiopia, Somalia, Djibouti, Sudan, South Sudan, Uganda, Kenya, Tanzania, Rwanda, Burundi, the Comoros, Mauritius, the Seychelles and Madagascar. Southern Africa shall comprise (10 countries) Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Eswatini, Zambia and Zimbabwe.

Article 7: The General Assembly

- (1) The General Assembly is constituted by all the members of the ANCL.
- (2) Associate members have a consultative status in the General Assembly.
- (3) Only fully-paid up members are entitled to vote in the General Assembly.

Article 8: General Assembly Power and decision making

- (1) The General Assembly has power to -
 - (a) Elect the President, Five Vice Presidents, the Secretary General the Deputy Secretary General, the Treasurer, and members of the Executive Committee;
 - (b) amend the Constitution;
 - (c) take principal decisions on behalf of the ANCL;
 - (d) discuss and adopt reports on the activities of all organs of the ANCL;
 - (e) take policy decisions on membership to the ANCL; and

- (f) do anything else that promotes the objectives of the ANCL.
- (2) The General Assembly meets at least once every four years and is chaired by the President.
- (3) Decisions of the General Assembly may be taken -
 - (a) at a meeting of the General Assembly; or
 - (b) by a postal or electronic vote which includes voting by email.
- (4) (a) All members of the ANCL must be notified of a meeting of the General Assembly at least two months in advance.
 - (b) One fifth of the members constitutes a quorum.
 - (c) Questions before a meeting of the General Assembly are decided by a simple majority of the members present and voting.
- (5) The Executive committee may decide that a question should be decided by a postal or electronic vote.
- (6) If a decision of the General Assembly is to be secured by a postal or electronic vote, the Secretariat must inform members at least six weeks in advance of -
 - (a) the procedure to be followed; and
 - (b) the question to be decided.
- (7) Members must be given at least three weeks to object to -
 - (a) a decision to decide a matter by a postal or electronic vote; and
 - (b) the procedure by which the vote will be taken.
- (8) When a matter is decided by a postal or electronic vote, the matter is decided by the majority of votes cast. Spoilt votes count as votes against the proposal. A notification that a member intends to abstain does not count as a vote cast.
- (9) Article 18 applies to the amendment of this Constitution.

Article 9: The President

- (1) The President is elected by the General Assembly by a simple majority vote.
- (2) The President is the chairperson of the General Assembly and the Executive Committee.
- (3) The President serves a four-year term of office, which may be renewed once.
- (4) The President convenes meetings of the General Assembly and the Executive Committee and ensures that the decisions of the General Assembly are executed. He or she coordinates the activities of the ANCL and acts as its representative.
- (5) Five Vice Presidents shall be elected from each of the remaining regional caucuses not represented by the President.
- (6) If the President is unable to fulfill his responsibilities, the Vice President whose last name is first in alphabetic order assumes the responsibilities of the President. No Vice President shall serve as Acting President twice in the same presidential term unless all other Vice Presidents have also served as interim president in accordance with the ranking order of their last names.

- (7) The President may be removed from office by the General Assembly on grounds of incompetence, gross misconduct or serious breach of the Constitution of the ANCL. Thereafter, the Vice Presidents serve as President on a six-month rotational basis until the next conference beginning with the next in line in accordance with the formulation in subsection 6.

Article 10: The Secretary General

- (1) The Secretary General is responsible for implementing decisions of the General Assembly, the Executive Committee and the President and ensuring that the Secretariat functions properly.
- (2) The Secretary General shall ensure that an Annual Report on the activities of the ANCL is prepared and presented to the members.
- (3) The Secretary General is elected by the General Assembly for a period of four years and is eligible for reelection.
- (4) The Secretary General may be removed from office by the General Assembly or the Executive Committee on grounds of incompetence, gross misconduct or serious breach of the Constitution of the ANCL.
- (5) There shall be a Deputy Secretary General who assists the Secretary General and will serve in that role if the Secretary General is unable to fulfill their responsibilities or is removed from office.

Article 11: The Treasurer

- (1) The Treasurer oversees the financial management of the ANCL and is responsible for management of financial resources.
- (2) The Treasurer shall ensure that the Financial Statements shall be prepared at least once a year for presentation to members, and that Books of Account and Financial Statements shall be audited and certified by an independent practising Chartered Accountant.
- (3) The Treasurer may be removed from office by the General Assembly or the Executive Committee on grounds of incompetence, gross misconduct or serious breach of the Constitution of the ANCL.
- (4) There shall be a Deputy Treasurer who assists the Treasurer and will serve in that role if the Treasurer is unable to fulfill their responsibilities or is removed from office.

Article 13: The Executive Committee

- (1) The Executive Committee is made up of such number of fully-paid up members of the ANCL as may be determined by the General Assembly.
- (2) The Executive Committee may co-opt up to five more members to serve on or replace those that have resigned from the Committee.
- (3) Members of the Executive Committee are elected by the General Assembly on the basis of geographic representation and their means and commitment.

- (4) The President, Five Vice Presidents, Secretary General the Deputy Secretary General, the Treasurer, the Deputy Treasurer; are members of the Executive Committee.
- (5) Members of the Executive Committee serve four-year terms, which may be renewed once.
- (6) The Executive Committee supports the President in defining strategies for the realisation of the Network's objectives.
- (8) The Executive Committee meets at the request of the President, who chairs and determines the agenda in consultation with the members.

Article 14: Gender Equality

To promote gender equality, the ANCL must strive to ensure that all deputies are of a different gender to the occupant of the office they deputize; and that at least half of the positions in the Executive Committee and in the presidency are held by women.

Article 15: Eligibility for Election

All elective officers shall be elected from the membership of the General Assembly of the Association and shall continue in office until their successors are elected or appointed.

Article 16: The Secretariat

- (1) The Secretariat is based in the Department of Public Law at the University of Cape Town, South Africa.
- (2) The General Assembly may decide to change the location of the Secretariat by a simple majority vote.
- (3) The Secretariat is responsible for the day-to-day running of the activities of the ANCL.

SECTION IV FINANCIAL MANAGEMNT

Article 17: Management of financial resources

The financial resources of the Network include membership fees, income from sales of publications of the ANCL, donations and grants.

Article 18: Annual Financial Year; Books of Accounts; and Annual Financial Statements

- (1) The Annual Financial Year of the ANCL shall commence on 1 March in each year, and terminate on the last day of February in the succeeding year.
- (2) The Executive Committee shall ensure that the financial resources of the ANCL are properly managed.
- (3) The Treasurer is responsible for the management of the financial resources.
- (4) Financial Statements (including Capital and Revenue accounts) shall be prepared at least once a year, in accordance with generally accepted accounting practice, and

shall clearly reflect the affairs of the ANCL including donor funding received by the secretariat. Such Books of Account and Financial Statements shall be audited and certified by an independent practising Chartered Accountant, or in such other manner as may be deemed appropriate by the Co-ordinating Committee.

- (5) A copy of the Annual Financial Statements shall be made available to each Member as soon as possible after the close of each financial year.

Article 19: Banking Account and Signatures

- (1) The ANCL's financial affairs shall be conducted by means of a banking account.
- (2) All cheques, promissory notes, and other documents requiring signature or authorisation on behalf of the ANCL shall be signed by at least two (2) authorised persons, as the Executive Committee may from time to time determine.

Article 20: Prescribed Fiscal Conditions

- (1) Anything to the contrary hereinbefore contained or implied notwithstanding, the powers of the Association, shall be exercised subject to compliance with the conditions stipulated in section 30 of the South African Income Tax Act, as read with the Ninth Schedule thereto, in order to thereby ensure that the ANCL secures and retains tax-exempt status in terms of section 10(1)(cN) of such Act. The **Prescribed Fiscal Conditions** presently applicable are set forth in the Schedule to this Constitution.
- (2) In furtherance of its objectives, the ANCL may accept donations in support of its Public Benefit Activities; and, if so authorised by the Commissioner for South African Revenue Service (SARS), it may also issue Receipts in terms of section 18A of the Income Tax Act, for the benefit of South African taxpaying donors. Accordingly, in the event of it being so authorised, the ANCL shall ensure its compliance with the special conditions prescribed by the Income Tax Act with respect to such tax deductible donations, including any such conditions as may be imposed by regulation, or by the exercise of the statutory powers and discretions vested in the Minister, and/or the Commissioner, as the case may be.

Article 21: Registration under the South African Non-profit Organisations Act

The ANCL shall also procure that it is duly registered in terms of the South African Non-profit Organisations Act and accordingly, in compliance with the prescriptive requirements of such Act, it is stipulated as follows:

- (1) The Organisation's name shall be as stated in Article 1.
- (2) The Organisation's aims and objectives shall be as stated in Article 2.
- (3) The Organisation's income and property shall not be distributable amongst its members or office-bearers, save insofar as they may be reimbursed for reasonable out of pocket expenses incurred in the execution of their duties.
- (4) The Organisation shall be deemed to be a body corporate, and shall have an identity separate and distinct from its Members, as envisaged by Article 16.

- (5) The Organisation shall continue to exist notwithstanding changes that may occur in the composition of its membership, or its office-bearers, as envisaged by Article 16;
- (6) The members and office-bearers shall have no rights in the property or other assets of the Organisation by virtue of their membership or office.
- (7) The powers of the Organisation shall be as set forth in its Constitution, including Article 9, as read with the Schedule hereto.
- (8) The organisational structure and mechanisms for the Organisation's governance are as set forth in this Constitution, including Articles 6 - 12.
- (9) The rules for convening and conducting meetings, including quorums required for and the minutes to be kept of those meetings, shall be as stated in Section III.
- (10) The manner in which decisions are to be made shall be as stated in Articles 8, 9, and 12.
- (11) The Organisation's financial transactions must be conducted by means of a banking account, as stated in Article 18(1).
- (12) The date for the end of the Organisation's financial year shall be as stated in Article 17(1).
- (13) The procedure for changing the constitution shall be as stated in Article 14.
- (14) The procedure by which the Organisation may be wound up or dissolved shall be as stated in Article 15.
- (15) If the Organisation is wound up or dissolved, any asset remaining after all its liabilities have been met, must be transferred to some other eligible Nonprofit Organisation or institution, having the same or similar objectives, as stated in Article 15, as read with clause 2.8 of the Schedule hereto.

SECTION V

AMENDMENT OF THE CONSTITUTION AND DISSOLUTION

Article 22: Amendment

- (1) The proposed amendment must be put to members for decision by a postal or electronic vote.
- (2) The provisions of Article 8(6) - (8) apply to the postal or electronic vote.

Article 23: Dissolution

If the ANCL is dissolved, the Secretariat must transfer its assets to another organisation with similar aims.

SCHEDULE OF PRESCRIBED FISCAL CONDITIONS
[In terms of sections 18A and 30 of the South African Income Tax Act
No 58 of 1962, as amended]

By reason of the anticipated approval by the Commissioner of the ANCL (hereinafter referred to as “the Organisation”) for purposes of the undermentioned provisions of the Income Tax Act, the Organisation shall be bound to conform to the conditions prescribed from time to time in terms of the relevant South African fiscal legislation, including any amendments thereto as may be enacted or prescribed from time to time. Such Prescribed Fiscal Conditions, as are presently applicable to the Association as at the date of adoption of these amendments to the Constitution, are as follows :

- 1. As the Organisation is a Public Benefit Organisation approved by the Commissioner for purposes of section 18(A)(1) of the Income Tax Act, it shall, insofar as this may be applicable :**
 - 1.1 Ensure that any eligible donations actually paid or transferred to the Organisation, are applied solely to undertake, or to enable other Eligible Beneficiaries to undertake Public Benefit Activities as listed from time to time in Part II of the Ninth Schedule; including the provision of funds or assets to assist other Eligible Beneficiary organisations, institutions, boards or bodies to conduct such Activities, including such as may be determined by the Minister from time to time for purposes of section 18A of the Act. The term “Eligible Beneficiaries” shall include the Government itself, and any provincial administration or local authority contemplated in section 10(1)(a) or (b) of the Income Tax Act.
 - 1.2 Ensure that during each year of assessment preceding the year of assessment of the Organisation during which a qualifying donation is received, it distributes or incurs the obligation to distribute at least Seventy-Five Percent (75%) of the funds so received by or accrued to it by way of donations which qualify for a deduction in terms of section 18A of the Income Tax Act; unless the Commissioner upon good cause shown agrees to waive, defer or reduce such obligation to distribute, as contemplated by the proviso to section 18A(1)(b)(ii) of the Act, and in that event, subject to any such conditions as the Commissioner may determine.
 - 1.3 Comply with, and have regard to, any such additional requirements as may be prescribed by the Minister from time to time in terms of section 18A(1), or as may be otherwise imposed by the Commissioner in terms of the Act,

including any additional requirements prescribed by the Minister as binding upon Eligible Beneficiaries carrying on any specified activity before donations shall be allowed as a deduction for purposes of section 18A.

- 1.4 Ensure that an audit certificate is provided upon submission by the Organisation to the Commissioner of its annual return for each year of assessment, confirming that all donations received or accrued by the Organisation in that year, in respect of which section 18A receipts were issued by the Organisation, were utilised in the manner contemplated by that section.

2. **As the Organisation is a Public Benefit Organisation approved by the Commissioner for purposes of section 30 of the Income Tax Act, it shall, insofar as this may be applicable :**
 - 2.1 Carry on the public benefit activities of the Organisation in a non-profit manner, and with an altruistic or philanthropic intent.
 - 2.2 Ensure that no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary, or employee, of the organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.
 - 2.3 Take reasonable steps to ensure that :
 - 2.3.1 each such activity as is carried on by it is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups);
 - 2.3.2 each such activity carried on by it is for the benefit of, or is readily accessible to, the poor and needy; or
 - 2.3.3 at least Eighty-Five Percent (85%) of its funds are derived from donations, grants from any organ of state, or foreign grants.
 - 2.4 Comply with such conditions, if any, as the Minister may prescribe by way of regulation to ensure that the activities and resources of the organisation are directed in the furtherance of its objects.
 - 2.5 Submit to the Commissioner a copy of the Constitution, Will or other written instrument under which it has been established.

- 2.6 Be required in terms of such Constitution, to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the organisation, and that no single person directly or indirectly controls the decision-making powers of the organisation.
- 2.7 Be prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and be required to utilise its funds solely for the objects for which it has been established.
- 2.8 Be required on dissolution to transfer its assets to :
- 2.8.1 any public benefit organisation which has been approved in terms of section 30(3) of the Income Tax Act;
- 2.8.2 any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of that Act, which has as its sole or principal object the carrying on of any public benefit activity; or
- 2.8.3 any Department of State, or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b) of the Act.
- 2.9 Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
- 2.10 Be required to submit to the Commissioner a copy of any amendment to the Constitution, Will or other written instrument under which it was established.
- 2.11 Ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner.

- 2.12 Not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered; and has not and will not economically benefit any person in a manner which is not consistent with its objects.
- 2.13 Comply with such reporting requirements as may be determined by the Commissioner.
- 2.14 Take reasonable steps to ensure that the funds which it may provide to any association of persons as contemplated in paragraph (b)(iii) of the definition of "Public Benefit Activities" in section 30 of the Act, are utilised for the purpose for which they are provided.
- 2.15 Shall not use its resources directly or indirectly to support, advance or oppose any political party.
- 2.16 Ensure that any books of account, records or other documents relating to its affairs are:
- 2.16.1 where kept in book form, retained and carefully preserved by any person in control of the organisation, for a period of at least four years after the date of the last entry in any such book; or
- 2.16.2 where not kept in book form, are retained and carefully preserved by any person in control of the organisation, for a period of four years after the completion of the transaction, act or operation to which they relate.

Done at Johannesburg on 27 August 2024