

# AFRICAN TREATY COLLECTION



## BOOK TWO

Virginia Morris



**“Education is the most powerful weapon  
we can use to change the world.”**

**Nelson Mandela**

The quest for Pan-Africanism culminated in the establishment of the Organization of African Unity by the 32 African States that had achieved independence as of 25 May 1963. The historic decision to establish an organization to promote the goals of African unity and the aspirations of the African peoples was taken in the Africa Hall located at the United Nations Economic Commission for Africa in Addis Ababa, Ethiopia. The photograph on the cover is of the stained glass window in the foyer of the Africa Hall. It was designed by the Ethiopian Artist, Maître Afework Tekle. The artwork is divided into three parts which reflect “Africa Then”, “Africa Then and Now”, and “Africa Now and in the Future”.

Graphic design provided by Sean Bacon.

# **AFRICAN TREATY COLLECTION**

## **Book Two**

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## **Table of Contents**

### **Book Two**

51. African Charter on Values and Principles of Public Service and Administration (2011)	3
52. Agreement Between the Government of the Republic of Senegal and the African Union on the Establishment of the Extraordinary African Chambers within the Courts of Senegal (2012)	17
53. Agreement for the Establishment of the African Risk Capacity (ARC) Agency (2012)	33
54. Statute of the Pan-African University (2013)	49
55. African Charter on the Values and Principles of Decentralization, Local Governance and Local Development (2014)	67
56. African Union Convention on Cross-Border Cooperation (Niamey Convention) (2014)	83
57. Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (2014)	93
58. Protocol on the Establishment of the African Monetary Fund (2014)	129
59. Protocol to the Constitutive Act of the African Union relating to the Pan-African Parliament (2014)	155
60. African Union Convention on Cyber Security and Personal Data Protection (2014)	169
61. African Road Safety Charter (2016)	199
62. Statute of the Africa Centres for Disease Control and Prevention (Africa CDC) (2016)	211
63. Statute of the African Union Sports Council (2016)	227
64. Statute of the African Minerals Development Centre (2016)	243
65. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (2016)	259
66. Statute on the Establishment of the Legal Aid Fund of Human Rights Organs of the African Union (2016)	271
67. Statute of the African Science Research and Innovation Council (ASRIC) (2016)	281
68. Statute of the African Observatory of Science, Technology and Innovation (AOSTI) (2016)	289
69. Statute of the Pan-African Intellectual Property Organization (PAIPO) (2016)	297
70. Revised Statute of the Pan-African University (PAU) (2016)	311
71. African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter) (2016)	333
72. Statute of the African Union Mechanism for Police Cooperation (AFRIPOL) (2017)	353

73. Statute of the Trust Fund for the Victims of Hissène Habré Crimes (2018)	365
74. Statute of the African Institute for Remittances (AIR) (2018)	377
75. Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment (2018)	389
76. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (2018)	405
77. Statute of the African Space Agency (2018)	429
78. Agreement Establishing the African Continental Free Trade Area (2018)	441
Protocol on Trade in Goods (2018)	452
Protocol on Trade in Services (2018)	461
Protocol on Rules and Procedures on the Settlement of Disputes (2018)	477
79. Revised Convention on the Pan-African Postal Union (2018)	497
80. Treaty for the Establishment of the African Medicines Agency (AMA) (2019)	509
81. Statute of the African Audiovisual and Cinema Commission (AACC) (2019)	529
82. Statute of the African Union International Centre for Girls' and Women's Education in Africa (AU/CIEFFA) (2019)	547
83. Statute of the African Peer Review Mechanism (2020)	555
84. Revised Protocol on Relations between the African Union and the Regional Economic Communities (2020)	569
85. Statute of the African Centre for the Study and Research on Migration (2020)	585
86. Statute of the African Migration Observatory (2020)	599
87. Statute of the Continental Operational Centre in Sudan for Combating Irregular Migration (2020)	613
88. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security (2022)	627

**AFRICAN CHARTER ON VALUES AND PRINCIPLES OF  
PUBLIC SERVICE AND ADMINISTRATION**





51.

**AFRICAN CHARTER ON VALUES AND PRINCIPLES OF PUBLIC SERVICE AND ADMINISTRATION**

**Adopted in Addis Ababa, Ethiopia, on 31 January 2011.**

**Entered into force on 23 July 2016.**

Preamble

*The Member States of the African Union,*

*Reiterating* their political commitment to strengthen professionalism and ethics in public service in Africa,

*Determined* to promote the values and principles of democracy, good governance, human rights and the right to development,

*Cognizant* of the mandate of the public service and administration to protect the fundamental values of public service and promote an administrative culture based on respect for the rights of the user,

*Committed* to promoting the values and principles governing the organization of public service and administration,

*Conscious* of the need to maintain the legitimacy of the public service and adapt African public services to the evolving needs on the continent,

*Reaffirming* their collective desire to strive tirelessly for the modernization, improvement and entrenchment of new values of governance in public service,

*Guided* by their common desire to strengthen and consolidate public service with a view to promoting integration and sustainable development on the continent,

*Committed* to promoting a public service and administration that uses the optimum conditions of equity and efficiency,

*Desirous* of ensuring effective application of the African Charter on the Values and Principles of Public Service and Administration, taking into account conditions unique to Member States,

*Recalling* Executive Council Decision EX.CL/Dec.243 (VIII),

*Have agreed* as follows:

Chapter I

Definitions, Objectives and Principles

Article 1

Definitions

In this Charter and unless otherwise stated, the following expressions shall have the following meaning:

"Administration" means any institution or organization at the continental, regional, national or subnational level that applies the public policies or undertakes public service duties;

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

## 51. AFRICAN CHARTER ON VALUES AND PRINCIPLES OF PUBLIC SERVICE AND ADMINISTRATION (2011)

"AU" means the African Union;

"Charter" means the African Charter on the Values and Principles of Public Service and Administration;

"Commission" means the Commission of the African Union;

"Conference of States Parties " means the Conference of Member States that has ratified this Charter;

"Constitutive Act" means the Constitutive Act of the African Union;

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

"Member States" means the Member States of the African Union;

"Public service" means any service or public interest activity that is under the authority of the administration;

"Public service agent" means any worker or employee of the State or of its institutions, including those who were selected, appointed or elected to carry out activities in the name or on behalf of the State, at all levels of its structures;

"Public service ethics" means the accountability standards by which the work, behaviour and actions of public service agents are scrutinized;

"Regional Economic Communities" means the African Union's regional integration blocs;

"State Party" means any Member State of the African Union that has ratified or acceded to this Charter and deposited the instruments of ratification or accession with the Chairperson of the Commission of the African Union;

"User" means any juristic or natural person who calls on the public service for a service.

### Article 2 Objectives

The objectives of this Charter are to:

1. Promote the principles and values contained herein;
2. Ensure quality and innovative service delivery that meets the requirements of all users;
3. Encourage the efforts of Member States in modernizing administration and strengthening capacity for the improvement of public service;
4. Encourage citizens and users of public services to actively and effectively participate in public administration processes;
5. Promote the moral values inherent in the activities of public service agents with a view to ensuring transparent service delivery;
6. Improve the working conditions of public service agents and ensure the protection of their rights;
7. Encourage the harmonization of policies and procedures related to public service and administration among Member States with the aim of promoting regional and continental integration;

## 51. AFRICAN CHARTER ON VALUES AND PRINCIPLES OF PUBLIC SERVICE AND ADMINISTRATION (2011)

8. Promote equality between men and women as well as equality within public service and administration structures;
9. Strengthen cooperation among Member States, Regional Economic Communities and the international community for the improvement of public service and administration;
10. Encourage the exchange of experiences and best practices in order to create a database of information within the Member States.

### Article 3 Principles

The Member States agree to implement the Charter in accordance with the following principles:

1. Equality of all users of public service and administration;
2. The prohibition of all forms of discrimination on any basis, including place of origin, race, gender, disability, religion, ethnicity, political opinion, membership in a trade union or any other lawful organization;
3. Impartiality, fairness and due process in the delivery of public services;
4. Continuity of public services under all circumstances;
5. Adaptability of public services to the needs of users;
6. Professionalism and ethics in public service and administration;
7. Promotion and protection of rights of users and public service agents;
8. Institutionalizing a culture of accountability and integrity and transparency in public service and administration;
9. Effective, efficient and responsible use of resources.

### Chapter II Duties of the Public Service and Administration

#### Article 4 Respect for Human Rights and Legality

1. The public service and administration and its agents shall respect the human rights, dignity and integrity of all users.
2. Public services must be delivered in accordance with national laws, regulations and policies in force.
3. Decisions of the public service and administration shall conform to existing national laws and regulatory frameworks.

#### Article 5 Access to Public Service

## 51. AFRICAN CHARTER ON VALUES AND PRINCIPLES OF PUBLIC SERVICE AND ADMINISTRATION (2011)

1. States Parties shall entrench into their national laws and regulations the principles of equal access and non-discrimination.
2. Public service and administration shall be organized to ensure and facilitate easy access to adequate services.
3. Public service and administration shall be organized in a manner which ensures that services are delivered closer to users.
4. Public service and administration shall be participatory in order to ensure the effective involvement of all stakeholders including civil society in the planning and delivery of services.

### Article 6 Access to Information

1. Public service and administration shall make available to users information on procedures and formalities pertaining to public service delivery.
2. Public service and administration shall inform users of all decisions made concerning them, the reasons behind those decisions, as well as the mechanisms available for appeal.
3. Public service and administration shall establish effective communication systems and processes to inform the public about service delivery, to enhance access to information by users, as well as to receive their feedback and inputs.
4. Public service and administration shall ensure that administrative procedures and documents are presented in a user-friendly and simplified manner.

### Article 7 Efficient and Quality Service

1. Public services shall be delivered in the most effective, efficient and economical manner, consistent with the highest possible standards.
2. Public service and administration shall establish appropriate mechanisms to periodically monitor and evaluate the effectiveness of public service delivery.
3. Public service and administration shall set and respect time frames for public service delivery.
4. Public service and administration shall ensure that its services are adapted to the evolving needs of users.
5. Public service and administration shall take the necessary steps to create and maintain trust among public service agents and users.

### Article 8 Modernization of the Public Service and Administration

1. Public service and administration shall facilitate the introduction of modern and innovative procedures and systems for the delivery of its services.
2. Public service and administration shall ensure that modern technologies are used to support and improve the delivery of services.

## 51. AFRICAN CHARTER ON VALUES AND PRINCIPLES OF PUBLIC SERVICE AND ADMINISTRATION (2011)

3. Public service and administration shall simplify its procedures and ease formalities related to access and delivery of services.

### Chapter III Code of Conduct for Public Service Agents

#### Article 9 Professionalism

1. Public service agents shall demonstrate professionalism, transparency and impartiality in the performance of their duties.
2. Public service agents shall demonstrate excellence and innovation in their performance of duties.
3. Public service agents shall be required to perform their professional duties and show courtesy, integrity and neutrality in dealing with users.
4. Public service agents shall act responsibly and in accordance with the national laws and regulations.

#### Article 10 Ethical Behaviour

1. Public service agents shall demonstrate integrity and respect all rules, values and established codes of conduct in the performance of their duties.
2. Public service agents shall not solicit, accept, or receive directly or indirectly any payment, gift, donation, or reward in kind or cash, for services rendered.
3. Public service agents shall on no account use their positions for political or personal gains. In all circumstances, they shall act with impartiality and loyalty.

#### Article 11 Incompatibilities and Conflict of Interest

1. Public service agents shall not participate in making decisions or intervene in situations in which they have vested interests in order not to compromise their impartiality or cast doubt over the image of the administration.
2. States Parties shall clearly stipulate norms of incompatibility and conflicts of interest in national laws.
3. Public service agents shall not occupy any position, engage in transactions or hold financial, commercial or material interest incompatible with their duties or responsibilities.
4. Public service agents shall respect the confidentiality of documents and information in their possession or at their disposal in the exercise of their duties.
5. Public service agents shall refrain from unduly profiting from offices they previously occupied.

#### Article 12 Preventing and Combating Corruption

1. States Parties shall enact laws and adopt strategies to fight corruption through the establishment of independent anti-corruption institutions.

## 51. AFRICAN CHARTER ON VALUES AND PRINCIPLES OF PUBLIC SERVICE AND ADMINISTRATION (2011)

2. Public service and administration shall constantly sensitize public service agents and users on legal instruments, strategies and mechanisms used to fight corruption.
3. States Parties shall institute national accountability and integrity systems to promote value-based societal behaviour and attitude as a means of preventing corruption.
4. States Parties shall promote and recognize exemplary leadership in creating value-based and corruption-free societies.

### Article 13 Declaration of Assets

Public service agents shall declare their assets and income at the beginning, during and at the end of their service as prescribed in national laws and regulations.

### Chapter IV Rights of Public Service Agents

#### Article 14 Equality of Public Service Agents

1. The public service and administration shall promote equality among its agents.
2. Public service and administration shall not encourage or perpetuate discrimination based on origin, race, gender, disability, religion, ethnicity, political opinion or any other consideration.

#### Article 15 Freedom of Expression and Association

1. Public service agents shall have freedom of expression giving due consideration to their status as public servants.
2. Public service agents shall have the right to create or belong to associations, trade unions or any other group to promote and protect their rights in accordance with national laws.
3. Without prejudice to national laws, membership or non-membership in a political party shall in no way affect the career of a public servant.
4. Public service agents shall have the right to engage in collective bargaining, or take industrial action having due regard to national laws and regulations.
5. Representatives of trade unions shall be protected against discriminatory practices and any form of punishment on account of their trade union activities.
6. Public service and administration shall promote an enabling environment which enhances dialogue and consultation.
7. Procedures and mechanisms to resolve disputes shall be clearly stipulated in national laws and regulations.

#### Article 16 Working Conditions

## 51. AFRICAN CHARTER ON VALUES AND PRINCIPLES OF PUBLIC SERVICE AND ADMINISTRATION (2011)

1. Public service and administration shall provide a working environment that guarantees the safety of its agents.
2. Public service and administration shall protect its agents against all forms of threats, insults, harassment or aggression.
3. Public service and administration shall protect its agents against all forms of sexual harassment in the performance of their duties.

### Article 17 Remuneration

Public service agents shall have the right, within a coherent and harmonized pay system, to a just and equitable remuneration which corresponds to their qualifications, responsibilities, performance and tenure.

### Article 18 Social Rights

Public service agents shall have the right to leave, social security and retirement benefits.

## Chapter V Management and Development of Human Resources

### Article 19 Recruitment

1. Public service and administration shall endeavour to establish a human resource policy framework and plan for effective and efficient operation.
2. The recruitment of public service agents shall be based on the principle of merit, equality and non-discrimination.
3. Without prejudice to any provision of this Charter, States Parties shall adopt legislative, executive and administrative measures that guarantee the right to employment of women, ethnic minorities, and people with disabilities, marginalized and vulnerable social groups.
4. States Parties shall adopt procedures for selection and recruitment into the public service and administration that shall be based on principles of competition, merit, equity and transparency.

### Article 20 Performance Management of Public Service Agent

1. States Parties shall institute a performance culture within the public service and administration.
2. Public service agents shall undergo a process of performance management based on clear and measurable criteria.
3. States Parties shall carry out continuous monitoring and evaluation to assess the performance of public service agents in order to determine their promotional requirements, development needs, levels of efficiency and productivity.

### Article 21 Capacity Development

## 51. AFRICAN CHARTER ON VALUES AND PRINCIPLES OF PUBLIC SERVICE AND ADMINISTRATION (2011)

1. States Parties shall undertake systematic, comprehensive and evidence-based capacity development programmes to strengthen the effectiveness and efficiency of public service and administration.
2. States Parties shall collaborate with management development and research institutions as well as leveraging knowledge networks to strengthen capacities of public service agents.
3. States Parties shall provide working tools and create a conducive working environment for the application of new knowledge within the limits of available resources.
4. States Parties shall put in place mechanisms and processes for the exchange of expertise, knowledge, information, technology and best practices in capacity enhancement of public service and administration.

### Article 22 Mobility

1. Public service and administration shall adopt the principle of "mobility" in the management of the career of its agents.
2. Mobility shall take into account the service requirements and needs of public service Agents.

### Chapter VI Mechanisms for Application

### Article 23 Mechanisms for Application

To give effect to the commitments contained in this Charter, the following actions shall be undertaken.

#### 1. Individual State Party Level

States Parties commit themselves to implement the objectives, apply the principles and respect the commitments enshrined in this Charter as follows:

- (a) Adopt executive, legislative, and administrative instruments to align their national laws and regulations to this Charter;
- (b) Take all necessary measures to ensure broad dissemination of the Charter;
- (c) Demonstrate political will as a necessary condition for the achievement of objectives outlined in the Charter;
- (d) Integrate commitments, values and principles of the Charter in national policies and strategies;
- (e) Take the necessary steps to develop cooperation and share experiences in the area of public service and administration consistent with the objectives, values and principles of the Charter.

#### 2. Commission Level\*

##### (i) Continental Level

With a view to ensuring and facilitating the implementation of this Charter, the Commission shall:

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\* Editor's note: The paragraph has been renumbered in accordance with the French text.



## 51. AFRICAN CHARTER ON VALUES AND PRINCIPLES OF PUBLIC SERVICE AND ADMINISTRATION (2011)

- (a) Ensure that a Conference of States Parties is established;
  - (b) Develop guidelines on the implementation of the Charter in partnership with the Conference of States Parties;
  - (c) Establish, in consultation with the Conference of States Parties, a Secretariat to coordinate and undertake the implementation of duties, obligations and responsibilities enshrined in this Charter;
  - (d) Facilitate the creation of conditions for good governance and the delivery of quality public services on the continent through the harmonization of policies and laws of States Parties;
  - (e) Assist States Parties to implement the Charter and coordinate the evaluation of its implementation;
  - (f) Mobilize necessary resources to support States Parties to strengthen their capacity for the implementation of this Charter;
  - (g) Establish the required mechanisms and create capacities for the implementation of this Charter;
  - (h) Undertake periodic review of the Charter and make recommendations to the policy organs of the African Union.
- (ii) Regional Level

In accordance with their constitutive instruments, the Regional Economic Communities shall:

- (a) Encourage their Member States to ratify or accede to this Charter and implement it;
- (b) Integrate and take into account the objectives, principles and values of this Charter in the drafting and adoption of their legal instruments.

### Article 24 Reporting and Follow-Up Mechanisms

1. States Parties shall submit every two years, from the date the Charter comes into force, a report to the Commission on the legislative or other relevant measures taken with a view to giving effect to the principles and commitments of the Charter.
2. A copy of the report shall be submitted to the relevant organs of the African Union for appropriate action within their respective mandates.
3. The Commission shall prepare and submit to the Assembly, through the Executive Council and the Conference of States Parties, a synthesized report on the implementation of the Charter.
4. The Assembly shall take appropriate measures aimed at addressing issues raised in the report.

### Article 25 Recognition and Award System

1. States Parties shall institutionalize a transparent and impartial system for recognizing outstanding performance, creativity and innovation in public service and administration.

## 51. AFRICAN CHARTER ON VALUES AND PRINCIPLES OF PUBLIC SERVICE AND ADMINISTRATION (2011)

2. The Conference of States Parties shall promote mechanisms to support activities for the improvement of public service and administration.

3. The Commission shall promote innovative experiences and institute a system of awards for Innovation in public service and administration.

### Chapter VII Final Clauses

#### Article 26 Cautionary Clauses

1. No clause contained herein shall affect more favourable legislation on public service and administration or better laws on rights and obligations contained in national legislation of States Parties or in other national, regional or international instruments.

2. In the event of a contradiction between two or more provisions of this Charter, the interpretation that shall prevail is that which favours the rights and legitimate interests of public service users.

#### Article 27 Interpretation

The African Court of Justice and Human Rights shall be seized with matters of interpretation arising from the application or implementation of this Charter. Pending the establishment of the Court, such matters shall be submitted to the Assembly.

#### Article 28 Settlement of Disputes

1. Any dispute or differences arising between the States Parties with regard to the interpretation or application of this Charter shall be settled amicably through direct consultations between the States Parties concerned. In the event of failure to settle the dispute or differences, either State may refer the dispute to the African Court of Justice and Human Rights.

2. Until such time as and when the latter shall have been established, the dispute or differences shall be submitted to the Conference of the States Parties, which will decide by consensus or, failing which, by a two-thirds (2/3) majority of the States Parties present and voting.

#### Article 29 Signature, Ratification and Accession

1. This Charter shall be open for signature, ratification and accession by all Member States in accordance with their respective constitutional procedures.

2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission.

#### Article 30 Entry into Force

1. This Charter shall enter into force thirty days (30) after the deposit of the instruments of ratification by fifteen (15) Member States.

2. For each Member State that accedes to this Charter after its entry into force, the Charter shall become effective on the date the State deposits its instrument of accession with the Chairperson of the Commission.

## 51. AFRICAN CHARTER ON VALUES AND PRINCIPLES OF PUBLIC SERVICE AND ADMINISTRATION (2011)

3. The Chairperson of the Commission shall notify Member States of the entry into force of this Charter.

### Article 31 Amendment and Revision

1. Any State Party may submit proposals for amendment or revision of this Charter.
2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission who shall transmit copies thereof to the States Parties within thirty (30) days following the date of receipt of such proposals.
3. The Assembly shall, on the recommendation of the Executive Council, consider such proposals within one (1) year following the notification of States Parties, in keeping with the provisions of paragraph 2 of this article.
4. Amendments or revision shall be adopted by the Assembly and then submitted for ratification by all Member States in accordance with their respective constitutional procedures. Such amendments or revision shall become effective following the deposit of instruments of ratification by fifteen (15) States Parties.

### Article 32 Depository

This Charter, 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 certified copies thereof to each signatory State and notify them of the dates of the deposit of the instruments of ratification or accession.

### Article 33 Registration of the Charter

This Charter shall, after due ratification, be registered with the Secretariat of the United Nations through the Commission of the African Union in conformity with Article 102 of the Charter of the United Nations.

### Article 34 Reservations

States Parties shall not make or enter reservations to this Charter that are incompatible with the object and purpose of this Charter.



**AGREEMENT BETWEEN THE GOVERNMENT OF  
THE REPUBLIC OF SENEGAL AND THE AFRICAN UNION ON  
THE ESTABLISHMENT OF THE EXTRAORDINARY AFRICAN  
CHAMBERS WITHIN THE COURTS OF SENEGAL**



52.

**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SENEGAL AND THE AFRICAN UNION ON THE ESTABLISHMENT OF THE EXTRAORDINARY AFRICAN CHAMBERS WITHIN THE COURTS OF SENEGAL\***

**Adopted in Dakar, Senegal, on 22 August 2012.**

**Implemented provisionally on the date of signature and entered into force upon ratification by Senegal.\***

Preamble

*Recalling* Decision Assembly/AU/Dec.401 (XVIII) adopted on 31 January 2012 by the Assembly of Heads of State and Government of the African Union requesting the Commission of the African Union and the Government of Senegal to examine the practical modalities as well as the legal and financial implications for the prosecution of international crimes committed in Chad during the period from 7 June 1982 to 1 December 1990,

*Recalling* the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984 and ratified by Senegal on 21 August 1986,

*Recalling* Judgment ECW/CCJ/JUD/06/10 of 18 November 2010 of the Court of Justice of the Economic Community of West African States (ECOWAS),

*Recalling* the Judgment of 20 July 2012 of the International Court of Justice on Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal),

*Whereas* the African Union represented by the Commission of the African Union (hereinafter referred to as the "Commission") and the Government of the Republic of Senegal (hereinafter referred to as the "Government") have conducted negotiations with a view to the establishment of the Extraordinary African Chambers within the courts of Senegal for the prosecution of international crimes committed in Chad from 7 June 1982 to 1 December 1990 (hereinafter referred to as the "Extraordinary African Chambers"),

*The African Union and the Government of the Republic of Senegal have agreed as follows:*

Article 1  
Establishment

1. The Government and the Commission agree to establish, within the courts of Senegal, the Extraordinary African Chambers to prosecute the person or persons primarily responsible for the crimes and serious violations of international law, customary international law, and international conventions ratified by Chad and Senegal, committed in Chad from 7 June 1982 to 1 December 1990.

2. As part of the implementation of paragraph 1 of this article, the Government undertakes to adopt, as soon as possible, the necessary legislative, regulatory and administrative measures to establish the Extraordinary African Chambers within the Senegalese judicial system.

3. The Government and the Commission undertake to adopt a roadmap with a precise timetable for the establishment of the Extraordinary African Chambers and the start of prosecutions.

4. Of an international character, the Extraordinary African Chambers apply their Statute, international criminal law, the Criminal Code and the Criminal Procedure Code of Senegal and other relevant Senegalese laws.

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\* Editor's note: The Agreement and Statute annexed thereto were adopted in French. The unofficial English translation is provided for information purposes only.

\* Editor's note: The date of ratification by Senegal is not provided on the African Union website.

52. AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SENEGAL AND THE AFRICAN UNION ON  
THE ESTABLISHMENT OF THE EXTRAORDINARY AFRICAN CHAMBERS WITHIN THE COURTS OF SENEGAL (2012)

5. The Statute of the Extraordinary African Chambers is annexed to this Agreement, of which it forms an integral part.

Article 2  
Organization

The composition and the rules of procedure of the Extraordinary African Chambers are determined by the Statute of the Extraordinary African Chambers and Senegalese laws.

Article 3  
Budget

1. The establishment and operation of the Extraordinary African Chambers are financed by the budget approved by the Round Table of 24 November 2010.

2. Additional financial resources may be mobilized when needed.

Article 4  
Framework and Management of the Funds

The framework and the management of the funds are decided by the African Union, the Government and the donors concerned.

Article 5  
Immunity of Funds, Assets and Other Property

The funds, assets and other property intended for the functioning of the Extraordinary African Chambers, wherever they are located and whoever the holder, enjoy immunity from jurisdiction and enforcement.

Article 6  
Privileges and Immunities

1. Judges of the Extraordinary African Chambers of foreign nationality, as well as members of their families who form part of their households, enjoy the privileges and immunities, exemptions and facilities, including tax exemptions, granted to diplomatic agents in accordance with the 1961 Vienna Convention on Diplomatic Relations. They are exempt from taxes on their salaries, allowances and emoluments in Senegal.

2. Judges, prosecutors, clerks, the Administrator and other staff members of the Extraordinary African Chambers of Senegalese nationality enjoy, in accordance with the General Convention on the Privileges and Immunities of the Organization of African Unity (OAU) of 1965, the following privileges and immunities:

(a) Immunity from criminal and civil jurisdiction for all acts, including their words and writings, which they perform in the exercise of their functions. This immunity is maintained after they have left the service of the Extraordinary African Chambers;

(b) Exemption from all taxes on the salaries, allowances and emoluments paid to them as part of their participation in the Extraordinary African Chambers.

Article 7  
Counsel



52. AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SENEGAL AND THE AFRICAN UNION ON  
THE ESTABLISHMENT OF THE EXTRAORDINARY AFRICAN CHAMBERS WITHIN THE COURTS OF SENEGAL (2012)

1. The Government shall ensure that the counsel of a suspect, an accused recognized as such by the Extraordinary African Chambers or a civil party is not subjected to any measure likely to affect his freedom or independence in the exercise of his functions.
2. The Counsel enjoys, in particular:
  - (a) Immunity from arrest, detention for acts relating to the performance of his functions as counsel and from seizure of his personal effects;
  - (b) Inviolability for all documents relating to the performance of his functions as counsel to a suspect, an accused or a civil party;
  - (c) Immunity from criminal or civil jurisdiction for acts performed by him in his capacity as counsel, including his words and writings. This immunity is maintained after he ceases to act as counsel to a suspect, an accused or a civil party;
  - (d) Immunity from all immigration restrictions during his stay and during his outbound trip to reach Senegal and his return trip.

Article 8  
Witnesses and Experts

1. The Government undertakes to facilitate the entry, stay and exit of experts and witnesses residing outside Senegalese territory.
2. These experts and witnesses are not subject to any measures that could prevent them from performing their functions in complete freedom and independence. The provisions of paragraph 2 (a) and (d) of Article 7 are applicable.

Article 9  
Safety and Protection of the Persons Concerned

In this Agreement, the Government ensures, on its territory, the safety and the protection of the personnel of the Extraordinary African Chambers, suspects, accused, victims, witnesses, experts and civil parties participating in the trial in Senegal in accordance with Senegalese laws.

Article 10  
Mutual Legal Assistance

The Commission shall facilitate the signing of any instrument of judicial cooperation between Senegal, Chad or any other State concerned within the framework of the implementation of this Agreement.

Article 11  
Dispute Settlement

Any dispute between the Parties concerning the interpretation or application of this Agreement shall be settled by negotiation or by any other means agreed between the Parties.

Article 12  
Amendment

This Agreement may be amended by written agreement between the Parties. The amendments enter into force in accordance with the provisions of Article 13.

52. AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SENEGAL AND THE AFRICAN UNION ON  
THE ESTABLISHMENT OF THE EXTRAORDINARY AFRICAN CHAMBERS WITHIN THE COURTS OF SENEGAL (2012)

Article 13  
Entry into force

This Agreement shall be implemented provisionally on the date of signature by both Parties. It enters into force definitively after its ratification by the Government in accordance with its constitutional procedures and the deposit of the instrument of ratification with the Chairperson of the Commission of the African Union.

Article 14  
Termination of the Agreement

1. This Agreement is terminated once the judgments have been finalized by the Extraordinary African Chambers.
2. Either Party may terminate this Agreement after a written notice of six months. The termination takes effect from the date of expiry of the notice period.

**Annex**

**Statute of the Extraordinary African Chambers within the Courts of Senegal for the Prosecution of International Crimes Committed in Chad During the Period from 7 June 1982 to 1 December 1990**

Article 1  
Purpose

The purpose of this Statute is to implement the decision of the African Union relating to the prosecution by the Republic of Senegal of the international crimes committed in Chad between 7 June 1982 and 1 December 1990, in accordance with Senegal's international commitments.

Article 2  
Establishment of the Extraordinary African Chambers

The Extraordinary African Chambers are established within the courts of the Republic of Senegal as follows:

- (a) An Extraordinary African Investigation Chamber within the *Tribunal Régional Hors Classe de Dakar*;
- (b) An Extraordinary African Indictment Chamber at the Court of Appeals of Dakar;
- (c) An Extraordinary African Trial Chamber at the Court of Appeals of Dakar; and
- (d) An Extraordinary African Appeals Chamber within the Court of Appeals of Dakar.

Article 3  
Jurisdiction

1. The Extraordinary African Chambers shall have the power to prosecute and try the person or persons principally responsible for crimes and serious violations of international law, customary international law and international conventions ratified by Chad, committed in Chad during the period from 7 June 1982 to 1 December 1990.
2. The Extraordinary African Chambers may choose to prosecute the most serious crimes within their jurisdiction.

52. AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SENEGAL AND THE AFRICAN UNION ON  
THE ESTABLISHMENT OF THE EXTRAORDINARY AFRICAN CHAMBERS WITHIN THE COURTS OF SENEGAL (2012)

Article 4

Crimes within the Jurisdiction of the Extraordinary African Chambers

Under this Statute, the Extraordinary African Chambers have jurisdiction with regard to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) Torture.

Article 5

Crime of genocide

For the purposes of this Statute, the crime of 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.

Article 6

Crimes against humanity

For the purposes of this Statute, a crime against humanity means one of the following acts when committed as part of a widespread or systematic attack directed against any civilian population:

- (a) Rape, sexual slavery, enforced prostitution, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (b) Murder;
- (c) Extermination;
- (d) Deportation;
- (e) The crime of apartheid;
- (f) The enslavement or massive and systematic practice of summary executions, kidnapping of persons followed by their enforced disappearance;
- (g) Torture or inhumane acts intentionally causing great suffering or serious injury to body or to physical or mental health, on political, racial, national, ethnic, cultural, religious or gender grounds.

52. AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SENEGAL AND THE AFRICAN UNION ON  
THE ESTABLISHMENT OF THE EXTRAORDINARY AFRICAN CHAMBERS WITHIN THE COURTS OF SENEGAL (2012)

Article 7  
War crimes

1. For the purposes of this Statute, a war crime means any of the following acts concerning members of the armed forces, prisoners of war, civilians or property protected by provisions of the Geneva Conventions of 12 August 1949:

- (a) Murder;
- (b) Torture or inhuman treatment, including biological experiments, or wilfully causing great physical or mental suffering;
- (c) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (d) Compelling a prisoner of war or other protected person to serve in the armed forces;\*
- (e) Depriving a prisoner of war or any other protected person of the rights of fair and regular trial;
- (f) Unlawful deportation or transfer or unlawful confinement;
- (g) Taking of hostages.

2. The Extraordinary African Chambers have jurisdiction to try persons who have committed serious violations of Common Article 3 of the Geneva Conventions of 12 August 1949 for the protection of victims in time of war and of Additional Protocol II to the said Conventions of 8 June 1977.\* These violations include:

- (a) Violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) Collective punishments;
- (c) Taking of hostages;
- (d) Acts of terrorism;
- (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- (f) Pillage;
- (g) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
- (h) Threats to commit any of the foregoing acts.

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\* Editor's note: The Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949 includes the grave breach of "compelling a prisoner of war to serve in the forces *of the hostile Power*" (emphasis added).

\* Editor's note: Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

52. AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SENEGAL AND THE AFRICAN UNION ON  
THE ESTABLISHMENT OF THE EXTRAORDINARY AFRICAN CHAMBERS WITHIN THE COURTS OF SENEGAL (2012)

Article 8  
Torture

For the purposes of this Statute, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any other reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does include pain or suffering arising only from, inherent in or incidental to lawful sanctions. No exceptional circumstance whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

Article 9  
Non-Applicability of Statute of Limitations

The crimes within the jurisdiction of the Extraordinary African Chambers are not subject to any statute of limitations.

Article 10  
Individual Criminal Responsibility and Irrelevance of Official Capacity

1. The Extraordinary African Chambers have jurisdiction over natural persons by virtue of this Statute.
2. Anyone who has committed, ordered, planned or instigated others to commit, or otherwise aided and abetted in planning, preparing or executing a crime referred to in Articles 5 to 8 of this Statute is individually responsible for such crime as a perpetrator or an accomplice.
3. The official position of an accused, as Head of State or Government or as a senior official, does not exempt a person from criminal responsibility under this Statute, nor does it constitute a ground for mitigation of the sentence.
4. The fact that any of the acts referred to in Articles 5 to 8 of this Statute has been committed by a subordinate does not exempt the superior from criminal responsibility if the superior knew or had reason to know that the subordinate was preparing to commit or had committed this act and the superior did not take the necessary and reasonable measures to prevent such act from being committed or to punish the perpetrators.
5. The fact that an accused acted pursuant to an order of a government or a superior does not exempt the accused from criminal responsibility but may be considered as a ground for mitigation of the sentence.

Article 11  
Composition of the Extraordinary African Chambers and Appointment of Judges

1. The Extraordinary African Investigation Chamber within the *Tribunal Régional Hors Classe de Dakar* is composed of four investigating judges of Senegalese nationality and two alternate judges of Senegalese nationality appointed by the Chairperson of the Commission of the African Union on the proposal of the Minister of Justice of Senegal.
2. The Extraordinary African Indictment Chamber within the Court of Appeals of Dakar is composed of three judges of Senegalese nationality and one alternate judge of Senegalese nationality appointed by the Chairperson of the Commission of the African Union on the proposal of the Minister of Justice of Senegal.

52. AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SENEGAL AND THE AFRICAN UNION ON  
THE ESTABLISHMENT OF THE EXTRAORDINARY AFRICAN CHAMBERS WITHIN THE COURTS OF SENEGAL (2012)

3. The Extraordinary African Trial Chamber within the Court of Appeals of Dakar is composed of a President, two judges of Senegalese nationality and two alternate judges of Senegalese nationality appointed by the Chairperson of the Commission of the African Union on the proposal of the Minister of Justice of Senegal. The President of the Chamber is a national of another Member State of the African Union.

4. The Extraordinary African Appeals Chamber is composed of a President, two judges of Senegalese nationality and two alternate judges of Senegalese nationality appointed by the Chairperson of the Commission of the African Union on the proposal of the Minister of Justice of Senegal. The President of the Chamber is a national of another Member State of the African Union.

5. The judges shall be chosen from among persons of high moral character, impartiality and integrity and who have served as judges for at least 10 years. The Presidents of the Extraordinary African Trial and Appeals Chambers must also meet the requirements in their respective States for the highest judicial offices.

Article 12

The Office of the Prosecutor

1. The Office of the Prosecutor is represented by the Prosecutor or the deputy prosecutors in the Extraordinary African Chambers. The Prosecutor and three deputy prosecutors of Senegalese nationality are appointed by the Chairperson of the Commission of the African Union on the proposal of the Minister of Justice of Senegal.

2. The prosecutors must have high moral character, impartiality and integrity, and must have at least 10 years of professional experience, and extensive experience in criminal investigations and prosecutions. Prosecutors exercise their functions in complete independence.

3. The Office of the Prosecutor conducts the prosecutions before the Extraordinary African Chambers unless otherwise provided in this Statute. To this end, the Office of the Prosecutor has the powers conferred on it by the Senegalese Code of Criminal Procedure.

Article 13

Registry

1. The Extraordinary African Chambers are assisted by one or more clerks whose responsibilities are determined in accordance with the Senegalese Code of Criminal Procedure.

2. The clerks of the Extraordinary African Chambers are appointed by the Minister of Justice of Senegal.

Article 14

General Principles Relating to the Participation of Victims as Civil Parties

1. The admission of a civil party may take place at any time during the investigation by written request from the victim or his successor to the Registry. The Registry communicates the request to the competent Chamber, as well as to the Office of the Prosecutor and the Defence.

2. Victims may form groups and decide to be represented by a jointly selected representative. When the interests of justice so require, the Extraordinary African Chambers may require victims or a group of victims to choose, if necessary, with the assistance of the Administrator, one or more joint representatives. The mandate thus given may be revoked at any time.

3. If the victims are unable to choose one or more joint representatives within the time limit set by the competent Chamber, the Chamber may ask the Administrator to appoint one or more representatives.

52. AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SENEGAL AND THE AFRICAN UNION ON  
THE ESTABLISHMENT OF THE EXTRAORDINARY AFRICAN CHAMBERS WITHIN THE COURTS OF SENEGAL (2012)

4. If a group of victims cannot afford to pay a joint representative, it may request the assistance of the Administrator who decides on the request.

5. Subject to the provisions of this Statute, the terms of victim participation are governed by the Senegalese Code of Criminal Procedure.

Article 15

Administration of the Extraordinary African Chambers

1. The Minister of Justice of the Republic of Senegal appoints an Administrator of the Extraordinary African Chambers. The Administrator is in charge of the non-judicial aspects of the administration and service of the Extraordinary African Chambers. The Administrator also manages the staff members of the Extraordinary African Chambers in collaboration with the Presidents of the Chambers and the Office of the Prosecutor. The Administrator is assisted, in the exercise of his functions, by the staff necessary for the functioning of the Extraordinary African Chambers.

2. The Administrator represents the Extraordinary African Chambers in their relations with the international community, including with the Management Committee established by the Final Document of the Round Table of Donors of 24 November 2010.

3. The Administrator of the Extraordinary African Chambers may enter into appropriate agreements to raise awareness and to inform Africa and the international community about the work of the Extraordinary African Chambers.

4. The Administrator is responsible for directing and assisting, in the appropriate manner, the witnesses and victims who appear before the Extraordinary African Chambers as well as other persons to whom the testimonies of these witnesses may pose a risk, as well as planning measures and arrangements to ensure their protection and safety. To this end, the Administrator shall coordinate with the Governments of Chad, Senegal and other States concerned.

5. The Administrator contributes to the establishment of a mechanism for judicial cooperation between Senegal and other States.

Article 16

Applicable Law

1. The Extraordinary African Chambers shall apply this Statute.

2. For cases not provided for in this Statute, they shall apply Senegalese law.

Article 17

Procedure and Initiation of Prosecutions

1. The Extraordinary African Chambers shall apply this Statute first and foremost, and for cases not provided for in the Statute, the Senegalese Code of Criminal Procedure.

2. The crimes referred to in Articles 5 to 8 of this Statute may not be the subject of a mediation procedure.

3. Prosecutions can be initiated only by the Office of the Prosecutor at the Extraordinary African Chambers.

4. The Office of the Prosecutor may initiate investigations on its own or on the basis of information obtained from any source, including governments, international and non-governmental organizations, or complaints from victims without prejudice to their place of domicile.

52. AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SENEGAL AND THE AFRICAN UNION ON  
THE ESTABLISHMENT OF THE EXTRAORDINARY AFRICAN CHAMBERS WITHIN THE COURTS OF SENEGAL (2012)

Article 18

Previous Investigations and Judicial Proceedings

1. The Extraordinary African Chambers shall take all necessary measures for judicial cooperation, and when necessary, the receipt and use of the results of investigations carried out by the judicial authorities of other States for the crimes covered by this Statute.
2. They may request the transfer of any criminal proceedings and, in this context, validate the statements and evidence established by the competent authorities of the requested States.

Article 19

Ne bis in idem

1. Unless otherwise provided in this Statute, no one may be tried by the Extraordinary African Chambers for acts constituting crimes for which the person has already been convicted or acquitted.
2. No one may be tried by another court for the crimes referred to in Articles 5 to 8 for which the person has already been convicted or acquitted by the Extraordinary African Chambers.
3. Anyone who has been tried by another court for conduct also referred to in Articles 5, 6, 7 or 8 may only be tried by the Extraordinary African Chambers if the proceedings before the other court:
  - (a) Were intended to protect the person concerned from criminal responsibility for crimes falling within the jurisdiction of the Extraordinary African Chambers; or
  - (b) Were not conducted in an independent or impartial manner, with respect for the guarantees of a fair trial provided by international law, but in a manner which, in the circumstances, was inconsistent with the intention of bringing the person to justice.

Article 20

Amnesty

The amnesty granted to a person within the jurisdiction of the Extraordinary African Chambers for the crimes referred to in Articles 5 to 8 of this Statute does not preclude prosecution.

Article 21

Rights of the Accused

1. All accused persons are equal before the Extraordinary African Chambers.
2. Every accused has the right to a fair and public hearing, subject to the measures ordered by the Extraordinary African Chambers to ensure the protection of victims and witnesses.
3. Every accused is presumed innocent until proven guilty, in accordance with the provisions of this Statute.
4. When considering the charges against the accused in accordance with this Statute, every accused person is entitled to the following minimum guarantees:
  - (a) To be informed, promptly and in detail, in a language that the accused understands, of the nature and content of the charges against him;



52. AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SENEGAL AND THE AFRICAN UNION ON  
THE ESTABLISHMENT OF THE EXTRAORDINARY AFRICAN CHAMBERS WITHIN THE COURTS OF SENEGAL (2012)

- (b) To have adequate time and facilities to prepare his defence and to communicate freely with the counsel of his choice;
- (c) To be tried without undue delay;
- (d) To be present at the trial and to conduct the defence in person or through counsel of his choice, and if the accused does not have counsel, to be informed of the right to counsel, and, when the interests of justice so require, to be assigned counsel, free of charge, if the accused cannot afford to pay for it;
- (e) To examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as prosecution witnesses;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in the Extraordinary African Chambers;
- (g) To not be compelled to testify against himself or to confess guilt.

Article 22  
Hearings

Hearings are public and matters relating to the conduct of hearings are governed by the Senegalese Code of Criminal Procedure.

Article 23  
Sentence

1. The Extraordinary African Trial Chamber pronounces sentences and imposes penalties and sanctions on persons convicted of serious violations of human rights, international law and customary international law.
2. The sentence is rendered in public by a majority of the judges of the Extraordinary African Trial Chamber. The sentence is in writing and includes for the reasons for the sentence.

Article 24  
Applicable Penalties

1. The Extraordinary African Chambers may impose on a person convicted of a crime referred to in Articles 5 to 8 of this Statute one of the following penalties:
  - (a) Imprisonment for a maximum of 30 years; or
  - (b) Life imprisonment, when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.
2. In addition to imprisonment, the Extraordinary African Chambers may order:
  - (a) Fines imposed under the criteria provided by Senegalese law;
  - (b) Forfeiture of profits, property and assets derived directly or indirectly from the crime, without prejudice to the rights of third parties in good faith.

Article 25  
Appeal Procedures

52. AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SENEGAL AND THE AFRICAN UNION ON  
THE ESTABLISHMENT OF THE EXTRAORDINARY AFRICAN CHAMBERS WITHIN THE COURTS OF SENEGAL (2012)

1. The Extraordinary African Appeals Chamber is authorized to consider appeals from persons convicted by the Extraordinary African Trial Chamber, the Prosecutor, or civil parties with respect to their interests, on the following grounds:
  - (a) A procedural error;
  - (b) An error on a material question of law that invalidates the decision; including a jurisdictional error;
  - (c) An error of fact that leads to a miscarriage of justice.
2. The Extraordinary African Appeals Chamber may affirm, reverse or revise the decisions taken by the Extraordinary African Trial Chamber.
3. The judges of the Extraordinary African Appeals Chamber may consider the jurisprudence of international criminal courts or tribunals.
4. The judgments rendered by the Extraordinary African Appeals Chamber are final. They are not subject to appeal.

Article 26  
Pre-Trial Detention and Enforcement of Sentences

1. Any pre-trial detention and imprisonment ordered by the Extraordinary African Chambers prior to the final judgment shall be carried out in Senegalese prisons in accordance with Senegalese law.
2. Imprisonment sentences are carried out in accordance with international standards. If the circumstances so require, the convicted person may serve the prison sentence in one of the Member States of the African Union which has concluded an enforcement agreement with Senegal.
3. The conditions of detention, whether in Senegal or in another Member State of the African Union, are governed by law of the enforcement State in accordance with international standards. The enforcement State is bound by the length of the sentence.
4. National courts will be in charge of all proceedings, particularly those relating to detention, that may arise after the dissolution of Extraordinary African Chambers.
5. The competent national authorities shall enforce fines and forfeiture measures ordered by the Extraordinary African Chambers under Article 24 of this Statute, in accordance with the laws of the State where the property and assets are located.

Article 27  
Reparations

1. The reparations granted by the Extraordinary African Chambers are restitution, compensation and rehabilitation.
2. The Extraordinary African Chambers may decide that the compensation awarded as reparation be paid through the fund referred to in Article 28 of this Statute.
3. Before making a decision under this article, the Extraordinary African Chambers may invite observations from the convicted person, the victims and other interested persons or States.

52. AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SENEGAL AND THE AFRICAN UNION ON  
THE ESTABLISHMENT OF THE EXTRAORDINARY AFRICAN CHAMBERS WITHIN THE COURTS OF SENEGAL (2012)

4. The provisions of this article are without prejudice to the rights of victims under national or international law.

Article 28

The Fund for the Benefit of Victims

1. A fund is created for the benefit of victims of crimes under the jurisdiction of the Extraordinary African Chambers and their beneficiaries. This fund is financed by voluntary contributions from foreign governments, international institutions, non-governmental organizations and other sources willing to provide support to victims.
2. Reparations may be awarded to victims, individually or collectively, whether or not they participated in proceedings before the Extraordinary African Chambers.

Article 29

Privileges and Immunities

1. Judges of foreign nationality, as well as members of their families who form part of their households, enjoy the privileges and immunities, exemptions and facilities, including tax exemptions, granted to diplomatic agents in accordance with the 1961 Vienna Convention on Diplomatic Relations. They are exempt from taxes on their salaries, allowances and emoluments in Senegal.
2. Judges, prosecutors, clerks, the Administrator and other staff members of the Extraordinary African Chambers of Senegalese nationality enjoy, in accordance with the General Convention on the Privileges and Immunities of the Organization of African Unity (OAU), the following privileges and immunities:
  - (a) Immunity from criminal and civil jurisdiction for all acts (including their words and writings) which they perform in the exercise of their functions. This immunity is maintained after they have left the service of the Extraordinary African Chambers.
  - (b) Exemption from any tax on the salaries, allowances and emoluments paid to them as part of their participation in the Extraordinary African Chambers.

Article 30

Working Language

The working language of the Extraordinary African Chambers is French.

Article 31

Practical Arrangements

1. The establishment of the Extraordinary African Chambers is carried out in the following chronological order:
  - (a) The Prosecutor and deputy prosecutors, the investigating judges of the Extraordinary African Indictment Chamber and the clerks are appointed during the first stage of the establishment of the Extraordinary African Chambers.
  - (b) During the investigation phase, the judges of the Extraordinary African Indictment Chamber are convened and rule on any appeal that is referred to them under the Code of Criminal Procedure of Senegal. The decision of the Extraordinary African Indictment Chamber is final and without appeal.

52. AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SENEGAL AND THE AFRICAN UNION ON  
THE ESTABLISHMENT OF THE EXTRAORDINARY AFRICAN CHAMBERS WITHIN THE COURTS OF SENEGAL (2012)

(c) The judges of the Extraordinary African Trial Chamber take office at the end of the investigation stage. The judges of the Extraordinary African Appeals Chamber take office when an appeal is filed against a judgment of the Extraordinary African Trial Chamber.

2. The terms of the judges expire when their respective phases are completed.

Article 32  
Budget

1. The establishment and operation of the Extraordinary African Chambers are financed by the budget approved by the Round Table of 24 November 2010.

2. Additional financial resources may be mobilized, when needed, at the appropriate time.

Article 33  
Access to the Trial

All reasonable measures will be taken to ensure access to the trial for all parties concerned as well as representatives of the press, observers of the international community and the African Union and representatives of civil society.

Article 34  
Protection of Parties and Witnesses at Trial

The Government of Senegal ensures, on its territory, the protection of the parties and witnesses at the trial throughout the duration of the proceedings.

Article 35  
Protection of Witnesses and Experts

The protection of witnesses and experts for acts carried out during the proceedings before the Extraordinary African Chambers is governed by the Agreement between the Government of the Republic of Senegal and the African Union on the Establishment of the Extraordinary African Chambers within the Courts of Senegal.

Article 36  
Recording of Hearings

The proceedings of the Extraordinary African Chambers are filmed and recorded for broadcast, under the supervision of the Prosecutor, unless this contravenes the measures necessary to protect witnesses and other participants.

Article 37  
Duration of the Extraordinary African Chambers

1. The Extraordinary African Chambers are dissolved once all judgments are final.

2. The files are archived at the Registry of the Court of Appeals of Dakar once the Extraordinary African Chambers have been dissolved.

3. National courts are in charge of all matters that may arise after the dissolution of the Extraordinary African Chambers.

**AGREEMENT FOR THE ESTABLISHMENT OF  
THE AFRICAN RISK CAPACITY (ARC) AGENCY**



53.

**AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICAN RISK CAPACITY (ARC) AGENCY**

**Adopted in Pretoria, South Africa, on 23 November 2012.**

**The Agreement entered into force provisionally upon adoption and shall enter into force definitively 30 days from the date of deposit of the tenth instrument of ratification, acceptance or approval.**

Preamble

*The Parties,*

*Aware* that extreme weather events driven by climate change will be likely to result in increased risk of hunger and malnutrition in Africa's most vulnerable populations,

*Cognizant* that systems for responding to natural disasters must be timely and equitable, and must provide adequate funding if lives and livelihoods are not to be lost, assets depleted and development gains reversed,

*Noting* the support expressed by the Third Joint African Union Conference of African Ministers of Economy and Finance and United Nations Economic Commission for Africa ("ECA") Conference of African Ministers of Finance, Planning and Economic Development, held in Lilongwe, Malawi, from 29 to 30 March 2010 for efforts to enhance capacity to mitigate exposure to disaster risk through sharing risk across regions, support that was endorsed by the Executive Council of the African Union ("Executive Council") in its decision, EX.CL/Dec.564 (XVII) at the July 2010 AU Summit in Kampala, Uganda, and further endorsed by the Assembly of Heads of State and Government of the African Union ("AU Assembly"),

*Noting* the Resolution of the Ministers responsible for Disaster Risk Reduction, representing 47 African Union Member States at the Second Africa Ministerial Conference on Disaster Risk Reduction held in Nairobi, Kenya, on 16 April 2010, endorsed by the Executive Council in its decision EX.CL/Dec.607 (XVIII) which called on African Union Member States to explore the feasibility of the creation of an African-owned Pan-African disaster risk pool,

*Recalling* the decision taken by the Fourth Joint African Union Conference of Ministers of Economy and Finance and ECA Conference of African Ministers of Finance, Planning and Economic Development, held in Addis Ababa, Ethiopia, in March 2011 relating to the implementation of the Resolution for the Establishment of the Joint Africa-Arab Fund for Disaster Response (Assembly/Africa-Arab/Res.2 (II)) adopted at the Second Africa-Arab Summit in Sirte, Libya, on 10 October 2010 "to establish a fund for disaster response, the Statutes, objectives and modalities of which are to be defined by the AU Commission and the League of Arab States" by the Conference of Ministers supporting the "Commission's leadership in exploring... the design of such a facility",

*Also recalling* the Agreement on the African Risk Capacity Project Special Arrangement concluded on 24 June 2011 between the African Union Commission and the World Food Programme (hereinafter referred to as "WFP") pursuant to the January 2011 decision of the Executive Council requesting the Commission "to put in place the necessary administrative arrangements," (EX.CL/Dec.607 (XVIII)) providing for cooperation between the two organizations in working towards a long-term sustainable solution to provide the AU Member States with adequate contingency funding in a timely, appropriate, objective and cost-efficient manner in order to address the impacts of extreme weather events,

*Further recalling* Resolution XVI on "African Risk Capacity (ARC): Sovereign Disaster Risk Solutions" adopted by the Fifth Joint African Union Conference of African Ministers of Economy and Finance and ECA Conference of African Ministers of Finance, Planning and Economic Development, held in Addis Ababa, Ethiopia, from 26 to 27 March 2012, which "endorses, in principle, the proposal to establish ARC; requests that the Commission elaborate a legal agreement for the establishment of the African Risk Capacity (ARC); and recommends that ARC should be

### 53. AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICAN RISK CAPACITY (ARC) AGENCY (2012)

established as a specialized agency of the African Union and accorded the privileges and immunities specified in the OAU General Convention on Privileges and Immunities",

*Also further recalling* the Decision adopted by the Assembly of Heads of State and Government (Assembly/AU/Dec.417 (XIX)) of 16 July 2012 "that the ARC shall be established as a specialized agency of the African Union and accorded the privileges and immunities specified in the OAU General Convention on Privileges and Immunities",

*Convinced* that the establishment of an African Risk Capacity under the leadership of the African Risk Capacity Agency will provide an improved sovereign risk management instrument that will allow African Union Member States to pool resources to provide rapid and efficient emergency financing when faced with extreme weather events in a manner that is complementary to the development of other risk management mechanisms for enterprises and households, improve African Union Member States' access to predictable, regionally-managed funding for emergencies, and facilitate contingency planning for such events,

*Have agreed* as follows:

#### Part One The ARC Agency and its Objective

##### Article 1 Definitions

For the purpose of this Agreement the terms and expressions below shall have the following meaning:

"ARC" means the African Risk Capacity;

"ARC Agency" means the African Risk Capacity Agency as established by this Agreement;

"ARC Agency Subsidiary or Affiliated Entity" means a subsidiary or affiliated entity established by or at the instigation of the ARC Agency for the purpose of carrying out insurance, reinsurance, derivatives transactions, and other means of risk transfer;

"AU" means the African Union;

"AU Commission" means the African Union Commission;

"Bureau" means the Bureau of the Conference of the Parties as defined in paragraph 4 of Article 12;

"Certificate of good standing" means a certificate attesting to the fact that the country concerned is in compliance with the requirements set out in rules adopted by the Conference of the Parties pursuant to paragraph 2 (l) of Article 13;

"Conference of the Parties" means the Conference of the Parties to this Agreement;

"Contingency plans" means detailed procedures formulated by individual Parties in cooperation with the ARC Agency, describing the steps to be taken in case of an extreme weather event, as well as the intended uses of the emergency funds and insurance proceeds paid out by an ARC Agency Subsidiary or Affiliated Entity in the case of such an event;

"Director General" means the Director General of the ARC Agency;

"Extreme weather event" means a weather phenomenon that is at the extreme of historical distribution;



### 53. AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICAN RISK CAPACITY (ARC) AGENCY (2012)

"Governing Board" means the Governing Board of the ARC Agency;

"Insurance" means a financial arrangement pursuant to which risk is pooled and then transferred to a third party who, in exchange for premium payments, will make payments upon the occurrence of certain trigger events;

"Natural disaster" means a sudden calamitous event caused by natural forces that results in serious disruption of the functioning of a community or a society causing widespread human, material, economic and/or environmental losses that exceed the ability of the affected community or society to cope using its own level of resources;

"Party" means an AU Member State that is a Party to this Agreement;

"Reinsurance" means the practice where an insurance company (the insurer) transfers a portion of its risks to another (the reinsurer);

"Risk pool" means an aggregation of individual country risks for the purpose of managing the consequences of independent risks which effectively disperse losses incurred by a few over a larger group;

"Risk transfer" means shifting the burden of financial loss or responsibility for risk financing to another party, through insurance, reinsurance, or other means;

"Secretariat" means the Secretariat of the ARC Agency comprised of the Director General and the staff of the ARC Agency;

"Software" means the software developed for the use of the ARC Agency and the ARC Agency Subsidiary or Affiliated Entities for the purposes of weather risk assessment.

#### Article 2 Establishment

The ARC Agency is hereby established as a specialized agency of the AU to help Member States of the African Union to improve their capacities to better plan, prepare and respond to extreme weather events and natural disasters.

#### Article 3 Objective of the ARC Agency

The objective of the ARC Agency is to assist the Member States to reduce the risk of loss and damage caused by extreme weather events and natural disasters affecting Africa's populations by providing targeted responses to disasters in a more timely, cost-effective, objective and transparent manner.

#### Article 4 Functions of the ARC Agency

- I. The ARC Agency shall undertake such functions as may be necessary to achieve its objective.
2. Without prejudice to the generality of the foregoing, the ARC Agency shall undertake in particular the following functions:
  - (a) Enabling Parties to enhance the quantification and management of risk through modern and innovative financial tools such as risk financing and risk transfer;

## 53. AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICAN RISK CAPACITY (ARC) AGENCY (2012)

- (b) Helping Parties plan and prepare for emergencies caused by extreme weather events and natural disasters: the ARC Agency shall begin by assisting Parties to plan and prepare for emergencies caused by drought, and will later expand to address other types of extreme weather events and natural disasters, as decided by the Conference of the Parties;
- (c) Helping develop contingency plans and risk management strategies for extreme weather events and natural disasters, and monitoring the continuing effectiveness of such contingency plans and risk management strategies;
- (d) Assisting Parties in assessing the financial impact of extreme weather events and natural disasters;
- (e) Facilitating the pooling of the financial resources of Parties to provide contingency funding in a timely, objective and cost-efficient manner in order to help alleviate the impacts of extreme weather events and natural disasters;
- (f) Establishing and operating an African Risk Capacity Insurance or financial facility in the form of an ARC Agency Subsidiary or Affiliated Entity to engage in insurance, reinsurance, derivatives transactions, and other means of risk transfer to manage the delivery of this contingency funding effectively;
- (g) Assisting Parties in establishing a regional contingent credit or revolving grant facility for addressing more serious extreme weather events and natural disasters.

3. The ARC Agency, after the initial phase, will focus more on the oversight of risk transfer operations to be carried out through its African risk capacity insurance or financial facility and the ownership functions related to that facility, and the size and structure of the ARC Agency will reflect that core role.

### Article 5 Transparency and Accountability

The ARC Agency shall operate in accordance with generally accepted international standards of governance, transparency and accountability.

### Article 6 Use of Software

The Parties shall have the right to use the Software free of charge under license from the ARC Agency for the purposes of this Agreement.

### Part Two Status of the Arc Agency and its Staff

### Article 7 Legal Capacity

1. The ARC Agency shall have full international legal personality and shall enjoy in the territory of each Party, full juridical personality necessary for the fulfilment of its objectives and the exercise of its functions in accordance with this Agreement.
2. For the fulfilment of its objectives, the ARC Agency shall, in particular, have the legal capacity to:
  - (a) Enter into agreements;
  - (b) Acquire and dispose of moveable and immoveable property;

- (c) Institute legal proceedings.

#### Article 8

##### Privileges and Immunities of the ARC Agency

The Parties undertake to accord to the ARC Agency, its premises, property and assets, representatives of Parties, Members of the Governing Board, staff members of the ARC Agency, and experts on mission providing advice or assistance to the ARC Agency the privileges and immunities as specified in the General Convention on the Privileges and Immunities of the Organization of African Unity and the Additional Protocol to the OAU General Convention on Privileges and Immunities, and such facilities and courtesies as are necessary for the exercise of their functions in connection with the ARC Agency.

#### Article 9

##### Headquarters of the ARC Agency

1. The headquarters of the ARC Agency shall be situated in such a location as the Conference of the Parties shall determine based on criteria agreed upon by the Conference of the Parties.
2. The ARC Agency shall as soon as practicable enter into a hosting agreement with the government of the country in which its headquarters are situated concerning the provision of premises, facilities, services, and privileges and immunities for the purposes and efficient operation of the ARC Agency.

#### Part Three

##### Administration and Institutional Framework of the Arc Agency

#### Article 10

##### Organs of the ARC Agency

The ARC Agency shall have the following organs:

- (a) The Conference of the Parties;
- (b) The Governing Board;
- (c) The Secretariat.

#### Article 11

##### Subsidiary or Affiliated Entities of the ARC Agency

There shall be such subsidiary or affiliated entities of the ARC Agency as the Conference of the Parties may decide it is necessary to establish for the purposes of carrying out the functions of the ARC Agency. Such entities may include, where the Conference of the Parties deems so appropriate, subsidiary or affiliated entity or entities to be established under the national laws. Such entities may be established under the national laws of a Member State of the African Union, unless decided otherwise by the Conference of the Parties, in order to benefit from more effective legal and regulatory conditions and until such time that an equally favourable legal and regulatory regime exists in an AU Member State.

#### Article 12

##### The Composition and Sessions of the Conference of the Parties

### 53. AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICAN RISK CAPACITY (ARC) AGENCY (2012)

1. The Conference of the Parties shall be composed of all Parties to this Agreement in accordance with Article 26.
2. The Parties shall be represented by Ministers or their duly authorized representatives.
3. The Conference of the Parties shall meet at least once every year in ordinary session and at such other times as may be requested in writing by at least two thirds of the Parties or by the Governing Board of the ARC Agency.
4. The Conference of the Parties shall elect a Bureau composed of at least a Chairperson, and two Vice-Chairpersons from among the representatives of the Parties taking into account the principle of geographical rotation; the members of the Bureau shall hold office for one year with the possibility of renewal for one additional term.
5. The quorum for a Conference of the Parties shall be a simple majority of the Parties of the ARC Agency.
6. Decisions of the Conference of the Parties shall be taken by a two-thirds majority of the Parties present and voting, except that decisions taken pursuant to paragraph 2 (b), (n), (o), and (p) of Article 13 shall be taken by a two-thirds majority of the Parties to this Agreement.
7. The Conference of the Parties shall have the right to invite observers to attend its meetings without the right to vote.

#### Article 13

##### Functions of the Conference of the Parties

1. The Conference of the Parties is the supreme organ of the ARC Agency and shall have the power to undertake such function as are provided for in this Agreement and as may otherwise be necessary to achieve the objectives of this Agreement.
2. The functions of the Conference of the Parties, without prejudice to the generality of the foregoing, shall in particular be to:
  - (a) Adopt the Rules of Procedure for the Conference of the Parties;
  - (b) Determine the criteria and the scale of assessment for membership fees for Parties in accordance with Article 18;
  - (c) Appoint and dismiss the Director General of the ARC Agency;
  - (d) Adopt the Strategic Plan, approve the Programme of Work and Budget of the ARC Agency;
  - (e) Elect and dismiss for cause the Members of the Governing Board in accordance with Article 14;
  - (f) Dissolve the Governing Board if necessary;
  - (g) Determine the headquarters location of the ARC Agency in accordance with the Criteria for Hosting ARC and its organs adopted by the Conference of the Parties;
  - (h) Adopt rules for ensuring Parties' compliance with approved contingency plans;

### 53. AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICAN RISK CAPACITY (ARC) AGENCY (2012)

- (i) Decide on the necessity of establishing or causing to be established, or dissolving or causing to be dissolved any ARC Agency Subsidiary or Affiliated Entity and whether such entities should be established under national law;
- (j) Decide on the location of any ARC Agency Subsidiary or Affiliated Entity to be established;
- (k) Appoint, and dismiss if necessary, the independent auditor of ARC Agency;
- (l) Establish rules governing the issuance and withdrawal of Certificates of Good Standing;
- (m) Decide and prioritize the activities of the ARC Agency relating to extreme weather events and natural disasters affecting different parts of the continent;
- (n) Amend this Agreement in accordance with Article 23;
- (o) Dissolve ARC Agency, if deemed necessary, in accordance with Article 25;
- (p) Settle disputes regarding the interpretation and/or application of this Agreement, in accordance with Article 24.

#### Article 14 Composition of the Governing Board

##### 1. The Governing Board shall consist of:

- (a) Subject to paragraph 2 below, five members, and one alternate for each such member elected by the Conference of the Parties in accordance with the rules of procedure established pursuant to paragraph 2 (a) of Article 13 from among the Parties that have, at the time of the election current contracts for insurance with an ARC Agency Subsidiary or Affiliated Entity, taking into account the need for equitable geographical representation and rotation among the Parties;
- (b) One member having experience in insurance matters to be appointed by the Chairperson of the AU Commission from among the nationals of the Member States of the AU;
- (c) One member having experience in the area of food security, extreme weather events and disaster risk management to be appointed by the Chairperson of the AU Commission in consultation with the Executive Director of the United Nations World Food Programme from among the nationals of the Member States of the AU;
- (d) The Director General of the ARC Agency, without the right to vote;
- (e) One additional member may be appointed by the Conference of the Parties to give effect to any arrangements entered into under Article 21.

##### 2. During the initial period before Parties have entered into contracts for insurance with an ARC Agency Subsidiary or Affiliated Entity, the members of the Governing Board and alternates shall be elected from Parties that have:

- (a) Signed pre-participation Memoranda of Understanding with the ARC Project; and
- (b) Have notified in writing to the Chairperson of the Conference of Parties their intention to take out contracts for insurance once such contracts are available.

### 53. AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICAN RISK CAPACITY (ARC) AGENCY (2012)

3. Members and their alternates shall serve in their personal capacities, and shall serve on a part-time basis as required to carry out their functions.
4. An alternate shall not attend any meeting of the Governing Board if the member he or she is replacing is also present.
5. Subject to paragraph 6 of this article, members of the Governing Board shall be appointed for a term of not more than three years, which term may be renewed for one further term of three years.
6. The Conference of the Parties at its first session shall adopt a scheme for the staggering of the terms of members of the Governing Board, to ensure continuity in the work of the Board. The terms of the first members of the Governing Board shall be as determined by the Conference of the Parties in order to give effect to this scheme.
7. The Governing Board may invite observers to attend its meetings without the right to vote. Invitations to attend as observers may be extended in particular to organizations with which the ARC Agency is maintaining close working relationships including the League of Arab States and its specialized institutions.
8. The Governing Board shall elect its own Chairperson from among the members of the Governing Board.

#### Article 15 Functions of the Governing Board

The functions of the Governing Board shall be to:

- (a) Prepare its own rules of procedure;
- (b) Draw up the strategic plans for adoption by the Conference of the Parties and set the general policy direction of the ARC Agency in implementation of the decisions of the Conference of the Parties and monitor their performance;
- (c) Establish the timing and mode of payment of contributions;
- (d) Determine the currency of contributions;
- (e) Establish, or cause to be established, such ARC Agency Subsidiary or Affiliated Entities, including Subsidiary or Affiliated Entities established under national law, as the Conference of the Parties may deem necessary to carry out the functions of the ARC Agency;
- (f) Advise the Members or shareholders of any ARC Agency Subsidiary or Affiliated Entity, on the appointment or dismissal of the Members of the Board of Directors of such entity taking into account any requirements and nomination procedures applicable to such ARC Agency Subsidiary or Affiliated Entity;
- (g) Evaluate the performance of any ARC Agency Subsidiary or Affiliated Entity, and advise the Members or shareholders of such company on its operations;
- (h) Evaluate the performance of the Director General;
- (i) Review reports by the Director General;
- (j) Consider the Programme of Work submitted by the Director General and make recommendations to the Conference of the Parties;
- (k) Set standards for development and updating of contingency plans by Parties;

### 53. AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICAN RISK CAPACITY (ARC) AGENCY (2012)

- (l) Approve initial contingency plans, as well as updated or revised contingency plans;
- (m) Consider reports from the Director General on the monitoring of the implementation of contingency plans by Parties, and take action to ensure compliance by Parties with the terms of approved contingency plans in accordance with such rules as may be approved by the Conference of the Parties;
- (n) Submit to the Conference of the Parties nominations for the post of Director General in accordance with guidelines set by the Conference of the Parties;
- (o) In the event of the death, resignation, incapacity, or other inability of the Director General to perform his or her functions during the period between sessions of the Conference of the Parties, appoint an interim Director General of the ARC Agency for a period of no more than one year pending the appointment of a new Director General by the Conference of the Parties;
- (p) Approve the issuance, or withdrawal, by the Director General of Certificates of Good Standing for the ARC Agency Parties, a requirement for participation in the Risk Pool;
- (q) Submit reports on its work to the Conference of the Parties;
- (r) Approve the Financial and Staff Regulations of the ARC Agency and amendments to those Regulations, and submit them for adoption by the Conference of the Parties;
- (s) Approve policies relating to exceptional and significant acquisition of moveable or immovable property not provided for in the Strategic Plan, Programme of Work and Budget;
- (t) Set guidelines regarding the receipt of grants, donations and proceeds for its activities from international organizations, governments, foundations and other entities;
- (u) Prepare meetings of the Conference of the Parties; and
- (v) Perform such other functions as may be directed by the Conference of the Parties for the attainment of the objectives of the ARC Agency.

#### Article 16 Meetings of the Governing Board

1. The Governing Board shall meet:
  - (a) In regular session twice a year; and
  - (b) As often as necessary in extraordinary session at the request of the Chairperson of the Governing Board or as otherwise requested by the Conference of Parties.
2. The quorum for meetings of the Governing Board shall be a two-thirds majority of the members of the Governing Board.
3. The decisions of the Governing Board shall be taken by consensus. However; if all attempts to reach a consensus fail, decisions may be taken by a two-thirds majority of the Members of the Governing Board.
4. Alternate members will replace the Members of the Governing Board in the case of their unavailability.

## 53. AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICAN RISK CAPACITY (ARC) AGENCY (2012)

5. Where a meeting of the Governing Board is to consider matters relating to establishment and operation of an ARC Agency Subsidiary or Affiliated Entity, and if formal action is required by the Members or shareholders of the ARC Agency Subsidiary or Affiliated Entity to implement recommendations of the Governing Board, the meeting shall be organized back to back with a meeting of the Members or shareholders of the ARC Agency Subsidiary or Affiliated Entity.

### Article 17

#### The Secretariat and the Director General of the ARC Agency

1. The Director General shall be the head of the Secretariat of the ARC Agency.
2. The Director General shall be a person of demonstrated competence, leadership ability and integrity, expertise and experience in the subject matter of this Agreement or related issues in Africa.
3. The Conference of the Parties shall appoint an interim Director General pending the appointment of a regular Director General.
4. The Director General shall be a national of a State Party appointed by the Conference of the Parties for a term of 4 years, renewable once.
5. Without prejudice to the generality of the foregoing, the Director General shall have the following specific responsibilities:
  - (a) Control and coordinate all technical and administrative activities of the ARC Agency Secretariat;
  - (b) Recruit, supervise, manage, discipline and when necessary dismiss , the staff of the Secretariat of the ARC Agency, and supervise staff seconded to work with the Secretariat of the ARC Agency in accordance with arrangements agreed with the seconding entity;
  - (c) Prepare and submit for the approval of the Conference of the Parties the Programme of Work and Budget of the ARC Agency;
  - (d) Prepare evaluations of the operations of the ARC Agency Subsidiary and Affiliated Entities for consideration by the Governing Board;
  - (e) Organize and carry out capacity-building activities related to the functions of the ARC Agency;
  - (f) Make recommendations to the Governing Board regarding the approval of contingency plans and monitor Parties' compliance with approved contingency plans and other programme requirements;
  - (g) Issue and withdraw, with the approval of the Governing Board, Certificates of Good Standing certifying that individual Parties are in compliance with their financial and other obligations under this Agreement and are authorized to take out insurance with a Subsidiary or Affiliated Entity established for this purpose;
  - (h) Implement the programme of activities of the ARC Agency as approved by the Governing Board;
  - (i) Prepare the Financial Regulations and Rules of the ARC Agency and its Staff Regulations and Rules, for approval by the Governing Board, which regulations shall be drawn up to internationally accepted standards, and shall be applied provisionally until adopted by the Conference of the Parties;
  - (j) Submit to the Governing Board a report on membership fees due under paragraph 1 of Article 18 once a year;



## 53. AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICAN RISK CAPACITY (ARC) AGENCY (2012)

(k) Prepare annual reports and such other reports regarding the activities of the ARC Agency and its performance as may be requested by the Governing Board;

(l) Represent the ARC Agency in its relations with States, individuals, corporations and other bodies or entities, and enter into agreements with such States, individuals, corporations and other bodies or entities in accordance with the mandate given by the Governing Board;

(m) Provide such other services to the Conference of the Parties and sessions of the Governing Board as those organs may require and be present at such meetings.

6. The Director General shall be responsible for the day-to-day operations of the ARC Agency subject to the policy guidance of the Governing Board.

7. The Director General may delegate to other officers of the Secretariat the authority and functions as he/she considers necessary for carrying out effectively the responsibilities of the Director General.

### Part Four Financial Provision

#### Article 18 Financial Resources

1. The annual membership fees to be paid by the Parties to defray the costs of the ARC Agency shall be set by the Conference of the Parties and adopted concurrently with the budget of the ARC Agency.

2. The Conference of the Parties shall determine the appropriate sanctions to be imposed on any Member State that defaults in the payment of its contributions to the budget of the ARC Agency for a period in excess of two years from the date the payment is due.

3. The ARC Agency shall devise innovative ways of resource mobilization. It may also receive grants, donations and proceeds for its activities from international organizations, governments, foundations and other entities in accordance with guidelines set by the Governing Board.

#### Article 19 Expenses

1. The Secretariat may incur expenses for administrative, operational and investment purposes in accordance with the approved Programme of Work, Budget and Financial Regulations and Rules of the ARC Agency as adopted by the Conference of the Parties.

2. Expenses incurred by representatives of Parties and by their alternates in attending meetings of the Conference of the Parties shall be borne by their respective governments.

3. Expenses incurred by Members of the Governing Board in the course of their official duties for the ARC Agency shall be borne by the ARC Agency.

4. The ARC Agency finances and accounts will be audited by an independent auditor appointed by the Conference of the Parties under Article 13, paragraph 2 (k), of this Agreement.

### Part Five External Relations of the Arc Agency

#### Article 20

## 53. AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICAN RISK CAPACITY (ARC) AGENCY (2012)

### Relationship with the African Union

1. The ARC Agency shall maintain a close working relationship with the AU, which in turn is encouraged to assist the ARC Agency in the achievement of its objectives.
2. The ARC Agency shall present a written annual report on its activities to the AU Assembly through the Executive Council.

### Article 21

#### Relationship with States and Other Organizations

The ARC Agency shall establish and maintain active cooperation with States, inter-governmental organizations and non-governmental organizations or institutions that are desirous of assisting the ARC Agency in achieving its objectives.

### Part Six

#### Final Provisions

### Article 22

#### Working Languages

The working languages of the ARC Agency shall be those of the AU.

### Article 23

#### Amendment of the Agreement

1. Any Party may propose an amendment to this Agreement and submit it to the Chairperson of the AU Commission through the Director General of the ARC Agency.
2. No amendment to this Agreement shall be considered by the Conference of the Parties unless it has been notified by the Chairperson of the AU Commission to all the Parties at least six months prior to such consideration.
3. An amendment shall be adopted by a two-thirds majority vote of the Parties of the ARC Agency.
4. An amendment shall come into force for each Party that accepts the amendment three months after the deposit of the instrument of acceptance.
5. Instruments of acceptance of an amendment shall be deposited with the Chairperson of the AU Commission.

### Article 24

#### Settlement of Disputes

1. Any dispute that may arise concerning the interpretation and/or application of any of the provisions of this Agreement, which cannot be settled by the parties to the dispute, shall be submitted to the Conference of the Parties.
2. If the Conference of the Parties does not reach a decision on the dispute, or if the decision of the Conference of the Parties is not accepted by the parties to the dispute concerned, either party to the dispute may request that the matter be submitted for arbitration by a Tribunal composed of three members selected in the following manner:
  - (a) Each party shall nominate an arbitrator;

### 53. AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICAN RISK CAPACITY (ARC) AGENCY (2012)

(b) The third arbitrator, who shall be the Chairperson of the Arbitration Tribunal, shall be chosen by common agreement between the arbitrators nominated by the parties to the dispute;

(c) If there are more than two parties to a dispute, then each of the parties shall be entitled to select one arbitrator, and the arbitrators shall nominate another arbitrator who shall serve as the Chairperson of the Arbitration Tribunal.

3. If the Arbitration Tribunal is not formed within a period of three months from the date of the request for arbitration, either of the parties to the dispute may request the Chairperson of the Conference of the Parties to make the necessary nominations, except when the ARC Agency itself is a party to the dispute, in which case nominations shall be made by the Chairperson of the AU Commission.

4. The decisions of the Arbitration Tribunal shall be binding on the parties to the dispute.

5. The provisions of paragraphs 2 and 3 of this article shall be without prejudice to the choice of any other mode of settlement that the parties concerned may decide upon.

#### Article 25 Dissolution

1. The ARC Agency may be dissolved by agreement of two thirds of the Parties to this Agreement at a meeting of the Conference of the Parties in accordance with Article 13 and upon endorsement by the AU Assembly.

2. At least six months notice shall be given of any meeting of the Conference of the Parties at which the dissolution of the ARC Agency is to be discussed.

3. Where agreement has been reached on the dissolution of the ARC Agency, the Conference of the Parties shall establish the modalities for the liquidation of the assets of the ARC Agency.

#### Article 26 Signature, Ratification and Accession

1. This Agreement, in the Arabic, English, French and Portuguese texts, shall be deposited with the Chairperson of the AU Commission.

2. This Agreement shall be open for signature by all Member States of the AU.

3. This Agreement shall be applied provisionally, once it has been signed by at least ten Member States of the AU, for each signatory State to the extent that provisional application is consistent with that State's own constitution, laws or regulations, pending ratification by the State concerned or the definitive entry into force of this Agreement.

4. Decisions on the permanent location of the ARC Agency and/or its subsidiary or affiliated entities shall not be taken prior to the definitive entry into force of this Agreement.

5. Financial obligations shall not be imposed on a State Party until the State concerned has ratified this agreement.

6. This Agreement shall be subject to ratification, acceptance or approval.

7. Instruments of ratification, acceptance or approval shall be deposited with the Chairperson of the AU

#### 48. AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICAN RISK CAPACITY (ARC) AGENCY (2012)

Commission.

8. This Agreement shall enter into force definitively 30 days from the date of deposit of the tenth instrument of ratification, acceptance or approval.

9. Any AU Member State desirous of becoming a member of the ARC Agency after the entry into force of this Agreement, may do so by depositing with the Chairperson of the AU Commission its instrument of accession to this Agreement.

10. The Chairperson of the AU Commission shall transmit certified copies of this Agreement and information relating to the ratification, acceptance or approval of this Agreement to all Member States of the AU.

#### Article 27 Reservations

No reservation shall be made to this Agreement if the reservation is incompatible with the object and purpose of this Agreement.

#### Article 28 Withdrawal

1. Any party may withdraw from this Agreement through written notification to the Chairperson of the AU Commission who within 30 days will inform the ARC Agency and the Parties to this Agreement accordingly.

2. The notification of withdrawal shall become effective one year following receipt by the Chairperson of the AU Commission of the notification of withdrawal.

3. The obligations incurred by the withdrawing Party under this Agreement prior to its withdrawal taking effect shall continue in force.

4. Such withdrawal shall not affect any contract of insurance already entered into with an ARC Agency Subsidiary or Affiliated Entity referred to in Article 11; the withdrawing State shall not be entitled to enter into new contracts.

# **STATUTE OF THE PAN-AFRICAN UNIVERSITY**



**54.**

**STATUTE OF THE PAN-AFRICAN UNIVERSITY**

**Adopted in Addis Ababa, Ethiopia, on 28 January 2013.**

**Entered into force on 28 January 2013.**

Preamble

The Member States of the African Union,

*Recalling* Decision Assembly/AU/Dec.290 (XV) adopted by the Assembly of Heads of State and Government of the African Union during its Fifteenth Ordinary Session in July 2010, in Kampala, Uganda, creating the Pan-African University,

*Aware* of the central role that higher education and scientific and technological research play as a cornerstone of social integration, economic development and competitiveness,

*Acknowledging* that the establishment of the Pan-African University is a first step towards the creation of high-quality continental institutions that bridge the above gaps and promote innovative teaching, learning and research within Africa, to meet the developmental needs of the continent,

*Inspired by* the Plan of Action for the Second Decade of Education for Africa 2006-2015, and the Consolidated Plan of Action for Science and Technology 2006-2011,

*Recognizing* that in order for the Pan-African University to meet its objectives, it will require sustainable financial resources that should be assured in terms of allocation, adequacy, and timely disbursement,

Article 1  
Definitions

In this Statute:

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

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

“African Diaspora” means the African Diaspora as defined by the Executive Council in Decision EX.CL/Dec.221 (VII);

“COMEDAF” means the Conference of Ministers of Education of the African Union;

“Commission” means the African Union Commission;

“Executive Council” means the Executive Council of the African Union;

“Graduate” means any studies undertaken after the first university degree, including all postgraduate studies;

“Institute” means an Institute of the PAU;

“PAU” means the Pan-African University established by the African Union;

“RECs” means the Regional Economic Communities;

“Rector” means the chief executive of the PAU, also known as Vice-Chancellor;

“Statute” means the present Statute of the Pan-African University;

“Thematic Partner” means a development partner engaging in support of one or more of the thematic areas of the PAU.

## Article 2 Principles

1. The Pan-African University is a continental academic and research institution operating in African Union member countries and is based on the following guiding principles:

- (i) Academic freedom, autonomy and accountability;
- (ii) Quality assurance;
- (iii) Strengthening existing African institutions at the graduate level to enable them to serve the whole continent;
- (iv) Promotion of African integration through the mobility of students, academic and administrative staff, as well as the development of collaborative research linked to the challenges faced by African countries;
- (v) Excellence and international partnerships in academic and research activities;
- (vi) Institution of an appropriate framework and a conducive environment to enable the African Diaspora to contribute towards the development of higher education and research in Africa;
- (vii) Promotion of interdisciplinary and multidisciplinary research programmes integral to policy-making processes in Africa;
- (viii) Promotion and harnessing of productive linkages with the industrial sector for innovation and dissemination of new knowledge and technology;
- (ix) Strengthening of research in information sciences and digitalization;
- (x) Promotion of optimal use of information and communication technologies for pedagogy, research and management;
- (xi) Promotion of gender equity at all levels and in all university functions;
- (xii) Promotion of access to higher education for persons with disabilities.

2. The PAU shall take into account basic principles of the Constitutive Act of the AU, the United Nations Charter and the Universal Declaration of Human Rights.

## Article 3 Objectives

1. The training and research activities of the PAU shall be focused on priority issues which shall enable it to attain the following objectives:



#### 54. STATUTE OF THE PAN-AFRICAN UNIVERSITY (2013)

- (i) To develop continent-wide and world-class graduate programmes in science, technology, innovation, humanities and social sciences and governance;
  - (ii) To stimulate collaborative, internationally competitive, leading-edge fundamental and economic growth-oriented research, in areas having a direct bearing on the scientific, economic and social development of Africa;
  - (iii) To enhance the mobility of students and academic staff among African universities to improve on teaching and collaborative research;
  - (iv) To contribute to the capacity-building needs of present and future stakeholders of the African Union;
  - (v) To improve on the attractiveness of African higher education and research institutions to attract and retain talented young professionals on the African continent;
  - (vi) To initiate and invigorate mutually beneficial partnerships with public and private sectors within Africa and the Diaspora as well as internationally; and
  - (vii) To facilitate the emergence and strengthening of an African higher education and research platform.
2. To realize its aims and objectives, the PAU is authorized to enter into agreements and contracts with competent bodies, for pedagogic, research, management and funding purposes.

#### Article 4 Academic Freedom and Autonomy

1. The PAU shall benefit from the basic principles applicable to all higher education institutions, particularly academic freedom, autonomy and accountability. The observance and respect of these rights shall enable the PAU to function under the best attainable conditions and standards within the framework of the common rules governing the institutions of the African Union.
2. The PAU as well as the host countries of its institutes and centres shall grant its members academic freedom and self-governance in teaching and research. In this respect, the PAU shall accord academic and research staff appropriate full independence, and shall equally grant students full learning rights and privileges.
3. The PAU may conclude specific agreements with host universities where it operates to provide the former with the requisite conditions for its functioning.

#### Article 5 Structure

1. The PAU shall be an academic network hosted by existing African institutions operating at the graduate level.
2. The PAU shall comprise five Institutes corresponding to the thematic areas defined in Article 5, paragraph 3, below.
3. The following five thematic areas shall constitute the academic structure of the PAU in accordance with the geographic regions they shall be located in:
  - (i) Space Sciences in Southern Africa;
  - (ii) Water and Energy (including climate change) in Northern Africa;

#### 54. STATUTE OF THE PAN-AFRICAN UNIVERSITY (2013)

- (iii) Life and Earth Sciences (including health and agriculture) in Western Africa;
  - (iv) Basic Sciences, Technology and Innovation in Eastern Africa;
  - (v) Governance, Humanities and Social Sciences in Central Africa.
4. Affiliated to each Institute, there shall be a network of Centres (up to ten), located on the continent and working on the same thematic area as the thematic Institute.
5. The Centres of the PAU shall be identified following a competitive process.
6. Hosting agreements shall be signed between the Commission and the host countries of Institutes and Centres. Host agreements of the thematic Centres should be in compliance with the terms of reference of the host agreements of their thematic institutes.
7. There shall be an internationally recognized quality management system established for the PAU structures.

#### Article 6 Governance and Management

1. The management of PAU shall be based on the institutional values of quality, excellence, efficiency, flexibility, transparency, equity, responsibility, accountability and continuous assessment. To this effect, strategic plans with qualitative and quantitative performance indicators as well as follow-up tools shall be drawn up.
2. The Commission has the supreme overall responsibility of overseeing the PAU.
3. The management organs of the PAU shall be:
- (i) The PAU Council;
  - (ii) The Rectorate;
  - (iii) The Senate;
  - (iv) The Boards of Institutes.
4. The Regulations of the PAU shall be adopted by the PAU Council.
5. The PAU graduation ceremony will be presided over by the Chairperson of the Commission or his/her representative.

#### Article 7 The PAU Council

1. The PAU Council shall be the highest governing body and shall have oversight of the policy, finances and properties of the PAU.
2. Council members shall be appointed by the Chairperson of the Commission, following consultation with the Bureau of the COMEDAF or STC (Special Technical Committee) in charge of education and the concerned organizations.

3. The Chairperson of the Commission shall ensure merit and competence with due consideration for gender equity in deciding on the appointment of the Council members.

4. The Council shall be constituted of twenty eight (28) members as follows:

- (i) The President;
- (ii) The Vice-President;
- (iii) The Commissioner for Human Resources, Science and Technology or his/her representative;
- (iv) The representative of UNESCO;
- (v) The representative of the Association of African Universities (AAU) or his/her representative;
- (vi) The Chairperson of COMEDAF or the STC in charge of education or his/her representative;
- (vii) The representative of the African Academy of Sciences (AAS);
- (viii) A representative from each of the RECs. Representatives shall be from academia, civil society or industry;
- (ix) Two Directors of the five Institutes;
- (x) A representative of the Lead Thematic Partners on a rotational basis;
- (xi) A representative of academic staff;
- (xii) A representative of administrative staff;
- (xiii) Two representatives of students;
- (xiv) Two scholars from African Diaspora, appointed by the Chairperson of the Commission;
- (xv) Two Vice-Chancellors/Rectors of the host universities of Institutes;
- (xvi) The PAU Rector (ex-officio);
- (xvii) The PAU Vice-Rectors (ex-officio).

5. The Executive Council shall elect the President and Vice-President of the PAU Council from a list of five candidates who should be citizens of the AU Member States presented by the Bureau of the COMEDAF or STC in charge of education.

6. Council members shall serve a three-year term with a possibility of being reappointed for one additional term. Half of the council members shall be replaced at the end of their three-year tenure.

7. The Council shall be responsible for the following:

- (i) Promotion and discipline of academic and research staff;
- (ii) Issuing all PAU regulation rules and measures and setting a code of conduct;
- (iii) Promoting socio-cultural activities;

#### 54. STATUTE OF THE PAN-AFRICAN UNIVERSITY (2013)

- (iv) Adoption, review and amendment of staff terms and conditions of service;
- (v) Identification and recommendation of new Centres;
- (vi) Approval of the PAU programmes and budgets;
- (vii) Consideration and approval of the Rector's annual report;
- (viii) Approval of the strategic plan and operational plans;
- (ix) Approval of agreements and conventions to be signed by the Rector;
- (x) Performing all other functions within its mandate necessary for the smooth operation and development of the PAU.

8. The President of the Council shall:

- (i) Set the agenda of the Council sessions in consultation with the Rector;
- (ii) Summon the Council members to attend Council sessions;
- (iii) Preside over the Council;
- (iv) Monitor discussions;
- (v) Represent the Council;
- (vi) Receive all communications addressed to the Council; and sign all official documents issued by the Council.

9. In the absence of the President, the meeting shall be chaired by the Vice-President.

10. The Rector shall serve as Secretary to the Council.

11. Minutes of the Council sessions shall be sent to the Commission for information.

12. The Council shall meet once a year in an ordinary session. Extraordinary sessions of Council may be convened at the request of the President or at least two thirds of Council members and in consultation with the Commission.

- (i) All meetings of the PAU Council will require a quorum of two thirds of the members.

13. The decisions of the Council will be adopted by simple majority.

14. The Council shall constitute committees or working groups as it deems necessary, including a forum for consultation with Thematic Partners.

#### Article 8 The Rector

1. The Rector is the chief executive of the PAU. He/she shall be appointed by the Chairperson of the Commission, on the basis of modalities determined by the Executive Council.

2. The rector of PAU shall be equivalent in rank to Commissioner of the African Union Commission whereby the same entitlements to that of a Commissioner shall also be applicable.

3. The Rector shall be appointed for a non-renewable term of five years.

4. The Rector is responsible for implementing the general policy, strategy and multiannual planning; he/she is also responsible for the corporate and public image of the University, including its external relations. He/she shall specifically be in charge of the following:

- (i) Preparing and presenting the activity report of the University to the Council;
- (ii) Ensuring the implementation of the decisions of the Council;
- (iii) Ensuring the required coordination between Directors of Institutes and Coordinators of Centres;
- (iv) Ensuring the implementation and the periodical monitoring of the multiannual strategic development plan approved by the Council;
- (v) Authorizing and managing budget allocations;
- (vi) Managing the University personnel;
- (vii) Signing agreements between PAU and host institutions as approved by the Council;
- (viii) Providing services necessary for the functioning of the Council.

5. The Rector shall have the discretion to set up specific consultative committees related to the formulation or the implementation of the multiannual strategic development plan of the Pan-African University.

6. The Rector shall be supported in his/her functions by three Vice-Rectors:

- (i) Vice-Rector Research, Development and Cooperation;
- (ii) Vice-Rector Academic and Students Affairs; and
- (iii) Vice-Rector Administration and Finance.

7. The Vice-Rectors are appointed under the same procedure as the Rector.

Article 9  
The PAU Senate

1. The Senate shall be the organ of the PAU in charge of academic affairs and research.

2. The Senate shall make recommendations to the Council in the following domains:

- (i) Organization, promotion and control of teaching and research activities;
- (ii) Admission, welfare and discipline of students, as well as awarding of degrees; and
- (iii) Collaboration with host institutions to develop policies for realization of PAU goals.

#### 54. STATUTE OF THE PAN-AFRICAN UNIVERSITY (2013)

3. The Senate shall be presided over by the Rector or in his/her absence, by the Vice-Rector Research Development and Cooperation or the Vice-Rector Academic and Students Affairs.
4. The Senate shall meet at least twice a year in ordinary sessions. Extraordinary sessions may be convened at the request of the Rector or at least two thirds of Senate members.
5. The membership of the Senate shall be appointed by PAU Council on the recommendation of the Rector and be constituted as follows:
  - (i) Rector as a Chairperson;
  - (ii) A representative of the Department in charge of education within the Commission;
  - (iii) Vice-Rector Research, Development and Cooperation;
  - (iv) Vice-Rector Academic and Students Affairs;
  - (v) Vice-Rector Finance and Administration;
  - (vi) The five Directors of Institutes;
  - (vii) Five representatives of academic and research staff, one from each thematic area;
  - (viii) Five student representatives (one from each geographic region).
6. The Senate shall sit at the Rectorate or any other convenient place within the five thematic Institutes.
7. The Senate quorum shall be formed by two-thirds majority.
8. The following three Committees shall assist the Senate:
  - (i) The Committee of Directors of Institutes;
  - (ii) The Committee of Coordinators of Centres;
  - (iii) The Finance and Administrative Committee.
9. The Committees of the Senate shall meet twice a year. The Committee sessions shall immediately precede the Senate ordinary sessions.
10. The Vice-Rector Administration and Finance shall serve as Secretary to the Senate.

#### Article 10 Directors and Boards of Institutes

1. Each Institute shall be headed by a Director. Directors shall be appointed by the Rector, following consultation with the Council and the host institution.
2. The Director of an Institute shall ensure the effective coordination between the Coordinators of Centres operating within the same thematic area. In this respect, he/she shall preside over the corresponding Annual General Meeting of the Coordinators of Centres in order to draw up the sectoral report including an activity report. This report shall be sent to the Rector prior to the Senate meetings among others.

3. In addition, the Director shall have the following functions:
- (i) Ensure effective coordination between the Coordinators of all PAU Centres of the respective thematic area;
  - (ii) Be a Senate member of the host university and report periodically to the Rectorate/Vice-Chancellery on the activities of the host university;
  - (iii) Liaise between the host university, the host government and the PAU;
  - (iv) Prepare and present the activities report of the Institute quarterly to the Rectorate;
  - (v) Ensure implementation of the decisions of the PAU;
  - (vi) Ensure required coordination between Centres of the Institute;
  - (vii) Ensure implementation and the periodic monitoring of the multiannual strategic development of the Institute and its affiliate Centres;
  - (viii) Ensure commitment and release of funds for which provision was made in the budget approved by the Rectorate/Vice-Chancellery and he/she shall be the authorizing officer for the Institute;
  - (ix) Manage the Institute personnel, property, equipment etc.;
  - (x) Sign agreements, on the approval by the Rectorate, pertaining to voluntary donations or contributions from governments, national or international organizations, private or public or any other donor organization for the benefit of Institute and the Pan-African University;
  - (xi) Keep records on the progress of postgraduate research, and in this connection receive from faculties and Centres recommendations for the deregistration of candidates whose work is unsatisfactory or for their discontinuation for sufficient cause and make such recommendations for the Senate as it shall deem appropriate;
  - (xii) Process the appointment of Board of Examiners for postgraduate theses, projects or other related presentations;
  - (xiii) Send out invitations to examiners for postgraduate research presentations, on the recommendation of the relevant faculties or schools;
  - (xiv) Make copies of submitted theses, projects or similar presentations to be forwarded to examiners;
  - (xv) Receive written assessment of such theses, projects or similar presentation from the examiners;
  - (xvi) Convene Board of Examiners meetings in consultation with the deans of faculties, schools or Centres concerned;
  - (xvii) Forward recommendations of the Board of Examiners to the Vice-Chancellor of the host university and the PAU Rector for approval on behalf of the respective Senates where the verdict of such Board is unanimous; provided that in the absence of unanimity of the examiners, recommendations shall be deliberated upon by the Board and recommendations thereon made to the Senates;
  - (xviii) Undertake any other work or responsibility as may be assigned to him/her by the Rector.

4. The conditions of service, including rights and privileges for Directors shall be defined in a specific policy document.
5. The Institute shall have a Board. The Director shall be supported and guided in running the Institute by a Board whose membership shall consist of the following:
  - (i) Director of the Institute;
  - (ii) Five Centre coordinators on a rotational basis;
  - (iii) All full-time professors;
  - (iv) Two representatives of the host university Senate;
  - (v) One representative of the Lead Thematic Partner;
  - (vi) The administrative officer of the Institute shall be the Secretary of the Institute Board; and
  - (vii) The Board shall have power to invite other scholars of the host University to attend its meetings in an advisory capacity only and without the right to vote at such meetings.
6. There shall be departments and any other substructures related to teaching, research and extension activities within the Institutes and Centres.
7. The Departments and any other substructures related to teaching, research and extension activities shall be created by the Chairperson of the Commission on the recommendation of the PAU Council.
8. The Board of the Institute shall be responsible for the supervision of academic, administrative, and financial management of the Institute. In this regard, its function shall include:
  - (1) Recommendations to the Senate with regard to the creation of departments, research laboratories, creation of teaching programmes, organization of studies, and recruitment and promotion of teaching staff;
  - (2) Supervision in the areas of:
    - (i) Management of personnel, facilities and finance;
    - (ii) Planning and budget;
    - (iii) Curriculum development, regulations and teaching;
    - (iv) Research and cooperation;
    - (v) Postgraduate thesis;
    - (vi) Research projects;
    - (vii) Nominations of supervisors for all Master and PhD theses;
    - (viii) Students affairs.
9. The quorum of the Board shall be half of its membership plus one.



#### 54. STATUTE OF THE PAN-AFRICAN UNIVERSITY (2013)

10. Decisions of the Board shall be adopted by simple majority of those present. In case of equality, the voice of the Chairperson counts twice.
11. The Board of the Institute shall constitute committees or working groups as it deems necessary.
12. The Board of the Institute shall meet at least twice a year on the invitation of the Chairperson.
13. The Board shall be presided over by the Director of the Institute.
14. The Senior Administrative Officer of the Institute shall serve as Secretary to the Board.

#### Article 11 University Staff

1. The PAU staff shall comprise the following categories:
  - (i) Full-time academic and administrative staff from host countries;
  - (ii) Full-time academic staff from other Member States;
  - (iii) Staff from Diaspora, partners and elsewhere as need arises;
  - (iv) Part-time academic and administrative staff from host countries; and
  - (v) Part-time academic staff and visiting academic and research staff from Member States, partners and African Diaspora.
2. Academic and administrative staff put at the disposal of the PAU by the host country, shall remain employees of their host institution. This includes:
  - (i) Academic and research staff;
  - (ii) Administrative personnel;
  - (iii) Technical personnel; and
  - (iv) Support personnel.
3. Full-time academic staff from host and other Member States shall be hired by the PAU for specific periods in line with the AU rules and regulations.
4. A visiting academic and research staff shall obtain a mission order signed by the Rector of the PAU at the request of the host institution.
5. All full-time professors, lecturers and administrative staff of PAU shall be granted with AU travelling privileges according to AU procedures.
6. Students of the PAU shall travel using their own national passports and access shall be facilitated by the host countries.
7. The level and entitlements of PAU staff will be determined by the Executive Council.

#### Article 12

Coordination of Centres

1. There shall be Centres under each Institute. Each Centre shall be regarded for administrative purposes as being a constituent part of the Institute.
2. Each Centre shall be headed by a Coordinator. Coordinators shall be appointed by the PAU Rector, following consultation with the Council and the host institution.
3. In addition to his/her teaching, research and other duties and responsibilities, the Coordinator of a Centre shall:
  - (i) Ensure effective coordination between the Centre and the Institute as well as the host university;
  - (ii) Liaise between the host university, the host government and the PAU;
  - (iii) Prepare and present the activities report of the Centre monthly to the Director of the Institute;
  - (iv) Ensure implementation of the decisions of the PAU and the Institute in the Centre;
  - (v) Ensure implementation and periodic monitoring of the multiannual strategic development of the Centre;
  - (vi) Ensure commitment and release funds for which provision was made in the budget approved by the PAU of which he/she is the authorizing officer for the Centre;
  - (vii) Manage the Centre's personnel, property, equipment etc.;
  - (viii) Be in charge of executing the academic and research programmes of the Centre with the assistance of programme officers. He/she shall particularly ensure the follow-up in relation to trainers, admission and graduation of students, promotion of relationship with students, management of internships, follow-up, assessment and issuance of degrees;
  - (ix) Act as the representative of the Rector in the Centre and administer the Pan-African University policies at the Centre level;
  - (x) Act as the academic and administrative head of the Centre;
  - (xi) Hold regular Centre meetings and ensure that the members of staff attend such meetings where the Coordinator and the entire staff have an opportunity to exchange ideas on policy matters;
  - (xii) Represent the Centre on the appropriate university committees and other bodies as required;
  - (xiii) Ensure that proper and acceptable standards of teaching and research are maintained in the Centre;
  - (xiv) Be required to publish annual reports on the Centre's performance;
  - (xv) Submit the Centre budget, procurement plans, annual reports and performance contracts;
  - (xvi) Undertake any other work or responsibility as may be assigned to him/her by the Director;
4. The conditions of service, including rights and privileges, for Coordinators shall be defined in a specific policy document.

## 54. STATUTE OF THE PAN-AFRICAN UNIVERSITY (2013)

5. There shall be, “Affiliated Centres” associated with PAU Institutes, selected by the PAU Council, in consultation with the PAU Rector. The policy document mentioned under paragraph 4 above shall also include issues relating to Affiliated Centres.

### Article 13 Intellectual Property Rights

1. All the ideas, inventions and innovations emanating from the research/activities done under PAU shall be patented in the host country in the name of the innovator(s), the host university and PAU. PAU shall develop a policy document in consultation and concurrence with the host university/country on intellectual property rights registration, patenting and sharing of proceeds from commercialized patents.

2. The policy document shall be reviewed in line with the international treaties and conventions on intellectual property rights.

3. The host country intellectual properties regulations should have supremacy over other policies in the event of ambiguity or otherwise.

### Article 14 PAU Research Policy

1. The PAU shall develop its own research policy which may vary from one institute to another depending on the nature of their activities and programmes.

2. The research policy shall be in consonance with the AU Member States’ scientific and technological research policy.

3. The host country scientific research regulations should have supremacy over other policies in the event of ambiguity or otherwise.

### Article 15 Budgeting and Financing of the PAU

1. All African Union Member States pledge to support and finance the PAU.

2. The PAU budget shall be managed under the general financial regulations approved by the PAU Council. The annual budget prepared by the Rector shall be adopted by the PAU Council.

3. Following the approval of the annual budget, the Rector shall proceed to execute the budget in conformity with the provisions of the PAU financial regulations.

4. The Rector shall prospect for financial opportunities and, on the approval of the Council, conclude agreements and conventions under which funding would be raised for the University.

5. The Rector shall present annually a financial report to the Council for approval.

6. The budgeting and financing of the PAU shall be managed through a special fund created by the Commission for PAU and managed according to the modalities endorsed by the PAU Council.

7. The accounts of the PAU shall be audited annually as per the AU rules and procedures.

### Article 16 The Endowment Fund

#### 54. STATUTE OF THE PAN-AFRICAN UNIVERSITY (2013)

1. An endowment fund shall be created based on voluntary contributions.
2. The following may be contributors to the Endowment Fund:
  - (i) Member States of the African Union;
  - (ii) Regional Economic Communities (RECs);
  - (iii) Development partners and relevant donors;
  - (iv) Public and private sources;
  - (v) Other sources as maybe determined by the PAU Rector and Council.
3. The management of the endowment fund shall be in conformity with the general financial principles endorsed by the PAU Council.
4. Each country hosting an Institute, a Centre or the Rectorate shall be required to commit additional resources.

#### Article 17 Headquarters

1. The headquarters of the Rectorate shall be located in one of the AU Member States.
2. A memorandum of understanding shall be signed with the host country selected.

#### Article 18 Staff and Student Disciplinary Committee

1. The Rector shall set up a disciplinary committee in each PAU Institute and Centre comprising not less than seven (7) members and not more than eleven (11) members but the total membership must always be an odd number.
2. The disciplinary committee shall conduct hearings and make decisions on students and staff acts of indiscipline in accordance with the staff/students rules and regulations.

#### Article 19 Award of Scholarships, Degrees and Examination Regulations

1. The regulations and criteria of scholarship shall be determined by the PAU Council in accordance with AU principles and values.
2. The degrees shall be jointly awarded by the PAU and the host Institutions. The examination regulations and the modalities of awarding the joint degrees shall be issued by the Chairperson of the Commission based on the recommendation of the PAU Council.

#### Article 20 Amendments

#### 54. STATUTE OF THE PAN-AFRICAN UNIVERSITY (2013)

1. This Statute may be amended by the Assembly upon recommendation of the Executive Council after it has obtained the opinion of the PAU Council.
2. The amendments shall come into force upon their adoption by the Assembly.

#### Article 21

##### Working Languages

The working languages of the PAU shall be English, French and Arabic. The PAU Council shall determine the process and practical modalities for the usage of other AU official languages, as well as other African languages.

#### Article 22

##### Entry into Force

This Statute shall enter into force upon its adoption by the Assembly.



**AFRICAN CHARTER ON THE VALUES AND PRINCIPLES  
OF DECENTRALIZATION, LOCAL GOVERNANCE  
AND LOCAL DEVELOPMENT**





55. AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF DECENTRALIZATION,  
LOCAL GOVERNANCE AND LOCAL DEVELOPMENT (2014)

55.

**AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF DECENTRALIZATION,  
LOCAL GOVERNANCE AND LOCAL DEVELOPMENT**

**Adopted in Malabo, Equatorial Guinea, on 27 June 2014.**

**Entered into force on 13 January 2019.**

Preamble

*We, the Member States of the African Union,*

*Guided* by the objectives and principles enshrined in the Constitutive Act of the African Union, particularly Articles 3 and 4, which emphasize the significance of good governance, popular participation, the rule of law and human rights,

*Inspired* by the Yaoundé Declaration adopted by African Ministers in charge of Decentralization and Local Development on 29 October 2005,

*Recalling* the AU Executive Council Decision EX.CL./Dec.677 (XX) adopted in Addis Ababa, Ethiopia, on 28 January 2012, as endorsed by the Assembly of Heads of State and Government relating to the development of an African Charter on the Values, Principles and Standards of Decentralization and Local Governance,

*Inspired* by the vision of the African Union of an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena,

*Recalling* the African Charter on Human and Peoples Rights (1981), the African Union Convention on Preventing and Combating Corruption (2003), the African Charter on Democracy, Elections and Governance (2007), the African Charter on the Values and Principles of Public Service and Administration (2011),

*Recognizing* the contribution of regional organizations, Member States, local authorities associations, civil society organizations and traditional leaders in promoting, protecting, strengthening and consolidating decentralization, local governance and local development,

*Determined* to promote the values and principles of decentralization, local governance and local development in Africa as a means for improving the livelihood of all peoples on the continent,

*Convinced* that local governments or local authorities are key cornerstones of any democratic governance system,

*Reaffirming* our collective will to deepen participatory democracy, citizens and community empowerment to promote accountability and transparency of public institutions, promote and protect cultural diversity, and promote gender and trans-generational equity at the local or subnational level,

*Committed* to ensure access to basic services for all people on the continent,

*Cognizant* of the various forms of decentralization, including devolution, deconcentration and delegation in the political, administrative and financial spheres,

*Have agreed* as follows:

Chapter I  
Definitions, Objectives, Scope and Values

Article 1

55. AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF DECENTRALIZATION,  
LOCAL GOVERNANCE AND LOCAL DEVELOPMENT (2014)

Definitions

In this Charter, unless otherwise stated, the expressions below shall have the following meaning:

"AU" means the African Union;

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

"Charter" means the African Charter on the Values and Principles of Decentralization, Local Governance and Local Development;

"Commission" means the African Union Commission;

"Constitutive Act" means the Constitutive Act of the African Union;

"Decentralization" means the transfer of power, responsibilities, capacities and resources from national to all subnational levels of government with the aim of strengthening the ability of the latter to both foster people's participation and delivery of quality services;

"Local development" means the mobilization of local, national and global human, economic, sociocultural, political and natural resources for the improvement and transformation of livelihood, communities and territories at the local level;

"Local economic development" means an element of local development which emphasizes the mobilization of endogenous resources and local knowledge and skills in a manner that attracts investments to generate inclusive economic activities and growth and promotes the equitable redistribution of resources;

"Local governance" means governance processes and institutions at the subnational level, which includes governance by and with local governments or local authorities, civil society, and other relevant actors at the local level;

"Local public official" means a locally elected representative of a local government or local authority;

"Member States" means Member States of the African Union;

"Ministers" means Ministers of the central government or any authority of the central government responsible for decentralization, local governance and local development;

"Regional Economic Communities" means regional integration blocks of the African Union;

"State Party" means any Member State that has ratified or acceded to the Charter and deposited the instruments of ratification or accession with the Chairperson of the African Union Commission;

"STCs" means the Specialized Technical Committees of the African Union;

"Subnational" level means all levels of government below the national level.

Article 2  
Objectives

The objectives of the Charter are to:

55. AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF DECENTRALIZATION,  
LOCAL GOVERNANCE AND LOCAL DEVELOPMENT (2014)

- (a) Promote, protect and act as a catalyst for decentralization, local governance and local development in Africa;
- (b) Promote and champion local governance and local democracy as one of the cornerstones of decentralization in Africa;
- (c) Promote resource mobilization and local economic development with the view to eradicating poverty in Africa;
- (d) Promote a shared understanding and a common vision of Member States on matters relating to decentralization, local governance and local development;
- (e) Promote the core values and principles of decentralization, local governance and local development;
- (f) Guide policy formulation, implementation, monitoring and evaluation at the continental, regional, State and subnational levels on decentralization, local governance and local development;
- (g) Encourage effective coordination, harmonization and knowledge sharing within Member States and among Regional Economic Communities on decentralization, local governance and local development;
- (h) Promote the association and cooperation of local governments or local authorities at the local, national, regional and continental levels; and
- (i) Promote civil society, private sector and people participation in decentralization, local governance and local development initiatives.

Article 3  
Scope

This Charter covers:

- (a) Decentralization;
- (b) Local governance;
- (c) Local development.

Article 4  
Core Values

This Charter shall be informed by the following values:

- (a) Community-based participation and inclusiveness;
- (b) Solidarity;
- (c) Respect for human and peoples' rights;
- (d) Diversity and tolerance;
- (e) Justice, equality and equity;
- (f) Integrity;

55. AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF DECENTRALIZATION,  
LOCAL GOVERNANCE AND LOCAL DEVELOPMENT (2014)

- (g) Civic responsibility and citizenship;
- (h) Transparency and accountability;
- (l) Responsiveness.

Chapter II  
Principles

The following principles shall underpin the approach to decentralization, local governance and local development in Africa.

Article 5  
Local Governance

1. States Parties shall enact domestic laws and regulations, recognizing different levels of government with the mandate to exercise their competencies through clearly defined regulatory mechanisms.
2. Local governments or local authorities shall in accordance with national law, have the powers to, in an accountable and transparent manner, manage their administration and finances through democratically elected, deliberative assemblies and executive organs.
3. Geographical boundaries of areas falling within the jurisdiction of local governments or local authorities shall be modified in accordance with the provisions of the law.
4. Local governments or local authorities shall be consulted through clearly defined regulations on national or subnational legal instruments, sectoral policies, programmes, or projects that directly or indirectly affect their competencies to impact the lives of local populations.

Article 6  
Subsidiarity

1. Central government shall create enabling conditions for decision-making, policy and programme initiation adoption and implementation to take place at lower levels of government where local governments or local authorities offer a better guarantee of pertinence and efficacy.
2. Central governments shall create enabling conditions for cooperation and coordination between national and all subnational levels of government and shall empower local governments or local authorities to discharge their duties and responsibilities.
3. Local governments or local authorities shall cooperate with central governments and other local actors to achieve increased efficiency and effectiveness in public action for the delivery of public services.

Article 7  
Resource Mobilization and Local Economic Development

1. Central governments shall adopt legislation, measures and establish relevant mechanisms to give local governments the authority to mobilize and disburse resources at the local level for local economic development.
2. Central governments shall adopt legislation and create the necessary oversight and evaluation mechanisms to ensure that the percentage of revenue raised at the national and local levels are effectively transferred to local governments or local authorities for local economic development.

55. AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF DECENTRALIZATION,  
LOCAL GOVERNANCE AND LOCAL DEVELOPMENT (2014)

3. Central governments shall work in close collaboration with local governments or local authorities to promote private sector and community development investments or initiatives through legislative, financial and institutional frameworks.

4. Local governments or local authorities shall, in accordance with the law, and in an accountable and transparent manner, raise, manage and administer local resources in consultation with central government, civil society and the private sector through legislative, institutional and clearly defined and regulated participatory mechanisms.

5. Local governments or local authorities shall encourage and ensure that civil society, private sector, communities, national and subnational entities pay local taxes and user fees through clearly established, transparent and efficient mechanisms.

Article 8  
Diversity and Differentiation

Without prejudice to observance of this Charter:

1. Local governments or local authorities shall exercise their powers having regard to local realities, values, and customs as well as national principles, norms and standards;

2. In accordance with the law, local programmes, projects or initiatives shall be implemented in consultation with stakeholders and carried out in such a manner as to recognize the cultural, religious and gender diversity of the people within its territory in urban and rural areas;

3. Central and local governments or local authorities may establish consultative mechanisms, informed by local conditions, to make proposals or give opinions concerning guidelines or decisions on local development. However, the role of local elected authorities shall remain primary.

Article 9  
Legality

1. Local governments shall adopt by-laws, develop and implement local programmes, projects or initiatives in a manner consistent with national laws and regulations.

2. States which are party to regional, continental and/or global treaties and policy instruments shall support and ensure local governments to comply with such instruments and treaties at the local level.

Article 10  
Inclusion, Equity and Equality

1. Local governments or local authorities shall discharge their responsibilities and duties in a manner that is inclusive, equitable and gives equal treatment to all local residents to ensure that citizens and local residents have equitable access to quality services.

2. Local governments or local authorities shall ensure that historically marginalized groups and poor communities in both rural and urban areas shall be included and given priority in service delivery.

3. Local governments or local authorities shall develop pro-poor initiatives and pay particular attention to women and youth, as well as vulnerable groups including but not limited to the elderly, persons with disability, HIV/AIDS-affected households, child-headed households, street children, the indigent, the illiterate, slum dwellers,

55. AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF DECENTRALIZATION,  
LOCAL GOVERNANCE AND LOCAL DEVELOPMENT (2014)

poor rural households, the unemployed and underemployed, refugees, the homeless, the displaced minorities in programme or project development, implementation and service delivery.

4. Local governments or local authorities shall not discriminate on the basis of sex, age, disability, social status, religion, place of origin, ethnic or racial origin, linguistic association and political ideology in exercising their functions, setting policies, planning, implementing, monitoring and evaluating programmes or projects.

5. Local governments or local authorities shall discharge their duties and responsibilities having regard to sustainable development, which includes the development of future generations, intergenerational development and environmental sustainability.

Article 11  
Shared Responsibility and Complementarity

States Parties shall ensure that:

(a) Local governments or local authorities promote and improve the livelihoods and environment of local communities;

(b) Local governments or local authorities, in the spirit of good local and central government relations, involve all relevant national, subnational, private sector and civil society actors in the development and implementation of local development plans and programmes, and ensure consistency with national, regional or continental development policies;

(c) Local governments or local authorities specify their local development plans and programmes in operational cooperation frameworks, such as a commitments charter, which shall be adopted by all relevant actors;

(d) Central and local governments or local authorities are bound by law to establish mechanisms to cooperate and support each other to attain global, continental, regional, national, and local development priorities;

(e) They establish mechanisms of cooperation between national development agencies, public institutions, private sector and civil society, on the one hand, with local governments or local authorities, on the other hand, to support the implementation of local development priorities;

(f) Local governments or local authorities are accountable to local communities regarding local development decisions and policies, the implementation of such decisions and policies and the management of financial resources. Local community and citizen responsibilities in this respect shall be clearly defined to facilitate collaboration with local governments or local authorities;

(g) Local governments or local authorities, in accordance with national legislation and in the spirit of good cooperative governance, are accountable to central governments and communities as regards the discharging of their duties and responsibilities and in the implementation of programmes, projects or policies.

Article 12  
Participation

1. National legislation shall guarantee the rights and outline the responsibilities of citizens to participate in public life at the local level.

2. Democracy shall be the foundation of local governance and shall take a participatory and representative form.

55. AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF DECENTRALIZATION,  
LOCAL GOVERNANCE AND LOCAL DEVELOPMENT (2014)

3. Local governments or local authorities shall promote participation of all segments of society in the planning, implementation, monitoring and evaluation of policies, programmes and projects through structured community platforms and other forms of participation to ensure the delivery of quality services.
4. Local governments or local authorities shall promote the development of innovative democratic and peaceful public expression platforms.
5. Local governments or local authorities shall make provision for the meaningful participation of communities, civil society and other actors in local governance and development.
6. Central governments, in collaboration with local governments or local authorities, shall invite and encourage the full participation of the African diaspora in the promotion of decentralization, local governance and local development through clearly defined policies and mechanisms.
7. National legislation shall be enacted to empower and encourage local governments or local authorities to adopt appropriate forms of popular participation, civic engagement and other forms of expression.

Article 13  
Representation

1. Election of local public officials shall be enshrined within the legal framework of States Parties, which shall clearly define the modalities and time frames for such elections.
2. Central governments shall enact electoral laws that promote regular, democratic, free, fair and transparent local government elections.
3. Central governments shall establish innovative measures and appropriate mechanisms to ensure the full participation of all eligible citizens, including specific measures for the representation of women and marginalized groups in local government elections within the framework of national legislation.
4. Local public officials shall duly represent the interests of local communities and shall consult with their populations on an ongoing and regular basis through clearly specified mechanisms and time frames.
5. Central governments shall adopt legislation and establish administrative and financial mechanisms and use information and communication technology (ICT) to encourage local residents and communities to provide feedback to their locally elected representatives, make their grievances heard, and seek redress.

Article 14  
Transparency, Accountability and Ethical Behaviour

1. Measures for the promotion of transparency and accountability by local governments or local authorities shall be clearly outlined in national legislation. Such legislation shall clearly define the respective roles and responsibilities of national and subnational governments, public agencies, service providers, elected and administrative officials, and civil society organizations.
2. Central governments and local governments or local authorities shall make provisions for community participation and establish accountability systems in local governance and local development programmes by publishing annual local government performance reports and disclosing financial statements in full.
3. Central governments and local governments or local authorities shall establish mechanisms to combat all forms of corruption.

55. AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF DECENTRALIZATION,  
LOCAL GOVERNANCE AND LOCAL DEVELOPMENT (2014)

4. Central governments and local governments or local authorities shall establish innovative mechanisms in the resolution of grievances to promote and protect whistle-blowing relating to all forms of corrupt behaviour and practice, including bribery, patronage and nepotism, as well as the resolution of grievances.
5. Local public officials shall display ethical behaviour and integrity in discharging their duties.
6. Central governments shall adopt legislation and create mechanisms to monitor standards of ethical behaviour by local governments or local authorities.

Article 15  
Mainstreaming Gender, Youth and Disability

1. Local governments or local authorities shall integrate gender, youth and disability issues in the overall process of formulating policy, planning for development and providing services, as well as in implementing, monitoring and evaluating development programmes and projects.
2. Local governments or local authorities shall promote and ensure the equal and effective participation of women, youth and people with disability in public life, leadership and management positions on all matters relating to local governance and local development.
3. Local governments or local authorities shall promote and increase participation of women, youth and people with disability in all matters relating to local governance and local development.

Article 16  
Efficiency

1. Local Governance Administration
  - (a) National legislation shall be adopted to empower local governments to determine and manage the organization of local public administration within a common national framework of standards, in order to ensure effective and enhanced delivery of quality and affordable services to local communities.
  - (b) Local governments or local authorities shall identify and implement innovative service delivery modalities to local populations within a framework of national legislation.
2. Resource Mobilization and Utilization
  - (a) Local governments shall be provided with the required human, financial and technological resources to effectively and efficiently discharge their responsibilities.
  - (b) Information and communication technology (ICT) shall be made accessible and effectively used to make local governance and local development more effective and efficient.
3. Capacity Development
  - (a) Local governments or local authorities, as well as local government associations, shall undertake comprehensive and continuous capacity development initiatives to enhance the performance of locally elected representatives and officials to effectively and efficiently carry out their duties and functions.
  - (b) Central governments shall establish civil service institutions, create special programmes and develop special curricula on local government and local public administration.



55. AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF DECENTRALIZATION,  
LOCAL GOVERNANCE AND LOCAL DEVELOPMENT (2014)

(c) Central governments shall encourage such initiatives to share experiences and best practices at the bilateral, regional and continental level.

(d) Communities, civil society and citizens shall benefit from capacity development in order to effectively contribute to local public administration and local development.

(e) States Parties shall promote voluntary peer-review processes within and between countries.

4. Natural Resources

(a) States Parties shall adopt national legislation and establish mechanisms which include local government, civil society and local populations to ensure adequate protection and sustainable use of natural resources at the local level.

(b) States Parties shall adopt national legislation and create mechanisms which include local government, civil society, and local populations for local communities to benefit from natural resources exploited in their communities.

(c) Central governments shall be responsible to equitably redistribute natural resource benefits acquired from natural resource exploitation in given localities and communities to all subnational governments and local communities.

5. Local Governance Financing, Financial Management and Local Development

(a) Central governments shall enact national legislation which strives to entrust local governments with the full responsibility to manage financial resources at the local level.

(b) Central governments shall ensure, through appropriate support and oversight, that allocated financial resources are managed effectively and efficiently without undermining the principle of local financial autonomy.

(c) National legislation shall be adopted to ensure the financial sustainability of local governments.

(d) Central governments shall define local resources as well as conditional and unconditional financial transfers.

(e) Conditional and unconditional financial transfers from central government to local governments or local authorities shall be transparent and predictable.

(f) Conditions under which local governments shall gain access to loans, financial markets, and development assistance shall be defined by law.

(g) Local governments shall implement accounting, auditing and management systems for the effective, efficient and transparent management of financial resources in strict compliance with national financial and accounting laws, norms and standards.

(h) Local governments or local authorities shall identify and establish mechanisms and processes for the efficient or optimal use of financial resources in the delivery of quality services as defined by law.

Article 17  
Solidarity, Cooperation and Partnership

55. AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF DECENTRALIZATION,  
LOCAL GOVERNANCE AND LOCAL DEVELOPMENT (2014)

1. National laws shall be adopted to regulate conditions under which local governments or local authorities may form partnerships or cooperate with local governments of other African countries to achieve common local, national and regional development and continental integration objectives.
2. Local governments or local authorities may enter into appropriate partnerships with non-African local governments to promote cooperation, especially South-South cooperation.
3. National legislation shall be adopted to recognize the right of local governments or local authorities to form a national association to cooperate and collaborate.
4. Such national association shall be governed by public law and shall be integrated into the decentralization management institutional mechanism.
5. Local governments or local government associations at the national level shall be free to join regional, continental and global local government associations.
6. Central governments shall encourage, support and ensure the full participation of local government associations as the collective voice of local governments in national, regional and continental development matters or decisions.
7. Central governments shall encourage and support the independent and effective functioning of local government associations.
8. Regional integration initiatives shall promote local government or local authority cooperation among Member States; the framework for cross-border cooperation shall be established by Member States and Regional Economic Communities.
9. Central governments shall support local governments to fully participate in processes, mechanisms and programmes at the regional and continental levels.

Chapter III  
Mechanisms for Implementation

Article 18  
Follow-Up Mechanisms

To give effect to the commitments contained in this Charter, the actions listed below shall be taken at the following levels:

1. Implementation at Individual State Party Level

(a) Local Government or Local Authority Level

Local governments or local authorities shall:

- (i) Equally be responsible and accountable to their local populations for the implementation of the objectives of this Charter, and the adherence to its values and principles;
- (ii) Cooperate with central government and other subnational levels of governments to realize shared development priorities;
- (iii) Participate in national local government associations and collaborate with civil society and the private sector to achieve the objectives of the Charter;

55. AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF DECENTRALIZATION,  
LOCAL GOVERNANCE AND LOCAL DEVELOPMENT (2014)

- (iv) Demonstrate the political will to advocate for and ensure the implementation of the objectives, values and principles of this Charter, together with the central government;
  - (v) Commit to create favourable conditions for the dissemination and implementation of this Charter; and
  - (vi) Commit to participate in the monitoring, evaluation and reporting of the implementation of this Charter.
- (b) Central Government Level

To ensure and facilitate the implementation of this Charter, States Parties shall:

- (i) Adopt appropriate legislative, executive and administrative measures to align their national laws and regulations to the objectives of this Charter and adhere to the values and principles contained therein;
- (ii) Integrate commitments, objectives, values and principles of this Charter in national policies and strategies;
- (iii) Take all necessary measures to ensure the broader dissemination of this Charter;
- (iv) Undertake a coordinated effort to place decentralization and local development at the centre of governance and development;
- (v) Demonstrate the political will, through inter alia, the allocation of appropriate resources, for the realization of the objectives, values and principles of this Charter in a concrete manner; and
- (vi) Take the necessary steps to develop cooperation and share experiences in the areas of decentralization, local governance and local development in accordance with the objectives, values and principles of this Charter.

2. Implementation at Commission Level

(a) Regional Level

In accordance with their constitutive instruments, Regional Economic Communities shall:

- (i) Encourage Member States to ratify, accede, implement and monitor this Charter;
- (ii) Integrate and take into account the objectives, principles and values of this Charter in drafting and adopting regional policy and legal instruments; and
- (iii) Support and facilitate the establishment of an appropriate advisory regional platform or forum for the collective voice and action of local governments.

(b) Continental Level

To ensure and facilitate the implementation of this Charter, the Commission shall:

- (i) Develop guidelines for the implementation of this Charter;
- (ii) Facilitate the creation of favourable conditions for good local governance and development for the delivery of quality public services on the continent at the local level through the harmonization of policies and laws of States Parties;

55. AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF DECENTRALIZATION,  
LOCAL GOVERNANCE AND LOCAL DEVELOPMENT (2014)

- (iii) Support and facilitate the establishment of an appropriate advisory continental platform or forum for the collective voice and action of local governments within the AU framework;
- (iv) Assist States Parties to implement this Charter and coordinate its evaluation;
- (v) Mobilize the necessary resources to support States Parties to build their capacity to implement this Charter; and
- (vi) Undertake periodic review of the Charter and make recommendations to the policy organs of the African Union.

Article 19  
Reporting

1. States Parties shall, from the date the Charter comes into force, submit to the Commission, every three years, a report to the Commission on the legislative or other measures taken with a view to giving effect to the principles and commitments of this Charter.
2. The Commission shall prepare and submit to the Assembly, through the Executive Council, a synthesized report on the implementation of this Charter, for consideration.

Article 20  
Recognition, Award System and Commemoration

1. States Parties shall institutionalize a transparent and an impartial system for recognizing outstanding performance, creativity and innovation in decentralization, local governance and local development.
2. States Parties shall promote a continental recognition and award system to acknowledge and emulate excellence in decentralization, local governance and local development.
3. The Commission shall promote innovative experiences and institute a system of awards for innovation in decentralization, local governance and local development.
4. States Parties shall commemorate the "Africa Day on Decentralization and Local Development", on the 10<sup>th</sup> of August of each year as a means to promote the values and principles of this Charter.

Chapter IV  
Final Clauses

Article 21  
Safeguard Provisions

1. The provisions of this Charter shall not be interpreted in a manner that is inconsistent with the relevant principles of international law, including international customary law.
2. None of the provisions of this Charter shall affect more favourable provisions relating to decentralization, local governance and local development contained in the domestic law of States Parties or in any other regional, continental or international agreement applicable in these States Parties.
3. In the implementation of this Charter, the specificities and special needs of island States shall be taken into account.

Article 22  
Settlement of Disputes

55. AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF DECENTRALIZATION,  
LOCAL GOVERNANCE AND LOCAL DEVELOPMENT (2014)

1. Any dispute relating to this Charter shall be amicably resolved through direct negotiations between the States Parties concerned.

2. Where the dispute is not resolved through direct negotiation, the States Parties shall endeavour to resolve the dispute through other peaceful means, including good offices, mediation and conciliation, or any other peaceful means agreed upon by the States Parties. In this regard, the States Parties shall be encouraged to make use of the procedures and mechanisms for resolution of disputes established within the framework of the Union.

Article 23

Signature, Ratification or Accession

This Charter shall be open to all Member States of the Union, for signature, ratification or accession, in conformity with their respective constitutional procedures.

Article 24

Entry into Force

This Charter shall enter into force thirty (30) days after the date of the receipt by the Chairperson of the Commission of the African Union of the fifteenth (15<sup>th</sup>) instrument of ratification.

Article 25

Amendment

1. Any State Party may submit proposals for the amendment or revision of this Charter.

2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission of the African Union, who shall transmit the same to States Parties within thirty (30) days of receipt thereof.

3. The Assembly of the Union, upon recommendation of the Executive Council of the Union, shall examine these proposals at its next session, provided all States Parties have been notified at least three (3) months before the beginning of the session.

4. The Assembly of the Union shall adopt the amendments in accordance with its Rules of Procedure.

5. The amendments or revisions shall enter into force in accordance with the provisions of Article 24 above.

Article 26

Depositary

1. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the African Union.

2. Any State Party may withdraw from this Charter by giving a written notice one (1) year in advance to the Chairperson of the Commission of the African Union.

3. The Chairperson of the Commission of the African Union shall notify the Member States of any signature of this Charter, any deposit of an instrument of ratification or accession, as well as its entry into force.

4. The Chairperson of the Commission shall also notify the States Parties of the requests for amendments or withdrawal from the Charter, as well as reservations thereon.

55. AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF DECENTRALIZATION,  
LOCAL GOVERNANCE AND LOCAL DEVELOPMENT (2014)

5. Upon entry into force of this Charter, the Chairperson of the Commission shall register it with the Secretary-General of the United Nations, in accordance with Article 102 of the Charter of the United Nations.
6. This Charter, 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 of the Charter to each Member State of the African Union in its official language.

**AFRICAN UNION CONVENTION ON CROSS-BORDER  
COOPERATION (NIAMEY CONVENTION)**





56.

**AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION  
(NIAMEY CONVENTION)**

**Adopted in Malabo, Equatorial Guinea, on 27 June 2014.**

**The Convention shall enter into force thirty days after the deposit of the fifteenth instrument of ratification.**

Preamble

*We, the Member States of the African Union,*

*Inspired* by the objectives and principles enshrined in the Constitutive Act of the African Union, adopted in Lomé, Togo, on 11 July 2000, and the Treaty Establishing the African Economic Community adopted in Abuja, Nigeria, on 3 June 1991,

*Reaffirming* our commitment to Resolution AHG/Res.16 (I) on the principle of the respect of borders existing at the time of accession to national independence, adopted by the First Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity, held in Cairo, Egypt, from 17 to 21 July 1964,

*Mindful* of Resolution CM/Res.1069 (XLIV) on Peace and Security in Africa through Negotiated Settlement of Border Conflicts, adopted by the Forty-fourth Ordinary Session of the Council of Ministers of the Organization of African Unity held in Addis Ababa, Ethiopia, from 21 to 26 July 1986,

*Recalling* the relevant provisions of the Memorandum of Understanding on the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA), adopted at the Thirty-eighth Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity, held in Durban, South Africa, on 8 July 2002,

*Recalling further* the Declarations on the African Union Border Programme, adopted by the Conferences of African Ministers in charge of Border Issues, held respectively in Addis Ababa, on 7 June 2007 and 25 March 2010, and in Niamey, Niger, on 17 May 2012,

*Determined* to give effect to the African Union decisions related to border issues, including Decisions EX.CL/370 (XI) and EX.CL/Dec.461 (XIV), adopted by the Eleventh and Fourteenth Ordinary Sessions of the Executive Council of the African Union, held respectively in Accra, Ghana, from 25 to 29 June 2007, and in Addis Ababa, Ethiopia, from 29 to 30 January 2009,

*Recalling* the international initiatives on the delimitation and delineation of maritime borders and the provisions of the United Nations Convention on the Law of the Sea,

*Convinced* that a legal framework for cross-border cooperation would accelerate integration in Africa and enhance prospects for the peaceful resolution of border disputes between Member States,

*Desirous* to implement effective cross-border cooperation, necessary for the transformation of border areas into zones of trade and cooperation,

*Have agreed* as follows:

Article 1  
Definitions

For the purposes of this Convention:

## 56. AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION (NIAMEY CONVENTION) (2014)

"Border area" means a geographical area straddling the border of two or more neighbouring States;

"Border Programme" means the African Union Border Programme, as defined in the Declarations adopted by the Conferences of African Ministers in charge of Border Issues, held in Addis Ababa, Ethiopia, on 7 June 2007 and 25 March 2010, and in Niamey, Niger, on 17 May 2012, and subsequently endorsed by the Executive Council of the African Union;

"Commission" means the African Union Commission;

"Continental Border Consultative Committee" means the Committee set up by the African Union Commission and comprising representatives of the Regional Economic Communities, as the implementation mechanism for cross-border cooperation at the continental level;

"Convention" means the African Union Convention on Cross-Border Cooperation;

"Cross-border cooperation" means any act or policy aimed at promoting and strengthening good-neighbourly relations between border populations, territorial communities and administrations or other stakeholders within the jurisdiction of two or more States, including the conclusion of agreements and arrangements useful for this purpose;

"Local border consultative committee" means a local border territorial administration or authority recognized as such under the domestic law of States Parties;

"Reaffirmation of borders" means the reconstruction of degraded beacons into their original locations, in conformity with international norms;

"Regional Border Consultative Committee" means the body that facilitates dialogue and consultation between regional, bilateral and local border territorial administrations or authorities across borders;

"Regional Economic Communities" mean the regional integration blocs of the African Union;

"State Party" or "States Parties" means any Member State of the African Union which has ratified, or acceded to, this Convention and deposited the instruments of ratification or accession with the Chairperson of the African Union Commission;

"Territorial communities or authorities" means communities, authorities, or bodies exercising local territorial functions and regarded as such under the domestic law of States Parties;

"Union" means the African Union.

### Article 2 Objectives

The objectives of the present Convention are to:

1. Promote cross-border cooperation, at local, subregional and regional levels;
2. Seize the opportunities arising from shared borders and address the related challenges;
3. Facilitate the delimitation, demarcation and reaffirmation of interstate borders, in conformity with mechanisms agreed upon by the parties concerned;

## 56. AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION (NIAMEY CONVENTION) (2014)

4. Facilitate the peaceful resolution of border disputes;
5. Ensure efficient and effective integrated border management;
6. Transform border areas into catalysts for growth, socio-economic and political integration of the continent; and
7. Promote peace and stability through the prevention of conflicts, the integration of the continent and the deepening of its unity.

### Article 3 Areas of Cooperation

States Parties shall commit themselves to promote cross-border cooperation in the following areas:

1. Mapping and geographical information, including survey;
2. Socio-economic development, including transportation, communication, trade, agropastoral activities, handicrafts, energy resources, industry, health, sanitation, drinking water, education and environmental protection;
3. Cultural activities and sports;
4. Security, especially combating cross-border crime, terrorism, piracy and other forms of crime;
5. Demining of border areas;
6. Institutional development in all areas covered by the present Convention, including identification, formulation and execution of projects and programmes;
7. Any other areas agreed upon by the States Parties.

### Article 4 Facilitation of Cross-Border Cooperation

1. The States Parties shall endeavour to solve any legal, administrative, security, cultural or technical impediment likely to hamper the strengthening and smooth functioning of cross-border cooperation. In this respect, States Parties shall regularly consult with each other or with other interested parties.
2. States Parties shall, in accordance with the provisions of the present Convention, cooperate fully in the implementation of the Border Programme.

### Article 5 Sharing of Information and Intelligence

1. Each State Party shall, as much as possible, provide information requested by another State Party, with a view to facilitating the performance by the requesting State of its obligations under this Convention.
2. Each State Party shall take the necessary steps to encourage, promote and facilitate information and intelligence sharing, as may be requested by another State Party on matters relating to the protection and security of border areas.

### Article 6

## 56. AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION (NIAMEY CONVENTION) (2014)

### Competent Authorities or Bodies Responsible for Border Matters

Each State Party shall, either at the time of ratification of, or accession to, this Convention, or as soon as possible, thereafter, communicate to the Commission the list of competent authorities or bodies responsible for border issues under its domestic law, which shall then serve as focal points.

### Article 7

#### Harmonization of Domestic Law Pertaining to Border Issues

States Parties are encouraged to harmonize their domestic law with this Convention and ensure that the local territorial administrations or authorities in border areas are duly informed of the opportunities available to them and their obligations under this Convention.

### Article 8

#### Mechanisms for Implementation of Cross-Border Cooperation at the Level of States Parties

1. States Parties shall commit themselves to apply the provisions of the present Convention and to endeavour to attain its objectives, particularly by:

- (a) Establishing cooperation mechanisms, including legal frameworks;
- (b) Taking into account domestication of the provisions of the Convention in the development of their national policies and strategies;
- (c) Submitting, every two years, a report on the measures taken for the implementation of the present Convention.

2. Activities pertaining to cross-border cooperation shall be undertaken by local territorial communities or authorities as defined by the domestic law of States Parties.

3. The decentralized border territorial administrations or authorities established under the domestic law of States Parties shall exercise their powers, including the conclusion of cooperation agreements with decentralized border territorial administrations or authorities of neighbouring States Parties, in conformity with the domestic law of their respective States.

4. States Parties may establish Border Consultative Committees comprising representatives of competent bodies to assist, in an advisory capacity, the border communities and authorities in the consideration of cross-border cooperation matters.

### Article 9

#### Mechanisms for Implementation of Cross-Border Cooperation at the Level of the Regional Economic Communities

1. The Commission shall establish a framework for cooperation with the Regional Economic Communities on the implementation of the Border Programme, in conformity with the objectives of this Convention. In this regard, the Commission shall request the Regional Economic Communities to:

- (a) Encourage Member States to sign, ratify or accede to this Convention;
- (b) Designate focal points for coordination, evaluation and monitoring of the implementation of the commitments enshrined in this Convention.

## 56. AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION (NIAMEY CONVENTION) (2014)

2. The Commission shall encourage each Regional Economic Community to establish a Regional Border Consultative Committee.
3. The Regional Border Consultative Committees, composed of nominees of Member States of the Regional Economic Communities, shall assist the latter, in an advisory capacity, in the consideration of cross-border cooperation matters.
4. The Regional Border Consultative Committee shall:
  - (a) Assist in the formulation of policies and activities for the promotion of cross-border cooperation in administrative, cultural, socio-economic and security areas in their respective regions;
  - (b) Prepare road maps outlining the actions necessary for enhancing cross-border cooperation;
  - (c) Coordinate all the activities, as well as the mobilization of the required means for the attainment of the objectives stipulated in this Convention;
  - (d) Facilitate dialogue and consultation between regional and local authorities located on either side of border areas, when requested by the States Parties concerned;
  - (e) Recommend the adoption of best practices for the effective management and administration of border areas;
  - (f) Examine the problems faced by border populations and suggest solutions thereto, when requested by the States Parties concerned;
  - (g) Make recommendations on ways and means of promoting cross-border activities undertaken by the different entities located within border areas, when requested by the States Parties concerned.

### Article 10

#### Mechanism for Implementation of Cross-Border Cooperation at the Continental Level

1. The Commission shall coordinate and facilitate the implementation of this Convention through the Border Programme. Accordingly, the Commission shall:
  - (a) Act as the central coordinating structure for the implementation of this Convention;
  - (b) Support States Parties in implementing this Convention;
  - (c) Coordinate the evaluation of the implementation of the Convention with other appropriate organs of the Union, the Regional Economic Communities and competent national bodies;
  - (d) Establish the Continental Border Consultative Committee;
  - (e) Support the efforts of the States Parties for an effective sharing of information and intelligence.
2. The Continental Border Consultative Committee shall be composed of the representatives of the Regional Economic Communities and shall operate under the auspices of the Commission.
3. The Continental Border Consultative Committee shall be charged with the following tasks:
  - (a) Advise the Commission on cross-border cooperation matters;

## 56. AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION (NIAMEY CONVENTION) (2014)

- (b) Consider and propose general guidelines to promote cross-border cooperation in administrative, security, socio-economic, cultural and other areas identified in this Convention;
- (c) Identify priority actions and resources needed for the implementation of these guidelines;
- (d) Promote best practices relating to the development of border regions;
- (e) Examine problems faced by border populations and propose recommendations in coordination with and the approval of the States Parties concerned.

### Article 11 Border Programme Fund

1. A Border Programme Fund shall be established and managed in accordance with the AU Financial Rules and Regulations.
2. The resources of the Border Programme Fund shall be provided through:
  - (a) Voluntary contributions of Member States; and
  - (b) Miscellaneous income, including donations and grants, in conformity with the principles and objectives of the Union.

### Article 12 Safeguard Provisions

1. The provisions of this Convention shall not be interpreted in a manner that is inconsistent with the relevant principles of international law, including international customary law.
2. None of the provisions of this Convention shall affect more favourable provisions relating to cross-border cooperation contained in the domestic law of States Parties or in any other regional, continental or international agreement applicable in these States Parties.
3. In the implementation of this Convention, the specificities and special needs of island States shall be taken into account.

### Article 13 Settlement of Disputes

1. Any dispute relating to this Convention shall be amicably resolved through direct negotiations between the States Parties concerned.
2. Where the dispute is not resolved through direct negotiation, the States Parties shall endeavour to resolve the dispute through other peaceful means, including good offices, mediation and conciliation, or any other peaceful means agreed upon by the States Parties. In this regard, the States Parties shall be encouraged to make use of the procedures and mechanisms for resolution of disputes established within the framework of the Union.

### Article 14 Signature, Ratification or Accession

This Convention shall be open to all Member States of the Union, for signature, ratification or accession, in conformity with their respective constitutional procedures.

## 56. AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION (NIAMEY CONVENTION) (2014)

### Article 15 Entry into Force

This Convention shall enter into force thirty (30) days after the date of the receipt by the Chairperson of the Commission of the African Union of the fifteenth (15<sup>th</sup>) instrument of ratification.

### Article 16 Amendment

1. Any State Party may submit proposals for the amendment or revision of this Convention.
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission of the African Union, who shall transmit the same to States Parties within thirty (30) days of receipt thereof.
3. The Assembly of the Union, upon recommendation of the Executive Council of the Union, shall examine these proposals at its next session, provided all States Parties have been notified at least three (3) months before the beginning of the session.
4. The Assembly of the Union shall adopt the amendments in accordance with its Rules of Procedure.
5. The amendments or revisions shall enter into force in accordance with the provisions of Article 15 above.

### Article 17 Depository

1. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the African Union.
2. Any State Party may withdraw from this Convention by giving a written notice of one (1) year in advance to the Chairperson of the Commission of the African Union.
3. The Chairperson of the Commission of the African Union shall notify the Member States of any signature of this Convention, any deposit of an instrument of ratification or accession, as well as its entry into force.
4. The Chairperson of the Commission shall also notify the States Parties of the requests for amendments or withdrawal from the Convention, as well as reservations thereon.
5. Upon entry into force of this Convention, the Chairperson of the Commission shall register it with the Secretary-General of the United Nations, in accordance with Article 102 of the Charter of the United Nations.
6. This Convention, 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 of the Convention to each Member State of the African Union in its official language.





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



57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

57.

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

**Adopted in Malabo, Equatorial Guinea, on 27 June 2014.**

**The Protocol and Statute annexed thereto shall enter into force thirty days after the deposit of the instruments of ratification by fifteen Member States.**

*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 Lomé, 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, subparagraph (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

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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 at 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 at the Thirteenth Ordinary Session of the Assembly in Sirte, Libya, 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 I 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;

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

"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;
4. The Defence Office.

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.

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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 6 bis  
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, subparagraph (f).

Article 10  
Depositary Authority

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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 instrument of ratification or accession is 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.

**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".
3. 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;

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

"Person" means a natural or legal person;

"President" means the President of the Court unless otherwise specified;

"Section" means the General Affairs Section, the Human and Peoples' Rights Section or the 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 jurisconsults 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 among the candidates on lists A and B, and six (6) judges shall be elected from among the candidates of list C, respectively.



57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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

"Article 18  
Revision and Appeal

1. In the case of the General Affairs Section and the Human and People's Rights Section, a revision of a judgment 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, the Human and Peoples' Rights Section or the 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

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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 of the Statute (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.

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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 22 A, 22 B and 22 C:

"Article 22 A  
The Office of the Prosecutor

1. The Office of the Prosecutor shall consist of a Prosecutor and two Deputy Prosecutors.
2. The Prosecutor and Deputy Prosecutors shall be elected by the Assembly from among 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 22 B  
The Registry

1. The Registry shall consist 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.

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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 Detention Management Unit, which shall 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 22 C  
The Defence Office

1. The Court shall establish, maintain and develop a Defence Office for the purpose of ensuring the rights of suspects and accused and any other person entitled to legal assistance.
2. The Defence Office, which may also include one or more public defenders, shall act independently as a separate organ of the Court. It shall be responsible for protecting the rights of the defence, providing support and assistance to defence counsel and to the persons entitled to legal assistance, including, where appropriate, legal research, collection of evidence and advice, and appearing before the Chamber in respect of specific issues.
3. The Defence Office shall ensure that there are adequate facilities to defence counsel and persons entitled to legal assistance in the preparation of a case, and shall provide any additional assistance ordered by a judge or Chamber.
4. The Defence Office shall be headed by a Principal Defender, who shall be appointed by the Assembly, and shall be a person of high moral character and possess the highest level of professional competence and extensive experience in the defence of criminal cases. He shall be admitted to the practice of law in a recognized jurisdiction and shall have practiced criminal law before a national or international criminal court for a minimum of ten years.
5. The Principal Defender shall, in order to ensure that the fair trial rights of suspects and accused are protected, adopt such regulations and practice directions as may be necessary to effectively carry out the functions of the Defence Office.

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

6. The Principal Defender shall be assisted by such other staff as maybe required to perform the functions of the Defence Office effectively and efficiently. The staff of the Defence Office shall be appointed by the Principal Defender in accordance with the Staff Rules and Regulations of the African Union.

7. The Principal Defender shall, for all purposes connected with pre-trial, trial and appellate proceedings, enjoy equal status with the Prosecutor in respect of rights of audience and negotiations *inter partes*.

8. At the request of a judge or chamber, the Registry, defence or, where the interests of justice so require, *proprio motu*, the Principal Defender or a person designated by him shall have rights of audience in relation to matters of general interest to defence teams, the fairness of the proceedings or the rights of a suspect or accused."

Article 12 bis  
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 subparagraph (d) as follows, with consequential renumbering of the existing subparagraphs (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 28 A, 28 B, 28 C, 28 D, 28 E, 28 F, 28 G, 28 H, 28 I, 28 I bis, 28 J, 28 K, 28 L, 28 L bis, 28 M and 28 N as follows:

"Article 28 A  
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;

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

- (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 or any other form of sexual violence.

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;

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

- (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



57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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;

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

- (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;

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

- (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) Wilfully 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 demilitarized 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 (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

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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 demilitarized zones the object of attack;

(xx) Slavery;

(xxi) Collective punishments;

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

(xxii) Despoliation of the wounded, sick, shipwrecked or dead.

(f) Paragraph (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.

Article 28 E  
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 of 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 the purposes of this Statute, "democratically elected government" has the same meaning as contained in AU instruments.

Article 28 F  
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;

(b) Any act of voluntary participation in the operation of a boat, ship or 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

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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 subparagraph A (1) to (3).

C. Notwithstanding the provisions of subparagraphs 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 28 H  
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.

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

- (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 28 I  
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/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;
- (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;

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

- (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 28 I 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 28 J  
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;



57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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 28 K  
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 subparagraph (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 28 L  
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 purposes 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 subparagraph (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;

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

- (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 28 L bis  
Illicit Exploitation of Natural Resources

For the purposes 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 28 M  
Crime of Aggression

A. For the purposes of this Statute, "crime of aggression" means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State or organization, whether connected to the State or not of an act of aggression 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 and with regard to the territorial integrity and human security of the population of a State Party.

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) The blockade of the ports, coasts or airspace of a State by the armed forces of another State;
- (e) The attack by the armed forces of a State on the land, sea or air forces, or marine and fleets of another State;
- (f) 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;
- (g) 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;
- (h) The sending or materially supporting by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Article 28 N  
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:

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

"the Peace and Security Council,"

Add a new subparagraph (d)

"(d) The Office of the Prosecutor."

Article 16

Other Entities Eligible to Submit Cases to the Court

The deletion of subparagraph (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, paragraph 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 34 A and 34 B as follows:

"Article 34 A

Institution of Proceedings Before the International Criminal Law Section

1. Subject to the provisions of Articles 22 A 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 34 B

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 43 A as follows:

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

"Article 43 A

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 subparagraph (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."

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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 IV A and new Articles 46 A to 46 M as follows:

"Chapter IV A

Provisions Specific to the International Criminal Jurisdiction of the Court

Article 46 A

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 46 A bis

Immunities

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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 46 B  
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 28 A 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 46 C  
Corporate Criminal Liability

1. For the purposes 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 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.

Article 46 D  
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 46 E  
Temporal Jurisdiction

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Protocol and Statute.

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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 46 E 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 28 A.

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 46 F  
Exercise of Jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in Article 28 A 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 46 G  
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 analyse 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, it shall submit to a Pre-Trial Chamber a request for authorization of an investigation, together with any supporting



57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

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 Office of 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 Office of the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, it shall inform those who provided the information. This shall not preclude the Office of the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.

Article 46 H  
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.

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

Article 46 I  
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 46 J  
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 46 J bis  
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 46 K  
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 46 L

57. PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2014)

Cooperation and Judicial Assistance

1. States Parties shall cooperate 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 cooperation or assistance of regional or international courts, non-States Parties or cooperating partners of the African Union and may conclude agreements for that purpose.

Article 46 M 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."



**PROTOCOL ON THE ESTABLISHMENT OF  
THE AFRICAN MONETARY FUND**



58.

**PROTOCOL ON THE ESTABLISHMENT OF THE AFRICAN MONETARY FUND**

**Adopted in Malabo, Equatorial Guinea, on 27 June 2014.**

**The Protocol and Statute annexed thereto shall enter into force thirty days after the deposit of the fifteenth instrument of ratification and the payment of at least 25 per cent of the minimum paid-up capital.**

Preamble

*The Member States of the African Union,*

*Considering* the vision of the African Heads of State in 1963 for the establishment of Africa's sovereign financial institutions,

*Considering* that the Constitutive Act of the African Union established the African Monetary Fund in Article 19, subparagraph (b),

*Considering* the Treaty Establishing the African Economic Community adopted in Abuja, Nigeria, in June 1991,

*Recalling* Assembly Decision AU/Dec.64 (IV) on the location of the Headquarters of African Union institutions in the regions of the continent adopted in Abuja, Nigeria, in January 2005,

*Further recalling* Executive Council Decision EX.CL/Dec.329 (X) on the establishment of the African Union financial institutions adopted in Addis Ababa, Ethiopia, in January 2007,

*Considering* the General Convention on the Privileges and Immunities of the Organization of African Unity,

*Desiring* to address collectively the main economic development challenges facing the African continent, and

*Convinced* that the attainment of the objectives of the African Union and the creation of a common African currency requires the establishment of the African Monetary Fund,

*Have agreed* as follows:

Article 1  
Definitions

In this Protocol, unless otherwise specifically stated:

"Act" means the Constitutive Act of the African Union;

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

"Board of Governors" means the Board of Governors of the African Monetary Fund;

"Commission" means the African Union Commission;

"Court" means the African Court of Justice and Human and People's Rights;

"Executive Council" means the Council of Ministers of the Union;

"Fund" means the African Monetary Fund;

"Member State" means a Member State of the Union;

"Protocol" means the Protocol establishing the African Monetary Fund and its annexes;

"REC" means Regional Economic Community;

"Region" means the geographical regions of Africa as defined by the Council of Ministers, in its Resolution CM/Res.464 (XXVI), adopted at its Twenty-sixth Ordinary Session in Addis Ababa, Ethiopia in March 1976;

"State Party" means a Member State that has ratified or acceded to the Protocol;

"Statute" means the Statute of the African Monetary Fund annexed to this Protocol;

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

#### Article 2 Establishment of the Fund

1. The Fund is hereby established as an organ of the Union in conformity with Article 5, paragraph 1 (i), and Article 19, subparagraph (b), of the Act.
2. The Fund shall function in accordance with the relevant provisions of the Constitutive Act, the Protocol and the Statute.
3. The Fund shall have legal personality with capacity and power to enter into contract, acquire, own or dispose of movable or immovable property and to sue and be sued.
4. In the territory of each State Party, the Fund shall, pursuant to paragraph 3 of this article, have such legal capacity as is necessary for the proper exercise of its functions and the fulfilment of its purposes.

#### Article 3 Purpose and objectives of the Fund

1. The purpose of the Fund shall be to foster macroeconomic stability, sustainable shared economic growth and balanced development in the continent, so as to facilitate the effective and predictable integration of African economies.
2. The objectives, functions and activities of the Fund shall be defined in the Statute.

#### Article 4 Headquarters of the Fund

1. The Headquarters of the Fund shall be in Yaoundé, the Republic of Cameroon.
2. Other offices of the Fund may be established outside the Headquarters upon the approval of the Board of Governors.

#### Article 5 Working languages of the Fund

The working languages of the Fund shall be those of the Union.



Article 6  
Dissolution

1. Upon the recommendation of the Board of Governors, the Assembly may decide to dissolve the Fund and determine the terms and conditions of sharing the remaining assets and liabilities.
2. After such dissolution, the Fund shall forthwith cease all activities, with the exception of those incidental to the orderly realization, conservation and safeguard of its assets and settlement of its obligations.

Article 7  
Interpretation

1. The Court shall be seized with matters of interpretations arising from the application or implementation of this Protocol.
2. Pending its establishment, such matters shall be submitted to the Assembly of the Union, which shall decide, accordingly.

Article 8  
Signature, Ratification and Accession

1. This Protocol 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 shall be deposited with the Chairperson of the Commission.

Article 9  
Entry into force

1. This Protocol and the Statute annexed to it shall enter into force thirty (30) days after the deposit of the fifteenth instrument of ratification and the payment of at least 25 per cent of the minimum paid-up capital.\*
2. For each Member State which shall accede to it subsequently, this Protocol and the Statute annexed to it shall enter into force on the date on which the instruments of accession are deposited with the Chairperson of the Commission.

Article 10  
Amendment and Revision

1. This Protocol or the Statute annexed to it may be amended or revised by a decision of the Assembly.
2. Any State Party or the Fund may propose, in writing to the Chairperson of the Commission, any amendment or revision to the Statute.
3. The Chairperson of the Commission shall notify the proposal to all States Parties at least thirty (30) days before the meeting of the Board of Governors which will consider the proposal before submitting to the Assembly.

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\* Editor's note: The term "Statutes" has been replaced by the singular "Statute" in Article 9.

## 58. PROTOCOL ON THE ESTABLISHMENT OF THE AFRICAN MONETARY FUND (2014)

4. Amendments or revisions shall be adopted by the Assembly and submitted, for ratification, to all Member States, in compliance with their respective constitutional procedures. They shall enter into force thirty (30) days after the deposit of the fifteenth instrument of ratification.

### Article 11 Depositary

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 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.

## STATUTE OF THE AFRICAN MONETARY FUND

### Chapter I General Provisions

#### Article 1 Definitions

In this Statute:

"Act" means the Constitutive Act of the African Union dated 11th July 2000;

"African Unit Account" means the unit of account adopted by the Board of Governors and that the Fund uses in its dealings with the States Parties;

"Annex" means an annex to this Statute;

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

"Board of Directors" means the Board of Directors of the Fund;

"Board of Governors" means the Board of Governors of the Fund;

"Commission" means the Commission of the African Union;

"Continent" means the continent of Africa;

"Court" means the African Court of Justice and Human and Peoples' Rights;

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

"First Round Share Purchasing" means the opportunity for States Parties to purchase allocated shares in accordance with Article 5 and Annex 2;

"Fund" means the African Monetary Fund;

"General Convention" means the General Convention on Privileges and Immunities of the Organization of African Unity;

"Member" means a State Party that has subscribed to the Fund;

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

"Managing Director" means the Chief Executive of the African Monetary Fund;

"Ordinary operations" means the operations relating to the core mandate of the Fund;

"Obligation" means States Parties' commitments to the Fund;

"Partners" means any external entities or organizations that will cooperate with the Fund on issues of mutual interest;

"Protocol" means the Protocol on the Establishment of the African Monetary Fund, the Statute and annexes to it;

"Second Round Share Purchasing" means the opportunity for States Parties to purchase unsubscribed shares during the First Round Share Purchasing;

"Senior Officials" the category of staff other than executives as defined by the African Monetary Fund;

"Shareholders" means States Parties who subscribed to the capital of the Fund;

"Special Operations" means any other operation that is different from ordinary operations;

"Special or Voluntary Contribution" means contribution from States Parties over and above subscriptions that do not accrue any voting rights;

"State Party" means a Member State which has ratified or acceded to the Protocol of the Fund;

"Statute" means the present Statute of the Fund;

"Subscription" means the amount of shares held by a member;

"Supervisory Bodies" means the Board of Governors and Board of Directors which oversees the activities of the Fund;

"Union" means the African Union established by the Constitutive Act;

"Voting Rights" means the rights accruing to States Parties from paid-up share capital subscription as per Annex 2.

## Article 2 Objectives of the Fund

The objectives of the Fund shall be to:

- (a) Correct disequilibria in the balance of payments of States Parties;
- (b) Ensure stability of exchange rates among currencies and their mutual convertibility;
- (c) Promote African monetary cooperation so as to achieve African economic integration and speed up the process of economic development in States Parties;

## 58. PROTOCOL ON THE ESTABLISHMENT OF THE AFRICAN MONETARY FUND (2014)

- (d) Reinforce capacity-building in the design and the implementation of debt management policies in States Parties as a means to achieving sustainable debt levels;
- (e) Promote the development of African financial markets;
- (f) Work towards the facilitation of settlement of commercial debts and the establishment of a clearing system for trade transactions among States Parties in order to promote intra-African trade.

### Article 3

#### Functions and Activities of the Fund

1. For the realization of its objectives, the Fund shall function in accordance with the provisions of this Statute and its annexes.
2. The functions and activities of the Fund shall be to:
  - (a) Promote and facilitate trade, the settlement of commercial payment and encourage capital flow between States Parties;
  - (b) Provide short-term and medium-term credit facilities to sustain balance of payment in conformity with the credit policy as defined by the Board of Directors and provide technical assistance and policy advice to States Parties with a view to assisting in financing their overall balance of payments deficits;
  - (c) Assist States Parties under programme with the Fund in accessing other financial sources for the purpose of financing the overall deficits in their balance of payments;
  - (d) Cooperate with African and international financial institutions to achieve its objectives;
  - (e) Conduct periodic consultations in States Parties on their economic policies in support of the realization of the goals of the Fund and the States Parties;
  - (f) Conduct research and capacity-building training required to achieve the objectives of the Fund;
  - (g) Ensure the collection, analysis and dissemination of qualitative and quantitative statistical data and methods and dissemination of results for a better understanding of the economies of States Parties;
  - (h) Carry out any other functions or activities as may be required by the Board of Governors.

### Chapter II Membership

#### Article 4 Membership

Membership of the Fund shall be open to all Member States of the African Union that have become States Parties to the Protocol.

### Chapter III Capital and Resources of the Fund

#### Article 5 Capital, Subscriptions of Shares, Voting Rights and Payment of Subscriptions

Section 1

Capital

1. The authorized share capital of the Fund shall be twenty-two billion, six hundred and forty million United States dollars (US\$ 22.640 billion). The authorized share capital shall be denominated in shares of one hundred United States dollars (US\$ 100) per share.
2. The callable share capital of the Fund shall be at least 50 per cent of the authorized share capital - eleven billion, three hundred and twenty million United States dollars (US\$ 11.320 billion).
3. The paid-up share capital of the Fund shall be at least 50 per cent of the callable share capital - five billion, six hundred and sixty million United States dollars (US\$ 5.660 billion) denominated in shares of one hundred United States dollars (US\$ 100) per share.
4. Every five years, the Board of Governors shall review, by a qualified majority as defined in the Rules and Procedures of the Fund, the allocation of the various capital shares of the Fund. The Fund's capital structure may be reviewed, if necessary and in the manner and conditions agreed by the Board of Governors.
5. On proposal of the Board of Directors, the Board of Governors determines the deadline upon which States Parties are required to make payment of their paid-up share capital.

Section 2

Subscription of Shares

1. The subscription by States Parties to the Fund shares shall be determined by the provisions under Annex 2 attached to this Statute.
2. A State Party may subscribe to the shares of the authorized capital of the Fund based on its capital subscription allocation specified in Annex 2 attached to this Statute.
3. On the date fixed by the Board of Governors for the end of the first round of subscription of shares, unsubscribed shares may be subscribed by any State Party in a second round of offer for subscription, in accordance with a proportion of allocation approved by the Board of Governors.
4. In case of an increase in the authorized capital of the Fund, the increase shall be shared among the States Parties according to the existing capital subscription formula in Annex 2, unless otherwise stated by the Board of Governors.
5. The shares may not be pledged or encumbered in any manner whatsoever.
6. Each State Party shall subscribe for shares in conformity with the provisions of Article 5, Section 2, paragraphs 1, 2 and 3, from the date of deposit of its instrument of ratification or accession.

Section 3

Voting Rights

1. Voting rights shall be proportionate to the shares subscribed and paid up by each State Party as specified in Annex 2 attached to this Statute.
2. The application of the voting rights to the decisions of the Board of Governors and Board of Directors shall be according to the provisions of Article 10 and Annex 2 attached to this Statute.

Section 4

Payment of Subscriptions

1. All payment obligations of a State Party concerning the subscription of shares in the initial capital of the Fund shall be denominated in United States dollars (US\$) or any other convertible currency.
2. The Board of Governors may, upon the recommendation of the Board of Directors, adjust the currency denomination or proportion of subscription in any currency, by States Parties.
3. Payment of paid-up capital initially subscribed by a State Party, as provided for in Section 2 of this article, shall be paid in whole or in four (4) separate annual instalments of, not less than, 25 per cent in each instalment. However, the Board of Governors may, in very limited circumstances, in the first round of share offering, permit an extended purchasing period of four (4) years with the total payment period not exceeding eight (8) years as per Annex 2.
4. The first payment shall be made by each State Party within the first sixty (60) days following the date of entry into force of the Protocol and the Statute, or date of deposit of instrument of ratification or accession in accordance with Article 9 of the Protocol, where such date precedes the date of entry into force. The next instalments shall be due annually as outlined in Section 4, paragraph 3.
5. On each payment made pursuant to paragraph 4 of this section or on each payment made by a newly admitted State Party, 50 per cent may be in the form of bonds issued by the Government of the State Party and issued in United States dollars or any other convertible currency. The bonds shall be non-negotiable, non-interest bearing and payable to the Fund at their par value on redemption.

Article 6  
Resources of the Fund

The Fund's resources shall include two categories of assets: ordinary resources and other resources.

Article 7  
Ordinary Resources

For purposes of this Statute, the term "ordinary resources" of the Fund shall mean:

- (a) The subscribed and the paid-up shares;
- (b) The resources derived from borrowing by the Fund;
- (c) Reserves;
- (d) Net income from loans and portfolio investments made with the resources referred to in paragraphs (a) and (b).

Article 8  
Other Resources

Other resources of the Fund shall include notably:

- (a) Special or voluntary contributions from States Parties;
- (b) Contributions in the form of grants, donations and similar assistance from other countries or institutions which are not States Parties, in conformity with the Constitutive Act, the Protocol and the Statute;

- (c) Grants;
- (d) Net income derived from operations of items (a) and (b).

Chapter IV  
Operations

Article 9  
Fund Operations

Section 1  
General Provisions

1. The Fund shall provide loans, technical assistance and policy advice to States Parties in situations of balance of payments and other macroeconomic problems in accordance with the Rules of Procedures adopted by the Board of Directors.
2. The Fund may grant financial assistance to States Parties upon approval of the Board of Governors.
3. In conformity with the policies and rules approved by the Board of Governors, the Fund shall be authorized to borrow and invest funds not immediately required for its operations in international financial markets and institutions.
4. The Fund shall, at all times, maintain a sound credit rating, be financially independent and operate largely on a self-financing basis.
5. The Fund shall ensure strict compliance with principles of good governance, including principles of integrity and transparency in its financial arrangements and those of its partners. These shall apply to the origins and destinations of capital for all financial transactions of the Fund. The supervisory bodies of the Fund shall ensure effective implementation of this provision.

Section 2  
Types of Operations

The Fund's operations shall consist of ordinary operations and special operations.

- (a) Ordinary operations shall be financed through ordinary resources of the Fund.
- (b) Special operations shall be funded from other resources of the Fund.

Section 3  
Limits on Ordinary Operations

1. Loans issued to a State Party over a period of twelve (12) months, shall not exceed twice the amount of its paid-up subscription. Outstanding Short, Medium and Long-Term loans to a State Party shall at no time exceed three times the amount of its paid-up subscription. The Board of Governors may decide to raise that limit to four times the amount of the paid-up subscription.
2. The maximum amount of indebtedness of the Fund shall not exceed 200 per cent of the total of the authorized share capital of the Fund. Borrowing shall be effected in conformity with the terms and conditions prescribed by the Board of Directors.

Section 4

Currencies

1. The transaction currencies of the Fund shall be the United States dollars, euro, and any other convertible currency that may be recommended by the Board of Directors and approved by the Board of Governors.
2. Pending the adoption of an African unit of account, the Fund's unit of account shall be the Special Drawing Rights of the IMF (SDR).

Section 5  
Areas of Cooperation

1. In achieving its objectives and exercising its activities, the Fund shall earmark resources to building regional and international partnerships and synergies aimed at improving the efficiency of its operations.
2. Within the African continent, the Fund shall maintain working relationships with shareholders and other organs of the Union in achieving its objectives. It shall coordinate its activities with regional and continental institutions, while safeguarding its autonomy and decision-making procedures.

Chapter V  
Governance and Management

Article 10  
Governance Structure of the Fund

The governance structure of the Fund shall be composed of the Board of Governors, the Board of Directors and the Managing Director.

Section 1  
The Board of Governors

1. The Board of Governors shall be made up of Governors or alternate Governors representing each State Party.
2. The members of the Board of Governors shall be Ministers in charge of Finance or Governors of Central Banks of States Parties.
3. The Board of Governors shall oversee the management of the Fund and shall hold the highest executive powers.
4. The Board of Governors shall meet at least once a year in ordinary session in accordance with its rules of procedures and shall also be convened upon request, by one half of its members, or by members holding one half of the total voting power, or upon the request of the Board of Directors.
5. The Board shall elect annually from among its members, one of the Governors as its Chairperson, on a regional rotational basis.
6. The Board of Governors shall, among others:
  - (a) Approve and confirm the nomination of the members of the Board of Directors;
  - (b) Appoint the Managing Director of the Fund from among the States Parties, other than the Governors or the members of the Board of Directors;



## 58. PROTOCOL ON THE ESTABLISHMENT OF THE AFRICAN MONETARY FUND (2014)

- (c) Determine the remuneration to be paid to the members of the Board of Directors and their alternates, and also the salary and terms of the contract of service of the Managing Director;
- (d) Adopt its own rules of procedure and the rules of procedure of the Board of Directors;
- (e) Recommend amendments to the Protocol and Statute of the Fund;
- (f) Admit new members and determine the conditions of their admission in conformity with Article 4 of this Statute;
- (g) Increase or reduce the authorized share capital of the Fund;
- (h) Appoint external auditors and decide on their mandate and remuneration;
- (i) Consider the solvency position of the Fund and propose to the Assembly, if necessary, the liquidation of the Fund.

7. Decisions of the Board of Governors shall be taken based on the provisions in the Rules and Regulations of the Fund. In case of a tie, the Chairperson of the Board shall have the casting vote. The Rules of Procedure of the Board of Governors shall lay down the conditions for applying this provision.

8. The members of the Board of Governors shall not be remunerated. However, the members of the Board of Governors shall be reimbursed for any costs incurred as a result of attending Board meetings.

### Section 2 The Board of Directors

1. The Board of Directors shall be composed of:
  - (i) The Managing Director;
  - (ii) Permanent Members;
  - (iii) Five (5) Substantive Directors (one per region); and
  - (iv) Five (5) Alternate Directors (one per region).
2. The members of the Board of Directors shall be non-resident except the Managing Director. However, where Fund's operations so require, the Board of Governors may decide to review this Statute as appropriate.
3. Any State Party with at least 4 per cent voting rights shall be allowed to hold a Permanent seat.
4. The Alternate Directors will be allowed to participate at Board Meetings but will not have voting rights except in the absence of the Substantive Director.
5. All members of the Board of Directors must have proven skills and experience s in economic, financial and monetary matters. They shall not be members of the Board of Governors.
6. The Board of Directors shall meet at least once every quarter and when required upon request by Substantive Directors representing a majority of voting rights.

## 58. PROTOCOL ON THE ESTABLISHMENT OF THE AFRICAN MONETARY FUND (2014)

7. The substantive Directors in a region shall be elected by the Governors of that region on a rotational basis for a fixed term period of three (3) years, renewable once. However the governors of each region may, at their discretion, consider extending the term of office of any substantive Director.
8. The Managing Director of the Fund shall also be the Chairperson of the Board of Directors of the Fund.
9. The Board of Directors shall, among others:
  - (a) Prepare the meetings of the Board of Governors;
  - (b) Review and approve the administrative structure of the Fund;
  - (c) Select and appoint the Deputy Managing Director of the Fund in conformity with the staff rules and regulations of the Fund;
  - (d) Develop staff rules and regulations for the Fund;
  - (e) Approve the appointments, suspensions and dismissals of the Senior Officials and other staff of the Fund, in accordance with the staff rules and regulations of the Fund;
  - (f) Determine the remuneration to be paid to the Deputy Managing Director of the Fund and the terms of his contract of service;
  - (g) Adopt the Code of Conduct of the Fund;
  - (h) Take decisions concerning lending conditions and borrowing terms of the Fund;
  - (i) Consider and approve the annual report and statement of accounts of the Fund;
  - (j) Approve the conclusion of general cooperation agreements between the Fund and other African or international institutions;
  - (k) Consider and approve the annual operating budget of the Fund.
10. The Board of Directors shall establish an internal audit committee, and any other committee as appropriate, for the purpose of internal control and compliance in the activities of the Fund.
11. The Board of Directors shall exercise the powers vested in it by the Board of Governors and may delegate all or part of such powers to the Managing Director of the Fund, where necessary, with the exception of those referred to in paragraph 4 of this section.
12. Decisions of the Board of Directors shall be made in conformity with the provisions in the Rules and Regulations of the Fund. Voting rights for the Substantive Directors shall be determined by the total paid-up capital subscription of that region, excluding that of States Parties with permanent seats. The voting rights for States Parties with permanent seats shall be determined by their paid-up capital subscription. In the case of a tie, the Managing Director shall have the casting vote. The Rules of Procedure of the Board of Directors shall determine the procedures for implementing this provision.

### Section 3 The Managing Director of the Fund

1. The Fund shall be managed and administered by a Managing Director who shall be assisted in his/her duties by Deputy Managing Directors. He/she shall be the Chief Executive and legal representative of the Fund.

2. The Managing Director shall attend the meetings of the Board of Governors and participate in the deliberations but shall not have the right to vote.
3. Under the supervision of the Board of Governors and in collaboration with the Board of Directors, the Managing Director shall be responsible for, inter alia:
  - (a) Recruitment, appointment and discipline of the executives and other staff of the Fund, in accordance with the rules and regulations of the Fund;
  - (b) Ensure implementation of the Statute of the Fund, as well as, other conventions and decisions of the Board of Governors and Directors of the Fund;
  - (c) Prepare the annual budget of the Fund;
  - (d) Set up special committees to assist her/him in carrying out the day-to-day administration of the Fund;
  - (e) Sign Agreements and Conventions on behalf of the Fund;
  - (f) Any other duties that may be assigned by the Board of Governors.
4. The Managing Director shall be appointed for a fixed term of four (4) years, renewable once upon approval by the Board of Governors. He/she shall be a national of a State Party to the Protocol and this Statute and shall have proven integrity, relevant competences and experience.
5. The Managing Director may delegate, all or part of his/her duties to the Deputy Managing Director, in accordance with the rules and regulations.

#### Section 4

##### The Provisional Administrative Structure of the Fund

Pending the commencement of the Fund's operations a provisional administrative structure approved by the Executive Council shall commence with immediate effect.

#### Article 11

##### Code of Conduct

1. In the performance of their duties, the Managing Director of the Fund and any other Fund staff shall not accept nor receive instructions from any government or any authority other than the Fund.
2. Each State Party shall undertake to respect the exclusive nature of the responsibilities of the Managing Director and any other staff member of the Fund and shall not influence or seek to influence them in the performance of their duties.
3. The Managing Director and the other staff of the Fund shall not, in the discharge of their duties, engage in any activity or conduct incompatible with the proper discharge of their duties. They are required to avoid conflict between professional and personal interests or obligations sufficient to influence the impartial exercise of their official duties or responsibilities.
4. Where the Managing Director of the Fund fails to comply with his/her obligations, an ad hoc Committee approved by the Board of Governors shall provide an appropriate report and recommendations for its consideration and decision.

5. Where a Deputy Managing Director of the Fund fails to comply with his/her obligations, the Board of Directors shall take disciplinary action against him/her and provide appropriate justification to the Board of Governors.

6. Where a staff member fails to comply with his/her obligations, the internal procedures referred to in the Statute and Staff Rules and Regulations shall be applied. The staff member concerned shall have the right to appeal in accordance with the Staff Rules and Regulations.

Chapter VI  
Withdrawal and Suspension of Members, Temporary Suspension  
and Termination of Fund Operations

Article 12  
Withdrawal

1. Any State Party may withdraw from the Fund by giving the Chairperson of the Board of Directors six months written notice for consideration by the Board of Governors.

2. The withdrawal of a State Party shall become effective, and its participation cease, on the date approved by the Fund. However, before the withdrawal becomes effective, the State Party concerned may at any time notify the Fund in writing that its notice of intention to withdraw is annulled.

3. A withdrawing State Party shall settle with the Fund, all its outstanding obligations and financial commitments. If the withdrawal becomes effective, the State Party shall not be liable for the obligations arising from transactions by the Fund subsequent to the receipt of the notification of withdrawal in accordance with paragraphs 1 and 2 above.

Article 13  
Suspension of a State Party

1. Where a State Party fails to fulfil any of its obligations towards the Fund the Board of Governors may suspend its voting and borrowing rights.

2. The Board of Governors shall determine the conditions for suspension of a State Party.

Article 14  
Settlement of Accounts

1. As of the date of suspension, the State Party shall remain liable for its obligations and other commitments to the Fund, as long as loans contracted before that date remain outstanding.

2. When a State Party ceases to be a member, its shares and voting rights shall be sold and redistributed to the other States Parties in proportion to the shares subscribed by each of those States Parties. To this end, the redemption price of those shares shall be the value shown by the books of the Fund at the date on which the shareholder ceased to be a member, the original purchase price of each share representing its maximum value. That shareholder shall also be charged with penalty to be determined by the Board of Governors.

3. Where the Fund terminates its operations pursuant to Article 16 of this Statute, within three months from the date on which a State Party has ceased to be a member, all the rights of the State Party concerned shall be determined in conformity with Articles 17 and 18 of this Statute. The State Party concerned shall be considered as still being a member of the Fund under such articles, but its voting rights shall be withdrawn.

Article 15

### Temporary Suspension of Facilities

Under exceptional circumstances, the Board of Directors may temporarily suspend the extension or release of new or existing credit facility to any State Party until outstanding issues are resolved and approved by the Board of Governors.

### Article 16

#### Termination of Operations

1. The Fund may terminate its operations following a resolution of the Board of Governors duly adopted by the Assembly of the Union.
2. Upon such termination, the Fund shall cease all activities with the exception of those relating to the orderly realization, conservation and safeguarding of its assets and the settlement of its obligations.
3. There shall be an independent liquidator appointed by the Court to administer the termination of the Fund. Pending its establishment, such appointment shall be decided by the Board of Governors.

### Article 17

#### Liability of Members and Settlement of Claims

1. In the event of termination of operations of the Fund, the liabilities of all States Parties, including outstanding subscriptions and loans, shall be recovered.
2. All creditors holding direct claims shall first be paid out of the assets of the Fund and then out of payments to the Fund of unpaid or callable subscriptions. Before making any payments to creditors holding direct claims, the Board of Directors shall make such arrangements as are necessary, in its judgment, to ensure a *pro rata* distribution among holders of direct and contingent claims.

### Article 18

#### Distribution of Assets

1. In the event of termination of the operations of the Fund, the distribution of assets among States Parties for their subscriptions to the capital of the Fund shall not be made until all liabilities to creditors have been settled or have been subject to appropriate measures. In addition, such distribution must be approved by a majority vote of the Board of Governors in conformity with its Rules of Procedure.
2. After a decision has been taken to distribute the assets of the Fund, as provided for in paragraph 1 above, the Board of Directors may decide subsequently to proceed with the distribution of such assets. Such distribution shall be subject to the prior settlement of all claims not yet paid by the Fund to States Parties.

### Chapter VII

#### Status, Immunities, Exemptions and Privileges

### Article 19

#### Status

To enable it to fulfil its purpose and the functions with which it is entrusted, the Fund shall possess full international personality. To this end, it may enter into agreements with members, non-members and other international organizations. Thus, the status, immunities, exemptions and privileges set forth in this chapter shall be accorded to the Fund in the territory of each State Party.

### Article 20

Status in States Parties

On the territory of each State Party, the Fund shall enjoy international personality and, in particular, have full capacity to:

- (a) Contract;
- (b) Acquire and dispose of movable and immovable property;
- (c) Institute legal proceedings.

Article 21

Privileges and Immunities of the Fund

The headquarters and other offices of the Fund shall enjoy such privileges and immunities as stipulated in the General Convention on Privileges and Immunities of the Organization of African Unity, the Vienna Convention on Diplomatic Relations and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations.

Section 1

Property, Funds, Assets and Transactions of the Fund

1. The Fund, its property and assets, as well as its offices and buildings, shall enjoy immunity from legal process except to the extent that the Fund has expressly waived in special cases, in accordance with the General Convention. It shall however be understood that the waiver cannot extend to any measure of execution.
2. The property and assets of the Fund shall be immune from search, requisition, confiscation, expropriation or any other form of executive, judicial or legislative action.
3. The archives of the Fund and, in general, all documents belonging to or held by it, shall be inviolable, wherever located.
4. Without being restricted by any financial control, regulation or moratorium:
  - (a) The Fund may hold assets, gold or currency of any kind and have bank accounts in any currency;
  - (b) The Fund may freely transfer its assets, gold or currency from one country to another or within any country and convert any currency held by it into any other currency.

Section 2

Tax Exemptions

1. The Fund, its assets, income and other assets shall be exempted from:
  - (i) All direct taxes, except taxes or charges that reflect payment for public utilities;
  - (ii) All customs duties, prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Fund for its official use;
  - (iii) Restrictions on rights to import and export its publications.
2. Even if the Fund does not, in principle, claim exemption from duties and sales taxes included in the price of movable and immovable property, yet when it makes, for its official use, substantial purchases of property

whose price includes taxes of this nature, States Parties shall take appropriate administrative measures for the remission or refund of the amount of such duties or taxes.

Section 3  
Communications

1. For its official communications and the transfer of all its documents, the Fund shall enjoy in the territory of States Parties, treatment not less favourable than that accorded by States Parties to international organizations and other governments, including diplomatic missions for cables, remote files, telephone, telegraph, telex, fax and other electronic communications, as well as the tariffs charged the media for information through the press or broadcast. The Fund shall also enjoy the same benefits as those granted to international organizations and governments, including diplomatic missions in terms of priority, pricing and taxation of mail. The communications and correspondence of the Fund may not be censored.

2. The Fund shall have the right to use codes and to dispatch and receive correspondence and other documents either by mail or in sealed bags which shall enjoy the same privileges and immunities as diplomatic couriers and bags.

Article 22  
Immunities and Privileges of Fund Staff

1. The Officials of the Fund who are not citizens of the host country or nationals to whom diplomatic status have been accorded on the discretion of the host country as per Article 8, paragraph 2, and Article 38, paragraph 2, of the Vienna Convention on Diplomatic Relations, 18 April 1961:

- (a) Shall enjoy immunity from criminal prosecution in respect of words spoken or written and all acts accomplished by them in the performance of their duties;
- (b) Shall be exempt from taxation on salaries and emoluments paid to them by the Fund;
- (c) Shall be free of any obligation under the national service;
- (d) Shall, together with their spouses and dependent relatives, be immune from immigration restrictions as well as aliens registration formalities and finger printing;
- (e) Shall enjoy, in respect of exchange facilities, the same privileges as officials of comparable rank of diplomatic missions accredited to the State Party concerned;
- (f) Shall enjoy, together with their spouses and dependants, the same repatriation facilities as diplomatic agents in times of international crisis;
- (g) Shall have the right to import duty-free their furniture and personal effects at the time of first taking up employment in the State Party concerned.

2. Personnel and other employees of the Fund who are nationals or permanent residents of the host country shall enjoy:

- (a) Immunities and exemptions with respect to words spoken and actions carried out in their official capacity;
- (b) Exemption from direct taxes on salaries and emoluments received for their employment.

3. The privileges and immunities shall be granted to officials of the Fund in the interest of the Fund. Such privileges and immunities shall not be granted in the personal interest of those concerned. The Managing Director

of the Fund shall have the right and duty to waive the immunity of any official in any case where he considers that such immunity would prevent justice from taking its course and can be waived without prejudice to the interests of the Fund. In the case of the Managing Director and senior officials of the Fund the waiver of immunity shall be incumbent on the Board of Directors upon approval of Board of Governors.

4. The Fund shall cooperate at all times with the competent authorities of the State Party concerned to facilitate the proper administration of justice, secure the observance of police regulations and prevent any abuse of the privileges, immunities and facilities specified in this article.

#### Article 23

##### Privileges and Immunities of Representatives of States Parties, Members of the Board of Governors and of the Board of Directors

Representatives of States Parties, members of the Board of Governors and the Board of Directors attending meetings, assemblies and conferences organized by the Fund shall enjoy such privileges and immunities as specified in Article V of the General Convention, in the performance of their functions and during their journeys to and from the venues of such meetings.

#### Article 24

##### Privileges and Immunities of Experts on Mission for the Fund

Experts, other than the officials mentioned in Article 22, carrying out a mission for the Fund shall, for the duration of the mission, including travel imposed by the mission, enjoy the privileges and immunities as are necessary to exercise their duties independently in accordance with the provisions of Article VII of the General Convention.

#### Chapter VIII

##### Miscellaneous Provisions

#### Article 25

##### Mode of Communication with Member Countries and Depositories

1. Each State Party shall indicate an appropriate official entity with which the Fund can communicate on any matter concerning the Fund.
2. The Fund shall have a comprehensive communication strategy for its activities.
3. The Fund may keep its holdings with depositories determined by the Board of Directors.

#### Article 26

##### Publication of the Protocol and the Statute, Dissemination of Information and Reports

1. The Fund shall make the text of the Protocol and the Statute and all important documents available in all working languages of the Union.
2. States Parties shall provide the Fund with any information it may request from them to facilitate the conduct of its operations.
3. The Fund shall publish and communicate to its members an annual report containing an expert's appraisal of the situation of its accounts, and forward, at maximum intervals of three months, a summary statement of its financial position and a profit and loss statement showing the results of its operations.
4. The Fund may publish any report as it deems desirable for the accomplishment of its mission and forward it to its members.



## 58. PROTOCOL ON THE ESTABLISHMENT OF THE AFRICAN MONETARY FUND (2014)

5. The Fund shall prepare and submit an annual report on its activities to the Assembly through the Executive Council.

### Article 27

#### Commencement of Operations of the Fund

1. Upon entry into force of the Protocol, each State Party shall appoint a representative, and the Chairperson of the Commission shall convene the inaugural meeting of the Board of Governors.
2. The Fund shall commence operations upon payment of at least 25 per cent of the paid-up capital.
3. The Fund shall notify States Parties of the date of commencement of its operations.
4. The Provisional Administrative Structure referred to in Article 10, Section 4, shall cease to exist on commencement of the Fund's operations.

### Article 28

#### Settlement of Disputes

Any dispute arising from the interpretation or application of the Statute shall be resolved amicably within a time limit of one year. Failing which, the dispute may be referred to the Court. Pending its establishment, such matters shall be submitted to the Assembly of the Union, which shall decide by a two-thirds majority.

### Chapter IX

#### Transitional Provisions and Annexes

### Article 29

#### Temporary Domicile of the Resources of the Fund

The resources of the Fund shall be domiciled at the African Development Bank or any other credible continental financial institution approved by the Board of Governors pending the commencement of operations of the African Central Bank.

### Article 30

#### Annexes to the Statute of the Fund

The annexes to this Statute shall include:

1. List of African Union Member States;
2. Capital subscriptions and voting rights.

**ANNEX I**  
**LIST OF AFRICAN UNION MEMBER STATES**

1. Algeria	21. Gambia	41. Senegal
2. Angola	22. Ghana	42. Seychelles
3. Benin	23. Guinea	43. Sierra Leone
4. Botswana	24. Guinea Bissau	44. Somalia
5. Burkina Faso	25. Kenya	45. South Africa
6. Burundi	26. Lesotho	46. South Sudan
7. Cameroon	27. Liberia	47. Sudan
8. Cape Verde	28. Libya	48. Swaziland
9. Central African Republic	29. Madagascar	49. Tanzania
10. Chad	30. Malawi	50. Togo
11. Comoros	31. Mali	51. Tunisia
12. Congo	32. Mauritania	52. Uganda.
13. Côte d'Ivoire	33. Mauritius	53. Zambia
14. D. R. Congo	34. Mozambique	54. Zimbabwe
15. Djibouti	35. Namibia	
16. Egypt	36. Niger	
17. Equatorial Guinea	37. Nigeria	
18. Eritrea	38. Rwanda	
19. Ethiopia	39. Saharawi A. D. R.	
20. Gabon	40. São Tomé and Príncipe	

**ANNEX II**  
**CAPITAL SUBSCRIPTION CALCULATION FOR THE AFRICAN MONETARY FUND**

A  
Definitions of Capital

1.1  
Authorized Share Capital

The authorized capital is the maximum amount of share capital that the Fund shall be authorized by its statutory documents to issue to shareholders (States Parties). It is the highest limit of the amount that could be issued as shares to States Parties throughout the existence of the Fund, except when amended by the approval of the Board of Governors. The Fund would not operate its business with the amount as high as the authorized capital because it is above its current requirement but it represents a future limit to the amount that can be subscribed by States Parties. Therefore the Fund shall not issue the whole of its authorized capital during the life of its operation.

1.2  
Subscribed Share Capital

The subscribed capital of the Fund shall be the amount of capital agreed by the State Party to contribute in response to the call of the Fund. This shall not be the amount that is required to be paid by the State Party to the Fund but represents the commitment of the State Party to avail the Fund of any proportion of such amount as at when requested.

1.3

Callable Share Capital

The callable capital is that portion of subscribed capital subject to call by the Fund only as and when required to meet its obligation. In the event of a call payment shall be made by the State Party to the Fund to enable it to discharge the obligation for which the call is made.

1.4

Paid-up Share Capital

The paid-up capital of the Fund shall be the amount that is required to be paid by States Parties to be shareholders of the Fund and to enable the Fund to carry out its activities.

B

Definition of Variables

1.5

Total External Debt

Total external debt is debt owed to non-residents repayable in foreign currency, goods, or services. Total external debt is the sum of publicly guaranteed, and private nonguaranteed long-term debt, use of IMF credit, and short-term debt. Short-term debt includes all debt having an original maturity of one year or less and interest in arrears on long-term debt. Data are in current U.S. dollars.

1.6

Total External Reserves (includes gold, current US\$)

Total reserves comprise holdings of monetary gold, special drawing rights, reserves of IMF members held by the IMF, and holdings of foreign exchange under the control of monetary authorities. The gold component of these reserves is valued at year-end (December 31) London prices. Data are in current U.S. dollars.

1.7

GDP

GDP at purchaser's prices is the sum of gross value added by all resident producers in the economy plus any product taxes and minus any subsidies not included in the value of the products. It is calculated without making deductions for depreciation of fabricated assets or for depletion and degradation of natural resources. Data are in current U.S. dollars. Dollar figures for GDP are converted from domestic currencies using single year official exchange rates. For a few countries where the official exchange rate does not reflect the rate effectively applied to actual foreign exchange transactions, an alternative conversion factor is used.

1.8

Balance of Payment

Current account balance is the sum of net exports of goods services, net income, and net current transfers. Data are in current U.S. dollars.

1.9

Population

Total population is based on the de facto definition of population, which counts all residents regardless of legal status or citizenship--except for refugees not permanently settled in the country of asylum, who are generally

considered part of the population of their country of origin. The values shown are midyear estimates. All series are averaged (annually) over the considered period.

## C

## Capital Subscription Calculation

The shares of Capital subscriptions for the AMF are determined using the following procedures:

1. For each State Party, the share of capital subscription ( $Scs_i$ ) determined taking into account the GDP and Population of the State Party using the following:

$$Scs_i = 100 * \left[ 0.5 * GDP_i / \sum_{j=1}^n GDP_j + 0.5 * Pop_i / \sum_{j=1}^n Pop_j \right]$$

considering that the weight allocated to each variable is summed-up to 100 per cent.

2. The Capital Subscription (CS) of the Fund is determined as a percentage ( $p_1$ ) of the Authorized Capital (AC) as followed:  $CS = p_1 * AC$ . This percentage ( $p_1$ ) is assumed varying from 75 per cent - Low hypothesis - to 100 per cent - High hypothesis.
3. For each State Party, the Capital Subscription is determined as followed:  $CS_i = Scs_i * p * AC$ .
4. The Authorized Capital (AC) is determined as a percentage of an estimate of the annual average of BOP deficit balances over a period - in current prices US\$ of all Member States of the African Union. This percentage is assumed varying from 75 per cent - Low hypothesis - to 100 per cent - High hypothesis.
5. The Callable Capital (CC) is determined as a percentage ( $p_2$ ) of the Capital Subscription. This percentage ( $p_2$ ) is assumed varying from 50 per cent - Low hypothesis - to 75 per cent - High hypothesis. For each State Party, the Callable Capital is determined using the following formula:  $CC_i = p_2 * CS_i$
6. The Paid-up Capital (PC) is then determined as a percentage ( $p_3$ ) of an estimate of the Callable Capital. This percentage ( $p_3$ ) is assumed varying from 50 per cent - Low hypothesis - to 75 per cent - High hypothesis. For each State Party, the Paid-up Capital is determined using the following formula:  $PC_i = p_3 * CC_i$

The above procedure is followed in order to reduce the degree of skewedness of distribution to the minimum among the Member States of the Fund and also to minimize the direct financial effect on Member States. In this regard, each Member State contribution is less than 0.625 per cent of its 9 years average annual GDP. The burden of payment is further reduced by the annual installment where each Member State pays about 25 per cent of its required paid-up capital annually.

Authorized Share Capital is determined taking into account the annual balance of payment average deficit/surplus during 2000 and 2008 period, evaluated to US\$ 30. 19bn. Required Callable Share Capital and paid-up capital are determined as in the Table below.

# 58. PROTOCOL ON THE ESTABLISHMENT OF THE AFRICAN MONETARY FUND (2014)

Average BOP (a)	30.19
Authorized Capital (75% of (a)) (b)	22.64
Callable Capital (50% of b) '(c)	11.32
Total Required Paid-up Capital (50% of c) '(d)	5.66
Number of voting rights	500,000.00

Country	Capital Subscription	Paid-up Capital (Total)	Voting Right (%)	Voting (Total) Number	Rights
Country	%	US\$ BN	(%)	Number	
1	Algeria	4.59	0.260	4.59	22,949.06
2	Angola	2.31	0.131	2.31	11,549.06
3	Benin	1.28	0.072	1.28	6,399.06
4	Botswana	1.26	0.071	1.26	6,299.06
5	Burkina Faso	1.47	0.083	1.47	7,349.06
6	Burundi	1.17	0.066	1.17	5,849.06
7	Cameroon	1.89	0.107	1.89	9,449.06
8	Cape Verde	0.99	0.056	0.99	4,949.06
9	Central African Rep.	1.10	0.062	1.10	5,499.06
10	Comoros	0.97	0.055	0.97	4,849.06
11	Congo	1.20	0.068	1.20	5,999.06
12	D. R. Congo	2.79	0.158	2.79	13,949.06
13	Côte d'Ivoire	1.90	0.108	1.90	9,499.06
14	Djibouti	0.99	0.056	0.99	4,949.06
15	Egypt	6.12	0.346	6.12	30,599.06
16	Equatorial Guinea	1.31	0.074	1.31	6,549.06
17	Eritrea	1.10	0.062	1.10	5,499.06
18	Ethiopia	3.41	0.193	3.41	17,049.06
19	Gabon	1.21	0.068	1.21	6,049.06
20	Gambia	1.00	0.057	1.00	4,999.06
21	Ghana	1.84	0.104	1.84	9,199.06
22	Guinea Bissau	0.99	0.056	0.99	4,949.06
23	Guinea	1.31	0.074	1.31	6,549.06
24	Kenya	2.50	0.141	2.50	12,499.06
25	Lesotho	1.03	0.058	1.03	5,149.06
26	Liberia	1.05	0.059	1.05	5,249.06
27	Libya	2.35	0.133	2.35	11,749.06
28	Madagascar	1.60	0.091	1.60	7,999.06
29	Malawi	1.40	0.079	1.40	6,999.06
30	Mali	1.41	0.080	1.41	7,049.06
31	Mauritania	1.08	0.061	1.08	5,399.06
32	Mauritius	1.15	0.065	1.15	5,749.06

## 58. PROTOCOL ON THE ESTABLISHMENT OF THE AFRICAN MONETARY FUND (2014)

Country		Capital Subscription	Paid-up Capital (Total)	Voting Rights	Voting Rights (Total)
		%	US\$ BN	%	Number
33	Mozambique	1.69	0.096	1.69	8,449.06
34	Namibia	1.18	0.067	1.18	5,899.06
35	Niger	1.40	0.079	1.40	6,999.06
36	Nigeria	7.94	0.449	7.94	39,699.06
37	Rwanda	1.27	0.072	1.27	6,349.06
38	São Tomé and Príncipe	0.95	0.054	0.95	4,749.06
39	Senegal	1.49	0.084	1.49	7,449.06
40	Seychelles	0.97	0.055	0.97	4,849.06
41	Sierra Leone	1.12	0.063	1.12	5,599.06
42	Somalia	1.35	0.076	1.35	6,749.06
43	South Africa	8.05	0.456	8.05	40,249.06
44	South Sudan	0.57	0.032	0.57	2,829.81
45	Sudan	2.26	0.128	2.26	11,319.25
46	Swaziland	1.04	0.059	1.04	5,199.06
47	Tanzania	2.41	0.136	2.41	12,049.06
48	Chad	1.35	0.076	1.35	6,749.06
49	Togo	1.17	0.066	1.17	5,849.06
50	Tunisia	2.03	0.115	2.03	10,149.06
51	Uganda	2.00	0.113	2.00	9,999.06
52	Zambia	1.48	0.084	1.48	7,399.06
53	Zimbabwe	1.57	0.089	1.57	7,849.06
54	Saharawi Arab Rep.	0.95	0.054	0.95	4,749.06
Total		100,00	5,660	100,00	500 000,00

**PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN  
UNION RELATING TO THE PAN-AFRICAN PARLIAMENT**





59. PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION  
RELATING TO THE PAN-AFRICAN PARLIAMENT (2014)

59.

**PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION RELATING TO THE PAN-AFRICAN PARLIAMENT**

**Adopted in Malabo, Equatorial Guinea, on 27 June 2014.**

**The Protocol shall enter into force thirty days after the deposit of the instruments of ratification by a simple majority of the Member States.**

Preamble

*The Member States of the African Union, States Parties to the Constitutive Act of the African Union,*

*Bearing in mind* the Sirte Declaration adopted at the Fourth Extraordinary Session of the Assembly of Heads of State and Government held in Sirte, Libya, on 9 September 1999 establishing the African Union and calling for the speedy establishment of the institutions provided for in the Treaty Establishing the African Economic Community signed in Abuja, Nigeria, on 3 June 1991, and the establishment of the Pan-African Parliament by the year 2000,

*Noting*, in particular, the adoption by the Assembly of Heads of State and Government meeting at its Thirty-sixty Ordinary Session in Lomé, Togo, from 10 to 12 July 2000, of the Constitutive Act of the African Union, thereby giving concrete expression to the common vision of a united, integrated and strong Africa,

*Considering* the principles and objectives stated in the Constitutive Act of the African Union,

*Further considering* that Articles 5 and 17 of the Constitutive Act of the African Union provide for a Pan-African Parliament as an organ of the African Union, whose composition, functions, powers and organization are to be defined in a protocol,

*Further noting* that the establishment of the Pan-African Parliament is informed by a vision to provide a common platform for African peoples on the continent and the diaspora and their grass-roots organizations to be more involved in discussions and decision-making on the problems and challenges facing the continent,

*Conscious* of the imperative and urgent need to further consolidate the aspiration of the African peoples for greater unity, solidarity and cohesion in a larger community transcending cultural, ideological, ethnic, religious and national differences,

*Recalling* the Cairo Agenda for Action which was endorsed by the Thirty-first Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, from 26 to 28 June 1995 (AHG/Res.236 (XXXI)), and which recommended the speeding up of the rationalization of the institutional framework in order to achieve economic integration at the regional level,

*Further recalling* the Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World, which was adopted by the Twenty-sixth Ordinary Session of the Assembly in Addis Ababa, Ethiopia, on 11 July 1990,

*Considering* that by the Algiers Declaration (AHG/Decl.1 (XXXV)) of 14 July 1999 the Assembly reaffirmed its faith in the African Economic Community,

*Determined* to promote democratic principles and popular participation, to consolidate democratic institutions and culture and to ensure good governance,

*Further determined* to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments,

59. PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION  
RELATING TO THE PAN-AFRICAN PARLIAMENT (2014)

*Conscious* of the obligations and legal implications for Member States of the need to establish the Pan-African Parliament,

*Taking into account* the Decision of the Assembly adopted at its Twelfth Ordinary Session held in Addis Ababa, Ethiopia, in February 2009 (Assembly/AU/Dec.223 (XII)) requesting the Commission to initiate a review process of the Protocol in consultation with the Permanent Representatives Committee taking into account the views of the Pan-African Parliament,

*Noting* that Article 25 of the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament provided for a review of the operation and effectiveness of the Protocol and the system of representation in the Pan-African Parliament after five years and also for further conferences of the Members at intervals of ten (10) years or such shorter time as may be decided by the Pan-African Parliament,

*Firmly convinced* that the strengthening of the Pan-African Parliament will ensure effectively the full participation of the African peoples in the economic development and integration of the continent,

*Hereby agree* as follows:

Article 1  
Definitions

In this Protocol,

"AU" means the African Union;

"African diaspora" means peoples of African origin living outside the continent irrespective of their citizenship and nationality and who are willing to contribute to the development of the continent and the building of the African Union;

"Assembly" means the Assembly of Heads of States and Government of the African Union;

"Bureau" means the Bureau of the Pan-African Parliament and it is composed of the President and Vice-Presidents of the Pan-African Parliament;

"Chairperson of the Commission" refers to the Chairperson of the African Union Commission;

"Secretary-General" means the Secretary-General of the Pan-African Parliament;

"Commission" means the African Union Commission;

"Community" means the African Economic Community;

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

"Court" means the African Court of Justice and Human and Peoples' Rights of the African Union;

"Deputy Secretary-General" means the Deputy Secretary-General of the Pan-African Parliament;

"Inaugural session" means the first meeting of the Pan-African Parliament after the election of the Members;

"Member of the Pan-African Parliament" or "Pan-African Parliamentarian" or "Member" means a person elected to the Pan-African Parliament in accordance with Article 5 of this Protocol;

59. PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION  
RELATING TO THE PAN-AFRICAN PARLIAMENT (2014)

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

"OAU" means the Organization of African Unity;

"Other deliberative body" means the institution in a Member State which performs the legislative functions of the State;

"Parliament" means the Pan-African Parliament;

"Plenary" means a meeting of the whole or full Parliament;

"President", unless otherwise specified, means the Member of the Pan-African Parliament elected to preside over the business of Parliament in accordance with Article 13 of this Protocol;

"Protocol" means the Protocol to the Constitutive Act of the African Union relating to the Pan-African Parliament;

"Region of Africa" shall have the meaning assigned to it in the relevant decisions of the Assembly;

"State Party" means a Member State who has ratified or acceded to this Protocol;

"Treaty" means the Treaty Establishing the African Economic Community.

Article 2  
The Pan-African Parliament

1. The Pan-African Parliament established by the Protocol to the Treaty Establishing the African Economic Community Relating to the Establishment of the Pan-African Parliament is hereby continued in existence and shall have the functions and powers provided for in the present Protocol.
2. The organs of the Pan-African Parliament shall be the Plenary, the Bureau, the Secretariat, committees and regional groups.
3. The Pan-African Parliamentarians shall represent all the peoples of Africa and the interests of the African diaspora.

Article 3  
Objectives of the Pan-African Parliament

The objectives of the Pan-African Parliament shall be to:

- (a) Give a voice to the African peoples and the diaspora;
- (b) Facilitate the effective implementation of the policies and objectives of the AU;
- (c) Promote the principles of human and peoples' rights and democracy in Africa;
- (d) Encourage good governance, respect for the rule of law, transparency and accountability in Member States;
- (e) Familiarize the peoples of Africa and the African diaspora with the objectives and policies aimed at integrating the African continent within the framework of the African Union;
- (f) Promote peace, security and stability;

59. PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION  
RELATING TO THE PAN-AFRICAN PARLIAMENT (2014)

- (g) Contribute to a more prosperous future for the peoples of Africa by promoting collective self-reliance and economic recovery;
- (h) Facilitate cooperation and development in Africa;
- (i) Strengthen continental solidarity, cooperation and development and build a sense of common destiny;
- (j) Facilitate cooperation among Regional Economic Communities in Africa and their parliamentary fora;
- (k) Encourage national and regional parliaments to ratify and integrate treaties adopted by the AU into their legal systems';
- (l) Cooperate with national and regional parliaments and similar bodies within and outside Africa as well as civil societies, community based organizations and grass-roots organizations;
- (m) Invite and encourage the full participation of African diaspora as an important part of the African peoples in the building of the African Union in accordance with modalities approved by the Assembly.

Article 4  
Membership

1. Until the Assembly decides otherwise, each State Party shall be represented in the Pan-African Parliament by an equal number of parliamentarians.
2. The membership of the Pan-African Parliament shall comprise five (5) members elected by each State Party.
3. At least two (2) of the elected members shall be women. A delegation which does not satisfy this requirement shall not have the right to be accredited for representation in the Parliament.

Article 5  
Elections

1. (a) The national parliament or other deliberative body shall elect from outside its membership, five (5) Members of the Pan-African Parliament.
- (b) The representation of each State Party must reflect the diversity of political opinions in each national parliament or other deliberative body taking into account the number of members from each political party represented in the national parliament.
- (c) The elections of Members of the Pan-African Parliament by the national parliaments or other deliberative body shall be conducted as far as possible in the same month throughout the Member States as may be decided by the Assembly.
- (d) The election of the President of the Pan-African Parliament shall be presided over by the Chairperson of the Assembly.
2. (a) Qualifications for election to the Pan-African Parliament shall be the same as for a national parliament or other deliberative body.

59. PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION  
RELATING TO THE PAN-AFRICAN PARLIAMENT (2014)

(b) Notwithstanding paragraph 2 (a) of this article, membership of the Pan-African Parliament shall not be compatible with the exercise of executive or judicial functions in a State Party or a permanent office in the AU, a Regional Economic Community or other international organization.

3. Until a code is developed for election to the Pan-African Parliament by direct universal suffrage, the procedure for election to the Pan-African Parliament shall be determined by the national parliament or other deliberative body of each Member State.

4. (a) The institution of a Member State which determines disputes about elections to the national assembly or other deliberative body shall be responsible for determining any question that may arise as to whether a person has been duly elected a Member of the Pan-African Parliament or whether a vacancy has occurred in the representation at the Pan-African Parliament of a Member State.

(b) Where the institution decides that a vacancy has occurred, a by-election shall be conducted to elect another person to fill the vacancy.

5. The Speaker or President of the national parliament or other deliberative body shall notify the President of the Pan-African Parliament of every election under paragraph 1 of this article and every determination under paragraph 4 of this article.

6. For the avoidance of doubt, a member of a national parliament or other deliberative body is eligible to contest an election to the Pan-African Parliament. However, if elected, he or she shall resign from the national parliament or other deliberative body.

Article 6  
Tenure of Office of a Member and Vacancies

1. The term of a Member of the Pan-African Parliament shall be five (5) years. He or she shall be eligible for re-election or one (1) further term only.

2. The term of a Member of the Pan-African Parliament shall commence from the date on which he or she is sworn into office and shall end on the last day of the term of the Parliament.

3. The seat of a Member of the Pan-African Parliament shall become vacant if the holder:

(a) Dies;

(b) Ceases to satisfy the eligibility criteria stipulated in this Protocol for Members of the Pan-African Parliament;

(c) Is unable to perform his or her functions because of physical or mental incapacity;

(d) Resigns in writing to the President;

(e) Is removed on grounds of misconduct by the Pan-African Parliament in accordance with its Rules of Procedure;

(f) Is absent from the Pan-African Parliament meetings for such period and in such circumstances as are prescribed by the Rules of Procedure of the Pan-African Parliament;

(g) Is convicted by a court of competent jurisdiction of an offence involving fraud, dishonesty or moral integrity and sentenced to a term of imprisonment exceeding six (6) months;

59. PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION  
RELATING TO THE PAN-AFRICAN PARLIAMENT (2014)

- (h) Represents a State Party which is suspended from participating in the activities of the AU;
  - (i) When his or her term expires.
4. Removal on the grounds stipulated in paragraph 3 (c) or (e) above shall be by a resolution on a motion to be decided on by secret ballot and supported at the end of a debate by two-thirds majority of all the Members of the Pan-African Parliament. In the case of a removal on the grounds stipulated in paragraph 3 (c), the motion shall, in addition, be supported by a medical report in accordance with rules provided for in the Rules of Procedure.
5. Where a vacancy occurs in the office of a Member of the Pan-African Parliament, a by-election shall be conducted to fill his or her place subject to Article 4, paragraph 3. The person elected shall serve for the remainder of the term of the member and shall be eligible for re-election for a full term.

Article 7  
Voting in the Pan-African Parliament

The Pan-African Parliamentarian shall vote in person and in his or her personal and independent capacity except when he or she is on an official mission of the Parliament in which case he or she may vote through a proxy. A Parliamentarian cannot act as a proxy for more than one (1) member at a time.

Article 8  
Functions and Powers

1. The Pan-African Parliament shall be the legislative organ of the African Union. In this regard,
- (a) The Assembly shall determine the subjects/areas on which the Pan-African Parliament may propose draft model laws;
  - (b) The Pan-African Parliament may on its own make proposals on the subjects/ areas on which it may submit or recommend draft model laws to the Assembly for its consideration and approval.
2. The Pan-African Parliament shall also:
- (a) Receive and consider reports of other organs of the African Union as may be referred to it by the Council or the Assembly, including audits and other reports, and make recommendations thereon;
  - (b) Debate and discuss its own budget and the budget of the Union and make recommendations thereon to the relevant policy organs;
  - (c) Establish any parliamentary committee and determine its functions, mandate, composition and term of office;
  - (d) Discuss any matter relevant to the African Union and make recommendations to the Council or the Assembly, as it may deem appropriate;
  - (e) Make proposals to the Council on the structure of the Secretariat of the Parliament taking into account its needs;
  - (f) Request the attendance of officials of the other organs of the African Union at its sessions to offer assistance to the Parliament in the discharge of its duties;
  - (g) Promote the programmes and objectives of the African Union in Member States;

59. PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION  
RELATING TO THE PAN-AFRICAN PARLIAMENT (2014)

- (h) Receive, consider and submit opinions on draft legal instruments, treaties and other international agreements as may be referred to it by the Council or Assembly;
  - (i) Liaise with national parliaments or other deliberative bodies and the Parliaments of the Regional Economic Communities on all matters relating to the African Union and regional integration in Africa;
  - (j) Carry out such other activities as it deems appropriate to achieve the objectives set out in Article 3 of this Protocol.
3. Without prejudice to the preceding paragraphs and in so far as it is not in conflict with the mandate of any other organ of the AU, the powers and functions of the Parliament may also be exercised through:
- (a) Fact-finding or inquiry missions;
  - (b) Observer missions.
4. (a) The Pan-African Parliament shall have the power, in accordance with the Financial Rules and Regulations of the African Union, to engage in fund raising activities.
- (b) The Pan-African Parliament shall not have the power to raise a loan.
5. For the avoidance of doubt, paragraph 2 shall not apply to the Assembly, Council or Court.

Article 9  
Privileges and Immunities of the Pan-African Parliamentarians

1. The Pan-African Parliamentarians, while exercising their functions, shall enjoy in the territory of each Member State the immunities and privileges extended to representatives of Member States under the General Convention on the Privileges and Immunities of the OAU and the Vienna Convention on Diplomatic Relations.
2. The Pan-African Parliamentarians shall enjoy parliamentary immunity in each Member State. Accordingly, a Member of the Pan-African Parliament shall not be liable to civil or criminal proceedings, arrest, imprisonment or damages for what is said or done by him or her, within or outside the Pan-African Parliament in his or her capacity as a Pan-African Parliamentarian in the discharge of his or her duties.
3. Without prejudice to paragraph 2 of this article, the Pan-African Parliament shall have the power to waive the immunity of a member in accordance with its Rules of Procedure.

Article 10  
Allowances

1. The Pan-African Parliamentarians shall be paid allowances by their respective States Parties.
2. The allowances for the President, Vice-Presidents and other officials of committees shall be the responsibility of the respective States Parties.

Article 11  
Rules of Procedure

1. The Parliament may adopt and amend its own Rules of Procedure, including the procedures for giving effect to its mandate under Article 8 of this Protocol, by a two-thirds majority of all its members.

59. PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION  
RELATING TO THE PAN-AFRICAN PARLIAMENT (2014)

2. In developing its Rules of Procedure, the Parliament shall ensure consistency of these Rules with AU rules and regulations.

Article 12

The Bureau of the Pan-African Parliament

1. There shall be a Bureau of the Pan-African Parliament which shall be elected on a rotational basis among the five (5) regions of the AU.

2. The Pan-African Parliament shall elect, at its first sitting, by secret ballot, from among its members and in accordance with its Rules of Procedure, a President and four (4) Vice-Presidents representing the five (5) regions of the AU. The election shall, in each case, be by simple majority of the members present and voting. At least two (2) of the Bureau Members shall be women.

3. The Bureau shall, in line with the relevant AU rules and regulations, be responsible for the development of policies for the management and administration of the affairs and property of the Pan-African Parliament, which shall be submitted to the Plenary for approval.

4. The functions of the President and the Vice-Presidents shall be defined in the Rules of Procedure.

5. The term of office of the President and the Vice-Presidents of the Bureau shall be two (2) and a half years renewable once.

6. The President shall preside over all parliamentary proceedings except those held in committees and, in his or her absence, the Vice-Presidents shall act in rotation, in accordance with the Rules of Procedure.

7. The Vice-Presidents shall be ranked in the order of First, Second, Third and Fourth Vice-President, in accordance with the result of the vote. In the absence of the President, each Vice-President shall stand in for the President in rotation.

8. The offices of the President and Vice-President shall become vacant if the holder:

- (a) Dies;
- (b) Resigns in writing to the Bureau;
- (c) Is unable to perform his or her functions for reasons of physical or mental incapacity;
- (d) Is removed on grounds of misconduct;
- (e) Loses his/her membership of the Pan-African Parliament or when his or her term of office expires.

9. Removal on the grounds stipulated in paragraph 8 (c) or 8 (d) above shall be by a resolution on a motion to be decided on by secret ballot and supported at the end of debate by two-thirds majority of all the Members of the Pan-African Parliament. In the case of removal on the grounds stipulated in paragraph 8 (c), the motion shall, in addition, be supported by a medical report.

10. In case of a vacancy in the Bureau, a Member of the Pan-African Parliament shall be elected in his/her place to complete his/her term, through an election at the sitting of the Pan-African Parliament immediately following its occurrence.



59. PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION  
RELATING TO THE PAN-AFRICAN PARLIAMENT (2014)

11. The President may, with the approval of the Bureau, invite any person to a session of the Pan-African Parliament, if in the opinion of the Bureau the business to be transacted at that session renders the presence of that person desirable.

Article 13

The Secretary-General of the Pan-African Parliament

1. The Pan-African Parliament shall, on the recommendation of the Bureau, appoint a Secretary-General and two Deputy Secretaries-General in accordance with the AU Staff Rules and Regulations.
2. The Secretary-General shall appoint, after consultation with the Bureau, such other staff as may be necessary for the proper functioning of the Pan-African Parliament, in accordance with the AU Staff Rules and Regulations.
3. The Secretary-General and a Deputy Secretary-General shall be a person of proven experience or expertise in parliamentary practice, management and financial administration, and a demonstrated interest and understanding of the process of integration in Africa.
4. The Secretary-General shall be the head of the Secretariat, and shall be responsible for the day-to-day management and administration of the affairs and property of the Pan-African Parliament. He/she shall be accountable to the Parliament through the Bureau.
5. The Secretary-General shall be the accounting officer of the Parliament.
6. The Secretary-General shall, as soon as practicable, cause to be transmitted to the secretaries-general/clerks of the national parliaments or other deliberative body and the Parliaments of the Regional Economic Communities copies of the records of all the relevant debates at the sessions and committee hearings of the Pan-African Parliament for information.
7. The Deputy Secretaries-General shall assist the Secretary-General in the discharge of his/her duties.
8. The Secretary-General shall ensure that proper books of account are kept for the Pan-African Parliament; the Secretary-General shall submit annually a report on the utilization of the funds available to the Pan-African Parliament, including its budgetary allocation, through the Bureau to the Council in accordance with the AU Financial Rules and Regulations.
9. The Secretary-General and the Deputy Secretaries-General shall before assuming office take an oath or make a solemn declaration before the Pan-African Parliament.

Article 14

Oath of Office

At its sitting following the election and before transacting any other business, the Parliamentarians shall take an oath or make a solemn declaration. The text of the oath or declaration shall be set out as an addendum to the Rules of Procedure.

Article 15

Sessions and Quorum

1. The inaugural session of the Pan-African Parliament shall be convened by the Secretary-General.
2. The Pan-African Parliament shall meet in ordinary session at least twice a year, within a period to be determined in the Rules of Procedure. Each ordinary session may last up to one (1) month.

59. PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION  
RELATING TO THE PAN-AFRICAN PARLIAMENT (2014)

3. The Bureau, the Assembly, the Council or at least two thirds of the Pan-African Parliamentarians may, by written notification addressed to the President, request an extraordinary session, subject to the following:

- (a) The request shall provide the reasons for and details of the matters to be discussed at the proposed extraordinary session;
- (b) The President shall convene such a session within such time as provided for in the Rules of Procedure;
- (c) The session shall discuss only those matters stipulated in the request;
- (d) The session shall end upon exhaustion of the agenda;
- (e) In any case, the duration of an extraordinary session shall not exceed ten (10) days.

4. The proceedings of the Pan-African Parliament shall be open to the public, unless otherwise directed by the Bureau.

5. (a) The quorum for a meeting of the Pan-African Parliament shall be determined by the Rules of Procedure.

(b) The Rules of Procedure may differentiate between the quorum necessary for conducting ordinary business by the Pan-African Parliament and the quorum needed for making valid decisions.

Article 16  
Budget of the Pan-African Parliament

- 1. The annual budget of the Pan-African Parliament shall constitute an integral part of the regular budget of the AU.
- 2. The budget shall be drawn up by the Pan-African Parliament and submitted to the relevant AU policy organs for approval, in accordance with the AU Financial Rules and Regulations.
- 3. The financial year of the Pan-African Parliament shall be the same as that of the AU.

Article 17  
Seat of the Pan-African Parliament

- 1. The seat of the Pan-African Parliament shall be located in the Republic of South Africa.
- 2. The Pan-African Parliament may convene in the territory of any Member State at the invitation of that Member State.

Article 18  
Official and Working Languages

The official and working languages of the Pan-African Parliament shall be those of the AU.

Article 19  
Relations Between the Pan-African Parliament, the Parliaments of  
Regional Economic Communities and National Parliaments or Other Deliberative Bodies

59. PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION  
RELATING TO THE PAN-AFRICAN PARLIAMENT (2014)

1. The Pan-African Parliament shall work in close cooperation with the Parliaments of the Regional Economic Communities and the national parliaments or other deliberative body. To this effect, the Pan-African Parliament may, in accordance with its Rules of Procedure, convene annual consultative fora with the Parliaments of the Regional Economic Communities and the national parliaments or other deliberative body to discuss matters of common interest.

2. The Pan-African Parliament shall periodically submit a report in writing on its work to the national parliaments or other deliberative bodies for information. Copies of such reports shall also be submitted to the Ministers with responsibility for foreign affairs, African Union affairs and/or regional integration.

Article 20

Relations Between the Pan-African Parliament and Other Organs of the AU

1. The Chairperson of the Assembly shall deliver a speech on the state of the AU at each inaugural session of a new term of the Pan-African Parliament.

2. The Chairperson of the Commission shall, at least once during the term of each Parliament, present the activity report of the Commission to the Pan-African Parliament.

3. The other organs of the AU, except the Assembly, the Council and the Court, shall forward their activity reports annually to the Pan-African Parliament by the third month of each succeeding year.

4. The Pan-African Parliament shall forward its annual activity report to the different organs of the AU, at the latest, by the third month of each succeeding year.

Article 21

Interpretation

The Court shall have jurisdiction on all questions of interpretation of this Protocol.

Article 22

Signature and Ratification

1. This Protocol shall be signed and ratified by Member States in accordance with their respective constitutional procedures.

2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission.

Article 23

Entry into Force

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification with the Chairperson of the Commission by a simple majority of the Member States.

Article 24

Accession

1. A Member State shall accede to this Protocol, after its entry into force, by depositing its instrument of accession with the Chairperson of the Commission. The Chairperson of the Commission shall, upon receipt of such instrument of accession, notify all Member States.

2. For any Member State acceding to this Protocol, the Protocol shall come into force on the date of the deposit of its instrument of accession.

59. PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION  
RELATING TO THE PAN-AFRICAN PARLIAMENT (2014)

Article 25  
Amendment or Revision of the Protocol

1. This Protocol may be amended or revised by a decision of a two-thirds majority of the Assembly.
2. A Member State party to this Protocol or the Pan-African Parliament may propose, in writing, to the Chairperson of the Commission any amendment or revision of the Protocol.
3. The Chairperson of the Commission shall notify the proposal to all Member States at least thirty (30) days before the meeting of the Assembly, which is to consider the proposal.
4. Save where the proposal originates from the Pan-African Parliament, the Chairperson of the Commission shall request the opinion of the Pan-African Parliament on the proposal and shall transmit the opinion, if any, to the Assembly, which may approve the proposal, taking into account the opinion of the Pan-African Parliament.
5. The amendment or revision shall enter into force thirty (30) days after the deposit of the instruments of ratification with the Chairperson by a simple majority of Member States.

Article 26  
Review of the Protocol

Conferences to review the operation and effectiveness of the Protocol, the legislative mandate and the system of representation to the Pan-African Parliament may be organized by the States Parties at intervals of ten (10) years, or within such shorter time as the Pan-African Parliament may decide with a view to ensuring that the objectives and purposes of this Protocol, as well as the vision underlying the Protocol, are being realized and that the Protocol meets with the evolving needs of African States.

Article 27  
Transitional Provision

1. The present Protocol shall upon entry into force replace the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament.
2. The term of office of a Member of the Parliament shall terminate within a period not exceeding one year after the entry into force of this Protocol.

**AFRICAN UNION CONVENTION ON CYBER SECURITY AND  
PERSONAL DATA PROTECTION**



60.

**AFRICAN UNION CONVENTION ON CYBER SECURITY AND PERSONAL DATA PROTECTION**

**Adopted in Malabo, Equatorial Guinea, on 27 June 2014.**

**The Convention shall enter into force thirty days after the deposit of the fifteenth instrument of ratification.**

Preamble

*The Member States of the African Union,*

*Guided by the Constitutive Act of the African Union adopted in 2000,*

*Considering that this Convention on the Establishment of a Legal Framework for Cyber Security and Personal Data Protection embodies the existing commitments of African Union Member States at subregional, regional and international levels to build the Information Society,*

*Recalling that it aims at defining the objectives and broad orientations of the Information Society in Africa and strengthening existing legislation on information and communication technologies (ICTs) of Member States and the Regional Economic Communities (RECs),*

*Reaffirming the commitment of Member States to fundamental freedoms and human and peoples' rights contained in the declarations, conventions and other instruments adopted within the framework of the African Union and the United Nations,*

*Considering that the establishment of a regulatory framework on cyber security and personal data protection takes into account the requirements of respect for the rights of citizens, guaranteed under the fundamental texts of domestic law and protected by international human rights conventions and treaties, particularly the African Charter on Human and Peoples' Rights,*

*Mindful of the need to mobilize all public and private actors (States, local communities, private sector enterprises, civil society organizations, the media, training and research institutions, etc.) for the promotion of cyber security,*

*Reiterating the principles of the African Information Society Initiative and the Regional Action Plan on the Knowledge Economy,*

*Aware that it is meant to regulate a particularly evolving technological domain, and with a view to meeting the high expectations of many actors with often divergent interests, this Convention sets forth the security rules essential for establishing a credible digital space for electronic transactions, personal data protection and combating cybercrime,*

*Bearing in mind that the major obstacles to the development of electronic commerce in Africa are linked to security issues, particularly:*

- (a) The gaps affecting the regulation of legal recognition of data communications and electronic signature,
- (b) The absence of specific legal rules that protect consumers, intellectual property rights, personal data and information systems,
- (c) The absence of e-services and telecommuting legislation,
- (d) The application of electronic techniques to commercial and administrative acts,

## 60. AFRICAN UNION CONVENTION ON CYBER SECURITY AND PERSONAL DATA PROTECTION (2014)

- (e) The probative elements introduced by digital techniques (timestamping, certification, etc.),
- (f) The rules applicable to cryptology devices and services,
- (g) The oversight of online advertising,
- (h) The absence of appropriate fiscal and customs legislation for electronic commerce,

*Convinced* that the aforementioned observations justify the call for the establishment of an appropriate normative framework consistent with the African legal, cultural, economic and social environment; and that the objective of this Convention is therefore to provide the necessary security and legal framework for the emergence of the knowledge economy in Africa,

*Stressing* that at another level, the protection of personal data and private life constitutes a major challenge to the Information Society for governments as well as other stakeholders; and that such protection requires a balance between the use of information and communication technologies and the protection of the privacy of citizens in their daily or professional lives, while guaranteeing the free flow of information,

*Concerned* by the urgent need to establish a mechanism to address the dangers and risks deriving from the use of electronic data and individual records, with a view to respecting privacy and freedoms while enhancing the promotion and development of ICTs in Member States of the African Union,

*Considering* that the goal of this Convention is to address the need for harmonized legislation in the area of cyber security in Member States of the African Union, and to establish in each State Party a mechanism capable of combating violations of privacy that may be generated by personal data collection, processing, transmission, storage and use, that by proposing a type of institutional basis, the Convention guarantees that whatever form of processing is used shall respect the basic freedoms and rights of individuals while also taking into account the prerogatives of States, the rights of local communities and the interests of businesses, and take on board internationally recognized best practices,

*Considering* that the protection under criminal law of the system of values of the Information Society is a necessity prompted by security considerations; that is reflected primarily by the need for appropriate criminal legislation in the fight against cybercrime, in general, and money laundering, in particular,

*Aware* of the need, given the current state of cybercrime which constitutes a real threat to the security of computer networks and the development of the Information Society in Africa, to define broad guidelines of the strategy for the repression of cybercrime in Member States of the African Union, taking into account their existing commitments at subregional, regional and international levels,

*Considering* that this Convention seeks, in terms of substantive criminal law, to modernize instruments for the repression of cybercrime by formulating a policy for the adoption of new offences specific to ICTs, and aligning certain offences, sanctions and criminal liability systems in force in Member States with the ICT environment,

*Considering further* that in terms of criminal procedural law, the Convention defines the framework for the adaptation of standard proceedings concerning information and telecommunication technologies and spells out the conditions for instituting proceedings specific to cybercrime,

*Recalling* Decision Assembly/AU/Decl.1 (XIV) of the Fourteenth Ordinary Session of the Assembly of Heads of State and Government of the African Union on Information and Communication Technologies in Africa: Challenges and Prospects for Development, held in Addis Ababa, Ethiopia, from 31 January to 2 February 2010,

*Taking into account* the Oliver Tambo Declaration adopted by the Conference of African Ministers in charge of Information and Communication Technologies held in Johannesburg, South Africa, on 5 November 2009,



*Recalling* the provisions of the Abidjan Declaration adopted on 22 February 2012 and the Addis Ababa Declaration adopted on 22 June 2012 on the Harmonization of Cyber Legislation in Africa,

*Have agreed* as follows:

Article 1  
Definitions

For the purposes of this Convention:

"AU" means the African Union;

"Child pornography" means any visual depiction, including any photograph, film, video, image, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

- (a) The production of such visual depiction involves a minor;
- (b) Such visual depiction is a digital image, computer image, or computer-generated image where a minor is engaging in sexually explicit conduct or when images of their sexual organs are produced or used for primarily sexual purposes and exploited with or without the child's knowledge;
- (c) Such visual depiction has been created, adapted, or modified to appear that a minor is engaging in sexually explicit conduct;

"Code of conduct" means a set of rules formulated by the processing official with a view to establishing the correct use of computer resources, networks and the electronic communication of the structure concerned, and approved by the protection authority;

"Commission" means the African Union Commission;

"Communication with the public by electronic means" refers to any provision to the public or segments of the public, of signs, signals, written material, image, audio or any messages of any type, through an electronic or magnetic communication process;

"Computer system" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device or a group of interconnected or related devices performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device or devices;

"Computerized data" means any representation of facts, information or concepts in a form suitable for processing in a computer system;

"Consent of data subject" means any manifestation of express, unequivocal, free, specific and informed will by which the data subject or his/her legal, judicial or treaty representative accepts that his/her personal data be subjected to manual or electronic processing;

"The (or this) Convention" means the African Union Convention on Cyber Security and Personal Data Protection;

"Critical cyber/ICT infrastructure" means the cyber infrastructure that is essential to vital services for public safety, economic stability, national security, international stability and for the sustainability and restoration of critical cyberspace;

"Cryptology activity" means all such activity that seeks to produce, use, import, export or market cryptology tools;

"Cryptology" means the science of protecting and securing information particularly for the purpose of ensuring confidentiality, authentication, integrity and non-repudiation;

"Cryptology tools" means the range of scientific and technical tools (equipment or software) which allows for enciphering and/or deciphering;

"Cryptology service" refers to any operation that seeks to implement cryptology facilities on behalf of oneself or another person;

"Cryptology services provider" means any natural or legal person who provides cryptology services;

"Damage" means any impairment to the integrity or availability of data, a programme, a system, or information;

"Data controller" means any natural or legal person, public or private, any other organization or association which alone or jointly with others, decides to collect and process personal data and determines the purposes;

"Data subject" means any natural person that is the subject of personal data processing;

"Direct marketing" means the dispatch of any message that seeks to directly or indirectly promote the goods and services or the image of a person selling such goods or providing such services; it also refers to any solicitation carried out through message dispatch, regardless of the message base or nature, especially messages of a commercial, political or charitable nature, designed to promote, directly or indirectly, goods and services or the image of a person selling the goods or providing the services;

"Double criminality (dual criminality)" means a crime punished in both the country where a suspect is being held and the country asking for the suspect to be handed over or transferred;

"Electronic communication" means any transmission of signs, signals, written material, pictures, sounds or messages of whatsoever nature, to the public or a section of the public by electronic or magnetic means of communication;

"Electronic commerce (e-commerce)" means the act of offering, buying, or providing goods and services via computer systems and telecommunications networks such as the Internet or any other network using electronic, optical or similar media for distance information exchange;

"Electronic mail" means any message in the form of text, voice, sound or image sent by a public communication network, and stored in a server of the network or in a terminal facility belonging to the addressee until it is retrieved;

"Electronic signature" means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication;

"Electronic signature verification device" means a set of software or hardware components allowing the verification of electronic signature;

"Electronic signature creation device" means a set of software or hardware elements allowing for the creation of an electronic signature(s);

"Encryption" means all techniques consisting in the processing of digital data in an unintelligible format using cryptology tools;

## 60. AFRICAN UNION CONVENTION ON CYBER SECURITY AND PERSONAL DATA PROTECTION (2014)

"Exceeds authorized access" means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accessor is not entitled so to obtain or alter;

"Health data" means all information relating to the physical or mental state of the data subject, including the aforementioned genetic data;

"Indirect electronic communication" means any text, voice, sound or image message sent over an electronic communications network which is stored in the network or in the recipient's terminal equipment until it is collected by the recipient;

"Information" means any element of knowledge likely to be represented with the aid of devices and to be used, conserved, processed or communicated. Information may be expressed in written, visual, audio, digital and other forms;

"Interconnection of personal data" means any connection mechanism that harmonizes processed data designed for a set goal with other data processed for goals that are identical or otherwise, or interlinked by one or several processing official(s);

"Means of electronic payment" refers to means by which the holder is able to make electronic payment transactions online;

"Member State or Member States" means Member State(s) of the African Union;

"Child or minor" means every human being below the age of eighteen (18) years in terms of the African Charter on the Rights and Welfare of the Child and the United Nations Convention on the Rights of the Child, respectively;

"Personal data" means any information relating to an identified or identifiable natural person by which this person can be identified, directly or indirectly in particular by reference to an identification number or to one or more factors specific to his/her physical, physiological, mental, economic, cultural or social identity;

"Personal data file" means all structured package of data accessible in accordance with set criteria, regardless of whether or not such data are centralized, decentralized or distributed functionally or geographically;

"Processing of personal data" means any operation or set of operations which is performed upon personal data, whether or not by automatic means such as the collection, recording, organization, storage, adaptation, alteration, retrieval, backup, copy, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination and locking, encryption, erasure or destruction of personal data;

"Racism and xenophobia in information and telecommunication technologies" means any written material, picture or any other representation of ideas or theories which advocates or encourages or incites hatred, discrimination or violence against any person or group of persons for reasons based on race, colour, ancestry, national or ethnic origin or religion;

"Recipient of processed personal data" means any person entitled to receive communication of such data other than the data subject, the data controller, the subcontractor and persons who, for reasons of their functions, have the responsibility to process the data;

"Secret conventions" means unpublished codes required to implement a cryptology facility or service for the purpose of enciphering or deciphering operations;

"Sensitive data" means all personal data relating to religious, philosophical, political and trade union opinions and activities, as well as to sex life or race, health, social measures, legal proceedings and penal or administrative sanctions;

"State Party or States Parties" means Member State(s), which has (have) ratified or acceded to the present Convention;

Subcontractor" means any natural or legal person, public or private, any other organization or association that processes data on behalf of the data controller;

"Third party" means a natural or legal person, public authority, agency or body, other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor are authorized to process the data.

## Chapter I Electronic Transactions

### Section I Electronic Commerce

#### Article 2 Scope of Application of Electronic Commerce

1. States Parties shall ensure that e-commerce activities are exercised freely in their territories except:
  - (a) Gambling, even in the form of legally authorized betting and lotteries;
  - (b) Legal representation and assistance activities;
  - (c) Activities exercised by notaries or equivalent authorities in application of extant texts.
2. Without prejudice to other information obligations defined by extant legislative and regulatory texts in African Union Member States, States Parties shall ensure that any person exercising e-commerce activities shall provide to those for whom the goods and services are meant, easy, direct and uninterrupted access using non-proprietary standards with regard to the following information:
  - (a) Where a physical person is involved, the provider shall indicate his/her name and where it is a legal person, its corporate name, its capital, its registration number in the register of companies or associations;
  - (b) Full address of the place of establishment, electronic mail address and telephone number;
  - (c) Where the person is subject to business registration formalities or registration in the national directory of businesses and associations, the registration number, the share capital and corporate headquarters;
  - (d) Where the person is subject to taxes, the tax identification number;
  - (e) Where his/her activity is subject to a licensing regime, the name and address of the issuing authority, and the reference of the authorization;
  - (f) Where the person is a member of a regulated profession, the applicable professional rules, his/her professional title, the African Union State Party in which he/she was granted such authorization, as well as the name of the order or professional body with which he/she is registered.
3. Any natural or legal person involved in e-commerce activities, even in the absence of contractual offers, provided the person has posted a price for the said activities, shall clearly and unambiguously indicate such a price, particularly where it includes taxes, delivery and other charges.

Article 3

Contractual Liability of the Provider of Goods and Services by Electronic Means

E-commerce activities are subject to the law of the State Party in whose territory the person exercising such activity is established, subject to the intention expressed in common by the said person and the recipient of the goods or services.

Article 4

Advertising by Electronic Means

1. Without prejudice to Article 3 any advertising action, irrespective of its form, accessible through an online communication service, shall be clearly identified as such. It shall clearly identify the individual or corporate body on behalf of whom it is undertaken.

2. The conditions governing the possibility of promotional offers as well as the conditions for participating in promotional competitions or games where such offers, competitions or games are electronically disseminated, shall be clearly spelled out and easily accessible.

3. States Parties shall prohibit direct marketing through any kind of indirect communication using, in any form, the particulars of an individual who has not given prior consent to receiving the said direct marketing through such means.

4. The provisions of Article 4, paragraph 2 above notwithstanding, direct marketing by electronic mail shall be permissible where:

- (a) The particulars of the addressee have been obtained directly from him/her;
- (b) The recipient has given consent to be contacted by the marketing partners;
- (c) The direct marketing concerns similar products or services provided by the same individual or corporate body.

5. States Parties shall prohibit the transmission, for the purposes of direct marketing, of messages by means of any form of indirect electronic communication without indicating valid particulars to which the addressee may send a request to stop such communications without incurring charges other than those arising from the transmission of such a request.

6. States Parties undertake to prohibit concealment of the identity of the person on whose behalf the advertisement accessed by an online communication service is issued.

Section II

Contractual Obligations in Electronic Form

Article 5

Electronic Contracts

1. The information requested for the purpose of concluding a contract or information available during contract execution may be transmitted by electronic means if the recipients have agreed to the use of that means. The use of electronic communications is presumed to be acceptable unless the recipient has previously expressly stated a preference for an alternative means of communication.

2. A service provider or supplier, who offers goods and services in a professional capacity by electronic means, shall make available the applicable contractual conditions directly or indirectly, in a way that facilitates the conservation and reproduction of such conditions according to national legislation.
3. For the contract to be validly concluded, the offeree shall have had the opportunity to verify details of his/her order, particularly the price thereof, prior to confirming the said order and signifying his/her acceptance.
4. The person offering his/her goods and services shall acknowledge receipt of the order so addressed to him/her without unjustified delay and by electronic means. The order, the confirmation of acceptance of an offer and the acknowledgment of receipt are deemed to be received when the parties to whom they are addressed are able to access to them.
5. Exemptions may be made to the provisions of Article 5, paragraphs 3 and 4, of this Convention for agreements concluded between businesses or professionals (B2B).
6. (a) Any natural or legal person engaged in the activity defined in the first subparagraph of Article 2, paragraph 1, of this Convention shall, ipso facto, be accountable to his/her contractual partner for the proper performance of the obligations arising from the contract, irrespective of whether such obligations are to be carried out by himself/herself or by other service providers, without prejudice to his/her right to claim against the said service providers.  
  
(b) However, the natural or legal person may be released from all or part of the liability by proving that the non-fulfilment or poor performance of the contract is due either to the contractual partner or a case of force majeure.

Article 6  
Writing in Electronic Form

1. Without prejudice to existing domestic legislative provisions in the State Party, no person shall be compelled to take legal action by electronic means.  
  
(a) Where a written document shall be required for the validity of a legal act, each State Party shall establish the legal conditions for functional equivalence between electronic communications and paper-based documents, when the internal regulations require a written document for the validity of a legal act.  
  
(b) Where a paper document has been subject to specific conditions as to legibility or presentation, the written document in electronic form shall be subject to the same conditions.  
  
(c) The requirement to transmit several copies of a written document shall be deemed to have been met in electronic form, where the said written document can be reproduced in material form by the addressee.
2. The provisions of Article 6, paragraph 2, of this Convention do not apply to the following:  
  
(a) Signed private deeds relating to family law and law of succession; and  
  
(b) Acts under private signature relating to personal or real guarantees in accordance with domestic legislation, whether made under civil or commercial law, unless they are entered into by a person for the purposes of his/her profession.
3. The delivery of a written document in electronic form shall be effective when the addressee takes due note and acknowledges receipt thereof.

4. Given their tax functions, invoices must be in writing to ensure the readability, integrity and sustainability of the content. The authenticity of the origin must also be guaranteed.

Among the methods that may be implemented to fulfil the tax purposes of the invoice and to ensure that its functions have been met is the establishment of management controls which create a reliable audit trail between an invoice and a supply of goods or services.

In addition to the type of controls described in Section I, the following methods are examples of technologies that ensure the authenticity of origin and integrity of content of an electronic invoice:

- (a) A qualified electronic signature as defined in Article 1;
- (b) Electronic data interchange (EDI), understood as the electronic transfer, from computer to computer, of commercial and administrative data in the form of an EDI message structured according to an agreed standard, provided that the agreement to the exchange provides for the use of procedures guaranteeing the authenticity of the origin and data integrity.

5. A written document in electronic form is admissible in evidence in the same way as a paper-based document, and shall have the same force of law, provided that the person from whom it originates can be duly identified and that it has been made out and retained in a manner that guarantees its integrity.

### Section III Security of Electronic Transactions

#### Article 7 Ensuring the Security of Electronic Transactions

1. (a) The supplier of goods shall allow his/her clients to make payments using electronic payment methods approved by the State according to the regulations in force in each State Party.

(b) The supplier of goods or provider of services by electronic means who claims the discharge of an obligation must prove its existence or otherwise prove that the obligation was discharged or did not exist.

2. Where the legislative provisions of States Parties have not laid down other principles, and where there is no valid agreement between the parties, the judge shall resolve proof-related conflicts by determining by all possible means the most plausible claim regardless of the message base employed.

3. (a) A copy or any other reproduction of contracts signed by electronic means shall have the same probative value as the contract itself, where the said copy has been certified as a true copy of the said act by bodies duly accredited by an authority of the State Party.

(b) Certification will result in the issuance, where necessary, of a certificate of conformity.

4. (a) An electronic signature created by a secure device which the signatory is able to keep under his exclusive control and is appended to a digital certificate shall be admissible as a signature on the same terms as a handwritten signature.

(b) The reliability of the procedure is presumed, unless otherwise proven, if the electronic signature is generated by a secure signature creation device, the integrity of the act is guaranteed and the identification of the signatory is ensured.

### Chapter II Personal Data Protection

Section I  
Personal Data Protection

Article 8  
Objective of This Convention with Respect to Personal Data

1. Each State Party shall commit itself to establishing a legal framework aimed at strengthening fundamental rights and public freedoms, particularly the protection of physical data, and punish any violation of privacy without prejudice to the principle of free flow of personal data.
2. The mechanism so established shall ensure that any form of data processing respects the fundamental freedoms and rights of natural persons while recognizing the prerogatives of the State, the rights of local communities and the purposes for which the businesses were established.

Article 9  
Scope of Application of the Convention

1. The following actions shall be subject to this Convention:
  - (a) Any collection, processing, transmission, storage or use of personal data by a natural person, the State, local communities, and public or private corporate bodies;
  - (b) Any automated or non-automated processing of data contained in or meant to be part of a file, with the exception of the processing defined in Article 9, paragraph 2, of this Convention;
  - (c) Any processing of data undertaken in the territory of a State Party;
  - (d) Any processing of data relating to public security, defence, research, criminal prosecution or State security, subject to the exceptions defined by specific provisions of other extant laws.
2. This Convention shall not be applicable to:
  - (a) Data processing undertaken by a natural person within the exclusive context of his/her personal or household activities provided, however, that such data are not for systematic communication to third parties or for dissemination;
  - (b) Temporary copies produced within the context of technical activities for transmission and access to a digital network with a view to automatic, intermediate and temporary storage of data and for the sole purpose of offering other beneficiaries of the service the best possible access to the information so transmitted.

Article 10  
Preliminary Personal Data Processing Formalities

1. The following actions shall be exempted from the preliminary formalities:
  - (a) The processing mentioned in Article 9, paragraph 2, of this Convention;
  - (b) Processing undertaken with the sole objective of maintaining a register meant exclusively for private use;
  - (c) Processing undertaken by a non-profit making association or body, with a religious, philosophical, political or trade union aim, provided that the data are consistent with the objective of the said association or body structure, and relate solely to its members, and that the data are not disclosed to a third party.



2. With the exception of the cases defined in Article 10, paragraphs 1, 4 and 5, of this Convention, personal data processing shall be subject to a declaration before the protection authority.

3. With regard to the most common categories of personal data processing which are not likely to constitute a breach of privacy or individual freedoms, the protection authority may establish and publish standards with a view to simplifying or introducing exemptions from the obligation to make a declaration.

4. The following actions shall be undertaken after authorization by the national protection authority:

- (a) Processing of personal data involving genetic information and health research;
- (b) Processing of personal data involving information on offences, convictions or security measures;
- (c) Processing of personal data for the purpose of interconnection of files as defined in Article 15 of this Convention, data processing involving national identification number or any other identifier of the same type;
- (d) Processing of personal data involving biometric data;
- (e) Processing of personal data of public interest, particularly for historical, statistical or scientific purposes.

5. Personal data processing undertaken on behalf of the Government, a public institution, a local community, or a private corporate body operating a public service shall be in accordance with a legislative or regulatory act enacted after an informed advice of the protection authority.

Such data processing is related to:

- (a) State security, defence or public security;
- (b) Prevention, investigation, detection or prosecution of criminal offences, or execution of criminal convictions or security measures;
- (c) Population survey;
- (d) Personal data directly or indirectly revealing racial, ethnic or regional origin, affiliation, political, philosophical or religious beliefs or trade union membership of persons, or data concerning health or sex life.

6. Requests for opinion, declarations and applications for authorization shall indicate:

- (a) The identity and address of the data controller or, where he/she is not established in the territory of a Member State of the African Union, the identity and address of his/her duly mandated representative;
- (b) The purpose(s) of the processing and a general description of its functions;
- (c) The interconnections envisaged or all other forms of harmonization with other processing activities;
- (d) The personal data processed, their origin and the category of persons involved in the processing;
- (e) Period of conservation of the processed data;
- (f) The service or services responsible for carrying out the processing as well as the category of persons who, due to their functions or service requirements, have direct access to registered data;

## 60. AFRICAN UNION CONVENTION ON CYBER SECURITY AND PERSONAL DATA PROTECTION (2014)

- (g) The recipients authorized to receive data communication;
- (h) The function of the person or the service before which the right of access is to be exercised;
- (i) Measures taken to ensure the security of processing actions and of data;
- (j) Indication regarding use of a subcontractor;
- (k) Envisaged transfer of personal data to a third country that is not a Member of the African Union, subject to reciprocity.

7. The national protection authority shall take a decision within a set time frame starting from the date of receipt of the request for opinion or authorization. Such time frame may, however, be extended or not on the basis of an informed decision of the national protection authority.

8. The notification, the declaration or request for authorization may be addressed to the national protection authority by electronic means or by post.

9. The national protection authority may be approached by any person acting on his/her own, or through a lawyer or any other duly mandated natural or legal person.

### Section II

#### Institutional Framework for the Protection of Personal Data

### Article 11

#### Status, Composition and Organization of National Personal Data Protection Authorities

1. (a) Each State Party shall establish an authority in charge of protecting personal data.  
(b) The national protection authority shall be an independent administrative authority with the task of ensuring that the processing of personal data is conducted in accordance with the provisions of this Convention.
2. The national protection authority shall inform the concerned persons and the processing officials of their rights and obligations.
3. Without prejudice to Article 11, paragraph 6, each State Party shall determine the composition of the national personal data protection authority.
4. Sworn officials may be invited to participate in audit missions in accordance with extant provisions in States Parties.
5. (a) Members of the national protection authority shall be subject to the obligation of professional secrecy in accordance with the extant texts of each State Party.  
(b) Each national protection authority shall formulate rules of procedure containing, inter alia, rules governing deliberations, processing and presentation of cases.
6. Membership of the national protection authority shall be incompatible with membership of Government, carrying out the functions of business executive and ownership of shares in businesses in the information and communication technologies sector.
7. (a) Without prejudice to national legislation, members of the national protection authority shall enjoy full immunity for opinions expressed in the pursuit or in connection with the pursuit of their duties.

(b) Members of the national protection authority shall not receive instructions from any other authority in the performance of their duties.

8. States Parties shall undertake to provide the national protection authority with the human, technical and financial resources necessary to accomplish their mission.

#### Article 12

##### Duties and Powers of National Protection Authorities

1. The national protection authority shall ensure that the processing of personal data is consistent with the provisions of this Convention within Member States of the African Union.

2. The national protection authorities shall ensure that information and communication technologies do not constitute a threat to public freedoms and the private life of citizens. To this end, they are responsible for:

- (a) Responding to every request for an opinion regarding personal data processing;
- (b) Informing the persons concerned and data controllers of their rights and obligations;
- (c) In a number of cases, authorizing the processing of data files, particularly sensitive files;
- (d) Receiving the preliminary formalities for personal data processing;
- (e) Entertaining claims, petitions and complaints regarding the processing of personal data and informing the authors of the results thereof;
- (f) Speedily informing the judicial authority of certain types of offences that have come to their attention;
- (g) Undertaking the audit of all processed personal data, through its officials or sworn officials;
- (h) Imposing administrative and monetary sanctions on data controllers;
- (i) Updating a processed personal data directory that is accessible to the public;
- (j) Advising persons and bodies engaged in personal data processing or in carrying out tests and experiments likely to result in data processing;
- (k) Authorizing transborder transfer of personal data;
- (l) Making suggestions that could simplify and improve legislative and regulatory frameworks for data processing;
- (m) Establishing mechanisms for cooperation with the personal data protection authorities of third countries;
- (n) Participating in international negotiations on personal data protection;
- (o) Preparing an activity report in accordance with a well-defined periodicity, for submission to the appropriate authorities of the State Party.

3. The national protection authorities may decide on the following measures:

## 60. AFRICAN UNION CONVENTION ON CYBER SECURITY AND PERSONAL DATA PROTECTION (2014)

- (a) Issuance of warning to any data controller that fails to comply with the obligations resulting from this Convention;
  - (b) An official warning letter to stop such breaches within a time frame set by the authority.
4. Where the data controller fails to comply with the official warning letter addressed to him/her, the national protection authority may impose the following sanctions after adversary proceedings:
- (a) Temporary withdrawal of the authorization granted;
  - (b) Permanent withdrawal of the authorization;
  - (c) Monetary fine.
5. In cases of emergency, where the processing or use of personal data results in violation of fundamental rights and freedoms, the national protection authority may, after adversary proceedings, decide as follows:
- (a) Discontinuation of data processing;
  - (b) Blocking of some of the personal data processed;
  - (c) Temporary or permanent prohibition of any processing at variance with the provisions of this Convention.
6. The sanctions imposed and decisions taken by national protection authorities are subject to appeal.

### Section III

#### Obligations Relating to Conditions Governing Personal Data Processing

#### Article 13

##### Basic Principles Governing the Processing of Personal Data

##### Principle 1

##### Principle of Consent and Legitimacy of Personal Data Processing

Processing of personal data shall be deemed to be legitimate where the data subject has given his/her consent. This requirement of consent may, however, be waived where the processing is necessary for:

- (a) Compliance with a legal obligation to which the controller is subject;
- (b) Performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed;
- (c) Performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- (d) Protect the vital interests or fundamental rights and freedoms of the data subject.

##### Principle 2

##### Principle of Lawfulness and Fairness of Personal Data Processing

The collection, recording, processing, storage and transmission of personal data shall be undertaken lawfully, fairly and non-fraudulently.

Principle 3

Principle of Purpose, Relevance and Storage of Processed Personal Data

- (a) Data collection shall be undertaken for specific, explicit and legitimate purposes, and not further processed in a way incompatible with those purposes.
- (b) Data collection shall be adequate, relevant and not excessive in relation to the purposes for which they are collected and further processed.
- (c) Data shall be kept for no longer than is necessary for the purposes for which the data were collected or further processed.
- (d) Beyond the required period, data may be stored only for the specific needs of data processing undertaken for historical, statistical or research purposes under the law.

Principle 4

Principle of Accuracy of Personal Data

Data collected shall be accurate and, where necessary, kept up to date. Every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified.

Principle 5

Principle of Transparency of Personal Data Processing

The principle of transparency requires mandatory disclosure of information on personal data by the data controller.

Principle 6

Principle of Confidentiality and Security of Personal Data Processing

- (a) Personal data shall be processed confidentially and protected, in particular where the processing involves transmission of the data over a network.
- (b) Where processing is undertaken on behalf of a controller, the latter shall choose a processor providing sufficient guarantees. It is incumbent on the controller and processor to ensure compliance with the security measures defined in this Convention.

Article 14

Specific Principles for the Processing of Sensitive Data

- 1. States Parties shall undertake to prohibit any data collection and processing revealing racial, ethnic and regional origin, parental filiation, political opinions, religious or philosophical beliefs, trade union membership, sex life and genetic information or, more generally, data on the state of health of the data subject.
- 2. The prohibitions set forth in Article 14, paragraph 1, shall not apply to the following categories where:
  - (a) Processing relates to data which are manifestly made public by the data subject;
  - (b) The data subject has given his/her written consent, by any means, to the processing and in conformity with extant texts;

## 60. AFRICAN UNION CONVENTION ON CYBER SECURITY AND PERSONAL DATA PROTECTION (2014)

- (c) Processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his/her consent;
- (d) Processing, particularly of genetic data, is required for the establishment, exercise or defence of legal claims;
- (e) A judicial procedure or criminal investigation has been instituted;
- (f) Processing is necessary in the public interest, especially for historical, statistical or scientific purposes;
- (g) Processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- (h) Processing is necessary for compliance with a legal or regulatory obligation to which the controller is subject;
- (i) Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority or assigned by a public authority vested in the controller or in a third party to whom data are disclosed;
- (j) Processing is carried out in the course of the legitimate activities of a foundation, association or any other non-profit making body with a political, philosophical, religious, cooperative or trade union aim, and on condition that the processing relates solely to the members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of the data subjects.

3. Personal data processing for journalistic purposes or for the purpose of research or artistic or literary expression shall be acceptable where the processing is solely for literary and artistic expression or for professional exercise of journalistic or research activity, in accordance with the code of conduct of these professions.

4. The provisions of this Convention shall not preclude the application of national legislation with regard to the print media or the audiovisual sector, as well as the provisions of the criminal code which provide for the conditions for exercise of the right of reply, and which prevent, limit, compensate for and, where necessary, repress breaches of privacy and damage to personal reputation.

5. A person shall not be subject to a decision which produces legal effects concerning him/her or significantly affects him/her to a substantial degree, and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him/her.

6. (a) The data controller shall not transfer personal data to a non-member State of the African Union unless such a State ensures an adequate level of protection of the privacy, freedoms and fundamental rights of persons whose data are being or are likely to be processed.

(b) The previous prohibition is not applicable where, before any personal data is transferred to the third country, the data controller shall request authorization for such transfer from the national protection authority.

### Article 15

#### Interconnection of Personal Data Files

The interconnection of files laid down in Article 10, paragraph 4, of this Convention should help to achieve the legal or statutory objectives which are of legitimate interest to data controllers. This should not lead to discrimination or limit data subjects' rights, freedoms and guarantees, should be subject to appropriate security measures, and also take into account the principle of relevance of the data which are to be interconnected.

Section IV  
The Data Subjects' Rights

Article 16  
Right to Information

The data controller shall provide the natural person whose data are to be processed with the following information, no later than the time when the data are collected, and regardless of the means and facilities used, with the following information:

- (a) His/her identity and his/her representative, if any;
- (b) The purposes of the processing for which the data are intended;
- (c) Categories of data involved;
- (d) Recipient(s) to which the data might be disclosed;
- (e) The capacity to request to be removed from the file;
- (f) Existence of the right of access to and the right to rectify the data concerning him/her;
- (g) Period for which data are stored;
- (h) Proposed transfers of data to third countries.

Article 17  
Right of Access

Any natural person whose personal data are to be processed may request from the controller, in the form of questions, the following:

- (a) Such information as would enable him/her to evaluate and object to the processing;
- (b) Confirmation as to whether or not data relating to him/her are being processed;
- (c) Communication to him/her of the personal data undergoing processing and any available information as to their source;
- (d) Information as to the purpose of the processing, the categories of personal data concerned, and the recipients or categories of recipients to whom the data are disclosed.

Article 18  
Right to Object

Any natural person has the right to object, on legitimate grounds, to the processing of the data relating to him/her.

He/she shall have the right to be informed before personal data relating to him/her are disclosed for the first time to third parties or used on their behalf for the purposes of marketing, and to be expressly offered the right to object, free of charge, to such disclosures or uses.

Article 19

Right of Rectification or Erasure

Any natural person may demand that the data controller rectify, complete, update, block or erase, as the case may be, the personal data concerning him/her where such data are inaccurate, incomplete, equivocal or out of date, or whose collection, use, disclosure or storage are prohibited.

Section V  
Obligations of the Personal Data Controller

Article 20  
Confidentiality Obligations

Processing of personal data shall be confidential. Such processing shall be undertaken solely by persons operating under the authority of a data controller and only on instructions from the controller.

Article 21  
Security Obligations

The data controller must take all appropriate precautions, according to the nature of the data, and in particular, to prevent such data from being altered or destroyed, or accessed by unauthorized third parties.

Article 22  
Storage Obligations

Personal data shall be kept for no longer than is necessary for the purposes for which the data were collected or processed.

Article 23  
Sustainability Obligations

(a) The data controller shall take all appropriate measures to ensure that processed personal data can be utilized regardless of the technical device employed in the process.

(b) The processing official shall, in particular, ensure that technological changes do not constitute an obstacle to the said utilization.

Chapter III  
Promoting Cyber Security and Combating Cybercrime

Section I  
Cyber Security Measures to Be Taken at the National Level

Article 24  
National Cyber Security Framework

1. National policy

Each State Party shall undertake to develop, in collaboration with stakeholders, a national cyber security policy which recognizes the importance of the critical information infrastructure (CII) for the nation, identifies the risks facing the nation in using the all hazards approach and outlines how the objectives of such policy are to be achieved.

2. National strategy



States Parties shall adopt the strategies they deem appropriate and adequate to implement the national cyber security policy, particularly in the area of legislative reform and development, sensitization and capacity-building, public-private partnership, and international cooperation, among other things. Such strategies shall define organizational structures, set objectives and time frames for successful implementation of the cyber security policy and lay the foundation for effective management of cyber security incidents and international cooperation.

Article 25  
Legal Measures

1. Legislation against cybercrime

Each State Party shall adopt such legislative and/or regulatory measures as it deems effective by considering as substantive criminal offences acts which affect the confidentiality, integrity, availability and survival of information and communication technology systems, the data they process and the underlying network infrastructure, as well as effective procedural measures to pursue and prosecute offenders. States Parties shall take into consideration the choice of language that is used in international best practices.

2. National regulatory authorities

Each State Party shall adopt such legislative and/or regulatory measures as it deems necessary to confer specific responsibility on institutions, either newly established or pre-existing, as well as on the designated officials of the said institutions, with a view to conferring on them a statutory authority and legal capacity to act in all aspects of cyber security application, including but not limited to response to cyber security incidents, and coordination and cooperation in the field of restorative justice, forensic investigations, prosecution, etc.

3. Rights of citizens

In adopting legal measures in the area of cyber security and establishing the framework for implementation thereof, each State Party shall ensure that the measures so adopted will not infringe on the rights of citizens guaranteed under the national constitution and internal laws, and protected by international conventions, particularly the African Charter on Human and Peoples' Rights, and other basic rights such as freedom of expression, the right to privacy and the right to a fair hearing, among others.

4. Protection of critical infrastructure

Each State Party shall adopt such legislative and/or regulatory measures as they deem necessary to identify the sectors regarded as sensitive for their national security and well-being of the economy, as well as the information and communication technologies systems designed to function in these sectors as elements of critical information infrastructure; and, in this regard, proposing more severe sanctions for criminal activities on ICT systems in these sectors, as well as measures to improve vigilance, security and management.

Article 26  
National Cyber Security System

1. Culture of cyber security

(a) Each State Party undertakes to promote the culture of cyber security among all stakeholders, namely, governments, enterprises and the civil society, which develop, own, manage, operationalize and use information systems and networks. The culture of cyber security should lay emphasis on security in the development of information systems and networks, and on the adoption of new ways of thinking and behaving when using information systems as well as during communication or transactions across networks.

(b) As part of the promotion of the culture of cyber security, States Parties may adopt the following measures: establish a cyber security plan for the systems run by their governments; elaborate and implement programmes and initiatives for sensitization on security for systems and networks users; encourage the development of a cyber security culture in enterprises; foster the involvement of the civil society; launch a comprehensive and detailed national sensitization programme for Internet users, small business, schools and children.

2. Role of Governments

Each State Party shall undertake to provide leadership for the development of the cyber security culture within its borders. Member States undertake to sensitize, provide education and training, and disseminate information to the public.

3. Public-Private Partnership

Each State Party shall develop public-private partnership as a model to engage industry, the civil society, and academia in the promotion and enhancement of a culture of cyber security.

4. Education and training

Each State Party shall adopt measures to develop capacity-building with a view to offering training which covers all areas of cyber security to different stakeholders, and setting standards for the private sector.

States Parties undertake to promote technical education for information and communication technology professionals, within and outside government bodies, through certification and standardization of training; categorization of professional qualifications as well as development and needs-based distribution of educational material.

Article 27

National Cyber Security Monitoring Structures

1. Cyber security governance

(a) Each State Party shall adopt the necessary measures to establish an appropriate institutional mechanism responsible for cyber security governance.

(b) The measures adopted as per paragraph 1 of this article shall establish strong leadership and commitment in the different aspects of cyber security institutions and relevant professional bodies of the State Party. To this end, States Parties shall take the necessary measures to:

(i) Establish clear accountability in matters of cyber security at all levels of Government by defining the roles and responsibilities in precise terms;

(ii) Express a clear, public and transparent commitment to cyber security;

(iii) Encourage the private sector and solicit its commitment and participation in government-led initiatives to promote cyber security.

(c) Cyber security governance should be established within a national framework that can respond to the perceived challenges and to all issues relating to information security at the national level in as many areas of cyber security as possible.

2. Institutional framework

Each State Party shall adopt such measures as it deems necessary in order to establish appropriate institutions to combat cybercrime, ensure monitoring and a response to incidents and alerts, national and cross-border coordination of cyber security problems, as well as global cooperation.

Article 28  
International Cooperation

1. Harmonization

States Parties shall ensure that the legislative measures and/or regulations adopted to fight against cybercrime will strengthen the possibility of regional harmonization of these measures and respect the principle of double criminal liability.

2. Mutual legal assistance

States Parties that do not have agreements on mutual assistance in cybercrime shall undertake to encourage the signing of agreements on mutual legal assistance in conformity with the principle of double criminal liability, while promoting the exchange of information as well as the efficient sharing of data between the organizations of States Parties on a bilateral and multilateral basis.

3. Exchange of information

States Parties shall encourage the establishment of institutions that exchange information on cyberthreats and vulnerability assessment such as the Computer Emergency Response Team (CERT) or the Computer Security Incident Response Teams (CSIRTs).

4. Means of cooperation

States Parties shall make use of existing means for international cooperation with a view to responding to cyberthreats, improving cyber security and stimulating dialogue between stakeholders. These means may be international, intergovernmental or regional, or based on private and public partnerships.

Section II  
Criminal Provisions

Article 29  
Offences Specific to Information and Communication Technologies

1. Attacks on computer systems

States Parties shall take the necessary legislative and/or regulatory measures to make it a criminal offence to:

- (a) Gain or attempt to gain unauthorized access to part or all of a computer system or exceed authorized access;
- (b) Gain or attempt to gain unauthorized access to part or all of a computer system or exceed authorized access with intent to commit another offence or facilitate the commission of such an offence;
- (c) Remain or attempt to remain fraudulently in part or all of a computer system;
- (d) Hinder, distort or attempt to hinder or distort the functioning of a computer system;

## 60. AFRICAN UNION CONVENTION ON CYBER SECURITY AND PERSONAL DATA PROTECTION (2014)

- (e) Enter or attempt to enter data fraudulently in a computer system;
- (f) Damage or attempt to damage, delete or attempt to delete, deteriorate or attempt to deteriorate, alter or attempt to alter, change or attempt to change computer data fraudulently.

States Parties further undertake to:

- (g) Adopt regulations compelling vendors of information and communication technology products to have vulnerability and safety guarantee assessments carried out on their products by independent experts and researchers, and disclose any vulnerabilities detected and the solutions recommended to correct them to consumers;
- (h) Take the necessary legislative and/or regulatory measures to make it a criminal offence to unlawfully produce, sell, import, possess, disseminate, offer, cede or make available computer equipment, programme, or any device or data designed or specially adapted to commit offences, or unlawfully generate or produce a password, an access code or similar computerized data allowing access to part or all of a computer system.

### 2. Computerized Data Breaches

States Parties shall take the necessary legislative and/or regulatory measures to make it a criminal offence to:

- (a) Intercept or attempt to intercept computerized data fraudulently by technical means during non-public transmission to, from or within a computer system;
- (b) Intentionally input, alter, delete, or suppress computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless of whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches;
- (c) Knowingly use data obtained fraudulently from a computer system;
- (d) Fraudulently procure, for oneself or for another person, any benefit by inputting, altering, deleting or suppressing computerized data or any other form of interference with the functioning of a computer system;
- (e) Even through negligence, process or have personal data processed without complying with the preliminary formalities for the processing;
- (f) Participate in an association formed or in an agreement established with a view to preparing or committing one or several of the offences provided for under this Convention.

### 3. Content-related offences

1. States Parties shall take the necessary legislative and/or regulatory measures to make it a criminal offence to:

- (a) Produce, register, offer, manufacture, make available, disseminate and transmit an image or a representation of child pornography through a computer system;
- (b) Procure for oneself or for another person, import or have imported, and export or have exported an image or representation of child pornography through a computer system;
- (c) Possess an image or representation of child pornography in a computer system or on a computer data storage medium;

- (d) Facilitate or provide access to images, documents, sound or representation of a pornographic nature to a minor;
- (e) Create, download, disseminate or make available in any form writings, messages, photographs, drawings or any other presentation of ideas or theories of racist or xenophobic nature through a computer system;
- (f) Threaten, through a computer system, to commit a criminal offence against a person for the reason that they belong to a group distinguished by race, colour, descent, national or ethnic origin or religion where such membership serves as a pretext for any of these factors, or against a group of persons which is distinguished by any of these characteristics;
- (g) Insult, through a computer system, persons for the reason that they belong to a group distinguished by race, colour, descent, national or ethnic origin, or religion or political opinion, if used as a pretext for any of these factors, or against a group of persons distinguished by any of these characteristics;
- (h) Deliberately deny, approve or justify acts constituting genocide or crimes against humanity through a computer system.

2. States Parties shall take the necessary legislative and/or regulatory measures to make the offences provided for under this Convention criminal offences. When such offences are committed under the aegis of a criminal organization, they will be punishable by the maximum penalty prescribed for the offence.

3. States Parties shall take the necessary legislative and/or regulatory measures to ensure that, in case of conviction, national courts will give a ruling for confiscation of the materials, equipment, instruments, computer programme, and all other devices or data belonging to the convicted person and used to commit any of the offences mentioned in this Convention.

#### 4. Offences relating to electronic message security measures

States Parties shall take the necessary legislative and/or regulatory measures to ensure that digital evidence in criminal cases is admissible to establish offences under national criminal law, provided such evidence has been presented during proceedings and discussed before the judge, that the person from whom it originates can be duly identified, and that it has been made out and retained in a manner capable of assuring its integrity.

### Article 30

#### Adapting Certain Offences to Information and Communication Technologies

##### 1. Property Offences

(a) States Parties shall take the necessary legislative and/or regulatory measures to criminalize the violation of property such as theft, fraud, handling of stolen property, abuse of trust, extortion of funds and blackmail involving computer data.

(b) States Parties shall take the necessary legislative and/or regulatory measures to consider as aggravating circumstances the use of information and communication technologies to commit offences such as theft, fraud, handling of stolen property, abuse of trust, extortion of funds, terrorism and money laundering.

(c) States Parties shall take the necessary legislative and/or regulatory measures to specifically include "by means of digital electronic communication" such as the Internet in listing the means of public dissemination provided for under the criminal law of States Parties.

(d) States Parties shall take the necessary criminal legislative measures to restrict access to protected systems which have been classified as critical national defence infrastructure due to the critical national security data they contain.

2. Criminal liability for legal persons

States Parties shall take the necessary legislative measures to ensure that legal persons other than the State, local communities and public institutions can be held responsible for the offences provided for by this Convention, committed on their behalf by their organs or representatives. The liability of legal persons does not exclude that of the natural persons who are the perpetrators of or accomplices in the same offences.

Article 31

Adapting Certain Sanctions to Information and Communication Technologies

1. Criminal Sanctions

(a) States Parties shall take the necessary legislative measures to ensure that the offences provided for under this Convention are punishable by effective, proportionate and deterrent criminal penalties.

(b) States Parties shall take the necessary legislative measures to ensure that the offences provided for under this Convention are punishable by appropriate penalties under their national legislation.

(c) States Parties shall take the necessary legislative measures to ensure that a legal person held liable pursuant to the terms of this Convention is punishable by effective, proportionate and deterrent sanctions, including criminal fines.

2. Other criminal sanctions

(a) States Parties shall take the necessary legislative measures to ensure that in the case of conviction for an offence committed through a digital communication medium, the competent court may hand down additional sanctions.

(b) States Parties shall take the necessary legislative measures to ensure that in the case of conviction for an offence committed through a digital communication medium, the judge may in addition order the mandatory dissemination, at the expense of the convicted person, of an extract of the decision, through the same medium, and according to modalities prescribed by the law of Member States.

(c) States Parties shall take the necessary legislative measures to ensure that a breach of the confidentiality of data stored in a computer system is punishable by the same penalties as those applicable for breaches of professional secrecy.

3. Procedural law

(a) States Parties shall take the necessary legislative measures to ensure that where the data stored in a computer system or in medium where computerized data can be stored in the territory of a State Party, are useful in establishing the truth, the court applied to may carry out a search to access all or part of a computer system through another computer system, where the said data are accessible from or available to the initial system.

(b) States Parties shall take the necessary legislative measures to ensure that where the judicial authority in charge of investigation discovers data stored in a computer system that are useful for establishing the truth, but the seizure of the support does not seem to be appropriate, the data as well as all such data as are required to understand them, shall be copied into a computer storage medium that can be seized and sealed, in accordance with the modalities provided for under the legislation of States Parties.

(c) States Parties shall take the necessary legislative measures to ensure that judicial authorities can, for the purposes of investigation or execution of a judicial delegation, carry out the operations provided for under this Convention.

(d) States Parties shall take the necessary legislative measures to ensure that if information needs so require, particularly where there are reasons to believe that the information stored in a computer system are particularly likely to be lost or modified, the investigating judge may impose an injunction on any person to preserve and protect the integrity of the data in his/her possession or under his/her control, for a maximum period of two years, in order to ensure the smooth conduct of the investigation. The custodian of the data or any other person responsible for preserving the data shall be expected to maintain secrecy with regard to the data.

(e) States Parties shall take the necessary legislative measures to ensure that where information needs so require, the investigating judge can use appropriate technical means to collect or record in real time, data in respect of the contents of specific communications in its territory, transmitted by means of a computer system or compel a service provider, within the framework of his/her technical capacities, to collect and record, using the existing technical facilities in its territory or that of States Parties, or provide support and assistance to the competent authorities towards the collection and recording of the said computerized data.

#### Chapter IV Final Provisions

#### Article 32 Measures to Be Taken at the Level of the African Union

The Chairperson of the Commission shall report to the Assembly on the establishment and monitoring of the operational mechanism for this Convention.

The monitoring mechanism to be established shall ensure the following:

(a) Promote and encourage the continent to adopt and implement measures to strengthen cyber security in electronic services and in combating cybercrime and human rights violations in cyberspace;

(b) Gather documents and information on cyber security needs as well as on the nature and magnitude of cybercrime and human rights violations in cyberspace;

(c) Work out methods for analyzing cyber security needs, as well as the nature and magnitude of cybercrime and human rights violations in cyberspace, disseminate information and sensitize the public on the negative effects of these phenomena;

(d) Advise African Governments on the way to promote cyber security and combat the scourge of cybercrime and human rights violations in cyberspace at the national level;

(e) Garner information and carry out analyses of the criminal behaviour of the users of information networks and computer systems operating in Africa, and transmit such information to competent national authorities;

(f) Formulate and promote the adoption of harmonized codes of conduct for the use of public officials in the area of cyber security;

(g) Establish partnerships with the Commission and the African Court on Human and Peoples' Rights, the African civil society, and governmental, intergovernmental and non-governmental organizations with a view to facilitating dialogue on combating cybercrime and human rights violations in cyberspace;

## 60. AFRICAN UNION CONVENTION ON CYBER SECURITY AND PERSONAL DATA PROTECTION (2014)

- (h) Submit regular reports to the Executive Council of the African Union on the progress made by each State Party in the implementation of the provisions of this Convention;
- (i) Carry out any other tasks relating to cybercrime and breaches of the rights of individuals in cyberspace as may be assigned to it by the policy organs of the African Union.

### Article 33 Safeguard Provisions

The provisions of this Convention shall not be interpreted in a manner that is inconsistent with the relevant principles of international law, including international customary law.

### Article 34 Settlement of Disputes

1. Any dispute arising from this Convention shall be settled amicably through direct negotiations between the States Parties concerned.
2. Where the dispute cannot be resolved through direct negotiation, the States Parties shall endeavour to resolve the dispute through other peaceful means, including good offices, mediation and conciliation, or any other peaceful means agreed upon by the States Parties. In this regard, the States Parties shall be encouraged to make use of the procedures and mechanisms for resolution of disputes established within the framework of the Union.

### Article 35 Signature, Ratification or Accession

This Convention shall be open to all Member States of the Union, for signature, ratification or accession, in conformity with their respective constitutional procedures.

### Article 36 Entry into Force

This Convention shall enter into force thirty (30) days after the date of the receipt by the Chairperson of the Commission of the African Union of the fifteenth (15<sup>th</sup>) instrument of ratification.

### Article 37 Amendment

1. Any State Party may submit proposals for the amendment or revision of this Convention.
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission of the African Union, who shall transmit same to States Parties within thirty (30) days of receipt thereof.
3. The Assembly of the Union, upon recommendation of the Executive Council of the Union, shall consider these proposals at its next session, provided all States Parties have been notified at least three (3) months before the beginning of the session.
4. The Assembly of the Union shall adopt the amendments in accordance with its Rules of Procedure.
5. The amendments or revisions shall enter into force in accordance with the provisions of Article 36 above.

### Article 38 Depositary



60. AFRICAN UNION CONVENTION ON CYBER SECURITY AND PERSONAL DATA PROTECTION (2014)

1. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the African Union.
2. Any State Party may withdraw from this Convention by giving written notice one (1) year in advance to the Chairperson of the Commission of the African Union.
3. The Chairperson of the Commission of the African Union shall inform all Member States of any signature, depositing of an instrument of ratification or accession to this Convention, as well as its entry into force.
4. The Chairperson of the Commission shall also inform the States Parties of requests for amendments or withdrawal from the Convention, as well as reservations thereon.
5. Upon entry into force of this Convention, the Chairperson of the Commission shall register it with the Secretary-General of the United Nations, in accordance with Article 102 of the Charter of the United Nations.
6. This Convention, drawn up in four (4) original texts in 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 certified true copies of the same to all Member States of the African Union in its official language.



## **AFRICAN ROAD SAFETY CHARTER**



61.

**AFRICAN ROAD SAFETY CHARTER**

**Adopted in Addis Ababa, Ethiopia, on 30 January 2016.**

**The Charter shall enter into force thirty days after the deposit of the fifteenth instrument of ratification.**

Preamble

*We, Member States of the African Union,*

*Considering* the Constitutive Act of the African Union, adopted on 11 July 2000 in Lomé, Togo, in particular Article 14, paragraph 1 (e), and Article 15, which entrusts the African Union Commission with a coordination mission in the transport, communication and tourism sectors,

*Considering* the Treaty Establishing the African Economic Community adopted in Abuja, Nigeria, in June 1991, in particular Article 61, that defines the steps that Member States should undertake to achieve a harmonious and integrated development of the continental transport and communications network in Africa,

*Considering* Decision AHG/Decl.1 (XXXVII) of the Assembly of Heads of State and Government of the Organization of African Unity adopted during the Thirty-seventh Ordinary Session of the Assembly in July 2001 in Lusaka, Zambia, establishing the New Partnership for Africa's Development (NEPAD) as the framework for Africa's development,

*Considering* the challenges arising from economic globalization and the need for Africa to implement, in a complete and effective manner, the Almaty Programme of Action of 2003, which underscores the United Nations programme for cooperation in transit transport for landlocked developing countries,

*Considering* Decision Assembly/AU/Dec.78 (V) of the Heads of State and Government of the African Union, meeting in July 2005 in Sirte, Libya, to include in the Millennium Development Goals (MDGs) the transport targets and indicators adopted in April 2005 in Addis Ababa, Ethiopia, by African Ministers responsible for transport and infrastructure, within the framework of poverty alleviation,

*Considering* the Declaration Assembly/AU/Decl.1 (XII) adopted at the Twelfth Ordinary Session of the Assembly of Heads of State and Government of the African Union held in Addis Ababa, Ethiopia, in February 2009, on the development of transport and energy infrastructure in Africa,

*Considering* resolution 64/255 adopted by the United Nations General Assembly on 2 March 2010 proclaiming 2011-2020 a Decade of Action for Road Safety as well as its related Action Plan,

*Considering* the Declaration Assembly/AU/Decl.2 (XVIII) adopted at the Eighteenth Ordinary Session of the Assembly of Heads of State and Government of the African Union held in Addis Ababa, Ethiopia, in January 2012 on the Programme for Infrastructure Development in Africa (PIDA) and its Priority Action Plan (PAP) and Institutional Architecture for Infrastructure Development in Africa (IAIDA),

*Considering* the Luanda Declaration AU/TPT/MIN/Decl. (II) and its Africa Action Plan for the Road Safety Decade 2011-2020 adopted by the Second Ordinary Session of the Conference of African Ministers responsible for Transport, in November 2011,

*Considering* Decision EX.CL/Dec.682 (XX) adopted by the Twentieth Ordinary Session of the Executive Council on the Report of the Second Ordinary Session of the Conference of African Ministers responsible for Transport endorsing the Luanda Declaration and Plans of Action,

## 61. AFRICAN ROAD SAFETY CHARTER (2016)

*Considering* the relevant international conventions in transport matters, especially in the areas of safety and security, the protection of the environment as well as facilitation of transport,

*Recognizing* the multisectoral dimension of road safety and the need for closer collaboration among the key stakeholders (transport, infrastructure, education, police, health, law enforcement) in improving the road safety situation on the continent,

*Committed* to improving transport infrastructure and health services in Africa so as to prevent road crashes and fatalities,

*Recognizing* the need to speed up the development of infrastructure and associated services in Africa and to put in place safer roads for Africa 's development,

*Deeply concerned* by the inordinately high rate of road crashes in Africa with most victims being pedestrians, cyclists and motorcyclists constituting largely young people and where the cost of road traffic accidents is nearly 2 per cent of GNP, indeed, a heavy toll with a significant adverse socio-economic impact on the continent,

*Hereby agree* as follows:

### Chapter I General Provisions

#### Article 1 Definitions

For the purposes of this Charter, the following definitions shall apply:

"AU" means the African Union;

"Charter" means the African Road Safety Charter;

"Commission" means the African Union Commission;

"Constitutive Act" means the Constitutive Act of the African Union;

"Non-motorized road users" means a user of the road that does not require a motor to generate energy for that purpose, and includes the use of animal-drawn or human-drawn carts, a pedestrian and a cyclist;

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

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

"States Parties" mean Member States, which have ratified or acceded to this Charter;

"Road infrastructure" means road facilities and equipment, including the road network, parking spaces, stopping places, draining system, cycle paths, bridges and footpaths;

"Road Safety Decade" means 2011-2020 as Decade of Action for Road Safety proclaimed by the United Nations General Assembly (Resolution 64/255) and by the Twentieth Ordinary Session of the AU Executive Council (Dec Ex.CL/Dec.682 (XX));

"Road safety impact assessment" means the evaluation process on road safety to be undertaken at all phases of design, construction and operation of road infrastructure;

## 61. AFRICAN ROAD SAFETY CHARTER (2016)

"Road safety lead agency" means the national agency in charge of road safety issue with cross-sectoral coordination responsibilities;

"Road traffic crash" means a collision or incident that may or may not lead to injury, occurring on a public road and involving at least one moving vehicle;

"Road traffic fatality" means a death occurring within 30 days of a road traffic crash;

"Road user" means a person using any part of the road system as a non-motorized or motorized transport user;

"Roadworthiness of vehicles" means the technical process of checking all safety technical parameters to ensure the safe use of a vehicle on the road;

"Safety audits" mean checks that are carried out at various stages of any road project to ensure that its design and implementation are consistent with safety principles, and to determine whether further design changes are needed to prevent crashes;

"Seat belt" means a vehicle occupant restraint, worn to protect an occupant from injury, ejection or forward movement in the event of a crash or sudden deceleration;

"UNECA" means United Nations Economic Commission for Africa;

"Vulnerable road users" mean road users most at risk in traffic, such as pedestrians, cyclists, motorcyclists and public transport passengers. Children, older people and disabled people may also be included in this category.

### Chapter II Objectives and Principles

#### Article 2 Objectives

1. The main objectives of the Charter are:
  - (a) To serve as a policy framework for road safety improvement in Africa;
  - (b) To serve as an advocacy tool and instrument for road safety improvement on the continent aimed at facilitating the creation of an enabling environment to drastically reduce the road traffic crashes.
2. The specific objectives are to:
  - (a) Facilitate the formulation of comprehensive road safety policies at country level;
  - (b) Speed-up implementation of national, regional and continental road safety programs;
  - (c) Contribute to the coordination of road safety in the continent;
  - (d) Promote better coordination of interventions by development partners in the road safety area;
  - (e) Enhance private sector, civil society organizations, non-governmental organizations participation in road safety issues; and
  - (f) Promote the harmonization of the collection, treatment and dissemination of road safety data.

## 61. AFRICAN ROAD SAFETY CHARTER (2016)

### Article 3 Principles

In implementing the provisions of this Charter, States Parties shall function in accordance with the following principles:

1. Self-reliance and a sense of responsibility by driving a robust and owned vision on road safety improvement;
2. Solidarity and sharing knowledge on road safety;
3. Subsidiarity between the African States Parties, Commission and other regional and continental institutions working towards the continent's development and integration;
4. Development partnership between the African stakeholders, the United Nations agencies and other international institutions working towards a fair human development in the world.

### Chapter III Road Safety Management

#### Article 4 Creation of Road Safety Lead Agencies

1. States Parties shall establish legally mandated national road safety lead agencies with cross-sectoral coordination responsibilities within three (3) years after the ratification or accession to this Charter.
2. The responsibilities of the lead agencies shall among others include:
  - (a) Policy advice to Government on matters of road safety across sectors; and
  - (b) Formulation and coordination of the implementation of road safety strategies.

#### Article 5 Institutional Strengthening of Road Safety Lead Agencies

States Parties shall provide institutional support to lead agencies through financial and human resources, political support and recognition to give them the requisite clout to perform their coordination functions.

#### Article 6 Road Safety Strategies

States Parties shall, through an inclusive, collaborative and consultative process, prepare road safety strategies with clear priorities, responsibilities, ambitious and feasible targets.

#### Article 7 Road Safety Data Management System

1. States Parties shall build capacity within lead agencies to enable them to create and master credible road safety data management system encompassing quality data collection, storage, collation, analysis, and reporting modules.



## 61. AFRICAN ROAD SAFETY CHARTER (2016)

2. Road safety data management system shall include national databases on vehicles and drivers, accidents, injuries and deaths, intermediate outcomes such as seat belt and helmet wearing rates and economic impacts of road safety injuries.

3. The data shall be robust, reliable, continentally harmonized and available for planning, research and development, monitoring and evaluation of progress made.

### Article 8 Road Safety Collaboration

1. States Parties shall promote collaborative efforts at national, regional and continental levels, aimed at improving effectiveness of road safety initiatives, knowledge sharing, and monitoring and evaluation.

2. States Parties shall also engage actively in international road safety partnerships.

3. States Parties shall create the enabling environment for private sector, civil society, non-governmental organizations, academic and research institution's participation in road safety activities.

4. States Parties shall commemorate the Africa Road Safety Day, every third Sunday of November.

### Chapter IV Safer Road and Mobility

#### Article 9 Functional Classifications

1. States Parties shall technically classify roads according to the functions they serve. Road designs must reflect the design norms and standards of their respective classification and intended functions.

2. States Parties shall ensure that infrastructure for non-motorized traffic is incorporated as priority requirements within the design of all classes of roads, especially in the urban and rural roads context.

#### Article 10 Construction Traffic Management

States Parties shall develop road safety management policies and principles to guide consultants and contractors during the process of road construction in order to ensure road safety.

#### Article 11 Road Safety Inspection

1. States Parties shall ensure that road safety Inspections are carried out as part of all maintenance processes.

2. The inspections shall take the form of a safety analysis and will involve, as a minimum, all road assets including, but not limited to, roadways, pavements, walkways, cycle paths, road furniture, signs, traffic signals or controls, road markings, crash barriers and streetlights.

3. The safety analysis shall also pay specific attention to areas considered as dangerous spots.

#### Article 12 Road Safety Audit

## 61. AFRICAN ROAD SAFETY CHARTER (2016)

1. States Parties shall introduce legislation and policies requiring road safety audits in all phases of design, construction and operation of road infrastructure.
2. States Parties shall establish formal road safety audit guidelines to address inter alia the credibility and independence of the Audit process.

### Article 13 National Road Design Manual

1. States Parties shall ensure that design manuals for roads and bridges are developed, reviewed and updated to ensure that they are fit for this purpose, cater for a safe design and reflect international best practices.
2. Road designs shall ensure that rest areas have been properly planned and incorporated in the national trunk road systems.

### Article 14 Vulnerable Road Users

States Parties shall ensure that the needs of vulnerable road users are adequately taken into account in the planning, design and provision of road infrastructure.

### Article 15 Safer Vehicle

1. States Parties shall adopt and enforce minimum standards of vehicles to ensure their roadworthiness.
2. States Parties shall formulate and enforce regulation on age limit of imported vehicles.
3. States Parties shall strengthen and enforce the mandatory periodic inspection of vehicles.
4. States Parties shall provide incentives for acquiring new vehicles that are environmentally and operationally safe. These incentives should apply also to mass transit vehicles and goods.
5. States Parties shall put in place legislation regulating the transportation of dangerous and hazardous goods.

### Article 16 Safer Road Users

1. States Parties shall strengthen the rules and regulations for training of drivers and issuing of driver licenses.
2. States Parties shall introduce a communication drive to educate and sensitize the population on the principal risks of road crashes.
3. States Parties shall introduce road safety in school curricula.
4. States Parties shall issue and enforce road safety legislation, particularly those related to speed control, control of driving while under the influence of alcohol and drugs, wearing seat belts, use of helmets and enhancing visibility and use of mobile telephone while driving.
5. States Parties shall formulate and enforce regulations on driving and rest hours for professional and all other drivers and introduce appropriate monitoring and enforcement mechanisms.

## 61. AFRICAN ROAD SAFETY CHARTER (2016)

### Article 17 Post-Crash Care

1. States Parties shall strengthen pre-hospital and post-crash care services in order to provide timely and appropriate care to road traffic-injured patients to minimize their effects and long-term disability.
2. States Parties shall establish Emergency Medical Services (EMS) coordinating centres.
3. States Parties shall implement third party motor vehicle insurance law to ensure EMS and rehabilitation of vehicle crash victims.
4. States Parties shall facilitate training (capacity-building) in injury emergency response services.
5. States Parties shall ensure the presence of emergency services at strategic locations on highways to attend to road users injured in highway accidents.

### Chapter V Financing, Monitoring and Evaluation

#### Article 18 Financing Modalities

1. States Parties shall recognize the socio-economic consequences of road accidents as a guiding principle in the allocation of financial resources for road safety. The expenditures on road safety should not be considered as a cost but as an investment.
2. States Parties shall prescribe the proportion of financial resources to be allocated for road safety interventions as part of road infrastructure development and maintenance.
3. States Parties shall identify sustainable sources of funding particularly internally for road safety.

#### Article 19 Conference of States Parties

1. A Conference of States Parties to the Charter is hereby established as the highest political decision-making body. The Conference of States Parties shall consist of Ministers responsible for road safety.
2. The Conference of States Parties shall adopt rules of procedures for itself and for any subsidiary body it may establish, as well as financial rules to determine in particular the financial participation of the Parties to Charter.
3. The Conference of States Parties shall:
  - (a) Provide strategic oversight, ensure effective implementation of the Charter and take all measures it deems necessary for the promotion of the objectives of the Charter;
  - (b) Promote the harmonization of appropriate policies, strategies and measures for increasing road safety in Africa;
  - (c) Consider and adopt, as appropriate, recommendations of the Secretariat;
  - (d) Consider the reports and activities of the Secretariat and take appropriate action in regard thereto;

## 61. AFRICAN ROAD SAFETY CHARTER (2016)

- (e) Consider and adopt amendments to this Charter; and
  - (f) Perform any other function consistent with the Charter or the Rules of Procedure of the Conference of States Parties.
- 4. The Conference of States Parties shall meet every three (3) years.
  - 5. The Commission shall serve as the Secretariat of the Conference of States Parties and shall coordinate the implementation of this Charter at the continental level.

### Article 20

#### Monitoring and Evaluation at the National level

- 1. States Parties shall develop and implement sustainable and accurate national databases on road crashes and enforce mandatory reporting.
- 2. States Parties shall build national capacity for data management on road safety.
- 3. States Parties shall establish baseline data on road safety.
- 4. States Parties shall prepare annual progress reports on road safety.
- 5. The lead road safety agency in each Member State shall coordinate national road safety data collection and be the custodian of national road safety management systems.
- 6. States Parties shall establish an evaluation process to review the progress and draw lessons from the implementation of their road safety programs.

### Article 21

#### Settlement of Disputes

- 1. Any dispute or difference arising between States Parties with regard to the interpretation, application and implementation of this Charter shall be settled by mutual consent between the States concerned, including through negotiations, mediation, conciliation or other peaceful means.
- 2. In the event of failure by the disputing parties to settle the dispute or difference in accordance with Article 21, paragraph 1, the disputing parties may, by mutual consent refer the dispute to:
  - (a) The African Court of Justice Human and Peoples' Rights, where applicable; or
  - (b) An Arbitration Panel of three (3) arbitrators whose appointment shall be as follows:
    - (i) Two (2) arbitrators each appointed by a party to the dispute; and
    - (ii) A third arbitrator who shall be President of the Panel and appointed by the Chairperson of the African Union Commission.
- 3. The decision of the Panel of Arbitrators shall be final and binding.

### Chapter VI

#### Final Provisions

## 61. AFRICAN ROAD SAFETY CHARTER (2016)

### Article 22 Popularization of the Charter

States Parties shall take all appropriate measures to ensure the widest possible dissemination of this Charter.

### Article 23 Safeguard Clause

1. No provision in this Charter shall be interpreted as derogating from the principles and values contained in other relevant instruments for the promotion of road safety in Africa.
2. Nothing in this Charter shall be construed as preventing a Party from taking any action, compatible with the provisions of the United Nations Charter or any other international instrument and that is limited to the exigencies of the situation, as it considers necessary to its external or internal security.

### Article 24 Signature, Ratification and Accession

1. This Charter shall be open to Member States of the Union for signature, ratification or accession.
2. The instrument of ratification or accession to the present Charter shall be deposited with the Chairperson of the Commission who shall notify Member States of the Union of the deposit of the instruments of ratification or accession.

### Article 25 Entry into force

1. This Charter shall enter into force thirty (30) days after the deposit of the fifteenth (15<sup>th</sup>) instrument of ratification.
2. The Chairperson of the Commission shall notify all Members States of the entry into force of the present Charter.
3. For any Member State acceding to the present Charter, the Charter shall come into force in respect of that State on the date of the deposit of its instrument of accession.

### Article 26 Reservations

1. A State Party may, when, ratifying or acceding to this Charter, submit in writing, a reservation with respect to any of the provisions of this Charter. Reservation shall not be incompatible with the object and purpose of this Charter.
2. Unless otherwise provided, a reservation may be withdrawn at any time.
3. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States Parties of the withdrawal accordingly.

### Article 27 Depositary

This Charter shall be deposited with the Chairperson of the Commission, who shall transmit a certified true copy of the Charter to the Government of each signatory State.

## 61. AFRICAN ROAD SAFETY CHARTER (2016)

### Article 28 Registration

The Chairperson of the Commission shall upon the entry into force of this Charter, register the Charter with the United Nations Secretary-General in conformity with Article 102 of the Charter of the United Nations.

### Article 29 Withdrawal

1. At any time after three years from the date of entry into force of this Charter a State Party may withdraw by giving written notification to the depository.
2. Withdrawal shall be effective one year after receipt of notification by the depository, or on such later date as may be specified in the notification.
3. Withdrawal shall not affect any obligation of the withdrawing State Party prior to the withdrawal.

### Article 30 Amendment and Revision

1. Any State Party may submit proposal(s) for the amendment or revision of this Charter. Such proposal(s) shall be adopted by the Conference of States Parties.
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit such proposals to the Conference of States Parties at least six months before the meeting at which it shall be considered for adoption.
3. Amendments or revisions shall be adopted by the Conference of States Parties by consensus or, failing which, by a two-thirds majority of States Parties.
4. The amendment or revision shall enter into force in accordance with the procedures outlined in Article 25 of this Charter.

### Article 31 Authentic Texts

This Charter is drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic.

**STATUTE OF THE AFRICA CENTRES FOR  
DISEASE CONTROL AND PREVENTION (AFRICA CDC)**





62.

**STATUTE OF THE AFRICA CENTRES FOR DISEASE CONTROL AND PREVENTION (AFRICA CDC)**

**Adopted in Addis Ababa, Ethiopia, on 30 January 2016.**

**Entered into force upon adoption.**

Preamble

*We, Member States of the African Union,*

*Whereas* our Declaration at the African Union Special Summit on HIV, TB and Malaria (ATM) in Abuja, Nigeria, in July 2013, in which we took cognizance of the need for an Africa Centre for Disease Control and Prevention (Africa CDC) to conduct life-saving research on priority health problems in Africa and to serve as a platform to share knowledge and build capacity in responding to public health emergencies and threats,

*Recalling* Decision Assembly/AU/Dec.499 (XXII) adopted at the Twenty-second Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, in January 2014 that stressed the urgency of establishing the Africa Centre for Disease Control and Prevention and requested the Commission to submit a report to the Assembly in January 2015 that will include the legal, structural and financial implications of the establishment of the Centre,

*Noting* the decision of the First African Ministers of Health Meeting jointly convened by the African Union Commission (the Commission) and World Health Organization (WHO) held in Luanda, Angola, from 16 to 17 April 2014, in which the Ministers committed themselves to the implementation of Decision Assembly/AU/Dec.499 (XXII) and requested the Commission and WHO, in collaboration with relevant stakeholders, to provide technical support towards the establishment of the Africa CDC,

*Cognizant* of the Decision of the Executive Council at its Sixteenth Extraordinary Session devoted to the Ebola Virus Disease (EVD) outbreak held on 8 September 2014, in which the Council decided, inter alia, to request the Commission to "Take all the necessary steps for the rapid establishment of an Africa Centre for Disease Control and Prevention (Africa CDC) pursuant to Assembly Decision AU/Dec.499 (XXII) on the establishment of the Centre, and ensure the functioning of the Africa CDC, together with the establishment of regional centres by mid-2015, including the enhancement of the early warning systems to address in a timely and effective manner all the health emergencies and the coordination and harmonization of health domestic regulations and interventions as well as the exchange of information on good experiences and best practices",

*Whereas* in Decision Assembly/AU/Dec.554 (XXIV) adopted at the Twenty-fourth Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, in January 2015 in which the Assembly endorsed the establishment of the Africa CDC and approved that the Coordination Office should initially be located at the Headquarters of the African Union in Addis Ababa, Ethiopia,

*Have agreed* as follows:

Section One  
General Provisions

Article 1  
Definitions

In this Statute, unless the context requires otherwise:

"Advisory and Technical Council" or "Council" means a body that provides technical advice to the Africa CDC;

## 62. STATUTE OF THE AFRICA CENTRES FOR DISEASE CONTROL AND PREVENTION (AFRICA CDC) (2016)

"African CDC" means the Africa Centers for Disease Control and Prevention;

"Assembly" means the Assembly of the African Union;

"AU" or "Union" means the African Union as established by the Constitutive Act;

"Board" means the Governing Board of the Africa CDC;

"Commission" means the African Union Commission;

"Constitutive Act" means the Constitutive Act of African Union;

"Development/External Partners" means the institutions and organizations including Africa private sector that promote public health and share the strategic objectives of Africa CDC;

"DSA" means the Department of Social Affairs of the Commission;

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

"IHR" means the International Health Regulations;

"Member States" means the Member States of the Union;

"PHEIC" means Public Health Emergency of International Concern;

"Policy organs" means the Assembly and Executive Council of the African Union;

"PRC" mean Permanent Representative Committees of the African Union;

"RECs" means the Regional Economic Communities;

"Regional Centers" means the Regional Collaborating Centers in Africa supporting the Africa CDC in the day-to-day execution of its strategic work plan;

"RHO" means the Region Health Organizations;

"Secretariat" means the Africa CDC's Secretariat;

"Specialized institutions and agencies of the African Union" means specialized institutions and agencies created or recognized as such by the African Union;

"Statute" means the present Statute of the Africa Centers for Disease Control and Prevention;

"STC" means the Specialized Technical Committee on Health, Population and Drug Control;

"WHO" means the World Health Organization.

### Article 2

#### Establishment and Status of the Africa Centres for Disease Control

1. The Africa CDC is hereby established as a specialized technical institution of the Union charged with the responsibility to promote the prevention and control of diseases in Africa.

## 62. STATUTE OF THE AFRICA CENTRES FOR DISEASE CONTROL AND PREVENTION (AFRICA CDC) (2016)

2. The Africa CDC derives its juridical personality from and through the African Union and shall:
  - (a) Enter into agreements within the applicable Rules and Regulations of the Union; and
  - (b) Acquire and dispose of immovable and movable property in accordance with the said Rules and Regulations.
3. In the discharge of its functions, the Africa CDC shall be guided by the Framework of Operations annexed to the present Statute as may be amended from time to time.

### Article 3 Objectives and Functions

In carrying out its functions the African CDC shall pursue the following strategic objectives which shall include:

- (a) The establishment of early warning and response surveillance platform to address in a timely and effective manner all health emergencies;
- (b) Supporting public health emergency preparedness and response;
- (c) Assisting Member States in collaboration with WHO and others stakeholders to address gaps in International Health Regulations compliance;
- (d) Supporting and/or conducting regional and country-level hazard mapping and risk assessments for Member States;
- (e) Supporting Member States in health emergencies response particularly those which have been declared PHEIC emergencies as well as the promotion and prevention of diseases through the strengthening of health systems, by addressing communicable and non-communicable diseases, environmental health and Neglected Tropical Diseases (NTDs);
- (f) Promoting partnership and collaboration among Member States to address emerging and endemic diseases and public health emergencies;
- (g) Harmonizing disease control and prevention policies and the surveillance systems in Member States; and
- (h) Supporting Member States in capacity-building in public health through, medium and long term field epidemiological and laboratory training programmes.

### Article 4 Guiding Principles

The guiding principles of the Africa CDC shall be:

1. **Leadership:** The Africa CDC is an institution that provides strategic direction and promotes public health practice within Member States through capacity-building, promotion of continuous quality improvement in the delivery of public health services as well as in the prevention of public health emergencies and threats;
2. **Credibility:** The Africa CDCs strongest asset is the trust it cultivates with its beneficiaries and stakeholders as a respected, evidence-based institution. It plays an important role in championing effective communication and information sharing across the continent;

## 62. STATUTE OF THE AFRICA CENTRES FOR DISEASE CONTROL AND PREVENTION (AFRICA CDC) (2016)

3. Ownership: The Africa CDC is an Africa-owned institution. Member States will maintain national-level ownership of the Africa CDC simultaneously through an advisory role in the shaping of Africa CDC priorities and through direct programmatic engagement;
4. Delegated authority: In the event of public health emergency on the continent with cross border or regional implications, the Africa CDC is mandated to deploy responders, in consultation with affected Member States to confirm and/or contain the emergency. Thereafter, the Africa CDC will take the appropriate steps to notify the Commission of its action;
5. Timely dissemination of Information: The Africa CDC leadership will regularly update Member States on ongoing actions based on Article 3, subparagraph (d), above and seek their support and collaboration. It should leverage collaboration and engage Member States in strong partnerships and networking;
6. Transparency: Open interaction and unimpeded information exchange between the Africa CDC and, Member States is inherent in the mission of the Africa CDC;
7. Accountability: The Africa CDC is accountable to Member States in its approach to governance and financial administration;
8. Value-addition: In every strategic aim, objective, or activity, the Africa CDC should demonstrate how its initiative adds value to the public health activities of Member States and other partners.

### Article 5 Framework

The Africa CDC is an Africa-owned institution that adds value and is highly credible and shall operate in collaboration with Regional Centers in the pursuit of its strategic objectives. The Africa CDC shall therefore operate within the following framework:

1. Development of a shared perception on the continent that national public health threats have an impact on regional security and economic viability;
2. Work with the WHO, other multi-sectoral partners such as African Union specialized institutions and agencies, external partners as well as Africa CDC Collaborating Regional centres to pursue the strategic objectives of the Centre;
3. Facilitate easy access to critical information by:
  - (a) Establishing a continental framework for data sharing;
  - (b) Improving data quality;
  - (c) Developing interchangeable data elements that prepare countries to respond to emergencies;
  - (d) Timely disseminating critical information to Member States;
4. Establish an emergency operation center (EOC) whose operation shall be guided by the Africa CDC Framework of Operations.

### Article 6 Seat of the Africa CDC

## 62. STATUTE OF THE AFRICA CENTRES FOR DISEASE CONTROL AND PREVENTION (AFRICA CDC) (2016)

1. The seat of the Africa CDC shall be at the Headquarters of the African Union in Addis Ababa, Ethiopia until the Assembly decides otherwise.
2. The Secretariat of the Africa CDC shall be located at the above Seat of the CDC.

### Article 7 Meeting

1. The meetings of the Africa CDC shall be held at its Seat, unless a Member State or cooperating partner offers to host any such session.
2. In the event that a meeting of the Africa CDC is held outside its seat; the host Member State or cooperating partner shall be responsible for all extra expenses incurred by the Secretariat as a result of holding the meeting outside the seat of Africa CDC.

## Section Two Governance and Management of the Africa CDC

### Article 8 Structure of the Africa CDC

The structure of the Africa CDC shall consist of:

- (a) Governing Board;
- (b) Advisory and Technical Council; and
- (c) Secretariat.

### Article 9 The Governing Board

1. The Board shall be the deliberative organ of the Africa CDC.
2. The Board shall meet at least once a year in ordinary session. It may meet in extraordinary sessions, subject to availability of funds and at the request of:
  - (a) The policy organs of the Union;
  - (b) The STC;
  - (c) Any Member State, upon approval of a two-thirds majority of Member States; or
  - (d) The Secretariat, in the event of outbreak of an epidemic or a health emergency, or such other emergency situations that necessitate the holding of a Board Meeting.

### Article 10 Composition of the Board

1. The Board, which is answerable to the STC shall be composed of fifteen (15) members, as follows:
  - (a) Ten (10) Ministers of Health representing the five Regions of the African Union, two per region nominated by their Region;

- (b) Two (2) representatives of the Commission (Social Affairs and Political Affairs of the African Union);
  - (c) Two (2) nominees of the Chairperson of the Commission representing the private sector and the Civil society in consultation with the Chairperson of the Board;
  - (d) One (1) representative of Regional Health Organizations on rotational basis.
2. The Legal Counsel or his/her representative shall attend the Board meetings to provide legal advice as may be required.
  3. The Director of the Africa CDC shall serve as the Secretary of the Board.
  4. The Board may invite such expertise as may be necessary.

Article 11  
Election and Term of Office

1. The ten members of the Board representing Member States shall be selected by their regions failing which they shall be elected by the Working Group on Health.
2. Where applicable, the term of office of members of this Board shall be a nonrenewable period of three (3) years for five Member States representatives of each AU region and a non-renewable period of two (2) years for the other five representatives of each AU region.
3. The term of office of the two members nominated by the Chairperson of the AU Commission and the one (1) member representing Regional Health organizations shall be two (2) years on rotational basis and nonrenewable.
4. The Board shall elect by a simple majority for a three (3) year non-renewable term a Chairperson of the Board from among the regional representatives of Member States, taking into account the Union's principle of regional rotation and gender equity.
5. The Board shall also elect, by a simple majority, for a nonrenewable two (2) year term, a Vice Chairperson of the Board also from among the regional representatives of Member States, taking into account the African Union's principle of regional rotation and gender equity.
6. The term of office of the ten (10) representatives of Member States of the Board shall be guided by the principle of succession based on equitable regional and gender representation.

Article 12  
Functions of the Board

The functions of the Board shall be to:

1. Provide strategic guidance to the Secretariat, in accordance with AU policies and procedures;
2. Examine decisions and/or proposals submitted by the Secretariat, and submit its recommendations to the STC;
3. Propose amendments to this Statute based on recommendations by the Secretariat;

## 62. STATUTE OF THE AFRICA CENTRES FOR DISEASE CONTROL AND PREVENTION (AFRICA CDC) (2016)

4. Ensure that the Africa CDC strategic agenda of disease surveillance, detection and response are integrated into continental development strategy;
5. Approve the designation and re-designation of the Regional Collaborating Centres based on the recommendation of the Regions and on the criteria stipulated in Article 24 of this Statute; and submit the same to the STC for noting;
6. Assist the Secretariat in resource mobilization;
7. Submit annual reports to the STC on the activities and achievements of the Africa CDC; and
8. Examine the Africa CDC Action plan, budgets, activity and reports, and recommend the same for approval.

### Article 13 Quorum and Decision-Making Procedures of the Board

1. The quorum for Board meetings and its decisions-making procedures shall be adopted in the Rules of Procedure of the Board and that of Council.
2. The Board shall adopt its own Rules of Procedure and that of the Council.

### Article 14 Advisory and Technical Council

The Council shall serve as an advisory and technical body to the Africa CDC.

### Article 15 Composition of the Council

1. The Council shall be composed of twenty-three (23) members as follows:
  - (a) Five (5) representatives of the Regional Collaborating Centres;
  - (b) Five (5) representatives of National Public Health Institutes or laboratories or related Institutions on rotational basis taking into account the AU Regions;
  - (c) Five (5) representatives of National Focal Persons of the Ministry in charge of Health in Member States on rotational basis taking into account the AU Regions;
  - (d) Two (2) representatives of African Health Networks on rotational basis;
  - (e) Two (2) representatives of the Union with specialized expertise (Medical Services Directorate and African Union Inter-African Bureau for Animal Resources);
  - (f) One (1) representative of Regional Health Organizations on rotational basis;
  - (g) Two (2) representatives of WHO; and
  - (h) One (1) representative of the World Organization for Animal Health.
2. Director of the Africa CDC shall serve as the Secretary of the Council.
3. The Advisory Council may invite such expertise from relevant stakeholders as necessary.

Article 16  
Term of Office of the Council

1. Members of the Advisory and Technical Council shall serve for a non-renewable term of three years, where applicable.
2. The Council shall elect its Chairperson and Vice-Chairperson by a simple majority and they shall serve for a non-renewable term of two (2) years.

Article 17  
Functions of the Advisory and Technical Council

The Advisory and Technical Council shall advise the Africa CDC on:

1. Emerging issues and other related matters of disease control and prevention;
2. The strategic plans and activities of the Africa CDC;
3. Opinions on advocacy and resources mobilization;
4. Different aspects of disease surveillance, detection and response on the African continent;
5. Research and study areas and merits of the scientific work of the Africa CDC.

Article 18  
Meetings, Quorum, and Decision-Making Procedures of the Advisory Council

1. The sessions of the Council, its quorum, and decision-making procedures shall be provided in its Rules of Procedure.
2. The Board shall adopt the Rules of Procedure of the Council.

Article 19  
Secretariat

1. The Secretariat shall be responsible for ensuring the implementation of the decisions of the policy organs of the Union, the STC, and the Board of the Africa CDC.
2. The Secretariat shall convene the meetings of the Governing Board, Advisory Council Meeting, or other meetings of the Africa CDC in consultation with the Board and the Council.
3. The Secretariat shall be headed by a Director and shall report to the Commission through the DSA.
4. The Director shall be the Chief Executive Officer of the Africa CDC.
5. The Director shall be appointed by the Commission on the approval of the Board, and shall serve for a period of four (4) years and renewable only once.
6. The Secretariat shall consist of administrative, professional and technical and support staff with competence in the various areas of the Africa CDC.
7. The EOC referred to in Article 5, paragraph 4, shall be part of the Secretariat.



8. The recruitment of secretariat staff members shall be conducted in conformity with relevant AU rules and procedure except for the appointment of the Director as stipulated in Article 19, paragraph 5.

9. AU rules, procedures, regulations and directives shall apply in the operation of the Africa CDC.

Article 20  
Functions of the Secretariat

The functions of the Secretariat shall include but not be limited to the following:

- (a) Assisting and supporting the Member States to develop appropriate disease surveillance, detection and response policies, programmes, systems and structures;
- (b) Providing technical support and capacity-building to the Member States for disease control and prevention;
- (c) Developing and Implementing strategic advocacy programme and stakeholder communication plans;
- (d) Networking with Member States, WHO, Regional Health Organizations, RECs, private sector organizations, Regional Health Networks, Partners CDCs, and other relevant stakeholders to attain the objectives of the Africa CDC;
- (e) Serving as the focal point in all matters of the Africa CDC;
- (f) Establishing information centers that guide Member States and other stakeholders and serving as the main source of information on disease control and prevention on the continent;
- (g) Undertaking research and studies in all the relevant areas of competence of the Africa CDC;
- (h) Promoting activities undertaken by the Africa CDC and disseminating the findings of the studies to Member States and other stakeholders: and
- (i) Preparing health map of Africa for communicable and non-communicable diseases.

Article 21  
Functions of the Director

1. The Director shall:
- (a) As the Chief Executive Officer be responsible for the overall management of the Africa CDC;
  - (b) Implement directives from the Board and the Commission as may be applicable;
  - (c) Prepare the program, financial and operational report of the Africa CDC;
  - (d) Draft and submit Africa CDC's budget, report on activities, rules of procedure and Plan of Action of the Africa CDC to the Board and the Commission for approval;
  - (e) Attend meetings of the Board and the Council and act as Secretary to the Board and Council;
  - (f) Collect and disseminate findings on disease control and prevention related research;

## 62. STATUTE OF THE AFRICA CENTRES FOR DISEASE CONTROL AND PREVENTION (AFRICA CDC) (2016)

- (g) Ensure the production and publication of the periodical bulletin of the Africa CDC;
  - (h) Perform any other functions as may be assigned in line with the objectives of the Africa CDC.
2. AU rules procedures, regulations, directives shall apply in the operation of the Africa CDC.

### Section Three Operations of the Africa CDC

#### Article 22 Transitional Provisions

The Chairperson of the Commission shall take necessary measures to establish an interim structure subject to the endorsement of the relevant PRC Subcommittee and appoint the required staff in order to facilitate the speedy establishment of the Africa CDC in accordance with the present Statute.

#### Article 23 Role of Department of Social Affairs

The Department of Social Affairs as the policy Department on the subject matter shall ensure synergy between the Africa CDC and the Commission.

#### Article 24 Africa CDC Regional Collaborating Centres

1. In the execution of its strategic work plan, Regional Collaborating Centres (RCC) shall support the Africa CDC. The collaboration and support of the Regional Collaborating Centres is to ultimately bring into reality an "Africa CDC without walls" that supports the continent at the point of need, rather than from a centralized, distant location.
2. At the time of the take-off of the Africa CDC, there shall be a minimum of five (5) RCC in order to ensure that each region within the continent is represented.
3. Each Regional Centre represents an existing entity that has met Africa CDC criteria in accordance with Article 24 for selection as a Regional Centre. The leadership of the RCC shall be designated as an Africa CDC Regional Coordinator within the Africa CDC organizational structure.
4. Each region shall be responsible for selecting their RCC in accordance with the criteria laid down in Article 25. The RCC shall be a government-owned institution.
5. The Africa CDC shall establish clear procedures for cooperation and collaboration with the RCCs.
6. A Regional Collaborating centre may also be a regional CDC where such Regional CDC exists.

#### Article 25 Selection of Regional Collaborating Centres

1. Each region shall select one Regional Collaborating Centre based on the following guiding principles and criteria:
  - (a) Guiding Principles:
    - (i) Synergy between Regional Center's internal goals and Africa CDC aims;

## 62. STATUTE OF THE AFRICA CENTRES FOR DISEASE CONTROL AND PREVENTION (AFRICA CDC) (2016)

- (ii) Good governance and respected leadership;
  - (iii) Sustainable funding and fiscal accountability;
  - (iv) History of collaboration between health sectors.
- (b) Criteria:
- (i) Technical proficiency and clear evidence of expertise in the Essential Public Health Operations (EPHO) that are directly relevant to the strategic objectives of the Africa CDC;
  - (ii) Clear synergy between the Regional Collaborating Centre's programme objectives and the Africa CDC strategic objectives, which results in greater collective impact and capacity-building;
  - (iii) Track record in mobilizing health workforce;
  - (iv) Laboratory capacity;
  - (v) Ability to represent regional constituency;
  - (vi) Track record of expertise in region-specific health hazards;
  - (vii) Willing and able to provide surge capacity to other countries if country capacity is lacking, particularly during public health emergencies; and
  - (viii) A Collaborating Regional Center shall either be:
    - a. An existing government institution; or
    - b. An institution which provide substantive support to government health institutions.
2. The Governing Board shall at periodic intervals of not more than five (5) years evaluate the performance of RCC. Pursuant to the evaluation, the Governing Board may replace a non-performing or underperforming RCC with a more suitable Regional Center.

### Article 26

#### Cooperation with Member States

1. In carrying out its functions, the Africa CDC shall dedicate necessary resources to building partnerships aimed at improving the effectiveness of its operations.
2. The Africa CDC shall develop partnerships with Ministries of Member States responsible for health and agencies that deal with disease control and prevention which shall serve as national contact points.
3. The Africa CDC may be requested by the Member States, the RECs, the Commission, other organs of the Union, and international organizations to provide scientific or technical assistance in any field within its competence.

### Article 27

#### Cooperation with WHO

The Commission shall pursue closer collaboration with the WHO on the operationalization of the Africa CDC. The Africa CDC shall establish clear procedures for cooperation with the WHO in accordance with established procedures of the Commission. The Africa CDC and WHO shall develop a clear framework for collaboration to avoid overlap in their support to Member States to fulfill the objectives on disease control and prevention as well as the implementation of the Africa CDC's objectives and strategies.

Article 28  
Cooperation with Other Stakeholders

The Africa CDC shall maintain working ties with Development partners and stakeholders, particularly with the Regional Health Organizations, RECs, private sector, civil society organizations, other organs of the Union and the non-African CDCs in pursuit of its strategic objectives.

Article 29  
Privileges and Immunities of the Africa CDC

1. The privileges and immunities of the Africa CDC shall be governed by Host agreements negotiated with Host Country and applicable international law.
2. The Africa CDC and its staff shall enjoy the privileges and immunities stipulated in the General Convention on the Privileges and Immunities of the Organization of African Unity and the Vienna Convention on Diplomatic Relations.

Section Four  
Financial Arrangements

Article 30  
Budget and Contribution

1. The budget of the Africa CDC shall be borne by the African Union and shall be within the Union Budget.
2. Other Sources of funding the Africa CDC may include:
  - (a) Voluntary contributions from Member States;
  - (b) Contributions from development partners of the Union and the Commission;
  - (c) Contributions from the private sector; and
  - (d) Any other source of funding in accordance with AU Rules.
3. The budget calendar of the Africa CDC shall be that of the Union.
4. The Africa CDC shall prepare and submit its budget to the relevant policy organ of the African Union for approval.

Section Five  
Final Provisions

Article 31  
Working Languages

The working languages of the Africa CDC shall be the same as those of the African Union.

Article 32  
Amendment

1. The present Statute may be amended upon the recommendation of:
  - (a) The Executive Council;
  - (b) The STC; or
  - (c) The Board or the AUC.
2. Any amendment to the Statute shall enter into force upon its adoption by the Assembly.

Article 33  
Entry into Force

The present Statute shall enter into force upon its adoption by the Assembly.



# **STATUTE OF THE AFRICAN UNION SPORTS COUNCIL**





63.

**STATUTE OF THE AFRICAN UNION SPORTS COUNCIL**

**Adopted in Addis Ababa, Ethiopia, on 30 January 2016.**

**Entered into force upon adoption.**

Preamble

*We, Member States of the African Union,*

*Recalling* the objectives and principles enshrined in the Constitutive Act of the African Union,

*Also recalling* the Executive Council Decision EX.CL/Dec.680 (XX) of January 2012, which dissolved the Supreme Council and established the African Union Sports Council,

*Whereas* sport, as an element of culture and a major phenomenon in contemporary civilization, plays a powerful role in human upbringing, the strengthening of national cohesion and the rapprochement of peoples,

*Whereas* Member States have, in this respect, increased their efforts to integrate sport and sport for development as well as physical activities in their respective development plans,

*Whereas* Member States are concerned over the need to actively contribute toward the establishment of a New International Sports Order that is balanced and democratic,

*Whereas* Member States are resolute to pursue and intensify the campaign against all forms of racial, religious and political discrimination in sports,

*Whereas* in order to safeguard and ensure the gradual triumph of these values as well as to foster sports development in Africa, there is a strong need for unity, close and dynamic cooperation between African States,

*Whereas* Member States are further convinced that in order to achieve that goal, it is necessary to establish a Specialized Technical Office to direct, coordinate and superintend activities of the entire African Sport Movement,

*Now hereby agree* as follows:

Article 1

Definitions

For the purpose of the present Statute:

"AASC" means Association of African Sports Confederations;

"Africa Sports Movement" means a forum comprised of the African Union, the Association of African Sports Confederations and Association of National Olympic Committees of Africa and other Stakeholders;

"African Games" means the Multi-Sport discipline event held after four (4) years;

"AGTC" means African Games Technical Committee;

"ANOCA" means Association of National Olympic Committees of Africa;

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

### 63. STATUTE OF THE AFRICAN UNION SPORTS COUNCIL (2016)

"AUSC" means African Union Sports Council;

"Chairperson" means the Chairperson of the AU Commission unless otherwise specified;

"Commission" means the African Union Commission;

"Committee" means a Technical Committee of the AUSC;

"Constitutive Act" means the Constitutive Act of the African Union;

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

"Executive Secretary" means the Executive Secretary of AUSC;

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

"Member" means African Sport Movement (Member of AUSC);

"Representative" means the duly accredited representative of a member of AUS;

"STC" means the Specialized Technical Committee on Youth, Culture and Sports as established under Article 14 of the Constitutive Act;

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

#### Article 2 Establishment and Headquarters

1. The AUSC is hereby established as a Specialized Technical Office of the Union.
2. The Headquarters of the AUSC shall be in Yaoundé, Republic of Cameroon, unless otherwise decided by the Assembly.
3. A Headquarters Agreement shall govern the relations between the Union and the Host Country.

#### Article 3 Purpose

The AUSC shall be responsible for the coordination of the Africa Sports Movement and the forum for concerted action between Member States for the promotion and development of Sports and development through Sport in Africa.

#### Article 4 Composition

The AUSC shall be composed of Member States, the African Union Sport Development Regions, ANOCA, AASC, and other continental sports bodies recognized by AUSC.

#### Article 5 Functions

The AUSC shall:

### 63. STATUTE OF THE AFRICAN UNION SPORTS COUNCIL (2016)

- (a) Service the sport policy development needs of the AU;
- (b) Promote sport as a fundamental human right to be enjoyed by all;
- (c) Promote and defend sport development and development through sport;
- (d) Grant membership of the AUSC subject to approval by the STC;
- (e) Ensure that Member States fund sport development;
- (f) Ensure that Member States develop sport policies, programmes, systems and structures;
- (g) Facilitate the development of relevant sport structures in Member States and the alignment of national sport policies and strategies to the AU Sport Policy Framework and other continental sport policies to achieve harmonization and coordination of sports development;
- (h) Facilitate sport development on the African continent in terms of skills development, social interaction, and communication of relevant information on programmes in combating HIV and AIDS and anti-doping programmes, as well as to promote person-to-person development programmes;
- (i) Enhance the profile and status of the African Games to attract high profile athletes to ensure that it becomes a qualifier for the Olympic Games and other international events;
- (j) Increase the revenue of the African Games and institute transparent mechanisms regarding the proceeds raised from the marketing and sponsorship of the African Games;
- (k) Promote cooperation with international sports organizations with a view to solicit sponsorship, funding and training of sportsmen and women;
- (l) Ensure that ANOCA and AASC play their assigned roles within the new African Union Sports Council;
- (m) Promote and defend a culture of good governance, democratic principles and institutions, popular participation, human rights and freedoms as well as social justice in the domain of sport;
- (n) Promote, advocate and defend a culture of gender equality in the domain of sport;
- (o) Promote and strengthen the institutional, human and operational capacities of African civil society.

#### Article 6 Working Languages

The working languages of AUSC shall be those of the Union.

#### Article 7 Emblem and Flag

1. The emblem of the AUSC shall represent the outline of the African Union emblem with eight rings and a flame superimposed on it.
2. The flag of the AUSC shall be that of the African Union stamped with the AUSC emblem.

#### Article 8

Organs of the AUSC

The AUSC shall be governed by the following bodies:

- (a) The STC as provided for in its rules of Procedure;
- (b) The Sport Advisory Board;
- (c) The Technical Committees;
- (d) The African Union Sport Development Regions;
- (e) The Secretariat of the AUSC.

Article 9

Composition of the Sport Advisory Board

The Sport Advisory Board shall be composed as follows:

- (a) Chairpersons of the five (5) AU Sports Development Regions at the expert level;
- (b) Africa Union Commission represented by the Department responsible for Sport;
- (c) Executive Secretary of the AUSC;
- (d) Two (2) representatives from ANOCA;
- (e) Two (2) representatives from AASC;
- (f) Chairpersons of the Technical Committees.

Article 10

Functions of the Sport Advisory Board

The Sport Advisory Board shall:

- (a) Consider different aspects of sport on the continent;
- (b) Recommend strategic/activity plans for the Commission and Regional Economic Communities;
- (c) Advise the STC on emerging issues and other matters related to sport;
- (d) Advise the Commission on the implementation of decisions by Member States;
- (e) Make appropriate recommendations on the Host Country of the African Games for consideration by the STC;
- (f) Recommend members of the Technical Committees to the STC for consideration;
- (g) Carry out any other functions assigned to it by the STC.

Article 11

Meetings of the Sport Advisory Board

## 63. STATUTE OF THE AFRICAN UNION SPORTS COUNCIL (2016)

1. The Sport Advisory Board shall meet twice a year in ordinary session at the Headquarters of AUSC or in any other Member State upon the invitation of the Member State.
2. In the event the session is held outside the Headquarters of the AUSC, the Host Country shall be responsible for all extra expenses incurred by the AUSC as a result of holding the session outside the Headquarters.
3. At the request of two thirds of its members, the Chairperson of the Sport Advisory Board shall convene an extraordinary session on a specific agenda communicated to all members at least fifteen (15) days in advance.
4. Each Member of the Sport Advisory Board shall bear the cost of his/her participation in all meetings of the Board.

### Article 12 Quorum of the Sport Advisory Board

A simple majority of members of the Sport Advisory Board shall be required to constitute a quorum for any ordinary or extraordinary session.

### Article 13 Decision-Making of the Sport Advisory Board

1. Decisions of the Sport Advisory Board shall be taken by a simple majority of members present.
2. Each member shall have one vote.
3. In the event of a tie, the Chairperson of the Sport Advisory Board shall have the casting vote.

### Article 14 Bureau of the Sport Advisory Board

1. The Sport Advisory Board shall, on the basis of rotation and geographical distribution, elect, after due consultations, a Chairperson, a Vice-Chairperson and a Rapporteur.
2. The Bureau shall be elected by a simple majority.
3. The Members of the Bureau shall hold office for a period of two (2) years renewable only once.

### Article 15 Functions of the Chairperson of the Sport Advisory Board

1. The Chairperson shall:
  - (a) Preside over all the proceedings of the ordinary and extraordinary sessions;
  - (b) Open and close the sessions;
  - (c) Submit for approval the records of the sessions;
  - (d) Guide the proceedings;
  - (e) Submit to a vote matters under discussion and announce the results of the vote taken;

- (f) Rule on points of order;
  - (g) Ensure order and decorum during the proceedings of the sessions.
2. In the absence of the Chairperson or in case of a vacancy, the Vice-Chairperson or in his/her absence, the Rapporteur shall act as the Chairperson.
3. The provisions of the present article are applicable to the Chairperson of the Bureau of the Technical Committees and ad hoc working group, which may be set up by the Board and the Technical Committees.

Article 16  
Technical Committee on Sport for Development

1. The Technical Committee on Sport for Development shall consist of the following members:
- (a) A representative from each AU Sport Development region;
  - (b) A representative from ANOCA;
  - (c) A representative from AASC;
  - (d) A representative from AUSC Secretariat;
  - (e) A representative from Women in Sports Associations;
  - (f) A representative from Sport for Development and Peace Organization;
  - (g) A representative from School and Tertiary Sport Association;
  - (h) A representative from Association of African Paralympic;
  - (i) A representative from African Region Anti-Doping;
  - (j) A representative from Sport for All;
  - (k) A representative from Military Sport (OSMA).
2. The Sport Advisory Board may review the composition of this Technical Committee.
3. The Technical Committee on Sport for Development shall elect from among its members a Chairperson who shall be a representative of one of the AU Sport Development Regions for a term of two (2) years on the basis of rotation and geographical distribution. The Chairperson shall be assisted by a Vice-Chairperson and a Rapporteur.
4. The Technical Committee on Sport for Development shall carry out the following functions:
- (a) Facilitate training of professionals in sport science, medicine, anti-doping and related fields of study;
  - (b) Advocate and promote anti-doping programmes on and off the field of play;
  - (c) Conduct education and awareness campaigns on communicable/transmittable diseases;

### 63. STATUTE OF THE AFRICAN UNION SPORTS COUNCIL (2016)

- (d) Ensure and monitor inclusivity and equity in sports including promoting the involvement of women, the girl child and people with disabilities not only as athletes but also as technical officials and administrators;
- (e) Design and ensure the development and the implementation of sport development and educational programmes, for women, the girl child and people with disabilities;
- (f) Advocate for local manufacturing of sport equipment;
- (g) Create awareness and campaign for the manufacture of products required by people with disabilities;
- (h) Design programmes for sport and development through sport and ensure that these are implemented;
- (i) Develop sport education and accreditation criteria and systems to be implemented on the continent;
- (j) Focus on crisis areas affected by man-made or natural calamities in Africa to produce strategic plans for their introduction of Sport and Recreation for victims in these areas;
- (k) Aim at the achievement of Agenda 2063 through sport;
- (l) Develop continental sport law and Policy; and
- (m) Carry out any other functions assigned to it by the Sport Advisory Board or the STC.

#### Article 17

##### Technical Committee for Finance

1. The Technical Committee for Finance shall be composed as follows:
  - (a) One (1) representative from each of the five (5) development regions;
  - (b) AUSC Executive Secretary;
  - (c) ANOCA representative;
  - (d) AASC representative;
  - (e) One (1) AUSC Finance Officer.
2. The Sport Advisory Board may review the composition of this Technical Committee.
3. The Technical Committee on Finance shall elect from among its members a Chairperson who shall be a representative of one of the AU Sport Development Regions for a term of two (2) years on the basis of rotation and geographical distribution. The Chairperson shall be assisted by a Vice-Chairperson and a Rapporteur.
4. The functions of the Finance Technical Committee shall be to:
  - (a) Consider financial matters for the AUSC, including income from the African Games to be paid to the AUSC;
  - (b) Receive and consider statements from the AUSC;
  - (c) Consider the operational and programmes budgets of the AUSC;
  - (d) Mobilize resources;

- (e) Carry out any other functions assigned to it by the Sport Advisory Board or the STC.

Article 18

Technical Committee for the African Games

1. The African Games Technical Committee shall be composed as follows:
  - (a) AUSC Executive Secretary;
  - (b) ANOCA representative;
  - (c) Representative of the Commission Department responsible for Sport;
  - (d) AASC representative;
  - (e) One (1) representative of each of the five (5) regions at expert level;
  - (f) Seven (7) experts recommended by the Executive Secretary of AUSC and appointed by the Sport Advisory Board.
2. The Sport Advisory Board may review the composition of this Technical Committee.
3. The Technical Committee for the African Games and Marketing shall elect from among its members a Chairperson who shall be a representative of one of the AU Sport Development Regions for a term of two (2) years on the basis of rotation and geographical distribution. The Chairperson shall be assisted by a Vice-Chairperson and a Rapporteur.
4. The functions of the Technical Committee for the African Games shall be to:
  - (a) Propose objective criteria for the evaluation of bidding files pertaining to the organization of the African Games;
  - (b) Establish a standing follow up/evaluation mechanism for the preparations of the Games;
  - (c) Update the Technical Regulations and ensure their consistency with the General Regulations of the African Games and consider and approve the Games manuals;
  - (d) Establish and implement effective systems to generate adequate revenue for the successful hosting of the African Games;
  - (e) Recommend guidelines for bidding and hosting of the African Games;
  - (f) Report on the preparation, organization and hosting of the African Games by the Local Organizing Committee (COJA);
  - (g) Review and consider the Memorandum of Understanding (MOU) between AUC, ANOCA and AASC on the organization and management of the African Games;
  - (h) Approve the required technical, administrative and operational rules, policies, structures, plans, manuals and programmes as well as provide technical advice on their execution, for the successful hosting of the African Games in line with international standards;



### 63. STATUTE OF THE AFRICAN UNION SPORTS COUNCIL (2016)

- (i) Ensure that the African Games are organized and hosted in accordance with the African Games Protocols;
- (j) In collaboration with the Sports Confederations, approve equipment and materials, upon recommendation by competent Confederations;
- (k) Oversee coordination meetings during the African Games;
- (l) Provide strategic leadership on all aspects of the African Games and provide interface to ANOCA, AASC other sports confederations and agencies;
- (m) Work closely with ANOCA and AASC to ensure successful preparation and hosting of the African Games;
- (n) Promote the African Games as the pinnacle and the most visible African Sport event of African Sport Architecture (ASA) and motivation for Africa's elite athletes;
- (o) Ensure that the African Games brand is consistent with the expectations of stakeholders inclusive of continental and international federations, Africa Union Commission, Member States, sponsors, and members of the African Sport Movement;
- (p) Develop and implement strategies, policies and best practices for the African Games in line with international sporting standards;
- (q) Develop and implement a comprehensive Marketing plan to ensure growth of the African Games brand in the continent and beyond;
- (r) Define benchmarks of the African Games legacy and work together with the Local Organizing Committee (COJA), host cities, governments and the relevant authorities to identify appropriate legacy objectives and desired impacts;
- (s) Define athlete and officials' qualifying and performance standards for the African Games in line with International Federations trends and standards;
- (t) Ensure a professional coordinated and management process from the bidding phase, through planning and delivery of the African Games contributing to enhancing the profile of the Architecture for Sport in Africa;
- (u) Promote and encourage best practices, build on the success of the Games, creative solutions and facilitate knowledge transfer to future host countries of the African Games;
- (v) Manage and supervise broadcasting and media rights and ensure maximum coverage of the Games in Africa and beyond, execute international marketing of the Games, monitor and assist COJA in planning and executing its Games Marketing Programme;
- (w) Stipulate Games participating fees and all the stipends within the COJA system;
- (x) Ensure the Games trademarks and/or copyrights are registered and liaise with host government and host city authorities for adequate and legal protection of the trademarks and of the Games sites;
- (y) Appoint the technical Disciplinary Committee per each sport code and be the final Board of Appeal;
- (z) Be the disciplinary committee of the Games with the Secretariat being the Ultimate Board of Appeal;
- (aa) Oversee Games Committees and provide proper guidance and assistance to ensure effective execution of the committees' duties;

- (bb) Ensure that the closure of the Games is properly done within the stipulated timeframe as provided for in the Protocol Agreement;
- (cc) Recommend deposit fee to be paid by the African Games host country;
- (dd) Carry out any other functions assigned to it by the Sport Advisory Board or the STC.

Article 19  
Meetings of the Technical Committees

1. The Technical Committees shall meet in ordinary session once a year at the Headquarters of AUSC or in any other Member State, upon invitation of the Member State.
2. In the event the session is held outside the Headquarters of the AUSC, the Host Country shall be responsible for all extra expenses incurred by the AUSC as a result of holding the session outside the Headquarters.
3. At the request of two thirds of its members, the Chairperson of a Technical Committee shall convene an extraordinary session on a specific agenda communicated to all members at least fifteen (15) days in advance.
4. Each Member of the Technical Committees shall bear the cost of his/her participation in all meetings of the Committee.

Article 20  
Quorum for the Technical Committees

A simple majority of members of technical committees shall be required to constitute a quorum for any ordinary or extraordinary session.

Article 21  
Decisions of Technical Committees

1. Decisions of Technical Committees shall be taken by a simple majority of the members present.
2. Each member shall have one vote.
3. In the event of a tie, the Chairperson of a Technical Committee shall have the casting vote.

Article 22  
Structure of the AUSC Secretariat

1. The Secretariat shall consist of an Executive Secretary who shall be assisted by the necessary administrative, professional and technical staff.
2. The Executive Secretary shall be appointed by the Chairperson of the Commission in accordance with the Staff Rules and Regulations of the African Union, upon recommendation of the Sport Advisory Board.
3. The staff members of the Secretariat shall be appointed in accordance with the Staff Rules and Regulations of African Union.
4. The structure of the Secretariat shall be determined in accordance with the rules and procedures in the African Union.

### 63. STATUTE OF THE AFRICAN UNION SPORTS COUNCIL (2016)

#### Article 23

##### Functions of the Executive Secretary

1. The Executive Secretary shall:
  - (a) Oversee the management and administration of the AUSC Secretariat;
  - (b) Attend the meetings of the Sport Advisory Board and the STC;
  - (c) Prepare, circulate and keep the records of all meetings of the Sport Advisory Council;
  - (d) Submit a regular progress report and financial statements to the Sport Advisory Board and STC.
2. The Executive Secretary shall be answerable to the Department responsible for Sport.

#### Article 24

##### Composition of the African Union Sport Development Regions

1. The African Union Sport Development Regions shall be aligned to the geographical distribution of the African Union as approved by the Executive Council and endorsed by the Assembly of the Union.
2. There shall be five (5) African Union Sport Development Regions, namely, Northern, Western, Central, Eastern, and Southern, composed as follows:
  - (a) Region 1 (Northern Africa): Algeria, Egypt, Libya, Mauritania, Tunisia and Saharawi Arab Democratic Republic;
  - (b) Region 2 (West Africa): Benin, Burkina Faso, Capo Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo;
  - (c) Region 3 (Central Africa): Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of Congo, Equatorial Guinea, Gabon and Sao Tome & Principe;
  - (d) Region 4 (Eastern Africa): Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Mauritius, Rwanda, Seychelles, Somalia, South Sudan, Sudan, Tanzania and Uganda;
  - (e) Region 5 (Southern Africa): Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe.

#### Article 25

##### Organs of the African Union Sports Development Regions

1. Each African Union Sport Development Region shall have the following organs:
  - (a) The Conference of Ministers of Sport of the Region;
  - (b) Executive Committee of Experts from Member States of the Region; and
  - (c) The Secretariat of the AU Sport Development Regions (Regional Secretariat).
2. Each region shall develop its own strategies, structures, programmes and resource mobilization mechanisms within the objectives and mandate of the AUSC.

3. The representatives of AUSC Secretariat, ANOCA, Sport Confederations and Associate Sports Bodies will attend the meetings and activities of the organs of the AU Sport Development Regions as members in an advisory capacity.

4. The Regional Secretariat shall be the administrative structure of the region responsible for carrying out the tasks inherent in the missions assigned to the regions and shall submit annual report to the AUSC. Each region will decide on the Host Country of the Permanent Regional Secretariat.

Article 26  
The African Games

1. For purposes of promoting high performance in African sports and enhancing sporting and cultural exchanges between Member States, a multi-disciplinary sport competition known as the "African Games" is hereby established under the ownership and patronage of the African Union.

2. The African Games shall be organized under the patronage of the International Olympic Committee (IOC) which recognizes the said Games as Continental Games for the African continent.

3. The African Games shall be the exclusive property of the African Union which shall hold all rights relating to their organization, exploitation, broadcast and reproduction by any means whatsoever.

4. The African Games shall be celebrated once every four (4) years and one (1) year before the Olympic Games.

5. The maximum duration of the Games shall be fifteen (15) days.

6. The organization of the African Games shall be governed by rules and regulations adopted by the STC and in conformity with the Olympic Charter.

7. The AUSC may partner with ANOCA and AASC in the organization and management of the African Games.

8. The STC shall recommend for designation by the Assembly, a Member State to host the African Games.

9. An Agreement outlining the organizational modalities for each edition of the African Games shall be concluded between the Union and the Host Country.

Article 27  
Cooperation

1. For purposes of enhancing the development of sports and Olympism in Africa and consolidating cohesion among the various structures of the African Sports Movement, the AUSC may recognize as a confederation or a continental association, organizations that either administer one or several sports disciplines in Africa or whose statutes and activities are in conformity with either the AUSC Statute\* or the Olympic Charter. In such case, AUSC may establish cooperation relations with them.

2. AUSC may grant ANOCA and African Sports Confederations political support and material assistance necessary for the development of their activities.

3. ANOCA, AASC and associations under their jurisdiction shall recognize the authority and primacy of AUSC over the entire African Sports and Olympic Movement.

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\* Editor's note: The term "Statutes" has been replaced by the singular "Statute".

Article 28  
Budget

1. The operational budget of AUSC shall constitute an integral part of the regular budget of the Union.
2. AUSC may mobilize resources from extrabudgetary sources in accordance with the AU Financial Rules and Regulations.
3. For purposes of attaining its objectives, AUSC shall have a budget broken down as follows:
  - (a) Operational budget;
  - (b) Programme budget; and
  - (c) African Sports Development Funds (ASDF):
4. The budget of AUSC shall be submitted for approval to the policy organs of the Union in accordance with the relevant provisions of the AU Financial Rules and Regulations.

Article 29  
African Sports Development Funds

The African Sports Development Funds (ASDF) is hereby established and it shall be funded through:

- (a) Voluntary contributions from Member States;
- (b) Sundry commissions and fees accruing from sports events;
- (c) Grants in cash or kind from Governments, national or international institutions desirous to contribute toward sports development in Africa;
- (d) Revenue from the African Games Deposit Fee and marketing and sponsorship of the Games.

Article 30  
Expenditure and Accounting

1. Revenue of AUSC shall cover:
  - (a) Expenses incurred from all AUSC activities;
  - (b) Recurrent expenses of the Secretariat;
  - (c) Assistance that AUSC may grant under varied forms and more especially as subsidies to AU Sports Development Regions, ANOCA, African Sports Confederations and to any other organization that contribute toward the enhancement of sports in Africa;
  - (d) Training, study and research grants awarded to nationals of Member States.
2. Revenue and expenditure shall be recorded in one or several accounts opened on behalf of the AUSC in one or several banks established in the Host Country of the Organization's Headquarters.
3. The Revenue and expenditure of the AUSC shall be governed by the Financial Rules and Regulations of the Union.

Article 31  
Transitional Arrangements

Following the adoption of this Statute by the Assembly, the Chairperson of the Commission, in close collaboration and in consultation with the Host Country and the Members of the Bureau of the STC shall take the necessary measures to establish an interim structure and appoint the required staff in order to facilitate the speedy establishment of AUSC in accordance with the present Statute.

Article 32  
Amendments

1. The present Statute may be amended by the Assembly. Any Member State proposing an amendment shall submit the proposed amendment, in writing to the Chairperson of the Commission who shall circulate the proposed amendments to all Member States three (3) months before the Assembly's session that will consider the proposed amendment.
2. The amendment shall enter into force upon adoption by the Assembly.

Article 33  
Entry into Force

1. This Statute shall enter into force upon its adoption by the Assembly of the Union.
2. This Statute, of which the Arabic, French, English and Portuguese texts are equally authentic, shall be deposited with the Chairperson of the Commission.

# **STATUTE OF THE AFRICAN MINERALS DEVELOPMENT CENTRE**





64.

**STATUTE OF THE AFRICAN MINERALS DEVELOPMENT CENTRE**

**Adopted in Addis Ababa, Ethiopia, on 30 January 2016.**

**The Statute shall enter into force thirty days after the deposit of the fifteenth instrument of ratification.**

Preamble

*We, Member States of the African Union,*

*Bearing in mind* the importance of minerals and other natural resources, notably their contribution towards inclusive growth and sustainable development through job creation especially for the youth and women, wealth creation and poverty eradication thus leading to socio-economic structural transformation of African economies,

*Deeply concerned* about the fact that Africa's abundant mineral resources are not yet contributing equitably and effectively towards improving the living conditions of its populations,

*Also concerned* about the increasing competition and demand for Africa's raw mineral resources and the imposition of trade conditionalities, both of which are likely to reduce the continent's policy space to pursue local beneficiation, value addition and resource-based industrialization,

*Aware* of the enormous potential that the appropriate development of mineral resources offers to propel Africa towards broad-based socio-economic development and to the achievement of the African Union Agenda 2063,

*Recalling* the commitment made by African Union Heads of State and Government in their Solemn Declaration on the occasion of the fiftieth anniversary of the OAU/AU to take ownership of, use and develop the natural resources endowments and mineral resources, through value addition as the basis for industrialization of the continent,

*Also recalling* Decision AU/MIN/CAMRMRD/4 (I) taken during the First Ordinary Session of the AU Conference of Ministers Responsible for Mineral Resources Development held from 13 to 17 October 2008, calling upon AU Member States to work together to ensure that international agreements that they enter into enhance rather than undermine Africa's policy space for integrating mineral resources development into their economies,

*Further recalling* Decision Assembly/AU/Dec.175 (X) adopted by the Assembly of the Union in Addis Ababa, Ethiopia, on 31 January 2008 that adopted the Action Plan for Accelerated Industrial Development of Africa (Doc. EX.CL/378 (XII)),

*Mindful* of Decision EX.CL/Dec.471 (XIV) of the Fourteenth Ordinary Session of the Executive Council held in Addis Ababa, Ethiopia, in February 2009 that adopted the Africa Mining Vision, as well as Decision EX.CL/Dec.714 (XXI) of the Twenty-first Ordinary Session of the Executive Council held in Addis Ababa, Ethiopia, in July 2012 that endorsed the Addis Ababa Declaration on Building a Sustainable Future for Africa's Extractive Industry - From Vision To Action and called for the establishment of a Minerals Development Centre,

*Convinced* that the time is now for Africa's renaissance, for the continent to regain ownership of its natural resources and to implement the Africa Mining Vision, with sound, prudent management and good governance, with a view to maximizing the benefits derivable from mineral resources exploitation for the present and future generations while limiting negative environmental and macroeconomic impacts,

*Recognizing* that the implementation of the Africa Mining Vision is a joint responsibility of State and non-State actors, including the private sector, community-based organizations, specialized institutions, and organized labour among other stakeholders,

#### 64. STATUTE OF THE AFRICAN MINERALS DEVELOPMENT CENTRE (2016)

*Determined* to seize the opportunities offered by historically high commodity prices and increased competition for Africa's mineral resources, in order to change the continent's development paradigm and move from a mere reliance on extracting and exporting raw minerals to a more transformational growth trajectory,

*Reaffirming* the commitment for efficient implementation of the Action Plan of the Africa Mining Vision in order to achieve the goals of the Accelerated Industrial Development of Africa (AIDA), Boosting of Intra-African Trade (BIAT) as well as of the African Union Agenda 2063 for the transformation of the lives of Africa's populations and the integration of Africa into the global economy,

*Inspired* by the outcomes of the First Ministerial Retreat of the Executive Council held in Bahir Dar, Ethiopia, from 24 to 26 January 2014, calling for an effective management, governance and beneficiation of African resources to effect transformation, inclusive growth and industrialization,

*Urging* that minerals should play their transformative role in order to contribute to solving the pressing problems of development on the African continent,

*Being aware* of the need for cooperation in this field, particularly in research, development and training,

*Emphasizing* the urgency of strengthening the mineral beneficiation capabilities of African countries,

*Recognizing* the important role that the African Minerals Development Centre will play in supporting African Union Member States towards harnessing effectively their mineral resources in order to improve the living conditions of Africans,

*Appreciating* the efforts taken by our key partners the African Development Bank, the United Nations Development Programme and the United Nations Economic Commission for Africa for the promotion and preparation of the establishment of such a centre,

*Have agreed* as follows:

##### Article 1 Definitions

For the purpose of this Statute:

"Act" means the Constitutive Act of the African Union;

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

"Affiliated Institutions" means established institutions with the capacity to execute specialized functions in fulfilment of the objectives of the Centre;

"Advisory Board" means the Minerals Advisory Board of the Centre;

"AMV" means the Africa Mining Vision;

"AU" or "Union" means the African Union;

"Centre" means the African Minerals Development Centre;

"Collaborating Institutions" means any entities or organizations that will cooperate with the Centre on issues of mutual interest;

#### 64. STATUTE OF THE AFRICAN MINERALS DEVELOPMENT CENTRE (2016)

"Commission" means the African Union Commission;

"Continent" means the continent of Africa;

"Conference of States Parties" means the highest executive decision-making body of the Centre;

"Court" means the African Court of Justice and Human and Peoples' Rights;

"Director General" means the Chief Executive of the Centre and the Head of the Secretariat;

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

"General Convention" means the General Convention on Privileges and Immunities of the Organization of African Unity;

"Members" means the States Parties;

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

"Obligation" means the commitments of States Parties to the Centre;

"RECs" means the Regional Economic Communities recognized by the African Union;

"Region" means any of the regions of the African Union as provided for by Resolution CM/Res.464 (XXVI) of the Council of Ministers of the Organization of African Unity on the division of Africa into five (5) regions, namely: Northern, Western, Central, Eastern and Southern Africa;

"Senior Officials" means the category of staff other than executives as defined by the Centre;

"Special Operations" means any other operation that is different from ordinary operations;

"State Party" means the Member State which has ratified or acceded to the Statute of the Centre;

"Statute" means the present Statute of the Centre;

"Subsidiary institutions" means such institutions that are partly or wholly owned and controlled by the Centre to implement specific activities within the objectives of the Centre;

"Supervisory Bodies" means the Conference of States Parties and the Advisory Board, which oversees the activities of the Centre;

"UNECA" means the United Nations Economic Commission for Africa.

#### Article 2 Establishment of the Centre

1. The Centre is hereby established as a specialized agency of the Union.
2. The Centre shall be responsible for Mineral resources Development in Africa.

#### Article 3 Objectives

## 64. STATUTE OF THE AFRICAN MINERALS DEVELOPMENT CENTRE (2016)

1. The main objective of the Centre shall be to coordinate and oversee the implementation of the AMV and its Action plan to enable the mineral resource sector to play its role in the social and economic transformation, inclusive growth and sustainable development of African economies, in conjunction with Member States, RECs, the private sector, civil society organizations including women and youth organizations, collaborating institutions and other key stakeholders.
2. The specific objectives of the Centre shall be to:
  - (a) Ensure that there are coherent policies and robust regulatory and legal frameworks on exploration, exploitation, licensing, contracting, taxation, exporting, mineral processing and handling at the national level which are harmonized at the regional and continental levels;
  - (b) Develop a diversified and globally competitive African mineral industry which contributes to broad economic and social growth through the creation of economic linkages;
  - (c) Contribute to the regional integration agenda and the boosting of intra-African trade;
  - (d) Promote good governance in mineral resources development for the betterment of local communities in Africa;
  - (e) Foster sustainable development principles based on environmentally and socially responsible mining, which respects human rights, health and safety of the local communities, workers and other stakeholders; and
  - (f) Contribute to the Plan of Action for Accelerating Industrial Development of Africa (AIDA) through promotion of beneficiation, value addition, industrial linkages, responsible investments, innovation and diversification.

### Article 4 Functions of the Centre

The Centre shall:

1. Support Member States in the formulation, harmonization and implementation of coherent policies, legal and fiscal regimes which are geared towards development of the mineral sector;
2. Support the acceleration of regional mapping and exploration activities to improve the quality of geological information and geodata management systems on the continent;
3. Facilitate and nurture human resources and skills development in line with the AMV Action Plan;
  - (a) Facilitate and undertake research and development, and the building of knowledge networks and niches involving the academia, private sector, government, think tanks, and other players;
  - (b) Encourage the establishment of industry/professional associations, Chambers of Mines, cluster councils, and incubator/technology parks;
  - (c) Foster learning processes by the establishment of a critical mass of industry players that share information and best practices, collaborate and compete to enhance competitiveness;
  - (d) Promote local beneficiation and value addition for the local production of consumer and industrial goods;
  - (e) Encourage and support Artisanal and Small Scale Mining and medium-scale enterprises to be integrated in the regional and global value chains;

## 64. STATUTE OF THE AFRICAN MINERALS DEVELOPMENT CENTRE (2016)

- (f) Harness the potential of Public Private Partnerships in supporting infrastructure and capacity development;
- (g) Promote advocacy and communication in the mineral resources sector in order to strengthen transparency and access to information and knowledge at all levels, that may enhance informed decision-making;
- (h) Promote and apply science, technology and innovation in awareness raising;
- (i) Promote the mineral sector development that is environmentally friendly, socially responsible and gender responsive and benefits all the communities; and
- (j) Carry out any other functions that may enable the Centre to achieve its objectives as may be approved by the Conference of States Parties.

### Article 5 Membership

1. Membership of the Centre shall be open to all Member States of the Union.
2. Member States that have signed and ratified the Statute before its entry into force are Founding Members of the Centre.

### Article 6 Legal Capacity

For the fulfilment of its objectives the Centre shall, in particular, have legal capacity to:

- (a) Enter into agreements;
- (b) Acquire and dispose of moveable and immovable property; and
- (c) Institute legal proceedings.

### Article 7 Privileges and Immunities

The Centre, its representatives and staff shall enjoy in the territory of each Member State, the privilege and immunities stipulated in the General Convention and its Additional Protocol, and such facilities and courtesies as are necessary for the exercise of their functions.

### Article 8 Headquarters

The headquarters of the Centre shall be situated in such a location as the Conference of States Parties shall determine based on the Criteria for Hosting the AU organs.

### Article 9 Organs of the Centre

The Centre shall have the following organs:

- (a) The Conference of States Parties;

- (b) The Minerals Advisory Board; and
- (c) The Secretariat.

Article 10  
The Conference of States Parties

1. States Parties shall be represented by Ministers responsible for Mineral resources development or their duly authorized representatives.
2. States Parties shall, in nominating a representative to the Conference of States Parties, pay due regard to their administrative capability and minerals policy and development background.
3. The following shall participate in the Conference of States Parties:
  - (a) The AU Commissioner of Trade and Industry;
  - (b) The Chairperson of the Advisory Board; and
  - (c) The Director General of the Centre.
4. The Conference of States Parties shall meet in:
  - (a) Ordinary session once every two years; and
  - (b) Extraordinary session at the request of the Chairperson of the Conference of States Parties or any State Party and upon approval of two thirds of all the States Parties.
5. The Conference of States Parties shall elect a Bureau, which shall be comprised of a Chairperson, two Vice-Chairpersons and a Rapporteur from among its representatives taking into account the principle of geographical rotation.
6. The members of the Bureau shall hold office for two years renewable once for a further term of two years.
7. The quorum for the Conference of States Parties shall be two thirds of the total membership of the Centre.
8. Decisions of the Conference of States Parties shall be taken by a two-thirds majority of the States Parties present and having a right to vote.
9. The Conference of States Parties shall have the right to invite Member States and stakeholders as observers to attend its meetings without the right to vote.

Article 11  
Functions of the Conference of States Parties

The Conference of the States Parties shall:

- (a) Issue policy guidelines through resolutions and recommendations;
- (b) Adopt its Rules of Procedure;

#### 64. STATUTE OF THE AFRICAN MINERALS DEVELOPMENT CENTRE (2016)

- (c) Determine the criteria and the scale of assessment for membership fees;
- (d) Appoint and dismiss the Director General of the Centre;
- (e) Appoint external auditors and decide on their mandate and remuneration;
- (f) Appoint and dismiss for cause the Members of the Advisory Board;
- (g) Dissolve the Advisory Board, if necessary;
- (h) Decide on the necessity of establishing or causing to be established, or dissolving or causing to be dissolved any subsidiary institution as provided for in Article 15 of this Statute;
- (i) Decide on the location of any subsidiary institution of the Centre;
- (j) Decide on a sustainable financial mechanism as well as decide and prioritize the activities of the Centre relating to critical issues affecting minerals development in different parts of the continent.

#### Article 12 The Minerals Advisory Board

1. The Advisory Board shall consist of the following:
  - (a) The AU Director of Trade and Industry;
  - (b) Representatives of the members of the Bureau of the AU Specialized Technical Committee on Trade, Industry and Mineral Resources;
  - (c) One representative from each REC;
  - (d) The representatives of the Collaborating Institutions;
  - (e) The Director General of the Centre; and
  - (f) An expert in the area of minerals resources development appointed by the Conference of States Parties.
2. Members of the Advisory Board shall possess relevant professional experience in the field of mineral resources development and participate actively in carrying out AMDC's activities.
3. Members of the Advisory Board other than the Director General and the AU Director of Trade and Industry, shall be appointed for a term of two years renewable once.
4. The Advisory Board Members shall serve in their personal capacities on a part-time basis, as representatives of the Centre.
5. The Advisory Board shall meet:
  - (a) In regular session twice a year one of which is to immediately precede the Conference of States Parties;
  - (b) As often as necessary in extraordinary session at the request of the Chairperson of the Advisory Board or as otherwise requested by the Secretariat subject to the availability of resources; and

#### 64. STATUTE OF THE AFRICAN MINERALS DEVELOPMENT CENTRE (2016)

- (c) At the seat of the Centre, unless otherwise determined by the Conference of States Parties.
- 6. The quorum for meetings of the Advisory Board shall be a two-thirds majority of the members of the Advisory Board.
- 7. The decisions of the Advisory Board shall be taken by consensus, failing which by a two-thirds majority of the members of the Advisory Board.
- 8. The Board shall elect annually from among its members, a Chairperson, Vice Chairperson and a Rapporteur on regional rotational basis.
- 9. A Member State may participate in a meeting of the Advisory Board to consider any issue that affects that Member State provided that the Member State shall not vote on the matter under consideration.
- 10. The members of the Advisory Board shall not be remunerated but shall be reimbursed for any costs incurred as a result of attending Board meetings.
- 11. Pending the definitive entry into force of this Statute the Chairperson of the AU Commission shall appoint members of the Advisory Board to undertake the functions of the Advisory Board. Such members appointed by the Chairperson of the AU Commission shall serve only on an interim basis.

#### Article 13

##### The Functions of the Minerals Advisory Board

The functions of the Advisory Board shall be to:

- (a) Prepare its own rules of procedure and submit to Conference of States Parties for approval;
- (b) Convene the ordinary and extraordinary sessions of the Conference of States Parties, subject to the relevant provisions of Article 10, and determine the provisional agenda;
- (c) Ensure the implementation of the work programme and other resolutions of the Conference of States Parties;
- (d) Supervise and coordinate the activities of the Secretariat and committees or working groups;
- (e) Assist the States Parties in implementing the resolutions, directives and decisions of the Conference of States Parties and discharge the duties and obligations, which are conferred upon it under the Statute;
- (f) Submit to the Conference of States Parties nominations for the post of Director General in accordance with guidelines set by the Conference of States Parties;
- (g) Supervise the Director General in the administration and financial management of the Secretariat;
- (h) Submit periodic reports of its activities to the Conference of States Parties; and
- (i) Carry out any other functions that may be assigned to it by the Conference of States Parties.

#### Article 14

##### The Secretariat

- 1. The Secretariat shall be headed by a Director General who shall be assisted by the necessary and competent staff for the smooth functioning of the Centre.



#### 64. STATUTE OF THE AFRICAN MINERALS DEVELOPMENT CENTRE (2016)

2. The Conference of States Parties shall on the recommendation of the Advisory Board appoint the Director General.
3. In the appointment of the Director General and other staff, consideration shall be made to ensure competence, gender balance, qualification, experience, high integrity and geographical distribution of posts.
4. The Director General shall serve in office for a term of four (4) years renewable only once.
5. The Director General shall:
  - (a) Follow up and ensure the implementation of the resolutions, directives and decisions of the Conference of States Parties and the Advisory Board in accordance with the rules and regulations of the Centre;
  - (b) Represent the Centre and defend its interest under the guidance and approval of the Advisory Board and the Conference of States Parties;
  - (c) Promote the development of the programmes, projects and initiatives of the Centre;
  - (d) Prepare and submit proposals relating to the work programmes, business plans, strategic objectives, projects, activities and budgets of the Centre and ensure their implementation;
  - (e) Oversee the administrative and financial management of the Centre by appropriately managing the budgetary and financial resources including collecting the approved revenue from various sources;
  - (f) Prepare financial reports and budgets to be submitted to the Conference of States Parties for approval on the recommendation of the Advisory Board, in accordance with the Centre's rules and regulations;
  - (g) Submit reports on the activities of the Centre to the Conference of States Parties and Advisory Board;
  - (h) Appoint the staff of the Centre and terminate their contracts of appointments in accordance with the Centre's Staff Rules and Regulations;
  - (i) Prepare and service meetings of the Conference of States Parties, the Advisory Board and Committees of the Centre;
  - (j) Organize meetings and undertake studies as necessary and maintain relevant records in relation thereto;
  - (k) Submit to the Conference of States Parties and the Advisory Board annual reports on the operations of the Centre;
  - (l) Keep in custody the seal, documents, files and other data relating or relevant to the work of the Centre;  
and
  - (m) Make recommendations to improve the Centre's operational efficiency.

#### Article 15

##### Subsidiary or Affiliated Institutions of the Centre

There shall be such subsidiary or affiliated institutions of the Centre as the Conference of States Parties may decide for the purposes of carrying out the functions of the Centre.

#### Article 16

## 64. STATUTE OF THE AFRICAN MINERALS DEVELOPMENT CENTRE (2016)

### Cooperation with other Organizations

The Centre shall work in close cooperation with the different AU organs, RECs, national organizations, including government ministries, universities, industrial research and training institutes, mineral development and policy-making bodies as well as the private sector, civil society organizations and international agencies.

### Article 17

#### Financial Resources of the Centre

1. The regular budget of the Centre shall be funded by contributions of States Parties in accordance with the scale of assessment determined by the Conference of States Parties.
2. Supplemental budgets of the Centre shall be made available, where necessary to meet the extra and/or special budgetary expenditure of the Centre. The Conference of States Parties shall determine the contributions of States Parties to the special budgets of the Centre.
3. In addition, the Centre may receive grants, donations and proceeds for its activities as approved by the Advisory Board.

### Article 18

#### Expenses

1. The Secretariat may incur expenses for administrative, operational and investment purposes in accordance with the approved Programme of Work, Budget and Financial Regulations and Rules of the Centre as adopted by the Conference of States Parties.
2. Expenses incurred by representatives of States Parties in attending meetings of the Conference of States Parties shall be borne by their respective governments.
3. Expenses incurred by Members of the Advisory Board in the course of their official duties for the Centre shall be borne by the Centre.

### Article 19

#### Sanctions

1. Any State Party that fails to honour its financial obligations to the Centre for a period of two (2) years or more shall, as long as it is in such arrears, forfeit the right to vote in the Conference of States Parties or to present candidates for any elective or other post with the Centre.
2. Any violation of any provisions of this Statute by a State Party shall result in sanctions as may be determined by the Conference of States Parties.

### Article 20

#### Settlement of Disputes

1. Any dispute or difference arising between States Parties with regard to the interpretation, application and implementation of this Statute shall be settled by mutual consent between the States concerned, including through negotiations, mediation, conciliation or other peaceful means.
2. In the event of failure by the disputing parties to settle the dispute or difference in accordance with Article 20, paragraph 1, the disputing parties may, by mutual consent, refer the dispute to:
  - (a) The African Court of Justice and Human Rights, where applicable; or

## 64. STATUTE OF THE AFRICAN MINERALS DEVELOPMENT CENTRE (2016)

- (b) An Arbitration Panel of three (3) arbitrators whose appointment shall be as follows:
  - (i) The parties to the dispute shall appoint two (2) of the arbitrators;
  - (ii) The Chairperson of the Commission shall appoint the third arbitrator who shall be President of the Panel.
- 3. The decision of the Panel of Arbitrators shall be binding.

### Article 21

#### Popularization of the Statute

States Parties shall take all appropriate measures to ensure the widest possible dissemination of this Statute in accordance with the relevant provisions and procedures of their respective constitutions.

### Article 22

#### Safeguard Clause

- 1. No provision in this Statute shall be interpreted as derogating from the principles and values contained in other relevant instruments for the promotion of minerals development in Africa.
- 2. Nothing in this Statute shall be construed as preventing a Party from taking any action, compatible with the provisions of the United Nations Charter or any other international instrument and that is limited to the exigencies of the situation, as it considers necessary to its external or internal security.

### Article 23

#### Signature, Ratification and Accession

- 1. This Statute shall be open to Member States of the Union for signature, ratification or accession.
- 2. The instrument of ratification or accession to the present Statute shall be deposited with the Chairperson of the Commission who shall notify Member States of the Union of the deposit of the instruments of ratification or accession.

### Article 24

#### Entry into Force

- 1. This Statute shall enter into force thirty (30) days after the deposit of the fifteenth (15<sup>th</sup>) instrument of ratification.
- 2. The Chairperson of the Commission shall inform all Members States of the entry into force of the present Statute.
- 3. For any Member State acceding to the present Statute, the Statute shall come into force in respect of that State on the date of the deposit of its instrument of accession.

### Article 25

#### Reservations

- 1. A State Party may, when ratifying or acceding to this Statute, submit in writing a reservation with respect to any of the provisions of this Statute. Reservations shall not be incompatible with the object and purpose of this Statute.

## 64. STATUTE OF THE AFRICAN MINERALS DEVELOPMENT CENTRE (2016)

2. Unless otherwise provided, a reservation may be withdrawn at any time.
3. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States Parties of the withdrawal accordingly.

### Article 26 Depositary

This Statute shall be deposited with the Chairperson of the Commission, who shall transmit a certified true copy of the Statute to the Government of each signatory State and notify Member States of the dates of the deposit of the instruments of ratification or accession.

### Article 27 Registration

The Chairperson of the Commission shall upon the entry into force of this Statute register this Statute with the United Nations Secretary-General in conformity with Article 102 of the Charter of the United Nations.

### Article 28 Withdrawal

1. At any time after three years from the date of entry into force of this Statute, a State Party may withdraw by giving written notification to the depositary.
2. Withdrawal shall be effective one year after receipt of notification by the depositary, or on such later date as may be specified in the notification.
3. Withdrawal shall not affect any obligation of the withdrawing State Party prior to the withdrawal.

### Article 29 Amendment and Revision

1. Any State Party may submit proposal(s) for the amendment or revision of this Statute. Such proposal(s) shall be adopted by the Conference of States Parties.
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit such proposal(s) to the Conference of States Parties at least six months before the meeting at which it shall be considered for adoption.
3. The Conference of States Parties, upon the advice of the Commission, shall examine these proposals within a period of one year from the date of receipt of such proposals.
4. Amendments or revisions shall be adopted by the Conference of States Parties by consensus or, failing which, by a two-thirds majority.
5. The amendment or revision shall come into force thirty (30) days after adoption by the Conference of States Parties.

### Article 30 Authentic Texts

This Statute is drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic.

Article 31  
Working Languages

The working languages of the Centre shall be those of the Union.



**PROTOCOL TO THE AFRICAN CHARTER ON  
HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF OLDER PERSONS IN AFRICA**





65. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS  
ON THE RIGHTS OF OLDER PERSONS IN AFRICA (2016)

65.

**PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS  
ON THE RIGHTS OF OLDER PERSONS IN AFRICA**

**Adopted in Addis Ababa, Ethiopia, on 30 January 2016.**

**The Protocol shall enter into force thirty days after the deposit of the instruments of ratification by fifteen Member States.**

*We, Member States of the African Union,*

*Considering* that Article 66 of the African Charter on Human and Peoples' Rights provides for special protocols or agreements, if necessary, to supplement the provisions of that Charter,

*Considering* that the African Charter makes specific provisions for the protection of the rights of older persons, under Article 18, paragraph 4, which stipulates that, "The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs",

*Noting* Article 2 of the African Charter which states that, "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status",

*Recalling* Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa which provides for the special protection of elderly women,

*Considering* recommendation (1) contained in paragraph 4.1 of the African Union Policy Framework and Plan of Action on Ageing (2002) which states that "Member States recognize the fundamental rights of older persons and commit themselves to abolish all forms of discrimination based on age; that they undertake to ensure that the rights of older persons are protected by appropriate legislation; including the right to organize themselves in groups and to representation in order to advance their interests",

*Considering* recommendation (1) (a) contained in paragraph 4.1 of the same Policy Framework and Plan of Action which calls for the elaboration and adoption of "an additional Protocol to the African Charter on Human and Peoples' Rights relating to the rights of older persons",

*Considering further* paragraph 20 of the Kigali Declaration on Human Rights (2003), which "calls upon States Parties to develop a Protocol on the protection of the rights of the elderly and persons with disabilities",

*Recalling* section 2.2.11 of the African Union Social Policy Framework (2009) which calls for the implementation of all the tenets of the AU Policy Framework and Plan of Action on Ageing (2002), other international instruments that deal with the issues of ageing and older persons, the 1991 United Nations Principles for Older Persons, the 1992 United Nations Proclamation on Ageing, and the 2002 Madrid International Plan of Action on Ageing which promotes the rights of older persons,

*Considering also* the World Population Plan of Action (1974), the Declaration of Principles of the United Nations Conference on Human Settlements (HABITAT) of 1996 and 1999, the International Labour Organization (ILO) Convention No. 102 of 1952 concerning Minimum Standards of Social Security, Convention No. 128 and Recommendation No. 131 of 1967 on Invalidity, Old Age and Survivors' Benefits, Recommendation No. 162 of 1980 concerning Older Workers, and Convention No. 157 concerning Maintenance of Social Security Rights of 1982,

*Considering* the various international declarations, conventions and instruments including, but not limited to, the International Convention on the Elimination of All Forms of Racial Discrimination of 1966, the International

65. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS  
ON THE RIGHTS OF OLDER PERSONS IN AFRICA (2016)

Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966, the Convention on the Elimination of all Forms of Discrimination against Women of 1979, the United Nations Plan of Action on Ageing of 1982, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, the United Nations Declaration on the Right to Development of 1986, the United Nations Principles for Older Persons of 1991, the United Nations Proclamation on Ageing of 1992, and the Madrid Plan of Action on Ageing of 2002,

*Taking into consideration* the virtues of African traditions, values and practices which should inspire and characterize the provision of mutual social and communal care and support, respect for older members of society and the passing of knowledge to younger population groups,

*Noting* that the increase in the number and needs of older persons in Africa calls for African Governments to institute urgent measures aimed at addressing these needs such as access to regular incomes, equitable distribution of resources, employment opportunities; access to appropriate health services; access to basic social services such as food, water, clothing and shelter; access to good care and support from the family, the State, civil society and private organizations; recognition of their contribution towards the care of persons with AIDS and orphans; respect and recognition of the role and contribution that older persons make to society; and a recognition of their special needs in emergency situations,

*Have agreed* as follows:

Article 1  
Definitions

For purposes of this Protocol:

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

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

"Ageing" means the process of getting old from birth to death and in this Protocol, it shall also refer to issues concerned with older persons;

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

"AU" means the African Union;

"Commission" means the African Union Commission;

"Constitutive Act" means the Constitutive Act of the African Union;

"Harmful traditional practices" means traditional beliefs, attitudes and practices which violate the fundamental rights of older persons such as their right to life, dignity and physical integrity;

"ICT" means information communication and technology;

"Member States" means the Member States of the African Union;

"Older persons" means those persons aged sixty (60) years and above, as defined by the United Nations Plan of Action on Ageing (1982) and the AU Policy Framework and Plan of Action on Ageing (2002);

"Residential care" means long-term care, including geriatric care, given to older persons in a residential setting rather than their home;

65. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS  
ON THE RIGHTS OF OLDER PERSONS IN AFRICA (2016)

"States Parties" means Member States of the African Union that have ratified or acceded to this Protocol and deposited the instruments of ratification or accession with the Chairperson of the African Union Commission;

"The Advisory Council on Ageing" means a Council established in accordance with the AU Policy Framework and Plan of Action on Ageing (2002);

The words "the aged", "seniors", "senior citizens" and "the elderly" shall be construed to have the same meaning as "older persons".

Article 2  
Obligations of States Parties

1. States Parties shall recognize the rights and freedoms enshrined in this Protocol and shall undertake to adopt legislative or other measures to give effect to them.
2. States Parties shall ensure that the 1991 United Nations Principles of Independence, Dignity, Self-fulfilment, Participation and Care of Older Persons are included in their national laws and are legally binding as the basis for ensuring their rights.

Article 3  
Elimination of Discrimination Against Older Persons

States Parties shall:

1. Prohibit all forms of discrimination against older persons and encourage the elimination of social and cultural stereotypes which marginalize older persons;
2. Take corrective measures in those areas where discrimination and all forms of stigmatization against older persons continue to exist in law and in fact; and
3. Support and enforce local, national, regional, continental and international customs, traditions and initiatives directed at eradicating all forms of discrimination against older persons.

Article 4  
Access to Justice and Equal Protection Before the Law

States Parties shall:

1. Develop and review existing legislation to ensure that older persons receive equal treatment and protection;
2. Ensure the provision of legal assistance to older persons in order to protect their rights; and
3. Ensure that law enforcement organs at all levels are trained to effectively interpret and enforce policies and legislation to protect the rights of older persons.

Article 5  
Right to Make Decisions

States Parties shall:

65. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS  
ON THE RIGHTS OF OLDER PERSONS IN AFRICA (2016)

1. Ensure that appropriate legislation exists that recognizes the rights of older persons to make decisions regarding their own well-being without undue interference from any person or entity, and that older persons have the right to appoint a party of their choice to carry out their wishes and instructions;
2. Ensure that, in the event of incapacity, older persons shall be provided with legal and social assistance in order to make decisions that are in their best interests and well-being; and
3. Enact legislation and take other measures that protect the right of older persons to express opinions and participate in social and political life.

Article 6  
Protection Against Discrimination in Employment

States Parties shall:

1. Take measures to eliminate work place discrimination against older persons with regard to access to employment taking into consideration occupational requirements; and
2. Ensure appropriate work opportunities for older persons taking into account their medical and physical abilities, skills and experience.

Article 7  
Social Protection

States Parties shall:

1. Develop policies and legislation that ensure that older persons who retire from their employment are provided with adequate pensions and other forms of social security;
2. Ensure that universal social protection mechanisms exist to provide income security for those older persons who did not have the opportunity to contribute to any social security provisions;
3. Ensure that the processes and procedures of accessing pensions are decentralized, simple and dignified;
4. Take legislative and other measures to enable individuals to prepare for income security in old age; and
5. Take legislative and other measures that facilitate the rights of older persons to access services from State service providers.

Article 8  
Protection from Abuse and Harmful Traditional Practices

States Parties shall:

1. Prohibit and criminalize harmful traditional practices targeted at older persons; and
2. Take all necessary measures to eliminate harmful traditional practices, including witchcraft accusations, which affect the welfare, health, life and dignity of older persons, particularly older women.

Article 9  
Protection of Older Women

States Parties shall:

65. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS  
ON THE RIGHTS OF OLDER PERSONS IN AFRICA (2016)

1. Ensure the protection of the rights of older women from violence, sexual abuse and discrimination based on gender;
2. Put in place legislation and other measures that guarantee protection of older women against abuses related to property and land rights; and
3. Adopt appropriate legislation to protect the right of inheritance of older women.

Article 10  
Care and Support

States Parties shall:

1. Adopt policies and legislation that provide incentives to family members who provide home care for older persons;
2. Identify, promote and strengthen traditional support systems to enhance the ability of families and communities to care for older family members; and
3. Ensure the provision of preferential treatment in service delivery for older persons.

Article 11  
Residential Care

States Parties shall:

1. Enact or review existing legislation to ensure that residential care is optional and affordable for older persons;
2. Ensure that older persons in residential care facilities are provided with care that meets the national minimum standards provided that such standards comply with regional and international standards; and
3. Ensure that older persons in palliative care receive adequate care and pain management medication.

Article 12  
Support for Older Persons Taking Care of Vulnerable Children

States Parties shall:

1. Adopt measures to ensure that indigent older persons who take care of orphans and vulnerable children are provided with financial, material and other support; and
2. Ensure that when children are left in the care of older persons, any social or other benefits designed for the children, are remitted to the older persons.

Article 13  
Protection of Older Persons With Disabilities

States Parties shall:

1. Adopt legislation and other measures to protect the rights of older persons with disabilities;

65. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS  
ON THE RIGHTS OF OLDER PERSONS IN AFRICA (2016)

2. Ensure that such legislation and measures comply with regional and international standards; and
3. Ensure that older persons with disabilities have access to assistive devices and specialized care, which respond to their needs within their communities.

Article 14  
Protection of Older Persons in Conflict and Disaster Situations

States Parties shall:

1. Ensure that, in situations of risk, including natural calamities, conflict situations, during civil strife or wars, older persons shall be among those to enjoy access, on a priority basis, to assistance during rescue efforts, settlement, repatriation and other interventions; and
2. Ensure that older persons receive humane treatment, protection and respect at all times and are not left without needed medical assistance and care.

Article 15  
Access to Health Services

States Parties shall:

1. Guarantee the rights of older persons to access health services that meet their specific needs;
2. Take reasonable measures to facilitate access to health services and medical insurance coverage for older persons within available resources; and
3. Ensure the inclusion of geriatrics and gerontology in the training of health-care personnel.

Article 16  
Access to Education

States Parties shall provide opportunities for older persons to have access to education and to acquire ICT skills.

Article 17  
Participation in Programmes and Recreational Activities

States Parties shall develop policies that ensure the rights of older persons to enjoy all aspects of life, including active participation in socio-economic development, cultural programmes, leisure and sports.

Article 18  
Accessibility

States Parties shall take measures to ensure that older persons have access to infrastructure, including buildings, public transport and are accorded seating priority.

Article 19  
Awareness on Ageing and Preparation for Old Age

States Parties shall:

65. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS  
ON THE RIGHTS OF OLDER PERSONS IN AFRICA (2016)

1. Adopt measures to encourage the development of awareness-raising programmes to educate the younger population groups on ageing and older persons to combat negative attitudes against older persons; and
2. Adopt measures to develop training programmes that prepare older persons for the challenges faced in old age, including retirement.

Article 20  
Duties of Older Persons

Older persons have responsibilities towards their families, communities, the wider society, the State and the international community. In this regard, they shall:

1. Mentor and pass on knowledge and experience to the younger generations;
2. Foster and facilitate intergenerational dialogue and solidarity within their families and communities; and
3. Play a role in mediation and conflict resolution.

Article 21  
Coordination and Data Collection

States Parties shall:

1. Ensure the systematic collection and analysis of national data on older persons;
2. Develop a national mechanism on ageing with responsibility to assess, monitor, evaluate and coordinate the integration and implementation of older persons' rights in national policies, strategies and legislation; and
3. Support the Advisory Council on Ageing, as a continental mechanism of the African Union, to facilitate the implementation and follow-up of the continental policies and plans on ageing.

Article 22  
Implementation

1. States Parties shall ensure the implementation of this Protocol, and shall indicate in their periodic reports submitted to the African Commission in accordance with Article 62 of the African Charter, the legislative and other measures undertaken for the full realization of the rights recognized in this Protocol.
2. In the implementation of this Protocol, the African Commission shall have the mandate to interpret the provisions of the Protocol in accordance with the African Charter.
3. The African Commission may refer matters of interpretation and enforcement or any dispute arising from the application or implementation of this Protocol to the African Court on Human and Peoples' Rights.
4. Where applicable, the African Court on Human and Peoples' Rights shall have the mandate to hear disputes arising from the application or implementation of this Protocol.

Article 23  
Popularization of the Protocol

States Parties shall take all appropriate measures to ensure the widest possible dissemination of this Protocol in accordance with the relevant provisions and procedures of their respective constitutions.

65. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS  
ON THE RIGHTS OF OLDER PERSONS IN AFRICA (2016)

Article 24  
Safeguard Clause

1. No provision in this Protocol shall be interpreted as derogating from the principles and values contained in other relevant instruments for the realization of the rights of older persons in Africa.
2. In the event of a contradiction between two or more provisions of this Protocol, the interpretation which favours the rights of older persons and protects their legitimate interests shall prevail.

Article 25  
Signature, Ratification and Accession

1. This Protocol shall be open to Member States of the Union for signature, ratification or accession.
2. The instrument of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission who shall notify all Member States of the dates of the deposit of the instruments of ratification or accession.

Article 26  
Entry into Force

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15<sup>th</sup>) instrument of ratification by a Member State.
2. The Chairperson of the Commission shall notify all Members States of the African Union of the entry into force of the present Protocol.
3. For any Member State of the African Union acceding to the present Protocol, the Protocol shall come into force in respect of that State on the date of the deposit of its instrument of accession.

Article 27  
Reservations

1. A State Party may, when ratifying or acceding to this Protocol, submit in writing a reservation with respect to any of the provisions of this Protocol. Reservations shall not be incompatible with the object and purpose of this Protocol.
2. Unless otherwise provided, a reservation may be withdrawn at any time.
3. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States Parties of the withdrawal accordingly.

Article 28  
Depositary

This Protocol shall be deposited with the Chairperson of the African Union Commission, who shall transmit a certified true copy of the Protocol to the Government of each signatory State.

Article 29  
Registration

The Chairperson of the Commission, upon the entry into force of this Protocol, shall register this Protocol with the United Nations Secretary-General in conformity with Article 102 of the Charter of the United Nations.



65. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS  
ON THE RIGHTS OF OLDER PERSONS IN AFRICA (2016)

Article 30  
Withdrawal

1. At any time after three years from the date of entry into force of this Protocol, a State Party may withdraw by giving written notification to the depositary.
2. Withdrawal shall be effective one year after receipt of notification by the depositary, or on such later date as may be specified in the notification.
3. Withdrawal shall not affect any obligation of the withdrawing State Party prior to the withdrawal.

Article 31  
Amendment and Revision

1. Any State Party may submit proposal(s) for the amendment or revision of this Protocol. Such proposal(s) shall be adopted by the Assembly.
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit such proposals to the Assembly at least six months before the meeting at which it shall be considered for adoption.
3. Amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority.
4. The amendment or revision shall enter into force in accordance with the procedures outlined in Article 26 of this Protocol.

Article 32  
Authentic Texts

This Protocol is drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic.



**STATUTE ON THE ESTABLISHMENT OF THE LEGAL AID FUND  
OF HUMAN RIGHTS ORGANS OF THE AFRICAN UNION**



66. STATUTE ON THE ESTABLISHMENT OF THE LEGAL AID FUND  
OF HUMAN RIGHTS ORGANS OF THE AFRICAN UNION (2016)

66.

**STATUTE ON THE ESTABLISHMENT OF THE LEGAL AID FUND  
OF HUMAN RIGHTS ORGANS OF THE AFRICAN UNION**

**Adopted in Addis Ababa, Ethiopia, on 30 January 2016.**

**Entered into force upon adoption.**

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 Rwanda 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, paragraph 2, of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights,

*Mindful* of Resolution 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 Assistance in Africa,

*Recalling* the Decision of the African Court on Human and Peoples' Rights at its Twenty-fifth 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 Twenty-sixth 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;

66. STATUTE ON THE ESTABLISHMENT OF THE LEGAL AID FUND  
OF HUMAN RIGHTS ORGANS OF THE AFRICAN UNION (2016)

"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 African 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;

66. STATUTE ON THE ESTABLISHMENT OF THE LEGAL AID FUND  
OF HUMAN RIGHTS ORGANS OF THE AFRICAN UNION (2016)

- (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 African 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:

66. STATUTE ON THE ESTABLISHMENT OF THE LEGAL AID FUND  
OF HUMAN RIGHTS ORGANS OF THE AFRICAN UNION (2016)

- (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, 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;



66. STATUTE ON THE ESTABLISHMENT OF THE LEGAL AID FUND  
OF HUMAN RIGHTS ORGANS OF THE AFRICAN UNION (2016)

- (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 non-renewable 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;

66. STATUTE ON THE ESTABLISHMENT OF THE LEGAL AID FUND  
OF HUMAN RIGHTS ORGANS OF THE AFRICAN UNION (2016)

- (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

66. STATUTE ON THE ESTABLISHMENT OF THE LEGAL AID FUND  
OF HUMAN RIGHTS ORGANS OF THE AFRICAN UNION (2016)

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.



**STATUTE OF THE AFRICAN SCIENTIFIC RESEARCH AND  
INNOVATION COUNCIL (ASRIC)**



67.

**STATUTE OF THE AFRICAN SCIENTIFIC RESEARCH AND INNOVATION COUNCIL (ASRIC)**

**Adopted in Addis Ababa, Ethiopia, on 30 January 2016.**

**Entered into force upon adoption.**

*We, Member States of the African Union,*

*Guided* by the objectives and principles enshrined in the Constitutive Act of the African Union that underscores the importance of science, technology and innovation as a tool for socio-economic transformation,

*Recalling* Decision EX.CL/Dec.254 (VIII) adopted by the Executive Council endorsing the Africa's Science and Technology Consolidated Plan of Action (CPA),

*Noting* the review process of the CPA that resulted in the ten-year incremental Science, Technology and Innovation Strategy that responds to the continental development challenges,

*Further recalling* Decision EX.CL/Dec.747 (XXII) and Decision EX.CL/Dec.216 (VII) adopted by the Executive Council on the establishment of the African Research and Innovation Council as the institutional setting for the implementation of the Africa Science, Technology and Innovation Agenda, and

*Recognizing* the role such a council would play in promoting scientific research and innovation in Africa,

*Have agreed* as follows:

Article 1  
Definitions

In this Statute:

"ASRIC" means African Scientific Research and Innovation Council;

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

"AU" or "Union" means the African Union established by the Constitutive Act of the African Union;

"AU-STRC" means the African Union Scientific, Technical and Research Commission;

"Commission" means the African Union Commission as established by the Constitutive Act of the African Union;

"Congress" means the General Conference of ASRIC as established by Article 5 of this Statute;

"Member States" means Member States of the African Union;

"RECs" means Regional Economic Communities recognized by the African Union;

"Secretariat" means the ASRIC Secretariat as established in this Statute;

"Scientific Committee" means the committee established in this Statute;

"Statute" means the Statute of the African Scientific Research and Innovation Council;

"STC" means the African Union Specialized Technical Committee on Education, Science and Technology;

"STI" means Science, Technology and Innovation.

Article 2  
Establishment and Legal Status of ASRIC

1. ASRIC is hereby established as a Specialized Technical Advisory Body of the Commission and shall operate in accordance with the provisions of this Statute.
2. In accordance with Article 8 of this Statute the Secretariat of ASRIC shall be at the Department of Human Resources, Science and Technology (HRST) of the Commission.

Article 3  
Objectives of ASRIC

The objective of ASRIC shall be to promote scientific research and innovation in order to address the challenges of Africa's socio-economic development.

Article 4  
Functions of ASRIC

The functions of the ASRIC shall be to:

- (a) Mobilize African research excellence to advance the African development agenda;
- (b) Build and sustain a continental scientific, research and innovation policy nexus;
- (c) Mobilize resources to support scientific, research and innovation activities and programmes in accordance with the AU policy in this area;
- (d) Promote dialogue and provide the voice of the scientific community that expresses continental excellence;
- (e) Advocate for knowledge exchange and technology acquisition and link the scientific community;
- (f) Support and strengthen the capacity of STI national and regional councils and facilitate collaboration among them;
- (g) Identify strategies and means to bridge the gap between science, research and innovation and policy; and
- (h) Promote intra-Africa and international collaboration in STI.

Article 5  
Governance of the ASRIC

The Governance mechanisms of the ASRIC shall be composed of:

- (a) The Congress;
- (b) The Bureau of the Congress; and
- (c) The Secretariat.



Article 6  
The ASRIC Congress

1. The Congress shall direct the overall policies of ASRIC and shall be responsible to the STC.
2. The Congress shall meet once every year in ordinary sessions and may, subject to the availability of resources, hold extraordinary sessions when the need arises.
3. The Congress shall be composed of the following:
  - (a) One (1) national research council or other similar institutions nominated by each Member State;
  - (b) RECs;
  - (c) African STI institutions;
  - (d) Financial institutions of the African Union established under Article 19 of the Constitutive Act;
  - (e) Laureates of the African Union Kwame Nkrumah Scientific awards;
  - (f) Two representatives of the African diaspora nominated by the Chairperson of the Commission in consultation with ECOSOCC;
  - (g) Two representatives of the African STI civil society nominated by the Chairperson of the Commission;
  - (h) Two representatives of industry from each of the five regions of the AU nominated by the Chairperson of the Commission in consultation with the Chairperson of the Congress; and
  - (i) The Executive Director of the ASRIC as an ex-officio member.
4. The Congress may invite International STI institutions as may be necessary to participate in its sessions.
5. The voting members of the Congress shall be the national research councils or other similar institutions nominated by each Member State.
6. The Congress shall perform the following functions:
  - (a) Direct the overall policies of ASRIC, including formulation and review of the annual ASRIC Work Programmes and approve action plans, funding and resource mobilization strategies in accordance with the AU policy in this area;
  - (b) Develop its internal guidelines and rules of procedures in line with the relevant AU legal instruments;
  - (c) Elect its Bureau;
  - (d) Define and adopt interdisciplinary programs, approve associated draft budget and produce annual reports to be submitted to the AU Policy organs;
  - (e) Establish strategic partnership with similar global institutions in accordance with AU rules and regulations; and

- (f) Establish scientific subcommittees and other subcommittees whose functions and responsibilities shall be elaborated in the rules of procedure of ASRIC, as may be proposed by its Bureau.

Article 7  
The Bureau of Congress

1. The Bureau shall be composed of:
  - (a) Chairperson;
  - (b) First Vice-Chairperson responsible for the Scientific Programme;
  - (c) Second Vice-Chairperson responsible for Innovation;
  - (d) Third Vice-Chairperson responsible for Communication; and
  - (e) Fourth Vice-Chairperson responsible for Resource mobilization.
2. The Executive Director of the Secretariat shall serve as the Secretary of the Bureau.
3. The members of the Bureau shall serve for a non-renewable term of three years.
4. The Bureau shall perform the following functions:
  - (a) Oversee and follow up the implementation of the decisions of the Congress;
  - (b) Preside over the proceedings of the Congress;
  - (c) Ensure scientific excellence, promote creativity and innovative research for all programs/projects supported by ASRIC;
  - (d) Establish or strengthen networks and associations to implement programs identified by the Congress;
  - (e) Coordinate research activities in Africa; and
  - (f) Develop the terms of references and rules of procedures for ad-hoc scientific subcommittees.

Article 8  
The ASRIC Secretariat

1. The AU-STRC shall be the Secretariat of the ASRIC.
2. The Executive Director of ASRIC is the Head of the Secretariat.
3. The structure, function and appointment of the staff of the Secretariat shall be in accordance with the AU Staff Regulations and Rules.
4. The Secretariat shall perform the following functions:
  - (a) Provide administrative and secretarial services to ASRIC;
  - (b) Manage the overall activities related to the implementation of the interdisciplinary programs in coordination with the scientific sub-committees;

## 67. STATUTE OF THE AFRICAN SCIENTIFIC RESEARCH AND INNOVATION COUNCIL (ASRIC) (2016)

- (c) Prepare and implement the budget of ASRIC and carry out financial programming and resource mobilization in accordance with the AU rules, policies and practice;
- (d) Establish Pan-African platforms connecting institutions, networks, and other actors to strengthen synergies and scientific knowledge exchange;
- (e) Administer calls and grants that address the priority areas identified by the Congress;
- (f) Promote the establishment of strategic partnerships, and advance Africa's positions in international negotiations on research matters such as research ethics, integrity and open-access to publications; and
- (g) Perform any other functions to ensure the smooth running of ASRIC.

### Article 9 Budget

1. The budget of the ASRIC shall be within the AU budget.
2. In addition to the regular AU budget, other sources of funding ASRIC may include:
  - (a) Voluntary contributions from AU Member States and partners;
  - (b) Contributions from development partners of the Union and the Commission;
  - (c) Contributions from the private sector;
  - (d) National and regional financial institutions and other financing mechanisms;
  - (e) AU Science, Technology and Innovation Fund when established; and
  - (f) Any other source of funding in accordance with AU Rules.
3. The budget calendar of the ASRIC shall be that of the Union.

### Article 10 Working Languages

The working languages of the ASRIC shall be those of the Union.

### Article 11 Amendments

1. The present Statute may be amended upon the recommendation of the STC.
2. The amendments shall come into effect upon their adoption by the Assembly.

### Article 12 Entry into Force

The present Statute shall enter into force upon its adoption by the Assembly.



**STATUTE OF THE AFRICAN OBSERVATORY FOR SCIENCE,  
TECHNOLOGY AND INNOVATION (AOSTI)**



68.

**STATUTE OF THE AFRICAN OBSERVATORY FOR SCIENCE, TECHNOLOGY AND INNOVATION (AOSTI)**

**Adopted in Addis Ababa, Ethiopia, on 30 January 2016.**

**Entered into force upon adoption.**

*We, Member States of the African Union,*

*Guided by the objectives and principles enshrined in the Constitutive Act of the African Union that underscores the importance of science, technology and innovation as a tool for socio-economic transformation,*

*Recalling* Decision EX.CL/Dec.254 (VIII) adopted by the Executive Council at its Eighth Ordinary Session in January 2006 in Khartoum, Sudan, endorsing the Africa's Science and Technology Consolidated Plan of Action (CPA) and taking into account the CPA review process that resulted in the ten-year incremental Science, Technology and Innovation Strategy guided by the AU Vision,

*Further recalling* Decision Assembly/AU/Dec.235 (XII) adopted by the Assembly in February 2009 in Addis Ababa, Ethiopia, that recognized the need to establish an African Observatory of Science, Technology and Innovation and endorsed the offer by the Republic of Equatorial Guinea to host the Observatory,

*Reaffirming* Decision Assembly/AU/Dec.452 (XX) adopted by the Assembly in January 2013 in Addis Ababa, Ethiopia, on the creation of the African Observatory of Science, Technology and Innovation as the lead African institution for the measurements of science, technology and innovation in support of the African Union decision-making processes,

*Recognizing* the commitment of the Government of the Republic of Equatorial Guinea to host the African Observatory of Science, Technology and Innovation in accordance with the provisions of the Host Agreement concluded between the African Union and the Government of the Republic of Equatorial Guinea in July 2010,

*Hereby agree* as follows:

Article 1  
Definitions

In this Statute:

"AOSTI" means the African Observatory of Science, Technology and Innovation;

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

"AU" or "Union" means the African Union established by the Constitutive Act of the African Union adopted by the Heads of States and Government of the Organization of African Unity (OAU) in Lomé, Togo, in July, 2000;

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

"Host Country" means the country that hosts the Headquarters of the AOSTI;

"Member States" means Member States of the African Union;

"RECs" means Regional Economic Communities;

"Secretariat" means the Secretariat of the Observatory;

"Statute" means this Statute of the African Observatory of Science, Technology and Innovation;

"STC" means the African Union Specialized Technical Committee on Education, Science and Technology;

"Steering Committee" means the Steering Committee established by this Statute; and

"STI" means Science, Technology and Innovation.

#### Article 2 Legal Status of AOSTI

The AOSTI shall be a Specialized Technical Office of the Union and shall be governed in accordance with the provisions of this Statute.

#### Article 3 Objectives of AOSTI

The AOSTI shall serve as the continental repository for STI data and statistics and a source of policy analysis in support of evidence based policy-making in Africa and shall further:

- (a) Monitor and evaluate Africa Union STI policy implementation;
- (b) Champion evidence-based STI policy-making;
- (c) Support Member States and RECs to manage and use STI statistical information in accordance with the African Charter on Statistics;
- (d) Assist Member States and RECs to map their STI capabilities to address economic, social, environmental and other development challenges;
- (e) Strengthen national and RECs capacities for STI policy design, evaluation and review;
- (f) Provide to decision-makers in Member States and RECs up-to-date information on global scientific and technological trends;
- (g) Strengthen national and regional capacities for technology foresight and prospecting; and
- (h) Promote and strengthen regional and international cooperation in areas of competence of AOSTI.

#### Article 4 Mandate and Functions of AOSTI

The AOSTI shall perform the following functions:

- (a) Manage programmes and projects in areas of STI measurements at the continental level;
- (b) Develop capacity of Member States and RECs to undertake STI measurements;
- (c) Develop framework for reviewing national innovation systems;
- (d) Analyse STI policies in the African Union;



## 68. STATUTE OF THE AFRICAN OBSERVATORY FOR SCIENCE, TECHNOLOGY AND INNOVATION (AOSTI) (2016)

- (e) Initiate partnerships and networks in the field of STI measurements;
- (f) Mobilize human and financial resources to support its operations and programmes;
- (g) Establish and maintain an STI information system;
- (h) Identify future, needs and develop appropriate responsive and flexible data and indicators; and
- (i) Perform any other function related to STI measurements and analysis of related policies as deemed necessary for Africa's development.

### Article 5 Governance of AOSTI

The AOSTI shall be governed by the following bodies:

- (a) The STC;
- (b) The Steering Committee; and
- (c) The Secretariat.

### Article 6 The Steering Committee

1. The Steering Committee shall be composed of:

- (a) Two (2) representatives from the five AU regions nominated by their regions taking into account gender balance. The representatives shall be renowned high-level scientists with expertise in the domain of statistics and scientific evaluation, provided that no two members shall be from the same country. The representatives shall serve for a non-renewable term of two (2) years;
- (b) The Director of the Department of Human Resources, Science and Technology (HRST) or his/her representative; and
- (c) A representative of the Host Country.

2. The Executive Secretary of the AOSTI shall serve as Secretary of the Steering Committee.

3. The Steering Committee shall advise the AOSTI on:

- (a) Setting up standards and validating procedures;
- (b) Monitoring and evaluation processes;
- (c) Mapping the contribution of STI in Africa's socio-economic development;
- (d) Production of the African STI Outlook Series;
- (e) Matters of policy analysis, programmes and projects including resource mobilization;
- (f) Ensuring quality measurement of indicators; and

## 68. STATUTE OF THE AFRICAN OBSERVATORY FOR SCIENCE, TECHNOLOGY AND INNOVATION (AOSTI) (2016)

- (g) Any scientific or technical issues in relation with the objectives of the AOSTI.
- 4. The Steering Committee shall:
  - (a) Elect from among its members, a Chairperson and a Vice Chairperson both of whom shall serve for a non-renewable term of two (2) years;
  - (b) Report to the STC through the Department of HRST; and
  - (c) Meet once a year in ordinary sessions and may, subject to the availability of resources, hold extraordinary sessions on the request of its Chairperson, the STC or the Commission.

### Article 7 The Secretariat

- 1. The structure of the Secretariat shall be as proposed by the African Union Commission in consultation with the Steering Committee.
- 2. The Secretariat shall perform the following functions:
  - (a) Prepare the budget and financial reports of AOSTI;
  - (b) Work closely with Member States and RECs to set up STI statistic networks and facilities;
  - (c) Mobilize resources in the framework of the AU policy in this area;
  - (d) Establish strategic partnerships in areas of competence of AOSTI; and
  - (e) Perform any other functions that are deemed necessary in line with the objectives of AOSTI.

### Article 8 Budget

- 1. The budget of the AOSTI shall be within the budget of the Union.
- 2. In addition to the regular budget of the Union, other sources of funding the AOSTI may include:
  - (a) Voluntary contributions from AU Member States and partners;
  - (b) Contributions from development partners of the Union and the Commission;
  - (c) Contributions from the private sector;
  - (d) National and regional financial institutions and other financing mechanisms;
  - (e) AU Science, Technology and Innovation Fund when established; and
  - (f) Any other source of funding in accordance with AU Rules.
- 3. The budget calendar of the AOSTI shall be that of the Union.

### Article 9 Headquarters of AOSTI

The Headquarters of the AOSTI shall be in the Republic of Equatorial Guinea. The Host Country Agreement shall govern the relations between AOSTI and the Host Country.

Article 10  
Privileges and Immunities

The AOSTI shall enjoy in the territory of the Host Country, the privileges and immunities specified in the General Convention on Privileges and Immunities of the Organization of African Unity adopted in Accra, Ghana on 25 October 1965.

Article 11  
Amendments

1. The present Statute may be amended by the Assembly upon the recommendation of the STC.
2. The amendments shall enter into force upon their adoption by the Assembly.

Article 12  
Working Languages

The working languages of the AOSTI shall be those of the AU.

Article 13  
Entry into Force

The present Statute shall enter into force upon its adoption by the Assembly.



**STATUTE OF THE PAN-AFRICAN  
INTELLECTUAL PROPERTY ORGANIZATION (PAIPO)**



69.

**STATUTE OF THE PAN-AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (PAIPO)**

**Adopted in Addis Ababa, Ethiopia, on 31 January 2016.**

**The Statute shall enter into force thirty days after the deposit of the fifteenth instrument of ratification.**

Preamble

*We, Member States of the African Union,*

*Determined* to promote a development-oriented intellectual property system, in order to achieve the objectives of the African Union,

*Recalling* Decision Assembly/AU/Dec.138 (VIII) adopted by the Assembly of the Union in Addis Ababa, Ethiopia, in January 2007 requesting the Chairperson of the Commission, in collaboration with the Regional Economic Communities (RECs), World Intellectual Property Organization (WIPO) and in coordination with the Organization Africaine de la Propriete Intellectuelle (OAPI) and the African Regional Intellectual Property Organization (ARIPO) to submit to it the texts relevant to the establishment of a single Pan-African Intellectual Property Organization (PAIPO),

*Further recalling* Decision Assembly/AU/Dec.453 (XX) adopted by the Assembly in Addis Ababa, Ethiopia, in January 2013 on the creation of the Pan-African Intellectual Property Organization (PAIPO),

*Recognizing* that intellectual property can serve as a tool for development, including through achieving economic growth and development,

*Being fully aware* of the need to provide a broad-based intellectual property platform that would provide a forum for policy-based discussions and formulation of a common African position on global and emerging intellectual property issues,

*Being cognizant* of the valuable benefits that the Member States would derive from an effective, continuous and well-coordinated stock of specialized intellectual property information, knowledge and services that would be instrumental in promoting and protecting creativity, invention, innovation, facilitating technology transfer, techno-industrial competitiveness and economic growth in Africa,

*Recognizing* the need to promote creativity and utilization of the intellectual property system among Member States,

*Further recognizing* the need for positive efforts designed to raise effective awareness of intellectual property issues in Africa, and the need to encourage the creation of a knowledge-based and innovative society and to promote the creation, use and exploitation of intellectual property assets in Africa for development purposes,

*Desirous* of encouraging creativity as well as promoting the strategic use of, protection and exploitation of intellectual property rights for development throughout Africa,

*Realizing* the role that an efficient continental intellectual property organization can play in promoting the cultural and socio-economic development of Africa and in dealing more effectively with the challenges posed by globalization,

*Appreciating* the crucial role played by national intellectual property offices of Member States, and taking note of the autonomy of ARIPO and OAPI, in recognizing the need to modernize and harmonize intellectual property legislation throughout Africa and to render more efficient the administration of intellectual property rights,

*Recognizing* ARIPO and OAPI as building blocks for the creation of a Pan-African intellectual property organization as well as welcoming their support in the implementation of the Heads of State and Government decision on PAIPO, Assembly/AU/Dec.522 (XXIII),

*Being desirous* of supporting the role played by national intellectual property offices of Member States,

*Realizing* the need to strengthen the capacity of national intellectual property institutions and boosting manpower development in intellectual property management as well as affirming the 45 recommendations of the WIPO Development Agenda adopted in 2007,

*Noting* that indigenous knowledge on the continent has become a vital source of wealth while at the same time local communities have become increasingly marginalized in the use, appropriation, and commercialization of their knowledge, genetic and cultural resources,

*Recognizing* international human rights laws and international agreements on sustainable development and the protection of indigenous knowledge, that provide legitimate rights of indigenous and local communities,

*Recalling* the United Nations resolution 70/1 entitled Transforming Our World: the 2030 Agenda for Sustainable Development adopted on 25 September 2015 and the African Union Agenda 2063,

*Further recognizing* the cross-cutting nature of intellectual property and the need to have cooperation in the field of intellectual property systems within the African Union,

*Have agreed* as follows:

#### Article 1 Definitions

For purposes of this Statute:

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

"ARIPO" means the African Regional Intellectual Property Organization as established by the Lusaka Agreement of 1976, as amended from time to time;

"CBD" means the Convention on Biological Diversity, which entered into force on 29 December 1993;

"Commission" means the African Union Commission;

"Conference of States Parties" means the highest political decision-making body of the parties to the PAIPO;

"Council of Ministers" means the Ministers in charge of intellectual property in Member States of the AU;

"Member States" means Member States of the PAIPO;

"OAPI" means the African Intellectual Property Organization established under the Bangui Agreement of March 2, 1977, as amended from time to time;

"PAIPO" means the Pan-African Intellectual Property Organization;

"RECs" means Regional Economic Communities recognized by the African Union;



"Secretariat" means the Secretariat of the Pan-African Intellectual Property Organization;

"States Parties" means States that are party to the PAIPO statute;

"Statute" means the present statute of the Pan-African Intellectual Property Organization;

"Union" or "AU" means the African Union;

"WIPO" means the World Intellectual Property Organization;

"Intellectual property" shall refer and include the rights relating to:

- (a) Creations of the mind, inventions, literary and artistic works, and symbols, names, images and designs used in commerce;
- (b) Indigenous knowledge systems, genetic resources and associated traditional knowledge, geographical indications, expressions of folklore among others;
- (c) Authors, performers, producers and broadcasters, who contribute to the cultural and economic development of nations;
- (d) Intangible assets of brands, designs and other intangible fruits of a company's creative and innovative capacity; and
- (e) All other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

"IP Systems" means tools and other legal and administrative measures that assist in the use of intellectual property and the application of intellectual property rights for the socio-economic development of Africa.

## Article 2 Establishment of the PAIPO

PAIPO is hereby established as a specialized agency of the Union.

## Article 3 Mandate of the PAIPO

The PAIPO shall be responsible for intellectual property and other emerging issues related to intellectual property in Africa and shall promote effective use of the intellectual property system as a tool for economic, cultural, social and technological development of the continent as well as set intellectual property standards that reflect the needs of the African Union its Member States and RECs, ARIPO and OAPI.

## Article 4 Functions of the PAIPO

The PAIPO shall:

- (a) Harmonize intellectual property standards that reflect the needs of the AU, its Member States and RECs, ARIPO and OAPI;
- (b) Facilitate the realization and harmonization of national legislation and regional treaties with continental intellectual property standards;

## 69. STATUTE OF THE PAN-AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (PAIPO) (2016)

- (c) Facilitate the use of intellectual property to promote creativity and innovativeness on the continent;
- (d) Assist its Member States upon request in formulating policies and addressing current and emerging intellectual property issues;
- (e) Initiate and facilitate strategies that shall promote and develop the intellectual property system;
- (f) Strengthen existing regional organizations or such other organizations as may be necessary;
- (g) Strengthen existing collective management organizations and facilitate their establishment in the Member States, which have no collective management organization in the field of copyright and related rights;
- (h) Take deliberate measures to promote the protection and exploitation of intellectual property rights within the Member States, including conclusion of bilateral and multilateral agreements;
- (i) Collect, process and disseminate relevant information on intellectual property to Member States and support the establishment of continental databases on genetic resources, traditional knowledge and traditional cultural expressions and folklore in order for Member States to derive regular and maximum benefit;
- (j) Develop policy guidelines using best practices and training modules to support Member States to achieve world-class intellectual property systems;
- (k) Contribute to the accelerated achievement of the objectives of the African Union as stated in the Constitutive Act of the African Union;
- (l) Promote the harmonization of intellectual property systems of its Member States, with particular regard to protection, exploitation, commercialization and enforcement of intellectual property rights;
- (m) Perform administrative tasks provided in intellectual property treaties adopted by the Conference of States Parties;
- (n) Provide a forum for policy discussions and formulation, addressing political issues and developing African Common positions relating to intellectual property matters, particular regard being given to genetic resources, traditional knowledge, geographic indications, expressions of folklore, matters pertaining and arising from the CBD and emerging topics in the field of intellectual property;
- (o) Initiate and facilitate activities that strengthen the human, financial and technical capacity of Member States to maximize the benefits of the intellectual property system;
- (p) Promote and facilitate positive efforts designed to raise awareness of intellectual property in Africa and to encourage the creation of a knowledge-based economy, innovative society as well as emphasizing the importance of creative and cultural industries;
- (q) Lead the African negotiation in the international IP issues and to ensure the attainment of African common positions; and
- (r) Undertake other intellectual property activities as may be necessary for the achievement of the objectives of the PAIPO.

### Article 5 Membership

## 69. STATUTE OF THE PAN-AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (PAIPO) (2016)

Membership shall be open to AU Member States. Each Member State shall enjoy equal rights in terms of participation and representation at PAIPO meetings.

### Article 6 Legal Capacity

1. The PAIPO shall enjoy, in the territory of each Member State, legal capacity and full juridical capacity necessary for the fulfillment of its objectives and the exercise of its functions in accordance with this Statute.
2. For the fulfillment of its objectives, the PAIPO shall, in particular, have legal capacity to include:
  - (a) Enter into agreements;
  - (b) Acquire and dispose of movable and immovable property;
  - (c) Institute legal proceedings.

### Article 7 Privileges and Immunities

The PAIPO, 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.

### Article 8 Headquarters of the PAIPO

The headquarters of the PAIPO shall be situated in Tunisia in accordance with the decision of the Assembly.

### Article 9 Organs of the PAIPO

The PAIPO shall be composed of the following organs:

- (a) Conference of States Parties;
- (b) Council of Ministers;
- (c) Secretariat; and
- (d) The Board of Appeal.

### Article 10 The Conference of States Parties

1. The Conference of States Parties is hereby established as the supreme policymaking organ of PAIPO.
2. The Conference of States Parties shall adopt its rules of procedures and those of any subsidiary body it may establish, as well as financial rules to determine in particular the financial participation of the Parties to PAIPO.
3. The Conference of States Parties shall:

## 69. STATUTE OF THE PAN-AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (PAIPO) (2016)

- (a) Provide strategic leadership and ensure oversight for the implementation of the PAIPO Statute and take all measures it deems necessary for the promotion of the objectives of PAIPO;
  - (b) Consider and adopt, as appropriate, recommendations of the Council of Ministers;
  - (c) Consider the reports and activities of the Bureau and take appropriate action in regard thereto; and
  - (d) Perform any other function consistent with PAIPO's Statute or the Rules of Procedure of the Conference of States Parties.
4. The Conference of States Parties shall have a Bureau consisting of a President, three Vice-Presidents, and a Rapporteur elected by the Conference of States Parties for a one three-year term. The members of the Bureau shall reflect equitable geographical representation.
5. The Conference of States Parties shall meet every three (3) years.

### Article 11 Council of Ministers

1. The Council of Ministers is the highest decision-making organ and shall constitute the General Assembly of PAIPO. The Council of Ministers shall adopt its rules of procedures as well as the rules of procedure of any of its committees, working groups and/or subsidiary bodies.
2. The Council of Ministers shall consist of Ministers in charge of intellectual property in the Member States.
3. The Council of Ministers shall meet once every two years.
4. The Council shall have a Committee of Experts composed of senior officials representing the ministries in charge of intellectual property of States Parties.
5. The Council of Ministers may establish such other working groups and/or subsidiary bodies as it deems fit.
6. The Council of Ministers shall have the following functions:
- (a) Give policy direction to the PAIPO and address policy matters relating to the Organization;
  - (b) Set the amount of annual contributions and special contributions to be paid by Member States to the budget of the PAIPO;
  - (c) Elect the Director General of the PAIPO upon the recommendation of its Bureau and in accordance with rules of procedure of the Council of Ministers;
  - (d) Approve the PAIPO strategic plan, budget, policies and programmes;
  - (e) Decide and prioritize the activities of the PAIPO relating to intellectual property;
  - (f) Elect a Bureau of five (5) members consisting of a President, three Vice-Presidents, and a Rapporteur drawn from the five (5) AU geographical regions, where applicable. The AUC Commissioner in charge of intellectual property shall serve as an observer member of the Bureau;
  - (g) Develop the structure and the administrative guidelines of the Secretariat including the staff and financial rules and regulations, the terms of reference of the Board of Appeal as well as adopt the governing rules and regulations of the Board of Appeal;

- (h) Report and submit recommendations to the Executive Council of the African Union; and
  - (i) May delegate any of its functions to any organ of the PAIPO.
7. The Bureau of the Council of Ministers shall meet once (1) a year in ordinary session and may hold an extraordinary session subject to availability of resources and when it deems necessary.

Article 12  
The Director General

1. The Council of Ministers shall elect the Director General for a term of three (3) years based on geographical rotation, renewable once.
2. The powers, duties and conditions of service of the Director General shall be as set out in staff rules and regulations of PAIPO.
3. The Director General shall be the Head of the Secretariat.
4. The Director General shall appoint staff members of the Secretariat in accordance with the staff rules and regulations of PAIPO.
5. In the discharge of his/her duties, the Director General shall not seek or accept instructions from any State, authority or individual external to the PAIPO.

Article 13  
The Secretariat of the PAIPO

1. There shall be a Secretariat of the PAIPO.
2. The Secretariat shall:
  - (a) Ensure the implementation of the decisions of the PAIPO in accordance with its objectives;
  - (b) Draft policies and strategies aimed at the fulfillment of the PAIPO's objectives for adoption by the Council of Ministers;
  - (c) Develop and implement capacity-building programmes for the benefit of Member States in the areas of intellectual property;
  - (d) Take necessary actions to ensure the protection of intellectual property and rights in Africa, including indigenous knowledge systems, genetic resources and associated traditional knowledge, geographical indications, expressions of folklore among others;
  - (e) Develop advocacy policies and strategies to create community awareness in the intellectual property sector;
  - (f) Draft the policy and strategy on international cooperation in matters of intellectual property for adoption by the Council of Ministers;
  - (g) Prepare strategic plan, work programmes, the budget, financial statements and annual reports on the activities of the PAIPO;

## 69. STATUTE OF THE PAN-AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (PAIPO) (2016)

- (h) Be responsible for the day-to-day management of the PAIPO; and
- (i) Perform any other duties as may be assigned by the Council of Ministers.

### Article 14 The Board of Appeal

1. A Board of Appeal shall be established by the Council of Ministers.
2. The Board shall hear disputes and litigations arising from the activities of the PAIPO.

### Article 15 Observers

The Council of Ministers may invite any State, REC, international, regional or subregional organization or institution, which is not a member to attend any meetings of any organ of the PAIPO, as an Observer.

### Article 16 Relationship with Other Institutions, Cooperating States and Organizations

The PAIPO shall establish and maintain working relationships with any intergovernmental, international, regional or national institutions that may assist PAIPO to achieve its objectives.

### Article 17 Finances

1. The PAIPO shall be funded by:
  - (a) Annual statutory contributions and special contributions to be paid by Member States as may be set by the Council of Ministers;
  - (b) Income from services rendered by the PAIPO; and
  - (c) Income from property owned by or other investments made by the PAIPO.
2. The PAIPO may receive donations and voluntary contributions from:
  - (a) Member States;
  - (b) Other States and institutions that are not members of the PAIPO; and
  - (c) Any other sources approved by the Council of Ministers.
3. The Union shall consider a contribution of seed funding to PAIPO for a period of five years. The Assembly shall be regularly informed of the status of the funding of the PAIPO.

### Article 18 Official Languages

The official languages of the PAIPO shall be those of the AU.

### Article 19 Settlement of Disputes

## 69. STATUTE OF THE PAN-AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (PAIPO) (2016)

1. Any dispute or difference arising between States Parties with regard to the interpretation, application and implementation of this Statute shall be settled by mutual consent between the States concerned, including through negotiations, mediation, conciliation or other peaceful means.
2. In the event of failure by the disputing parties to settle the dispute or difference, the disputing parties may, by mutual consent, refer the dispute to:
  - (a) The African Court of Justice Human and Peoples' Rights, where applicable; or
  - (b) To an Arbitration Panel of three (3) Arbitrators whose appointment shall be as follows:
    - (i) The Parties to the dispute shall appoint two of the Arbitrators; and
    - (ii) The Chairperson of the Commission shall appoint the third Arbitrator who shall be the President of the Panel.
3. The decision of the Panel of Arbitrators shall be binding.

### Article 20 Dissolution of the PAIPO

1. The PAIPO may be dissolved by a decision of the Conference of States Parties.
2. The notice period for any meeting of the Conference of States Parties that the dissolution of the PAIPO is to be considered shall not be less than six months.
3. Where a decision has been made on the dissolution of the PAIPO, the Conference of States Parties shall establish the modalities for the liquidation of the assets of the PAIPO.

### Article 21 Popularization of the Statute

States Parties shall take all appropriate measures to ensure the widest possible dissemination of this Statute.

### Article 22 Safeguard Clause

1. No provision in the present Statute shall be interpreted as derogating from the principles and values contained in other relevant instruments for the promotion of intellectual property development in Africa.
2. Nothing in this Statute shall be construed as preventing a Party from taking any action compatible with the provisions of the United Nations Charter or any other international instrument and that is limited to the exigencies of the situation, as it considers necessary to its external or internal security.

### Article 23 Signature, Ratification and Accession

1. This Statute shall be open to Member States of the Union for signature and ratification or accession.
2. The instrument of ratification or accession to the present Statute shall be deposited with the Chairperson of the Commission who shall notify Member States of the Union of the deposit of the instruments of ratification or accession.

Article 24  
Entry into Force

1. This Statute shall enter into force thirty (30) days after the deposit of the fifteenth (15<sup>th</sup>) instrument of ratification.
2. The Chairperson of the Commission shall inform all Member States of the Union of the entry into force of the present Statute.
3. For any Member State of the Union acceding to the present Statute, the Statute shall come into force in respect of that State on the date of the deposit of its instrument of accession.

Article 25  
Reservations

1. A State Party may, when ratifying or acceding to this Statute, submit in writing, a reservation with respect to any of the provisions of this Statute. Reservations shall not be incompatible with the object and purpose of this Statute.
2. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States Parties of the withdrawal accordingly.

Article 26  
Depository

This Statute shall be deposited with the Chairperson of the Commission, who shall transmit a certified true copy of the Statute to the Government of each signatory State.

Article 27  
Registration

The Chairperson of the Commission upon the entry into force of this Statute shall register this Statute with the United Nations Secretary-General in conformity with Article 102 of the Charter of the United Nations.

Article 28  
Withdrawal

1. At any time after three years from the date of entry into force of this Statute, a State Party may withdraw by giving written notification to the depository.
2. Withdrawal shall be effective one year after receipt of notification by the depository, or on such later date as may be specified in the notification.
3. Withdrawal shall not affect any obligation of the withdrawing State Party prior to withdrawal.

Article 29  
Amendment and Revision

1. Any State Party may submit proposals for the amendment or revision of this Statute. Such proposals shall be adopted at a meeting of the Conference of States Parties.



2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit the amendment or revision to the President of the Bureau of the Council of Ministers within thirty (30) days of receipt thereof.
3. The Conference of States Parties, upon the advice of the Council of Ministers, shall examine these proposals within a period of one year from the date of receipt of such proposals.
4. Amendments or revisions shall be adopted by the Conference of States Parties by consensus or, failing which, by a two-thirds majority.
5. The amendment or revision shall enter into force in accordance with the procedures outlined in Article 24 of this Statute.

Article 30  
Authentic Texts

This Statute is drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic.



# **REVISED STATUTE OF THE PAN-AFRICAN UNIVERSITY (PAU)**



70.

REVISED STATUTE OF THE PAN-AFRICAN UNIVERSITY (PAU)

**Adopted in Addis Ababa, Ethiopia, on 31 January 2016.**

**Entered into force upon adoption.**

Preamble

*We, the Member States of the African Union,*

*Recalling* Decision Assembly/AU/Dec.290 (XV) adopted by the Assembly of Heads of State and Government of the African Union during its Fifteenth Ordinary Session in July 2010 in Kampala, Uganda, creating the Pan-African University,

*Aware* of the central role that higher education and scientific and technological research play as a cornerstone of social integration, economic development and competitiveness,

*Acknowledging* that the establishment of the Pan-African University is a first step towards the creation of high quality continental institutions that promote quality training, research and innovation within Africa, ensure a steady nurturing of new ideas and also a continuous injection of highly skilled human resources to meet the developmental needs of the continent,

*Inspired* by the Plan of Action for the Second Decade of Education for Africa 2006-2015, and the Consolidated Plan of Action for Science and Technology 2006-2011,

*Also inspired* by the African Union Agenda 2063 -- The Africa We Want, the Science Technology and Innovation Strategy for Africa 2024 (STISA-2024) and the roles articulated therein for higher education, science, technology and innovation as drivers of the continent's rapid development,

*Recognizing* that, to meet its objectives, the Pan-African University must achieve financial sustainability by mobilizing adequate resources from the African Union Commission, African Union Member States and other potential partners,

*Aware* that sound financial management is key to the Pan-African University assuring allocation and timely disbursement of funds,

*Have agreed* as follows:

Article 1  
Definitions

In this Statute:

"Academic staff" means staff of PAU engaged in teaching, lecturing and research;

"African diaspora" consists of people of African origin living outside the continent irrespective of their citizenship and nationality and who are willing to contribute to the development of the continent and the building of the African Union defined by the Executive Council in Decision EX.CL/Dec.221 (VII);

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

"AU" or "Union" means the African Union established by the Constitutive Act of the African Union;

"Board" means the Board of a PAU Institute;

"Centre" means a Centre of the PAU;

"Commission" means the African Union Commission;

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

"Graduate study" or "graduate studies" means any studies undertaken after the first university degree including all post-graduate studies;

"Host Country" means a State that has formally entered into an agreement with the African Union to host the Rectorate, an Institute, a Centre or other facilities and installations of the PAU within its geographical territory;

"Host University" means a university or consortium of universities located within the geographical territory of a Host Country formally offered by the Host Country to serve as the seat of a PAU Institute, Centre, facility or installation;

"Institute" or "PAU Institute" means an Institute of the PAU;

"Institution affiliated to the PAU" means an academic institution or a unit thereof not forming part of the PAU network of institutes and Centres but which the PAU Council nevertheless designates as an institution affiliated to the PAU on the basis of academic excellence;

"Key Partner" means a development partner supporting the PAU in a manner that is not limited to any one of the thematic Institutes or areas of the PAU. The description of a key partner may be qualified based on the nature of the support it provides to the PAU (e.g., Key Funding Partner or Key Technical Partner);

"PAU" means the Pan-African University established by the African Union;

"PAU Council" means the Council of the Pan-African University;

"PAU Senate" means the Senate of the Pan-African University;

"Programme Department" refers to a Department of a PAU Institute or to a Centre designated as such by the PAU Council;

"RECs" means the Regional Economic Communities of the African Union;

"Rector" means the Chief Executive of the PAU, also known as Vice Chancellor;

"Statute" means the present Statute of the Pan-African University;

"STC" means Specialized Technical Committee on Education, Science and Technology;

"Thematic Partner" means a development partner engaging in support of one or more of the thematic areas of the PAU.

Article 2  
Principles

## 70. REVISED STATUTE OF THE PAN-AFRICAN UNIVERSITY (PAU) (2016)

1. The PAU is a continental academic, research and innovation institution based on the following guiding principles:

- (a) Academic freedom, autonomy and accountability;
- (b) Quality assurance;
- (c) Strengthening existing African institutions at the graduate studies level to enable them to serve the whole continent;
- (d) Promotion of African integration through the mobility of students, academic and administrative staff, as well as the development of collaborative research linked to the challenges faced by African countries;
- (e) Excellence and international partnerships in academic and research activities;
- (f) Institution of an appropriate framework and a conducive environment to enable the African diaspora to contribute towards the development of higher education, research and innovation in Africa;
- (g) Promotion of inter-disciplinary and multidisciplinary research programmes integral to policy-making processes in Africa;
- (h) Promotion and harnessing of productive linkages with the industrial sector for innovation and dissemination of new knowledge and technology;
- (i) Strengthening of research particularly in the thematic areas of the PAU;
- (j) Promotion of optimal use of Information and Communication Technologies for pedagogy, research and management;
- (k) Promotion of gender equity at all levels and in all university functions; and
- (l) Promotion of access to higher education for persons with disabilities.

2. The PAU shall take into account basic principles of the Constitutive Act of the AU, AU Instruments and Policies on Higher Education, Science, Technology and Innovation, Agenda 2063, the African Charter on Human and People's Rights as well as other regional and international human rights instruments.

### Article 3 Objectives

The PAU shall undertake training, research and innovation focused on priority issues in order to attain the following objectives:

- (a) Develop continent-wide and world-class graduate study programmes in science, technology, innovation, humanities, social sciences and governance;
- (b) Stimulate collaborative, internationally competitive, cutting edge fundamental and applied research, in areas having a direct bearing on the scientific, technological, economic and social development of Africa;
- (c) Enhance the mobility of students and academic staff among African universities to improve on training, research and innovation;
- (d) Contribute to the capacity-building needs of present and future stakeholders of the African Union;

## 70. REVISED STATUTE OF THE PAN-AFRICAN UNIVERSITY (PAU) (2016)

- (e) Improve on the attractiveness of African higher education and research institutions to attract and retain talented young professionals on the African continent;
- (f) Initiate and invigorate mutually beneficial partnerships with public and private sectors within Africa and the diaspora as well as internationally; and
- (g) Facilitate the emergence and strengthening of an African higher education and research platforms.

### Article 4

#### Legal Capacity and Autonomy of the PAU

1. The PAU is an autonomous institution of the African Union and in conformity with the African Union rules and regulations, shall possess legal personality and capacity to:
  - (a) Enter into agreements;
  - (b) Acquire and dispose of moveable and immovable property;
  - (c) Institute legal proceedings.
2. The PAU shall enjoy the basic principles applicable to all institutions of higher education, which are required for the achievement of its objectives. The observance and respect of these principles, particularly academic freedom, autonomy and accountability shall enable the PAU to function under the best attainable conditions and standards within the framework of the common rules governing the institutions of the African Union.
3. The PAU as well as its host countries and host universities shall grant full academic freedom and self-governance in teaching and research to all members of the academic and research staff of the university. Students of the PAU shall equally be entitled to full learning rights and privileges.

### Article 5

#### Privileges and Immunities

1. The PAU and its staff shall enjoy within the territory of each Member State of the African Union, the status, privileges and immunities provided in the 1965 General Convention on the Privileges and Immunities of the Organization of African Unity and other international agreements and Assembly Decisions relating to the status, privileges and immunities of the African Union and its institutions.
2. PAU Council members and staff travelling on official business of the PAU shall, on request by the Rector, be issued with appropriate African Union travel documents in accordance with relevant AU policies and regulations on travel documents. Students of the PAU shall travel using their own national passports. Host countries shall facilitate access by PAU students to campuses and facilities of the PAU located within their geographical territory.

### Article 6

#### Structure and Organization of the PAU

1. The PAU is a unitary academic, research and innovation institution comprising thematic Institutes hosted in different geographic regions by existing academic institutions operating at the graduate studies level.
2. The Institutes of the PAU shall be dedicated to the following thematic areas and shall be located in the corresponding geographic regions set out below:



## 70. REVISED STATUTE OF THE PAN-AFRICAN UNIVERSITY (PAU) (2016)

- (a) Space sciences in Southern Africa;
  - (b) Water and Energy Sciences (including climate change) in Northern Africa;
  - (c) Life and Earth Sciences (including health and agriculture) in Western Africa;
  - (d) Basic Sciences, Technology and Innovation in Eastern Africa; and
  - (e) Governance, Humanities and Social Sciences in Central Africa.
3. The Assembly may establish additional thematic Institutes of the PAU in any geographic location.
4. Each Institute of the PAU shall have a network of Centres under it, working within the same thematic area as the Institute. Each Centre shall be regarded as forming a constituent part of its corresponding thematic Institute.
5. The Centres of the PAU Institutes shall be identified following a competitive process and they shall be located in a manner that ensures equitable geographical representation among the five regions of the continent.
6. The PAU Council may, on the recommendation of the Board of an Institute create Programme Departments and any other substructures related to training, research, innovation and extension activities within the Institute and Centres of the PAU.
7. The Council may in consultation with the PAU Senate and the corresponding organ of the host university concerned designate, on grounds of academic excellence, other institutions or parts thereof not forming part of the PAU network as "Institutions Affiliated to the PAU", on such terms and conditions as may be determined by the PAU Council. Institutions affiliated to the PAU shall not form an integral part of the PAU.

### Article 7

#### Governance and Management of the PAU

1. The Assembly has supreme overall responsibility of overseeing the PAU.
2. The management organs of the PAU shall be:
- (a) The PAU Council;
  - (b) The Rectorate;
  - (c) The PAU Senate;
  - (d) Boards of Institutes; and
  - (e) Directorates of institutes.
3. The Chairperson of the Commission or his/her designated representative shall preside over all PAU graduation ceremonies.

### Article 8

#### Functions of the PAU Council

1. The PAU Council shall be the highest governing body of the university and shall have oversight of the policy, finances and property of the PAU. Unless otherwise provided in this Statute, the PAU Council shall have

## 70. REVISED STATUTE OF THE PAN-AFRICAN UNIVERSITY (PAU) (2016)

authority to adopt regulations and to issue directives, policies and guidelines to govern all activities and operations of the PAU.

2. The PAU Council shall:

- (a) Approve the recruitment, promotion and discipline of academic and research staff of the PAU;
- (b) Approve staff regulations and rules for the PAU taking into account recommendations from the PAU Senate on the selection, and recruitment of academic staff. PAU staff regulations and rules approved by the PAU Council shall be presented to the Executive Council for approval;
- (c) Approve Codes of Conduct for PAU staff and students following recommendations by the PAU Senate;
- (d) Approve all other PAU regulations, rules, measures directives, policies and procedures which shall govern the activities and operations of the PAU;
- (e) Promote sociocultural activities of the PAU;
- (f) Designate new Centres of the PAU and Institutions Affiliated to the PAU as well as Programme Departments within the Institutes and Centres of the PAU in consultation with the PAU Senate and the corresponding organ of the host university concerned;
- (g) Approve work plans and adopt the budget of the PAU on the basis of proposals submitted to it by the Rector;
- (h) Consider the Rector's annual activity report covering the work of the PAU and the status of implementation of its work plans;
- (i) Approve the multiannual strategic development plan and operational plans of the PAU;
- (j) Approve any agreements, contracts and other arrangements of a legal nature to be signed by the Rector on behalf of the PAU;
- (k) Consider and approve the appointment of members of the PAU Senate nominated by the Rector;
- (l) Report annually on the work of the PAU to the Assembly; and
- (m) Perform all other functions within its mandate as are necessary for the smooth operation and development of the PAU.

3. The Council may constitute committees or working groups and outline the membership and respective roles thereof as it deems necessary.

### Article 9 Composition of the PAU Council

1. The PAU Council shall be constituted as follows:

- (a) President;
- (b) Vice-President;
- (c) The Commissioner for Human Resources, Science and Technology or his/her representative;

## 70. REVISED STATUTE OF THE PAN-AFRICAN UNIVERSITY (PAU) (2016)

- (d) The Vice-Chancellors/Vice-Rectors of all host universities of PAU Institutes;
- (e) The Chairperson of the STC in charge of education or his/her representative;
- (f) The PAU Rector (ex-officio);
- (g) The Directors of all PAU Institutes;
- (h) A representative of the United Nations Educational, Scientific and Cultural Organization (UNESCO);
- (i) A representative from each of the RECs;
- (j) Two scholars from the African diaspora appointed by the Chairperson of the Commission;
- (k) A representative of the Association of African Universities (AAU);
- (l) A representative of the African Academy of Sciences (AAS);
- (m) A representative of the Key and Thematic Partners on a rotational basis;
- (n) A representative of academic staff of the PAU;
- (o) A representative of administrative staff of the PAU;
- (p) Two representatives of students of the PAU.

2. The Executive Council shall elect the President and Vice-President of the PAU Council from a list of five candidates presented by the Bureau of the STC. The candidates presented shall be citizens of AU Member States.

3. The Chairperson of the Commission shall appoint all other members of the PAU Council following consultations with the Bureau of the STC and the respective organizations enumerated in paragraph 1 of this article. The Chairperson of the Commission shall ensure merit and competence with due consideration for gender equity and geographical representation in deciding on the appointment of the members of the PAU Council.

### Article 10

#### Term of Office of the PAU Council

- 1. PAU Council members shall serve a three-year term renewable once.
- 2. Half of the members of the PAU Council shall be replaced at the end of their three-year term. This half shall be determined by lot at the time of their assumption of office as members of the PAU Council.

### Article 11

#### Functions of the President of PAU Council

- 1. The President of the PAU Council shall:
  - (a) Set the agenda of the PAU Council sessions in consultation with the Rector;
  - (b) Summon the members of the PAU Council to attend PAU Council sessions;
  - (c) Preside over the meetings of the PAU Council;

## 70. REVISED STATUTE OF THE PAN-AFRICAN UNIVERSITY (PAU) (2016)

- (d) Monitor discussions;
  - (e) Represent the PAU Council;
  - (f) Receive all communications addressed to the PAU Council;
  - (g) Sign all official documents issued by the PAU Council; and
  - (h) Perform such other functions as may be specifically assigned by the PAU Council.
2. In the absence of the President, the Vice-President shall perform the functions of the President.

### Article 12 Meetings of the PAU Council

1. The PAU Council shall meet twice a year in ordinary session. It may meet in extraordinary session at the request of the President or at least simple majority of the total membership of the PAU Council, in consultation with the Rectorate.
2. The quorum for a meeting shall be a simple majority of the total membership of the PAU Council.
3. Decisions of the PAU Council shall be adopted by a two-thirds majority of the Members present and voting.
4. Except as otherwise determined by the PAU Council, all meetings of the PAU Council shall be held at the Rectorate.
5. Minutes of PAU Council sessions shall be sent to the Commission for information.
6. The Rector shall serve as Secretary to the PAU Council.

### Article 13 The Rectorate

1. The Rectorate shall be responsible for the day-to-day management of the PAU and shall be headed by the Rector who is the Chief Executive Officer of the PAU.
2. In the performance of his/her functions, the Rector shall be directly responsible to the PAU Council for the discharge of her/his duties and shall be supported by:
- (a) A Vice-Rector for Academic and Students Affairs;
  - (b) A Vice-Rector for Research, Development and Cooperation; and
  - (c) Such other staff members as are required for the efficient running of the Rectorate.
3. The Chairperson of the Commission shall appoint the Rector and Vice-Rectors upon recommendation of the PAU Council following a competitive recruitment process.
4. The Rector shall appoint all other staff of the Rectorate with the approval of the PAU Council.

5. The Rector and Vice-Rector shall be appointed for a term of five (5) years renewable once and shall be subject to annual performance evaluation by the PAU Council.

Article 14  
Functions of the Rector

The Rector shall be responsible for implementing the general policy and multi-annual strategic development plan of the PAU. He/she shall also be responsible for the corporate and public image of the University, including its external relations. He/she shall specifically be in charge of the following:

- (a) Preparing and presenting the annual activity report of the PAU to the PAU Council;
- (b) Ensuring the implementation of the decisions and directives of the PAU Council;
- (c) Ensuring the required coordination between Directors of Institutes and Coordinators of Programme Departments and Centres;
- (d) Ensuring the implementation and the periodic monitoring of the PAU's multi-annual strategic development plan as approved by the PAU Council;
- (e) Authorizing and managing the disbursement of budgetary allocations;
- (f) Managing the personnel of the PAU;
- (g) Concluding agreements, contracts or other arrangements between the PAU and other competent bodies for pedagogic research, management and funding purposes with the approval of the PAU Council;
- (h) Providing services necessary for the proper functioning of the PAU Council;
- (i) Reporting regularly to the PAU Council on the functioning of the PAU Senate;
- (j) Setting up specific consultative committees related to the formulation or the implementation of the multi-annual strategic development plan of the PAU; and
- (k) Performing all other functions as are necessary for the proper administration, smooth operation and development of the PAU.

Article 15  
Functions of the PAU Senate

The PAU Senate shall be in charge of academic affairs, research and innovation activities of the PAU and shall be responsible for:

- (a) Organizing, promoting and monitoring all training research and innovation activities of the PAU;
- (b) Making recommendations to PAU Council on the recruitment and establishment of PAU academic staff;
- (c) Admission, assessment and examination of students, as well as the award and revocation of degrees;
- (d) Developing and recommending PAU administrative and academic rules and regulations for consideration and approval by the PAU Council;

## 70. REVISED STATUTE OF THE PAN-AFRICAN UNIVERSITY (PAU) (2016)

- (e) Considering and approving annual academic performance reviews from Institute Boards on organization of studies, academic staff performance, and promotion;
- (f) Considering recommendations made by Institute Boards and host university Senates on assessment of written research work projects or similar presentations where there is unanimity among the members of the Board of Examiners, and deciding on final assessments;
- (g) Deciding on activity reports covering the work of the Institutes as submitted by the respective Directors;
- (h) Ensuring the well-being and discipline of students;
- (i) Making recommendations to the PAU Council on the designation of Institutions Affiliated to the PAU;
- (j) Making recommendations to the PAU Council on modalities for closer collaboration between Institutes, Centres and host universities to develop policies for the realization of PAU goals;
- (k) Deciding on the creation of Programme Departments, Research Laboratories and Teaching Programmes;
- (l) Appointing committees to assist it in the conduct of its work including, but not limited to, the Standing Committee on Academic Staff responsible for:
  - i. Developing rules and regulations for PAU academic staff;
  - ii. Deciding on the academic establishment list of approved academic positions for each Institute and Centre and launching recruitment processes upon the recommendation of the Institute Boards;
  - iii. Approval of recommendations from Institute Boards for the appointment of academic staff:
    - a. The Committee of Directors of Institutes;
    - b. The Academic Policy, Standards and Quality Assurance Committee;
    - c. The Finance and Administrative Committee; and
    - d. The Committee on Research and Innovation;
- (m) All other matters relevant to the academic affairs, research and innovation activities of the PAU.

### Article 16 Composition of the PAU Senate

The PAU Senate shall be composed as follows:

- (a) The Rector;
- (b) A representative of the Department in charge of Education within the Commission;
- (c) Vice-Rector for Academic and Students Affairs;
- (d) Vice-Rector for Research, Development and Cooperation;
- (e) Director of Administration and Finance;

## 70. REVISED STATUTE OF THE PAN-AFRICAN UNIVERSITY (PAU) (2016)

- (f) The Deputy Vice Chancellor/Deputy Rector responsible for academic affairs at all host universities of PAU Institutes;
- (g) The Directors of all PAU Institutes;
- (h) One representative of the academic and research staff of each PAU Institute appointed by the PAU Council on the recommendation of the Rector; and
- (i) One student representative from each PAU Institute appointed by the PAU Council on the recommendation of the Rector.

### Article 17 Meetings of the PAU Senate

1. The PAU Senate shall meet twice a year in ordinary session. It may meet in extraordinary session at the request of the Rector or at least a simple majority of the total membership of the PAU Senate.
2. The quorum for a meeting shall be a simple majority of the total membership of the PAU Senate.
3. Decisions of the PAU Senate shall be taken by a two-thirds majority of the Members present and voting.
4. Meetings of the PAU Senate shall be held at the Rectorate or at any other convenient place within the PAU institutes as the Rector shall determine.
5. The Rector shall serve as the chairperson of the PAU Senate. In the absence of the Rector, the Vice-Rector for Research, Development and Cooperation shall preside over the meetings of the PAU Senate.
6. The Vice-Rector for Academic and Student Affairs shall serve as secretary to the PAU Senate.

### Article 18 Directorates of Institutes

1. Each Institute shall be headed by a Director who shall be accountable to the Rector in the discharge of her/his duties.
2. In the performance of her/his functions a Director shall be assisted by a Deputy Director and such other staff as may be required for the effective functioning of the Institute.
3. The Rector shall appoint all Directors, Deputy Directors and other staff of the Directorates of PAU institutes in consultation with the PAU Council and the respective host universities, following a competitive recruitment process.

### Article 19 Functions of the Director of an Institute

1. The Director shall be responsible for the day-to-day management and administration of the Institute.
2. In particular, the Director shall perform the following functions:
  - (a) Ensure effective coordination between the Coordinators of all Programme Departments and Centres falling under his/her Institute;

## 70. REVISED STATUTE OF THE PAN-AFRICAN UNIVERSITY (PAU) (2016)

- (b) Preside over the Annual General Meeting of the Coordinators of Programme Departments and Centres of the Institute in order to draw up the report of the Institute, including an activity report covering the work of the Institute for consideration and decision by the PAU Senate;
- (c) Liaise between the host university, host country and the PAU Rectorate;
- (d) Prepare and submit to the Rectorate activity reports on the work of the Institute on semester basis;
- (e) Ensure implementation of the decisions of the PAU Council at the level of the Institute;
- (f) Ensure the implementation and periodic monitoring of the multi-annual strategic development plan of PAU at the level of the Institute, its Programme Departments and Centres;
- (g) Ensure the commitment and release of funds for which provision has been made in the budget approved by the PAU Council and serve as the authorizing officer for the Institute;
- (h) Effectively manage the personnel, property, equipment and facilities of the Institute;
- (i) With the approval of the Rector, sign agreements pertaining to voluntary donations or contributions from governments, national or international organizations, or any other private or public donor organization for the benefit of the Institute;
- (j) Sign contracts and other agreements on behalf of the Institute;
- (k) Keep accurate records on the academic progress of each student, and in this connection, receive from Coordinators of Programme Departments and Centres recommendations for the de-registration or withdrawal of students whose academic performance is unsatisfactory, and forward such recommendations to the PAU Senate for appropriate action when there is sufficient cause;
- (l) Ensure the appointment of Boards of Examiners or juries for postgraduate theses, projects or other related academic or research work;
- (m) Send out invitations to examiners to participate in the evaluation of postgraduate research work on the recommendation of the relevant Programme Departments or Centres of the Institute;
- (n) Arrange for official delivery to examiners of written research work, projects or similar presentations duly submitted by PAU students;
- (o) Receive from the examiners, official assessments of such written research work, projects or similar presentations;
- (p) Convene Board of Examiners meetings in consultation with the Programme Departments or Centres concerned;
- (q) Forward recommendations of the Board of Examiners jointly to the Vice Chancellor of the host university and the PAU Rector for approval on behalf of the respective Senates where the verdict of such Board is unanimous; provided that in the absence of unanimity, the recommendations of the Board of Examiners shall be deliberated upon by the Board of the Institute and recommendations made thereon to the Senates of the host university and the PAU respectively;
- (r) Report annually to the Rector on the individual academic accomplishments of academic and research staff employed at the Institute and its Centres; and



- (s) Undertake any other work or responsibility as may be assigned to him/her by the Rector of the PAU or as may be necessary for the efficient functioning of the Institute.

Article 20  
Boards of Institutes

1. Each PAU Institute shall have a Board whose mandate shall be to supervise, guide and support the Directorate in the management and administration of the Institute.

2 The membership of the Board shall consist of the following:

- (a) A Vice-Rector of the PAU, appointed by the Rector in consultation with the PAU Senate, who will serve as chairperson of the Board;
- (b) The Director of the Institute who will serve as the secretary of the Board;
- (c) Two (2) Coordinators of Programme Departments within the Institute (on rotational basis);
- (d) The Coordinators of all Centres of the Institute (on rotational basis);
- (e) All full-time academic staff of the Institute;
- (f) Two representatives of the Senate of the host university;
- (g) A representative of the Thematic Partner(s) of the Institute (on rotational basis); and
- (h) The Board shall have power to invite other scholars from the host university to attend its meetings in an advisory capacity only and without the right to vote at such meetings.

3. The Board shall be responsible for the supervision of the academic, administrative, and financial management of the Institute. In this regard, its functions shall include:

- (a) Making recommendations to PAU Senate with regard to the creation of Programme Departments, Research Laboratories and Teaching Programmes; organization of studies, and recruitment and promotion of research and teaching staff in accordance with rules, regulations and guidelines established by the PAU Senate;
- (b) Making recommendations to the Rector for the appointment of non-professorial academic staff;
- (c) Deliberating upon any unanimous assessments made by the Board of Examiners on written research work, projects or similar student presentations and make recommendations thereon to the Senates of the host university and the PAU respectively;
- (d) Supervising the Directorate in the areas of:
  - (i) Management of personnel, facilities, equipment and finance;
  - (ii) Planning and budgeting;
  - (iii) Curriculum development, regulations and teaching;
  - (iv) Research and cooperation;
  - (v) Postgraduate theses;

- (vi) Research projects;
- (vii) Nominations of supervisors for all Masters and PhD theses; and
- (viii) Student affairs.

4. The Board of each Institute may constitute such committees or working groups, as it deems necessary to assist it in the performance of its duties. Notwithstanding the foregoing, the Board shall appoint a Standing Committee on Human Resources responsible for:

- (a) Considering and approving recommendations from Selection Committees for the appointment of non-professorial academic staff;
- (b) Making recommendation to the PAU Senate Standing Committee on Academic Staff on the academic establishment of the Institute;
- (c) Developing annual academic performance reviews for approval by the PAU Senate.

Article 21  
Meetings of the Board

1. All meetings of the Board shall require a quorum of simple majority of its membership.
2. Decisions of the Board shall be adopted by a simple majority of members present and voting. In the event of equality of votes, the chairperson shall have a casting vote on the matter.
3. The Board shall meet at least twice a year. The Chairperson of the Board shall convene meetings of the Board in consultation with the Director of the Institute.

Article 22  
Programme Departments of Institutes

1. Each Programme Department shall be headed by a Coordinator, appointed by the Rector in consultation with the Director of the Institute and the host university.
2. In addition to her/his academic duties and responsibilities, the Coordinator of a Programme Department shall:
  - (a) Ensure effective coordination between the Programme Department and the Institute as well as the host university as the case may be;
  - (b) Liaise between the host university, the PAU Institute and the host country;
  - (c) Prepare and submit to the Institute Director monthly reports covering the activities of the Programme Department;
  - (d) Ensure implementation of the decisions of the PAU Council, PAU Senate and the Board at the level of the Programme Department;
  - (e) Ensure the implementation and monitoring of the multi-annual strategic development plan of the PAU at the level of the Programme Department;

## 70. REVISED STATUTE OF THE PAN-AFRICAN UNIVERSITY (PAU) (2016)

- (f) Ensure the commitment and release funds for which provision has been made in the budget approved by the PAU Council of which he/she shall be the authorizing officer for the Programme Department;
  - (g) Effectively manage the personnel, property, facilities and equipment of the Programme Department;
  - (h) Be in charge of executing the academic and research programmes of the Programme Department with the assistance of programme officers. He/she shall particularly follow up on: the recruitment and professional development of staff; admission, continuous assessment and graduation of students; promotion of good relationships between staff and students; and management of internships;
  - (i) Act as the representative of the Institute Director and administer the rules, regulations and policies of the PAU at the level of the Programme Department;
  - (j) Act as the academic and administrative head of the Programme Department;
  - (k) Hold regular Programme Department meetings and ensure that staff members attend such meetings where the Coordinator and the entire staff have the opportunity to exchange ideas on policy matters;
  - (l) Represent the Programme Department on relevant committees and other governing bodies of the host university as may be required;
  - (m) Ensure that proper and acceptable standards of teaching and research are maintained at the Programme Department;
  - (n) Prepare and submit to the Director of the Institute budgets, procurement plans and annual reports, covering the performance of the Programme Department; and
  - (o) Undertake any other tasks or responsibilities as may be assigned to him/her by the Institute Director.
3. The terms and conditions of service of Programme Department and Centre Coordinators, including the rights and privileges to which they shall be entitled, shall be determined in the PAU Staff Regulations and Rules, as may be applicable on the basis of recommendations made by the PAU Council.

### Article 23 PAU Staff

1. The academic and administrative staff of the PAU shall be selected with a view to achieving its stated objectives. The basic criteria for selection shall be the highest standards of qualification, competence, efficiency and integrity.
2. The staff of the PAU shall comprise the following categories:
  - (a) Full-time and part-time academic and administrative staff from host countries;
  - (b) Full-time and part-time academic and administrative staff from other Member States of the African Union;
  - (c) Full-time and part-time academic staff from the African diaspora and from countries that are not Member States of the African Union;
  - (d) Staff provided by host universities and partners on secondment to the PAU; and

## 70. REVISED STATUTE OF THE PAN-AFRICAN UNIVERSITY (PAU) (2016)

(e) Visiting academic staff from host countries, Member States, non-member States of the African Union, the African diaspora and Partners.

3. The African Union Staff Regulations and Rules shall apply to the PAU staff except the provisions on age and quota as it relates to Academic staff and such other exceptions as may be identified taking into account the unique nature of the PAU as an academic institution. Such exceptions shall be submitted for the consideration and approval of the Executive Council.

4. The PAU Council shall recommend an appropriate retirement age for the Academic staff for the approval of the AU policy organs.

5. Part-time academic and administrative staff put at the disposal of the PAU by the host countries, host universities or partners of the PAU shall remain employees of the host government, Host University or partner. This includes:

- (a) Academic staff;
- (b) Administrative personnel;
- (c) Technical personnel; and
- (d) Support personnel.

6. PAU Institute Directors shall request and obtain a mission order signed by the Rector of the PAU before recruiting or accepting visiting academic and research staff at their respective Institutes.

### Article 24 PAU Students

1. Admission to PAU shall be open to candidates who demonstrate a capability to undertake, complete and benefit from graduate studies involving training, research and innovation in accordance with the academic standards set by the PAU Senate.

2. Notwithstanding the provision in paragraph 1 above, admission of women, persons of disability, and the maintenance of fair representation of citizens of all AU Member States shall be encouraged at all times.

3. Upon admission, continued studentship at the PAU shall be based on compliance with academic and disciplinary rules and regulations laid down by the PAU Senate.

### Article 25 Intellectual Property Rights

1. All innovations emanating from the research/activities performed by students, academic and research staff at the PAU shall be registered in the host country in the joint names of the innovator(s), host university and the PAU. The PAU shall, in consultation and concurrence with the host university/country, develop a policy document on the registration of such intellectual property rights, and the sharing of proceeds realized from their subsequent commercialization.

2. The policy document referred to in paragraph 1 above shall be reviewed in line with relevant international treaties and conventions on intellectual property rights.

3. The host country's laws and regulations on intellectual property shall have supremacy over other policies in the event of ambiguity.

Article 26  
PAU Research Policy

1. The PAU shall develop its own research policy, which may vary from one institute to another depending on the nature of their activities and programmes.
2. The research policy shall take into consideration priority research areas identified by the African Union.

Article 27  
Budgeting and Financing of the PAU

1. All African Union Member States pledge to support and finance the PAU.
2. Capital costs, recurrent and operational costs of the PAU shall be met from:
  - (a) Annual budget appropriations made by the Assembly;
  - (b) Cash and in-kind contributions, grants and subventions for the PAU made by governments of host countries of the PAU, other Member States of the AU and foreign countries, directly to the PAU or through the Commission;
  - (c) Cash and in-kind contributions, grants and subventions made by non-governmental entities, including key and thematic partners, intergovernmental organizations, foundations, corporate entities, universities and individuals, directly to the PAU or through the Commission; and
  - (d) Tuition fees and related charges paid by or on behalf of students of the PAU.
3. The Rector shall seek additional funding opportunities for the PAU and may, with the prior approval of the PAU Council, conclude and sign agreements and contracts for the purpose of securing additional funding or support for the activities and programmes of the PAU in accordance with AU Financial Rules and Regulations.
4. The AU Financial Rules and Regulations shall govern all financial operations of the PAU, except such other exceptions as may be identified taking into account the unique nature of the PAU. Such exceptions shall be submitted for the consideration and approval of the Executive Council.
5. Prior to the commencement of each fiscal year, the Rector shall prepare and submit to the PAU Council for approval a consolidated annual budget for the PAU in accordance with the AU Financial Rules and Regulations. The consolidated annual budget of the PAU shall incorporate budget estimates for all activities of:
  - (a) The PAU Council;
  - (b) The PAU Senate;
  - (c) The Rectorate;
  - (d) All PAU Institutes and Centres including activities of their respective Directorates and Boards; and
  - (e) The PAU Project Management or Coordinating Unit located within the Commission.

## 70. REVISED STATUTE OF THE PAN-AFRICAN UNIVERSITY (PAU) (2016)

6. Following the approval of the consolidated annual budget by the PAU Council the Rector shall proceed to execute the budget in conformity with the provisions of the Financial Rules and Regulations of the African Union.

### Article 28 The Endowment Fund

1. An Endowment Fund shall be created for the PAU based on voluntary contributions.
2. The following may be contributors to the Endowment Fund:
  - (a) Member States of the African Union;
  - (b) Regional Economic Communities (RECs);
  - (c) Development partners and relevant donors;
  - (d) Public and private sources; and
  - (e) Other sources as the PAU Council may determine.
3. The management of the Endowment Fund shall be in conformity with the Financial Rules and Regulations of the African Union.
4. Each host country of a PAU an Institute, the Rectorate of the PAU shall commit additional resources to support the university.

### Article 29 Seat

1. Unless otherwise decided by the Assembly, the headquarters of the Rectorate shall be located in Yaoundé, Cameroon.
2. Host agreements shall be signed between the African Union and host countries and Universities for the Rectorate, Institutes and Centres of the PAU.

### Article 30 Disciplinary Committees

1. The PAU Senate shall, acting on the recommendations of the Board, set up a Staff Disciplinary Committee in each PAU Institute and Centre comprising not less than seven (7) members, provided that the total membership of the committee must always be an odd number.
2. The PAU Senate shall, acting on the recommendations of the Board, set up a Student Disciplinary Committee in each PAU Institute and Centre comprising not less than seven (7) members, provided that the total membership of the committee must always be an odd number.
3. The Disciplinary Committees shall conduct hearings and make decisions on acts of indiscipline committed by staff and students in contravention of the relevant rules and regulations applicable to staff and students of the PAU.
4. Students may appeal to the Rector against decisions of the Student Disciplinary Committee. Staff may appeal to the PAU Council against decisions of the Staff Disciplinary Committee. Appeals shall be brought in accordance with procedures and timelines set out in the relevant rules and regulations.

Article 31

Award of Scholarships, Degrees and Examination Regulations

1. The regulations and criteria for the award of Pan-African University Scholarships to PAU students shall be determined by the PAU Senate and approved by the PAU Council.
2. Degrees shall be jointly awarded by the PAU and the host universities. The PAU Senate shall, in consultation with the host universities, issue examination regulations and the modalities for the award of joint degrees subject to the approval of the Councils of the respective institutions.

Article 32

Amendments

1. This Statute may be amended by the Assembly upon recommendation of the PAU Council through the relevant STC.
2. The amendments shall come into force upon their adoption by the Assembly.

Article 33

Working Languages

The working languages of the PAU shall be those of African Union, where applicable.

Article 34

Entry into Force

This Statute shall enter into force upon its adoption by the Assembly.





**AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER)**



71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

71.

**AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND DEVELOPMENT IN AFRICA (LOMÉ CHARTER)**

**Adopted in Lomé, Togo, on 15 October 2016.**

**The Charter shall enter into force thirty days after the deposit of the fifteenth instrument of ratification.**

Preamble

*We, the Heads of State and Government of the Member States of the African Union (AU),*

*Considering* the Constitutive Act of the African Union of 11 July 2000, in particular Article 3, subparagraphs (a), (b), (e) and (f),

*Having regard* to the provisions of the Charter of the United Nations of 26 June 1945, in particular Chapters VI, VII and VIII,

*Cognizant* of the United Nations Convention on the Law of the Sea of 10 December 1982, in particular Articles 100, 101 and 105, defining the legal framework for the fight against piracy and armed robbery against ships and the International Convention for the Safety of Life at Sea of 1 November 1974,

*Considering* the International Convention for the Prevention of Pollution from Ships of 2 November 1973,

*Considering* the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation of 10 March 1988 and its Protocol of 14 October 2005,

*Noting* the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal of 22 March 1989,

*Conscious* of the United Nations Convention against Transnational Organized Crime (Palermo Convention) of 15 November 2000, and its three supplementary protocols,

*Considering* the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa of 30 January 1991,

*Considering also* the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation adopted in Rome on 10 March 1988,

*Recalling* the provisions of the OAU Convention on the Prevention and Combating of Terrorism of 14 July 1999 and the Protocol to the OAU Convention on the Prevention and Combating of Terrorism of 1 July 2004,

*Further recalling* the provisions of the Revised African Maritime Transport Charter of 26 July 2010,

*Mindful* of the African Union Agenda 2063 and the United Nations 2030 Agenda,

*Further mindful* of the relevant provisions of the United Nations Security Council resolutions, which call for the development and implementation of regional, subregional and national maritime safety and security and fight against piracy strategies,

*Recalling* 2050 Africa's Integrated Maritime Strategy (2050 AIM Strategy) adopted on 27 January 2014, whose implementation shall be in conformity with international maritime law,

## 71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

*Aware* of the geostrategic importance of the seas, oceans and inland waterways in the socio-economic development of Africa and of their role in the sustainable development of the continent,

*Further considering* that the persistence of conflicts constitutes a serious threat to peace and security and undermines our efforts to raise the standard of living of our peoples,

*Deeply concerned* by the scourge of terrorism, extremism in all its forms and transnational organized crime as well as the different threats against peace and security in Africa,

*Acknowledging* that the proliferation of small arms and light weapons as well as cross-border crime contribute to the spread of insecurity and instability and pose serious risks to international maritime navigation,

*Reaffirming* our commitment to combat maritime crime, threats and challenges to protect and secure our seas and oceans,

*Convinced* that the prevention, management and the eradication of these scourges can only succeed through the enhancement of cooperation, with a view to coordinating the efforts of coastal, island and landlocked African States within the framework of the African Union,

*Concerned* about the protection of biodiversity and the sustainable use of marine resources of the planet in accordance with the Convention on Biological Diversity, adopted in Rio de Janeiro, on 5 June 1992, the Convention on the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region, adopted in Nairobi, Kenya, on 21 June 1985 and the Convention for Cooperation in the Protection, Management and Development of the Marine and Coastal Environment of the Atlantic Coast of the West, Central and Southern Africa Region adopted in Abidjan, Côte d'Ivoire, on 23 March 1981,

*Deeply committed* to peace and security in the Mediterranean Sea, the Red Sea, the Gulf of Aden, the Atlantic Ocean and the Indian Ocean, and welcoming the determination, through the Maritime Strategies of the Regional Economic Communities/Regional Mechanisms, the Indian Ocean Commission, and the Gulf of Guinea Commission to work closely with the Commission of the African Union on the implementation, in conformity with international maritime law, of the 2050 AIM Strategy,

*Also welcoming* the convening in Yaoundé, Cameroon, from 24 to 25 June 2013 of the Joint Summit of the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS) and the Gulf of Guinea Commission (GGC) on Maritime Safety and Security, which culminated in the establishment of the Interregional Coordination Centre (ICC) based in Yaoundé, Cameroon,

*Firmly resolved* to work tirelessly to ensure peace, security, safety and stability, protection of the marine environment and facilitation of trade in the maritime space and development of our countries,

*Hereby agree* as follows:

### Chapter I General Provisions

#### Article 1 Definitions

1. For the purpose of this Charter, the following terms and expressions shall apply:

"African Space Policy and Strategy" refers to the first concrete steps to realize an African Space Programme, as one of the flagship programmes of the AU Agenda 2063 adopted on 31 January 2016;

71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

"2050 AIM Strategy" refers to the 2050 Africa's Integrated Maritime Strategy adopted by the Assembly on 27 January 2014;

"Armed robbery against ships" means any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, in an area falling within the jurisdiction of a State;

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

"AU Agenda 2063" refers to the African Union vision adopted on 27 January 2014;

"Bamako Convention" refers to the Bamako Convention on the ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa adopted by the Organization of African Unity on 30 January 1991;

"Blue/Ocean Economy" means sustainable economic development of oceans using such technics as regional development to integrate the use of seas and oceans, coasts, lakes, rivers, and underground water for economic purposes, including, but without being limited to fisheries, mining, energy, aquaculture and maritime transport, while protecting the sea to improve social wellbeing;

"Charter" means the African Union Charter on Maritime Security and Safety and Development in Africa;

"Coastal State" refers to any State having a coast;

"Commission" means the African Union Commission;

"Drug trafficking" means the global illicit trade involving the cultivation, manufacture, distribution and sale of substances which are subject to drug prohibition laws;

"Flag State" means the State under whose laws a vessel is registered or licensed which has authority and responsibility to enforce regulations over vessels registered under its flag, including those relating to inspection, certification, and issuance of safety and pollution prevention documents;

"Illegal, unreported and unregulated (IUU) fishing" means:

I. Illegal fishing means activities:

(a) conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;

(b) conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or

(c) in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization;

II. Unreported fishing means fishing activities:

(a) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or

71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

(b) undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization;

III. Unregulated fishing means fishing activities:

(a) in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or

(b) in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law;

"Inland waterways" means any navigable rivers, creeks, lakes, tidelands, lagoons, below water baseline, or channel leading into such place having facilities for ships to moor and load or discharge including offshore cargo handling facilities, harbour, berths, jetties, pontoons or buoys and wharves within the limits of the inland waterways in any place in a country and includes any place declared to be an inland waterway under relevant national legislation, as defined in the 2050 AIM Strategy;

"International Maritime Organization (IMO) SOLAS Convention" refers to the International Maritime Organization International Convention for the Safety of Life at Sea of 1 November 1974;

"Marine biodiversity" refers to the variety and variability of life on Earth; It is a measure of the variety of organisms present in different ecosystems including genetic variations, ecosystem variations or species variations (number of species) within the Maritime Domain;

"Marine governance" means the national and international, legal and regulatory framework and associated enforcement processes that ensure the peaceful and sustainable use of the seas for commerce, food, energy and raw material;

"Marine pollution" refers to the introduction and/or spread of invasive organisms into the ocean or the harmful, or potentially harmful effects resulting from the entry into the ocean of chemicals, particles, industrial, agricultural and residential waste or noise and any other polluting factors carried by means of air or land pollution;

"Marine resources" means the things that plants, animals and humans need for life that originate in the sea;

"Maritime awareness" means the effective understanding of anything associated with the maritime domain that could impact upon the security, safety, economy, or environment;

"Maritime domain" refers to all areas and resources of, on, under, relating to, adjacent to, or bordering on the sea, ocean, or lakes, intra-coastal and inland navigable waterways, including all maritime-related activities, infrastructure, cargo, vessels and other means of conveyance. It also includes the air above the seas, oceans, lakes, intra-coastal and inland navigable waterways and the oceans' electromagnetic spectrum as well, as defined in the 2050 AIM Strategy;

"Maritime safety" means all measures taken for the safety of ships and offshore installations, their crews and where appropriate, their passengers, the safety of navigation and the facilitation of maritime traffic, maritime infrastructure, maritime facilities and maritime environment;

71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

"Maritime security" means the prevention of and fight against all acts or threats of illicit acts against a ship, its crew and its passengers or against the port facilities, maritime infrastructure, maritime facilities and maritime environment;

"Maritime territories" means maritime spaces under the jurisdiction or responsibility of the State Party;

"Maritime zones" means maritime zones as defined in the United Nations Convention on the Law of the Sea (UNCLOS) adopted on 10 December 1982;

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

"Palermo Convention" refers to the United Nations Convention against Transnational Organized Crime adopted by the United Nations General Assembly on 15 November 2000;

"Pavilion State" means the State under whose legislation a merchant ship is registered and which has authority and responsibility to ensure compliance with the regulations on ships flying its flag, including regulations relating to inspection, certification and issuance of safety and anti-pollution documents;

"Piracy" means:

(a) Any illegal act of violence or detention committed for private ends by the crew or passengers of a private ship or a private aircraft, and directed:

(i) On the high seas against another ship or aircraft, or against persons or property, on board such ship or aircraft;

(ii) Against a ship, aircraft or property in a place outside the jurisdiction of any State;

(b) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) Any act of inciting or of intentionally facilitating an act as described in paragraphs (a) or (b);

"Pirate ship" means a ship under the effective control of individuals who have the intention to use it to commit an act of piracy, or a ship which has been used to commit such an act as long as they are under the control of these individuals;

"Port State control" means the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules;

"Revised African Maritime Transport Charter" refers to the Revised African Maritime Transport Charter adopted by the African Union on 26 July 2010;

"Requested State" means the State of which something is requested;

"Requesting State" means the State that is requesting something;

"Ship" means a vessel or mobile facility of any type whatsoever operating in the marine and/or inland waterways environments and includes hydrofoil boat, air cushion vehicles, submersibles, floating craft and fixed or floating platforms operated for the purpose of providing movement of goods and passengers and the provision of marine services;

71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

"Signatory" means a Member State that has signed this Charter;

"States Parties" means Member States that have ratified, accepted, approved or acceded to this Charter in accordance with their respective constitutional rules and the Charter has entered into force for those States;

"Subsidiarity principle" refers to the principle that seeks to guarantee a degree of independence for a lower authority in relation to a higher body or for a local authority in relation to central government. It therefore involves the sharing of powers between several levels of authority;

"Terrorist acts" refers to:

(a) Any act or threat of act in violation of the criminal laws of the State Party likely to endanger the life, physical integrity, freedoms of an individual or group of individuals, which results or may result in damages to private or public property, natural resources, the environment or cultural heritage and committed with the intention of:

(i) Intimidating, creating a situation of terror, forcing, exerting pressure or compelling any government, body, institution, population or section thereof to take or refrain from taking any initiative, adopt, abandon any particular standpoint or act according to certain principles;

(ii) Disrupting the normal functioning of public services, providing essential services to populations or creating a crisis situation within the population;

(iii) Creating general insurrection in a State Party;

(b) Any promotion, financing, contribution, order, aide, incitement, encouragement, attempt, threat, conspiracy, organization or equipment of any individual with the intention of committing any act mentioned in subparagraph (a) (i) to (iii);

"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, abduction, fraud, deception, abuse of power or a position of vulnerability or 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;

"Transnational organized crime" means organized crime coordinated across national borders, involving groups of three or more persons existing for a while acting together, to or committing one or more serious offenses to obtain, directly or indirectly, a financial or other material benefit or networks of individuals working in more than one country to plan and execute illegal business ventures. In order to achieve their goals, these criminal groups use systematic violence and corruption;

"United Nations 2030 Agenda" refers to the United Nations plan for achieving a better future for all adopted by the United Nations General Assembly on 25 September 2015;

"United Nations Basel Convention" refers to the Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal adopted by the United Nations General Assembly on 31 April 1989; and

"UNCLOS" refers to the Convention on the Law of the Sea adopted by the United Nations on 10 December 1982.

2. In this Charter, any reference to sea includes oceans and inland waterways.

Article 2  
Principles



71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

Each State Party reaffirms its commitment to the principles and objectives contained in the Charter of the United Nations adopted on 26 June 1945, the Constitutive Act of the African Union adopted on 11 July 2000, the Universal Declaration of Human Rights adopted on 10 December 1948, the African Charter of Human and Peoples' Rights adopted on 27 June 1981, the Agenda 21 on Sustainable Development, adopted in Rio de Janeiro, on 14 June 1992, the Palermo Convention adopted on 15 November 2000, the Bamako Convention adopted on 30 January 1991, and other relevant legal instruments as well as the following fundamental principles:

- (a) The promotion of peace, security, stability and development;
- (b) The protection of fundamental human rights and freedoms, as well as the observance of the rules of International Humanitarian Law;
- (c) The free movement of people and goods;
- (d) The sovereign equality and interdependence of the Member States;
- (e) The territorial integrity and national sovereignty of Member States; and
- (f) Subsidiarity.

Article 3  
Objectives

The objectives of the present Charter shall be to:

- (a) Prevent and suppress national and transnational crime, including terrorism, piracy, armed robbery against ships, drug trafficking, smuggling of migrants, trafficking in persons and all other kinds of trafficking transiting through the sea and IUU fishing;
- (b) Protect the environment in general and the marine environment in the space of coastal and insular States, in particular;
- (c) Promote a flourishing and sustainable Blue/Ocean Economy;
- (d) Promote and enhance cooperation in the fields of maritime domain awareness, prevention by early warning and fight against piracy, armed robbery against ships, illicit trafficking of all kinds, the pollution of the seas, cross-border crime, international terrorism and the proliferation of small arms and light weapons;
- (e) Establish appropriate national, regional and continental institutions and ensure the implementation of appropriate policies likely to promote safety and security at sea;
- (f) Promote the inter-agency and transnational coordination and cooperation among Member States within the spirit of the African Peace and Security Architecture of the African Union;
- (g) Boost the implementation of the 2050 AIM Strategy in conformity with International Maritime Law;
- (h) Promote the training and capacity-building of the maritime, port and industrial sector, for safe and responsible use of the maritime domain;
- (i) Cooperate in the field of Search and Rescue in line with the IMO SOLAS Convention;
- (j) Further sensitize communities living next to seas for sustainable development of African coastline and biodiversity;

71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

- (k) To promote and protect the right of access to the sea of landlocked countries in accordance with the provisions of this Charter, the legal instruments of the AU and other regional and international instruments;
- (l) Raise the level of social welfare of the concerned population.

Article 4  
Scope

The present Charter shall cover:

- (a) The prevention and control of all transnational crime at sea, including terrorism, piracy, armed robbery against ships, drug trafficking, smuggling of migrants, trafficking in persons and all other kinds of trafficking, IUU fishing, prevention of pollution at sea and other unlawful acts at sea, under the jurisdiction of a State Party in its area of responsibility;
- (b) All measures to prevent or minimize accidents at sea caused by ships or crew or aimed at facilitating safe navigation;
- (c) All measures for the sustainable exploitation of marine resources and optimization of the development opportunities of sectors related to the sea.

Chapter II  
Measures to Prevent and Combat Crimes at Sea

Article 5  
Socio-Economic Measures to Prevent Crimes at Sea

Each State Party shall endeavour to:

- (a) Continue its efforts to take appropriate measures to create productive jobs, reduce poverty and eliminate extreme poverty, encourage awareness of maritime related issues in order to establish the best living conditions, and to strengthen social cohesion through the implementation of a fair, inclusive and equitable policy to address the socio-economic issues;
- (b) Stimulate the creation of jobs along the coasts, particularly by codifying and promoting artisanal fishery through the training of sector stakeholders, encouraging the local processing of fishery products, and facilitating their marketing at national, subregional and international levels.

Article 6  
States Parties Responsibility

Each State Party undertakes, according to its own realities, where applicable, to:

- (a) Organize its actions at sea and to develop its capacity to protect its maritime area and provide assistance to other States Parties or third States as may be required;
- (b) Strengthen law enforcement at sea, through the training and the professionalization of navies, coast guards, and agencies responsible for maritime safety and security, custom authorities and port authorities;
- (c) Maintain patrols, surveillance and reconnaissance in the anchorage areas, the exclusive economic zone and continental shelf for law enforcement, search and rescue operations.

71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

Article 7

National Coordinating Structures

1. Each State Party shall take measures to curb maritime crime and other forms of unlawful acts, as part of on-going dialogue and effective cooperation between their relevant national institutions.
2. Each State Party shall establish a national coordinating structure and centre for awareness on maritime related issues to ensure the coordination of actions aimed at safeguarding and enhancing maritime safety and security.

Article 8

Harmonizing of National Legislation

Each State Party shall, where appropriate:

- (a) Harmonize its national laws to conform with relevant international legal instruments including UNCLOS, SOLAS and the Protocol of the 2005 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation of 1 November 2005; and
- (b) Train the staff responsible for their implementation, in particular personnel within the justice system.

Article 9

Resources to Guarantee Maritime Security and Safety

Each State Party shall adopt policies that guarantee the availability of resources either by public funds or by forging public-private partnerships, needed for investment in equipment, operations and training in the field of maritime security and safety in accordance with their domestic procedures.

Article 10

Financial Obligations of Flag States and Coastal States

Each State Party shall encourage cooperation between flag States and coastal States, so that, in a spirit of co-responsibility, the financial obligations of security and safety in the African maritime domain are shared and supported by the different actors concerned.

Article 11

Maritime Security and Safety Fund

States Parties undertake to establish a Maritime Security and Safety Fund.

Chapter III

Maritime Governance

Article 12

Maritime Governance

Each State Party shall ensure good maritime governance based on better information sharing, effective communication, and efficient coordination of their actions.

Article 13

Maritime Boundaries

71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

Each State Party shall endeavour to delimit its respective maritime boundaries in conformity with provisions of relevant international instruments.

Article 14  
Protection of Maritime Territories

Each State Party shall protect its maritime territories and ensure its maritime security and safety in conformity with the relevant international laws and principles.

Article 15  
Flag State Responsibilities and Port State Control

Each State Party shall fulfil its Flag State and Port State Control responsibilities within their jurisdictions to:

- (a) Eradicate substandard shipping practices;
- (b) Enhance security and safety; and
- (c) Protect the marine environment from pollution.

Article 16  
Trafficking in Human Beings and Smuggling of Migrants by Sea

Each State Party shall develop and implement sound migration policies aimed at eliminating trafficking in human beings, especially women and children, as well as smuggling of migrants by sea.

Article 17  
Drug Trafficking

Each State Party shall develop and implement balanced and integrated strategies aimed at combating drug trafficking and related challenges in the maritime domain.

Article 18  
Safety of Navigation

Each State Party undertakes to promote safety of navigation as well as the protection and sustainable use of the marine environment by:

- 1. Providing appropriate aids to navigation according to available resources;
- 2. Ensuring the best possible standardization in aids to navigation; and
- 3. Facilitating access to information relating to aids to navigation.

Chapter IV  
Development of the Blue/Ocean Economy

Article 19  
Exploitation of the Maritime Domain

- 1. Each State Party shall explore and exploit their respective maritime domains in accordance with relevant international principles and standards.

71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

2. Each State Party shall facilitate the engagement of non-State actors, especially the private sector, in the development and implementation of the blue/ocean economy.

Article 20  
Fisheries and Aquaculture

1. Each State Party shall implement appropriate fisheries and aquaculture policies for the conservation, management and sustainable exploitation of fish stocks and other biological resources.

2. Each State Party shall carry out the necessary reforms for good governance in the fishery sector and the promotion of continental fishing and aquaculture to contribute to the creation of employment in the sector, reduce food insecurity and malnutrition and promote economic diversification.

3. Each State Party shall take appropriate measures to effectively combat IUU fishing activities within the framework of its respective national jurisdictions and to take legal steps aimed at prosecuting the perpetrators engaged in IUU fishing.

Article 21  
Creation of Wealth and Jobs through Coastal and Maritime Tourism

Each State Party undertakes to promote coastal and maritime tourism as a key sector, with due consideration to the environmental dimensions, that generates considerable revenue and creates jobs, and agree to promote the sustainable development of all associated activities.

Article 22  
Integrated Human Resource Strategy for Maritime Development

1. Each State Party shall develop an integrated human resources strategy for the maritime sector to support the provision of skills, taking into account gender balance, in the entire maritime value chain which includes shipping and logistics, offshore activities, fishing, coastal and maritime tourism, and safety and security.

2. Each State Party shall set up a human resources development agenda, including training, in accordance with the potential for economic growth and job creation opportunities more widely along the maritime value chain.

Article 23  
Competitiveness Improvement

Each State Party shall improve competitiveness of its maritime industries, particularly in international trade. To this end, each State Party commits to:

- (a) Encourage the creation and development of African maritime companies;
- (b) Promote access of African operators to maritime transport auxiliary services and professions;
- (c) Create an enabling environment to foster equity investment by African operators in foreign companies operating in Africa in maritime transport auxiliary services and professions;
- (d) Prioritize trans-African cabotage to national and regional African maritime companies, in order to promote intra-African trade and facilitate the socio-economic integration of the continent.

Article 24  
Development of Infrastructure and Equipment

71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

Relating to Maritime Activities

1. Each State Party shall develop and strengthen its infrastructure to enable its port facilities to achieve its economic growth potential and competitiveness.
2. Each State Party shall encourage public-private partnerships to facilitate modernization of African maritime industries in order to provide standard quality services and contribute to the attainment of the objectives of sustainable development.

Article 25

Measures to Mitigate Climate Change and Environmental Threats

1. Each State Party shall adopt specific adaptation and mitigation measures to contain climate change and environmental threats to the marine environment in conformity with relevant international instruments.
2. Each State Party shall establish information exchange and early warning systems on marine pollution, including the dumping of toxic and hazardous waste and unauthorized emissions from the high seas.

Article 26

Protection of Marine Biological Species, Fauna and Flora

Each State Party shall preserve the marine environment and protect the biological species of marine fauna and flora in the development process of its environment and biodiversity.

Article 27

Toxic and Hazardous Waste Dumping

1. Each State Party shall develop a mechanism for the detection, prevention and reporting of marine pollution, particularly through the dumping of toxic and hazardous waste.
2. Each State Party shall prohibit the import, export, handling, accumulation or dumping of trans-boundary hazardous waste, including radioactive materials, chemical and organic waste in conformity with provisions of the Bamako and Basel Conventions.

Article 28

Prevention of Illegal Exploitation and Theft of Marine Resources

1. Each State Party shall endeavor to prevent and effectively fight the illegal exploitation and theft of marine resources in its respective maritime territory.
2. Each State Party shall prohibit trade in products derived from illegal exploitation and plundering of marine resources within its maritime domain.
3. Each State Party shall prohibit trade in products derived from illegal exploitation and plundering of marine resources from any State Party.

Article 29

Maritime Disaster Risk Management

Each State Party shall develop an integrated multi-sectoral and multidisciplinary strategy for ensuring disaster risk management and reducing the severity and impacts of a disaster.

Chapter V

71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

Cooperation

Article 30

Cooperation in the Exploitation of the Maritime Domain

States Parties shall cooperate at national, regional and continental levels, in:

1. Developing and exploiting marine resources in their territorial waters through scientific and technological exchanges, partnerships for research and innovation, as well as the promotion and strengthening of the blue/ocean economy, in accordance with relevant international principles and standards;
2. Facilitating business partnerships in the maritime domain;
3. Harnessing state-of-the-art technologies, in conformity with the African Space Policy and Strategy and other relevant instruments for maritime security and safety.

Article 31

Cooperation in Fishing and Aquaculture

1. States Parties shall cooperate in order to ensure the sustainability of marine biodiversity.
2. States Parties shall cooperate within the framework of the Fisheries Committees established by its regional competent bodies and specialized institutions in order to strengthen and promote sustainable management of fishery resources.

Article 32

Cooperation in Combating Crimes at Sea

1. States Parties shall cooperate and coordinate their actions in combating transnational organized crimes of all kinds including the circulation and trafficking of arms, maritime terrorism, drug trafficking, trafficking in protected species or of its trophies, money laundering and its predicate offences, acts of piracy and armed robbery against ships, taking of hostages at sea, theft of oil and gas, trafficking in persons, smuggling of migrants, pollution of the seas and oceans, IUU fishing, and illegal dumping of toxic and hazardous waste.
2. States Parties shall take adequate measures, individually and collectively, to effectively fight organized crime, including transnational organized crime, and ensure that the perpetrators of such crimes are effectively prosecuted and denied the advantage of the proceeds of their crimes.

Article 33

Maritime Information Sharing

1. States Parties shall establish a platform for exchange and sharing of experiences and best practices on maritime security and safety.
2. States Parties shall endeavour to develop a system of information sharing integrating national, regional and continental structures for maritime domain awareness aimed at:
  - (a) Preventing the commission of unlawful acts at sea;
  - (b) The arrest and detention of individuals preparing to or committing any unlawful acts at sea; and
  - (c) The seizure or confiscation of ships and equipment used in the commission of any unlawful acts at sea.

71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

Article 34  
Cooperation in Intelligence Sharing

States Parties shall encourage cooperation in sharing intelligence between its national services, regional and continental agencies and appropriate international specialized organs, to ensure the effectiveness of the fight against unlawful acts at sea.

Article 35  
Strategies for Awareness on Maritime Related Issues

Each State Party shall adopt appropriate maritime strategies for awareness on maritime related issues adapted to its national, regional and international maritime security and safety situations in order to create greater awareness of the seas and oceans.

Article 36  
Scientific and Academic Cooperation

Each State Party shall encourage:

1. The strengthening of cooperation between its universities and training and research institutes in relation to seas and oceans including those of the Pan- African University;
2. Maritime scientific research campaigns for development purposes; and
3. Support initiatives by training institutions in respect of capacity-building in maritime security and safety.

Article 37  
Continental Cooperation Framework

States Parties shall establish a framework for close cooperation in the field of maritime security and safety with the national cross-sectoral mechanisms, the Regional Economic Communities and other relevant bodies.

Article 38  
Regional Cooperation Structures

States Parties shall establish, where they do not exist, regional cooperation structures in the fight against crime at sea.

Article 39  
National Coordination Framework

1. Each State Party shall develop national legal frameworks to coordinate their respective legal interventions at sea.
2. Each State Party shall endeavour to incorporate cooperation mechanisms in its national legal frameworks with a view to effectively combating crime at sea.
3. Each State Party undertakes to promote, strengthen and sustain maritime rescue coordination centres and the maritime rescue sub-centres for the efficient organization of maritime search and rescue services.

Article 40  
Judicial and Legal Cooperation



71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

1. States Parties agree to mutual judicial and legal cooperation on the basis of the present Charter.
2. Each State Party shall cooperate on the basis of its bilateral or multilateral agreements, or in the absence of a cooperation agreement, on the basis of its national legislation.
3. Notwithstanding the differences in the legal framework of each State Party, national legislation shall guarantee joint investigation mechanisms, secure information exchange procedures, judicial requests, extradition and transfer of detainees and other related mechanisms.

Chapter VI  
Monitoring and Control

Article 41  
Committee of States Parties

1. A fifteen (15) member Committee of States Parties is hereby established which shall be responsible for monitoring the implementation of this Charter and recommending follow-up actions.
2. The Committee shall be composed of the Ministers responsible for maritime affairs or such other Ministers or Authorities as may be designated by the governments of the States Parties.
3. The Committee members shall be elected every three years, from among the five regions of the continent on the basis of rotation, gender and geographical distribution in accordance with AU procedures and practice.
4. States Parties shall adopt the rules of procedure of the Committee.

Article 42  
States Parties Reports

Each State Party to the present Charter shall undertake to submit to the Committee a report on the measures they have undertaken to give effect to the provisions of this Charter:

1. Within two years of the entry into force of the Charter for the State Party concerned; and
2. Thereafter, every five years.

Article 43  
Reports of the Committee

The Committee of the States Parties shall present, every two years, to the Assembly of the Union, a report on the progress made in the implementation of the Charter.

Article 44  
Secretariat of the Committee

The Commission shall act as the Secretariat of the Committee of the States Parties.

Article 45  
Settlement of Disputes

1. Any dispute or difference arising between States Parties with regard to the interpretation, application and implementation of this Charter shall be settled by mutual consent between the States concerned, including through negotiations, mediation, conciliation or other peaceful means.

71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

2. In the event of failure by the disputing parties to settle the dispute or difference in accordance with Article 45, paragraph 1, the disputing parties may, by mutual consent, refer the dispute to:

- (a) The African Court of Justice Human and Peoples' Rights where applicable; or
- (b) An arbitration panel of three (3) arbitrators whose appointment shall be as follows:
  - (i) Two (2) arbitrators each appointed by a party to the dispute; and
  - (ii) A third arbitrator who shall be President of the Panel and appointed by the Chairperson of the African Union Commission.\*

3. The decision of the Panel of Arbitrators shall be final and binding.

Article 46  
Annexes, Guidelines and Modalities

1. Member States shall adopt as and when necessary, annexes to complement this Charter. The annexes shall be an integral part of this Charter.

2. A State Party which accedes to this Charter prior to the adoption of annexes retains the right to subsequently accede to the annexes.

3. In the event of a State Party acceding to this Charter after the adoption of annexes, the State Party must declare its intention to be bound by one or all of the annexes.

4. States Parties shall also adopt guidelines and modalities to guide States Parties in fulfilling their obligations under this Charter.

Chapter VII  
Final Provisions

Article 47  
Popularization of the Charter

Each State Party shall take all appropriate measures to ensure the widest possible dissemination of this Charter.

Article 48  
Safeguard Clause

1. No provision in this Charter shall be interpreted as derogating from the principles and values contained in other relevant instruments for the promotion of Maritime Security and Safety and Development in Africa.

2. Nothing in this Charter shall be construed as preventing a Party from taking any action, compatible with the provisions of the United Nations Charter or any other international instrument and that is limited to the exigencies of the situation, as it considers necessary to its external or internal security.

Article 49  
Signature, Ratification and Accession

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\* Editor's note: The subparagraph numbers have been aligned with the French text.

71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

1. This Charter shall be open to Member States of the Union for signature, ratification or accession.
2. The instrument of ratification or accession to the present Charter shall be deposited with the Chairperson of the Commission who shall notify Member States of the Union of the deposit of the instruments of ratification or accession.

Article 50  
Entry into force

1. This Charter shall enter into force thirty (30) days after the deposit of the fifteenth (15<sup>th</sup>) instrument of ratification.
2. The Chairperson of the Commission shall notify all Members States of the entry into force of the present Charter.
3. For any Member State acceding to the present Charter, the Charter shall come into force in respect of that State on the date of the deposit of its instrument of accession.

Article 51  
Reservations

1. A State Party may, when, ratifying or acceding to this Charter, submit in writing, a reservation with respect to any of the provisions of this Charter. Reservation shall not be incompatible with the object and purpose of this Charter.
2. Unless otherwise provided, a reservation may be withdrawn at any time.
3. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States Parties of the withdrawal accordingly.

Article 52  
Depository

This Charter shall be deposited with the Chairperson of the Commission, who shall transmit a certified true copy of the Charter to the Government of each signatory State.

Article 53  
Registration

The Chairperson of the Commission, shall upon the entry into force of this Charter, register the Charter with the United Nations Secretary-General in conformity with Article 102 of the Charter of the United Nations.

Article 54  
Withdrawal

1. At any time after three years from the date of entry into force of this Charter a State Party may withdraw by giving written notification to the depository.
2. Withdrawal shall be effective one year after receipt of notification by the depository, or on such later date as may be specified in the notification.
3. Withdrawal shall not affect any obligation of the withdrawing State Party prior to the withdrawal.

71. AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND  
DEVELOPMENT IN AFRICA (LOMÉ CHARTER) (2016)

Article 55  
Amendment and Revision

1. Any State Party may submit proposal(s) for the amendment or revision of this Charter. Such proposal(s) shall be adopted by the Assembly.
2. Proposals for amendment or revision shall be submitted in writing to the Chairperson of the Commission who shall transmit such proposals to the Assembly at least six months before the meeting at which it shall be considered for adoption.
3. Amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority of the Assembly.
4. The amendment or revision shall enter into force thirty (30) days after the deposit of the receipt of the fifteenth (15<sup>th</sup>) instrument of ratification to the Chairperson of the Commission of the African Union.

Article 56  
Authentic Texts

This Charter is drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic.

**STATUTE OF THE AFRICAN UNION  
MECHANISM FOR POLICE COOPERATION (AFRIPOL)**



**72.**

**STATUTE OF THE AFRICAN UNION MECHANISM FOR POLICE COOPERATION (AFRIPOL)**

**Adopted in Addis Ababa, Ethiopia, on 30 January 2017.**

**Entered into force upon adoption.**

**Preamble**

*We, Member States of the African Union,*

*Recalling* the objectives and principles enshrined in the Constitutive Act of the African Union,

*Inspired* by the need to fully operationalize the African Architecture for Peace and Security provided for in the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (PSC),

*Recalling* the Solemn Declaration on a Common African Defence and Security Policy (CADSP), premised on a common African perception of what is required to be done collectively by African States,

*Guided* by the various instruments on the fight against transnational organized crime and terrorism adopted by Member States of the African Union,

*Recalling* the Algiers Declaration of 11 February 2014, adopted by African Chiefs of Police in Algiers, Algeria, relating to the establishment of the African Union Mechanism for Police Cooperation,

*Further recalling* Decision EX.CL/Dec.820 (XXV) in which the Executive Council, at its Twenty-fifth Ordinary Session held in Malabo, Equatorial Guinea, from 20 to 24 June 2014, endorsed the Algiers Declaration on the establishment of the African Union Mechanism for Police Cooperation,

*Concerned* about the growing scale of crime in several subregions of Africa, especially those related to information and communication technologies, illicit capital transfers, illicit trafficking of natural resources and smuggling,

*Cognizant* of the ever increasing sophistication with which organized crime syndicates, including terrorist groups, drug traffickers and arms traffickers, human smuggling, kidnapping-for-ransom, illicit proliferation of arms and money laundering are becoming intimately intertwined,

*Convinced* of the need to promote African police coordination at strategic, operational and tactical levels through the assessment of threats, analysis of criminal intelligence, planning and implementation of actions,

*Convinced* of the importance of police cooperation through exchange of information and intelligence between Member States,

*Further convinced* that an effective response to the various forms of crime on the African continent requires the harmonization of police methods, the exchange and extension of best practices in terms of training, prevention, investigative techniques and expertise as well as the strengthening of African police capabilities,

*Recognizing* that the need for greater cooperation between security and intelligence agencies is more crucial than ever before,

*Recalling* the commitment of the Member States of the African Union and their determination to promote human rights, good governance, the rule of law and to work together to ensure peace, security, safety and stability on the African continent,

## 72. STATUTE OF THE AFRICAN UNION MECHANISM FOR POLICE COOPERATION (AFRIPOL) (2017)

*Recognizing* that such an objective requires increased coordination and cooperation, especially with Interpol and other relevant organizations,

*Acknowledging* the progress achieved thus far, which needs to be consolidated in an overall strategic African framework for the prevention and combating of crime,

*Determined* to establish an African Union Mechanism for Police Cooperation,

*Have agreed* as follows:

### Article 1 Definitions

In this Statute, unless otherwise indicated:

"AFRIPOL" means the African Union Mechanism for Police Cooperation;

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

"CAPCCO" means the Central African Police Chiefs Committee or its successor;

"Commission" means the Commission of the African Union;

"Constitutive Act" means the Constitutive Act of the African Union;

"EAPCCO" means the Eastern Africa Police Chiefs Cooperation Organization or its successor;

"Executive Council" means the Executive Council of Ministers of the Union;

"General Assembly of AFRIPOL" means the Conference of the Chiefs of Police of the African Union Member States;

"INTERPOL" means the International Criminal Police Organization;

"Member States" means Member States of the African Union;

"NARC" means North African Regional Capability;

"Police Strategic Support Group" means the unit designated as such and established within the Peace Support Operations Division of the AU Peace and Security Department;

"Policy organs" means the African Union policy organs as defined in the Constitutive Act;

"RPCOs" means the Regional Police Chiefs Cooperation Organizations, and includes CAPCCO, EAPCCO, SARPCCO, WAPCCO and any other regional police chiefs cooperation organizations as may be established;

"SARPCCO" means the Southern African Regional Police Chiefs Cooperation Organization or its successor;

"Statute" means the present Statute establishing AFRIPOL;

"Secretariat" means the Permanent Technical and Operational Office of AFRIPOL;

"Steering Committee" means the executive body of AFRIPOL;



## 72. STATUTE OF THE AFRICAN UNION MECHANISM FOR POLICE COOPERATION (AFRIPOL) (2017)

"STCDSS" means the Specialized Technical Committee on Defence, Safety and Security or its successor;

"Union" or "AU" means the African Union established by the Constitutive Act;

"WAPCCO" means the West African Police Chiefs Committee or its successor.

### Article 2

#### Establishment and Legal Capacity of AFRIPOL

1. AFRIPOL is hereby established as a technical institution of the Union as the mechanism for police cooperation for Member States of the Union.
2. AFRIPOL derives its juridical personality from and through the African Union and shall:
  - (a) Enter into agreements within the applicable rules and regulations of the Union;
  - (b) Acquire and dispose of movable and immovable property in accordance with the said rules and regulations; and
  - (c) Institute legal proceedings.

### Article 3

#### Objectives

The objectives of AFRIPOL are to:

- (a) Establish a framework for police cooperation at the strategic, operational and tactical levels between Member State police institutions;
- (b) Facilitate the prevention, detection and investigation of transnational organized crime in coordination and collaboration with national, regional and international police institutions;
- (c) Develop Member States' police capacities, through the establishment of African centres of excellence, for targeted police training programmes adapted to the realities of the African context;
- (d) Prepare a harmonized African strategy to fight against transnational organized crime, terrorism and cybercrime within the framework of the implementation of the relevant African Union policies;
- (e) Enhance coordination with similar structures in preventing and combating transnational organized crime;
- (f) Enhance mutual technical assistance in training, exchange of experiences, experts and good practices between police institutions; and
- (g) Enhance coordination among police forces deployed in the context of peace support operations and work with the Police Strategic Support Group in planning, mobilization, deployment, management and liquidation elements, plus, where applicable, other law enforcement components, in the police element in AU-led peace support operations.

### Article 4

#### Functions

In carrying out its mandate, AFRIPOL shall pursue in particular the following functions:

## 72. STATUTE OF THE AFRICAN UNION MECHANISM FOR POLICE COOPERATION (AFRIPOL) (2017)

- (a) Assist Member States' police institutions to set up a framework of cooperation for police institutions at the national, regional, continental and international levels;
- (b) Assist Member States' police institutions to improve their efficiency and effectiveness through enhancement of their organizational, technical, strategic, operational and tactical capacities;
- (c) Facilitate, where appropriate, and in accordance with the applicable national and international laws, mutual legal assistance or extradition arrangements between Member States;
- (d) Facilitate the exchange or sharing of information or intelligence to prevent and combat transnational organized crimes, terrorism and cybercrime;
- (e) Prevent, detect and investigate transnational organized crime in cooperation and collaboration with national, regional and international police and law enforcement agencies;
- (f) Assist Member States to develop or improve good practices in governance and management of police institutions and respect for human and peoples' rights:
- (g) Assist Member States to develop and improve community-based policing to encourage citizen involvement in preventing and combating crime;
- (h) Enable planning and coordination of joint patrols and operations:
- (i) Support Member States in developing a continental vision and strategies for coordination and collaboration among police institutions;
- (j) Assist Member States to develop common African positions on police matters;
- (k) Undertake studies on trends in transnational organized crimes and develop continental tools for crime prevention;
- (l) Develop appropriate communication strategies, systems and databases for the fulfilment of the above functions;
- (m) Act as an interface with the Police Strategic Support Group in the areas of planning, mobilization, and where applicable deployment of law enforcement agents and police officers in peace support operations conducted by the African Union; and
- (n) Carry out any other functions given by the AU policy organs.

### Article 5 Principles

AFRIPOL shall function in accordance with the following principles:

- (a) Non-interference in the internal affairs of any Member State, respect for the sovereignty and national laws of the Members States;
- (b) Respect for democratic principles, human rights, the rule of law and good governance in accordance with the Constitutive Act, the African Charter on Human and Peoples' Rights, the Universal Declaration on Human Rights and other relevant instruments;
- (c) Respect for police ethics, the principles of neutrality, integrity and the presumption of innocence;

## 72. STATUTE OF THE AFRICAN UNION MECHANISM FOR POLICE COOPERATION (AFRIPOL) (2017)

- (d) Respect and recognition of African ownership of AFRIPOL.

### Article 6

#### The Specialized Technical Committee on Defence, Safety and Security

The STCDSS shall have the responsibility to provide leadership and direction regarding police affairs in Africa.

### Article 7

#### Structure of AFRIPOL

The structure of AFRIPOL shall consist of:

- (a) The General Assembly;
- (b) The Steering Committee;
- (c) The Secretariat; and
- (d) The national liaison offices.

### Article 8

#### The General Assembly

1. The General Assembly shall be the supreme technical and deliberative organ of AFRIPOL, with the responsibility to provide leadership direction regarding police cooperation in Africa.
2. The General Assembly is composed of Chiefs of Police from Member States.
3. The General Assembly shall:
  - (a) Work out the policies and set the guidelines and strategic priorities of AFRIPOL;
  - (b) Ensure the supervision of the implementation of the Policies, Guidelines and strategic priorities of AFRIPOL upon their adoption by the AU policy organs;
  - (c) Consider the draft budget and the proposed structure of AFRIPOL and submit them to the relevant AU policy organs in accordance with the AU Financial Rules and Regulations;
  - (d) Ensure and follow up on the implementation of the Statute;
  - (e) Appoint and terminate the appointment of the Executive Director of AFRIPOL;
  - (f) Recommend the amendment of the Statute through the relevant AU procedures;
  - (g) Adopt its Rules of Procedure subject to approval by the Executive Council through the STCDSS;
  - (h) Consider and approve the Rules of Procedure of the Steering Committee and review its composition and functions;
  - (i) Submit an annual report on its work to the relevant AU policy organs through the STCDSS;

## 72. STATUTE OF THE AFRICAN UNION MECHANISM FOR POLICE COOPERATION (AFRIPOL) (2017)

- (j) Elect on the basis of rotation, for a non-renewable term of two (2) years, five (5) members of the Bureau representing the five (5) regions in accordance with AU;
- (k) The Bureau shall be composed as follows:
  - i. The President;
  - ii. Three (3) Vice-Presidents; and
  - iii. One (1) Rapporteur;
- (l) Decide on the venue of its meetings; and
- (m) Carry out any other functions assigned to it by the AU policy organs for the purpose of ensuring the implementation of this Statute and other relevant instruments or policies.

### Article 9 Steering Committee

- 1. The Steering Committee of AFRIPOL shall be composed as follows:
  - (a) The five (5) members of the Bureau of the General Assembly;
  - (b) The Commissioner for Peace and Security of the African Union;
  - (c) The Chiefs of the RPCOs; and
  - (d) The Executive Director of AFRIPOL
- 2. The Steering Committee shall be chaired by the serving President of the General Assembly.
- 3. The functions, frequency of meetings and the proceedings of the Steering Committee shall be provided in its Rules of Procedure.

### Article 10 Secretariat

- 1. There is hereby established a Secretariat of AFRIPOL.
- 2. The Director shall be the Chief Executive Officer of AFRIPOL who shall be assisted by the necessary and proper staff.
- 3. The staff members of the Secretariat shall be recruited and shall hold positions in accordance with the African Union Staff Rules and Regulations.
- 4. The structure of the Secretariat shall be determined in accordance with the rules and procedures in force in the African Union.
- 5. The Director shall be appointed by the General Assembly upon recommendation of the Steering Committee. The modalities of appointment of the Executive Director of AFRIPOL and other procedural matters shall be provided in the Rules of Procedure of the General Assembly.

## 72. STATUTE OF THE AFRICAN UNION MECHANISM FOR POLICE COOPERATION (AFRIPOL) (2017)

6. The Executive Director shall work closely and provide regular reports to the African Union Commission through the Department of Peace and Security.
7. The Secretariat shall:
  - (a) Ensure the efficient administration of AFRIPOL;
  - (b) Convene and service the meetings of the General Assembly, the Steering Committee, or other meetings of AFRIPOL;
  - (c) Maintain contact with national and international law enforcement authorities;
  - (d) Implement the decisions of the General Assembly and the Steering Committee;
  - (e) Draw up the annual draft programme of work for the consideration and approval of the General Assembly and subsequently by the STCDSS;
  - (f) Draft, circulate and file minutes of meetings and all other records of AFRIPOL;
  - (g) Submit annual activity and financial reports to the General Assembly on the AFRIPOL activities; and
  - (h) Carry out any other functions assigned to it by the General Assembly, the Steering Committee or the relevant organs of the African Union.

### Article 11 National Liaison Offices

Each Member State, shall in accordance with its national legislation, establish an AFRIPOL national liaison office for the smooth running of the AFRIPOL activities.

### Article 12 Attendance and Participation

1. In accordance with Article 10, the chiefs of police shall attend and participate personally in the AFRIPOL sessions. In the event that they are not in a position to attend personally, duly accredited representatives shall represent them.
2. The representatives of the organs of the Union or any other relevant AU institutions may be invited to attend the AFRIPOL sessions.
3. AFRIPOL may invite, as observers, any person or institution to attend its sessions. Such observers, may be invited to make written or oral interventions but shall not be entitled to vote.

### Article 13 Venue

1. AFRIPOL sessions shall be held at the AFRIPOL Headquarters, unless a Member State offers to host any such session.
2. In the event the session is held outside the AFRIPOL Headquarters, the host country shall be responsible for all extra expenses incurred by the AFRIPOL as a result of holding the session outside the Headquarters.

### Article 14

## 72. STATUTE OF THE AFRICAN UNION MECHANISM FOR POLICE COOPERATION (AFRIPOL) (2017)

### Quorum

The quorum of the sessions of the General Assembly shall be two-thirds majority and the Steering Committee of AFRIPOL shall be simple majority.

### Article 15 Ordinary Sessions

1. AFRIPOL shall meet in ordinary session once every year and shall adopt its agenda at the opening of each session.
2. The provisional agenda of an ordinary session shall be drawn up by the Secretariat in consultation with the Steering Committee and may include item(s) proposed by Member States.
3. The Secretariat shall communicate the agenda as well as the working documents to Member States at least thirty (30) days before the opening of the session.

### Article 16 Extraordinary Sessions

1. AFRIPOL may meet in an extraordinary session subject to availability of funds, at the request of:
  - (a) The General Assembly;
  - (b) The policy organs of the Union; or
  - (c) Any Member State, upon approval by a simple majority of the Member States.
2. The agenda of an extraordinary session shall comprise only the item(s) submitted for consideration in the request for convening the said session.
3. The AFRIPOL Secretariat shall communicate the provisional agenda and working documents of an extraordinary session to Member States at least fifteen (15) days before the opening of the session.

### Article 17 Majority Required For Decisions

The General Assembly of AFRIPOL shall take its decisions by consensus, failing which, by two-thirds majority of the Member States present and eligible to vote.

### Article 18 Flag, Anthem and Logo

1. The AFRIPOL flag and anthem shall be that of the Union.
2. AFRIPOL may adopt the AU logo or its own logo.

### Article 19 Cooperation with Member States, African Union Organs and Institutions

AFRIPOL shall cooperate with Member States, organs and institutions of the AU on any subject matter related to its objectives and functions.

## 72. STATUTE OF THE AFRICAN UNION MECHANISM FOR POLICE COOPERATION (AFRIPOL) (2017)

### Article 20

#### Relations with INTERPOL and Other Organizations

1. In the fulfilment of its mandate, AFRIPOL shall cooperate and work closely with INTERPOL and any other relevant organization.
2. AFRIPOL may establish relations and collaborate with similar intergovernmental and international organizations that will enhance its capacity to deliver on its mandate and as approved by the General Assembly.

### Article 21

#### Budget and Resources

1. The budget of AFRIPOL shall constitute an integral part of the regular budget of the Union.
2. For purposes of attaining its objectives, AFRIPOL shall have its own operational and programme budget.
3. AFRIPOL may mobilize resources from extrabudgetary sources in accordance with the AU Financial Rules and Regulations.
4. The AFRIPOL may receive donations and voluntary contributions subject to the approval of the General Assembly.
5. The budget of AFRIPOL shall be submitted for approval to the policy organs of the Union in accordance with the relevant provisions of the AU Financial Rules and Regulations.

### Article 22

#### Terms and Conditions of Service of Staff Members

The terms and conditions of service of the staff members of the AFRIPOL Secretariat shall be governed by the African Union Staff Rules and Regulations.

### Article 23

#### Membership

AFRIPOL shall be composed of police institutions of Member States of the African Union.

### Article 24

#### Headquarters of AFRIPOL

1. The Headquarters of AFRIPOL shall be in Algiers, Peoples' Democratic Republic of Algeria.
2. A headquarters agreement shall be concluded between the Government of the Host Country and the African Union upon the adoption of the present Statute by the Assembly.

### Article 25

#### Languages

The official and working languages of AFRIPOL shall be those of the Union.

### Article 26

#### Privileges and Immunities

## 72. STATUTE OF THE AFRICAN UNION MECHANISM FOR POLICE COOPERATION (AFRIPOL) (2017)

AFRIPOL and its staff shall enjoy the privileges and Immunities as provided in the General Convention on the Privileges and Immunities of the Organization of African Unity, the Vienna Convention on Diplomatic Relations of 1961 and the headquarters agreement that shall be concluded between the AU and the Government of the Host Country.

### Article 27 Transitional Arrangements

Following the adoption of the present Statute by the Assembly of the Union, the Chairperson of the Commission, shall:

- (a) In consultation with the Host Country, take the necessary measures to establish an Interim Secretariat; and
- (b) The required staff in order to facilitate the speedy establishment of AFRIPOL in accordance with the present Statute and subject to the endorsement by the relevant policy organs of the AU.

### Article 28 Amendment

- 1. The present Statute may be amended by the Assembly upon the recommendation of either:
  - (a) The General Assembly; or
  - (b) The STCDSS after obtaining the opinion of the General Assembly.
- 2. Any amendment to this Statute shall enter into force upon its adoption by the Assembly of the Union.

### Article 29 Entry into Force

- 1. The present Statute shall enter into force upon its adoption by the Assembly of the Union.
- 2. The present Statute, of which the Arabic, English, French and Portuguese texts are equally authentic, shall be transmitted to the Executive Director and to all Member States.



**STATUTE OF THE TRUST FUND FOR  
VICTIMS OF HISSÈNE HABRÉ'S CRIMES**



**73.**

**Statute of the Trust Fund for Victims of Hissène Habré's Crimes**

**Adopted in Addis Ababa, Ethiopia, on 29 January 2018.**

**Entered into force upon adoption.**

Preamble

*The Assembly,*

*Recalling* Decision Assembly/AU/Dec.103 (VI) adopted by the Assembly of the Union in January 2006, in Khartoum, The Sudan, on the establishment of the Extraordinary African Chambers (EAC),

*Recalling* Decision Assembly/AU/Dec.401 (XVIII) adopted on 31 January 2012 by the Assembly of Heads of State and Government of the African Union requesting the African Union and the Government of Senegal to consider the practical modalities and the legal and financial implications of a trial for international crimes committed on Chadian territory during the period from 07 June 1982 to 1 December 1990,

*Recalling* Decision Assembly/AU/Dec.615 (XXVII) adopted by the Assembly of the Union in July 2016 in Kigali, Rwanda, on the establishment of a Trust Fund on reparations for the rightful victims of crimes within the jurisdiction of the Extraordinary African Chambers,

*Recalling* the Statute of the Extraordinary African Chambers within Senegalese jurisdiction for proceedings for international crimes committed on the territory of the Republic of Chad during the period from 7 June 1982 to 1 December 1990,

*Noting* the objectives and principles of the African Union on the respect of democratic principles, human rights, the rule of law and good governance,

*Bearing in mind* Articles 27 and 28 of the Statute of the Extraordinary African Chambers which provides for reparations and the establishment of a trust fund for victims,

*Taking note* of the judgments rendered by the Extraordinary African Chambers on 29 July 2016 and 27 April 2017 awarding reparations to the victims of Hissène Habré,

*Have agreed* as follows:

Article 1  
Definitions

For the purpose of this Statute:

“African Union” or “Union” means the African Union established by the Constitutive Act adopted on 11 July 2000 and which entered into force on 26 May 2001;

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

“Board” means the Board of Directors of the Trust Fund;

“Chairperson” means the Chairperson of the Board of Directors of the Trust Fund;

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

### 73. STATUTE OF THE TRUST FUND FOR VICTIMS OF HISSÈNE HABRÉ'S CRIMES (2018)

"Executive Council" means the Executive Council of Ministers of the Union;

"Fund" means the Trust Fund for victims of Hissène Habré's crimes;

"Member States" means Member States of the Union;

"Secretariat" means the Secretariat of the Trust Fund for victims of Hissène Habré's crimes;

"Statute" means the Statute of the Trust Fund for victims of Hissène Habré's crimes;

"Victim" means victim as defined in the ruling of the Extraordinary African Chambers of 27 April 2017.

#### Article 2 Establishment

1. The Trust Fund for victims of the crimes of Hissène Habré shall be established pursuant to Articles 27 and 28 of the Statute of the Extraordinary African Chambers and Decision Assembly/AU/Dec.615 (XXVII), adopted by the Assembly of the Union in July 2016 in Kigali, Rwanda.

2. The Fund shall have legal personality.

#### Article 3 Purpose

1. The purpose of this Statute is to establish an institutional framework for compensation and reparations for victims of Hissène Habré's crimes.

2. The Trust Fund shall be established to serve as the implementing body for the decision on reparations pronounced by the Extraordinary African Chambers, in order to mobilize the necessary funds and pay the said reparations to the victims of Hissène Habré's crimes.

#### Article 4 Principles

The principles of confidentiality, transparency, non-discrimination, impartiality, efficiency, independence, and equity shall guide the management and control structures for the disbursement of funds and the pursuit of activities within the scope of their respective mandates.

#### Article 5 Structure of the Fund

The governance structure of the Fund shall be as follows:

- (a) The Board of Directors; and
- (b) The Secretariat.

#### Article 6 Composition of the Board of Directors

1. The Board of Directors shall be composed of the following members:

### 73. STATUTE OF THE TRUST FUND FOR VICTIMS OF HISSÈNE HABRÉ'S CRIMES (2018)

- (a) One (1) representative of the African Union Commission (AUC);
  - (b) One (1) representative of the Republic of Chad;
  - (c) One (1) representative of victims from the three major victims' associations;
  - (d) One (1) representative from a civil society organization with proven expertise, and ideally, accredited to the African Union.
2. The participation of members of victims' associations shall be based on rotation according to alphabetical order, for a period of six (6) months, between the three victims' associations.
3. One (1) or several representatives of contributors may be included on the Board. If necessary, coordination shall be organized between the contributors.
4. The Board of Directors may admit other members as observers. The two other representatives of non-member victims' associations shall be admitted to participate in deliberations as observers.
5. The Legal Counsel of the African Union or his/her representative shall attend Board meetings to provide any legal advice that may be necessary.
6. The Secretary of the Fund shall act as the Secretariat of the Board.
7. Members of the Board must demonstrate high standards of integrity, impartiality and proven skills in the area of compensation and reparations for victims within the meaning of the Statute.

#### Article 7 Functions of the Board

1. The functions of the Board shall be to:
- (a) Decide on the allocation by the Secretariat of the proceeds of confiscated property and all other assets of the convicted person to the Fund;
  - (b) Direct the Secretariat on the necessary measures to be taken, particularly by the mechanism for judicial assistance, to locate and recover assets belonging to the convicted person, whose direct link to the latter can be established in implementation of the ruling on his case;
  - (c) Determine the guidelines and actions to be carried out by the Secretariat with a view to implementing collective and moral reparations, in collaboration with the Government of Chad, interested States and organizations, as well as the associations of civil parties;
  - (d) Consider the assets awarded as compensation under Articles 27 and 28 of the Statute of the Extraordinary African Chambers for receipt by the Secretariat;
  - (e) Consider requests for recognition of victim status from persons who did not participate in the proceedings and those whose requests were rejected pursuant to the ruling of the Extraordinary African Chambers of 27 April 2017;
  - (f) Decide on the organization by the Secretariat of donors' conferences with a view to collecting voluntary contributions to the Fund;

### 73. STATUTE OF THE TRUST FUND FOR VICTIMS OF HISSÈNE HABRÉ'S CRIMES (2018)

- (g) Supervise the activities of the Secretariat relating to the collection of voluntary contributions and ensure that the Secretariat makes sustained efforts to raise funds;
  - (h) Approve the draft budget of the Fund for its functioning and activities related to its mandate;
  - (i) Decide on the disbursement and actual payment of reparations and compensation to victims and their beneficiaries;
  - (j) Carry out supervision and monitoring in order to ensure responsible and appropriate use of funds in conformity with the applicable regulations of the African Union;
  - (k) Adopt the Handbook of Procedures proposed by the Secretariat;
  - (l) Provide strategic guidelines for the Secretariat in conformity with the relevant rules and procedures of the African Union;
  - (m) Consider the reports and proposals of the Secretariat;
  - (n) Report to the Executive Council of the African Union through the Commission;
2. The Fund may call on the assistance of independent experts within the framework of its mandate.

#### Article 8 Chairperson of the Board

The Board shall be chaired by the representative of the African Union Commission.

#### Article 9 Meetings

1. The Board of Directors shall meet in ordinary sessions at least once every quarter during each year, at the headquarters of the Secretariat.
2. The Board may meet in extraordinary sessions when circumstances so require, and the Chairperson shall determine the start date, duration and venue of each extraordinary session. Extraordinary sessions may be held in person, by telephone, internet or video conference.
3. The Secretariat shall propose, in consultation with the Chairperson, the provisional agenda of ordinary and extraordinary sessions. The Secretariat may receive proposals for items to be included on the agenda from other Board members. Any proposed item shall be accompanied by an explanatory statement, and where possible, documents or a draft decision. All documents shall be circulated to Board members at least one month prior to the session. The provisional agenda shall be submitted for consideration by the Board of Directors at the beginning of the relevant session.
4. The Executive Secretary of the Fund shall attend sessions of the Board as a resource person.
5. The Board may invite other persons with relevant skills to attend some of its sessions, if need be, and make oral or written statements and advise on issues under consideration.
6. Meetings of the Board shall be held in closed sessions, unless it is decided otherwise. Decisions and minutes of the Board shall be made public, subject to confidentiality, and shall be communicated to interested parties. At the end of a meeting of the Board of Directors, the Chairperson may make a communication through his/her Secretariat.

### 73. STATUTE OF THE TRUST FUND FOR VICTIMS OF HISSÈNE HABRÉ'S CRIMES (2018)

7. The quorum for a Board meeting shall be a simple majority.

#### Article 10 Working Languages

1. The working languages of the Board shall be English and French.
2. The Board may decide that one of the other working languages of the African Union be used when the language is understood and spoken by the majority of persons concerned, and its use will facilitate the conduct of the deliberations of the Board.

#### Article 11 Decisions of the Board

1. Decisions of the Board shall be taken at ordinary or extraordinary sessions.
2. Every effort shall be made to reach decisions by consensus. If a consensus cannot be reached, all decisions shall be adopted by the simple majority of voting Board members.
3. The Board shall adopt its rules of procedure.

#### Article 12 Remuneration of Board Members

1. Members of the Board shall not receive any remuneration to serve on the Board, apart from the reimbursement of eligible expenses relating to activities of the Board, in conformity with the Handbook of Procedures of the Fund.
2. Reimbursements shall be made from voluntary contributions to the General Fund.

#### Article 13 Secretariat

1. The Chairperson of the Commission, on the recommendation of the Board, shall appoint the Chief Executive of the Secretariat.
2. The functions of the Secretariat shall be as follows:
  - (a) Provide the necessary assistance for the smooth functioning of the Board;
  - (b) Implement the reparations decided on by the Board, in conformity with the Handbook of Procedures;
  - (c) Allocate the proceeds of confiscated property or any other assets of the convicted person to the Fund in conformity with the decisions of the Board;
  - (d) Take all necessary measures, pursuant to decisions by the Board, particularly by the mechanism for legal assistance, to locate and recover assets belonging to the convicted person, whose direct link to the latter can be established in implementation of the ruling on his case;
  - (e) Seek, pursuant to the Board's decision, with the Government of Chad, interested States and organizations, as well as associations of civil parties, the realization and implementation of collective and moral reparations;

### 73. STATUTE OF THE TRUST FUND FOR VICTIMS OF HISSÈNE HABRÉ'S CRIMES (2018)

- (f) Receive, pursuant to the Board's decision, the assets awarded as compensation under Articles 27 and 28 of the Statute of the Extraordinary African Chambers;
  - (g) Receive and submit to the Board for consideration, requests for recognition of victim status from persons who did not participate in the proceedings and those whose requests were rejected pursuant to the ruling of the Extraordinary African Chambers of 27 April 2017;
  - (h) Organize, pursuant to the Board's decision, donors conferences to obtain voluntary contributions for the Fund;
  - (i) Seek and collect voluntary contributions;
  - (j) Submit the draft budget of the Fund to the Board for adoption;
  - (k) Ensure the disbursement and actual payment of reparations and compensation to victims and their beneficiaries, in accordance with the decisions of the Board;
  - (l) Propose a Handbook of Procedures for adoption by the Board;
  - (m) Prepare regular reports for consideration by the Board.
3. The Secretariat may call on the assistance of independent experts within the framework of its mandate.
4. The Headquarters of the Secretariat shall be based in .....

#### Article 14 Submission of Reports

The Secretariat shall submit half-yearly reports to the Board on:

- (a) Its activities;
- (b) The financial management of the Fund;
- (c) The implementation of decisions of the Board.

#### Article 15 Financing of the Fund

1. The Fund shall be financed from the recovering of the assets of persons sentenced in accordance with the verdict of the Extraordinary Chambers of Africa, including through the judicial mutual assistance mechanism and by the voluntary contributions of Member States, foreign governments, international institutions, non-governmental organizations and other entities willing to support the victims.
2. The Board shall, within the framework of its annual report to the Executive Council of the African Union on the activities and projects of the Fund, appeal as many times as necessary, for voluntary contributions to the Fund.
3. All other voluntary contributions received by the Fund should emanate from sources that conform to the Financial Rules and Regulations of the AU.



### 73. STATUTE OF THE TRUST FUND FOR VICTIMS OF HISSÈNE HABRÉ'S CRIMES (2018)

4. The Fund shall accept only subsidies, donations or other benefits that conform to the objectives of the AU.
5. The Board shall develop mechanisms that would enhance the verification of the origin of money received by the Fund.
6. Voluntary contributions from governments shall not be transferred. Voluntary contributions emanating from other sources may be transferred by the donor to a maximum of one third of the contribution, to another activity of the Fund when requested by the donor:
  - (a) For victims and, when individuals are concerned, to their families;
  - (b) Will not lead to discrimination based on race, colour, gender, language, religion, political leaning or other, nationality, ethnic group or other, assets, birth or any other status, on condition that the contributions are intended to assist those who are enjoying a specific protection in accordance with international law are not considered as discriminatory.
7. When a contribution is transferred and where the corresponding objective cannot be attained, the Board shall transfer the contribution to its general account subject to the consent of the donor.
8. When a contribution is transferred and where the corresponding objective cannot be attained, the Board shall transfer the contribution to its general account subject to the consent of the donor.
9. The Board shall not accept voluntary contributions:
  - (a) That are deemed incompatible with the objectives and activities of the Fund;
  - (b) That are deemed to have been transferred in a manner that does not conform to the provisions of paragraph 6. Before turning down such a contribution, the Board shall request from the donor the possibility of cancelling the transfer or to modify it in order to make it acceptable;
  - (c) Which would compromise the independence of the Fund;
  - (d) Whose distribution would lead to a clearly unequal distribution of the Fund and available assets to the various groups of victims.

#### Article 16 Functioning of the Fund

1. The bank accounts of the Fund shall be opened in accordance with the Financial Rules and Regulations of the African Union and with the Procedural Handbook of the Fund.
2. The accounting system of the Fund shall enable the separation of funds in order to facilitate the introduction of transferred contributions.
3. The Fund shall be audited in accordance with the Financial Rules and Regulations of the AU.
4. The Secretariat shall receive the resources that the Extraordinary African Chambers may decide to transfer to the Fund. It shall take note of the sources and the amounts received as well as all other information relating to the use of the money.

#### Article 17 Beneficiaries

### 73. STATUTE OF THE TRUST FUND FOR VICTIMS OF HISSÈNE HABRÉ'S CRIMES (2018)

The resources of the Fund shall serve to compensate:

- (a) The victims of the crimes of Hissène Habré that fall under the jurisdiction of the Extraordinary African Chambers, as set out in the verdict of the Extraordinary African Chambers;
- (b) People who did not participate in the procedure and those whose applications have been rejected, in accordance with the verdict of the Extraordinary African Chambers of 27 April 2017.

#### Article 18 General Principles

- 1. The Board of Directors may decide to consult the victims and, in the case of individuals, their families as well as their legal representatives and may consult any competent expert or any organization of experts within the framework of the conduct of its activities and projects.
- 2. For the purposes of this Statute and in accordance with the Procedural Handbook and the verdict of the Extraordinary African Chambers, the Fund shall be considered as seized when the Board of Directors shall deem it necessary to offer a physical or psychological reparation or material support to victims and their families.

#### Article 19 Sensitization

- 1. Once the Fund goes operational, the Chairman of the Board of Directors shall issue a statement through his/her Secretariat.
- 2. The statement may indicate the basis of its activities and its projects, and if need be, provide any additional information. An appeal for voluntary contributions may accompany the statement.
- 3. The Board of Directors shall launch a sensitization and information campaign which it shall deem appropriate with a view to increasing voluntary contributions. The Board may, in this regard, solicit assistance from the Secretariat.

#### Article 20 Verification

- 1. The Secretariat shall ensure that all persons who submit applications to the Fund are part of the beneficiaries, in accordance with the principles set out in the verdict of the Extraordinary African Chambers.
- 2. Subject to the stipulations set out in the verdict of the Extraordinary African Chambers, the Board of Directors shall define the norms provided for the verification exercise, taking into account the current situation of the group of beneficiaries and available evidence.

#### Article 21 Disbursement of Reparations

- 1. The Fund shall define the modalities for the disbursement of reparations to beneficiaries taking into account their current situation and their place of residence, in accordance with the principles set out in Article 4.
- 2. The Fund may decide to resort to the services of middlemen in order to facilitate the disbursement of reparations, if need be, provided it would facilitate access to groups of beneficiaries and avoid conflicts of interests. The middlemen may be national or international non-governmental organizations working in close proximity with groups of beneficiaries and representatives of beneficiaries.

### 73. STATUTE OF THE TRUST FUND FOR VICTIMS OF HISSÈNE HABRÉ'S CRIMES (2018)

3. The Secretariat should put in place procedures that would ensure that reparation allowances have been duly received by beneficiaries, in accordance with the implementation plan of a disbursement programme. The beneficiaries shall be bound to acknowledge receipt of the reparation in writing or by other means of identification and these registers should be preserved by the Secretariat. Additional random checks and the monitoring of the reparation register should be executed in order to avoid unexpected difficulties or the risk of fraud and corruption.

#### Article 22 Information Requirements

1. The Board of Directors shall submit an annual written report on the activities of the Fund to the Executive Council through the Commission.

2. The annual report of the Board of Directors shall be made public, subject to confidentiality.

#### Article 23 Privileges and Immunities

1. The Funds, its representatives and its staff shall enjoy, on the territory of each Member State, the privileges and immunities provided for in the 1965 General Convention on Privileges and Immunities of the Organization of African Unity and other relevant international instruments.

2. The Headquarters Agreement concluded between the Fund and the host country of the Fund, shall govern the relations between the Fund and the host country.

#### Article 24 Amendments

Amendments to this Statute may be proposed by the Board of Directors and shall enter into force upon adoption by the Assembly of the Union.

#### Article 25 Entry into Force

This Statute shall enter into force upon its approval by the Assembly of the Union.



# **STATUTE OF THE AFRICAN INSTITUTE FOR REMITTANCES (AIR)**



**74.**

**Statute of the African Institute for Remittances (AIR)**

**Adopted in Addis Ababa, Ethiopia, on 29 January 2018.**

**Entered into force upon adoption.**

Preamble

*We, the Member States of the African Union,*

*Mindful* of the Executive Council Decision EX.CL/Dec.683 (XX) in January 2012, which acknowledges the establishment of an African Institute for Remittances (AIR) will facilitate remittances leverage for economic and social development in Africa,

*Bearing in mind* the resolution (Resolution 892 (XLV)) of the Fifth AU-ECA Joint Annual Meeting of the AU Conference of Ministers of Economy and Finance and the ECA Conference of African Ministers of Finance, Planning and Economic Development, in March 2012, which recognized remittances, if well harnessed and formulated, could contribute to growth and development in Africa,

*Acknowledging* the Declaration of the Global African Diaspora Summit, in Sandton, Johannesburg, South Africa, on 25 May 2012, (Diaspora/Assembly/AU/Decl. (I)) that adopted the African Institute for Remittances as one of the five Legacy Projects of the African Union,

*Recalling* our Decision (Assembly/AU/Dec.440 (XIX)) adopted during the Nineteenth Ordinary Session in July 2012, which endorsed the establishment of the African Institute for Remittances,

*Considering* the Executive Council Decision EX.CL/Dec. 808 (XXIV) in January 2014, that accepted the offer of the Republic of Kenya to host the African Institute for Remittances (AIR),

*Hereby agree* as follows:

Article 1  
Definitions

1. In this Statute:

“AIR” means the African Institute for Remittances;

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

“AU” or “Union” means the African Union established by the Constitutive Act of the African Union adopted by the Heads of State and Government of the Organization of African Unity (OAU) in Lomé, Togo, in July, 2000;

“Board” means the Governing Board of the AIR;

“Constitutive Act” means the Constitutive Act of the African Union adopted by the Heads of State and Government of the Organization of African Unity (OAU) in Lomé, Togo, in July, 2000;

“Commission” means the Commission of the African Union;

“Development partners” means the multilateral institutions, development agencies, donors, foundations and others that have contributed financially or otherwise to the establishment and continue supporting the Institute;

## 74. STATUTE OF THE AFRICAN INSTITUTE FOR REMITTANCES (AIR) (2018)

“Executive Council” means the Council of Ministers of the African Union;

“Forum” means the Consultative Forum of the AIR;

“Host country” means the Government of the Republic of Kenya;

“Institute” means the African Institute for Remittances (AIR);

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

“Policy organs” means the Assembly, the Executive Council and the Permanent Representatives Committee (PRC) of the African Union;

“Private sector” means the remittances service providers (RSPs), i.e., banks, telecoms, money transfer operators (MTOs), non-bank financial institutions such as microfinance institutions, saving and credit cooperatives (SACCOs) and post offices;

“Remittances” means transactions between residents and non-residents involving financial and non-financial items that represent foreign income to households of an economy from households or entities of another economy;

“Secretariat” means the AIR Secretariat;

“Stakeholders” means organizations, individuals and/or anyone who has an interest in African remittances and/or in the African Institute for Remittances (AIR);

“Statute” means the present Statute of the African Institute for Remittances;

“STC” means the AU Specialized Technical Committee on Finance, Monetary Affairs, Economic Planning and Integration.

2. In this Statute, words expressed in the singular term shall be construed to include the plural and vice versa.

### Article 2

#### Establishment of the African institute for Remittances

1. The AIR is hereby established as a Specialized Technical Office of the Commission.
2. The objectives, structure, mandate and functions of the AIR shall be defined as herein in the Statute.

### Article 3

#### Legal Status of AIR

The AIR shall possess full juridical personality and, in particular, full capacity:

- (a) To enter into agreements with members, non-members and other international organizations;
- (b) To contract;
- (c) To acquire and dispose of immovable and movable property; and
- (d) To institute and to respond to legal proceedings.



Article 4  
Objectives

The objectives of the AIR shall be to:

- (a) Improve the statistical measurement, compiling and reporting capabilities of Member States on remittances data;
- (b) Promote appropriate changes to the legal and regulatory frameworks for remittances, payment and settlement systems as well as use of innovative technology so as to promote greater competition and efficiency, resulting in reductions of transfer costs;
- (c) Leverage the potential impact of remittances on social and economic development of Member States, as well as promoting financial inclusion.

Article 5  
Functions and Activities of the AIR

1. In order to attain the above objectives, the AIR shall function in accordance with the provisions of this Statute.
2. The functions and activities of the AIR shall be to:
  - (a) Assist Member States, remittance senders and recipients and other stakeholders to develop and implement concrete strategies and operational instruments to leverage remittances as development tools for poverty eradication;
  - (b) Provide technical assistance to government institutions (central banks, ministries, financial and non-financial institutions) on establishing and operating the necessary regulatory frameworks on remittances;
  - (c) Promote adoption and implementation of the General Principles for International Remittance Services (GPs) by Member States, including transparency and consumer protection, an accessible payment systems infrastructure, an enabling legal and regulatory environment, a balanced market structure and competition as well as sound governance and risk management;
  - (d) Conduct empirical research on remittance markets, to address the main market inefficiencies and explore best practices in the area of remittances and disseminate findings;
  - (e) Collect and disseminate data on remittances and manage the remittances price database including Send Money Africa (SMA);
  - (f) Engage with private sectors players to address market failure, particularly to act as a catalyst in fostering investment in remittances, innovating in service delivery and promoting technology usage by remittance service providers (RSPs) including non-bank financial institutions;
  - (g) Improve capacities of non-bank financial institutions to strengthen their ability to offer remittance services in rural areas;
  - (h) Foster effective ways of networking, coordination and cooperation among Member States and stakeholders to address remittances issues in a more strategic and programmatic manner;

#### 74. STATUTE OF THE AFRICAN INSTITUTE FOR REMITTANCES (AIR) (2018)

- (i) Enable development of content and technology platforms for country-based payment and settlement systems for remittances;
- (j) Promote policies that improve the development impact of remittances;
- (k) Establish an information center on remittances in Africa;
- (l) Establish partnerships with remittances sending countries to facilitate the transfer and management of remittances, to address existing challenges and to harmonize bilateral or multilateral policies and agreements.

##### Article 6 Governance of the AIR

The AIR shall be governed by the following bodies:

- (a) The Governing Board;
- (b) The Consultative Forum;
- (c) The Secretariat.

##### Article 7 The Governing Board (The Board)

1. The Board shall oversee the management of the AIR.
2. The Board shall meet in ordinary session once every year.
3. The Board may also be convened in an extraordinary session, in conformity with its rules of procedure, subject to availability of funds, at the request of:
  - (a) One half of its members;
  - (b) The policy organs of the Union; or
  - (c) The Secretariat, in the event of a situation that necessitates holding of the Board meeting.

##### Article 8 Board Composition Tenure of Office

1. The Board shall be composed of eleven (11) members, as follows:
  - (a) Five (5) ministers of finance and economic planning representing the five regions of the African Union nominated by their regions, failing which they shall be nominated by the STC;
  - (b) A representative of the Commission;
  - (c) A representative of the host country;
  - (d) Two (2) governors of central banks representing the Association of African Central Banks (AACB);
  - (e) A representative of the African private sector;

#### 74. STATUTE OF THE AFRICAN INSTITUTE FOR REMITTANCES (AIR) (2018)

- (f) Chairperson of the Consultative Forum.
- 2. The Legal Counsel of the Commission or his/her representative shall be a non-voting member of the Board to provide legal advice as may be required.
- 3. The Board may invite such expertise, from relevant professionals, as may be necessary.
- 4. The Executive Director of the AIR shall act as the Secretary of the Board.
- 5. Where applicable, the term of office of members of the Board shall be a non-renewable period of three (3) years.
- 6. The Board shall elect from among its members, one of the five (5) ministers as its Chairperson, on a regional rotational basis for three (3) years.
- 7. In the event of the Chairperson vacating his/her position before the expiration of his/her tenure of office for whatever reason, he/she shall be replaced by a minister to be designated by his/her region.

#### Article 9 Functions of the Board

The functions of the Board shall be to:

- (a) Examine and consider the plan of action and activities of the AIR;
- (b) Provide strategic guidance to the Secretariat;
- (c) Oversee the management of the AIR;
- (d) Adopt its own rules of procedure and the rules of procedure of the Forum;
- (e) Recommend amendments to this Statute;
- (f) Ensure that the remittances agenda is integrated with the continental, regional and national development strategy;
- (g) Assist the Secretariat in mobilizing funds;
- (h) Submit annual reports to the policy organs on implemented activities and achievements of the AIR.

#### Article 10 Quorum and Decision-Making Procedures of the Board

- 1. The quorum for Board meetings shall be two thirds of the total membership of the Board.
- 2. The Board shall adopt its own rules of procedure.

#### Article 11 The Consultative Forum (The Forum)

The Forum shall serve as an advisory and technical body of the AIR.

#### Article 12

Composition and Tenure of the Forum

1. The Forum shall be composed of twenty-three (23) members as follows:
  - (a) Two (2) representatives of the Commission;
  - (b) Five (5) representatives from the diaspora/migrant organizations representing each of the five regions of the African Union;
  - (c) Five (5) representatives from development partners;
  - (d) Five (5) representatives from the private sector (banks, money transfer operators, etc.) organizations;\*
  - (e) Five (5) representatives from the Association of African Central Banks (AACB);
  - (f) A representative from the host country.
2. The Executive Director of the AIR shall serve as the Secretary of the Forum.
3. The Forum may invite such expertise from relevant stakeholders as necessary.
4. Members of the Forum shall serve for a non-renewable term of three (3) years.
5. The Forum shall elect its own Chairperson and Vice-Chairperson by a simple majority and they shall serve for a non-renewable term of three (3) years and two (2) years respectively.

Article 13  
Functions of the Forum

The functions of the Forum shall be to:

- (a) Recommend strategic/activity plans to the Board and the Secretariat;
- (b) Advise the Board and the Secretariat on emerging issues and other related matters on remittances;
- (c) Advise the Board and the Secretariat on the implementation of decisions by the policy organs.

Article 14  
Meetings, Quorum, and Decision-Making Procedures of the Forum

1. The quorum for the Forum meetings shall be two thirds of the total membership of the Forum.
2. The Forum shall adopt its own rules of procedure.

Article 15  
The Secretariat

1. The AIR shall be managed and administered by an Executive Director.
2. The Executive Director shall be appointed by the Commission on the approval of the Board and shall serve for a period of four (4) years;

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\* Editor's note: This paragraph number has been aligned with the French text.

## 74. STATUTE OF THE AFRICAN INSTITUTE FOR REMITTANCES (AIR) (2018)

3. The Executive Director shall not serve for a period of more than two (2) terms.
4. Under the supervision of the Director for Social Affairs of the Commission, the Executive Director shall be responsible for:
  - (a) The implementation of the decisions of the policy organs of the Union and the Board of the AIR;
  - (b) The implementation of the Statute of the AIR, as well as, other conventions and decisions of the Governing Board of the AIR;
  - (c) The preparation of the annual budget of the AIR;
  - (d) Overseeing the recruitment process of staff members, pursuant to the Staff Regulations and Rules of the Commission except for the appointment of the Executive Director as stipulated in this Statute.

### Article 16 Functions of the Executive Director

The functions of the Executive Director shall be to, inter alia:

- (a) Direct and supervise the overall management of the AIR;
- (b) Act as authorizing officer of the AIR;
- (c) Act as the AIR's official representative;
- (d) Implement directives from the Board and the Commission as may be applicable;
- (e) Prepare and submit to the Board and the Commission the annual activity programmes, budget, financial statements and operational report of the AIR;
- (f) Propose to the Board strategic alliances and partnerships for the joint execution of programmes and activities with development partners as well as mobilization of funding;
- (g) Organize the collection and dissemination of remittance related researches;
- (h) Ensure the production and publication of the periodical bulletin of the AIR;
- (i) Oversee the execution of the Host Country Agreement;
- (j) Act as Secretary of the Board;
- (k) Perform any other functions as may be assigned in line with the objectives of the AIR.

### Article 17 Budget

1. The budget of the AIR shall be within the budget of the Union.
2. In addition to the regular budget of the Union, other sources of funding the AIR may include:
  - (a) Voluntary contributions from AU Member States and partners;

#### 74. STATUTE OF THE AFRICAN INSTITUTE FOR REMITTANCES (AIR) (2018)

- (b) Contributions from development partners of the Union and the Commission;
  - (c) Contributions from the private sector;
  - (d) National and regional financial institutions and other financing mechanisms;
  - (e) AU Science, Technology and Innovation Fund when established; and
  - (f) Any other source of funding in accordance with AU Rules.
3. The budget calendar of the AIR shall be that of the Union.

#### Article 18 Headquarters of AIR

- 1. The headquarters of the AIR shall be in Nairobi, Republic of Kenya.
- 2. The Host Country Agreement shall govern the relations between AIR and the host country.
- 3. The Secretariat may authorize the convening of meetings and conferences in the territory of any Member State at the invitation of that Member State.

#### Article 19 Code of Conduct

- 1. In the performance of their duties, the Executive Director and any other staff of the AIR shall not accept nor receive instructions from any government or any authority other than the AIR.
- 2. Each Member State shall undertake to respect the exclusive nature of the responsibilities of the Executive Director and any other staff member of the AIR and shall not influence or seek to influence them in the performance of their duties.
- 3. The Executive Director and the other staff of the AIR shall not, in the discharge of their duties, engage in any activity or conduct incompatible with the proper discharge of their duties. They are required to avoid conflict between professional and personal interests or obligations sufficient to influence the impartial exercise of their official duties or responsibilities.
- 4. Where the Executive Director of the AIR fails to comply with his/her obligations, an ad hoc committee approved by the Governing Board shall provide an appropriate report and recommendations for its consideration and decision.
- 5. Where a staff member fails to comply with his/her obligations, the internal procedures referred to in the Statute and the AU Staff Rules and Regulations shall be applied. The staff member concerned shall have the right to appeal in accordance with the Staff Rules and Regulations.
- 6. The Executive Director and other staff of the AIR may accept, on behalf of the Commission, gifts, bequests and other donations made to the AIR, provided that such donations are consistent with the objectives and principles of the AIR and shall remain the property of the AIR.

#### Article 20 Relation with Member States, Development Partners and Other Stakeholders

#### 74. STATUTE OF THE AFRICAN INSTITUTE FOR REMITTANCES (AIR) (2018)

1. In carrying out its functions, the AIR shall dedicate necessary resources to building partnerships aimed at improving the effectiveness of its operations.
2. Within the African continent, the AIR shall maintain working ties with development partners and stakeholders, particularly with international financial institutions, diaspora and civil society organizations, Regional Economic Communities (RECs), private sector players and other organs of the Union in pursuit of its purposes.
3. The AIR shall develop partnerships with Member States' central banks and shall also coordinate its operations with regional and continental institutions that finance development projects across Africa.
4. In pursuance of its objectives, the AIR shall closely cooperate with international financial institutions and such cooperation shall strive to ensure synergy and partnership.
5. The AIR may be requested by the Member States, the RECs, the Commission, other organs of the Union, and international organizations to provide scientific or technical assistance in any field within its competence.

#### Article 21 Privileges and Immunities

The AIR shall enjoy in the territory of the host country, the privileges and immunities specified in the General Convention on Privileges and Immunities of the Organization of African Unity adopted in Accra, Ghana, on 25 October 1965.

#### Article 22 Amendments

1. The present Statute may be amended by the Assembly upon the recommendation of the STC.
2. The amendments shall enter into force upon their adoption by the Assembly.

#### Article 23 Working Languages

The working languages of the AIR shall be those of the AU.

#### Article 24 Entry into Force

The present Statute shall enter into force upon its adoption by the Assembly.





**PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN  
ECONOMIC COMMUNITY RELATING TO  
FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE  
AND RIGHT OF ESTABLISHMENT**



75.

**PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING TO FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT**

**Adopted in Addis Ababa, Ethiopia, on 29 January 2018.**

**The Protocol shall enter into force thirty days after the deposit of the fifteenth instrument of ratification.**

Preamble

*We, the Heads of State and Government of the Member States of the African Union,*

*Recalling* our commitment to conclude a protocol on the free movement of persons, right of residence and right of establishment, under Article 43, paragraph 2, of the Treaty Establishing the African Economic Community, which was adopted in Abuja, Nigeria, on 3 June 1991 and entered into force on 12 May 1994,

*Mindful* of Article 3, subparagraph (a), of the Constitutive Act of the African Union which promotes the achievement of greater unity and solidarity between the African countries and the people of Africa, and the Treaty Establishing the African Economic Community which promotes economic, social and cultural development and the integration of African economies,

*Reiterating* our shared values which promote the protection of human and peoples' rights as provided in the Universal Declaration of Human Rights of 1948 and the African Charter on Human and Peoples' Rights of 1981 which guarantees the right of an individual to freedom of movement and residence,

*Guided* by our common vision for an integrated, people-centred and politically united continent and our commitment to free movement of people, goods and services among the Member States as an enduring dedication to Pan-Africanism and African integration as reflected in Aspiration 2 of the African Union Agenda 2063,

*Recalling* our commitment under Article 4, paragraph 2 (i), of the Treaty Establishing the African Economic Community, to gradually remove obstacles to the free movement of persons, goods, services and capital and the right of residence and establishment among Member States,

*Bearing in mind* the strategies of the Migration Policy Framework for Africa adopted in Banjul, The Gambia, in 2006 which encourage the Regional Economic Communities and their Member States to consider the adoption and implementation of appropriate protocols in order to progressively achieve the free movement of persons and to ensure the enjoyment of the right of residence, establishment and access to gainful employment in the host countries,

*Recognizing* the contribution and building on the achievements of the Regional Economic Communities and other intergovernmental organizations towards progressively achieving the free movement of persons and ensuring the enjoyment of the right of residence and the right of establishment by citizens of Member States,

*Aware* of the challenges of implementing the free movement of persons in the Regional Economic Communities which are at different levels of implementing the frameworks providing for free movement of persons,

*Envisaging* that the free movement of persons, capital, goods and services will promote integration, Pan-Africanism, enhance science, technology, education, research and foster tourism, facilitate intra-Africa trade and investment, increase remittances within Africa, promote mobility of labour, create employment, improve the standards of living of the people of Africa and facilitate the mobilization and utilization of the human and material resources of Africa in order to achieve self-reliance and development,

75. PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING  
TO FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT (2018)

*Aware* of the need to ensure that effective measures are put in place in order to prevent situations whereby upholding the freedom of movement of people will not lead to situations whereby the arrival and settlement of migrants in a given host country will create or exacerbate inequalities or will constitute challenges to peace and security,

*Noting* that the free movement of persons in Africa will facilitate the establishment of the Continental Free Trade Area endorsed by the African Union Assembly of Heads of State and Government at its Eighteenth Ordinary Session,

*Noting further* the decision of the Peace and Security Council adopted at its 661<sup>st</sup> meeting (PSC/PR/COMM.1 (DCLXI) held on 23 February 2017, in Addis Ababa, Ethiopia, in which the Council acknowledged that the benefits of free movement of people, goods and services far outweigh the real and potential security and economic challenges that may be perceived or generated,

*Recalling further* the decision of the Peace and Security Council adopted at its 661<sup>st</sup> meeting (PSC/PR/COMM.1 (DCLXI) held on 23 February 2017 in Addis Ababa, Ethiopia, in which the Council underlined the need to ensure a phased approach in implementing AU policy decisions on free movement of people and goods, mindful of the variances in the legitimate security concerns of Member States,

*Reaffirming* our belief in our common destiny, shared values and the affirmation of the African identity, the celebration of unity in diversity and the institution of the African citizenship as expressed in the Solemn Declaration on the Fiftieth Anniversary adopted by the Assembly of Heads of State and Government at its Twenty-first Ordinary Session in Addis Ababa, Ethiopia, on 23 May 2013,

*Determined* to enhance the economic development of Member States through a prosperous and integrated continent,

*Mindful* of the decision of the Assembly adopted in July 2016 in Kigali, Rwanda, (Assembly/AU/Dec.607 (XXVII) welcoming the launch of the African passport and urging Member States to adopt the African passport and to work closely with the African Union Commission to facilitate the processes towards its issuance at the citizen level based on international, continental and citizen policy provisions and continental design and specifications,

*Have agreed* as follows:

Part I  
Definitions

Article 1  
Definitions

For the purpose of this Protocol:

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

"Commission" means the Commission of the African Union;

"Dependent" means a child or other person who, a national of a Member State is required to support and maintain as defined by the laws of the host Member State;

"Executive Council" means the Executive Council of Ministers of the Union;

75. PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING  
TO FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT (2018)

"Free movement of persons" means the right of nationals of a Member State to enter, move freely, and reside in another Member State in accordance with the laws of the host Member State and to exit the host Member State in accordance with the laws and procedures for exiting that Member State;

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

"Regional arrangement" means agreements, measures or mechanisms on free movement of persons developed and implemented by the Regional Economic Communities;

"Right of entry" means the right of a national of a Member State to enter and move freely in another Member State in accordance with the laws of the host Member State;

"Right of establishment" means the right of a national of a Member State to take up and pursue the economic activities specified in Article 17, paragraph 2, in the territory of another Member State;

"Right of residence" means the right of a national of one Member State to reside and seek employment in another Member State other than their Member State of origin in accordance with the national law of the host Member State ;

"States Parties" means Member States of the African Union which have ratified, or acceded to this Protocol and deposited the instrument of ratification or accession with the Chairperson of the African Union Commission;

"Territory" means the land, airspace and waters belonging to or under the jurisdiction of a Member State;

"Travel document" means a passport which complies with the International Civil Aviation Organization standards for travel documents, or any other travel document identifying a person issued by or on behalf of a Member State or by the Commission which is recognized by the host Member State;

"Treaty" means the Treaty Establishing the African Economic Community that was adopted in Abuja, Nigeria, on 3 June 1991 and entered into force on 12 May 1994;

"Union" means the African Union established by the Constitutive Act of the African Union;

"Vehicle" means any means in or by which a person travels, is carried or conveyed by land into the territory of a Member State;

"Visa" means the authority granted to a national of a Member State to enter into the territory of the host Member State.

Part II  
Objective and Principles of the Protocol

Article 2  
Objective

The objective of this Protocol is to facilitate the implementation of the Treaty Establishing the African Economic Community by providing for the progressive implementation of free movement of persons, right of residence and right of establishment in Africa.

Article 3  
Principles

75. PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING  
TO FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT (2018)

1. The free movement of persons, right of residence and right of establishment in Member States shall be guided by the principles guiding the African Union provided in Article 4 of the Constitutive Act.
2. In addition to the principles in paragraph 1, the implementation of this Protocol shall be guided by:
  - (a) Non-discrimination;
  - (b) Respect for laws and policies on the protection of national security, public order, public health, the environment, and any other factors that would be detrimental to the host State; and
  - (c) Transparency.

Article 4  
Non-Discrimination

1. States Parties shall not discriminate against nationals of another Member State entering, residing or established in their territory, on the basis of their nationality, race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status as provided by Article 2 of the African Charter on Human and Peoples' Rights.
2. It shall not be discrimination for a States Party, as a result of reciprocity or deeper integration, to give more favourable treatment to nationals of another States Party or region, in addition to the rights provided for in this Protocol.
3. A citizen of another State Party entering, residing or established in a State Party in accordance with the provisions of this Protocol, shall enjoy the protection of the law of the host State Party, in accordance with the relevant national policies and laws of the host State Party.

Article 5  
Progressive Realization

1. The free movement of persons, right of residence and right of establishment shall be achieved progressively through the following phases:
  - (a) Phase one, during which States Parties shall implement the right of entry and abolition of visa requirements;
  - (b) Phase two, during which States Parties shall implement the right of residence;
  - (c) Phase three, during which States Parties shall implement the right of establishment.
2. The Roadmap annexed to this Protocol serves as a guideline to help, as appropriate, with the implementation of the above phases.
3. Nothing in this Protocol shall:
  - (a) Affect more favourable provisions for the realization of the free movement of persons, right of residence and right of establishment contained in national legislation, regional or continental instruments; or
  - (b) Prevent the accelerated implementation of any phase of free movement of persons, right of residence and right of establishment by a Regional Economic Community, subregion or Member State before the time set by this Protocol or the Assembly for the implementation of that phase.

75. PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING  
TO FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT (2018)

Part III  
Free Movement of Persons

Article 6  
Right of Entry

1. In accordance with this Protocol, nationals of a Member State shall have the right to enter, stay, move freely and exit the territory of another Member State in accordance with the laws, regulations and procedures of the host Member State.
2. Member States shall implement the right of entry by permitting nationals of Member States to enter into their territory without the requirement of a visa.
3. The right to enter the territory of a Member State shall be enjoyed in accordance with Article 7.
4. A Member State permitting a national of another Member State to enter into their territory shall permit that national to move freely or stay for a maximum period of ninety (90) days from the date of entry or such further period determined by Member States or through bilateral or regional arrangements.
5. A national of a Member State who wishes to stay in the host Member State beyond the period provided in paragraph 4 shall seek an extension of stay in accordance with the procedures established by the host Member State.

Article 7  
Entry in Member State

1. Entry into the territory of a Member State shall be permitted for a person:
  - (a) Entering the Member State through a designated point or official port of entry;
  - (b) With a recognized and valid travel document as defined in Article 1; and
  - (c) Who is not prohibited from entering the Member State by the laws of that Member State for the protection of national security, public order or public health.
2. A host Member State may impose other conditions, which are not inconsistent with this Protocol, according to which a national of a Member State may be refused entry into the territory of the host Member State.

Article 8  
Designated or Official Points of Entry And Exit

1. Member States shall designate and share with other Member States information relating to their official entry and exit points or ports.
2. Member States shall in line with national or regional procedures keep the designated official entry and exit points open to facilitate the free movement of persons, subject to reciprocity and the protection measures a Member State may take.

Article 9  
Travel Documents

1. Member States shall issue to their nationals valid travel documents to facilitate free movement.

75. PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING  
TO FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT (2018)

2. Member States shall mutually recognize and exchange specimens of the valid travel documents issued by the Member State.
3. Member States shall cooperate in the process of identification and issuance of travel documents.

Article 10  
African Passport

1. States Parties shall adopt a travel document called “African passport” and shall work closely with the Commission to facilitate the processes towards the issuance of this passport to their citizens.
2. The Commission shall provide technical support to Member States to enable them to produce and issue the African passport to their citizens.
3. The African passport shall be based on international, continental and national policy provisions and standards and on a continental design and specifications.

Article 11  
Use of Vehicles

1. States Parties shall permit nationals of another Member State using vehicles to enter into their territory and move freely for a maximum period of ninety (90) days from the date of entry, upon presentation of the following valid documents to the competent authorities in the host Member State:
  - (a) A driver’s license;
  - (b) Evidence of ownership or registration of the vehicle;
  - (c) Certificate of roadworthiness;
  - (d) Certificate of axle load limit;
  - (e) An insurance policy in respect of the vehicle by the host Member State.
2. The use of vehicles by persons in the territory of a host Member State shall be subject to the laws of the host Member State.
3. Member States shall establish and contribute to a continental database on registration of vehicles to facilitate the use of vehicles in the free movement of persons.

Article 12  
Free Movement of Residents of Border Communities

1. States Parties shall through bilateral or regional agreements establish measures to identify and facilitate the free movement of residents of border communities without compromising the security or public health of host Member States.
2. States Parties shall endeavour to amicably resolve any legal, administrative, security, cultural or technical impediment likely to hamper the free movement of border communities.

Article 13  
Free Movement of Students and Researchers



75. PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING  
TO FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT (2018)

1. States Parties shall permit nationals of another Member State who are holders of registration or preregistration documents, to take up education or research in their territory in accordance with the policies and laws of the host Member State.
2. A host State Party shall in accordance with national or regional policies issue student permits or passes to nationals of other Member States who are admitted to pursue studies in the host Member State.
3. States Parties shall develop, promote and implement programmes to facilitate exchange of students and researchers among Member States.

Article 14  
Free Movement of Workers

1. Nationals of a Member State shall have the right to seek and accept employment without discrimination in any other Member State in accordance with the laws and policies of the host Member State.
2. A national of a Member State accepting and taking up employment in another Member State may be accompanied by a spouse and dependants.

Article 15  
Permits or Passes

1. A host State Party shall issue residence permits, work permits, or other appropriate permits or passes to nationals of other Member States seeking and taking up residence or work in the host Member State.
2. Permits and passes shall be issued in accordance with the immigration procedures applicable to persons seeking or taking up residence or work in the host Member State.
3. The procedures referred to in paragraph 2 shall include the right of a national of another Member State to appeal against a decision denying them a permit or pass.

Part IV  
Right of Residence and Right of Establishment

Article 16  
Right of Residence

1. Nationals of a Member State shall have the right of residence in the territory of any Member State in accordance with the laws of the host Member State.
2. A national of a Member State taking up residence in another Member State may be accompanied by a spouse and dependants.
3. States Parties shall gradually implement favourable policies and laws on residence for nationals of other Member States.

Article 17  
Right of Establishment

1. Nationals of a Member State shall have the right of establishment within the territory of another Member State in accordance with the laws and policies of the host Member State.
2. The right of establishment shall include the right to set up in the territory of the host Member State:

75. PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING  
TO FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT (2018)

- (a) A business, trade, profession, vocation; or
- (b) An economic activity as a self-employed person.

Part V  
General Provisions

Article 18  
Mutual Recognition of Qualifications

1. States Parties shall individually or through bilateral, multilateral or regional arrangements, mutually recognize academic, professional and technical qualifications of their nationals to promote the movement of persons among the Member States.
2. States Parties shall establish a continental qualifications framework to encourage and promote the free movement of persons.

Article 19  
Portability of Social Security Benefits

States Parties shall, through bilateral, regional or continental arrangements, facilitate the portability of social security benefits to nationals of another Member State residing or established in that Member State.

Article 20  
Mass Expulsion

1. The mass expulsion of non-nationals shall be prohibited.
2. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

Article 21  
Expulsion, Deportation and Repatriation

1. A national of a Member State lawfully admitted into the territory of a host Member State may only be expelled, deported or repatriated from the host Member State by virtue of a decision taken in accordance with the law in force in the host Member State.
2. A host State Party shall notify the national of a Member State and the Government of that national of the decision to expel, deport or repatriate that citizen from the territory of the host Member State.
3. The expenses relating to:
  - (a) The expulsion or deportation shall be borne by the Member State expelling or deporting a person;
  - (b) Repatriation shall be borne by the person being repatriated or by the State of origin.
4. Where entry into a territory of a Member State is refused, the person responsible for transportation, shall at the request of competent border authorities reroute the persons denied entry back to the point of embarkment, or where this is not possible, to the Member State that issued the citizen's travel documents or any other place where the admission of the citizen will be accepted.

Article 22

75. PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING  
TO FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT (2018)

Protection of Property Acquired in Host Member State

1. A national of a Member State entering, residing or established in the territory of another Member State, may acquire property in the host Member State in accordance with the laws, policies and procedures of the host Member State.
2. Property lawfully acquired by a national of a Member State in the host Member State, shall not be nationalized, expropriated, confiscated or acquired by the host Member State except in accordance with the law and after fair compensation being paid to that national.
3. Property lawfully acquired by a national of a Member State shall be protected by the host Member State in the event of a dispute between the Member State where the national originates and the host Member State.
4. A host State Party shall not deprive a national of another Member State who is expelled, deported or repatriated by the host Member State, of his/her property lawfully acquired by that national in the host Member State except in accordance with the laws and procedures of the host Member State.

Article 23  
Remittances

States Parties shall through, bilateral, regional, continental or international agreements facilitate the transfer of earnings and savings of nationals of other Member States working, residing or established in their territory.

Article 24  
Procedures for Movement of Specific Groups

1. States Parties may in addition to the measures provided for by international, regional and continental instruments, establish specific procedures for the movement of specific vulnerable groups including refugees, victims of human trafficking and smuggled migrants, asylum seekers and pastoralists.
2. Procedures established by a Member State under this article shall be consistent with the obligations of that Member State under the international, regional and continental instruments relating to the protection of each group of persons referred to in paragraph 1.

Part VI  
Implementation

Article 25  
Cooperation Between Member States

1. States Parties shall in accordance with the African Union Convention on Cross-Border Cooperation coordinate their border management systems in order to facilitate the free and orderly movement of persons.
2. States Parties shall record, document, and upon request, make available all forms of aggregated migration data at the ports or points of entry or exit from their territory.
3. States Parties shall through bilateral or regional arrangements cooperate with each other by exchanging information related to the free movement of persons and the implementation of this Protocol.

Article 26  
Coordination and Harmonization

75. PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING  
TO FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT (2018)

1. In accordance with Article 88 of the Abuja Treaty and guided, as appropriate, by the Implementation Roadmap annexed to this Protocol, States Parties shall harmonize and coordinate the laws, policies, systems and activities of the Regional Economic Communities of which they are members which relate to free movement of persons with the laws, policies, systems and activities of the Union.

2. States Parties shall harmonize their national policies, laws and systems with this Protocol guided, as appropriate, by the Implementation Roadmap annexed to this Protocol.

Article 27  
Role of Member States

1. States Parties shall be responsible for implementing this Protocol.

2. States Parties shall adopt necessary legislative and administrative measures to implement and give effect to this Protocol.

3. States Parties shall harmonize all laws, policies, agreements and immigration procedures and other procedures to ensure compliance with this Protocol.

Article 28  
Role of Regional Economic Communities

1. Regional Economic Communities shall be the focal points for promoting, following up and evaluating implementation of this Protocol and reporting the progress towards free movement of persons in their respective regions.

2. Each Regional Economic Community shall submit periodic reports to the Commission on the progress of implementation of this Protocol within their respective region.

3. Regional Economic Communities shall harmonize their protocols, policies and procedures on free movement of persons with this Protocol.

Article 29  
Role of the Commission

1. The Commission shall follow up and evaluate the implementation of this Protocol by the Member States and shall through the relevant Specialized Technical Committees submit periodic reports to the Executive Council on the status of implementation of this Protocol.

2. The Commission shall in coordination with Member States develop and apply a continental follow up and coordinating mechanism for assessing the status of implementing this Protocol.

3. The follow-up and coordinating mechanism shall include the collection and analysis of data nationally and regionally in order to assess the state of the free movement of persons.

Article 30  
Remedies

1. States Parties shall provide appropriate administrative and judicial remedies in their national laws for nationals of other Member States affected by decisions of a Member State relating to the implementation of this Protocol.

75. PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING  
TO FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT (2018)

2. A national of a Member State who is denied the enjoyment of the right of entry, residence, establishment or other related rights provided in this Protocol, having exhausted all legal remedies in the host Member State, may refer the matter to the African Commission on Human and Peoples' Rights.

Part VII  
Final Provisions

Article 31  
Settlement of Disputes

1. Any dispute or difference arising between States Parties with regard to the interpretation, application and implementation of this Protocol shall be settled by mutual consent between States concerned, including through negotiations, mediation, conciliation or other peaceful means.
2. In the event of failure by the disputing parties to settle the dispute or difference, the disputing parties may:
  - (a) By mutual consent, refer the dispute to an Arbitration Panel of three (3) arbitrators whose decision shall be binding on the parties; or
  - (b) Refer the dispute to the African Court of Justice, Human Rights and Peoples' Rights, when operational.
3. The appointment of the Panel of Arbitrators shall be as follows:
  - (a) The parties to the dispute shall each appoint one arbitrator; and
  - (b) The Chairperson of the Commission shall appoint the third arbitrator who shall be the President of the Panel.\*
4. Pending the operationalization of the Court referred to in paragraph 2 (a) above, the decision of the Panel of Arbitrators shall be binding.

Article 32  
Signature, Ratification and Accession

1. This Protocol shall be open to Member States of the Union for signature, ratification or accession.
2. The instrument of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission who shall notify all Member States of the dates of the deposit of the instruments of ratification or accession.

Article 33  
Entry into Force

1. The Protocol shall enter into force thirty (30) days after the date of receipt by the Chairperson of the Commission of the fifteenth (15<sup>th</sup>) instrument of ratification.
2. Any Member State may, at the time of adoption of the Protocol by the Assembly, declare that it will apply provisionally the provisions of the Protocol pending its entry into force.

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\* Editor's note: The subparagraph numbering has been aligned with the French text.

75. PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING  
TO FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT (2018)

3. For any Member State that deposits its instrument of ratification, acceptance or accession subsequent to the entry into force of this Protocol, this Protocol shall enter into force for that State thirty (30) days following the date of the deposit of its instrument of acceptance or accession.

Article 34  
Reservations

1. A State Party may, when ratifying or acceding to this Protocol, submit in writing a reservation with respect to any of the provisions of this Protocol. Reservations shall not be incompatible with the object and purpose of this Protocol.
2. Unless otherwise provided, a reservation may be withdrawn at any time.
3. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States Parties of the withdrawal accordingly.

Article 35  
Depositary

This Protocol shall be deposited with the Chairperson of the African Union Commission, who shall transmit a certified true copy of the Protocol to the Government of each signatory State.

Article 36  
Registration

The Chairperson of the Commission upon the entry into force of this Protocol shall register this Protocol with the United Nations Secretary-General in conformity with Article 102 of the Charter of the United Nations.

Article 37  
Suspension and Withdrawal

1. Any State Party may suspend, temporarily, the implementation of the provisions of the present Protocol in case of grave threats to national security, public order and public health.
2. At any time after three years from the date of entry into force of this Protocol, a State Party may withdraw by giving written notification to the depositary.
3. Withdrawal shall be effective one year after receipt of notification by the depositary, or on such later date as may be specified in the notification.
4. Withdrawal shall not affect any obligation of the withdrawing State Party prior to the withdrawal.

Article 38  
Amendment and Revision

1. Any State Party may submit proposal(s) for the amendment or revision of this Protocol. Such proposal(s) shall be adopted by the Assembly.
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit such proposals to the Assembly at least six months before the meeting at which it shall be considered for adoption.

75. PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING  
TO FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT (2018)

3. Amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority.
4. The amendment or revision shall enter into force in accordance with the procedures outlined in Article 33 of this Protocol.

Article 39  
Authentic Texts

This Protocol is drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic.





**PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND  
PEOPLES' RIGHTS ON THE RIGHTS OF PERSONS WITH  
DISABILITIES IN AFRICA**



76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

76.

**PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF  
PERSONS WITH DISABILITIES IN AFRICA**

**Adopted in Addis Ababa, Ethiopia, on 29 January 2018.**

**The Protocol shall enter into force 30 days after the deposit of the fifteenth instrument of ratification.**

Preamble

*We, the Heads of State and Government of the Member States of the African Union,*

*Considering* that Article 66 of the African Charter on Human and Peoples' Rights of 27 June 1981 provides that special protocols or agreements, if necessary, may supplement the provisions of the African Charter,

*Further considering* that Article 18, paragraph 4, of the African Charter on Human and Peoples' Rights of 27 June 1981 provides that persons with disabilities shall have the right to special measures of protection in keeping with their physical or moral needs,

*Noting* that the Constitutive Act of the African Union of 11 July 2000 identifies respect for democratic principles, human rights, the rule of law and good governance as essential principles for the proper functioning of the African Union,

*Recognizing* that the African Union and its agencies as well as States Parties to the African Charter have made various efforts towards ensuring the rights of persons with disabilities,

*Noting* that Articles 6 and 61 of the African Charter on Human and Peoples' Rights of 27 June 1981 recognize regional and international human rights instruments and African practices consistent with international norms on human and peoples' rights as important reference points for the application and interpretation of the African Charter,

*Further noting* that human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated, and that the rights of every individual are recognized in international human rights instruments, including the Universal Declaration of Human Rights of 10 December 1948, the International Covenant on Economic, Social and Cultural Rights of 16 December 1966 and the International Covenant on Civil and Political Rights of 16 December 1966,

*Recalling* that the rights of persons with disabilities are affirmed in the Convention on the Rights of Persons with Disabilities of 13 December 2006,

*Further recalling* that various African Union human rights instruments, including the African Charter on the Rights and Welfare of the Child of 11 July 1990, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 11 July 2003, the African Youth Charter of 2 July 2006, the African Charter on Democracy, Elections and Governance of 30 January 2007, and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa of 23 October 2009 make provisions for the rights of persons with disabilities,

*Considering further* paragraph 20 of the Kigali Declaration on Human Rights of 8 May 2003, which "calls upon States Parties to develop a Protocol on the protection of the rights of the elderly and persons with disabilities",

*Recalling* that the Decision 750 (XXII) of the Executive Council at its Twenty-second Ordinary Session held in Addis Ababa, Ethiopia, from 21 to 25 January 2013, endorsed the African Union Disability Architecture (AUDA), of which a Protocol on the Rights of Persons with Disabilities to the African Charter is a central legal pillar,

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

*Acknowledging* that persons with disabilities have inherent dignity and individual autonomy including the freedom to make one's own choices,

*Cognizant* of the importance of full and effective participation and inclusion of persons with disabilities in society,

*Recognizing* the diversity of persons with disabilities,

*Appreciating* the value of persons with disabilities, including those with high support needs, as full members of society,

*Noting* that persons with disabilities experience extreme levels of poverty,

*Concerned* that persons with disabilities continue to experience human rights violations, systemic discrimination, social exclusion and prejudice within political, social and economic spheres,

*Gravely concerned* by the harmful practices that persons with disabilities often experience,

*Alarmed*, in particular, by the maiming or killing of persons with albinism in many parts of the continent,

*Concerned* at the multiple forms of discrimination, high levels of poverty and the great risk of violence, exploitation, neglect and abuse that women and girls with disabilities face,

*Recognizing* that families, guardians, caregivers and community play essential roles in the lives of persons with disabilities,

*Concerned* that adequate effective measures have not been taken to ensure that persons with disabilities may exercise their full rights on an equal basis with others,

*Recalling* the lack of a substantive binding African normative and institutional framework for ensuring, protecting and promoting the rights of persons with disabilities,

*Conscious* of the need to establish a firm legal African Union framework as a basis for laws, policies, administrative actions and resources to ensure the rights of persons with disabilities,

*Determined* that the rights and dignity of persons with disabilities should be promoted and protected to enable them to enjoy fully and equally all their human rights and fundamental freedoms,

*Have agreed* as follows:

Article 1  
Definitions

For the purposes of the present Protocol:

"African Charter" means the African Charter on Human and Peoples' Rights adopted by the Heads of State and Government of the Organization of African Unity (OAU) in Banjul, Gambia, in June 1981;

"African Commission" means the African Commission on Human and Peoples' Rights established by the African Charter on Human and Peoples' Rights adopted by the Heads of State and Government of the Organization of African Unity (OAU) in Banjul, Gambia, in June 2000;

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

"African Court" means the African Court on Human and Peoples' Rights or any successor court including the African Court of Justice and Human Rights established by the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights adopted by the Heads of State and Government of the Organization of African Unity (OAU) in Ouagadougou, Burkina Faso, in June 1998;

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

"AU" or "Union" means the African Union established by the Constitutive Act of the African Union adopted by the Heads of State and Government of the Organization of African Unity (OAU) in Lomé, Togo, in July 2000;

"Commission" means the Commission of the African Union;

"Deaf culture" means the way deaf people interact, it includes a set of social beliefs, behaviours, art, literary traditions, history, values, and shared institutions of communities that are influenced by deafness and which use sign languages as the main means of communication;

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human and peoples' rights in the political, economic, social, cultural, civil or any other field. Discrimination on the basis of disability shall include denial of reasonable accommodation;

"Habilitation" means inpatient or outpatient health care services such as physical therapy, occupational therapy, speech-language pathology, and audiology that address the competencies and abilities needed for optimal functioning and interaction with their environments to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social, and vocational ability, full inclusion and participation in all aspects of life;

"Harmful practices" include behaviour, attitudes and practices based on tradition, culture, religion, superstition or other reasons, which negatively affect the human rights and fundamental freedoms of persons with disabilities or perpetuate discrimination;

"Legal capacity" means the ability to hold rights and duties and to exercise those rights and duties;

"Persons with disabilities" include those who have physical, mental, psychosocial, intellectual, neurological, developmental or other sensory impairments which, in interaction with environmental, attitudinal or other barriers, hinder their full and effective participation in society on an equal basis with others;

"Protocol" means the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa;

"Reasonable accommodation" means necessary and appropriate modifications and adjustments, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human and peoples' rights;

"Rehabilitation" means inpatient or outpatient health care services such as physical therapy, occupational therapy, speech-language pathology and psychiatric rehabilitation services that help a person keep, restore or improve skills and functioning for daily living and skills related to communication that have been lost or impaired because a person was sick, injured or disabled;

"Ritual killings" means the killing of persons motivated by cultural, religious or superstitious beliefs that the use of a body or a body part has medicinal value, possesses supernatural powers and brings good luck, prosperity and protection to the killer;

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

"Situations of risk" means any situation that poses a grave risk to the general population, including disasters and all forms of armed conflict;

"States Parties" means any Member State of the African Union which has ratified or acceded to this Protocol and deposited the instrument of ratification or accession with the Chairperson of the African Union Commission;

"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design, and shall not exclude assistive devices for particular groups of persons with disabilities where this is needed;

"Youth" means every person between the ages of 15 and 35 years.

Article 2

Purpose

The purpose of this Protocol is to promote, protect and ensure the full and equal enjoyment of all human and peoples' rights by all persons with disabilities, and to ensure respect for their inherent dignity.

Article 3

General Principles

This Protocol shall be interpreted and applied in accordance with the following general principles:

- (a) Ensuring respect for and protection of the inherent dignity, privacy, individual autonomy, including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Reasonable accommodation;
- (h) Equality between men and women;
- (i) The best interests of the child;
- (j) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 4

General Obligations

States Parties shall take appropriate and effective measures, including policy, legislative, administrative, institutional and budgetary steps, to ensure, respect, promote, protect and fulfil the rights and dignity of persons with disabilities, without discrimination on the basis of disability, including by:

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

- (a) Adopting appropriate measures for the full and effective implementation of the rights recognized in the present Protocol;
- (b) Mainstreaming disability in policies, legislation, development plans, programmes and activities and in all other spheres of life;
- (c) Providing in their constitutions and other legislative instruments and taking other measures to modify or abolish existing policies, laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- (d) Modifying, outlawing, criminalizing or campaigning against, as appropriate, any harmful practice applied to persons with disabilities;
- (e) Promoting positive representations and empowerment of persons with disabilities through training and advocacy;
- (f) Taking measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
- (g) Refraining from engaging in any act or practice that is inconsistent with the present Protocol and ensuring that public authorities, institutions and private entities act in conformity with the Protocol;
- (h) Providing assistance and support as necessary and appropriate to enable the realization of the rights set out in the present Protocol;
- (i) Putting in place adequate resources, including through budget allocations, to ensure the full implementation of this Protocol;
- (j) Ensuring effective participation of persons with disabilities or their representative organizations, including women and children with disabilities, in all decision-making processes including the development and implementation of legislation, policies and administrative processes to this Protocol;
- (k) Ensuring, where persons with disabilities are lawfully deprived of any rights or freedoms contained in this Protocol, that they are on an equal basis with others, entitled to guarantees in accordance with international human rights law and the objects and principles of the present Protocol.

Article 5  
Non-discrimination

1. Every person with a disability shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Protocol without distinction of any kind on any ground including, race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.
2. States Parties shall:
  - (a) Prohibit discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds;
  - (b) Take steps to ensure that specific measures, as appropriate, are provided to persons with disabilities in order to eliminate discrimination and such measures shall not be considered discrimination;

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

- (c) Take effective and appropriate measures to protect the parents, children, spouses, other family members closely related to the persons with disabilities, caregivers or intermediaries from discrimination on the basis of their association with persons with disabilities.

Article 6  
Right to Equality

1. Every person with a disability is equal before the law and has the right to equal protection and benefit of the law.
2. Equality includes the full and equal enjoyment of all human and peoples' rights.
3. States Parties shall take all appropriate legislative, administrative, budgetary and other measures in order to promote equality for persons with disabilities.

Article 7  
Equal Recognition before the Law

1. States Parties shall recognize that persons with disabilities are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall take all appropriate and effective measures to ensure that:
  - (a) Persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life;
  - (b) Non-State actors and other individuals do not violate the right to exercise legal capacity by persons with disabilities;
  - (c) Persons with disabilities are provided with effective legal protection and the support they may require in enjoying their legal capacity consistent with their rights, will and specific needs;
  - (d) Appropriate and effective safeguards are put in place to protect persons with disabilities from abuses that may result from measures that relate to the enjoyment of their legal capacity;
  - (e) Policies and laws which have the purpose or effect of limiting or restricting the enjoyment of legal capacity by persons with disabilities are reviewed or repealed;
  - (f) Persons with disabilities have the equal right to hold documents of identity and other documents that may enable them to exercise their right to legal capacity;
  - (g) Persons with disabilities have the equal right to own or inherit property and are not arbitrarily dispossessed of their property;
  - (h) Persons with disabilities have equal rights to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit.

Article 8  
Right to Life

1. Every person with a disability has the inherent right to life and integrity.
2. States Parties shall take effective and appropriate measures to ensure:



76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

- (a) Protection, respect for life and the dignity of persons with disabilities, on an equal basis with others;
- (b) That persons with disabilities have access to services, facilities and devices to enable them to live with dignity and to realize fully their right to life.

Article 9  
Right to Liberty and Security of Person

1. Every person with a disability has the right to liberty and security of person.
2. States Parties shall take appropriate and effective measures to ensure that persons with disabilities, on an equal basis with others:
  - (a) Enjoy the right to liberty and security of person and are not deprived of their liberty unlawfully or arbitrarily;
  - (b) Are not forcibly confined or otherwise concealed by any person or institution;
  - (c) Are protected, both within and outside the home, from all forms of exploitation, violence and abuse.
3. States Parties shall take appropriate measures to prevent deprivation of liberty to persons with disabilities, to prosecute perpetrators of such abuse and to provide effective remedies for the victims.
4. Where persons with disabilities are lawfully deprived of their liberty, States Parties shall ensure that they are on an equal basis with others entitled to guarantees in accordance with international human rights law and the objects and principles of the present Protocol.
5. The existence of a disability or perceived disability shall in no case justify deprivation of liberty.

Article 10  
Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

1. Every person with a disability shall have the right to the respect of his/her inherent dignity and to be free from torture or cruel, Inhuman or degrading treatment, slavery, forced labour or unlawful punishment.
2. States Parties shall take appropriate and effective measures to ensure that persons with disabilities, on an equal basis with others:
  - (a) Are not subjected to torture or cruel, inhuman or degrading treatment or punishment;
  - (b) Are not subjected without their free, prior and informed consent to medical or scientific experimentation or intervention;
  - (c) Are not subjected to sterilization or any other invasive procedure without their free, prior and informed consent;
  - (d) Are protected, both within and outside the home, from all forms of exploitation, violence and abuse.
3. States Parties shall take appropriate measures to prosecute perpetrators of such abuse and to provide remedies for the victims.

Article 11  
Harmful Practice

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

1. States Parties shall take all appropriate measures and offer appropriate support and assistance to victims of harmful practices, including legal sanctions, educational and advocacy campaigns, to eliminate harmful practices perpetrated on persons with disabilities, including witchcraft, abandonment, concealment, ritual killings or the association of disability with omens.

2. States Parties shall take measures to discourage stereotyped views on the capabilities, appearance or behaviour of persons with disabilities, and they shall prohibit the use of derogatory language against persons with disabilities.

Article 12  
Situations of Risk

States Parties shall:

(a) Take specific measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, forced displacements, humanitarian emergencies and natural disasters;

(b) Ensure that persons with disabilities are consulted and participate in all aspects of planning, implementation and monitoring of pre- and post-conflict reconstruction and rehabilitation.

Article 13  
Right to Access Justice

1. States Parties shall take measures to ensure that persons with disabilities have access to justice on an equal basis with others, including through the provision of procedural, age and gender-appropriate accommodations, in order to facilitate their effective roles as participants in all legal proceedings.

2. States Parties shall take reasonable steps to ensure that customary law processes are inclusive and should not be used to deny persons with disabilities their right to access appropriate and effective justice.

3. All law enforcement and justice personnel shall be trained at all levels to effectively engage with and ensure the rights of persons with disabilities are recognized and implemented without discrimination.

4. States Parties shall ensure legal assistance including legal aid to persons with disabilities.

Article 14  
Right to Live in the Community

1. Every person with a disability has the right to live in the community with choices on an equal basis with others.

2. States Parties shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of the right to live in the community, on an equal basis with others, including by ensuring that:

(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live;

(b) Persons with disabilities who require intensive support and their families have adequate and appropriate facilities and services, including caregivers and respite services;

(c) Persons with disabilities have access to a range of in-home, residential and other community support services necessary to support living and inclusion in the community;

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

- (d) Persons with disabilities have personal mobility with the greatest possible independence;
- (e) Community-based rehabilitation services are provided in ways that enhance the participation and inclusion of persons with disabilities in the community;
- (f) Community living centres organized or established by persons with disabilities are supported to provide training, peer support, personal assistance services and other services to persons with disabilities; and
- (g) Community services and facilities for the general population, including health, transportation, housing, water, social and educational services, are available on an equal basis to persons with disabilities and are responsive to their needs.

Article 15  
Accessibility

1. Every person with a disability has the right to barrier free access to the physical environment, transportation, information, including communications technologies and systems, and other facilities and services open or provided to the public.
2. States Parties shall take reasonable and progressive step measures to facilitate full enjoyment by persons with disabilities of this right, and such measures shall, among others, apply to:
  - (a) Rural and urban settings and shall take account of population diversities;
  - (b) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
  - (c) Information, communications, sign languages and tactile interpretation services, braille, audio and other services, including electronic services and emergency services;
  - (d) Quality and affordable mobility aids, assistive devices or technologies and forms of live assistance and intermediaries; and
  - (e) The modification of all inaccessible infrastructure and the universal design of all new infrastructure.

Article 16  
Right to Education

1. Every person with a disability has the right to education.
2. States Parties shall ensure to persons with disabilities the right to education on an equal basis with others.
3. States Parties shall take reasonable, appropriate and effective measures to ensure that inclusive quality education and skills training for persons with disabilities is realized fully, including by:
  - (a) Ensuring that persons with disabilities can access free, quality and compulsory basic and secondary education;
  - (b) Ensuring that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others, including by ensuring the literacy of persons with disabilities above compulsory school age;

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

- (c) Ensuring reasonable accommodation of the individual's requirements is provided, and that persons with disabilities receive the support required to facilitate their effective education;
- (d) Providing reasonable, progressive and effective individualized support measures in environments that maximize academic and social development, consistent with the goal of full inclusion;
- (e) Ensuring appropriate schooling choices are available to persons with disabilities who may prefer to learn in particular environments;
- (f) Ensuring that persons with disabilities learn life and social development skills to facilitate their full and equal participation in education and as members of the community;
- (g) Ensuring that multidisciplinary assessments are undertaken to determine appropriate reasonable accommodation and support measures for learners with disabilities, early intervention, regular assessments and certification for learners are undertaken regardless of their disabilities;
- (h) Ensuring educational institutions are equipped with the teaching aids, materials and equipment to support the education of students with disabilities and their specific needs;
- (i) Training education professionals, including persons with disabilities, on how to educate and interact with children with specific learning needs; and
- (j) Facilitating respect, recognition, promotion, preservation and development of sign languages.

4. The education of persons with disabilities shall be directed to:

- (a) The full development of human potential, sense of dignity and self-worth;
- (b) The development by persons with disabilities of their personality, talents, skills, professionalism and creativity, as well as their mental and physical abilities, to their fullest potential;
- (c) Educating persons with disabilities in a manner that promotes their participation and inclusion in society; and
- (d) The preservation and strengthening of positive African values.

Article 17  
Right to Health

- 1. Every person with a disability has the right to the highest attainable standard of health.
- 2. States Parties shall take appropriate and effective measures to ensure persons with disabilities have, on an equal basis with others, access to health services, including sexual and reproductive health, such as by:
  - (a) Providing persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons;
  - (b) Providing those health services needed by persons with disabilities specifically because of their disabilities or health services designed to minimize or prevent further disability, the provision of medicines including pain relieving drugs;
  - (c) Prohibiting discrimination against persons with disabilities by providers of health services or providers of insurance;

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

- (d) Ensuring that all health services are provided on the basis of free, prior and informed consent;
- (e) Providing persons with disabilities with health care in the community;
- (f) Ensuring that health-care services are provided using accessible formats and that communication between service providers and persons with disabilities is effective;
- (g) Ensuring that persons with disabilities are provided with support in making health decisions when needed;
- (h) Ensuring that health campaigns include disability specific needs, but in a manner which does not stigmatize persons with disabilities, and designing services to minimize and prevent further disability; and
- (i) Ensuring that the training of health-care providers takes account of the disability specific needs and rights of persons with disabilities, and ensuring that formal and informal health services do not violate the rights of persons with disabilities.

Article 18  
Habilitation and Rehabilitation

States Parties shall take effective and appropriate measures, including peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life, including by:

- (a) Organizing, strengthening and extending comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services;
- (b) Promoting the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services;
- (c) Promoting the availability, knowledge and use of appropriate, suitable and affordable assistive devices and technologies;
- (d) Supporting the design, development, production, distribution and servicing of assistive devices and equipment for persons with disabilities, adapted to local conditions;
- (e) Developing, adopting and implementing standards, including regulations on accessibility and universal design, suitable to local conditions.

Article 19  
Right to Work

1. Every person with a disability has the right to decent work, to just and favourable conditions of work, to protection against unemployment, to protection against exploitation and to protection from forced or compulsory labour.
2. States Parties shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right on an equal basis with others, including by:
  - (a) Prohibiting discrimination on the basis of disability with regard to all matters concerning all forms of employment, including employment opportunities, vocational training, conditions of recruitment, hiring and employment, continuance of employment, promotion, career advancement, and safe and healthy conditions;

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

- (b) Protecting the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work and the right by persons with disabilities to exercise their labour and trade union rights;
  - (c) Promoting opportunities for persons with disabilities to initiate self-employment, entrepreneurship and to access financial services;
  - (d) Employing persons with disabilities in the public sector, including by reserving and enforcing minimum job quotas for employees with disabilities;
  - (e) Promoting the employment of persons with disabilities in the private sector through appropriate policies and measures, including through the use of specific measures such as tax incentives;
  - (f) Ensuring that reasonable accommodation is provided to persons with disabilities in the workplace;
  - (g) Ensuring that employees with disabilities or those who become disabled are not unfairly dismissed from employment on the basis of their disability.
3. States Parties shall take legislative, administrative and budgetary measures to ensure that the principle of equal pay for equal work is not used to undermine the right to work for persons with disabilities.
4. States Parties shall take appropriate measures to recognize the social and cultural value of the work of persons with disabilities.

Article 20  
Right to Adequate Standard of Living

1. Persons with disabilities have the right to an adequate standard of living for themselves and their families, including adequate food, access to safe drinking water, housing, sanitation and clothing, to the continuous improvement of living conditions and to social protection.
2. States Parties shall take appropriate and effective measures to facilitate full enjoyment by persons with disabilities of this right, on the basis of equality, including by:
- (a) Ensuring that persons with disabilities shall access appropriate and affordable services, devices and other assistance for disability-related needs, including accessible housing and other social amenities, mobility aids and caregivers;
  - (b) Ensuring access by persons with disabilities to social protection programmes;
  - (c) Putting financial measures in place to cover disability-related expenses, including through the use of tax exemptions or concessions, cash transfers, duty waivers and other subsidies; and
  - (d) Facilitating provision of assistance, including interpreters, guides, auxiliary and augmentative supporters and caregivers, while respecting the rights, will and preferences of persons with disabilities.

Article 21  
Right to Participate in Political and Public Life

1. Every person with a disability has the right to participate in political and public life.
2. States Parties shall take all appropriate policy, legislative and other measures to ensure this right, on the basis of equality, including through:

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

- (a) Undertaking or facilitating systematic and comprehensive civic education to encourage full participation of persons with disabilities in democracy and development processes, including by ensuring civic and voter education materials are available in accessible formats;
- (b) Encouraging the effective participation of persons with disabilities in political and public life including as members of political parties, electors and holders of political and public offices in accordance with national laws;
- (c) Putting in place reasonable accommodation and other support measures consistent with the secrecy of the ballot, including as appropriate, by ensuring accessibility to polling stations and facilitating assisted voting, for persons with disabilities to enable their effective participation in political and public life in accordance with national laws;
- (d) Realizing increased and effective representation and participation of persons with disabilities on an equitable basis as members of regional, subregional, national and local legislative bodies;
- (e) Repealing or amending laws that on the basis of disability restrict the right of persons with disabilities to vote, stand for or remain in public office.

Article 22  
Self-representation

States Parties shall recognize and facilitate the right of persons with disabilities to represent themselves in all spheres of life, including by promoting an environment that enables persons with disabilities to:

- (a) Form and participate in the activities of organizations of and for persons with disabilities at national, regional and international levels;
- (b) To build relationships and networks at national, regional and international levels;
- (c) Form and participate in the activities of non-governmental organizations and other associations;
- (d) Effectively advocate for their rights and inclusion in their societies;
- (e) Gain and enhance capacities, knowledge and skills for effectively articulating and engaging in issues of disability including through direct collaboration with organizations for persons with disabilities and academic institutions and other organizations;
- (f) Be actively consulted and involved in the development and implementation of all legislation, policies, programmes and budgets that impact persons with disabilities.

Article 23  
Right to Freedom of Expression and Opinion

1. Every person with a disability has the right to freedom of expression and opinion including the freedom to seek, receive and impart information and ideas through all forms of communication of their choice.
2. States Parties shall take policy, legislative, administrative and other measures to ensure that persons with disabilities can exercise these rights, on an equal basis with others.

Article 24  
Access to Information

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

1. Every person with a disability has the right to access information.
2. States Parties shall take policy, legislative, administrative and other measures to ensure that persons with disabilities can exercise these rights, on the basis of equality, including by:
  - (a) Providing information intended for the general public as well as information required for official interactions to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner, and without additional cost to persons with disabilities;
  - (b) Requiring private entities that provide services to the general public, including through print and electronic media, to provide information and services in accessible and usable formats for persons with disabilities;
  - (c) Recognizing and promoting the use of sign languages and deaf culture; and
  - (d) Ensuring that persons with visual impairments or with other print disabilities have effective access to published works including by using information and communication technologies.

Article 25  
Right to Participate in Sports, Recreation and Culture

1. Every person with a disability has the right to participate in sports, recreation and cultural activities.
2. States Parties shall take effective and appropriate policy, legislative, budgetary, administrative and other measures to ensure this right, on the basis of equality, including through:
  - (a) Ensuring that persons with disabilities have access to sports, recreational and cultural services and facilities, including access to stadia and other sporting facilities, theatres, monuments, entertainment establishments, museums, libraries and other historical sites;
  - (b) Encouraging and promoting the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
  - (c) Promoting disability-specific sporting and recreational activities and ensuring provision of appropriate infrastructure;
  - (d) Facilitating funding, research and other measures aimed at promoting the participation of persons with disabilities both in disability-specific and mainstream sporting and recreational activities;
  - (e) Enabling children with disabilities to participate in play within the learning environment;
  - (f) Facilitating access to audio, video, print and media technologies and services including theatre, television, film and other cultural performances and activities;
  - (g) Discouraging negative representations and stereotyping of persons with disabilities in both traditional and modern cultural activities and through the media;
  - (h) Encouraging and supporting creativity and talent among persons with disabilities for their own and the society's benefit;
  - (i) Putting in place measures to mitigate barriers that hinder access to cultural materials in accessible formats; and



76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

(j) Recognizing and supporting the cultural and linguistic identities of persons with disabilities, including deaf-blind and deaf culture, and sign languages.

Article 26  
Right to Family

1. Everyone with a disability has a right to marry and form a family with their full, prior and informed consent.

2. States Parties shall take all necessary and appropriate measures to eliminate discrimination against persons with disabilities, including negative stereotypes, in matters with regard to family, marriage, parenthood, guardianship, adoption and relationships, on an equal basis with others, in order to ensure that:

(a) Persons with disabilities may decide on the number and spacing of their children, and have access to family planning, and sexual and reproductive health education and services;

(b) Persons with disabilities have the right to keep their children and not be deprived of their children on account of their disability.

Article 27  
Women and Girls with Disabilities

States Parties shall ensure that women and girls with disabilities have full enjoyment of human and peoples' rights on an equal basis with other persons, including by ensuring that:

(a) Women and girls with disabilities participate in social, economic and political decision-making and activities;

(b) Barriers that hinder the participation of women with disabilities in society are eliminated;

(c) Women with disabilities are included in mainstream women's organizations and programmes;

(d) Women and girls with disabilities are protected from discrimination based on disability and enjoy the right to be treated with dignity;

(e) Women with disabilities have access to information, communication and technology;

(f) Women with disabilities have access to employment and to professional and vocational training;

(g) Programmes to overcome social and economic isolation and removing systemic barriers in the labour market for women with disabilities are developed;

(h) Women with disabilities have access to income generating opportunities and credit facilities;

(i) Specific measures are developed and implemented to facilitate full and equal participation for women and girls with disabilities in sports, culture and technology;

(j) Women with disabilities are protected from sexual and gender-based violence and are provided with rehabilitation and psychosocial support against sexual and gender-based violence;

(k) The sexual and reproductive health rights of women with disabilities are guaranteed, and women with disabilities have the right to retain and control their fertility; and are not sterilized without their consent;

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

(l) Disability inclusive gender perspectives are integrated in policies, legislation, plans, programmes, budgets and activities in all spheres that affect women with disabilities.

Article 28  
Children with Disabilities

1. States Parties shall ensure that children with disabilities have full enjoyment of human and peoples' rights on an equal basis with other children.

2. States Parties shall respect and promote the right of children with disabilities, in particular, their right to preserve their identities and to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

3. States Parties shall ensure that the best interests of the child are the primary consideration in all actions undertaken by any person or authority concerning children with disabilities.

4. States Parties shall ensure the rights and welfare of children with disabilities by taking policy, legislative and other measures aimed at:

(a) Ensuring children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children;

(b) Providing children with disabilities, disability, age and gender-appropriate assistance to realize their rights;

(c) Ensuring the life, survival, protection and development of children with disabilities;

(d) Ensuring children with disabilities have a name, a nationality and that they are registered immediately after birth;

(e) Ensuring children with disabilities are not abducted, sold or trafficked for any purpose or in any form for, sexual exploitation, child labour and harvesting organs;

(f) Ensuring that children with disabilities are protected from all forms of sexual exploitation, abuse and forced labour;

(g) Protecting children from being separated from their parents, caregivers and guardians merely on the basis that either the children or their parents have a disability;

(h) Taking specific measures to protect children with disabilities who require more intensive support;

(i) Ensuring children with disabilities have effective access to education, training and recreational opportunities in settings most conducive for them to achieve the fullest possible social inclusion, individual development and cultural and moral development;

(j) Fostering in all children from an early age an attitude of respect for the rights of persons with disabilities;

(k) Protecting children with disabilities from exploitation, violence and abuse within family, institutional and other settings;

(l) Ensuring that under no circumstances may children on account of their disabilities be sterilized.

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

Article 29  
Youth with Disabilities

1. States Parties shall ensure that youth with disabilities have full enjoyment of human and peoples' rights on an equal basis with other youth.
2. States Parties shall take policy, legislative, administrative and other measures to ensure that all the rights of youth with disabilities are fully respected, including by:
  - (a) Promoting full, inclusive and accessible education for youth with disabilities;
  - (b) Promoting the inclusion of youth with disabilities in mainstream youth organizations, programmes, including training for leadership and governance skills for their participation at national, regional and international levels;
  - (c) Removing barriers that hinder or discriminate against the participation of youth with disabilities in society;
  - (d) Promoting training and access to information, communication and technology for youth with disabilities;
  - (e) Developing programmes to overcome social and economic isolation, and removing systemic barriers in the labour market for youth with disabilities;
  - (f) Ensuring access to credit facilities for youth with disabilities;
  - (g) Developing and implementing specific measures to facilitate full and equal participation of youth with disabilities in sports, culture, science and technology;
  - (h) Promoting sexual and reproductive health education for youth with disabilities;
  - (i) Promoting the participation of youth with disabilities in political decision-making and activities.

Article 30  
Older Persons with Disabilities

1. States Parties shall ensure that older persons with disabilities have full enjoyment of human and peoples' rights on an equal basis with other older persons.
2. States Parties shall ensure that all the rights of older persons with disabilities are fully protected by taking policy, legislative and other measures, including for:
  - (a) Ensuring that older persons with disabilities, on an equal basis with others, have access to social protection programmes;
  - (b) Taking account of age and gender-related aspects of disability in programming and resourcing in accordance with the present Protocol;
  - (c) Ensuring that older persons with disabilities exercise their legal capacity on an equal basis with others, and that appropriate measures and safeguards are put in place to provide older persons with all the support they may require to exercise their legal capacity;
  - (d) Ensuring that older persons with disabilities have access to appropriate services that respond to their needs within the community;

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

- (e) Ensuring that older persons with disabilities are protected from neglect, violence, including violence on the basis of accusations or perceptions of witchcraft;
- (f) Ensuring that older persons with disabilities have access to appropriate sexual and reproductive health information and services.

Article 31  
Duties of Persons with Disabilities

1. States Parties shall recognize that persons with disabilities have duties on an equal basis with other person as elaborated in the African Charter.
2. States Parties shall ensure that persons with disabilities are rendered the forms of assistance and support, including reasonable accommodations, which they may require in performance of such duties.

Article 32  
Statistics, Data and Other Surveys

States Parties shall ensure the systematic collection, analysis, storage and dissemination of national statistics and data covering disability to facilitate the protection and promotion of the rights of persons with disabilities. Towards this end, States Parties shall:

- (a) Disaggregate statistics and data, as appropriate, on the basis of disability, gender, age and other relevant variables, including by ensuring that the national population census and other surveys capture data on disability;
- (b) Disseminate statistics and data in forms accessible to all persons including persons with disabilities;
- (c) Ensure that the collection, analysis, storage and dissemination of statistics and data on persons with disabilities comply with acceptable ethical, confidentiality and privacy standards;
- (d) Ensure effective involvement and participation of persons with disabilities in the design, collection and dissemination of data.

Article 33  
Cooperation

States Parties shall:

- (a) Cooperate at the international, continental, subregional and bilateral levels on capacity-building on issues of persons with disabilities, including by sharing research, technical, human and financial resources, information and good practices to support the implementation of this Protocol;
- (b) Ensure that regional and subregional cooperation programmes and institutions support the implementation of this Protocol and are accessible to persons with disabilities;
- (c) Ensure full and effective participation of persons with disabilities in the implementation and monitoring of this Protocol;
- (d) Support the African Union Commission to set up an Advisory Council on Disability as an ad hoc mechanism to facilitate the implementation and follow up of the continental policies and plans on disability.

Article 34

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

Implementation

1. States Parties shall ensure the implementation of this Protocol, and shall indicate in their periodic reports submitted to the African Commission in accordance with Article 62 of the African Charter, the legislative and other measures undertaken for the full realization of the rights recognized in this Protocol.
2. States Parties shall establish or designate national mechanisms, including independent national institutions, to monitor the implementation of the rights of persons with disabilities.
3. In the implementation of this Protocol, the African Commission shall have the mandate to interpret the provisions of the Protocol in accordance with the African Charter.
4. The African Commission may refer matters of interpretation and enforcement or any dispute arising from the application or implementation of this Protocol to the African Court on Human and Peoples' Rights.
5. In accordance with Article 5 and Article 34, paragraph 6, of the Protocol Establishing the African Court, the African Court on Human and Peoples' Rights shall have the mandate to hear any dispute arising from the application or implementation of this Protocol.

Article 35  
Popularization of the Protocol

States Parties shall take all appropriate measures to ensure the widest possible dissemination of this Protocol in accordance with the relevant provisions and procedures of their respective constitutions.

Article 36  
Safeguard Clause

1. No provision in this Protocol shall be interpreted as derogating from the principles and values contained in other relevant instruments for the realization of the rights of persons with disabilities in Africa.
2. In the event of a contradiction between two or more provisions of this Protocol, the interpretation which favours the rights of persons with disabilities and protects their legitimate interests shall prevail.

Article 37  
Signature, Ratification and Accession

1. This Protocol shall be open to Member States of the Union for signature, ratification or accession.
2. The instrument of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission who shall notify all Member States of the dates of the deposit of the instruments of ratification or accession.

Article 38  
Entry into force

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15<sup>th</sup>) instrument of ratification by a Member State.
2. The Chairperson of the Commission shall notify all Members States of the African Union of the entry into force of the present Protocol.

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

3. For any Member State of the African Union acceding to the present Protocol, the Protocol shall come into force in respect of that State on the date of the deposit of its instrument of accession.

Article 39  
Reservations

1. A State Party may, when ratifying or acceding to this Protocol, submit in writing a reservation with respect to any of the provisions of this Protocol. Reservations shall not be incompatible with the object and purpose of this Protocol.

2. Unless otherwise provided, a reservation may be withdrawn at any time.

3. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States Parties of the withdrawal accordingly.

Article 40  
Depositary

This Protocol shall be deposited with the Chairperson of the African Union Commission, who shall transmit a certified true copy of the Protocol to the government of each signatory State.

Article 41  
Registration

The Chairperson of the Commission upon the entry into force of this Protocol shall register this Protocol with the United Nations Secretary-General in conformity with Article 102 of the Charter of the United Nations.

Article 42  
Withdrawal

1. At any time after three years from the date of entry into force of this Protocol, a State Party may withdraw by giving written notification to the depositary.

2. Withdrawal shall be effective one year after receipt of notification by the depositary, or on such later date as may be specified in the notification.

3. Withdrawal shall not affect any obligation of the withdrawing State Party prior to the withdrawal.

Article 43  
Amendment and Revision

1. Any State Party may submit proposal(s) for the amendment or revision of this Protocol. Such proposal(s) shall be adopted by the Assembly.

2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit such proposals to the Assembly at least six months before the meeting at which it shall be considered for adoption.

3. Amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority.

4. The amendment or revision shall enter into force in accordance the procedures outlined in Article 26 of this Protocol.

76. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON  
THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA (2018)

Article 44  
Authentic Texts

This Protocol is drawn up in four (4) original texts, in the Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic.





# **STATUTE OF THE AFRICAN SPACE AGENCY**



77.

**Statute of the African Space Agency**

**Adopted in Addis Ababa, Ethiopia, on 29 January 2018.**

**Entered into force upon adoption.**

Preamble

*We, Member States of the African Union,*

*Guided by the objectives and principles enshrined in the Constitutive Act of the African Union that underscores the importance of science, technology and innovation as tools and enablers for socio-economic transformation of the continent,*

*Recalling Decisions EX.CL/Dec.744 (XXII), EX.CL/Dec.746 (XXII) and EX.CL/Dec.739 (XXII) adopted by the Twenty-second Ordinary Session of the Executive Council in Addis Ababa, Ethiopia, in January 2013, and recommendations from sectorial ministerial conferences on the growing need for Africa to develop a well-structured space policy and strategy that could guide the continent to implement a globally competitive outer space programme that would enable Member States to harness space resources in a more coordinated and systematic manner, address the continent's challenges, and develop an African space market and industry,*

*Further recalling Decision Assembly/AU/Dec.589 (XXVI) adopted by the Assembly in Addis Ababa Ethiopia, in January 2016, adopting the Africa Space Policy and Strategy with the view to formalizing an AU Agenda 2063 Outer Space Flagship Programme for developing local capacities in earth observation, satellite communication, navigation and positioning, space science and astronomy and requesting the African Union (AU) Space Working Group to develop the framework for the implementation of the African Space Policy and Strategy and the governance framework that covers the relevant legal requirements and protocols for an operational African outer space programme,*

*Recognizing the potential of space science, technology and innovation in Africa's development and the realization of the aspirations of our long-term vision, AU Agenda 2063, through jointly addressing common development challenges, such as natural hazards and disasters, climate-change mitigation and adaptation, agriculture and food insecurity, conflicts, disease outbreaks, provision of education and health services in rural and remote areas and connecting our citizens; and proactively managing, natural resources and the environment among others as outlined in the African Space Policy and Strategy,*

*Underscoring the need for appropriate institutional arrangements for the effective governance, promotion and coordination of space activities on the continent in order to realize maximum benefits,*

*Hereby agree as follows:*

Article 1  
Definitions

In this Statute:

"Agency" means the African Space Agency hereby established;

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

"AU" means the African Union established by the Constitutive Act of the African Union adopted by the Heads of State and Government of the Organization of African Unity (OAU) in Lomé, Togo, in July 2000;

## 77. STATUTE OF THE AFRICAN SPACE AGENCY (2018)

"Council" refers to the African Space Council established by this Statute;

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

"Host country" means the country that hosts the headquarters or an activity centre of the Agency;

"HSGC-EST" refers to the Committee of Ten Heads of State and Government Championing the cause of Education, Science and Technology;

"Member States" means the Member States of the African Union;

"Policy" means the African Space Policy;

"RECs" means the Regional Economic Communities;

"Statute" means this Statute of the African Space Agency;

"STC" means the Specialized Technical Committee of the African Union;

"STC-EST" means the African Union Specialized Technical Committee on Education, Science and Technology.

### Article 2

#### Establishment of the African Space Agency

The African Space Agency (AfSA) is hereby established in accordance with Article 5, paragraph 2, of the Constitutive Act as an organ of the African Union, dedicated to promoting, advising and coordinating the development and utilization of space science and technology in Africa and associated regulations for the benefit of Africa and the world and forging intra-African and international cooperation.

### Article 3

#### Legal Personality

For the fulfillment of its objectives, the Agency shall possess legal personality and capacity to:

- (a) Enter into agreements;
- (b) Acquire and dispose of moveable and immovable property;
- (c) Institute legal proceedings.

### Article 4

#### Objectives

The main objectives of the African Space Agency are to promote and coordinate the implementation of the African Space Policy and Strategy and to conduct activities that exploit space technologies and applications for sustainable development and improvement of the welfare of African citizens. In particular, the Agency shall:

- (a) Harness the potential benefits of space science, technology, innovation and applications in addressing Africa's socio-economic opportunities and challenges;
- (b) Strengthen space missions on the continent in order to ensure optimal access to space-derived data, information, services and products;

## 77. STATUTE OF THE AFRICAN SPACE AGENCY (2018)

- (c) Develop a sustainable and vibrant indigenous space market and industry that promotes and responds to the needs of the African continent;
- (d) Adopt good corporate governance and best practices for the coordinated management of continental space activities;
- (e) Maximize the benefits of current and planned space activities, and avoid or minimize duplication of resources and efforts;
- (f) Engage with its users through the establishment of communities of practice for each of the identified user requirements; and
- (g) Promote an African-led space agenda through mutually beneficial partnerships.

### Article 5 Functions of the Agency

1. The primary function of the Agency is to implement the African Space Policy and Strategy adopted by the AU Assembly in Decision Assembly/AU/Dec.589 (XXVI).

In particular, the Agency shall:

- (a) Promote and coordinate the implementation of programmes and activities approved by the African Space Council;
- (b) Address user needs to ensure that space programmes will play a critical role in improving Africa's economy and the quality of life of its peoples;
- (c) Support Member States and RECs in building their space programmes and coordinate space efforts across the continent;
- (d) Enhance and facilitate access to space resources and services in an effort to leverage space-derived benefits to the whole continent;
- (e) Support Member States and RECs in building critical infrastructure and coherently develop, upgrade and operate cutting-edge African space infrastructure;
- (f) Coordinate development of a critical mass of African capacities in space science, technology and innovation through appropriate education and training programmes;
- (g) Foster regional coordination and collaboration;
- (h) Promote strategic intra-continental and international partnerships;
- (i) Strengthen research, development and innovation in space science and technology;
- (j) Coordinate and promote Africa participation in international efforts for the peaceful use of space science and technology for the welfare of humanity;
- (k) Raise awareness of the benefits of space programmes for Africa;

## 77. STATUTE OF THE AFRICAN SPACE AGENCY (2018)

- (l) Engage Member States in space-related activities and research in Africa with the aim of fostering cooperation and avoiding duplication of efforts;
  - (m) Take maximum advantage of national activities conducted by Member States and facilitate coordination of the activities of Member States;
  - (n) Operate on the basis of international cooperation.
2. The African Space Agency with other national and international institutions will coordinate a continent-wide regulatory framework for space activities on the continent.
  3. The African Space Agency will work directly with the national space agencies when interfacing with the Member States and in the co-management of space activities for the continent.
  4. A common African position for multilateral engagements should be driven by the African Space Agency.

### Article 6

#### Governance and Management of the African Space Agency

1. The governance and management structure of the Agency shall comprise:
  - (a) The African Space Council;
  - (b) The Advisory Committee;
  - (c) The Secretariat; and
  - (d) The Director General.
2. HSGC-EST shall provide political guidance and shall serve as champions for space science and technology at the continental level.
3. The STC-EST shall provide overall strategic guidance and orientation to the Agency through the Space Council.
4. The Director General of the Agency shall submit reports on its annual work to the Council who shall submit the same to the STC-EST for consideration and further submission to the policy organs.

### Article 7

#### Composition of the Council

1. The Council shall be constituted as follows:
  - (a) Ten (10) elected persons from Member States, two (2) per each region;
  - (b) The following representatives of the Commission:
    - i. The Commissioner for Human Resources, Science and Technology (HRST) or his/her representative;
    - ii. The Commissioner of Infrastructure and Energy or his/her representative;
    - iii. The Commissioner of Peace and Security or his/her representative;

## 77. STATUTE OF THE AFRICAN SPACE AGENCY (2018)

- iv. The Commissioner of Rural Economy and Agriculture or his/her representative;
  - v. Two (2) representatives of the Bureau of the Chairperson (the Director of Communications and the Legal Counsel of the African Union).
2. The Chairpersons of the following STCs shall be invited to attend the sessions of the STC on Education, Science and Technology where the Council report will be considered:
  - i. Communication and ICT;
  - ii. Defense, Safety and Security;
  - iii. Agriculture Rural Development, Water and Environment;
  - iv. Transport, Transnational and Interregional Infrastructures, Energy and Tourism.
3. The representatives of the Commission shall be members of the Council with no voting rights.
4. The Chairperson of the Advisory Committee shall be invited to attend the African Space Council meetings.
5. The Director General of AfSA shall serve as the Secretary of the Council.

### Article 8 Qualifications and Election of Council Members

1. The African Space Council shall be composed of high-level experts elected by the Assembly from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest institution of space and astronomy, earth observation, satellite communication and navigation or related areas. The candidates should be citizens of the AU Member States provided that no members of the Council shall be nationals of the same Member State.
2. The Assembly shall elect the President and Vice-President of the African Space Agency Council from the ten (10) elected members referred in Article 9, paragraph 1, below.
3. The Assembly shall ensure merit and competence in the election of the Council members.
4. The Chairperson of the Commission shall communicate the list of candidates to Member States, at least thirty (30) days before the ordinary session of the Assembly or of the Executive Council during which the elections shall take place.

### Article 9 Term of Office

1. The ten (10) members of the Council representing the five (5) African Union regions shall be elected for a period of four (4) years term renewable once.
2. A new member elected to replace another, whose term of office has not expired, shall complete the term of office of his or her predecessor and shall be from the same region.
3. All the Council members, except the President and the Vice-President, shall perform their functions on a part-time basis.

## 77. STATUTE OF THE AFRICAN SPACE AGENCY (2018)

4. The term of the President and Vice-President of the Council shall be determined in the Rules of Procedures of the Council, which shall be adopted by the Executive Council.

### Article 10 Functions of the Council

1. The African Space Council shall have authority to oversee the Agency, issue directives, and review and approve strategic plans, workplans, budgets, regulations, policies and guidelines to govern the administrative activities and operations of the Agency for adoption by the relevant policy organs of the AU.
2. The African Space Council shall report to the Assembly through the Heads of State and Government on Education, Science and Technology (HSGC-EST).
3. The African Space Council shall meet once every year, after the meeting of the Advisory Committee of the African Space Council and prior to the annual meeting of the Heads of State and Government on Education, Science and Technology (HSGC-EST).

### Article 11 Meetings of the Council

1. The Council shall elaborate its own rules of procedure and the rules shall be adopted by the Executive Council in accordance of the AU Rules.
2. The Council shall meet once every year in ordinary session. It may meet in extraordinary session at the request of the Chairperson in consultation with the Agency. The extraordinary session shall be held at the request of:
  - (a) The AU policy organs;
  - (b) The Chairperson of the STS-EST, its Bureau or as decided by the STC-EST;
  - (c) The President of the Council;
  - (d) Two-thirds majority of the total membership of the African Space Council.
3. The quorum for the meeting shall be a simple majority of the total membership of the Council.
4. Decisions of the Council shall be adopted by a two-thirds majority of the members present and voting.
5. Except as otherwise determined by the Council, all meetings of the Council shall be held at the headquarters of the Agency.
6. The Council may invite, as observer, any person or institution to attend its sessions.

### Article 12 The Advisory Committee

1. An advisory committee shall be established with the aim to provide necessary advice to the Council.
2. The Advisory Committee shall comprise the following:



## 77. STATUTE OF THE AFRICAN SPACE AGENCY (2018)

- (a) Five (5) directors general of the national space agencies of Member States, one (1) from each of the five (5) geographic regions of the African Union based on the principle of rotation and geographic representation; the selection shall be done at each region and the nominees shall be communicated to the Commission;
  - (b) One representative of the eight (8) RECs recognized by the African Union, for a term of two years on a rotational basis; the Commission shall lead that process for the selection of RECs;
  - (c) Two (2) experts from the academia admitted through the African Academy of Sciences and whose membership shall be drawn from the five (5) regions of the African Union, based on the principle of rotation and geographic representation;
  - (d) Four (4) chief executive officers of four (4) African private sector entities, each representing one of the four space sectors, namely, earth observation, satellite communication, navigation, and space and astronomy.
- 3. The Director General of AfSA shall serve as the Secretary of the Advisory Committee.
  - 4. The Chairperson of the Advisory Committee shall be elected among the five (5) directors general of the national space agencies of Member States, on a rotational basis and geographic distribution for a two (2) years term.
  - 5. The term of office of the members of the Advisory Committee shall be three (3) years term renewable once.

### Article 13

#### Functions of the Advisory Committee

- 1. The Advisory Committee shall review and recommend for approval by the African Space Council strategic plans, annual workplans, budgets, external audit reports, regulations, policies and guidelines to govern the administrative activities and operations of the Agency.
- 2. The Advisory Committee shall report to the African Space Council.
- 3. The Advisory Committee shall meet once every year, prior to the annual meeting of the African Space Council.
- 4. The Advisory Committee shall adopt its own rules of procedure.

### Article 14

#### Meetings of the Advisory Committee

- 1. The Advisory Committee shall meet once every year in ordinary session and as may be called upon to advise extraordinary sessions of the African Space Council.
- 2. The quorum for the meeting shall be a simple majority of the total membership of the Committee.
- 3. Except as otherwise determined by the African Space Council, all meetings of the Advisory Committee shall be held at the headquarters of the Agency.
- 4. The Director General of the African Space Agency shall present the report of the Advisory Committee to the African Space Council.

### Article 15

#### The Director General of the Agency

## 77. STATUTE OF THE AFRICAN SPACE AGENCY (2018)

1. The Director General shall be the chief executive officer and legal representative of the Agency.
2. The Director General shall be responsible for the management of the Agency and shall be assisted by the necessary staff for the smooth running of the Agency.
3. The Director General shall be appointed by the African Space Council for a term of four (4) years renewable once.
4. The powers and duties of the Director General shall be as set out in the rules of procedures.

### Article 16 Financing of the African Space Agency

1. The budget of the Agency shall be borne by the African Union and shall be within the budget of the Union.
2. The budget calendar of the Agency shall be that of the African Union.
3. The Agency shall prepare and submit its budget to the policy organs of the Union for approval and inclusion in the Union's budget.

### Article 17 Headquarters of the Agency

1. The headquarters of the Agency shall be determined by the Assembly of the Union in accordance with the AU criteria adopted in 2005.
2. The AUC shall enter into a host country agreement with the government of the host country in which the Agency headquarters will be situated for the purposes of its efficient operation.
3. The Council shall hold its meetings at the headquarters of the Agency.
4. Any Member State may offer to host the Council meeting in lieu of the headquarter country. In the event that a Member State offers to host the meeting, the Member State shall be responsible for all extra expenses resulting from holding the meeting outside the Agency headquarters.
5. A Member State offering to host the Council meeting shall not be under sanctions and shall be required to meet predetermined criteria for the hosting of such session.
6. Where two (2) or more Member States offer to host the meeting, the Council shall decide on the venue in consultation with the Secretariat.

### Article 18 Privileges and Immunities

The African Space Agency and its staff shall enjoy within the territory of all AU Member States, in particular the host country, the privileges and immunities provided in the 1965 General Convention on the Privileges and Immunities of the Organization of African Unity and other relevant international agreements.

### Article 19 Working Languages

The working languages of the Agency shall be those of the African Union.

## 77. STATUTE OF THE AFRICAN SPACE AGENCY (2018)

### Article 20 Amendments

1. The present Statute may be amended by the Assembly upon the recommendation of the STC.
2. The amendments shall come into effect upon adoption by the Assembly.

### Article 21 Entry into Force

This Statute shall enter into force upon its adoption by the Assembly.



**AGREEMENT ESTABLISHING THE AFRICAN  
CONTINENTAL FREE TRADE AREA**



78.

**AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA**

**Adopted in Kigali, Rwanda, on 21 March 2018.**

**Entered into force on 30 March 2019.**

Preamble

*We, Member States of the African Union,*

*Desirous* to implement the Decision of the Assembly of Heads of State and Government during its Eighteenth Ordinary Session held in Addis Ababa, Ethiopia, from 29 to 30 January 2012 (Assembly/AU/Dec.394 (XVIII)) on the Framework, Road Map and Architecture for Fast Tracking the establishment of the African Continental Free Trade Area and the Action Plan for Boosting Intra-African Trade,

*Cognizant* of the launch of negotiations for the establishment of the Continental Free Trade Area aimed at integrating Africa's markets in line with the objectives and principles enunciated in the Abuja Treaty during the Twenty-fifth Ordinary Session of the Assembly of Heads of State and Government of the African Union held in Johannesburg, South Africa, from 14 to 15 June 2015 (Assembly/AU/Dec.569 (XXV)),

*Determined* to strengthen our economic relationship and build upon our respective rights and obligations under the Constitutive Act of the African Union of 2000, the Abuja Treaty and, where applicable, the Marrakesh Agreement Establishing the World Trade Organization of 1994,

*Having regard* to the aspirations of Agenda 2063 for a continental market with the free movement of persons, capital, goods and services, which are crucial for deepening economic integration, and promoting agricultural development, food security, industrialization and structural economic transformation,

*Conscious* of the need to create an expanded and secure market for the goods and services of States Parties through adequate infrastructure and the reduction or progressive elimination of tariffs and elimination of non-tariff barriers to trade and investment,

*Also conscious* of the need to establish clear, transparent, predictable and mutually-advantageous rules to govern trade in goods and services, competition policy, investment and intellectual property among States Parties, by resolving the challenges of multiple and overlapping trade regimes to achieve policy coherence, including relations with third parties,

*Recognizing* the importance of international security, democracy, human rights, gender equality and the rule of law, for the development of international trade and economic cooperation,

*Reaffirming* the right of States Parties to regulate within their territories and the States Parties' flexibility to achieve legitimate policy objectives in areas including public health, safety, environment, public morals and the promotion and protection of cultural diversity,

*Further reaffirming* our existing rights and obligations with respect to each other under other agreements to which we are parties, and

*Acknowledging* the Regional Economic Communities (RECs) Free Trade Areas as building blocs towards the establishment of the African Continental Free Trade Area (AfCFTA),

*Have agreed* as follows:

PART I  
DEFINITIONS

Article 1  
Definitions

For the purpose of this Agreement:

- (a) "Abuja Treaty" means the Treaty Establishing the African Economic Community of 1991;
- (b) "Agreement" means this Agreement Establishing the African Continental Free Trade Area and its protocols, annexes and appendices which shall form an integral part thereof;
- (c) "Annex" means an instrument attached to a protocol, which forms an integral part of this Agreement;
- (d) "Appendix" means an instrument attached to an annex which forms an integral part of this Agreement;
- (e) "Assembly" means the Assembly of Heads of State and Government of the African Union;
- (f) "AU" means the African Union;
- (g) "AfCFTA" means the African Continental Free Trade Area;
- (h) "Commission" means the African Union Commission;
- (i) "Constitutive Act" means the Constitutive Act of the African Union of 2000;
- (j) "Continental Customs Union" means the Customs Union at the continental level by means of adopting a common external tariff, as provided by the Treaty Establishing the African Economic Community of 1991;
- (k) "Council of Ministers" means the Council of African Ministers of States Parties responsible for Trade;
- (l) "Dispute Settlement Body" means the body established to administer the provisions of the Protocol on Rules and Procedures on the Settlement of Disputes except as otherwise provided in this Agreement;
- (m) "Executive Council" means the Executive Council of Ministers of the Union;
- (n) "GATS" means the WTO General Agreement on Trade in Services of 1994;
- (o) "GATT" means the WTO General Agreement on Tariffs and Trade of 1994;
- (p) "Instrument" unless otherwise specified in this Agreement refers to Protocol, Annex or Appendix;
- (q) "Member States" means the Member States of the African Union;
- (r) "Non-tariff barriers" means barriers that impede trade through mechanisms other than the imposition of tariffs;
- (s) "Protocol" means an instrument attached to this Agreement, which forms an integral part of the Agreement;
- (t) "RECs" means the Regional Economic Communities recognized by the African Union, namely, the Arab Maghreb Union (UMA); the Common Market for Eastern and Southern Africa (COMESA); the Community of Sahel-



## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

Saharan States (CEN-SAD); the East African Community (EAC); the Economic Community of Central African States (ECCAS); the Economic Community of West African States (ECOWAS); the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC);

- (u) "Secretariat" means the Secretariat established pursuant to Article 13 of this Agreement;
- (v) "State Party" means a Member State that has ratified or acceded to this Agreement and for which the Agreement is in force;
- (w) "Third party" means a State(s) that is not a party to this Agreement except as otherwise defined in this Agreement; and
- (x) "WTO" means the World Trade Organization, as established in terms of the Marrakesh Agreement Establishing the World Trade Organization of 1994.

### PART II ESTABLISHMENT, OBJECTIVES, PRINCIPLES AND SCOPE

#### Article 2 Establishment of the African Continental Free Trade Area

The African Continental Free Trade Area (hereinafter referred to as "the AfCFTA") is hereby established.

#### Article 3 General Objectives

The general objectives of the AfCFTA are to:

- (a) Create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan-African Vision of "An integrated, prosperous and peaceful Africa" enshrined in Agenda 2063;
- (b) Create a liberalized market for goods and services through successive rounds of negotiations;
- (c) Contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the States Parties and RECs;
- (d) Lay the foundation for the establishment of a Continental Customs Union at a later stage;
- (e) Promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the States Parties;
- (f) Enhance the competitiveness of the economies of States Parties within the continent and the global market;
- (g) Promote industrial development through diversification and regional value chain development, agricultural development and food security; and
- (h) Resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.

#### Article 4 Specific Objectives

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

For purposes of fulfilling and realizing the objectives set out in Article 3, States Parties shall:

- (a) Progressively eliminate tariffs and non-tariff barriers to trade in goods;
- (b) Progressively liberalize trade in services;
- (c) Cooperate on investment, intellectual property rights and competition policy;
- (d) Cooperate on all trade-related areas;
- (e) Cooperate on customs matters and the implementation of trade facilitation measures;
- (f) Establish a mechanism for the settlement of disputes concerning their rights and obligations; and
- (g) Establish and maintain an institutional framework for the implementation and administration of the AfCFTA.

### Article 5 Principles

The AfCFTA shall be governed by the following principles:

- (a) Driven by Member States of the African Union;
- (b) RECs' Free Trade Areas (FTAs) as building blocs for the AfCFTA;
- (c) Variable geometry;
- (d) Flexibility and special and differential treatment;
- (e) Transparency and disclosure of information;
- (f) Preservation of the acquis;
- (g) Most-favoured-nation (MFN) treatment;
- (h) National treatment;
- (i) Reciprocity;
- (j) Substantial liberalization;
- (k) Consensus in decision-making; and
- (l) Best practices in the RECs, in the States Parties and international conventions binding the African Union.

### Article 6 Scope

This Agreement shall cover trade in goods, trade in services, investment, intellectual property rights and competition policy.

Article 7  
Phase II Negotiations

1. In pursuance of the objectives of this Agreement, Member States shall enter into Phase II negotiations in the following areas:

- (a) Intellectual property rights;
- (b) Investment; and
- (c) Competition policy.

2. The negotiations referred to in paragraph 1 of this article shall commence after the adoption of this Agreement by the Assembly and shall be undertaken in successive rounds.

Article 8  
Status of the Protocols, Annexes and Appendices

1. The Protocols on Trade in Goods, Trade in Services, Investment, Intellectual Property Rights, Competition Policy, Rules and Procedures on the Settlement of Disputes and their associated annexes and appendices shall, upon adoption, form an integral part of this Agreement.

2. The Protocols on Trade in Goods, Trade in Services, Investment, Intellectual Property Rights, Competition Policy, Rules and Procedures on the Settlement of Disputes and their associated annexes and appendices shall form part of the single undertaking, subject to entry into force.

3. Any additional instruments, within the scope of this Agreement, deemed necessary, shall be concluded in furtherance of the objectives of the AfCFTA and shall, upon adoption, form an integral part of this Agreement.

PART III  
ADMINISTRATION AND ORGANIZATION

Article 9  
Institutional Framework for the Implementation of the AfCFTA

The institutional framework for the implementation, administration, facilitation, monitoring and evaluation of the AfCFTA shall consist of the following:

- (a) The Assembly;
- (b) The Council of Ministers;
- (c) The Committee of Senior Trade Officials; and
- (d) The Secretariat.

Article 10  
The Assembly

1. The Assembly, as the highest decision-making organ of the AU, shall provide oversight and strategic guidance on the AfCFTA, including the Action Plan for Boosting Intra-African Trade (BIAT).

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

2. The Assembly shall have the exclusive authority to adopt interpretations of this Agreement on the recommendation of the Council of Ministers. The decision to adopt an interpretation shall be taken by consensus.

### Article 11

#### The Composition and Functions of the Council of Ministers

1. The Council of Ministers is hereby established and shall consist of the Ministers responsible for Trade or such other ministers, authorities, or officials duly designated by the States Parties.

2. The Council of Ministers shall report to the Assembly through the Executive Council.

3. The Council of Ministers shall within its mandate:

(a) Take decisions in accordance with this Agreement;

(b) Ensure effective implementation and enforcement of the Agreement;

(c) Take measures necessary for the promotion of the objectives of this Agreement and other instruments relevant to the AfCFTA;

(d) Work in collaboration with the relevant organs and institutions of the African Union;

(e) Promote the harmonization of appropriate policies, strategies and measures for the effective implementation of this Agreement;

(f) Establish and delegate responsibilities to ad hoc or standing committees, working groups or expert groups;

(g) Prepare its rules of procedure and those of its subsidiary bodies created for the implementation of the AfCFTA and submit them to the Executive Council for approval;

(h) Supervise the work of all committees and working groups it may establish pursuant to this Agreement;

(i) Consider reports and activities of the Secretariat and take appropriate actions;

(j) Make regulations, issue directives and make recommendations in accordance with the provisions of this Agreement;

(k) Consider and propose for adoption by the Assembly, the staff and financial regulations of the Secretariat;

(l) Consider the organizational structure of the Secretariat and submit for adoption by the Assembly through the Executive Council;

(m) Approve the work programmes of the AfCFTA and its institutions;

(n) Consider the budgets of the AfCFTA and its institutions and submit them to the Assembly through the Executive Council;

(o) Make recommendations to the Assembly for the adoption of authoritative interpretation of this Agreement; and

(p) Perform any other function consistent with this Agreement or as may be requested by the Assembly.

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

4. The Council of Ministers shall meet twice a year in ordinary session and may meet as and when necessary in extraordinary sessions.
5. Decisions taken by the Council of Ministers, while acting within its mandate, shall be binding on States Parties. Decisions that have legal, structural or financial implications shall be binding on States Parties upon their adoption by the Assembly.
6. The States Parties shall take such measures as are necessary to implement the decisions of the Council of Ministers.

### Article 12 Committee of Senior Trade Officials

1. The Committee of Senior Trade Officials shall consist of Permanent or Principal Secretaries or other officials designated by each State Party.
2. The Committee of Senior Trade Officials shall:
  - (a) Implement the decisions of the Council of Ministers as may be directed;
  - (b) Be responsible for the development of programmes and action plans for the implementation of the Agreement;
  - (c) Monitor and keep under constant review and ensure proper functioning and development of the AfCFTA in accordance with the provisions of this Agreement;
  - (d) Establish committees or other working groups as may be required;
  - (e) Oversee the implementation of the provisions of this Agreement and for that purpose, may request a Technical Committee to investigate any particular matter;
  - (f) Direct the Secretariat to undertake specific assignments; and
  - (g) Perform any other function consistent with this Agreement or as may be requested by the Council of Ministers.
3. Subject to directions given by the Council of Ministers, the Committee of Senior Trade Officials shall meet at least twice a year and shall operate in accordance with the rules of procedure as adopted by the Council of Ministers.
4. The Committee shall submit its report, which may include recommendations, to the Council of Ministers following its meetings.
5. The RECs shall be represented in the Committee of Senior Trade Officials, in an advisory capacity.

### Article 13 The Secretariat

1. The Assembly shall establish the Secretariat, decide on its nature, location and approve its structure and budget.
2. The Commission shall be the interim Secretariat, until it is fully operational.

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

3. The Secretariat shall be a functionally autonomous institutional body within the African Union system with an independent legal personality.
4. The Secretariat shall be autonomous of the African Union Commission.
5. The funds of the Secretariat shall come from the overall annual budgets of the African Union.
6. The roles and responsibilities of the Secretariat shall be determined by the Council of Ministers of Trade.

### Article 14 Decision-Making

1. Decisions of the AfCFTA institutions<sup>1</sup> on substantive issues shall be taken by consensus.
2. Notwithstanding paragraph 1, the Committee of Senior Trade Officials shall refer, for consideration by the Council of Ministers, matters on which it has failed to reach consensus. The Council of Ministers shall refer the matters to the Assembly where consensus could not be reached.
3. Decisions on questions of procedure shall be taken by a simple majority of States Parties, eligible to vote.
4. Decisions on whether or not a question is one of procedure shall also be determined by a simple majority of States Parties, eligible to vote.
5. Abstention by a State Party eligible to vote shall not prevent the adoption of decisions.

### Article 15 Waiver of Obligations

1. In exceptional circumstances, the Council of Ministers may waive an obligation imposed on a State Party to this Agreement, upon request by a State Party, provided that any such decision shall be taken by three fourths<sup>2</sup> of the States Parties, in the absence of consensus.
2. A request for a waiver from a State Party concerning this Agreement shall be submitted to the Council of Ministers for consideration pursuant to the practice of decision-making by consensus. The Council of Ministers shall establish a time period, which shall not exceed ninety (90) days, to consider the request. If consensus is not reached during the time period, any decision to grant a waiver shall be taken by three fourths of the States Parties.
3. A decision by the Council of Ministers granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate. Any waiver granted for a period of more than one (1) year shall be reviewed by the Council of Ministers not later than one (1) year after it is granted, and thereafter annually until the waiver terminates. In each review, the Council of Ministers shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The Council of Ministers, on the basis of the annual review, may extend, modify or terminate the waiver.

## PART IV TRANSPARENCY

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<sup>1</sup> The Assembly, the Council of Ministers and the Committee of Senior Trade Officials.

<sup>2</sup> A decision to grant a waiver in respect of any obligation subject to a transition period or a period for staged implementation that the requesting State Party has not performed by the end of the relevant period shall be taken only by consensus.

Article 16  
Publication

1. Each State Party shall promptly publish or make publicly available through accessible mediums<sup>3</sup> its laws, regulations, procedures and administrative rulings of general application as well as any other commitments under an international agreement relating to any trade matter covered by this Agreement.
2. The provisions of this Agreement shall not require any State Party to disclose confidential information which would impede law enforcement or otherwise be contrary to public interest or will prejudice the legitimate commercial interest of particular enterprises, public or private.

Article 17  
Notification

1. Laws, regulations, procedures and administrative rulings of general application as well as any other commitments under an international agreement relating to any trade matter covered by this Agreement adopted after the entry into force of this Agreement shall be notified by States Parties in one (1) of the African Union working languages to other States Parties through the Secretariat.
2. Each State Party shall notify, through the Secretariat, in accordance with this Agreement, the other States Parties of any actual or proposed measure that the State Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other State Party's interests under this Agreement.
3. At the request of another State Party, a State Party, through the Secretariat, shall promptly provide information and respond to questions pertaining to an actual or proposed measure, irrespective of whether or not the other State Party was previously notified of that measure.
4. Any notification or information provided pursuant to this article is without prejudice to whether the measure is consistent with this Agreement.

PART V  
CONTINENTAL PREFERENCES

Article 18  
Continental Preferences

1. Following the entry into force of this Agreement, States Parties shall, when implementing this Agreement, accord each other, on a reciprocal basis, preferences that are no less favourable than those given to third parties.
2. A State Party shall afford the opportunity to other States Parties to negotiate preferences granted to third parties prior to entry into force of this Agreement and such preferences shall be on a reciprocal basis. In the case where a State Party is interested in the preferences in this paragraph, the State Party shall afford the opportunity to other States Parties to negotiate on a reciprocal basis, taking into account levels of development of States Parties.
3. This Agreement shall not nullify, modify or revoke rights and obligations under pre-existing trade agreements that States Parties have with third parties.

Article 19  
Conflict and Inconsistency with Regional Agreements

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<sup>3</sup> For example through Gazette, newsletter, Hansard, or websites in one of the African Union languages.

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

1. In the event of any conflict and inconsistency between this Agreement and any regional agreement, this Agreement shall prevail to the extent of the specific inconsistency, except as otherwise provided in this Agreement.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves.

### PART VI DISPUTE SETTLEMENT

#### Article 20 Dispute Settlement

1. A Dispute Settlement Mechanism is hereby established and shall apply to the settlement of disputes arising between States Parties.

2. The Dispute Settlement Mechanism shall be administered in accordance with the Protocol on Rules and Procedures on the Settlement of Disputes.

3. The Protocol on Rules and Procedures on the Settlement of Disputes shall establish, inter alia, a Dispute Settlement Body.

### PART VII FINAL PROVISIONS

#### Article 21 Exceptions

No provision of this Agreement shall be interpreted as derogating from the principles and values contained in other relevant instruments for the establishment and sustainability of the AfCFTA, except as otherwise provided for in the Protocols to this Agreement.

#### Article 22 Adoption, Signature, Ratification and Accession

1. This Agreement shall be adopted by the Assembly.

2. This Agreement shall be open for signature and ratification or accession by the Member States, in accordance with their respective constitutional procedures.

#### Article 23 Entry into Force

1. This Agreement and the Protocols on Trade in Goods, Trade in Services, and Protocol on Rules and Procedures on the Settlement of Disputes shall enter into force thirty (30) days after the deposit of the twenty-second (22<sup>nd</sup>) instrument of ratification.

2. The Protocols on Investment, Intellectual Property Rights, Competition Policy and any other instrument within the scope of this Agreement deemed necessary, shall enter into force thirty (30) days after the deposit of the twenty-second (22<sup>nd</sup>) instrument of ratification.



## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

3. For any Member State acceding to this Agreement, the Protocols on Trade in Goods, Trade in Services, and the Protocol on Rules and Procedures on the Settlement of Disputes shall enter into force in respect of that State Party on the date of the deposit of its instrument of accession.

4. For Member States acceding to the Protocols on Investment, Intellectual Property Rights, Competition Policy, and any other Instrument within the scope of this Agreement deemed necessary, shall enter into force on the date of the deposit of its instrument of accession.

5. The depositary shall inform all Member States of the entry into force of this Agreement and its annexes.

### Article 24 Depositary

1. The depositary of this Agreement shall be the Chairperson of the Commission.

2. This Agreement shall be deposited with the depositary, who shall transmit a certified true copy of the Agreement to each Member State.

3. A Member State shall deposit an instrument of ratification or accession with the depositary.

4. The depositary shall notify Member States of the deposit of the instrument of ratification or accession.

### Article 25 Reservation

No reservations shall be made to this Agreement.

### Article 26 Registration and Notification

1. The depositary shall, upon the entry into force of this Agreement, register it with the United Nations Secretary-General in conformity with Article 102 of the Charter of the United Nations.

2. States Parties shall, where applicable, notify this Agreement to the WTO individually or collectively.

### Article 27 Withdrawal

1. After five (5) years from the date of entry into force in respect of a State Party, a State Party may withdraw from this Agreement by giving written notification to States Parties through the depositary.

2. Withdrawal shall be effective two (2) years after receipt of notification by the depositary, or on such later date as may be specified in the notification.

3. Withdrawal shall not affect any pending rights and obligations of the withdrawing State Party prior to the withdrawal.

### Article 28 Review

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

1. This Agreement shall be subject to review every five (5) years after its entry into force, by States Parties, to ensure effectiveness, achieve deeper integration, and adapt to evolving regional and international developments.
2. Following the process of review, States Parties may make recommendations for amendments, in accordance with Article 29 taking into account experience acquired and progress achieved during the implementation of this Agreement.

### Article 29 Amendments

1. Any State Party may submit proposal(s) for amendment to this Agreement to the depositary.
2. The depositary shall within thirty (30) days of receipt of the proposal, circulate the proposal to States Parties and the Secretariat.
3. A State Party that wishes to comment on the proposal may do so within sixty (60) days from the date of circulation and submit the comments to the depositary and the Secretariat.
4. The Secretariat shall circulate the proposal and comments received to members of the appropriate AfCFTA committees and subcommittees for consideration.
5. The relevant committees and subcommittees shall present, through the Secretariat, recommendations to the Council of Ministers, for consideration, following which a recommendation may be made to the Assembly through the Executive Council.
6. Amendments to the Agreement shall be adopted by the Assembly.
7. The amendments to this Agreement shall enter into force in accordance with Article 23 of this Agreement.

### Article 30 Authentic Texts

This Agreement is drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all of which are equally authentic.

## PROTOCOL ON TRADE IN GOODS

### Preamble

*We, Member States of the African Union,*

*Desirous* to implement the Decision of the Assembly of Heads of State and Government during its Eighteenth Ordinary Session held in Addis Ababa, Ethiopia, from 29 to 30 January 2012 (Assembly/AU/Dec.394 (XVIII)) on the Framework, Road Map and Architecture for Fast Tracking the establishment of the African Continental Free Trade Area and the Action Plan for Boosting Intra-African Trade,

*Cognizant* of the launch of negotiations for the establishment of the Continental Free Trade Area aimed at integrating Africa's markets in line with the objectives and principles enunciated in the Abuja Treaty during the Twenty-fifth Ordinary Session of the Assembly of Heads of State and Government of the African Union held in Johannesburg, South Africa, from 14 to 15 June 2015 (Assembly/AU/Dec.569 (XXV)),

*Determined* to take the necessary measures for reducing the cost of doing business and creating a conducive environment for private sector development and thereby boosting intra-African trade,

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

*Resolved* to enhance competitiveness at the industry and enterprise level through exploiting opportunities for economies of scale, continental market access and an efficient allocation of resources,

*Confident* that a comprehensive Protocol on Trade in Goods will deepen economic efficiency and linkages, improve social welfare, progressively eliminate trade barriers, and increase trade and investment with greater opportunities for economies of scale for the businesses of States Parties,

*Committed* to expanding intra-African trade through the harmonization, coordination of trade liberalization and implementation of trade facilitation instruments across Africa, and cooperation in the area of quality infrastructure, science and technology, the development and implementation of trade-related measures, and

*Recognizing* the different levels of development among the States Parties and the need to provide flexibilities, special and differential treatment and technical assistance to States Parties with special needs,

*Have agreed* as follows:

### PART I DEFINITIONS, OBJECTIVES AND SCOPE

#### Article 1 Definitions

For purposes of this Protocol, the following definitions shall apply:

- (a) "Anti-Dumping Agreement" means the WTO Agreement on the implementation of Article VI of the GATT 1994;
- (b) "Committee" means the Committee for Trade in Goods established in Article 31 of this Protocol;
- (c) "Customs duty" means a duty or charge of any kind imposed on or in connection with the importation or exportation of a good, including any form of surtax or surcharge imposed on or in connection with such importation or exportation;
- (d) "Harmonized System" means the Harmonized Commodity Description and Coding System established by the International Convention on the Harmonized Commodity Description and Coding System;
- (e) "Non-tariff barriers" means barriers that impede trade through mechanisms other than the imposition of tariffs;
- (f) "Originating products" means goods that qualify as originating products under the rules of origin set out in Annex 2 on Rules of Origin;
- (g) "Preferential trade arrangements" means any trade arrangement by which a State Party grants preferences to imports from another State Party or a third party and includes non-reciprocal preferential scheme granted by way of waiver;
- (h) "Safeguards Agreement" means the WTO Agreement on Safeguards;
- (i) "Schedule of tariff concessions" means a list of negotiated specific tariff concessions and commitments by each State Party. It sets out, transparently, the terms, conditions and qualifications under which goods may be imported under the AfCFTA;

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

- (j) "TBT" means technical barriers to trade; and
- (k) "TBT Agreement" means the WTO Agreement on Technical Barriers to Trade.

### Article 2 Objectives

1. The principal objective of this Protocol is to create a liberalized market for trade in goods in accordance with Article 3 of the Agreement.
2. The specific objective of this Protocol is to boost intra-African trade in goods through:
  - (a) Progressive elimination of tariffs;
  - (b) Progressive elimination of non-tariff barriers;
  - (c) Enhanced efficiency of customs procedures, trade facilitation and transit;
  - (d) Enhanced cooperation in the areas of technical barriers to trade and sanitary and phytosanitary measures;
  - (e) Development and promotion of regional and continental value chains; and
  - (f) Enhanced socio-economic development, diversification and industrialization across Africa.

### Article 3 Scope

1. The provisions of this Protocol shall apply to trade in goods between the States Parties.
2. Annex 1 on Schedules of Tariff Concessions, Annex 2 on Rules of Origin, Annex 3 on Customs Cooperation and Mutual Administrative Assistance, Annex 4 on Trade Facilitation, Annex 5 on Non-Tariff Barriers, Annex 6 on Technical Barriers to Trade, Annex 7 Sanitary and Phytosanitary Measures, Annex 8 on Transit and Annex 9 on Trade Remedies shall, upon adoption, form an integral part of this Protocol.

## PART II NON-DISCRIMINATION

### Article 4 Most-Favoured-Nation Treatment

1. States Parties shall accord most-favoured-nation treatment to one another in accordance with Article 18 of the Agreement.
2. Nothing in this Protocol shall prevent a State Party from concluding or maintaining preferential trade arrangements with third parties, provided that such trade arrangements do not impede or frustrate the objectives of this Protocol, and that any advantage, concession or privilege granted to a third party under such arrangements is extended to other States Parties on a reciprocal basis.
3. Nothing in this Protocol shall prevent two or more States Parties from extending to one another preferences which aim at achieving the objectives of this Protocol among themselves, provided that such preferences are extended to the other States Parties on a reciprocal basis.

4. Notwithstanding the provisions of paragraphs 2 and 3 of this article, a State Party shall not be obliged to extend to another State Party, trade preferences extended to other States Parties or third parties before the entry into force of the Agreement. A State Party shall afford the opportunity to the other States Parties to negotiate the preferences granted therein on a reciprocal basis, taking into account levels of development of States Parties.

Article 5  
National Treatment

A State Party shall accord to products imported from other States Parties treatment no less favourable than that accorded to like domestic products of national origin, after the imported products have been cleared by customs. This treatment covers all measures affecting the sale and conditions for sale of such products in accordance with Article III of GATT 1994.

Article 6  
Special and Differential Treatment

In conformity with the objective of the AfCFTA in ensuring comprehensive and mutually beneficial trade in goods, States Parties shall provide flexibilities to other States Parties at different levels of economic development or that have individual specificities as recognized by other States Parties. These flexibilities shall include, among others, special consideration and an additional transition period in the implementation of this Agreement, on a case-by-case basis.

PART III  
LIBERALIZATION OF TRADE

Article 7  
Import Duties

1. States Parties shall progressively eliminate import duties or charges having equivalent effect on goods originating from the territory of any other State Party in accordance with their Schedules of Tariff Concessions contained in Annex 1 to this Protocol.

2. For products subject to liberalization, States Parties shall not impose any new import duties or charges having equivalent effect on goods originating from the territory of any other State Party, except as provided for under this Protocol.

3. An import duty shall include any duty or charge of any kind imposed on or in connection with the importation of goods consigned from any State Party to a consignee in another State Party, including any form of surtax or surcharge, but shall not include any:

(a) Charges equivalent to internal taxes imposed consistently with Article III, paragraph 2, of GATT 1994 and its interpretative notes in respect of like or directly competitive or substitutable goods of the State Party or in respect of goods from which imported goods have been manufactured or produced in whole or in part;

(b) Anti-dumping or countervailing duties imposed in accordance with Articles VI, and XVI of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures and Article 17 of this Protocol;

(c) Duties or levies imposed in relation to safeguards, in accordance with Articles XIX of GATT 1994, the WTO Agreement on Safeguards and Articles 18 and 19 of this Protocol; and

(d) Other fees or charges imposed consistently with Article VIII of GATT 1994.

Article 8

#### Schedules of Tariff Concessions

1. Each State Party shall apply preferential tariffs to imports from other States Parties in accordance with its Schedule of Tariff Concessions contained in Annex 1 to this Protocol and in conformity with the adopted tariff modalities. The Schedules of Tariff Concessions, the adopted tariff modalities and outstanding work on tariff modalities to be negotiated and adopted, shall be an integral part of this Protocol.
2. Notwithstanding the provisions of this Protocol, States Parties that are members of other RECs, which have attained among themselves higher levels of elimination of customs duties and trade barriers than those provided for in this Protocol, shall maintain, and where possible improve upon, those higher levels of trade liberalization among themselves.

#### Article 9

##### General Elimination of Quantitative Restrictions

The States Parties shall not impose quantitative restrictions on imports from or exports to other States Parties except as otherwise provided for in this Protocol, its annexes and Article XI of GATT 1994 and other relevant WTO Agreements.

#### Article 10

##### Export Duties

1. States Parties may regulate export duties or charges having equivalent effect on goods originating from their territories.
2. Any export duties or taxes, imposed on or in connection with, the exportation of goods, applied pursuant to this article shall be applied to goods exported to all destinations on a non-discriminatory basis.
3. A State Party that introduces export duties or taxes on, or in connection with, the exportation of goods in accordance with paragraph 2 of this article, shall notify the Secretariat ninety (90) days from the introduction of the said export duties or taxes.

#### Article 11

##### Modification of Schedules of Tariff Concessions

1. In exceptional circumstances, a State Party may request modification of its Schedule of Tariff Concessions.
2. In such exceptional circumstances, a State Party (hereinafter referred to as the “modifying State Party”) shall submit to the Secretariat, a written request, together with evidence of the exceptional circumstances for such a request.
3. Upon receipt of the request, the Secretariat shall immediately circulate the request to all States Parties.
4. Where a State Party considers that it has a substantial interest (hereinafter referred to as the “State Party with substantial interest”) in the tariff schedule of the modifying State Party, it should communicate in writing, with supporting evidence, to the modifying State Party through the Secretariat within thirty (30) days. The Secretariat shall immediately circulate all such requests to all States Parties.
5. The modifying State Party and any State Party with substantial interest, as determined under paragraph 3, shall enter into negotiations to be coordinated by the Secretariat with a view to reaching an agreement on any necessary compensatory adjustment. In such negotiations and agreement, the States Parties shall maintain a general level of commitments not less favourable than the initial commitments.

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

6. The outcome of the negotiations and the subsequent modification of the tariff schedule and any compensation thereof shall only be effected upon approval by States Parties with substantial interest and notification to the Secretariat which shall transmit to other States Parties. The compensatory adjustments shall be made in accordance with Article 4 of this Protocol.

7. The modifying State Party shall not modify its commitment until it has made compensatory adjustments as provided for in paragraph 6 and endorsed by the Council of Ministers. The outcome of the compensatory adjustment shall be notified to States Parties.

### Article 12 Elimination of Non-Tariff Barriers

Except as may be provided for in this Protocol, the identification, categorization, monitoring and elimination of non-tariff barriers by States Parties shall be in accordance with the provisions of Annex 5 on Non-Tariff Barriers.

### Article 13 Rules of Origin

Goods shall be eligible for preferential treatment under this Protocol, if they are originating in any of the States Parties in accordance with the criteria and conditions set out in Annex 2 on Rules of Origin, and in accordance with the Appendix to be developed on General and Product Specific Rules.

## PART IV CUSTOMS COOPERATION, TRADE FACILITATION AND TRANSIT

### Article 14 Customs Cooperation and Mutual Administrative Assistance

States Parties shall take appropriate measures including arrangements regarding customs cooperation and mutual administrative assistance in accordance with the provisions of Annex 3 on Customs Cooperation and Mutual Administrative Assistance.

### Article 15 Trade Facilitation

States Parties shall take appropriate measures including arrangements regarding trade facilitation in accordance with the provisions of Annex 4 on Trade Facilitation.

### Article 16 Transit

States Parties shall take appropriate measures including arrangements regarding transit in accordance with the provisions of Annex 8 on Transit.

## PART V TRADE REMEDIES

### Article 17 Anti-Dumping and Countervailing Measures

1. Subject to the provisions of this Protocol, nothing in this Protocol shall prevent States Parties from applying anti-dumping and countervailing measures.

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

2. In applying this article, States Parties shall be guided by the provisions of Annex 9 on Trade Remedies and the AfCFTA Guidelines on Implementation of Trade Remedies in accordance with relevant WTO Agreements.

### Article 18 Global Safeguard Measures

The implementation of this article shall be in accordance with Annex 9 on Trade Remedies and Guidelines on Implementation of Trade Remedies, Article XIX of GATT 1994 and the WTO Agreement on Safeguards.

### Article 19 Preferential Safeguards

1. States Parties may apply safeguard measures to situations where there is a sudden surge of a product imported into a State Party, under conditions which cause or threaten to cause serious injury to domestic producers of like or directly competing products within the territory.

2. The implementation of this article shall be in accordance with the provisions of Annex 9 on Trade Remedies and AfCFTA Guidelines on Implementation of Trade Remedies.

### Article 20 Cooperation relating to Anti-Dumping, Countervailing and Safeguards Investigations

States Parties shall cooperate in the area of trade remedies in accordance with the provisions of Annex 9 on Trade Remedies and AfCFTA Guidelines on Implementation of Trade Remedies.

## PART VI PRODUCT STANDARDS AND REGULATIONS

### Article 21 Technical Barriers to Trade

The implementation of this article shall be in accordance with the provisions of Annex 6 on Technical Barriers to Trade.

### Article 22 Sanitary and Phytosanitary Measures

The implementation of this article shall be in accordance with the provisions of Annex 7 on Sanitary and Phytosanitary Measures.

## PART VII COMPLEMENTARY POLICIES

### Article 23 Special Economic Arrangements/Zones

1. States Parties may support the establishment and operation of special economic arrangements or zones for the purpose of accelerating development.

2. Products benefiting from special economic arrangements or zones shall be subject to any regulations that shall be developed by the Council of Ministers. Regulations under this paragraph shall be in support of the continental industrialization programmes.



## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

3. The trade of products manufactured in special economic arrangements or zones within the AfCFTA shall be subject to the provisions of Annex 2 on Rules of Origin.

### Article 24 Infant Industries

1. For the purposes of protecting an infant industry having strategic importance at the national level, a State Party may, provided that it has taken reasonable steps to overcome the difficulties related to such infant industry, impose measures for protecting such an industry. Such measures shall be applied on a non-discriminatory basis and for a specified period of time.

2. The Council of Ministers shall adopt guidelines for implementation of this article as an integral part of this Protocol.

### Article 25 Transparency and Notification Requirements for State Trading Enterprises

1. In order to ensure the transparency of the activities of State Trading Enterprises (STE), States Parties shall notify such enterprises to the Secretariat for transmission to other States Parties.

2. For the purpose of this article, STE refers to governmental, non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports with reference to provisions of Article XVII of GATT 1994.

## PART VIII EXCEPTIONS

### Article 26 General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between States Parties where the same conditions prevail, or a disguised restriction on international trade, nothing in this Protocol shall be construed as preventing the adoption or enforcement of measures by any State Party that are:

- (a) Necessary to protect public morals or to maintain public order;
- (b) Necessary to protect human, animal or plant life or health;
- (c) Relating to the importations and exportations of gold or silver;
- (d) Relating to the products of prison labour;
- (e) Necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Protocol, including those relating to customs enforcement, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;
- (f) Imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) Relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

- (h) Undertaken in pursuance of obligations under any intergovernmental commodity agreement approved by the States Parties;
- (i) Involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan, provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Protocol relating to non-discrimination; and
- (j) Essential to the acquisition or distribution of foodstuffs or any other products in general or local short supply, provided that any such measures shall be consistent with the principle that all States Parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Protocol shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

### Article 27 Security Exceptions

Nothing in this Protocol shall be construed to:

- (a) Require any State Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) Prevent any State Party from taking any action which it considers necessary for the protection of its essential security interests:
  - (i) Relating to fissionable materials or the materials from which they are derived;
  - (ii) Relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials taking place either directly or indirectly for the purpose of supplying a military establishment; and
  - (iii) Taken in time of war or other emergency in international relations; or
- (c) Prevent any State Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

### Article 28 Balance of Payments

1. Where a State Party is in critical balance of payments difficulties, or under imminent threat thereof, or has the need to safeguard its external financial position difficulties and that has taken all reasonable steps to overcome the difficulties, may adopt appropriate restrictive measures in accordance with international rights and obligations of the State Party concerned, including those under the WTO Agreement, the Articles of Agreement of the International Monetary Fund and the African Development Bank, respectively. Such measures shall be equitable, non-discriminatory, in good faith, of limited duration and may not go beyond what is necessary to remedy the balance of payments situation.
2. The State Party concerned, having adopted or maintained such measures shall inform the other States Parties forthwith and submit, as soon as possible, a time schedule for their removal.

## PART IX TECHNICAL ASSISTANCE, CAPACITY-BUILDING AND COOPERATION

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

### Article 29

#### Technical Assistance, Capacity-Building and Cooperation

1. The Secretariat, working with States Parties, RECs and partners, shall coordinate and provide technical assistance and capacity-building in trade and trade-related issues for the implementation of this Protocol.
2. States Parties agree to enhance cooperation for the implementation of this Protocol.
3. The Secretariat shall explore avenues to secure resources required for these programmes.

### PART X

#### INSTITUTIONAL PROVISIONS

### Article 30

#### Consultation and Dispute Settlement

Except as otherwise provided in this Protocol, the relevant provisions of the Protocol on Rules and Procedures on the Settlement of Disputes shall apply to consultations and the settlement of disputes under this Protocol.

### Article 31

#### Implementation, Monitoring and Evaluation

1. The Council of Ministers in accordance with Article 11 of the Agreement shall establish the Committee on Trade in Goods, which shall carry out such functions as may be assigned to it by the Council of Ministers to facilitate the operation of this Protocol and further its objectives. The Committee may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions.
2. This Committee and its subsidiary bodies shall be open to participation by representatives of all States Parties unless otherwise decided.
3. The Chairperson of the Committee shall be elected by the States Parties.
4. In accordance with Article 13, paragraph 5, of the Agreement, the Secretariat shall, in consultation with States Parties, prepare annual factual reports to facilitate the process of implementation, monitoring and evaluation of this Protocol.
5. These reports should be considered and adopted by the Council of Ministers.

### Article 32

#### Amendment

Amendment to this Protocol shall be in accordance with Article 29 of the Agreement.

## PROTOCOL ON TRADE IN SERVICES

### Preamble

*We, Member States of the African Union,*

*Determined* to establish a continental framework of principles and rules for trade in services with a view to boosting intra-African trade in line with the objectives of the African Continental Free Trade Area (AfCFTA) and promoting economic growth and development within the continent,

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

*Desirous* to create, on the basis of progressive liberalization of trade in services, an open, rules-based, transparent, inclusive and integrated single services market which provides economic, social and welfare-enhancing opportunities across all sectors for the African people,

*Mindful* of the urgent need to consolidate and build on achievements in services liberalization and regulatory harmonization at the Regional Economic Community (REC) and continental levels,

*Desiring* to harness the potential and capacities of African services suppliers, in particular at the micro, small and medium levels, to engage in regional and global value chains,

*Recognizing* the right of States Parties to regulate in pursuit of national policy objectives, and to introduce new regulations, on the supply of services, within their territories, in order to meet legitimate national policy objectives, including competitiveness, consumer protection and overall sustainable development with respect to the degree of the development of services regulations in different countries, the particular need for States Parties to exercise this right, without compromising consumer protection, environmental protection and overall sustainable development,

*Cognizant* of the serious difficulty of the least developed, landlocked, island States and vulnerable economies in view of their special economic situation and their development, trade and financial needs,

*Acknowledging* the African Union Assembly Decision Assembly/AU/666 (XXX) adopted at the Thirtieth Ordinary Session of the Assembly of Heads of State and Government of the African Union, in Addis Ababa, Ethiopia, on 28 January 2018 on the Establishment of a Single African Air Transport Market through the Implementation of the Yamoussoukro Decision,

*Further recognizing* the potentially significant contribution of air transport services and, in particular, the Single African Air Transport Market to boost intra-African trade and fast track the African Continental Free Trade Area (AfCFTA),

*Have agreed* as follows:

### PART I DEFINITIONS

#### Article 1 Definitions

For the purposes of this Protocol:

- (a) "Commercial presence" means any type of business or professional establishment, including through:
  - i. The constitution, acquisition or maintenance of a juridical person; or
  - ii. The creation or maintenance of a branch or a representative office, within the territory of a State Party for the purpose of supplying a service;
- (b) "Direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;
- (c) "Juridical person" means any legal entity duly constituted or otherwise organized under applicable law of States Parties, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

(d) A juridical person is:

- i. "Affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- ii. "Controlled" by persons of a State Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; and
- iii. "Owned" by persons of a State Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that State Party;

(e) "Juridical person of another State Party" means a juridical person which is either:

- i. Constituted or otherwise organized under the law of that other State Party, and is engaged in substantive business operations in the territory of that State Party or any other State Party; or
- ii. In the case of the supply of a service through commercial presence, owned or controlled by:
  - 1. Natural persons of that State Party; or
  - 2. Juridical persons of that other State Party identified under subparagraph (i);

(f) "Measure" means any measure by a State Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

(g) "Measures by States Parties affecting trade in services" include measures in respect of:

- i. The purchase, payment or use of a service;
- ii. The access to and use of, in connection with the supply of a service, services which are required by those States Parties to be offered to the public generally;
- iii. The presence, including commercial presence, of persons of a State Party for the supply of a service in the territory of another State Party;

(h) "Monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a State Party operates as or is authorized or established formally or in effect by that State Party as the sole supplier of that service;

(i) "Natural person of another State Party" means a natural person who resides in the territory of that other State Party or any other State Party and who under the law of that other State Party:

- i. Is a national; or
- ii. Has the right of permanent residence;

(j) "Person" means either a natural person or a juridical person;

(k) "Sector" of a service means:

- i. With reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a State Party's schedule of specific commitments;

- ii. Otherwise, the whole of that service sector, including all of its subsectors;
- (l) "Service of another State Party" means a service which is supplied:
  - i. From or in the territory of that other State Party, or in the case of maritime transport, by a vessel registered under the laws of that other State Party, or by a person of that other State Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or
  - ii. In the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other State Party;
- (m) "Service consumer" means any person that receives or uses a service;
- (n) "Service supplier" means any person that supplies a service;<sup>4</sup>
- (o) "Supply of a Service" includes the production, distribution, marketing, sale and delivery of a service;
- (p) "Trade in services" means the supply of service:
  - i. From the territory of one State Party into the territory of any other State Party;
  - ii. In the territory of one State Party to the service consumer of any other State Party;
  - iii. By a service supplier of one State Party, through commercial presence in the territory of any other State Party;
  - iv. By a service supplier of one State Party, through presence of natural persons of a State Party in the territory of any other State Party.

PART II  
SCOPE OF APPLICATION

Article 2  
Scope of Application

- 1. This Protocol applies to measures by States Parties affecting trade in services.
- 2. For the purposes of this Protocol, trade in services is based on the four modes of supply of a service as defined in Article 1, subparagraph p, of this Protocol.
- 3. For the purposes of this Protocol:
  - (a) "Measures by States Parties" means measures taken by:
    - i. States Parties' central, regional or local governments and authorities; and

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<sup>4</sup> Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside of the territory where the service is supplied.

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

ii. Non-governmental bodies in the exercise of powers delegated by States Parties' central, regional or local governments or authorities.

In fulfilling its obligations and commitments under the Protocol, each State Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

(b) "Services" includes any service in any sector except services supplied in the exercise of governmental authority; and

(c) "A service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

4. Procurement by governmental agencies purchased for governmental purposes and not with a view to commercial resale are excluded from the scope of this Protocol.

5. This Protocol shall not apply to measures affecting:

- (a) Air traffic rights, however granted; and
- (b) Services directly related to the exercise of air traffic rights.

6. This Protocol shall apply to measures affecting:

- (a) Aircraft repair and maintenance services;
- (b) The selling and marketing of air transport services; and
- (c) Computer reservation system (CRS) services.

### PART III OBJECTIVES

#### Article 3 Objectives

1. The principal objective of this Protocol is to support the objectives of the AfCFTA, as set out in Article 3 of the Agreement, particularly to create a single liberalized market for trade in services.

2. The specific objectives of this Protocol are to:

- (a) Enhance competitiveness of services through: economies of scale, reduced business costs, enhanced continental market access, and an improved allocation of resources including the development of trade-related infrastructure;
- (b) Promote sustainable development in accordance with the Sustainable Development Goals (SDGs);
- (c) Foster domestic and foreign investment;
- (d) Accelerate efforts on industrial development to promote the development of regional value chains;
- (e) Progressively liberalize trade in services across the African continent on the basis of equity, balance and mutual benefit, by eliminating barriers to trade in services;

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

- (f) Ensure consistency and complementarity between liberalization of trade in services and the various annexes in specific services sectors;
- (g) Pursue services trade liberalization in line with Article V of the GATS by expanding the depth and scope of liberalization and increasing, improving and developing the export of services, while fully preserving the right to regulate and to introduce new regulations;
- (h) Promote and enhance common understanding and cooperation in trade in services among States Parties in order to improve the capacity, efficiency and competitiveness of their services markets; and
- (i) Promote research and technological advancement in the field of services to accelerate economic and social development.

### PART IV GENERAL OBLIGATIONS AND DISCIPLINES

#### Article 4 Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Protocol, each State Party shall, upon entry into force, accord immediately and unconditionally to services and service suppliers of any other State Party treatment no less favourable than that it accords to like services and service suppliers of any third party.
2. Nothing in this Protocol shall prevent a State Party from entering into a new preferential agreement with a third party, in accordance with Article V of the GATS provided such agreements do not impede or frustrate the objectives of this Protocol. Such preferential treatment shall be extended to all States Parties on a reciprocal and non- discriminatory basis.
3. Notwithstanding paragraph 1, two (2) or more States Parties may conduct negotiations and agree to liberalize trade in services for specific sectors or subsectors in accordance with the objectives in this Protocol. Other States Parties shall be afforded the opportunity to negotiate the preferences granted therein on a reciprocal basis.
4. Notwithstanding the provisions of paragraph 2, a State Party shall not be obliged to extend preferences agreed with any third party prior to the entry into force of this Protocol, of which that State Party was a member or a beneficiary. A State Party may afford the opportunity to the other States Parties to negotiate the preferences granted therein on a reciprocal basis.
5. The provisions of this Protocol shall not be so construed as to prevent any State Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.
6. A State Party may maintain a measure which is inconsistent with paragraph 1, provided it is listed in the most-favoured nation (MFN) exemption list. The agreed list of MFN exemptions shall be annexed to this Protocol. States Parties shall regularly review MFN exemptions, with a view to determining which MFN exemptions can be eliminated.

#### Article 5 Transparency



## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

1. Each State Party shall, in a medium<sup>5</sup> that is accessible, publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Protocol. International and regional agreements pertaining to or affecting trade in services to which a State Party is a signatory shall also be published.
2. Each State Party shall notify the Secretariat of any international and regional agreements pertaining to or affecting trade in services with third parties to which they are signatory prior to or after entry into force of this Protocol.
3. Each State Party shall promptly and at least annually notify the Secretariat of the introduction of any new, or any changes to, existing laws, regulations or administrative guidelines which significantly affect trade in services under this Protocol.
4. Where a State Party submits a notification to the Secretariat, the latter shall promptly circulate the said notification to all States Parties.
5. Each State Party shall respond promptly to all requests by any other State Party for specific information on any of its measures of general application or international and/or regional agreements within the meaning of paragraph 1. States Parties shall also reply to any question from any other State Party relating to an actual or proposed measure that might substantially affect the operation of this Protocol.
6. Each State Party shall designate the relevant enquiry points to provide States Parties with specific information, upon request, on all such matters related to trade in services as well as those subject to the notification requirement above.

### Article 6

#### Disclosure of Confidential Information

Nothing in this Protocol shall require any State Party to disclose confidential information and data, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

### Article 7

#### Special and Differential Treatment

In order to ensure increased and beneficial participation in trade in services by all parties, States Parties shall:

- (a) Provide special consideration to the progressive liberalization of service sectors commitments and modes of supply which will promote critical sectors of growth, social and sustainable economic development;
- (b) Take into account the challenges that may be encountered by States Parties and may grant flexibilities such as transitional periods, within the framework of action plans, on a case-by-case basis, to accommodate special economic situations and development, trade and financial needs in implementing this Protocol for the establishment of an integrated and liberalized single market for trade in services; and
- (c) Accord special consideration to the provision of technical assistance and capacity-building through continental support programmes.

### Article 8

#### Right to Regulate

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<sup>5</sup> For example through Gazette, newsletter, Hansard, or websites in one of the African Union languages.

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

Each State Party may regulate and introduce new regulations on services and services suppliers within its territory in order to meet national policy objectives, in so far as such regulations do not impair any rights and obligations arising under this Protocol.

### Article 9 Domestic Regulation

1. In sectors where specific commitments are undertaken, each State Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, transparent and impartial manner.
2. Each State Party shall maintain or institute, as soon as practicable, judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the State Party shall ensure that the procedures in fact provide for an objective and impartial review.
3. Where authorization is required for the supply of a service liberalized under this Protocol, the competent authorities of a State Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the State Party shall provide, without undue delay, information concerning the status of the application.

### Article 10 Mutual Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 3 of this article, a State Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in another State Party. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the State Party concerned or may be accorded autonomously.
2. A State Party that is a party to an agreement or arrangement of the type referred to in paragraph 1 of this article, whether existing or future, shall afford adequate opportunity for other interested States Parties to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a State Party accords recognition autonomously, it shall afford adequate opportunity for any other State Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other State Party's territory should be recognized.
3. A State Party shall not accord recognition in a manner which would constitute a means of discrimination between States Parties in the application of its standards or criteria for the authorization, licensing or certification of service suppliers, or a disguised restriction on trade in services.
4. Each State Party shall:
  - (a) Within twelve (12) months from the date on which the Agreement enters into force for it, inform the Secretariat of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1 of this article;
  - (b) Promptly inform the States Parties through the Secretariat as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 of this article in order to provide adequate opportunity to any other State Party to indicate their interest in participating in the negotiations before they enter a substantive phase; and

(c) Promptly inform the States Parties through the Secretariat when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1 of this article.

5. Wherever appropriate, recognition should be based on AfCFTA agreed criteria by States Parties. In appropriate cases, States Parties shall work in cooperation with relevant intergovernmental and non-governmental organizations towards the establishment and adoption of common continental standards and criteria for recognition and common continental standards for the practice of relevant services trades and professions.

#### Article 11

##### Monopolies and Exclusive Service Suppliers

1. Each State Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that State Party's obligations and specific commitments under this Protocol.

2. Where a State Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that State Party's specific commitments, the State Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. A State Party which has a reason to believe that a monopoly supplier of a service of any other State Party is acting in a manner inconsistent with paragraphs 1 and 2 of this article, may request the State Party establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations.

4. If, after the date of entry into force of this Protocol, a State Party grants monopoly rights regarding the supply of a service covered by its specific commitments, that State Party shall notify the Secretariat no later than three (3) months before the intended implementation of the grant of monopoly rights and the provisions concerning modification of specific commitments will apply.

5. The provisions of this article shall also apply to cases of exclusive service suppliers where a State Party, formally or in effect:

- (a) Authorizes or establishes a small number of service suppliers; and
- (b) Substantially prevents competition among those suppliers in its territory.

#### Article 12

##### Anti-Competitive Business Practices

1. States Parties recognize that certain business practices of service suppliers, other than those concerning monopolies and exclusive service suppliers, may restrain competition and thereby restrict trade in services.

2. Each State Party shall, at the request of any other State Party, enter into consultations with a view to eliminating practices referred to in paragraph 1 of this article. The State Party addressed shall respond to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The State Party addressed shall also provide other information available to the requesting State Party, subject to its domestic law and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting State Party.

#### Article 13

##### Payments and Transfers

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

1. Except under the circumstances envisaged in Article 14 of this Protocol, a State Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.
2. Nothing in this Protocol shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a State Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except as provided under Article 14 of this Protocol, or at the request of the Fund.

### Article 14 Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a State Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressures on the balance of payments of a State Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.
2. The restrictions referred to in paragraph 1 of this article shall:
  - (a) Not discriminate among States Parties;
  - (b) Be consistent with the Articles of Agreement of the International Monetary Fund;
  - (c) Avoid unnecessary damage to the commercial, economic and financial interests of any other State Party;
  - (d) Not exceed those necessary to deal with the circumstances described in paragraph 1 of this article; and
  - (e) Be temporary and be phased out progressively as the situation specified in paragraph 1 of this article improves.
3. In determining the incidence of such restrictions, States Parties may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.
4. Any restrictions adopted or maintained under paragraph 1 of this article, or any changes therein, shall be promptly notified to the Secretariat.
5. States Parties applying the provisions of this article shall consult promptly within the Committee on Trade in Services on restrictions adopted under this article.
6. The Committee on Trade in Services shall establish procedures for periodic consultations with the objective of enabling such recommendations to be made to the State Party concerned as it may deem appropriate.
7. Such consultations shall assess the balance-of-payment situation of the State Party concerned and the restrictions adopted or maintained under this article, taking into account, inter alia, such factors as:
  - (a) The nature and extent of the balance-of-payments and the external financial difficulties;
  - (b) The external economic and trading environment of the consulting State Party; and

(c) Alternative corrective measures which may be available.

8. The consultations shall address the compliance of any restrictions with paragraph 2 of this article, in particular the progressive phase-out of restrictions in accordance with paragraph 2 (e) of this article.

9. In such consultations, all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting State Party.

10. If a State Party which is not a member of the International Monetary Fund wishes to apply the provisions of this article, the Council of Ministers shall establish a review procedure and any other procedures necessary.

#### Article 15 General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between States Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Protocol shall be construed to prevent the adoption or enforcement by any State Party of measures:

(a) Necessary to protect public morals or to maintain public order;<sup>6</sup>

(b) Necessary to protect human, animal or plant life or health;

(c) Necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Protocol including those relating to:

i. The prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

ii. The protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

iii. Safety;

(d) Inconsistent with national treatment, provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other States Parties; and<sup>7</sup>

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<sup>6</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

<sup>7</sup> Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a State Party under its taxation system which:

(a) Apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the State Party's territory; or

(b) Apply to non-residents in order to ensure the imposition or collection of taxes in the State Party's territory; or

(c) Apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or

(d) Apply to consumers of services supplied in or from the territory of another State Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the State Party's territory; or

(e) Inconsistent with the most-favoured nation obligation provided that the difference in treatment is the result of an agreement on avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the State Party is bound.

Article 16  
Security Exceptions

1. Nothing in this Protocol shall be construed:

(a) To require any State Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

(b) To prevent any State Party from taking any action which it considers necessary for the protection of its essential security interests:

i. Relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

ii. Relating to fissionable and fusionable materials or the materials from which they are derived; and

iii. Taken in time of war or other emergency in international relations; or

(c) To prevent any State Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Secretariat shall be informed, to the fullest extent possible, of measures taken under paragraph 1 (b) and (c) of this article, and of their termination.

Article 17  
Subsidies

1. Nothing in this Protocol shall be construed to prevent States Parties from using subsidies in relation to their development programmes.

2. States Parties shall decide on mechanisms for information exchange and review of all subsidies related to trade in services that States Parties provide to their domestic service suppliers.

3. Any State Party which considers that it is adversely affected by a subsidy of another State Party may request consultations with that State Party on such matters. Such requests shall be accorded sympathetic consideration.

PART V  
PROGRESSIVE LIBERALIZATION

(e) Distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or

(f) Determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the State Party's tax base.

Tax terms or concepts in subparagraph (d) of Article 15 and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the State Party taking the measure.

Article 18  
Progressive Liberalization

1. States Parties shall undertake successive rounds of negotiations based on the principle of progressive liberalization accompanied by the development of regulatory cooperation, and sectoral disciplines, taking into account the objectives of the 1991 Abuja Treaty that aim to strengthen integration at the regional and continental levels in all fields of trade, and in line with the general principle of progressivity towards achievement of the ultimate goal of the African Economic Community.
2. States Parties shall negotiate sector specific obligations through the development of regulatory frameworks for each of the sectors, as necessary, taking account of the best practices and *acquis* from the RECs, as well as the negotiated agreement on sectors for regulatory cooperation. States Parties agree that negotiations for continuing the process shall commence following the establishment of the AfCFTA, based on the work programme to be agreed by the Committee on Trade in Services.
3. The liberalization process shall focus on the progressive elimination of the adverse effects of measures on trade in services as a means of providing effective market access with a view to boosting intra-African trade in services.
4. The list of Priority Sectors and the Modalities on Trade in Services shall be annexed to this Protocol and shall form an integral part hereof.
5. The Transitional Implementation Work Programme developed by Member States shall guide the finalization of outstanding Phase I negotiations on this Protocol, before the entry into force of the Agreement.

Article 19  
Market Access

1. With respect to market access through the modes of supply identified in Article 1, subparagraph (p), of this Protocol, each State Party shall accord services and service suppliers of any other State Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.<sup>8</sup>
2. In sectors where market-access commitments are undertaken, the measures which a State Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:
  - (a) Limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
  - (b) Limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (c) Limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>9</sup>

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<sup>8</sup> If a State Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply defined in Article 1, subparagraph (p), and if the cross-border movement of capital is an essential part of the service itself, that State Party is thereby committed to allow such movement of capital. If a State Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 1, subparagraph (p) (iii), it is thereby committed to allow related transfers of capital into its territory.

- (d) Limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) Measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) Limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 20  
National Treatment

1. In all sectors inscribed in the schedule, and subject to any conditions and qualifications set out therein, each State Party shall accord to services and service suppliers of any other State Party treatment no less favourable than that it accords to its own like services and service suppliers, subject to the conditions and qualifications agreed and specified in its Schedule of Specific Commitments.
2. A State Party may meet the requirement of paragraph 1 of this article by according to services and service suppliers of any other State Party either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the State Party compared to like services or service suppliers of any other State Party.

Article 21  
Additional Commitments

The States Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 19 or 20 of this Protocol, including but not limited to those regarding qualification, standards or licensing matters. Such commitments shall be inscribed in a State Party's Schedule of Specific Commitments.

Article 22  
Schedules of Specific Commitments

1. Each State Party shall set out in a schedule the specific commitments that it undertakes under Articles 19, 20 and 21 of this Protocol.
2. With respect to sectors where such commitments are undertaken, each Schedule of Specific Commitments shall specify:
  - (a) Terms, limitations and conditions on market access;
  - (b) Conditions and qualifications on national treatment;
  - (c) Undertakings relating to additional commitments; and

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<sup>9</sup> Article 1, subparagraph (g) (iii), does not cover measures of a State Party which limit inputs for the supply of services.



(d) Where appropriate, the time frame for implementation of such commitments, including their date of entry into force.

3. Measures inconsistent with both Articles 19 and 20 of this Protocol shall be inscribed in the column relating to Article 19 of this Protocol. In this case the inscription will be considered to provide a condition or qualification to Article 20 of this Protocol as well.

4. The Schedules of Specific Commitments, the Modalities for Trade in Services and the list of Priority Sectors shall, upon adoption, form an integral part of this Protocol.

5. The Transitional Implementation Work Programme developed by Member States shall guide the finalization of outstanding Phase I negotiations on this Protocol, before the entry into force of the Agreement.

#### Article 23

##### Modification of Schedules of Specific Commitments

1. A State Party (referred to in this article as the "modifying State Party") may modify or withdraw any commitment in its schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this article.

2. A modifying State Party shall notify its intent to modify or withdraw a commitment pursuant to this article to the Secretariat no later than three (3) months before the intended date of implementation of the modification or withdrawal. The Secretariat shall promptly circulate this information to States Parties.

3. At the request of any State Party the benefits of which under this Protocol may be affected (referred to in this article as an "affected State Party") by a proposed modification or withdrawal notified under paragraph 2 of this article, the modifying State Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the States Parties concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in commitments prior to such negotiations.

4. Compensatory adjustments shall be made on a most-favoured-nation basis.

5. If agreement is not reached between the modifying State Party and any affected State Party before the end of the period provided for negotiations, such affected State Party may refer the matter to dispute settlement. Any affected State Party that wishes to enforce a right that it may have to compensation must participate in the dispute process.

6. If no affected State Party has requested dispute settlement, the modifying State Party shall be free to implement the proposed modification or withdrawal, within a reasonable period of time.

7. The modifying State Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the dispute settlement.

8. If the modifying State Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any affected State Party that participated in the dispute settlement may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding the obligations under Article 4 of this Protocol, such a modification or withdrawal may be implemented solely with respect to the modifying State Party.

9. The Committee on Trade in Services shall facilitate such negotiations and establish related appropriate procedures.

Article 24  
Denial of Benefits

Subject to prior notification and consultation, a State Party may deny the benefits of this Protocol to service suppliers of another State Party where the service is being supplied by a juridical person of a non-State Party, without real and continuous link with the economy of the State Party or with negligible or no business operations in the territory of the other State Party or any other State Party.

PART VI  
INSTITUTIONAL PROVISIONS

Article 25  
Consultation and Dispute Settlement

The provisions of the Protocol on the Rules and Procedures on the Settlement of Disputes shall apply to consultations and the settlement of disputes under this Protocol.

Article 26  
Implementation, Monitoring and Evaluation

1. The Council of Ministers in accordance with Article 11 of the Agreement shall establish the Committee on Trade in Services, which shall carry out such functions as may be assigned to it by the Council of Ministers to facilitate the operation of this Protocol and further its objectives. The Committee may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions.
2. The Chairman of the Committee shall be elected by the States Parties.
3. The Committee shall prepare annual reports for States Parties to facilitate the process of implementation, monitoring and evaluation of this Protocol.

Article 27  
Technical Assistance, Capacity-Building and Cooperation

1. States Parties recognize the importance of technical assistance, capacity-building and cooperation in order to complement the liberalization of services, to support States Parties' efforts to strengthen their capacity in the supply of services and to facilitate implementation and attainment of the objectives of this Protocol.
2. States Parties agree, where possible, to mobilize resources, in collaboration with development partners, and implement measures, in support of the domestic efforts of States Parties, with a view to, inter alia:
  - (a) Building capacity and training for trade in services;
  - (b) Improving the ability of service suppliers to gather information on and to meet regulations and standards at international, continental, regional and national levels;
  - (c) Supporting the collection and management of statistical data on trade in services;
  - (d) Improving the export capacity of both formal and informal service suppliers, with particular attention to micro, small and medium size; women and youth service suppliers;
  - (e) Supporting the negotiation of mutual recognition agreements;

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

- (f) Facilitating interaction and dialogue between service suppliers of States Parties with a view to promotion of information sharing with respect to market access opportunities, peer learning and the sharing of best practices;
  - (g) Addressing quality and standards needs in those sectors where States Parties have undertaken commitments under this Protocol with a view to supporting the development and adoption of standards; and
  - (h) Developing and implementing regulatory regimes for specific services sectors at continental, regional and national levels, in particular in those sectors in which States Parties have undertaken specific commitments.
3. The Secretariat, working with States Parties, RECs and partners, shall coordinate the provision of technical assistance.

### Article 28 Annexes to this Protocol

1. Member States may develop annexes for the implementation of this Protocol relating, inter alia, to:
- (a) Schedules of Specific Commitments;
  - (b) MFN Exemption(s);
  - (c) Air Transport Services;
  - (d) List of Priority Sectors; and
  - (e) A framework document on Regulatory Cooperation.
2. Upon adoption by the Assembly, such annexes shall form an integral part of this Protocol.
3. States Parties may develop additional annexes for the implementation of this Protocol for adoption by the Assembly. Upon adoption by the Assembly, such annexes shall form an integral part of this Protocol.

### Article 29 Amendment

This Protocol shall be amended in accordance with the provisions of Article 29 of the Agreement.

## **PROTOCOL ON RULES AND PROCEDURES ON THE SETTLEMENT OF DISPUTES**

*We, Member States of the African Union,*

*Have agreed as follows:*

### Article 1 Definitions

- (a) "AB" means the Appellate Body established under Article 20 of this Protocol;
- (b) "Complaining party" means a State Party that has initiated a dispute settlement procedure under the Agreement;
- (c) "Consensus" means if no State Party present at the meeting of the DSB when a decision is taken, formally objects to the decision;

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

- (d) "Days" means working days save for cases involving perishable goods where days shall mean calendar days;
- (e) "Dispute" means a disagreement between States Parties regarding the interpretation and/or application of the Agreement in relation to their rights and obligations;
- (f) "DSB" means the Dispute Settlement Body established under Article 5 of this Protocol;
- (g) "Panel" means a Dispute Settlement Panel established under Article 9 of this Protocol;
- (h) "Party to a dispute or proceedings" means a State Party to a dispute or proceedings;
- (i) "State Party concerned" means a State Party to which rulings and recommendations of the DSB are directed; and
- (j) "Third party" means a State Party with a substantial interest in a dispute.

### Article 2 Objective

This Protocol provides for the administration of the Dispute Settlement Mechanism established in accordance with Article 20 of the Agreement and aims at ensuring that the dispute settlement process is transparent, accountable, fair, predictable and consistent with the provisions of the Agreement.

### Article 3 Scope of Application

1. This Protocol shall apply to disputes arising between States Parties concerning their rights and obligations under the provisions of the Agreement.
2. This Protocol shall apply subject to such special and additional rules and procedures on dispute settlement contained in the Agreement. To the extent that there is a difference between the rules and procedures of this Protocol and the special or additional rules and procedures in the Agreement, the special or additional rules and procedures shall prevail.
3. For the purposes of this article, a dispute settlement proceeding shall be considered to have been initiated in accordance with this Protocol when the complaining party requests consultations pursuant to Article 7 of this Protocol.
4. A State Party which has invoked the rules and procedures of this Protocol with regards to a specific matter shall not invoke another forum for dispute settlement on the same matter.

### Article 4 General Provisions

1. The dispute settlement mechanism of the AfCFTA is a central element in providing security and predictability to the regional trading system. The dispute settlement mechanism shall preserve the rights and obligations of States Parties under the Agreement and clarify the existing provisions of the Agreement in accordance with customary rules of interpretation of public international law.
2. Recommendations or rulings made by the DSB shall be aimed at achieving a satisfactory settlement of a dispute in accordance with rights and obligations under the Agreement.

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

3. Mutually agreed solutions to matters formally raised in accordance with the consultation and dispute settlement provisions of this Protocol shall be notified to the DSB, where any State Party may raise any point relating thereto.
4. All resolutions to matters formally raised in accordance with the consultations and dispute settlement provisions of this Protocol, including arbitration awards, shall be consistent with the Agreement.
5. Requests for conciliation, good offices, mediation and the use of dispute settlement procedures should not be intended or considered as contentious acts. If a dispute arises, States Parties will engage in these procedures in good faith in an effort to resolve the dispute. Further, complaints and counter-complaints in regard to separate matters should not be linked.
6. In their findings and recommendations, the Panel and AB shall not add to or diminish the rights and obligations of States Parties pursuant to the Agreement.

### Article 5 Dispute Settlement Body

1. The Dispute Settlement Body is hereby established in accordance with Article 20 of the Agreement to administer the provisions of this Protocol except as otherwise provided for in the Agreement.
2. The DSB shall be composed of representatives of the States Parties.
3. The DSB shall have the authority to:
  - (a) Establish Dispute Settlement Panels and an Appellate Body;
  - (b) Adopt Panel and Appellate Body reports;
  - (c) Maintain surveillance of implementation of rulings and recommendations of the Panels and Appellate Body; and
  - (d) Authorize the suspension of concessions and other obligations under the Agreement.
4. The DSB shall have its own chairperson and shall establish such rules of procedure as it deems necessary for the fulfilment of its responsibilities. The DSB Chairperson shall be elected by the States Parties.
5. The DSB shall meet as often as necessary to discharge its functions as provided for in this Protocol.
6. Where the rules and procedures of this Protocol provide for the DSB to take a decision, it shall do so by consensus.
7. The DSB shall inform the Secretariat of any dispute related to the provisions of the Agreement.

### Article 6 Procedures under the Dispute Settlement Mechanism

1. Where a dispute arises between or among the States Parties, in the first instance, recourse shall be had to consultations, with a view to finding an amicable resolution to the dispute.

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

2. Where an amicable resolution is not achieved, any party to the dispute shall, after notifying the other parties to the dispute, refer the matter to the DSB, through the Chairperson and request the establishment of a Dispute Settlement Panel, (hereinafter referred to as the "Panel") for purposes of settling the dispute.
3. The DSB shall adopt rules of procedure for the selection of the Panel, including the issues of conduct, to ensure impartiality.
4. The Panel shall set in motion the process of a formal resolution of the dispute as provided for in this Protocol and the parties to the dispute shall, in good faith, observe in a timely manner, any directions, rulings and stipulations that may be given to them by the Panel in relation to procedural matters and shall make their submissions, arguments and rebuttals in a format prescribed by the Panel.
5. The DSB shall make its determination of the matter and its decision shall be final and binding on the parties to a dispute.
6. Where the parties to a dispute consider it expedient to have recourse to arbitration as the first dispute settlement avenue, the parties to a dispute may proceed with arbitration as provided for in Article 27 of this Protocol.

### Article 7 Consultations

1. States Parties, with a view to encouraging amicable resolution of disputes, affirm their resolve to strengthen and improve the effectiveness of consultation procedures employed by States Parties.
2. Each State Party undertakes to accord consideration to, and afford adequate opportunity for, consultations regarding any representation made by another State Party concerning measures affecting the operation of the Agreement.
3. Requests for consultations shall be notified to the DSB through the Secretariat in writing, giving the reasons for the request, including identification of the issues and an indication of the legal basis for the complaint.
4. Where a request for consultations is made pursuant to this Protocol, the State Party to which the request is made shall, unless otherwise mutually agreed, reply to the request within ten (10) days after the date of its receipt and shall enter into consultations in good faith within a period not exceeding thirty (30) days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.
5. Where a State Party to which the request is made does not respond within ten (10) days after the date of receipt of the request, or does not enter into consultations within a period of thirty (30) days, or a period otherwise mutually agreed, after the date of receipt of the request, the State Party that requested the consultations may refer the matter to the DSB requesting the establishment of a Panel.
6. In the course of consultations and before resorting to further action under this Protocol, States Parties shall attempt to obtain satisfactory settlement of the dispute.
7. Consultations shall be:
  - (a) Confidential; and
  - (b) Without prejudice to the rights of any State Party in any further proceedings.
8. Where States Parties to a dispute fail to settle a dispute through consultations within sixty (60) days after the date of receipt of the request for consultations, the complaining party may refer the matter to the DSB, for

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

establishment of a Panel. Consultations may be held in the territory of the party complained against unless the parties agree otherwise. Unless States Parties to a dispute agree to continue or suspend consultations, consultations shall be deemed concluded within the sixty (60) days.

9. In cases of urgency, including cases of perishable goods:

(a) The State Party shall within ten (10) days after the date of receipt of the request enter into consultations;

(b) Where the parties fail to settle the dispute through consultations within twenty (20) days after the date of receipt of the request, the complaining party may refer the matter to the DSB for establishment of a Panel;

(c) Pursuant to the provisions of Annex 5 on Non-Tariff Barriers (Appendix 2: Procedures for Elimination and Cooperation in the Elimination of Non-Tariff Barriers), where a State Party fails to resolve an NTB after a mutually agreed solution was reached and after issuing the factual report, the requesting State Party shall resort to the dispute settlement panel stage. Notwithstanding the provisions herein, the above parties to a dispute may agree to submit the matter to arbitration in accordance with the provisions of Article 27 of this Protocol; and

(d) The parties to the dispute, the DSB and the Panel and Appellate Body shall make every effort to expedite the proceedings to the greatest extent possible.

10. Where a State Party that is not party to a dispute considers that it has substantial trade interest in consultations, that State Party may, within ten (10) days of the circulation of the request for consultations, request the parties to a dispute to be joined in the consultations.

11. Where the parties to the dispute agree that the claim of substantial interest is well founded, the third party shall be so joined to the consultations. If the request to join the consultations is not accepted, the disputing State Party shall inform the DSB and in this event the applicant State Party shall be free to request consultation.

### Article 8

#### Good Offices, Conciliation and Mediation

1. States Parties to a dispute may at any time voluntarily undertake good offices, conciliation, or mediation. Proceedings that involve good offices, conciliation, or mediation shall be confidential and be without prejudice to the rights of the States Parties in any other proceedings.

2. Good offices, conciliation or mediation may be requested at any time by any State Party to a dispute. They may begin at any time and be terminated at any time by any of the States Parties to the dispute. Once procedures for good offices, conciliation or mediation are terminated, a complaining party may then proceed with a request for the establishment of a panel.

3. When good offices, conciliation or mediation are entered into after the date of receipt of a request for consultations, the complaining party must allow for a period of sixty (60) days after the date of receipt of the request for consultations before requesting the establishment of a panel. The complaining party may request the establishment of a Panel during the sixty (60) day period if the States Parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

4. States Parties participating in proceedings under this article may suspend or terminate those proceedings, at any time, if they consider that the good offices, conciliation or mediation process has failed to settle the dispute.

5. If the States Parties to a dispute agree, the procedures for good offices, conciliation or mediation may continue while the Panel process proceeds.

6. The Head of the Secretariat may be requested by any State Party to a dispute to facilitate the process of good offices, conciliation or mediation, including offering the same. Such a request shall be notified to the DSB and the Secretariat.

Article 9  
Establishment of Panels

1. Where an amicable resolution is not achieved through consultations, the complaining party shall, in writing, refer the matter to the DSB and request the establishment of a Panel. Parties to a dispute shall be informed promptly of the composition of the Panel.

2. The request referred to in paragraph 1 of this article shall indicate whether consultations were held, identify the specific measures at issue and provide a summary of the legal basis of the complaint sufficient to present the problem clearly.

3. In case the applicant requests the establishment of a Panel with terms of reference other than the standard terms, the written request shall include the proposed text of special terms of reference.

4. A meeting of the DSB shall be convened within fifteen (15) days of the request to establish a Panel, provided that at least ten (10) days advance notice of the meeting is given to the DSB.

5. The Panel shall be constituted within ten (10) days of the meeting of the DSB referred to in paragraph 4 of this article.

Article 10  
Composition of the Panel

1. The Secretariat shall, upon entry into force of the Agreement, establish and maintain an indicative list or roster of individuals who are willing and able to serve as Panellists.

2. Each State Party may annually nominate two (2) individuals to the Secretariat for the inclusion in the indicative list or roster, indicating their area(s) of expertise related to the Agreement. The indicative list or roster of individuals shall be submitted by the Secretariat for consideration and approval by the DSB.

3. Individuals listed on the indicative list or roster shall:

(a) Have expertise or experience in law, international trade, other matters covered by the Agreement or the resolution of disputes arising under international trade agreements;

(b) Be chosen strictly on the basis of objectivity, reliability and sound judgment;

(c) Be impartial, independent of, and not be affiliated to or take instructions from, any party; and

(d) Comply with a code of conduct to be developed by the DSB and adopted by Council of Ministers.

4. The Panellists shall be selected with a view to ensuring their independence and integrity and shall have a sufficiently diverse background and a wide spectrum of experience in the subject matter of the dispute, unless the parties to the dispute agree otherwise.

5. In order to ensure and preserve the impartiality and independence of the Panellists, nationals of the disputing States Parties shall not serve on a Panel concerned with that dispute, unless the parties to the dispute agree otherwise.



## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

6. The Secretariat shall propose nominations for the Panel to the parties to the dispute. The parties to the dispute shall not oppose nominations except for compelling reasons.
7. If no agreement is reached on the composition of a Panel within thirty (30) days after the date of the establishment of a Panel, at the request of either party, the Head of the Secretariat, in consultation with the Chairperson of the DSB and with the consent of the disputing States Parties, shall determine the composition of the Panel by appointing the Panellists considered to be most appropriate.
8. The Chairperson of the DSB shall inform the States Parties of the composition of the Panel no later than ten (10) days after the date the Chairperson receives such a request.
9. Where there are two (2) disputing States Parties, the Panel shall comprise three (3) members. Where there are more than two (2) disputing States Parties, the Panel shall comprise five (5) members.
10. Panellists shall serve in their individual capacities and not as government representatives, nor as representatives of any organization.
11. Panellists shall not receive instructions or be influenced by any State Party when considering matters before them.

### Article 11

#### Terms of Reference of the Panel

1. Panellists shall have the following terms of reference unless the parties to a dispute agree otherwise, within twenty (20) days from the establishment of the Panel:
  - (a) To examine, in the light of the relevant provisions in the Agreement, cited by the parties to the dispute, the matter referred to the DSB by the complaining party; and
  - (b) To make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the Agreement.
2. Panels shall address the relevant provisions in the Agreement cited by the parties to the dispute.
3. In establishing a Panel, the DSB may authorize its Chairperson to draw up the terms of reference of the Panel in consultation with the States Parties to the dispute, subject to the provisions of paragraph 1. The terms of reference thus drawn up shall be circulated to all States Parties. If other than standard terms of reference are agreed upon, any State Party may raise any point relating thereto in the DSB.

### Article 12

#### Functions of a Panel

1. The principal function of a Panel is to assist the DSB in discharging its responsibilities under the Agreement.
2. In performing this function, a Panel shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant provisions of the Agreement and make findings to assist the DSB in making recommendations and rulings.
3. The Panel shall consult widely and regularly with the parties to a dispute and give them an adequate opportunity to develop a mutually satisfactory solution.

### Article 13

Third Parties

1. The interests of all parties to a dispute including third parties shall be taken into account during the Panel process.
2. A third party shall, after notification of its substantial interests to the Panel through the DSB, provided that disputing parties agree that the claim of substantial interest is well founded, have an opportunity to be heard and to make written submissions to the Panel.
3. Copies of the submissions shall be served on the parties to the dispute and shall be reflected in the report of the Panel.
4. If a third party considers that a measure already the subject of a Panel proceeding impairs or nullifies benefits accruing to it under the Agreement, that third party may have recourse to normal dispute settlement procedures under this Protocol. Such a dispute shall be referred to the original Panel wherever possible.
5. Third parties shall receive the submissions of the parties to a dispute at the first meeting of the Panel.

Article 14

Procedures for Multiple Complaints

1. Where more than one (1) State Party requests the establishment of a Panel related to the same matter, a single Panel may be established to examine these complaints, taking into account the rights of all States Parties concerned. A single Panel shall be established to examine such complaints whenever feasible.
2. The single Panel shall organize its examination and present its findings to the DSB in such a manner that the rights, which the parties to the dispute would have enjoyed had separate Panels examined the complaints, are in no way impaired. If one of the parties to the dispute so requests, the Panel shall submit separate reports on the dispute concerned. The written submissions by each of the complaining parties shall be made available to the other complaining parties, and each complaining party shall have the right to be present when any one of the other complaining parties presents its views to the Panel.
3. If more than one Panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as Panellists on each of the separate Panels and the timetable for the Panel process in such disputes shall be harmonized.

Article 15

Procedures for the Panel

1. The procedures of the Panel shall provide sufficient flexibility to ensure an effective and timely resolution of disputes by the Panels.
2. After consulting the parties to a dispute, the Panellists shall, within seven (7) days after the composition of the Panel and the determination of its terms of reference, fix the timetable for the proceedings of the Panel. The timetable thus drawn up shall be circulated to all States Parties.
3. In determining the timetable for the proceedings of the Panel, the Panel shall, within ten (10) working days, upon the expiry of the seven (7) days referred to in paragraph 2, set precise time limits for written submissions by the parties to a dispute. Parties to a dispute shall comply with the set time limits.
4. The period in which the Panel shall conduct its business, from the date of establishment of the Panel to the date of issuance of the final report to the parties to a dispute, shall not exceed five (5) months and in cases of urgency, including cases of perishable goods, the period shall not exceed one and a half (1½) months.

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

5. Where the parties to the dispute have failed to develop a mutually satisfactory solution, the Panel shall submit its findings in the form of a written report to the DSB. In such cases, the report of the Panel shall set out the findings of fact, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations that it makes.
6. Where a settlement of the matter among the parties to the dispute has been found, the report of the Panel shall be confined to a brief description of the case and to reporting that a solution has been reached.
7. Where a Panel determines that it cannot issue its report within five (5) months, or within one and a half (1½) months in cases of urgency, the Panel shall immediately inform the DSB in writing of the reasons for the delay together with an estimation of the period within which the Panel shall be ready to issue its report. Where a Panel cannot issue a report within the period specified in paragraph 4 of this article, the Panel shall issue the report within nine (9) months from the date of its composition.
8. The reports of the Panel shall be drafted in the absence of the parties to the dispute and shall be based on information and evidence provided by the parties and any other person, expert or institution in accordance with this Protocol.
9. The Panel shall produce a single report reflecting the views of the majority of the Panellists.
10. Without prejudice to the provisions of this article, the Panel shall follow the working procedures specified in the Annex on Working Procedures of the Panel unless the Panel decides otherwise after consulting the parties to the dispute.
11. The Panel shall, at the request of both parties to a dispute, suspend its work at any time for a period agreed by the parties not exceeding twelve (12) months and shall resume its work at the end of this agreed period at the request of the complaining party. If the complaining party does not request the resumption of the Panel's work before the expiry of the agreed suspension period, the procedure shall be terminated. The suspension and termination of the Panel's work are without prejudice to the rights of either party to a dispute in another proceeding on the same matter.

### Article 16

#### Right to Seek Information

1. The Panel shall have the right to seek information and technical advice from any source that it deems appropriate, after informing the relevant authorities of States Parties to the dispute.
2. The Panel shall have the right to seek information and technical advice from any State Party provided that the State Party is not a party to the dispute.
3. Where a Panel seeks information or technical advice from a State Party, such State Party shall, within the time set by the Panel, respond to the request made for such information.
4. Confidential information that is provided shall not be disclosed without formal authorization from the source providing the information.
5. Where a party to a dispute raises a factual issue concerning a scientific or other technical matter, the Panel may request an advisory report in writing from an expert review group with relevant qualifications and experience on the issue.
6. Rules for the establishment of the expert review group and its procedures are set forth in the Annex on Expert Review.

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

7. The Panel may seek information from any relevant source and may consult experts to obtain their opinion on any matter that may be brought before it.

### Article 17 Confidentiality

1. The deliberations of the Panels shall be confidential.
2. A party to a dispute shall treat as confidential any information submitted to a Panel and designated as such, by another party to a dispute.
3. Nothing in this Protocol shall preclude a party to a dispute from disclosing statements of its own positions to the public.
4. The reports of the Panels shall be drafted without the presence of the parties to the dispute in light of the information provided and the statements made.
5. Opinions expressed in the Panel report by the individual panellists shall be anonymous.

### Article 18 Reports of a Panel

1. A Panel shall consider the rebuttal submissions and arguments of the parties to a dispute and issue a draft report containing descriptive sections of the facts and arguments of the dispute, to the parties to a dispute.
2. The parties to a dispute shall submit their comments on the draft report in writing to the Panel, within a period set by the Panel.
3. Taking into account any comments received under paragraph 2 of this article, or on the expiration of the time set for the receipt of comments from the parties to a dispute, the Panel shall issue an interim report to the parties to a dispute, containing descriptive sections and its findings and conclusions.
4. Within a period set by a Panel, any party to a dispute may submit a written request for review of specific aspects of the interim report prior to the issuance and circulation of the final report to the parties to a dispute.
5. At the request of any party to a dispute, the Panel shall hold a meeting with the parties to a dispute on the review of specific aspects of the interim report.
6. Where no comments are received by the Panel within the period set for the receipt of comments on the interim report, the interim report shall be deemed to be the Panel's final report and it shall be promptly circulated to the parties to a dispute and any interested parties and shall be forwarded to the DSB for consideration.
7. The final report of the Panel shall include a discussion of the arguments made at the interim review stage.

### Article 19 Adoption of Report of a Panel

1. In order to provide sufficient time for the States Parties to consider the reports of the Panel, the reports shall not be brought up for consideration by the DSB before the expiration of twenty (20) days from the date on which the Panel circulated the report.

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

2. States Parties having objections to a Panel report shall give written reasons to the DSB, explaining their objections, which may include discovery of new facts, which by their nature have decisive influence on the decision provided that:

(a) Such objections must be notified to the DSB within ten (10) days prior to a meeting of the DSB at which the Panel report will be considered; and

(b) The objecting party shall serve a copy of the objection with the other parties to the dispute and to the Panel that made the report.

3. Parties to a dispute shall have the right to participate fully in the consideration of the Panel reports by the DSB and their views shall be fully recorded.

4. Within sixty (60) days from the date the final Panel report is circulated to the States Parties, the report shall be considered, adopted and signed at a meeting of the DSB convened for that purpose, unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. If a party to a dispute has notified its decision to appeal, the report by the Panel shall not be considered for adoption by the DSB until after completion of the appeal. The decision of the DSB shall be final except as otherwise provided for in this article.

5. The parties to the dispute shall be entitled to a signed copy of the adopted report within seven (7) days of its adoption.

6. An appeal on the report of the Panel shall be lodged with the DSB within thirty (30) days from the date of communication of the decision to appeal by the State Party to the DSB.

### Article 20 Appellate Body

1. A standing Appellate Body (AB) shall be established by the DSB. The AB shall hear appeals from panel cases.

2. The AB shall be composed of seven (7) persons, three (3) of whom shall serve on any one case.

3. Persons serving on the AB shall serve in rotation. Such rotation shall be determined in the working procedures of the AB.

4. The DSB shall appoint persons to serve on the AB for a four-year term, and each person may be reappointed once. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term.

5. The DSB shall appoint a person to fill the vacancy within two (2) months from the date the vacancy arose.

6. Where the DSB fails to appoint a person to fill the vacancy within two (2) months, the Chairperson of the DSB in consultations with the Secretariat shall within a period of one (1) month fill the vacancy.

7. The AB shall comprise of persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the Agreement generally.

8. Members of the AB shall not be affiliated to any government. The AB shall broadly represent the membership within the AfCFTA. All persons serving on the AB shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of the AfCFTA. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.

Article 21  
Appeals

1. Only parties to the dispute may appeal a Panel report. Third parties which have notified the DSB of a substantial interest in the matter pursuant to paragraph 2 of Article 13 of this Protocol, may make written submissions to, and be given an opportunity to be heard by, the AB.
2. As a general rule, the proceedings shall not exceed sixty (60) days from the date a party to the dispute formally notifies its decision to appeal, to the date the AB circulates its report. In fixing its timetable the AB shall take into account the provisions of paragraph 9 (d) of Article 7 of this Protocol if relevant. Where the AB considers that it cannot provide its report within sixty (60) days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed ninety (90) days.
3. An appeal shall be limited to issues of law covered in the Panel report and legal interpretations developed by the Panel.
4. The AB shall be provided with appropriate administrative and legal support as it requires.
5. The expenses of persons serving on the AB, including travel and subsistence allowance, shall be met from the AfCFTA budget in accordance with the financial rules and regulations of the AU.

Article 22  
Procedures for Appellate Review

1. Working procedures shall be drawn up by the AB in consultation with the Chairperson of the DSB and communicated to the States Parties for their information.
2. The proceedings of the AB shall be confidential.
3. The conduct of an appeal under this article shall not exceed ninety (90) days.
4. The reports of the AB shall be drafted without the presence of the parties to the dispute and in the light of the information provided and the statements made.
5. Opinions expressed in the AB report by individuals serving on the AB shall be anonymous.
6. The AB shall address each of the issues raised in accordance with paragraph 3 of Article 21 of this Protocol, during the appellate proceeding.
7. The AB may uphold, modify or reverse the legal findings and conclusions of the Panel.
8. The AB shall produce a single report reflecting the views of the majority of its members.
9. An AB report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the AB report within thirty (30) days following its circulation to the States Parties. This adoption procedure is without prejudice to the right of States Parties to express their views on an AB report.

Article 23  
Panel and Appellate Body Recommendations

Where the Panel or the AB concludes that a measure is inconsistent with the Agreement, it shall recommend that the State Party concerned bring the measure into conformity with the Agreement. In addition to its recommendations, the Panel or the AB may suggest ways in which the State Party concerned could implement the recommendations.

Article 24

Surveillance of Implementation of Recommendations and Rulings

1. States Parties shall promptly comply with recommendations and rulings of the DSB.
2. A State Party concerned shall inform the DSB of its intentions in respect of the implementation of the recommendations and rulings of the DSB, at a meeting of the DSB which shall be held within thirty (30) days after the date of adoption of the report by the Panel or the AB.
3. Where a State Party concerned finds it impracticable to comply immediately with the recommendations and rulings of the DSB, the State Party concerned shall be granted a reasonable period in which to comply on the following basis:
  - (a) Period of time proposed by the State Party concerned provided that the DSB approves the proposal; or
  - (b) In the absence of such approval a period mutually agreed by the parties to a dispute within forty-five (45) days of the date of adoption of the report of the Panel and the AB and recommendations and rulings of the DSB; or
  - (c) In the absence of such agreement, a period of time determined through binding arbitration within ninety (90) days after the date of adoption of the recommendations and rulings. In such arbitration, a guideline for the arbitrator should be that the reasonable period of time to implement Panel or AB recommendations should not exceed fifteen (15) months from the date of adoption of a Panel or AB report. However, that time may be shorter or longer, depending upon the particular circumstances.
4. If the parties cannot agree on an arbitrator within ten (10) days after referring the matter to arbitration, the arbitrator shall be appointed by the Secretariat in consultation with the DSB within ten (10) days, after consulting the parties.
5. The Secretariat shall keep the DSB informed of the status of the implementation of decisions made under this Protocol.
6. Except where the Panel or the AB has extended, pursuant to paragraph 7 of Article 15 or paragraph 2 of Article 21 of this Protocol, the time of providing its report, the period from the date of establishment of the Panel by the DSB until the date of determination of the reasonable period of time shall not exceed fifteen (15) months unless the parties to the dispute agree otherwise. Where either the Panel or the AB has extended the time of providing its report, the additional time taken shall be added to the fifteen (15) month period; provided that unless the parties to the dispute agree that there are exceptional circumstances, the total time shall not exceed eighteen (18) months.
7. Where there is disagreement as to the existence or consistency with the agreement of measures taken to comply with the recommendations and rulings, such disagreement shall be decided through recourse to these dispute settlement procedures, including wherever possible resort to the original Panel. The Panel shall circulate its report within ninety (90) days after the date of its establishment. Where the Panel considers that it cannot circulate its report within this time frame, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will circulate its report.
8. The DSB shall keep under surveillance the implementation of adopted recommendations or rulings. The issue of implementation of the recommendations or rulings may be raised at the DSB by any State Party at any

time following their adoption. Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six (6) months following the date of establishment of the reasonable period of time pursuant to paragraph 3 of this article, and shall remain on the DSB's agenda until the issue is resolved.

9. At least ten (10) days prior to each such DSB meeting, the State Party concerned shall provide the DSB with a detailed status report which shall contain among others:

- (a) The extent of the implementation of the ruling(s) and recommendation(s);
- (b) Issues, if any, affecting the implementation of the rulings and recommendations;
- (c) The period of time required by the State Party concerned to fully comply with implementation of the ruling(s) and recommendation(s).

#### Article 25

##### Compensation and the Suspension of Concessions or any Other Obligations

1. It is the duty of the States Parties to fully implement the recommendations and rulings of the DSB. Compensation and the suspension of concessions or other obligations are temporary measures available to the aggrieved party in the event that the accepted recommendations and rulings of the DSB are not implemented within a reasonable period of time. Provided that neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of the accepted recommendations. However, compensation is voluntary and, if granted, shall be consistent with the Agreement.

2. The suspension of concessions or other obligations shall be temporary and shall only be applied in as far as it is consistent with this Agreement and shall subsist until such a time as the inconsistency with the Agreement, or any other determined breach is removed, or that the State Party implements recommendations, or provides a solution to the injury caused, or occasioned by the non-compliance, or that a mutually satisfactory solution is reached.

3. In the event that the rulings and recommendations of the DSB are not implemented within a reasonable period of time, the aggrieved party may request the DSB to impose temporary measures which include compensation and the suspension of concessions.

4. If the State Party concerned fails to bring the measure found to be inconsistent with the Agreement into compliance therewith or otherwise comply with the decisions and rulings within the reasonable period of time determined pursuant to paragraph 3 of Article 24 of this Protocol, such State Party shall, if so requested, enter into negotiations with a complaining party, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed upon within twenty (20) days, a complaining party may request authorization from the DSB to suspend the application to the State Party concerned of concessions or other obligations under the Agreement.

5. In considering what concessions or other obligations to suspend, the complaining party shall apply the following principles and procedures:

- (a) The general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the Panel or AB has found a violation or other nullification or impairment;
- (b) If that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the Agreement;



## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

(c) If that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under this Agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under the Agreement; and

(d) If that party to a dispute decides to request authorization to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it shall state the reasons therefor in its request to the DSB.

6. In applying the above principles that party shall take into account:

(a) The trade in the sector under which the Panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party; and

(b) The broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations.

7. The level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment.

8. When the situation described in paragraph 4 of this article occurs, the DSB, shall grant authorization to suspend concessions or other obligations within thirty (30) days from the date of request unless the DSB decides by consensus to reject the request. However, if the State Party concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 5 have not been followed where a complaining party has requested authorization to suspend concessions or other obligations pursuant to paragraph 5 (b) or (c) of this article, the matter shall be referred to arbitration. Such arbitration shall be carried out by the original Panel, if Panellists are available, or by an arbitrator appointed by the Chairperson of the DSB and shall be completed within sixty (60) days from the date of appointment of the arbitrator. Concessions or other obligations shall not be suspended during the course of the arbitration.

9. The arbitrator, acting pursuant to paragraph 7 of this article, shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator may also determine if the proposed suspension of concessions or other obligations is allowed under the Agreement. However, if the matter referred to arbitration includes a claim that the principles and procedures set forth in paragraph 3 of this article, have not been followed, the arbitrator shall examine that claim. In the event the arbitrator determines that those principles and procedures have not been followed, the complaining party shall apply them consistent with paragraph 5 of this article. The parties to a dispute shall accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration. The DSB shall be informed promptly of the decision of the arbitrator and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request.

### Article 26

#### Costs

1. The DSB shall determine the remuneration and expenses of the Panellists, arbitrators and experts in accordance with the financial rules and regulations of the AU.

2. The remuneration of the Panellists, arbitrators and experts, their travel and lodging expenses, shall be borne in equal parts by the parties to a dispute, or in proportions determined by the DSB.

3. A party to a dispute shall bear all other costs of the process as determined by the DSB.

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

4. Parties to the dispute shall be required to deposit their share of the Panellists' expenses with the Secretariat at the time of establishment or composition of the Panel.

### Article 27 Arbitration

1. Parties to a dispute may resort to arbitration subject to their mutual agreement and shall agree on the procedures to be used in the arbitration proceedings.
2. Parties to a dispute who may have referred a dispute for arbitration pursuant to this article shall not simultaneously refer the same matter to the DSB.
3. Agreement by the parties to resort to arbitration shall be notified to the DSB.
4. Third parties shall be joined to an arbitration proceeding only upon the agreement of the parties to the arbitration proceedings.
5. The parties to an arbitration proceeding shall abide by the arbitration award and the award shall be notified to the DSB for enforcement.
6. In the event of a party to a dispute refusing to cooperate, the complaining party shall refer the matter to the DSB for determination.
7. Arbitration awards shall be enforced in accordance with the provisions of Articles 24 and 25 of this Protocol *mutatis mutandis*.

### Article 28 Technical Cooperation

1. Upon request from a State Party, the Secretariat may provide additional legal advice and assistance in respect of dispute settlement, provided that this shall be done in a manner that ensures the continued impartiality of the Secretariat.
2. The Secretariat may organize special training courses for interested States Parties concerning dispute settlement procedures and practices to enable States Parties to develop expert capacity on the Dispute Settlement Mechanism.

### Article 29 Responsibilities of the Secretariat

1. The Secretariat shall have the responsibility of assisting Panels, especially on legal, historical and procedural aspects of the matter dealt with, and of providing secretarial support.
2. The Secretariat shall facilitate the constitution of Panels in accordance with this Protocol.
3. In order to accomplish the functions under Article 28 of this Protocol, the Secretariat shall avail experts with extensive experience in international trade law to assist the Panellists.
4. The Secretariat shall undertake such other functions and duties as may be required under the Agreement and in support of this Protocol.
5. The Secretariat shall be responsible for all relevant notifications to and from the DSB and States Parties.

## 78. AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (2018)

### Article 30 Rules of interpretation

The Panel and the AB shall interpret the provisions of the Agreement in accordance with the customary rules of interpretation of public international law, including the Vienna Convention on the Law of Treaties, 1969.

### Article 31 Amendment

This Protocol shall be amended in accordance with Article 29 of the Agreement.



**REVISED CONVENTION ON THE  
PAN-AFRICAN POSTAL UNION**



79.

REVISED CONVENTION ON THE PAN-AFRICAN POSTAL UNION

**Adopted in Antananarivo, Madagascar, on 27 July 2018.**

**Entered into force upon approval on 27 July 2018.**

Preamble

*We, the Plenipotentiaries of Governments of Member States of the Pan African Postal Union (PAPU), meeting during the Fifth Extraordinary Session of the Plenipotentiary Conference from 26 to 27 July 2018 in Antananarivo, Madagascar,*

*Mindful of Resolution CM/Res.586 (XXIX) on the establishment of a Pan-African Postal Union adopted during the Twenty-ninth Ordinary Session of the Council of Ministers of the Organization of African Unity (OAU) held from 23 June to 3 July 1977 in Libreville, Gabon, and approved during the Fourteenth Session of the Assembly of Heads of State and Government of the OAU,*

*Mindful of the establishment of the Pan African Postal Union (PAPU) by the Constitutive Plenipotentiary Conference held by Member States of the OAU on 18 January 1980 in Arusha, United Republic of Tanzania,*

*Further mindful of Resolution CM/Res.810 (XXXV) on the establishment of the Pan African Postal Union adopted during the Thirty-fifth Ordinary Session of the OAU Council of Ministers held from 18 to 28 June 1980 in Freetown, Sierra Leone, and recognizing PAPU as the specialized agency of the OAU in charge of the postal sector, adopting its Constitutive Acts and calling on all Member States of the Organization to ratify the PAPU Convention,*

*In conformity with the principles and objectives set out in the Constitutive Act of the African Union,*

*Conscious of the important role postal services play as a communications vehicle and a vital infrastructure in peoples' economic, social and cultural development,*

*Taking into account changes in the international environment characterized by globalization, liberalization and the development of new information and communication technologies,*

*Convinced of the necessity to develop and maintain an effective coordination framework to ensure harmony in the development of postal services in Africa,*

*Desirous of developing the African postal services network and contributing to the strengthening of cooperation of Member States in the postal sector,*

*Aware of the need to restructure the Pan African Postal Union and update its Acts in order to adapt to the new global context,*

*Convinced of the need to promote partnership with the private sector in the development of postal services in Africa in line with the Cairo 2008 CIT Ministers Declaration and Action Plan approved by the AU Summit in June 2008,*

*Hereby agree as follows:*

Chapter I  
General Provisions

## 79. REVISED CONVENTION ON THE PAN-AFRICAN POSTAL UNION (1980, 2018)

### Article 1. Definitions

For the purposes of the Acts of the Pan African Postal Union, the terms below shall be defined as follows:

1. Accession: Act whereby a Member State of the African Union (AU) that is not a party to the PAPU Convention decides to submit itself to same by presenting a ratification instrument to the General Secretariat through diplomatic channels;
2. Accreditation: Recognition of a person's capacity to represent a State during PAPU meetings;
3. Adjournment of discussions/deliberations: A short postponement of deliberations on a subject matter on the agenda to a specified time;
4. Adjournment of session: A formal postponement of a session to a specified date or to an unspecified date;
5. African Union (AU): Continental organization composed of 55 African countries and established in Durban, South Africa, in 2002 pursuant to the Sirte Declaration of 9 September 1999. It replaces the Organization of African Unity (OAU);
6. Associate Member: Any entity, company and private or public sector organization, directly or indirectly engaged in postal services or activities related to postal services, regardless of their legal status, corporate purpose, head office or main office location, nationality of shareholders, share capital or key leaders, admitted at the said entity, company or organization's request to participate in any PAPU activities that are related to their core functions, in line with the requirements and limits set out in the Acts of the Union;
7. Closing of discussions/deliberations: Moment following which no speaker shall be allowed to take the floor after the list of speakers has been exhausted;
8. Closing of session: End of session that happens when all items on the agenda have been exhausted;
9. Digital economy: Economic and social activities that are generally conducted using online platforms like the Internet, mobile networks, etc. E-commerce is a key component of the digital economy;
10. Denunciation: Act whereby a Member State that is a party to the Convention of the Union withdraws therefrom by giving notice to the General Secretariat through diplomatic channels;
11. Dispute: Difference in opinion or interests between Member States arising from the Acts of the Union;
12. Financial Regulations: Regulations governing the management and control of the Union's finances;
13. Headquarters Country: Member State, whose request to accommodate the headquarters of the Union is granted by the Plenipotentiary Conference and concludes a headquarters agreement with the General Secretariat;
14. In camera sitting: Exception to the principle of public debate by barring access to the general public;
15. Member State: A Member State of the AU that has signed and ratified the PAPU Convention or acceded to same;
16. Postal service: All postal activities, the scope of which is determined and regulated by the Acts of the Universal Postal Union (UPU) and national regulations. These shall include mail/courier items, financial and digital services or other socio-economic activities as may be defined in national laws;



## 79. REVISED CONVENTION ON THE PAN-AFRICAN POSTAL UNION (1980, 2018)

17. Ratification: Statutory approval of the Acts of the Union by the competent authorities of a Member State according to its domestic legislative and/or regulatory formalities;
18. Ratification instrument: A diplomatic act whereby the Head of State or a competent authority of a country confirms the signing of the Acts of the Union by the country's plenipotentiary or its accession to the said Acts. The ratification instrument shall be deposited with the PAPU General Secretariat according to the procedure set forth in the Convention;
19. Restricted Union: Postal organization composed of either Member States only, designated operators only or regulatory bodies of a specific region, that is aimed at strengthening cooperation and fostering development in the postal sector;
20. Session: Period during which an organ or a committee of the Union meets to deliberate;
21. Sitting: A formal meeting to consider specific items on the agenda of the session of an organ or committee of the Union;
22. Staff Rules and Regulations: Regulations outlining the fundamental conditions of service, rights, duties and obligations of staff members of the Union;
23. Suspension of a Member: Decision by the Plenipotentiary Conference or the Administrative Council, as the case may be, to temporarily withdraw the rights and privileges of a Member under the Acts of the Union with effect from a specified date;
24. Sustainable development: Kind of economic development aimed primarily at reconciling economic and social progress with environmental protection, considering the latter as a common heritage to be passed on to future generations;
25. Universal Postal Service (UPS): A public offering of good-quality basic postal services, delivered in an inclusive and continuous manner, at any point of the territory and at affordable rates;
26. Universal Postal Union (UPU): Specialized institution of the United Nations in charge of outlining policy guidelines and directives for all Member States on how to deliver universal postal services and conduct exchange of mail items and financial services among all designated postal operators in Member States;
27. Withdrawal of membership: Sovereign and unilateral act whereby a member decides to leave the Union temporarily or permanently.

### Article 2. Establishment of the Union

1. The Convention establishing the Pan African Postal Union (PAPU), hereinafter referred to as "the Union" signed in Arusha, Tanzania, on 18 January 1980 and its subsequent amendments are hereby repealed and replaced.
2. The Union shall be a specialized agency of the African Union (AU) in the postal field.

### Article 3. Legal Status of the Union

1. The Union shall be an intergovernmental organization, which shall enjoy international legal status and capacity.
2. It shall enjoy all the powers necessary for the attainment of its objectives. Member States shall grant the Union privileges and immunities on their territories to enable it to fully achieve its objectives.

## 79. REVISED CONVENTION ON THE PAN-AFRICAN POSTAL UNION (1980, 2018)

### Article 4. Privileges and Immunities

The Union shall enjoy the status, privileges and immunities accorded to international organizations, in line with the relevant texts of the African Union on granting immunities and privileges, including the issuance of laissez-passer and diplomatic passports to its officials.

As a specialized agency of the organization of the African Union in the postal field, the Union shall enjoy privileged relations with the AU. To this end, the Union and the AU shall conclude an agreement.

### Article 5. Composition of the Union

The Union shall be composed of Member States of the African Union who have signed or acceded to the Convention in accordance with Articles 26 and 27.

### Article 6. Membership

The Union's membership is open to:

1. Member States of the African Union as defined in Article 5;
2. Associate Members who upon application and admission become members pursuant to the rules provided in the Detailed Regulations.

### Article 7. Headquarters of the Union

1. The headquarters of the Union shall be in Arusha in the United Republic of Tanzania.
2. The General Secretariat shall conclude a headquarters agreement with the government of the host country of the Union.

### Article 8. Official and Working Languages of the Union

1. The working languages of the Union and all its organs shall be, if possible, African languages, Arabic, English, French, Spanish and Portuguese.
2. Each language group shall bear the cost of translation and interpretation for its language.

## Chapter II Objectives

### Article 9. Objectives of the Union

The objectives of the Union shall be to:

1. Foster development cooperation among Member States in the area of postal services;
2. Promote and facilitate access to quality universal postal services;
3. Promote and facilitate reform of the postal sector;
4. Promote and facilitate technical assistance in the postal sector;

## 79. REVISED CONVENTION ON THE PAN-AFRICAN POSTAL UNION (1980, 2018)

5. Promote and advance common positions of Member States on postal issues;
6. Promote research and development in the postal sector;
7. Promote regional projects for developing the African Postal network;
8. Promote the development of new postal products and services;
9. Promote the sustainable development of the postal sector;
10. Promote affirmative action in the development of the postal sector.

### Chapter III Organs of the Union

#### Article 10. Organs of the Union

The organs of the Union shall be as follows:

1. The Plenipotentiary Conference;
2. The Administrative Council; and
3. The General Secretariat.

### Chapter IV Composition and Functions of the Organs of the Union

#### Article 11. Plenipotentiary Conference

The Plenipotentiary Conference hereinafter referred to as “the Conference” shall be the supreme organ of the Union, which shall ensure the attainment of the Union’s objectives. It shall:

1. Be composed of ministers responsible for postal services of Member States or any other plenipotentiary duly designated by a Member State;
2. Convene in an ordinary session every four (4) years;
3. Subject to the consent of two-thirds of Member States, convene an extraordinary session or:
  - 3.1 At the decision of the Ordinary session of the Conference; or
  - 3.2 At the request of one or several Member States, the Administrative Council or at the instance of the Secretary-General.

African Liberation Movements recognized by the African Union shall, at their request, be admitted as observers to the sessions of the Conference.

#### Article 12. Administrative Council

1. The Administrative Council, hereinafter referred to as “the Council”, shall consist of twenty-five (25) Member States elected by the Conference following the geographical distribution of the African Union appended hereto. Its term of office shall be four (4) years.

## 79. REVISED CONVENTION ON THE PAN-AFRICAN POSTAL UNION (1980, 2018)

2. In between the sessions of the Conference, the Council shall be the decision-making body of the Union within the limits of the powers delegated to it by the Conference.
3. The Council shall convene in an ordinary session once a year.
4. At the request of one or more Member States of the Union, or the Secretary-General, and subject to the agreement of two-thirds of the Member States of the Administrative Council, the Council shall meet in an extraordinary session.
5. The Council shall report to the Conference.

### Article 13. General Secretariat

1. The General Secretariat is the executive body of the Union. It shall consist of the Secretary-General, Assistant Secretary-General and other staff as may be required from time to time for the effective performance of the Union. The General Secretariat shall be headed by a Secretary-General assisted by an Assistant Secretary-General.
2. The Secretary-General and the Assistant Secretary-General shall be elected by the Conference for a four-year period. They shall be eligible for re-election only once. At the end of the second term of office, neither of them can apply again for either post.<sup>1</sup>
3. The Secretary-General shall report to the Council and the Conference.
4. The duties of the Assistant Secretary-General shall be defined in the Detailed Regulations.

### Article 14. Administrative and Technical Committees

1. The Conference or the Council may from time to time as is necessary appoint Administrative or Technical Committees in order to give effect to the functions of the Union.
2. The Committees shall undertake specific studies, operational activities or any other matter entrusted to them by the Conference or the Council and shall report to the organ that established it.

## Chapter V Finances of the Union

### Article 15. Revenue of the Union

The Revenue of the Union shall consist of:

1. Mandatory contributions made by Member States in accordance with the scale of assessment established by the Conference;

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<sup>1</sup> Pursuant to Decision No. 02/PAPU/PC/IX/2016 by the Ninth Ordinary Session of the Plenipotentiary Conference, the ineligibility of the Assistant Secretary-General as enacted by Article 13-2 of the Convention should apply in the following two cases:

- (a) The candidate shall not be eligible for re-election for a third consecutive term where he/she has been elected twice consecutively for the same position;
- (b) The candidate shall not be eligible for re-election for a third consecutive term where he/she has already been elected twice consecutively for each of the two positions.

## 79. REVISED CONVENTION ON THE PAN-AFRICAN POSTAL UNION (1980, 2018)

2. Mandatory contributions of Associate Members;
3. Voluntary contributions from Member States and Associate Members;
4. Donations from non-Member States and organizations;
5. Revenue derived from products and activities implemented by the Union;
6. Income generated from investments approved by the Council;
7. Penalties/fines levied for breach of the Convention.

### Article 16. Expenditure of the Union

Expenditure by the Union shall comprise expenses relating to:

1. Sessions of the Conference, the Council and meetings of the Administrative and Technical Committees;
2. Running of the General Secretariat;
3. Implementation of the Programme of Action of the Union;
4. Any other activity relating to achievement of the objectives of the Union and approved by the Plenipotentiary Conference and/or the Administrative Council.

### Article 17. Advance of Funds to the Union

The government of the host-country shall to the fullest extent possible, advance to the Union, funds necessary for its operation, pending reimbursement in accordance with the headquarters agreement.

## Chapter VI

### Classification of the Acts of the Union

#### Article 18. Classification of the Acts of the Union and other Regulations

1. The Convention shall be the basic Act of the Union. It supersedes any other Act of the Union.
2. The Detailed Regulations shall give effect to the Convention and shall be subordinate to it.
3. All the other Acts prepared by organs of the Union shall be consistent with the Convention and its Detailed Regulations.
4. The Plenipotentiaries shall adopt Detailed Regulations to ensure the application of this Convention and the functioning of the organs of the Union.
5. The Conference and the Council shall adopt their own Rules of Procedure.

## Chapter VII

### Rights and Obligations of Member States of the Union

#### Article 19. Obligations of Member States

All members of the Union shall:

## 79. REVISED CONVENTION ON THE PAN-AFRICAN POSTAL UNION (1980, 2018)

1. Respect and abide by the provisions of the Convention and its Detailed Regulations;
2. Participate in all activities, meetings and conferences of the Union;
3. Pay their contributions pursuant to the Detailed Regulations of the Convention.

### Article 20. Rights of Members

1. All Member States shall enjoy the same rights.
2. Each Member State shall have one vote at meetings of the Union.
3. Any Member State whose contributions to the Union are in arrears for two consecutive years shall forfeit the right to:
  - (a) Vote;
  - (b) Hold any positions within the Union;
  - (c) Technical assistance from the Union;
  - (d) Host meetings of organs of the Union.
4. Associate Members shall not have a right to vote and hold any positions within the Union.

### Article 21. Interpretation and Application of the Acts

Any dispute arising from the interpretation or application of the Convention during meetings shall be settled by a simple majority of Member States present and voting.

### Article 22. Alternative Dispute Resolution

Any disputes between Members regarding implementation of the Convention shall be submitted to the Secretary-General in line with the provisions as laid out in Article 33 of the Detailed Regulations.

## Chapter VIII Development Cooperation

### Article 23. Cooperation with International Bodies

1. With a view to promoting the improvement, harmonization and development of African postal services, the Union shall maintain privileged relations with the Universal Postal Union.
2. The Union shall collaborate with Restricted Unions, African Regional Economic Communities (RECs) and international entities whose interests and activities are related to postal services.

### Article 24. Agreements

Agreements may, whenever necessary, be concluded between the Union and international organizations.

### Article 25. Cooperation among Members of the Union

Members shall promote mutual cooperation of all kinds in the postal field.

## Chapter IX

### Signature, Accession and Denunciation of the Acts of the Union

#### Article 26. Signing of the Convention and Notification

1. The Plenipotentiaries shall sign the Convention presented in three (3) copies in English and three (3) copies in French. The General Secretariat shall keep one (1) copy, while the other two (2) shall be deposited with the host country of the Union and the African Union Commission, respectively.
2. A certified copy conforming to its text shall be forwarded to each Member State by the Secretary-General of the Union.

#### Article 27. Accession to the Convention

1. Any Member State that has not signed the Convention may accede to it.
2. The instrument of accession shall be deposited with the Secretary-General of the Union by diplomatic channels. It shall enter into force on the date it is deposited, unless otherwise stipulated.
3. The Secretary-General shall notify Member States of such accession and forward to each of them a certified copy of the instrument.

#### Article 28. Denunciation of the Convention

1. Any Member State of the Union may denounce the Convention by notification addressed to the Secretary-General through diplomatic channels.
2. The Secretary-General shall notify the denunciations to the other Member States.
3. This denunciation, which entails withdrawal by the Member State, shall become operative one (1) year after the date of receipt of the notification by the Secretary-General. It shall not exempt the Member State concerned from fulfilling its outstanding financial obligations to the Union.

## Chapter X

### Final Provisions

#### Article 29. Suspension of Membership

The Conference may decide by a two-thirds majority of Member States present and voting to suspend a member that:

- 1.1 Practices a policy contrary to the objectives and principles of the Union;
  - 1.2 Does not, for three (3) consecutive years, honour its financial obligations to the Union;
  - 1.3 Does not respect the decisions of the Conference which are binding on Members.
1. The Conference may, by two-thirds majority of votes cast, revoke the suspension of a member.
  2. The suspension or withdrawal of membership does not exempt a member from fulfilling its financial obligations during the period of suspension or withdrawal.

## 79. REVISED CONVENTION ON THE PAN-AFRICAN POSTAL UNION (1980, 2018)

3. The suspension of membership for non-payment of contributions shall cease as soon as the member honours all its financial obligations to the Union.

### Article 30. Amendment to the Convention

1. Any Member State may submit a written proposal to amend the Convention.
2. The Secretary-General shall communicate amendment proposals to Member States at least six (6) months before they are submitted to the Conference for consideration.
3. Amendments shall be adopted by two-thirds of Member States present and voting during a session of the Conference and shall enter into force.

### Article 31. Detailed Regulations of the Convention

The Plenipotentiaries shall adopt Detailed Regulations to ensure the application of this Convention and the operation of the organs of the Union.

### Article 32. Rules of Procedure

The Conference shall adopt its Rules of Procedure. The other organs of the Union shall adopt their own Rules of Procedure if they deem it necessary.

### Article 33. Entry into force

This Convention shall enter into force immediately it is approved by the Plenipotentiaries.



**TREATY FOR THE ESTABLISHMENT OF THE  
AFRICAN MEDICINES AGENCY (AMA)**



80.

**TREATY FOR THE ESTABLISHMENT OF THE AFRICAN MEDICINES AGENCY (AMA)**

**Adopted in Addis Ababa, Ethiopia, on 11 February 2019.**

**Entered into force on 5 November 2021.**

*We, Member States of the African Union,*

*Affirming* that quality-assured, safe and efficacious medical products are fundamental to the health and safety of the population of Africa,

*Aware* that weak regulatory systems have resulted in the circulation of substandard and falsified (SF) medical products in many of the African Union Member States,

*Cognizant* that the existence of SF products poses a risk to public health, harms patients and undermines confidence in healthcare delivery systems,

*Recalling* the 55th Decision of the African Union (AU) Assembly/AU/Dec.55 (IV) taken during the Abuja Summit in January 2005, which requested the AU Commission to develop a Pharmaceutical Manufacturing Plan for Africa (PMPA) within the framework of the New Partnership for Africa's Development (NEPAD), aimed to improve access to good quality, safe and efficacious medical products and health technologies for the African population,

*Further recalling* the Eighteenth Ordinary Session of the Heads of State and Government Orientation Committee, 29 to 30 January 2012, Decision Assembly/AU/Dec.413 (XVIII), paragraph 6, which endorsed the African Medicines Regulatory Harmonization (AMRH) Programme implemented through the Regional Economic Communities (RECs),

*Recognizing* the aspirations of the AU Roadmap on Shared Responsibility and Global Solidarity for the AIDS, tuberculosis and malaria response in Africa (Assembly AU/Dec.442 (XIX)), Pillar II on access to medicines which aims to accelerate and strengthen regional medicines regulatory harmonization initiatives and lay the foundation for a single African regulatory agency,

*Being cognizant* of the challenges posed by the lack of availability of medicines and vaccines during public health emergencies of international concern and, in particular, during the recent outbreak of the Ebola virus disease (EVD) in Africa and the attendant dearth of medical product candidates for clinical trials,

*Recognizing* the contribution of the African Vaccines Regulatory Forum (AVAREF) in facilitating approval of EVD candidate therapies and vaccines and efforts undertaken by the African Union (AU), Regional Economic Communities (RECs) and regional health organizations (RHOs) to mobilize human, financial and material resources and continental expertise to deal with the outbreak of EVD, and the subsequent establishment of regional expert working groups (EWGs) on clinical trials oversight in the East African Community (EAC) and the Economic Community of West African States (ECOWAS) as part of the implementation of the decision of the Assembly of the Union, Assembly/AU/Dec.553 (XXIV) on Ebola Virus Disease (EVD) Outbreak, of January 2015,

*Desiring* the use of continental institutional, scientific and regulatory resources to improve access to safe, efficacious and quality medicines, and aware of the establishment of the African Medicines Regulatory Harmonization (AMRH) in 2009, under the management and guidance of the NEPAD Agency working with RECs and RHOs, to facilitate harmonization of regulatory requirements and practice among the national medicines regulatory authorities (NMRAs) of the AU Member States to meet internationally acceptable standards, and provide a favourable regulatory environment for pharmaceutical research and development, local production and trade across countries on the African continent,

## 80. TREATY FOR THE ESTABLISHMENT OF THE AFRICAN MEDICINES AGENCY (2019)

*Appreciating* the launch and subsequent implementation of Medicines Regulatory Harmonization (MRH) Programmes and collaborative efforts in and between the East African Community (EAC), the Economic Community of West African States (ECOWAS), the West African Economic and Monetary Union (WAEMU), and the Southern African Development Community (SADC),

*Recognizing* other ongoing efforts on cooperation between the Economic Community of Central African States (ECCAS) and the Organization for Coordination in the Fight against Endemic Diseases in Central Africa (OCEAC) on implementation of the AMRH Programme in the Central African region, and the North-Eastern Africa regional collaboration and harmonization under the leadership of the Intergovernmental Authority on Development (IGAD),

*Noting* the commitment made by the African Ministers of Health during their first meeting held on 17 April 2014 in Luanda, Angola, jointly organized by the African Union Commission and the World Health Organization (WHO) to prioritize investment in regulatory capacity development, to pursue efforts towards convergence and harmonization of medical products regulation in RECs, to allocate adequate resources for the establishment of the African Medicines Agency (AMA), and the subsequent endorsement of the establishment of the AMA Task Team to spearhead the process,

*Recalling* the July 2012 AU Assembly Declaration, Assembly/AU/Decl.2 (XIX) on the report of AIDS Watch Africa (AWA) Action Committee of Heads of State and Government in which the Council decided that the African Medicine Regulatory Harmonization (AMRH) Initiative shall serve as a foundation for the establishment of the AMA,

*Further recalling* the AU Assembly Decision, Assembly/AU/Dec.589 (XXVI) of January 2016 on the first STC on Legal and Justice Affairs, Doc. EX.CL/935 (XXVIII), in which the Assembly adopted the AU Model Law on Medical Products Regulation as an instrument to guide AU Member States in the enactment or review of national medicines laws, and a call to Member States to sign and ratify the said legal instrument, where applicable, as expeditiously as possible to enable its entry into force,

*Convinced* that the efforts to coordinate the regulatory systems strengthening and harmonization initiative under the leadership of African Medicines Agency will provide improved sovereign control and regulation of medical products that will allow African Union Member States to provide for efficient and effective protection of public health against risks associated with use of SF, and will facilitate expeditious approval of products that address the health needs of the African populace, especially for diseases that disproportionately affect Africa,

*Have agreed* as follows:

### Part One The African Medicines Agency and its Objectives

#### Article 1 Acronyms

“AU” refers to the African Union;

“Africa CDC” refers to the Africa Centres for Disease Control and Prevention;

“AMA” refers to the African Medicines Agency;

“AMRC” refers to the African Medicines Regulators Conference;

“AMRH” refers to the African Medicines Regulatory Harmonization Initiative of the African Union;

“AP” refers to active pharmaceutical ingredient;

“GMP” refers to good manufacturing practices;

“NEPAD” refers to the New Partnership for Africa’s Development;

“NMRA” refers to the National Medicines Regulatory Authority;

“OAU” refers to the Organization of African Unity;

“PMPA” refers to refers to the Pharmaceutical Manufacturing Plan for Africa;

“RCOREs” refers to the Regional Centres of Regulatory Excellence;

“RECs” refers to the Regional Economic Communities recognized by the African Union;

“RHOs” refers to the regional health organizations;

“TCs” refers to technical committees;

“TWG” refers to the technical working group comprised of experts constituted under this Treaty;

“WHO” refers to the World Health Organization.

## Article 2 Definitions

In this Statute, unless the context requires otherwise:

“Agency” means the Agency established under Article 3;

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

“Blood products” means any therapeutic substance prepared from human blood for use in the treatment of diseases or other medical conditions;

“Board” means the Governing Board of the AMA;

“Bureau” means the Bureau of the Conference of States Parties;

“Commission” means the African Union Commission;

“Complementary medicines” means any of a range of health therapies that fall beyond the scope of conventional medicine but may be used alongside it in the treatment of diseases and other medical conditions;

“Conference of States Parties” means the Conference of States Parties to this Treaty;

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

“Diagnostic” means a medicine or medical device or substance used for the analysis or detection of diseases or other medical conditions;

“Director General” means the Director General of the AMA;

## 80. TREATY FOR THE ESTABLISHMENT OF THE AFRICAN MEDICINES AGENCY (2019)

“Food supplement” means a product intended for ingestion that contains a dietary ingredient intended to add further nutritional value to (supplement) the diet;

“Medical device” means any instrument, apparatus, implement, machine, appliance, implant, in vitro reagent or calibrator, software, material or other similar or related article:

- (a) Intended by the manufacturer to be used, alone or in combination, for humans or animals for:
  - (i) Diagnosis, prevention, monitoring, treatment or alleviation of disease;
  - (ii) Diagnosis, monitoring, treatment, alleviation of or compensation for an injury;
  - (iii) Investigation, replacement, modification or support of the anatomy or of a physiological process;
  - (iv) Supporting or sustaining life;
  - (v) Control of conception;
  - (vi) Disinfection of medical devices; or
  - (vii) Providing information for medical or diagnostic purposes by means of in vitro examination of specimens derived from the human body; and
- (b) Which does not achieve its primary intended action in or on the human or animal body by pharmacological, immunological or metabolic means, but which may be assisted in its intended function by such means;

“Medical products” means medicines, vaccines, blood and blood products, diagnostics and medical devices;

“Medicine” means any substance or mixture of substances used or purporting to be suitable for use or manufactured or sold for use in:

- (a) The diagnosis, treatment, mitigation, modification or prevention of disease, abnormal physical or mental state or the symptoms thereof in humans; or
- (b) Restoring, correcting or modifying any somatic or psychic or organic function in humans, and includes any veterinary medicine;

“Member States” means the Member States of the African Union;

“Other regulated products” means complementary medicines, traditional medical products, cosmetics, food supplements and related products;

“Secretariat” means the Secretariat of the AMA;

“State Party” means an AU Member State that has ratified or acceded to this Treaty;

“Traditional medical product” means an object or substance used in traditional health practice for:

- (a) The diagnosis, treatment or prevention of a physical or mental illness; or

## 80. TREATY FOR THE ESTABLISHMENT OF THE AFRICAN MEDICINES AGENCY (2019)

(b) Any curative or therapeutic purpose, including the maintenance or restoration of physical or mental health or well-being in human beings, but does not include a dependence-producing or dangerous substance or drug;

“Treaty” means the Treaty for the Establishment of the African Medicines Agency.

### Article 3 Establishment of the AMA

The African Medicines Agency is hereby established as a Specialized Agency of the AU.

### Article 4 Objectives of the AMA

The main objective of the AMA is to enhance capacity of States Parties and RECs, to regulate medical products in order to improve access to quality, safe and efficacious medical products on the continent.

### Article 5 Guiding principles

The guiding principles of the AMA shall be as follows:

1. Leadership: The AMA is an institution that provides strategic direction and promotes good public health practice in States Parties through capacity building, and the promotion of continuous quality improvement in the delivery of medical products regulation;
2. Credibility: The AMA’s strongest asset is the trust it cultivates with its beneficiaries and stakeholders as a respected, evidence-based institution. It will play an important role in championing effective communication and information sharing across the continent;
3. Ownership: the AMA is an Africa-owned institution. Parties will have primary ownership of the AMA to ensure that the financial, human, infrastructural and other resources are adequate for performing its functions;
4. Transparency and accountability: The AMA shall operate in accordance with generally accepted international standards of good governance, transparency and accountability:
  - (a) Timely dissemination of information, an open interaction and unimpeded information exchange between the AMA, on the one hand, and RECs and Member States, on the other;
  - (b) Accountability to States Parties in all its operations;
  - (c) Independent decisions, based on current scientific evidence, professional ethics and integrity. The detailed evidence of its decision-making process and the justification for its decisions shall be fully respected;
5. Value-addition: In every strategic aim, objective or activity, the AMA will demonstrate how its initiative adds value to the medical products regulatory activities of States Parties and other partners;
6. Confidentiality: The AMA shall adhere to the principles of confidentiality in all its operations;
7. Commitment to sound quality management: In all its functions the AMA shall adhere to international standards of quality management and create the conditions for continuous improvement of its regulatory practices and those of NMRAs of Member States of the African Union.

Article 6  
Functions

The AMA shall perform the following functions:

- (a) Coordinate and strengthen ongoing initiatives to harmonize medical products regulation and enhance the competence of GMP inspectors to do so;
- (b) Coordinate the collection, management, storage and sharing of information on all medical products including SF medical products, with all its States Parties and globally;
- (c) Coordinate joint reviews of applications for the conducting of clinical trials and provide technical support in quality control of drugs at the request of Member States which do not have the structures to carry out these examination/controls/checks;
- (d) Promote the adoption and harmonization of medical products regulatory policies and standards, as well as scientific guidelines, and coordinate existing regulatory harmonization efforts in the RECs and RHOs;
- (e) Designate, promote, strengthen, coordinate and monitor RCOREs with a view to developing the capacity of medical products regulatory professionals;
- (f) Coordinate and collaborate, where required and on a regular basis, the inspection of drug manufacturing sites, including the regulatory oversight and safety monitoring of medical products, as determined by States Parties and/or the AMA, and make reports available to States Parties;
- (g) Promote cooperation, partnership and recognition of regulatory decisions, in support of regional structures and NMRAs, that takes into account mobilization of financial and technical resources to ensure sustainability of the AMA;
- (h) Convene, in collaboration with the WHO, the AMRC and other bodies, meetings related to medical products regulation in Africa;
- (i) Provide regulatory guidance, scientific opinions and a common framework for regulatory actions on medical products, as well as priority and emerging issues and pandemics in the event of a public health emergency on the continent with cross-border or regional implications where new medical products are to be deployed for investigation and clinical trials;
- (j) Examine, discuss and/or express regulatory guidance on any regulatory matter within its mandate, either on its own initiative or at the request of the African Union, RECs, or States Parties;
- (k) Provide guidance on regulation of traditional medical products;
- (l) Provide advice on the marketing authorization application process for the priority drugs described by the States Parties or on the products proposed by the pharmaceutical laboratories;
- (m) Monitor the medicines market through the collection of samples in every State Party to ensure the quality of selected drugs, have them analyzed and provide the results to States Parties and other interested parties, who will thus have reliable information on the quality of the drugs circulating in their countries and, where necessary, will take appropriate measures;
- (n) Develop systems to monitor, evaluate and assess the comprehensiveness of national medical products regulatory systems with the view to recommend measures that will improve efficiency and effectiveness;



## 80. TREATY FOR THE ESTABLISHMENT OF THE AFRICAN MEDICINES AGENCY (2019)

- (o) Evaluate and decide on selected medical products, including complex molecules, for treatment of priority diseases/conditions as determined by the African Union, and WHO;
- (p) Provide technical assistance and resources, where possible, on regulatory matters to States Parties that seek assistance and pool expertise and capacities to strengthen networking for optimal use of the limited resources available;
- (q) Coordinate access to and network the services available in quality control laboratory services within national and regional regulatory authorities; and
- (r) Promote and advocate for the adoption of the AU Model Law on Medical Products Regulation in States Parties and RECs to facilitate regulatory and legal reforms at continental, regional and national levels.

### Part Two

#### Status of the African Medicines Agency and Its Staff

#### Article 7

##### Legal Personality

1. The AMA shall have the legal personality that is necessary for the fulfilment of its objectives and the exercise of its functions in accordance with this Treaty.
2. For the smooth fulfilment of its objectives, the AMA shall, in particular, have the legal capacity to:
  - (a) Enter into agreements;
  - (b) Acquire and dispose of movable and immovable property; and
  - (c) Institute and defend legal proceedings.

#### Article 8

##### Privileges and Immunities

The General Convention on the Privileges and Immunities of the OAU and the Additional Protocol to the OAU General Convention on Privileges and Immunities shall apply to the AMA, its members, its international personnel, premises, property and assets.

#### Article 9

##### Headquarters of the AMA

1. The headquarters of the AMA shall be determined by the Assembly of the Union.
2. The AUC shall enter into a host agreement with the government of the host country in which the AMA headquarters will be situated with regard to the provision of the premises, facilities, services, privileges and immunities for the purposes of the efficient operation of the AMA.

### Part Three

#### Administration and Institutional Framework

#### Article 10

##### Organs of the AMA

The AMA shall have the following organs:

## 80. TREATY FOR THE ESTABLISHMENT OF THE AFRICAN MEDICINES AGENCY (2019)

- (a) The Conference of States Parties;
- (b) The Governing Board;
- (c) The Secretariat; and
- (d) The technical committees.

### Article 11

#### Establishment of the Conference of States Parties

The Conference of States Parties is hereby established as the highest policy-making organ of the AMA. It shall have the power to undertake such functions as are provided for in this Treaty and as may otherwise be necessary to achieve the objectives of this Treaty.

### Article 12

#### Composition of the Conference of States Parties

1. The Conference of States Parties shall be composed of all Member States of the African Union who ratify or accede to this Treaty.
2. The States Parties shall be represented by ministers responsible for health or their duly authorized representatives.
3. The Conference of States Parties shall, after due consultation and on the basis of rotation and geographical distribution, elect a Chairperson and other members of the Bureau, namely, three (3) Vice-Chairpersons and a Rapporteur.
4. The Members of the Bureau shall hold office for a period of two (2) years.
5. The Bureau will meet at least once every year.
6. In the absence of the Chairperson or in case of a vacancy, the Vice-Chairpersons or the Rapporteur in order of their election shall act as the Chairperson.
7. The Conference of States Parties shall have the right to invite observers to attend its meetings, and such observers shall not have the right to vote.

### Article 13

#### Session of the Conference of States Parties

1. The Conference of States Parties shall meet at least once every two years in ordinary session, and in an extraordinary session at the request of the Chairperson, the Bureau, the Governing Board or two thirds of the States Parties.
2. The quorum of the Conference of States Parties shall be a simple majority of the States Parties to the AMA.
3. Decisions of the Conference of States Parties shall be taken by consensus, failing which by a two-thirds majority of the States Parties.

### Article 14

Functions of the Conference of States Parties

The Conference of States Parties shall be responsible for the following functions:

- (a) Set the amount of the annual contribution and special contribution by States Parties to the budget of the AMA;
- (b) Appoint and dissolve, on good cause, the Governing Board;
- (c) Adopt regulations setting out the powers, duties and conditions of service of the Director General;
- (d) Approve the structure and administrative guidelines of the Secretariat, as well as adopt its governing rules and regulations;
- (e) Provide policy direction to the AMA;
- (f) Recommend the location for the headquarters of the AMA in accordance with the AU criteria adopted by in 2005;
- (g) Approve Regional Centres of Regulatory Excellence (RCOREs), on the recommendation of the Governing Board which makes such recommendation after consultation with the Bureau;
- (h) Adopt a scheme to alternate the terms of members of the Board, to ensure that the Board at all times comprises a mix of new and old members;
- (i) Adopt its rules of procedure and for any subsidiary organs;
- (j) Recommend any amendments to this Treaty to the Assembly for consideration.

Article 15

Establishment of the Governing Board

The Governing Board of the AMA is hereby established by this Treaty. It shall be appointed by and answerable to the Conference of States Parties.

Article 16

Composition of the Governing Board

1. The Board shall consist of nine (9) members, composed as follows:
  - (a) Five (5) heads of NMRAs, one (1) drawn from each of the AU-recognized regions;
  - (b) One (1) representative of RECs responsible for regulatory affairs, to be appointed by the RECs on a rotational basis;
  - (c) One (1) representative of regional health organizations responsible for regulatory affairs, on a rotational basis appointed by the RHOs;
  - (d) One (1) representative of national committees responsible for bioethics, on a rotational basis and appointed by the RECs;
  - (e) The Commissioner for Social Affairs, AUC.

## 80. TREATY FOR THE ESTABLISHMENT OF THE AFRICAN MEDICINES AGENCY (2019)

2. The Board shall elect its own Chairperson and Vice-Chairperson from among the heads of NMRA's.
3. The Legal Counsel of the AMA or his/her representative shall be an ex-officio member of the Board and shall attend meetings to provide legal advice.
4. Remuneration for members of the Board shall be determined by the Conference of States Parties.
5. The Director General of the AMA shall serve as the Secretary of the Board.

### Article 17 Sessions of the Governing Board

1. The Board shall meet:
  - (a) In regular session at least once a year;
  - (b) In extraordinary session at the request of the Chairperson of the Board, the Bureau of the Conference of States Parties or a simple majority of the members of the Board.
2. The quorum for meetings of the Board shall be two thirds of the membership of the Board.
3. The decision of the Board shall be taken by consensus and, failing which, by a simple majority vote of the members present.
4. In the event the members are not in a position to attend personally, duly accredited representatives shall represent them in accordance with the rules of the Governing Board.
5. The Board shall consider and recommend its rules of procedure and those of the technical committees to the Conference of States Parties for adoption.
6. All members of the Board shall be subject to the rules of confidentiality, declaration of interest and conflict of interest.
7. The Board may invite such experts as may be required to its meetings.

### Article 18 Functions of the Governing Board

1. The Board is responsible for providing strategic direction, technical decision-making, guidance and monitoring the performance of the AMA.
2. The functions of the Board shall be to:
  - (a) Approve the strategic plan, programme of work, budgets, activity and reports submitted by the Director General;
  - (b) Recommend for endorsement by the Conference of States Parties, the appointment and dismissal of the Director General of the AMA;
  - (c) Appoint and dismiss, if necessary, the independent auditor of the AMA;
  - (d) Recommend regulations setting out the conditions of service of the staff of the Secretariat;

## 80. TREATY FOR THE ESTABLISHMENT OF THE AFRICAN MEDICINES AGENCY (2019)

- (e) Assist the Secretariat with resource mobilization;
- (f) Establish technical committees (TCs) to provide technical guidance on the functions of the AMA;
- (g) Establish rules governing the issuance of scientific opinions and guidance to States Parties, including expedited approval of products during health outbreaks;
- (h) Approve recommendations submitted by the TCs;
- (l) Establish such subsidiary or affiliated entities for purposes of carrying out the functions of the AMA as it considers necessary;
- (j) Carry out any other functions referred to it by the Conference of States Parties or the Bureau as mandated by the Conference of States Parties.

### Article 19

#### Term of Office of the Governing Board

1. The term of office of the members of the Board, unless otherwise specified below, shall be a non-renewable period of three (3) years.
2. The term of office of Board members representing the RECs and RHOs shall be a non-renewable period of two (2) years.
3. The Commissioner of Social Affairs (which will become Commissioner for Health, Humanitarian Affairs and Social Development) shall hold a permanent seat.
4. The Board shall elect, by a simple majority and for a three (3) year non-renewable term, a Chairperson and Vice-Chairperson of the Board from among the heads of NMRAs, taking into account the Union's principle of regional rotation and gender equity.

### Article 20

#### Establishment of Technical Committees of the AMA

1. The Board shall establish permanent or ad hoc technical committees to provide technical guidance on specific areas of regulatory expertise.
2. The areas to be considered may include but not be limited to: dossier assessment for advanced therapies, biologicals (including biosimilar and vaccines), medicines for emergencies, orphan medicinal products, clinical trials of medicines and vaccines, manufacturing site inspections of active pharmaceutical ingredients (API) and finished pharmaceutical products, quality control laboratories, bioavailability and bioequivalence studies, pharmacovigilance risk assessment, and African traditional medicines.

### Article 21

#### Functions of the Technical Committees

1. The technical committees shall be responsible for carrying out scientific assessments and conducting scientific reviews of dossiers, including quality aspects, and clinical trial applications, inspection of manufacturing facilities, and providing scientific opinion to facilitate the proper functioning of the AMA.
2. The technical committees shall carry out any other functions as may be assigned to it by the Board.

### Article 22

## 80. TREATY FOR THE ESTABLISHMENT OF THE AFRICAN MEDICINES AGENCY (2019)

### Composition of the Technical Committees (TCs)

1. The TCs shall be composed of not more than nine (9) experts representing a wide range of competencies and experiences.
2. Members of the TCs shall be drawn from State Party NMRAs as appointed by the Board and shall reflect geographic representation.
3. Other technical experts in relevant fields may be drawn from across and outside the continent, when necessary.
4. Each TC shall be headed by a Chair and Vice-Chair as specified in its terms of reference adopted by the Board.
5. All members of the TCs shall be subject to the rules of confidentiality, declaration of interest and conflict of interest.

### Article 23

#### The Secretariat of the AMA

1. The Secretariat of the AMA, located at the headquarters, shall be responsible for coordinating the implementation of the decisions of the Conference of States Parties, the policy organs of the African Union, and the Board of the AMA.
2. The Secretariat shall:
  - (a) Coordinate implementation of activities and ensure effective performance of the AMA in fulfilment of its objectives and functions;
  - (b) Ensure effective implementation of the decisions of the Board and the Conference of States Parties;
  - (c) Coordinate the programmes and work of all technical committees and the Board;
  - (d) Establish and maintain capacity-building and regulatory systems strengthening programmes for the benefit of Member States;
  - (e) Prepare the strategic plan, work programmes, budget, financial statement and annual report on the activities of the AMA, for consideration and approval by the Board and the Conference of States Parties;
  - (f) Perform any other duties as may be assigned by the Board and the Conference of States Parties and other relevant structures of the African Union.

### Article 24

#### The Director General of the AMA

1. The Director General shall be the head of the Secretariat and shall be responsible for the day-to-day management of the AMA.
2. The Director-General shall be appointed by the Conference of States Parties upon the recommendation of the Governing Board.
3. The Director General shall serve as the Chief Executive Officer, shall represent the AMA in all matters, and shall report to the Board, the Conference of States Parties and the African Union, as appropriate.

## 80. TREATY FOR THE ESTABLISHMENT OF THE AFRICAN MEDICINES AGENCY (2019)

4. The Director General shall be appointed for a term of four (4) years, renewable once, in accordance with regional rotations.
5. The Director General shall recruit staff of the Secretariat in line with the structure and procedure approved by the Conference of States Parties.
6. The Director General shall be a person of demonstrated competence, leadership ability and integrity, expertise and experience in the subject matter of this Treaty or related issues.
7. The Director General shall be a national of a State Party.
8. The Director General shall be responsible for monitoring the code of conduct of the AMA staff and experts.
9. In the discharge of his/her duties, the Director General shall not seek or accept instructions from any State, authority or individual external to the AMA.

### Article 25 Objections to Scientific Opinions

1. In the event that a person or entity duly objects to a scientific opinion, advice or decisions issued by the AMA, he/she may lodge their objection with the Board.
2. The Board shall set up an independent panel to consider the objection in line with the agreed procedures.
3. The Board shall develop procedures for objection.

### Part Four Financial Provisions

#### Article 26 Financial Resources

1. The Conference of States Parties shall:
  - (a) Set the annual assessed contribution to be paid by the States Parties;
  - (b) Adopt the annual the budget of the AMA;
  - (c) Determine the appropriate sanctions to be imposed on any State Party that defaults in the payment of its contributions to the budget of the AMA in line with the sanctions regime as adopted by the Assembly.
2. The AMA shall devise ways of resource mobilization.
3. The AMA may also receive grants, donations and proceeds for its activities from international organizations, governments, private sector, foundations and other entities in accordance with guidelines set by the Board and approved by the Conference of States Parties, provided there is no conflict of interest.
4. Pending the adoption of the AMA financial rules by the Conference of States Parties, it shall abide by the AU Financial Rules and Regulations where appropriate.

#### Article 27

## 80. TREATY FOR THE ESTABLISHMENT OF THE AFRICAN MEDICINES AGENCY (2019)

### Expenses

1. The Secretariat expenses for administrative, operational and investment purposes shall be in accordance with the approved programme of work, budget and financial rules and regulations of the AMA as approved by the Governing Board and adopted by the Conference of States Parties.
2. The finances and accounts of the AMA shall be audited by an independent auditor appointed by the Board.

### Part Five

#### Relations with the AU, Member States and Other Partner Institutions

#### Article 28

##### Relationship with the African Union

1. The AMA shall maintain a close working relationship with the AU.
2. The AMA shall present a written annual report on its activities to the AU Assembly through the relevant STC and Executive Council.

#### Article 29

##### Relationship with States

1. The AMA may establish and maintain active cooperation with AU Member States and non-AU Member States.
2. The States Parties shall appoint focal points to coordinate country level activities of the AMA.

#### Article 30

##### Relationship with Other Organizations and Institutions

1. The AMA shall establish and maintain a close working relationship and collaboration with the following:
  - (a) The World Health Organization (WHO);
  - (b) The Africa Centres for Disease Control and Prevention (Africa CDC);
  - (c) The Regional Economic Communities (RECs);
  - (d) Any other United Nations agencies, intergovernmental organizations and non-governmental organizations or other institutions, including specialized agencies other than those specifically provided for in this Treaty, that the AMA considers necessary to assist in achieving its objectives.

### Part Six

#### Final Provisions

#### Article 31

##### Working Languages

The working languages of the AMA shall be those of the AU, namely Arabic, English, French and Portuguese.

#### Article 32

##### Settlement of Disputes



## 80. TREATY FOR THE ESTABLISHMENT OF THE AFRICAN MEDICINES AGENCY (2019)

1. Any dispute that may arise between States Parties with regard to the interpretation, application and implementation of this Statute shall be settled by mutual consent between the States concerned, including through negotiations, mediation, conciliation or other peaceful means.
2. In the event of failure to settle the dispute, the parties may, by mutual consent, refer the dispute to:
  - (a) An arbitration panel of three (3) arbitrators whose appointment shall be as follows:
    - (i) Each party to the dispute shall appoint one (1) arbitrator;
    - (ii) The third arbitrator, who shall be the Chairperson of the Arbitration Tribunal, shall be chosen by common agreement between the arbitrators appointed by the parties to the dispute; and
    - (iii) The decision of the panel of arbitrators shall be binding; or
  - (b) The African Court of Justice and Human Rights.

### Article 33 Reservations

1. A State Party may, when ratifying or acceding to this Statute, submit in writing a reservation with respect to any of the provisions of this Treaty.
2. Reservations shall not be incompatible with the objects and purpose of this Treaty.
3. Unless otherwise provided, a reservation may be withdrawn at any time.
4. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States Parties of the withdrawal accordingly.

### Article 34 Withdrawal

1. At any time after three years from the date of entry into force of this Treaty, a State Party may withdraw by giving written notification to the depositary.
2. Withdrawal shall be effective one year after receipt of notification by the depositary, or on such a later date as may be specified in the notification.
3. Withdrawal shall not affect any obligations of the withdrawing State Party prior to the withdrawal.

### Article 35 Dissolution

1. The AMA may be dissolved by the agreement of two thirds of the States Parties to this Treaty at a meeting of the Conference of States Parties and upon endorsement by the AU Assembly.
2. At least six (6) months' notice shall be given of any meeting of the Conference of States Parties at which the dissolution of the AMA is to be discussed.
3. Once agreement has been reached on the dissolution of the AMA, the Conference of States Parties shall establish the modalities for the liquidation of the assets of the AMA.

## 80. TREATY FOR THE ESTABLISHMENT OF THE AFRICAN MEDICINES AGENCY (2019)

### Article 36 Amendment and Revision

1. Any State Party may submit proposals for the amendment or revision of this Treaty. Such proposal shall be adopted at a meeting of the Conference of States Parties.
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit the amendment or revision to the Chairperson of the Governing Board within thirty days (30) of receipt thereof.
3. The Conference of States Parties, upon the advice of the Governing Board, shall examine these proposals within a period of one year from the date of receipt of such proposals.
4. Amendment or revision shall be adopted by the Conference of States Parties by consensus or, failing which, by two-thirds majority.
5. The amendment or revision shall enter into force in accordance with the procedures outlined in Article 38 of this Treaty.

### Article 37 Signature, Ratification and Accession

1. This Treaty shall be open to Member States of the Union for signature and ratification or accession.
2. The instrument of ratification or accession to the present Treaty shall be deposited with the Chairperson of the Commission who shall notify Member States of the Union of the deposit of the instrument of ratification or accession.

### Article 38 Entry into Force

1. This Treaty shall enter into force thirty days (30) after the deposit of the fifteenth (15) instrument of ratification and accession.
2. The Chairperson of the Commission shall inform all Member States of the Union of the entry into force of the present Treaty.
3. For any Member State of the Union acceding to the present Treaty, the Treaty shall come into force in respect of that State on the date of the deposit of its instrument of accession.

### Article 39 Depositary

This Treaty shall be deposited with the Chairperson of the AU Commission, who shall transmit a certified true copy of the Statute to the Government of each signatory State.

### Article 40 Registration

The Chairperson of the Commission, upon the entry into force of this Treaty, shall register this Treaty with the United Nations Secretary-General in conformity with Article 102 of the Charter of the United Nations.

80. TREATY FOR THE ESTABLISHMENT OF THE AFRICAN MEDICINES AGENCY (2019)

Article 41  
Authentic Texts

This Treaty is drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all of which are equally authentic.



**STATUTE OF THE AFRICAN AUDIOVISUAL  
AND CINEMA COMMISSION (AACC)**



**81.**

**STATUTE OF THE AFRICAN AUDIOVISUAL AND CINEMA COMMISSION (AACC)**

**Adopted in Addis Ababa, Ethiopia, on 11 February 2019.**

**The Statute shall enter into force thirty days after the deposit of the fifteenth instrument of ratification.**

Preamble

*We, Member States of the African Union,*

*Recalling* the objectives and principles enshrined in the Constitutive Act of the African Union,

*Further recalling* Decision EX/CL/Dec.69 (III) of the Executive Council of the African Union adopted at its Third Ordinary Session, held from 10 to 12 July 2003, in Maputo, Mozambique, requesting the establishment of an African Commission on the Audiovisual and Cinema as well as a fund to promote the cinema industry and television programmes in Africa,

*Further recalling* the Dakar Plan of Action on Cultural industries for Development in Africa of 1992,

*Reaffirming* the Charter for African Cultural Renaissance (2006), the Algiers Plan of Action on the Cultural and Creative Industries in Africa (CAMC/MIN/2 (II)) (2008) and the Tshwane Declaration on Audiovisual and Cinema (2006),

*Recognizing* that culture contributes to bringing Africa and Africans together, underpins the resurgent African economy and cannot be separated from the socio-economic reality,

*Noting* the need to adopt legal, institutional and practical measures in favour of the free circulation of African cultural products,

*Acknowledging* that the African Charter on Broadcasting adopted in Windhoek in 2001 underscored the promotion and development of African content, including the introduction of minimum local content quotas,

*Acknowledging* that creative and cultural industries in Africa hold great promise in the development of the continent,

*Aware* that audiovisual and cinematic expressions contribute to the economic, social and cultural development of peoples,

*Recognizing* the efforts already deployed by various relevant institutions and organizations in the promotion of African audiovisual works and cinema, and the need for their coordination,

*Aware* of the role that audiovisual and cinematic expressions play in the African integration process as a factor of peace, understanding and conflict prevention as well as socio-economic growth,

*Hereby agree* as follows:

Article 1  
Definitions

For the purpose of the present Statute:

## 81. STATUTE OF THE AFRICAN AUDIOVISUAL AND CINEMA COMMISSION (AACC) (2019)

“AACC” means the African Audiovisual and Cinema Commission, a Pan-African institution for the promotion of audiovisual works and cinema;

“African Audiovisual and Cinema Forum” means the Forum of practitioners in the audiovisual and cinema sector;

“African content” means artistic, cinematic and television programmes, including advertisements produced by Africans about Africa for the African and global audience;

“African language” means a mother tongue, including vehicular cross-border languages of an African State;

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

“Audiovisual works” means any record of a sequence of related images with or without accompanied sound, irrespective of length, which is intended to be made visible as a moving image through the use of devices, regardless of the medium of initial or subsequent fixation and for which there is an expectation for public exhibition and includes films and video recordings, animation, and documentary productions, for exploitation on any form of distribution currently existing or future invented;

“Board” means the Governing Board of the AACC;

“Bureau” means the Bureau of the Council of Ministers;

“Committee” means the Technical Advisory Committee;

“Council” means the Council of Ministers in charge of culture, audiovisual and creative industries of States Parties;

“Creative economy” means the interface between creativity, culture, economics and technology as expressed in the ability to create and circulate intellectual capital, with the potential to generate income, jobs and export earnings while at the same time promoting social inclusion, cultural diversity and human development;

“Executive Secretary” means the Executive Secretary of the Secretariat of the AACC;

“Filmmaker” means professionals involved in creating scripts and generating story lines through audiovisual, cinematography and other platforms;

“Independent film and audiovisual practitioner” means an individual who works in the film and audiovisual value chain;

“Local content” means cultural, artistic audiovisual, cinematic and television programmes, including advertisements, inspired, created and produced by Africans;

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

“Pan-African Federation of Filmmakers” or “FEPACI” is the body corporate that represents audiovisual and cinema practitioners in Africa;

“Pan-Africanism” is an ideology asserting that the fate of all African peoples, both on the continent and in the diaspora, and African countries are intertwined, sharing a common history and destiny to be forged through united action;

“RECs” means Regional Economic Communities;

“State Party” means a Member State that has ratified or acceded to this Statute;



## 81. STATUTE OF THE AFRICAN AUDIOVISUAL AND CINEMA COMMISSION (AACC) (2019)

“STC” means a Specialized Technical Committee established under Article 14 of the Constitutive Act of the African Union;

“Union” or “AU” means the African Union established by the Constitutive Act.

### Article 2 Establishment

The African Audiovisual and Cinema Commission is hereby established as a Specialized Agency of the African Union.

### Article 3 Mandate

The AACC shall:

1. Develop and strengthen the African audiovisual and cinema industry;
2. Encourage the establishment of appropriate structures at the national, regional and continental levels to strengthen cooperation between African States in the area of audiovisual and cinema; and
3. Through the use of audiovisual and cinematic expressions, promote creativity/innovation, integration, solidarity, respect of values, mutual understanding, foster peace and promote a positive image of Africa.

### Article 4 Functions of AACC

The AACC shall:

1. Promote research on the African audiovisual and cinema industry in close collaboration with various research institutions;
2. Collate, disseminate and archive the results of audiovisual cinematic research;
3. Promote and encourage States Parties to take all necessary measures for protecting and archiving programmes for national film and audiovisual materials, and retrieving those held in foreign lands;
4. Facilitate the establishment and where appropriate the exchange of information relating to African audiovisual and cinematographic works held in data banks, archives, directories of national and international audiovisual products, films and filmmakers, film training institutions and financiers subject to national legislation on copyright;
5. Promote the collection, archiving and dissemination of documentation of oral African literature and knowledge using audiovisual and cinematic expressions, television and moving images;
6. Fast track the establishment of the African Audiovisual and Cinema Fund for sustainable financing of the audiovisual and cinema value chain;
7. Recommend such agreements as necessary to enhance the capacity of AU Member States to collaborate in developing, streamlining and promoting audiovisual and cinema industry policies;

## 81. STATUTE OF THE AFRICAN AUDIOVISUAL AND CINEMA COMMISSION (AACC) (2019)

8. Encourage the signing of cooperation treaties that would enhance the movement of filmmakers across African borders and exchange of programmes;
9. Strengthen regional African structures to appreciate the role of film in economic and social development;
10. Enhance African centredness in film, promote the positive image of the continent, redefine relations between African audiovisual and cinema and other expression from the rest of the world;
11. Elaborate a cinematic atlas of Africa, exposing, reawakening and repositioning the different milieu of African film;
12. Contribute to the popularization of the cinema culture, particularly among African youth;
13. Facilitate harmonization of training curricula to reflect high quality film production and seek its adaptation by training institutions across Africa; and encourage establishment of regional film schools;
14. Promote the use of African audiovisual and cinema as a medium of instruction and as a subject of study in educational institutions;
15. Foster capacity and talent development, training and certification in the African film industry in order to ensure higher quality of film productions;
16. Assist and offer advisory services to Member States on auditing national film support structures, including ensuring that national licensed broadcasters carry African content;
17. Provide technical support and advisory services to Member States for the formulation and implementation of audiovisual and cinema policy, particularly in the establishment and/or development of national structures for the promotion of African audiovisual and cinematic expressions;
18. Encourage Member States to capture and store social and economic data on film and audiovisual industry showing jobs created, capital formation, and contribution to sustainable and inclusive economic growth;
19. Encourage the creation of Pan-African television, digital, and other networks to promote African perspectives;
20. Promote distribution of African films throughout the continent and internationally;
21. Support national institutions responsible for broadcasting and content distribution to ensure that African broadcasters (public and private) and other content distributors invest resources into researching African stories and commissioning film makers to produce films and ensure effective and profitable distribution of the films;
22. Encourage all Member States' broadcasters, cinema and movie theatres, and all other content delivery channels including mobile phones, video on demand and online streaming services to carry a minimum of 70 percent (70%) African content in all their programming with special emphasis on prime time;
23. Promote the protection of indigenous knowledge and of existing African oral and written folklore both at the national and continental levels; promote the protection of the rights of authors;
24. Support the protection of intellectual property rights with due regard to existing frameworks on the harmonization of standards and legislation;
25. Perform such other functions consistent with the promotion of African cinematic expressions and products;

## 81. STATUTE OF THE AFRICAN AUDIOVISUAL AND CINEMA COMMISSION (AACC) (2019)

26. Create partnerships with public and private sector organizations in furtherance of its objectives and functions;
27. Monitor and audit African content carried by all content carriers in States Parties and table a monitoring and audit report to the regular meeting of the Council of Ministers;
28. Facilitate the development, monitoring and evaluation of training curricula for film schools across Africa;
29. Create an accreditation and certification system for film training institutions in Africa; and
30. Establish, strengthen and/or promote African film archives that hold key audiovisual and film material from various parts of Africa for posterity.

### Article 5 Membership

1. Membership shall be open to African Union Member States.
2. Each State Party shall enjoy equal rights in terms of participation and representation at AACC meetings.

### Article 6 Legal Capacity

1. The AACC shall have the legal personality that is necessary for the fulfilment of its objectives and the exercise of its functions in accordance with this Statute.
2. For the smooth fulfilment of its objectives, the AACC shall, in particular, have the legal capacity to:
  - (a) Enter into agreements;
  - (b) Acquire and dispose of movable and immovable property; and
  - (c) Institute and defend legal proceedings.

### Article 7 Privileges and Immunities

The States Parties undertake to accord to the AACC, and all its personnel, premises, property and assets, and experts on mission providing advice or assistance to the AACC, the privileges and immunities as stipulated in the General Convention on the Privileges and Immunities of the OAU and the Additional Protocol to the OAU General Convention on Privileges and Immunities.

### Article 8 Headquarters of the AACC

1. The headquarters of AACC shall be determined by the Assembly of the Union.
2. The African Union Commission shall enter into a host agreement with the government of the host country in which the AACC Headquarters will be situated with regard to the provision of the premises, facilities, services, privileges and immunities for the purposes of the efficient operation of the AACC.

## 81. STATUTE OF THE AFRICAN AUDIOVISUAL AND CINEMA COMMISSION (AACC) (2019)

3. The following evaluative criteria specific to the audiovisual and cinema industry shall be taken into consideration by the Assembly of the Union in determining the headquarters of the AACC:

- (a) History of success;
- (b) Infrastructure;
- (c) Policy environment; and
- (d) Financial support to the headquarters.

### Article 9 Organs of the AACC

The AACC shall be composed of the following organs:

- 1. The Council of Ministers;
- 2. The Governing Board;
- 3. The Technical Advisory Committee;
- 4. The African Audiovisual and Cinema Forum;
- 5. The Secretariat.

### Article 10 Composition of the Council of Ministers

- 1. The Council of Ministers shall be the supreme organ of the AACC.
- 2. The Council of Ministers shall consist of ministers in charge of culture, audiovisual and cinema, creative industry or any other ministers duly designated by the States Parties.
- 3. The Council shall adopt its rules of procedure as well as the rules of procedure of other organs, Committees, working groups or subsidiary bodies of the AACC.
- 4. There shall be a Bureau composed of five (5) members elected by the States Parties on the basis of rotation and equitable geographical distribution from the five (5) AU geographical regions, which shall operate in accordance with their rules of procedure.
- 5. The Council may establish committees, working groups and/or subsidiary bodies as it deems fit.
- 6. The Council shall meet annually to discuss and approve the AACC's strategic plan, policies and programmes, reports and audited accounts.

### Article 11 The Functions of the Council of Ministers

The Council shall:

## 81. STATUTE OF THE AFRICAN AUDIOVISUAL AND CINEMA COMMISSION (AACC) (2019)

1. Determine the scale and criteria for assessment of annual and special contributions to be paid by States Parties to the budget of the AACC in accordance with the criteria adopted by the Assembly;
2. Appoint and dismiss for cause members of the Governing Board, who shall be persons with sufficient audiovisual and cinema industry experience;
3. Report and make recommendations to the Executive Council of the Union;
4. Adopt financial and staff rules and regulations of the AACC;
5. Amend this Statute in accordance with Article 39.

### Article 12

#### Composition and Term of Office of the Governing Board

1. The Board shall be composed as follows:
  - (a) Representatives of five (5) States Parties from each of the AU regions;
  - (b) Five (5) independent film and audiovisual practitioners, one drawn from each of the African Union regions;
  - (c) Secretary-General of the Pan-African Federation of Filmmakers;
  - (d) One (1) representative from the RECs drawn from national cinema structures on a rotational basis;
  - (e) One (1) representative from the African Union Commission Department of Social Affairs.
2. The Board shall elect its Chairperson from among the Member States representatives.
3. The Executive Secretary of the AACC shall serve as the Secretary of the Board.
4. The members of the Governing Board shall serve for a period of four (4) years, renewable once.

### Article 13

#### Functions of the Governing Board

The Board shall be responsible for oversight of the operational activities of the AACC in accordance with the overall policy guidance of the Council of Ministers. The functions of the Board shall be to:

1. Appoint the Executive Secretary, who shall serve for four (4) years, renewable once;
2. Elaborate programmes, policies and plans of action to implement the strategic policies defined by the Council of Ministers;
3. Develop its rules of procedure for consideration and adoption by the Council of Ministers;
4. Appoint and dismiss for cause external auditors;
5. Support the AACC Secretariat to mobilize resources;
6. Consider and submit for adoption by the Council of Ministers, financial and progress reports from the AACC;

## 81. STATUTE OF THE AFRICAN AUDIOVISUAL AND CINEMA COMMISSION (AACC) (2019)

7. Receive technical reports and advice from the Technical Advisory Committee on matters referred to them for appropriate action;
8. Direct the policies of the AACC;
9. Prepare regulations setting out the powers, duties and conditions of service of the Executive Secretary and the Secretariat.

### Article 14

#### Meetings, Quorums and Decisions of the Board

1. The Board shall meet:
  - (a) In regular session at least once a year;
  - (b) In extraordinary session at the request of the Chairperson of the Board or two thirds of its members, on a specific agenda communicated to all members at least one (1) month in advance.
2. A simple majority of members of the Board shall be required to constitute a quorum for any ordinary or extraordinary session.
3. Decisions of the Board shall be taken by a simple majority of members present.
4. Each member shall have one vote; in the event of a tied vote, the Chairperson of the Board shall have the casting vote.
5. In the event the members are not in a position to attend personally, duly accredited representatives shall represent them in accordance with the rules of the governing board.
6. The Board shall consider and recommend its rules of procedure and those of the other organs of the AACC to the Council of Ministers for adoption.
7. All members of the Board shall be subject to the rules of confidentiality, declaration of interest and conflict of interest.
8. The Board may invite such experts as may be required, to its meetings.

### Article 15

#### Composition of the Technical Advisory Committee

1. The Board shall upon recommendations of the AACC Forum, appoint a Technical Advisory Committee composed of nine (9) members, one from each of the following disciplines on the basis of equitable geographical representation:

Training, skills development and academia;

Production;

Archiving;

Editing;

## 81. STATUTE OF THE AFRICAN AUDIOVISUAL AND CINEMA COMMISSION (AACC) (2019)

Cinematography;

Distribution;

Law;

Sound and audio; and

Finance.

2. The members of the Committee shall serve for two (2) years, renewable once.
3. The Executive Secretary shall be an ex-officio member of the Committee and shall attend in person or through his/her designated representative and shall have no right to vote.
4. The members of the Committee will elect from among themselves the Chairperson, whose functions shall be defined in the rules of procedure of the Committee.

### Article 16 Functions of the Committee

The functions of the Technical Advisory Committee shall be to:

1. Advise on the technical implementation of the activities of the AACC;
2. Provide such technical advice as may be requested by the Board or by the Executive Secretary from time to time;
3. Develop its own rules of procedure for consideration and adoption by the Council of Ministers.

### Article 17 Meetings, Quorum and Decisions of the Committee

1. The meetings of the Committee shall be convened by the Chairperson of the Committee at least once a year or as often as the Board may deem necessary.
2. For any session, a simple majority of the members shall be required to constitute a quorum.
3. Decisions of the Technical Advisory Committee shall be made by consensus and, failing which, by a simple majority vote of the members present.
4. The members of the Committee shall serve in their personal capacities on a part-time basis.
5. The members of the Committee shall not be remunerated but costs incurred in attending the Committee meetings shall be reimbursed.

### Article 18 Composition and Membership of the Forum

1. There shall be a forum comprised of accredited audiovisual and cinema practitioners, production equipment and technology providers convened by the AACC Secretariat.

## 81. STATUTE OF THE AFRICAN AUDIOVISUAL AND CINEMA COMMISSION (AACC) (2019)

2. The membership of the forum shall be three (3) accredited representatives from each State Party who shall serve for two (2) years, renewable once.

### Article 19 Functions of the Forum

The functions of the African Audiovisual and Cinema Forum shall be to:

1. Consider the state of the audiovisual and cinema sector and prepare a report to the Council of Ministers through the Governing Board;
2. Make recommendations on individuals to serve on the Board and Technical Advisory Committee;
3. Submit to the Board a biannual independent report on the state of the audiovisual and cinema sector in all Member States;
4. Recommend appropriate measures to improve the audiovisual and cinema sector;
5. Develop its own rules of procedure for consideration and approval of the Council of Ministers.

### Article 20 Conditions for Eligibility

The following criteria shall apply for participation to the Forum:

1. A member of the forum, as contemplated in Article 18, shall be invited either as an association or an individual;
2. Forum members must be a registered association, society, company or foundation in Africa or an individual nominated by a State Party;
3. The Forum members must have demonstrated experience and/or working knowledge of the African audiovisual and cinema industry or a demonstrated commitment to supporting the industry.

### Article 21 Composition of the AACC Secretariat

1. The Secretariat shall consist of an Executive Secretary who shall be assisted by the necessary administrative, professional and technical officials.
2. The structure of the Secretariat, terms and conditions of service, shall be approved by the Board in accordance with the staff rules and regulations adopted by the Council of Ministers.

### Article 22 Appointment of the Executive Secretary

1. The Executive Secretary shall be appointed by the Board in accordance with regional rotations.
2. The Executive Secretary shall be the Head of the AACC.
3. If the position falls vacant or the Executive Secretary is prevented from discharging the above duties, he/she shall be temporarily replaced by the most senior official within the Secretariat until the appointment of the new Executive Secretary.



Article 23  
Functions of the Executive Secretary

1. Subject to the directives of the Board, the Executive Secretary shall:
  - (a) Recruit, supervise and manage staff of the AACC Secretariat;
  - (b) Implement the approved programmes and policies of the AACC Secretariat;
  - (c) Coordinate the activities of AACC Secretariat as the chief administrative and accounting officer;
  - (d) Prepare for Board consideration and approval mid and long-term plans of the AACC;
  - (e) Prepare the annual budget of the AACC for consideration by the Governing Board;
  - (f) Prepare the plans of action of the AACC for consideration and approval;
  - (g) Attend all meetings of the Board and act as its Secretary; and
  - (h) Perform any other functions in line with the objectives of the AACC.
2. In the discharge of his or her duties, the Executive Secretary shall not seek or accept instructions from any State, authority or individual external to the AACC.

Article 24  
Observers

The Council of Ministers may invite any State, REC, international, regional or subregional organization or institution, which is not a member to attend its meetings as an observer.

Article 25  
Relationship with other Institutions, Cooperating States and Organizations

1. The AACC may:
  - (a) Establish and maintain working relationships with any intergovernmental, international, regional or national institutions that may assist the AACC to achieve its objectives and mandate;
  - (b) Design, resource or facilitate implementation or strengthening by stakeholders of an integrated Pan-African centre on the following:
    - (i) The African Audiovisual and Cinema Fund;
    - (ii) The African Film Library;
    - (iii) The African Convention on Audiovisual and Cinematographic Collaboration;
    - (iv) The Inter-African Centre for Production;
    - (v) The Inter-African Distribution Consortium;
    - (vi) The Inter-African Film Production Consortium;

(vii) The Pan-African Film School initiative.

2. States Parties shall designate focal point institutions to coordinate their respective working relationships with the AACC.

Article 26  
Finances

1. The AACC shall be funded by:

(a) Annual statutory and special contributions to be paid by States Parties as shall be determined by the Council of Ministers;

(b) Income from services rendered by the AACC;

(c) Income from property owned by or other investments made by the AACC.

2. The AACC may receive donations and voluntary contributions from:

(a) States Parties;

(b) Other States and institutions that are not members of the AACC;

(c) Any other sources approved by the Governing Board.

3. The AACC budget shall be drawn up by the Secretariat and approved by the Council of Ministers through the Board.

4. The Council of Ministers and the Board shall be regularly apprised of the funding status of the AACC.

Article 27  
Expenses

1. The expenses of the AACC shall be in accordance with the approved budget, programme of work and financial rules and regulations of the AACC.

2. The finances and accounts of the AACC shall be audited by an independent auditor appointed by the Governing Board.

Article 28  
Working Languages

The working languages of the AACC shall be those of the AU.

Article 29  
Settlement of Disputes

1. Any dispute that may arise between States Parties with regard to the interpretation, application and implementation of this Statute shall be settled by mutual consent between the States concerned, including through negotiations, mediation, conciliation or other peaceful means.

2. In the event of failure to settle the dispute, the parties may, by mutual consent, refer the dispute to:

## 81. STATUTE OF THE AFRICAN AUDIOVISUAL AND CINEMA COMMISSION (AACC) (2019)

- (a) An arbitration panel of three (3) arbitrators whose appointment shall be as follows:
  - (i) Each party to the dispute shall appoint one (1) arbitrator;
  - (ii) The third arbitrator, who shall be the Chairperson of the Arbitration Tribunal, shall be chosen by common agreement between the arbitrators appointed by the parties to the dispute; and
  - (iii) The decision of the panel of arbitrators shall be binding; or
- (b) The African Court of Justice and Human Rights.

### Article 30 Dissolution of the AACC

1. The AACC may be dissolved by a resolution of the Council of Ministers taken by two-thirds majority.
2. At least six (6) months' notice shall be given of any meeting of the Council of Ministers at which the dissolution of the AACC is to be discussed.
3. Where a decision has been made on the dissolution of the AACC, the Council of Ministers shall establish the modalities for the liquidation of the assets of the AACC.

### Article 31 Popularization of the Statute

States Parties shall take all appropriate measures to ensure the widest possible dissemination of this Statute in accordance with the relevant provisions and procedures of their respective constitutions.

### Article 32 Safeguard Clause

1. A provision in this present Statute shall not be interpreted as derogating from the principles and values contained in other relevant instruments for the promotion of audiovisual and cinema development in Africa.
2. Nothing in this Statute shall be construed as preventing a Party from taking such action, compatible with the provisions of the Constitutive Act of the African Union or the United Nations Charter and limited to the exigencies of the situation, as it considers necessary to its external or internal security.

### Article 33 Signature, Ratification and Accession

1. This Statute shall be open to Member States of the African Union for signature and ratification or accession.
2. The instrument of ratification or accession to the present Statute shall be deposited with the Chairperson of the African Union Commission.

### Article 34 Entry into force

1. This Statute shall enter into force thirty (30) days after the deposit of the fifteenth (15<sup>th</sup>) instrument of ratification.

## 81. STATUTE OF THE AFRICAN AUDIOVISUAL AND CINEMA COMMISSION (AACC) (2019)

2. The Chairperson of the African Union Commission shall inform all Member States of the African Union of the entry into force of the present Statute.

3. For any Member State of the African Union acceding to the present Statute, the Statute shall come into force in respect of that State on the date of the deposit of its instrument of accession.

### Article 35 Reservations

1. A State Party, when signing, ratifying or acceding to this Statute, may enter a reservation with respect to any of the provisions of this Statute, unless such a reservation is incompatible with the object and purpose of this Statute.

2. The withdrawal of a reservation must be formulated in writing to the Chairperson of the African Union Commission who shall notify other States Parties of the withdrawal accordingly.

### Article 36 Depository

This Statute shall be deposited with the Chairperson of the African Union Commission, who shall transmit a certified true copy of the Statute to the Government of each State Party and notify them of the dates of the deposit of the instruments of ratification or accession.

### Article 37 Registration

The Chairperson of the African Union Commission upon the entry into force of this Statute shall register this Statute with the United Nations Secretary-General in conformity with Article 102 of the Charter of the United Nations.

### Article 38 Withdrawal

1. At any time after three years from the date on which this Statute has entered into force, a State Party may withdraw from this Statute by giving written notification to the depository.

2. Withdrawal shall be effective one (1) year after receipt of notification by the depository, or on such later date as may be specified in the notification.

3. Withdrawal shall not exempt the withdrawing State Party from fulfilling any obligations it might have incurred under this Statute during its membership.

### Article 39 Amendment and Revision

1. Any State Party may submit proposals for the amendment or revision of this Statute.

2. Proposals for amendment or revision shall be submitted to the Chairperson of the African Union Commission who shall transmit such proposal(s) to States Parties within thirty (30) days of receipt thereof.

## 81. STATUTE OF THE AFRICAN AUDIOVISUAL AND CINEMA COMMISSION (AACC) (2019)

3. The Council of Ministers, upon the advice of the Bureau, shall examine these proposals within a period of one (1) year from the date of receipt of such proposals.
4. Amendments or revisions shall be adopted by the Council of Ministers by consensus or, failing which, by a two-thirds majority.
5. The amendment or revision shall come into force upon adoption by the Council of Ministers.

### Article 40 Authentic Texts

This Statute is drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, and all four (4) texts being equally authentic.



**STATUTE OF THE AFRICAN UNION INTERNATIONAL CENTRE  
FOR GIRLS' AND WOMEN'S EDUCATION IN AFRICA  
(AU/CIEFFA)**





82. STATUTE OF THE AFRICAN UNION INTERNATIONAL CENTRE FOR  
GIRLS' AND WOMEN'S EDUCATION IN AFRICA (AU/CIEFFA) (2019)

82.

**STATUTE OF THE AFRICAN UNION INTERNATIONAL CENTRE FOR GIRLS' AND WOMEN'S EDUCATION IN AFRICA  
(AU/CIEFFA)**

**Adopted in Addis Ababa, Ethiopia, on 11 February 2019.**

**Entered into force upon adoption.**

*We, Member States of the African Union,*

*Recalling* the Decision Assembly/AU/Dec.44 (III) adopted by the Assembly of Heads of State and Government in July 2004 in Addis Ababa, Ethiopia, which agreed to make the International Centre for Girls' and Women's Education in Africa (CIEFFA) an African institution under the aegis of the African Union,

*Further recalling* that the Assembly, in the aforementioned Decision, welcomed the establishment and operationalization of the African Union International Centre for Girls' and Women's Education in Africa (AU/CIEFFA) under the aegis of the United Nations Educational, Scientific and Cultural Organization (UNESCO) as an institution for the promotion of education of girls and women in Africa,

*Considering* that at the Thirtieth Session of its General Conference in 1999, UNESCO included the creation of CIEFFA in the global Programme I, Action Plan 2, as part of the special project of "promotion of girl's and women's education in Africa",

*Also considering* the agreements between UNESCO and the Government of Burkina Faso on the collaborations regarding the CIEFFA,

*Reaffirming* the Headquarters Agreement of 5 March 2008 between the Government of Burkina Faso and the African Union on the establishment of the Headquarters of the CIEFFA,

*Acknowledging* the efforts made by the Government of Burkina Faso and other partners, including UNESCO, to make the centre operational,

*Mindful* of the Continental Education Strategy for Africa (2016-2025) adopted by the Twenty-sixth Ordinary Session of the AU Executive Council and considering the role of CIEFFA in the implementation of this Strategy,

*Emphasizing* that the mission of CIEFFA is in line with the vision of Agenda 2063, which outlines that the African woman will be fully empowered in all spheres, with equal social, political, and economic rights and opportunities and enabled to fight against all forms of violence and discrimination against her,

*Determined* to provide CIEFFA with a statutory and regulatory framework for its organization and functioning under the aegis of the African Union,

*Hereby agree* as follows:

Article 1  
Definitions

In this Statute:

"Assembly" means the Assembly of Heads of States and Government of the African Union;

"AU" or "Union" means the African Union established by the Constitutive Act;

82. STATUTE OF THE AFRICAN UNION INTERNATIONAL CENTRE FOR  
GIRLS' AND WOMEN'S EDUCATION IN AFRICA (AU/CIEFFA) (2019)

"CIEFFA" means the African Union International Centre for Girls' and Women's Education in Africa;

"Commission" means the African Union Commission;

"Executive Director" means the Head of the Secretariat;

"General Conference", means the UNESCO General Conference;

"Member States" means Member States of the African Union;

"RECs" means the Regional Economic Communities;

"Secretariat" means the Secretariat of the AU/CIEFFA;

"Statute" means this Statute of the African Union International Centre for Girls' and Women's Education in Africa;

"STC" means the Specialized Technical Committee on Education, Science and Technology;

"Steering Committee" means the Steering Committee established by this Statute; and

"UNESCO" means the United Nations Educational, Scientific and Cultural Organization.

Article 2

Legal Status and Capacity of the CIEFFA

1. The CIEFFA shall be a Specialized Technical Institution of the Union and shall be governed in accordance with the provisions of this Statute.
2. The CIEFFA shall enjoy, in the territory of the Host Country the legal capacity necessary for the fulfilment of its objectives and the exercise of its functions in accordance with this Statute, including capacity to enter into agreements, acquire and dispose of movable and immovable property, and to institute and defend legal proceedings.

Article 3

Headquarters

The Headquarters of the CIEFFA shall be in Ouagadougou, Burkina Faso.

Article 4

Objectives of CIEFFA

1. CIEFFA aims to provide necessary policies, lines of actions, strategies and guidance to all relevant stakeholders to address gender equality, equity, leadership and advocacy in a learning environment in order to create gender sensitive schools, to increase girls' access and retention in education systems on the African continent towards sustaining Africa's development.
2. CIEFFA shall:
  - (a) Promote girls' and women's education at both formal and non-formal levels;
  - (b) Promote gender mainstreaming in education policies and development programmes;
  - (c) Build the operational capacities of Member States on girls' and women's education issues;

82. STATUTE OF THE AFRICAN UNION INTERNATIONAL CENTRE FOR  
GIRLS' AND WOMEN'S EDUCATION IN AFRICA (AU/CIEFFA) (2019)

- (d) Establish networks for information and experience sharing on girls' and women's education;
- (e) Develop strategies and innovative approaches for advocacy and a fruitful partnership to promote and consolidate girls' and women's education;
- (f) Promote research on girls' and women's education issues;
- (g) Conduct observatory activities on the status of education and training for girls and women in Africa;
- (h) Organize training on information and data collection, management and programmatic use; and
- (i) Monitor and report on decisions and programmes implementation at national, regional and continental levels.

Article 5  
Framework for Implementing Programmes

1. CIEFFA shall implement its programme as part of the Commission in collaboration with national, regional and international institutions.
2. CIEFFA shall establish and maintain a network with the institutions referred to in paragraph 1, to promote the education and training of girls and women in line with the AU's Agenda.

Article 6  
Administration and Institutional Framework

CIEFFA shall be governed by the following bodies:

1. The STC;
2. The Steering Committee; and
3. The Secretariat.

Article 7  
Establishment of the Steering Committee

The Steering Committee is hereby established as an advisory body of the CIEFFA.

Article 8  
The Composition of the Steering Committee

1. The Steering Committee shall be composed of:
  - (a) A representative of the Commission;
  - (b) Five representatives from Member States composed of one (1) representative from each AU region;
  - (c) A representative of an international organization other than UNESCO;

82. STATUTE OF THE AFRICAN UNION INTERNATIONAL CENTRE FOR  
GIRLS' AND WOMEN'S EDUCATION IN AFRICA (AU/CIEFFA) (2019)

- (d) A representative of an African civil society organization duly accredited to the AU working on issues of girls' and women's education nominated by the Chairperson of the Commission;
  - (e) A representative of UNESCO as a permanent member; and
  - (f) The Executive Director of CIEFFA shall serve as Secretary of the Steering Committee.
2. The Steering Committee may invite a representative from the Host Country to attend its meetings as an observer and such representative shall have no right to vote.
  3. The Steering Committee shall elect from among its members, a President and a Vice- President to facilitate its meetings and activities.
  4. In the absence of the President, the Vice-President or any member elected from among the members shall act as the President.
  5. For any session, a simple majority of the members shall be required to constitute a quorum.
  6. Decisions of the Steering Committee shall be made by consensus and, failing which, by a simple majority vote of the members present.
  7. The Members of the Steering Committee shall hold office for a period of two (2) years.
  8. The Steering Committee shall meet once a year in ordinary session upon the invitation of the Executive Director of the CIEFFA and may, subject to availability of resources, meet in extraordinary sessions as required.

Article 9  
The Functions of the Steering Committee

The Steering Committee shall:

1. Consider the Centre's action plan and budget and allocated resources for the functioning of the Centre in accordance with the provisions of this Statute. The budget ceiling must not exceed the total amount of available resources for the fiscal year concerned, including the contributions and subsidies paid to the Centre;
2. Facilitate mobilization of the resources required to enable AU/CIEFFA to fulfil its tasks under this Statute as appropriate;
3. Consider the Centre's work plan and ensure the implementation of its programme; and
4. Consider the Centre's annual activities report.

Article 10  
The Secretariat

1. The Executive Director shall be the Head of the Secretariat and shall be responsible for the day-to-day management of CIEFFA.
2. The Executive Director shall serve as the Chief Executive Officer, shall represent the CIEFFA in all matters, and shall report to the Steering Committee and the African Union, as appropriate.
3. The functions and appointment of the Executive Director and other staff of the Secretariat shall be in accordance with the structure and procedures of the AUC.

82. STATUTE OF THE AFRICAN UNION INTERNATIONAL CENTRE FOR  
GIRLS' AND WOMEN'S EDUCATION IN AFRICA (AU/CIEFFA) (2019)

4. The structure of the Secretariat shall be defined by the African Union Commission in collaboration with the Steering Committee.

Article 11  
Functions of the Secretariat

The Secretariat shall perform the following functions:

- (a) Prepare the budget and financial reports of CIEFFA;
- (b) Work closely with Member States and RECs to advocate for girls' and women's education on the continent;
- (c) Mobilize resources in the framework of the AU policy in this area;
- (d) Establish strategic partnerships in areas of competence of CIEFFA; and
- (e) Perform any other functions that are deemed necessary in line with the objectives of CIEFFA.

Article 12  
Budget

- 1. The budget of the CIEFFA shall be within the budget of the Union.
- 2. In addition to the regular budget of the Union, other sources of funding the CIEFFA may include:
  - (a) Voluntary contributions from AU Member States and partners;
  - (b) Contributions from development partners of the Union and the Commission;
  - (c) Contributions from the private sector;
  - (d) National and regional financial institutions and other financing mechanisms;
  - (e) Any other source of funding in accordance with AU Rules.
- 3. The budget calendar of the CIEFFA shall be that of the Union.
- 4. Funds of CIEFFA shall be managed and administered in accordance with the financial regulations and rules of the AU.

Article 13  
Privileges and Immunities

The CIEFFA, and all its personnel, premises, property and assets, and experts on mission providing advice or assistance to the CIEFFA shall enjoy in the territory of the Host Country, the privileges and immunities as stipulated in the General Convention on the Privileges and Immunities of the OAU and its Additional Protocol.

Article 14  
Amendments

The present Statute may be amended by the Assembly upon the recommendation of the STC.

82. STATUTE OF THE AFRICAN UNION INTERNATIONAL CENTRE FOR  
GIRLS' AND WOMEN'S EDUCATION IN AFRICA (AU/CIEFFA) (2019)

Article 15  
Languages

The working languages of the CIEFFA shall be those of the Union.

Article 16  
Entry into force

The present Statute shall enter into force upon its adoption by the Assembly.

# **STATUTE OF THE AFRICAN PEER REVIEW MECHANISM**





**83.**

**STATUTE OF THE AFRICAN PEER REVIEW MECHANISM**

**Adopted in Addis Ababa, Ethiopia, on 10 February 2020.**

**Entered into force upon adoption.**

Preamble

*The Assembly of the African Union,*

*Recalling* Article 3 (c) and (m) and Article 4 (m) of the Constitutive Act of the African Union, which, inter alia, stipulates respect for democratic principles, human rights, the rule of law and good governance, peace, security and stability on the continent, and the acceleration of the political and socio-economic integration of Africa,

*Reaffirming* aspiration 3 and 4 of the African Union Agenda 2063 – The Africa We Want and guided by the vision of the African Peer Review Mechanism (APRM) as an African-owned and African-led platform for self-assessment, peer-learning, and experience-sharing in the pursuit of the highest standards of governance,

*Recalling* the Declaration of the African Union on Democracy, Political, Economic and Corporate Governance, Assembly/AU/Decl.1 (I) of July 2002, adopted in Durban, South Africa, wherein Member States established the African Peer Review Mechanism on the basis of voluntary accession,

*Reiterating* that the 2007 African Charter on Democracy, Elections and Governance, stipulates that the States Parties shall promote and deepen democratic governance by implementing, inter alia, the principles and core values of the African Peer Review Mechanism,

*Recalling* Decision Assembly/AU/Dec.527 (XXIII) of the Twenty-third Ordinary Session of the African Union Assembly, held in Malabo, Equatorial Guinea, in July 2014, on the integration of the APRM as an autonomous entity within the African Union system,

*Recalling* Decisions Assembly/AU/Dec.198 (XI), Assembly/AU/Dec.631 (XXVIII), Assembly/AU/Dec.635 (XXVIII), Assembly/AU/Dec.686 (XXX), Assembly/AU/Dec.721 (XXXII), Ext/Assembly/AU/Dec.1 (XI) and Assembly/AU/Decl.4 (XXX) expanding the African Peer Review Mechanism's mandate and integrating it into the African Union's structures,

*Has adopted* this Statute as follows:

Article 1  
Definitions

In this Statute:

“ACDEG” means the African Charter on Democracy, Elections and Governance;

“AGA” means the African Governance Architecture;

“AU” means the African Union;

“AUDA-NEPAD” means the African Union Development Agency-New Partnership for Africa's Development;

“APR” means the African Peer Review;

### 83. STATUTE OF THE AFRICAN PEER REVIEW MECHANISM (2020)

“APRM” means the African Peer Review Mechanism;

“APR Forum” means the Heads of State and Government of participating States of the African Peer Review Mechanism;

“APSA” means the African Peace and Security Architecture;

“APR Focal Points Committee” means the Ministerial body comprising the Personal Representatives of the Heads of State and Government of APRM participating States of the African Peer Review Mechanism;

“APR Focal Point” means the National Focal Point for the African Peer Review Mechanism in each participating State;

“APR Panel” means the Panel of Eminent Persons of the African Peer Review Mechanism;

“APRM Secretariat” means the Continental Secretariat of the African Peer Review Mechanism;

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

“CEO” means the Chief Executive Officer of the Continental Secretariat of the African Peer Review Mechanism;

“Commission” means the Commission of the African Union;

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

“CCC of NGCs” means the Continental Consultative Committee of NGCs;

“ECOSOCC” means the Economic, Social and Cultural Council of the African Union;

“Executive Council” means the Executive Council of the African Union;

“Member States” means the Member States of the African Union;

“NGC” means the National APRM Governing Council;

“NSCC” means the National Secretariats Coordinating Committee;

“Participating States” means the Member States that have voluntarily acceded to the African Peer Review Mechanism;

“PRC” means the Permanent Representatives Committee of the African Union;

“RECs” means the Regional Economic Communities;

“Statute” means the present Statute of the African Peer Review Mechanism;

“Strategic partners” means those international partners who work closely with the African Union including the United Nations Development Program (UNDP), the African Development Bank (ADB) and the United Nations Economic Commission for Africa (UNECA);

“Technical Research Institutions” means the independent research institutions contracted by the APR National Structure to conduct the country self-assessment.

### 83. STATUTE OF THE AFRICAN PEER REVIEW MECHANISM (2020)

#### Article 2

##### Establishment of the African Peer Review Mechanism

1. The APRM is hereby established as an autonomous entity of the AU.
2. The APRM shall have legal personality, as necessary for the proper exercise of its mandate. In particular, the APRM shall:
  - (a) Enter into contracts;
  - (b) Acquire and dispose of moveable and immovable property; and
  - (c) Institute and defend legal proceedings.

#### Article 3

##### Purpose

1. The APRM shall serve as an African-owned and African-led platform for self-assessment, peer-learning, and experience-sharing in democracy and good governance, in full respect for democratic principles, human rights, rule of law, and the acceleration of political, social and economic integration in Africa.
2. The APRM has the primary purpose of fostering the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable and inclusive development and accelerated regional and continental economic integration, through sharing of experiences and reinforcement of successful and best practices including providing reliable data and information.

#### Article 4

##### Mandate

1. The APRM has the mandate to ensure that the policies and practices of participating States are in conformity with the agreed political, economic and corporate governance values, codes and standards, and to achieve mutually agreed objectives in socio-economic development contained in the Declaration on Democracy, Political, Economic and Corporate Governance.
2. The APRM shall carry out any other mandate that the Assembly may confer on it as and when the Assembly deems necessary to do so.

#### Article 5

##### Principles of the APRM

1. The APRM shall be founded on the principles of good political, economic, social and corporate governance, democracy, the rule of law, respect for human rights, State sovereignty, non-interference and peaceful resolution of conflicts.
2. The APRM shall deliver its mandate, including voluntary reviews, in a technically and culturally competent manner, as well as in a credible manner free of political manipulation.
3. The APRM shall encourage the participation of all stakeholders in society.

#### Article 6

##### Functions of APRM

1. The APRM shall:

### 83. STATUTE OF THE AFRICAN PEER REVIEW MECHANISM (2020)

- (a) Promote and facilitate self-monitoring and evaluation by the participating States;
- (b) Monitor, evaluate and track the implementation in key governance areas on the continent, including the AU Agenda 2063, and the United Nations Sustainable Development Agenda 2030 in relation to democracy and good governance and any subsequent development frameworks of these institutions;
- (c) Prepare the African Governance Report in collaboration with AGA, and present it to the Assembly for consideration at its ordinary session every two (2) years;
- (d) Serve as a platform for sharing best practices at the national, regional and continental levels;
- (e) Encourage the participating States to implement their national plans of actions;
- (f) Integrate the objectives of APRM into national plans, RECs and regional developmental bodies, including AUDA-NEPAD;
- (g) Provide support to Member States in the field of international credit rating agencies;
- (h) Contribute to early warning for conflict prevention within the continent, in harmony and synergy with the APSA and the AGA;
- (i) Encourage the participating States to implement the ACDEG, the Declaration on Democracy, Political, Economic and Corporate Governance and other relevant instruments; and
- (j) Promote democracy and good governance on the continent.

#### Article 7

##### African Peer Review Process

1. The APRM process entails voluntary periodic reviews of the policies and practices upon request of participating States as follows:
  - (a) First Country Review: a review carried out within eighteen (18) months after a Member State acceding to the APRM process;
  - (b) Periodic Review: a review that takes place every two (2) to four (4) years;
  - (c) Targeted Review: a review, at the request of a participating State, outside the time frame of the periodically mandated reviews. Priorities will be given for a periodic review; and
  - (d) Early Warning Review: a review commissioned by the APR Forum.
2. The criteria leading to these reviews shall be elaborated by the APRM Focal Points Committee and shall be submitted by the APRM Forum to the Assembly for consideration and adoption.

#### Article 8

##### Budget and Finance of APRM

1. The budget of the APRM shall form part of the AU statutory budget.
2. Member States may make contributions on a voluntary basis to the APRM.

### 83. STATUTE OF THE AFRICAN PEER REVIEW MECHANISM (2020)

3. The APRM may receive funds from partners in accordance with the AU Financial Rules and Regulations.
4. Financing of APRM and its programmes, disbursement and utilization of APRM funds shall be in accordance with the AU Financial Rules and Regulations.

#### Article 9 Accounts and Auditing

1. The accounts of APRM shall be made in the currencies stipulated in the AU Financial Rules and Regulations.
2. The CEO shall ensure that the accounts of APRM are audited by internal and external auditors of the AU, including the accounts of projects funded through extrabudgetary resources.
3. The Secretariat of APRM shall submit a report on the APRM audit to the APRM Focal Points Committee and the APRM Forum as well as to AU policy organs for consideration.
4. The AU regulations on audit shall apply to the APRM accounts.

#### Article 10 Structure of the APRM

1. The APRM has the following overall structure:
  - (a) APRM Continental Structure comprising:
    - (i) APR Forum;
    - (ii) APR Focal Points Committee;
    - (iii) APR Panel of Eminent Persons;
    - (iv) APRM Continental Secretariat;
    - (v) Continental Consultative Committee of NGCs;
    - (vi) National Secretariats Coordinating Committee;
  - (b) APRM National Structures comprising:
    - (i) National Focal Point;
    - (ii) APRM NGC; and
    - (iii) APRM National Secretariat Committee.

#### Article 11 APR Forum

1. The APR Forum shall be the highest governing structure of the APRM, to provide political leadership and strategic guidance and shall serve as a subcommittee of the Assembly.

### 83. STATUTE OF THE AFRICAN PEER REVIEW MECHANISM (2020)

2. The APR Forum shall operate under the guidance of a Troika led by the current Chairperson, who is assisted by the outgoing Chairperson and the incoming Chairperson, all drawn from among the Heads of State and Government.
3. The Chairperson of the APRM Forum shall be elected for a period of two (2) years non-renewable and on the basis of rotation among the five (5) regions of the AU.
4. The APR Forum shall:
  - (a) Consider voluntary country review reports submitted to it by the Panel; and
  - (b) Consider recommendations made by the Focal Points Committee and submit its recommendations to the Assembly.
5. The APR Forum shall nominate Members of the APR Panel, its Chairperson and Vice-Chairperson for endorsement by the Assembly.
6. The APR Forum shall recommend to the Assembly the appointment of the CEO of the APRM Continental Secretariat, the adoption of the structure of the Secretariat, the budget and the work programme of the APRM.
7. The APR Forum may propose to the Assembly the termination of the appointment of any member of the APR Panel on the basis of non-performance, misconduct or conflict of interest.
8. The APRM Forum shall meet once a year in ordinary session to consider review reports of APRM participating States, undertake peer review and make other decisions on the management and implementation of the APRM mandate.
9. At the request of any participating State and upon approval by a two-thirds majority, the APR Forum may meet in an extraordinary session.

#### Article 12 Focal Points Committee

1. The APRM Focal Points Committee shall be composed of the Personal Representatives of Heads of State and Government and shall serve as an intermediary body between the APR Forum and the APRM Continental Secretariat.
2. The APRM Focal Points Committee shall have the responsibility to, notably:
  - (a) Consider the participating States' self-assessment report;
  - (b) Make recommendations to the APR Forum on crises reports, early warning reports, and activity report of the APRM Continental Secretariat and voluntary country review report;
  - (c) Make recommendations to the APR Forum on the appointment of the CEO of the APRM Continental Secretariat;
  - (d) Review the annual budget and work programme of the APRM submitted by the CEO of the APRM Continental Secretariat, and make recommendations relating thereto;
  - (e) Make recommendations to the APR Forum on the structure of the APRM Continental Secretariat in line with the AU rules and processes;

### 83. STATUTE OF THE AFRICAN PEER REVIEW MECHANISM (2020)

- (f) Follow up on the implementation of the voluntary review recommendations;
- (g) Undertake any other related activities requested by the APR Forum;
- (h) Establish a Steering Committee to carry out the work of the Focal Point Committee between its meetings. The Steering Committee shall have eight (8) members composed of the three Focal Points forming the Troika and five (5) elected Focal Points representing each of the five (5) regions of the AU. The Steering Committee shall be elected for a period of two (2) years;
- (i) Consider the strategic documents of the APRM;
- (j) Recommend the appointment and removal of the Members of the Panel to the Forum.

#### Article 13 APRM Panel of Eminent Persons

1. The APRM Panel shall be composed of a minimum of five (5) and a maximum of ten (10) eminent Africans appointed by the APRM Forum.
2. Members of the APRM Panel shall be African nationals of high moral stature, integrity, objectivity, impartiality and independence, who have distinguished themselves in careers that are considered relevant to the work of the APRM, and shall have demonstrated commitment to the ideals of Pan-Africanism.
3. The agreed principles, criteria and procedures for the appointment of the members of the APR Panel shall be contained in the Rules of Procedure of the APR Forum.
4. The APRM Panel shall be responsible in leading the voluntary country review process, and shall:
  - (a) Ensure the integrity, independence, professionalism and credibility of the country review process;
  - (b) Serve in their personal capacity and not as representatives of their respective governments. They shall neither seek nor receive instructions from any authority external to the APRM Forum; and
  - (c) Observe the utmost discretion and confidentiality, with regard to all matters relating to the peer review process, while they serve on the APRM Panel and thereafter.
5. Members of the APRM Panel shall be appointed for a term of four (4) years non-renewable and shall be based on equitable geographical distribution and gender balance.
6. The APRM Panel shall be led by a Chairperson and a Vice-Chairperson nominated by the Forum and endorsed by the Assembly.
7. The term of office of the Chairperson and the Vice-Chairperson of the APR Panel shall be one year, and shall be non-renewable.
8. The APRM Panel may form subcommittees as required for the execution of its mandate.
9. The APRM Panel shall be directly responsible and report to the APR Forum.
10. The APRM Panel shall submit reports on its activities to the APRM Forum at least once a year.

#### Article 14 The APRM Secretariat

### 83. STATUTE OF THE AFRICAN PEER REVIEW MECHANISM (2020)

1. The APRM Secretariat shall serve as the Continental Secretariat and shall serve the APRM Forum, the APR Focal Points Committee and the APRM Panel.
2. The APRM Secretariat shall be led by a CEO nominated by the APR Focal Point Committee and considered by the APR Forum, for endorsement and appointment by the Assembly.
3. The CEO shall be appointed through a competitive and transparent selection process for a mandate of four (4) years renewable once.
4. The functions and responsibilities of the APRM CEO shall be:
  - (a) Legal Representative of the APRM; and
  - (b) Controlling Officer of the APRM.
5. The CEO shall be directly responsible to the APR Focal Points Committee for the effective discharge of his/her duties.
6. The CEO shall be responsible for the accounts and resources of the APRM.
7. The Chairperson of the Commission shall be the ultimate authority in line with the Financial Rules and Regulations of the Union.
8. The APRM Secretariat shall perform the following functions:
  - (a) Receive the participating States' self-assessment report;
  - (b) Undertake and manage research and analysis that underpin the APRM process;
  - (c) Prepare and facilitate the meetings of the APR Forum, APRM Focal Points Committee and the APR Panel;
  - (d) Prepare the necessary background work and facilitate the voluntary country review, including support missions, country review missions, publication of reports and monitoring and follow-up;
  - (e) Report to the Focal Point the activities of the APRM Secretariat; and
  - (f) Provide technical support to Member States in developing the Country Self-Assessment Report on Governance.
9. The APRM Secretariat shall serve as the secretariat of the Continental Consultative Committee of NGCs and the National Secretariats Coordinating Committee.
10. The APRM Secretariat shall be composed of qualified competent professionals, technical and administrative support staff, recruited in accordance with the AU Staff Regulations and Rules.
11. The APRM Secretariat shall present the draft strategic plans, programmes, draft budget and annual audited accounts of the APRM to the Focal Points Committee and the AU policy organs for consideration.
12. The APRM Secretariat shall, upon the approval of the Focal Points Committee, submit financial and structural proposals as well as legal instruments concerning the APRM to the AU policy organs for consideration.



### 83. STATUTE OF THE AFRICAN PEER REVIEW MECHANISM (2020)

13. The APRM Secretariat shall operate in accordance with the AU Staff Regulations and Rules; the AU Financial Rules and Regulations and other relevant AU legal instruments and those adopted by the Focal Points Committee and endorsed by the APR Forum.

14. The APRM Secretariat shall work closely with the PRC and its relevant subcommittees.

#### Article 15 Continental Committee of NGCs

The Continental Committee of NGCs shall be composed of Heads of NGCs and it shall serve as a platform for the exchange of best practice and peer learning among all APRM NGCs.

#### Article 16 National Secretariats Coordinating Committee

The National Secretariats Coordinating Committee shall be composed of Heads of National APRM Secretariats and it shall serve as a platform for the exchange of best practice and peer learning among all APRM National Secretariats.

#### Article 17 APRM National Structures

Without prejudice to the sovereign rights of each participating State to enact national legislation, each participating State, shall organize their APRM national structures, in accordance with this Statute.

#### Article 18 The APR National Focal Point

The APR National Focal Point shall be the Personal Representative of the Head of State and Government.

#### Article 19 National Governing Council

1. The National Governing Council (NGC) shall be autonomous from the government and its composition shall be inclusive of representatives of key stakeholders in society.

2. The NGC shall, among others:

- (a) Provide guidance for the implementation of the APRM principles at the national level;
- (b) Facilitate the establishment of the APRM National Secretariat and oversee its operation;
- (c) Ensure that the voluntary review process is technically competent, credible and free from political manipulation;
- (d) Participate in leading the APRM sensitization programmes country-wide and ensure that all stakeholders participate in the process and own it; and
- (e) Encourage that all the concerns outlined in the self-assessment reports and in the country review reports are addressed in the national programmes of action.

3. In establishing their respective NGCs, participating States are encouraged to define their terms of reference, determine their legal status, the terms of service and duration of appointment of the Chairperson and

### 83. STATUTE OF THE AFRICAN PEER REVIEW MECHANISM (2020)

other members and ensure the provision of adequate funding to enable the NGC to successfully discharge its responsibilities in an independent and autonomous manner.

4. Participating States shall constitute their NGCs and notify the APRM Secretariat.

#### Article 20 APRM National Secretariat

1. There shall be an APRM National Secretariat in the participating States of the APRM, to provide secretarial, technical and administrative support to all national APRM bodies.
2. The APRM National Secretariat shall be established in accordance with the laws and regulations of each participating State, and the APRM Secretariat shall be notified accordingly.
3. The APRM National Secretariat shall liaise between the NGC and the APRM Secretariat.
4. The APRM National Secretariat shall facilitate and support the work of the technical research institution.

#### Article 21 Cooperation with Research Institutions, Other Organs of the African Union, Regional Economic Communities, and AU Strategic Partners

The APRM, in pursuit of its mandate to foster democracy and good governance principles on the continent shall work closely with relevant research institutions, AU organs, Regional Economic Communities (RECs), and AU strategic partners.

#### Article 22 The Headquarters of the APRM

1. The Headquarters of the APRM Secretariat shall be in the Republic of South Africa.
2. The AU and the Government of the Republic of South Africa shall conclude a host country agreement for the APRM.

#### Article 23 Privileges and Immunities of the APRM

The APRM Headquarters and its offices shall enjoy, in the territory of host countries, such privileges and immunities, as stipulated in customary international law, the General Convention on Immunities and Privileges of the Organization of the African Unity of 1965, the Vienna Convention on Diplomatic Relations of 1961 and the host country agreement between the AU and the government of the host country.

#### Article 24 Working Languages

The working languages of the APRM shall be those of the AU.

#### Article 25 Accession to the APRM

1. Accession to the APRM is open to all AU Member States through the relevant legal instrument.

### 83. STATUTE OF THE AFRICAN PEER REVIEW MECHANISM (2020)

2. Any Member State wishing to accede to the African Peer Review process after the entry into force of the present Statute, shall deposit its instrument of accession with the Chairperson of the Commission.

3. The Secretariat of APRM shall undertake all arrangements to transfer to the AU Commission all original documents of accession made prior to the entry into force of this Statute.

#### Article 26 Transitional Arrangements

1. Member States currently participating in the APRM shall retain their status as members of the APRM, following the entry into force of the present Statute.

2. The determination and settling of assets and liabilities of the APRM prior to the entry into force of this Statute, shall be finalized within the transitional period of one (1) year.

3. The provisions of this Statute shall take precedence over and supersede any inconsistent or contrary provisions of any legal instrument of the APRM.

#### Article 27 Amendments and Revision

1. The APR Forum may propose amendments and revisions to this Statute.

2. Any amendment to this Statute shall enter into force upon its adoption by the Assembly.

#### Article 28 Authentic Texts

This Statute is drawn up in four (4) original texts, in the Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic.

#### Article 29 Entry into Force

This Statute shall enter into force upon its adoption by the Assembly.



**REVISED PROTOCOL ON RELATIONS BETWEEN THE AFRICAN  
UNION AND THE REGIONAL ECONOMIC COMMUNITIES**



84. REVISED PROTOCOL ON RELATIONS BETWEEN THE AFRICAN UNION AND  
THE REGIONAL ECONOMIC COMMUNITIES (2020)

84.

REVISED PROTOCOL ON RELATIONS BETWEEN THE AFRICAN UNION AND  
THE REGIONAL ECONOMIC COMMUNITIES

**Adopted in Addis Ababa, Ethiopia, on 7 February 2020.**

**Entered into force on 10 November 2021.**

Preamble

*The Parties,*

*Inspired* by the objectives of the Constitutive Act of the African Union and the Treaty Establishing the African Economic Community, and the treaties establishing the Regional Economic Communities, particularly regarding the need to accelerate the political and socio-economic integration of the continent through the integration process of the Regional Economic Communities,

*Recalling* the declarations and commitments made by Member States of the African Union intended to accelerate integration, such as the Sirte Declaration (1999), the Lusaka Declaration (2001) and the Durban Declaration (2002),

*Further recalling* Decision Assembly/AU/Dec.635 (XXVIII) adopted at the Twenty-eighth Ordinary Session of the Assembly on the need for clear division of labour and effective collaboration between the African Union, Regional Economic Communities, Regional Mechanisms, Member States and other continental institutions,

*Taking* into account the role of the African Union, in terms of the provisions of the Constitutive Act of the African Union and the Treaty Establishing the African Economic Community on the promotion of closer cooperation among the Regional Economic Communities, in particular, through the coordination and harmonization of their policies, measures, programmes and activities in all fields and sectors,

*Aware* of the need to establish a mechanism for the harmonization and strategic planning of programmes by the African Union and the Regional Economic Communities taking into account the need to accelerate the implementation of the integration agenda in Africa,

*Agreeing* on the need to establish a cooperation mechanism between the African Union and the RECs in the promotion of good governance, human rights, rule of law, humanitarian concerns and a democratic culture in Africa in line with the aspirations contained in the African Union Agenda 2063,

*Conscious* of the need for the coordination and the harmonization of the integration activities of the Regional Economic Communities with the activities of the African Economic Community so as to accelerate the establishment of the African Common Market,

*Aware* of the responsibility placed on both the African Union and the Regional Economic Communities to ensure that the latter are integrated in the most economic and effective manner and the integration process of Africa is accelerated to enable Africa to face the challenges of globalization,

*Stressing* the need to emphasize the principle of gender equality in all areas of cooperation,

*Agreeing* on the need to enhance integration in the economic, social, cultural and political areas, as well the need to maintain peace and security in conformity with the Protocol Relating to the Establishment of the Peace and Security Council of the African Union, the Memorandum of Understanding on Cooperation in the Area of Peace and Security between the African Union, the Regional Economic Communities and the Coordinating Mechanisms of the Regional Standby Brigades of Eastern Africa and Northern Africa, and the African Peace and Security Architecture,

84. REVISED PROTOCOL ON RELATIONS BETWEEN THE AFRICAN UNION AND  
THE REGIONAL ECONOMIC COMMUNITIES (2020)

*Aware* of the need to define the role of the African Union and that of the RECs taking into account the principles of subsidiarity and comparative advantage, thereby allowing the RECs to advance the continental integration agenda in specific areas,

*Convinced* of the need to strengthen the institutional framework to govern relations between the African Union and the Regional Economic Communities, through revision of the Protocol on Relations between the African Union and the Regional Economic Communities, which entered into force on 27 January 2008,

*Now therefore it is hereby agreed* as follows:

Chapter One  
Preliminary Provisions

Article 1  
Definitions

In this Protocol, unless the context otherwise requires:

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

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

"Abuja Treaty" means the Treaty Establishing the African Economic Community;

"AEC" means the African Economic Community;

"African Common Market" means a single African liberalized market for goods and services, facilitated by movement of persons in order to deepen the economic integration of the African continent, as envisaged in the Abuja Treaty;

"African Financial Institutions" means the financial institutions established under Article 19 of the Constitutive Act;

"AUDA-NEPAD" means the African Union Development Agency - New Partnership for Africa's Development;

"Bureau" means the Chairperson, Vice-Chairpersons and Rapporteur of the Assembly;

"Chairperson" means the Chairperson of the African Union Commission;

"CEO" means the Chief Executive Officer of a Regional Economic Community;

"Commission" means the African Union Commission;

"Constitutive Act" means the Constitutive Act of the African Union adopted in Lomé, Togo, on 11 July 2000;

"Parties" means the Parties to this Protocol, namely the African Union and the Regional Economic Communities;

"Policy organs" means the decision-making organs established by the legal instruments of the African Union and the Regional Economic Communities;

"Protocol" means this Revised Protocol on Relations between the African Union and the Regional Economic Communities;



84. REVISED PROTOCOL ON RELATIONS BETWEEN THE AFRICAN UNION AND  
THE REGIONAL ECONOMIC COMMUNITIES (2020)

“Regional Economic Community (REC)” means the Regional Economic Communities recognized by the African Union;

“Regional Mechanism (RM)” means an African Regional Mechanism for Conflict Prevention, Management and Resolution;

“Sirte Declaration” means the Assembly Declaration EAHG/Decl. (IV) Rev.1 adopted during the Fourth Extraordinary Session of the Assembly in Sirte, Libya, where Heads of State and Government agreed to establish the African Union, to accelerate the process of integration on the continent and to address social, economic and political problems affecting the continent in accordance with the Treaty Establishing the African Economic Community (Abuja Treaty);

“Specialized Technical Committees (STCs)” means the Specialized Technical Committees of the African Union established under Article 5 of the Constitutive Act and the Specialized Technical Committees of the RECs established under the treaties establishing the Regional Economic Communities;

“Treaties” means the treaties establishing the Regional Economic Communities;

“Union” means the African Union established by the Constitutive Act.

Article 2  
Scope of Application

This Protocol shall apply to the coordination between the Parties in the implementation of measures that serve the principles and objectives of the Constitutive Act, the Abuja Treaty, the treaties and any other relevant AU instruments.

Article 3  
Objectives

The objectives of this Protocol are to:

- (a) Formalize, consolidate and promote closer cooperation among the RECs and between them and the Union through the coordination and harmonization of their policies, measures, programmes and activities in all fields and sectors in line with the principle of subsidiarity and complementarity;
- (b) Establish a framework for coordination of the activities of the RECs in their contribution to the realization of the objectives of the Constitutive Act, the Abuja Treaty and the treaties, as well as other relevant AU instruments;
- (c) Strengthen the RECs in accordance with the provisions of the Abuja Treaty and decisions of the Union;
- (d) Implement the Sirte Declaration with regard to the acceleration of the integration process;
- (e) Coordinate AU and REC policies, measures, programmes and activities with a view to avoiding duplication;
- (f) Set and monitor general and specific benchmarks for the establishment of the African Common Market;
- (g) Establish a framework for linking the operations of the STCs and the Sectoral Cluster Committees of the Economic, Social and Cultural Council of the Union (ECOSOCC) and AUDA-NEPAD to the operations of the RECs;
- (h) Establish a coordination mechanism of regional and continental efforts for the development of common positions by its members in negotiations at the multilateral level;

84. REVISED PROTOCOL ON RELATIONS BETWEEN THE AFRICAN UNION AND  
THE REGIONAL ECONOMIC COMMUNITIES (2020)

- (i) Encourage the sharing of experiences in all fields among the RECs and ensure harmonization of their cooperation with potential donors and international financial institutions;
- (j) Ensure that gender is mainstreamed into all the programmes and activities within the relationships among the RECs and between the RECs and the Union.

Article 4

Mutual Undertakings

The Parties undertake, in conformity with the Constitutive Act, the Abuja Treaty and the treaties to coordinate their policies, measures, programmes and activities with a view to avoiding duplication thereof. To this end, the Parties shall:

- (a) Cooperate and coordinate the policies and programmes of the RECs with those of the Union;
- (b) Exchange, at all appropriate levels, information and experiences on programmes and activities and implement the provisions of this Protocol;
- (c) Promote interregional projects in all fields; and
- (d) Support each other in their respective integration endeavours and agree to attend and participate effectively in all meetings of each other and in the activities required to be implemented under this Protocol.

Article 5

Special Undertakings

1. The RECs shall take the necessary steps to review their treaties with the Union in order to establish an organic link with a view to:
  - (a) Strengthening their relations with the Union;
  - (b) Aligning their programmes, policies and strategies with those of the Union;
  - (c) Providing for an effective implementation of this Protocol; and
  - (d) Providing for the eventual absorption, at stage five as set out in Article 6, paragraph 2 (e), of the Abuja Treaty, of the RECs into the African Common Market, prelude to the AEC.
2. The Union undertakes to discharge fully its responsibility of strengthening the RECs as well as of coordinating and harmonizing their policies in line with Article 4, paragraphs 1 and 2, of the Abuja Treaty.

Chapter Two

Institutional Framework

Article 6

Establishment of the Coordination Structures

The following structures are established for the purpose of coordinating policies, measures, programmes and activities of the Parties towards implementation of this Protocol:

- (a) The Mid-Year Coordination Meeting;

84. REVISED PROTOCOL ON RELATIONS BETWEEN THE AFRICAN UNION AND  
THE REGIONAL ECONOMIC COMMUNITIES (2020)

- (b) The Committee on Coordination; and
- (c) The Coordination Secretariat.

Article 7  
The Mid-Year Coordination Meeting

1. In place of the June/July Summit, the Bureau of the Assembly shall hold a coordination meeting with the RECs with the participation of the Chairpersons of the RECs, the Commission and RMs.
2. The Commission shall coordinate and harmonize the activities of the Parties for the Mid-Year Coordination Meeting.
3. The Mid-Year Coordination Meeting shall:
  - (a) Assess the status of continental integration and coordinate efforts to accelerate the integration process;
  - (b) Coordinate the implementation of a clear division of labour and effective collaboration between the Union, RECs, RMs, Member States and other continental institutions, in line with the principle of subsidiarity, complementarity and comparative advantage;
  - (c) Coordinate and harmonize AU and REC policies with a view to accelerating Africa's integration process;
  - (d) Identify areas of cooperation and establish mechanisms for regional, continental and global cooperation in each sector or subsector;
  - (e) Guide the Union and the RECs in matters pertaining to priority programmes, resources needed for implementation of these programmes and the impact of such programmes in improving the lives of the African people;
  - (f) Review and assess the status of implementation of decisions and legal instruments pertaining to the relations among the Union, RECs and RMs;
  - (g) Consider any functions assigned by the Assembly; and
  - (h) Any other requests assigned by the Assembly.

Article 8  
The Committee on Coordination

1. The Committee on Coordination shall consist of the:
  - (a) Senior officials of Member States participating in the Mid-Year Coordination Meeting;
  - (b) Chairperson of the Commission;
  - (c) CEOs of RECs;
  - (d) CEOs of the financial institutions; and
  - (e) CEO of AUDA-NEPAD.

84. REVISED PROTOCOL ON RELATIONS BETWEEN THE AFRICAN UNION AND  
THE REGIONAL ECONOMIC COMMUNITIES (2020)

2. The Committee on Coordination shall be responsible for:
  - (a) Overseeing the implementation of this Protocol;
  - (b) Coordinating and harmonizing the policies to enhance integration in the economic, social, cultural and political areas, as well as in the field of peace and security;
  - (c) Monitoring, evaluating and reviewing progress made by each REC towards the implementation of stages two (2) through four (4) as set out in Article 6 of the Abuja Treaty;
  - (d) Proposing the budget of the Committee on Coordination referred to in Article 22 of this Protocol;
  - (e) Collaborative implementation of decisions and directives of the Assembly and the Executive Council on the implementation of the Abuja Treaty;
  - (f) Mobilizing resources for the implementation of the Abuja Treaty;
  - (g) Considering recommendations of the Coordination Secretariat covering paragraphs (a) to (c) above in order to facilitate the harmonious and expeditious implementation of the provisions of the Abuja Treaty, the treaties and this Protocol;
  - (h) Implementing the provisions of this Protocol and submitting regular progress reports to their respective policy organs including issues requiring their approval;
  - (i) Submitting its report for consideration by the Mid-Year Coordination Meeting.

Article 9  
Meetings of the Committee on Coordination

1. The Committee on Coordination chaired by the Chairperson shall meet at least twice a year and one of these meetings shall take place at least three (3) months before the annual Mid-Year Coordination Meeting.
2. The recommendations of the Committee on Coordination shall be taken by consensus or, failing consensus, by a simple majority of members present and voting. The recommendations of the Committee on Coordination shall be forwarded to the Executive Council, through the Committee of Permanent Representatives, as recommendations on matters of policy aimed at a harmonized and efficient approach to Africa's integration.
3. The Chief Executive of AUDA-NEPAD shall provide advice to the Committee and shall have no right to vote on such matters as shall be stipulated in the rules of procedure adopted under paragraph 4 of this article.
4. Subject to the provisions of the Abuja Treaty and the treaties, the Committee on Coordination shall determine its own rules of procedure for the conduct of its meetings.
5. Members of the Committee on Coordination may be accompanied to meetings by experts and advisers.
6. The Committee on Coordination may invite any African institution with expertise in relevant matters to participate in its work and to attend its meetings as an observer.

Article 10  
The Coordination Secretariat

1. The Coordination Secretariat shall consist of:

84. REVISED PROTOCOL ON RELATIONS BETWEEN THE AFRICAN UNION AND  
THE REGIONAL ECONOMIC COMMUNITIES (2020)

- (a) The representative of the Chairperson responsible for coordination of the activities of the RECs;
  - (b) The representative of the chief executives of the RECs responsible for the coordination of integration with the Union;
  - (c) The representative of the AUDA-NEPAD; and
  - (d) The representative of the chief executives of the financial institutions of the Union.
2. The Coordination Secretariat shall be responsible for:
- (a) Supporting the mandate of the Committee on Coordination;
  - (b) Preparing and submitting reports to the Committee on Coordination on:
    - (i) Coordination and harmonization of the policies to enhance integration in the economic, social, cultural and political areas, as well as in the field of peace and security;
    - (ii) Status of implementation on the progress made by each REC towards the implementation of stages two through four as set out in Article 6 of the Abuja Treaty;
  - (c) Preparing the budget referred to in Article 22 of this Protocol;
  - (d) Proposing modalities for:
    - (i) Implementing decisions and directives of the Assembly and the Executive Council on the implementation of the Abuja Treaty; and
    - (ii) Mobilizing resources for the implementation of the Abuja Treaty;
  - (e) Preparing proposals for consideration by the STCs.

Article 11  
Meetings of the Coordination Secretariat

1. The Coordination Secretariat shall meet at least twice a year prior to the meetings of the Committee on Coordination and shall be chaired by the representative of the Chairperson, bearing in mind the provisions of Article 9, paragraph 1, of the present Protocol.
2. The conclusions and recommendations of the Coordination Secretariat shall be taken by consensus or, failing which, by a simple majority of members present and voting.
3. At least one of the meetings of the Coordination Secretariat shall take place two (2) months before the second meeting of the Committee on Coordination.
4. Subject to the provisions of the Abuja Treaty and the treaties, the Coordination Secretariat shall determine its own rules of procedure provided that the rules of procedure so adopted shall follow as closely as possible the rules of procedure of the Committee on Coordination.
5. The Coordination Secretariat may invite any African institution to participate in its work and to attend its meetings as an observer.

Chapter Three

84. REVISED PROTOCOL ON RELATIONS BETWEEN THE AFRICAN UNION AND  
THE REGIONAL ECONOMIC COMMUNITIES (2020)

Areas of Competence

Article 12  
Role of the Union

1. In terms of the provisions of Article 88, paragraph 1, and paragraphs 2 (a) to (d) of Article 6 of the Abuja Treaty, the role of the Union, at stages 1 through 4, is primarily to strengthen the RECs and harmonize and coordinate the policies and measures adopted by the RECs into the envisaged African Common Market. To this end the Commission shall:

(a) Work towards the coordination and harmonization of the activities of RECs taking account of the paramount necessity of accelerating the achievement of a continental integration within the context of the Sirte Declaration;

(b) In cooperation with the RECs, identify the areas with respect to each REC which requires the assistance of the Commission with a view to strengthening each REC and facilitating the achievement of the objectives of the Abuja Treaty and the treaties.

2. The implementation by the Union, of measures, programmes and activities envisaged under the provisions of Article 6, paragraph 3, of the Abuja Treaty shall be undertaken jointly with the RECs and shall take into account the division of labour agreed on between the Union and the RECs.

3. The Commission shall, in consultation with the RECs, evaluate existing RECs to determine the progress of regional economic integration and thereafter design appropriate programmes to accelerate the integration process, including in relation to the stages set out in paragraph 2 (a) through (d) of Article 6 of the Abuja Treaty.

Article 13  
Role of the Regional Economic Communities

1. The RECs shall comply with the provisions of Article 3 of the Constitutive Act which envisages, inter alia:

(a) Accelerate the political and socio-economic integration of the continent;

(b) Coordinate and harmonize the policies between the RECs for the gradual attainment of the objectives of the Union.

2. The RECs shall also comply with the provisions of Articles 4 and 6 of the Abuja Treaty which envisages, inter alia:

(a) Trade liberalization, facilitation, promotion and development with a view to creating a free trade area and a customs union through the eventual adoption of a common external tariff;

(b) Sectoral integration based on harmonized macroeconomic policies, enabling free market policies, factor movement and measures that aim to reduce transaction costs of doing business across the borders and thus promote increased domestic production in the Parties Member States.

Chapter Four  
Regional Integration

Article 14  
Acceleration of the Regional Integration Agenda

84. REVISED PROTOCOL ON RELATIONS BETWEEN THE AFRICAN UNION AND  
THE REGIONAL ECONOMIC COMMUNITIES (2020)

1. The Assembly shall consider specific benchmarks to be attained at each stage, bearing in mind the guidelines outlined by the division of labour agreed on between the Union and the RECs.
2. Notwithstanding the provisions of Article 6 of the Abuja Treaty, the coordination and harmonization of tariff and non-tariff systems among the RECs with a view to establishing, at the continental level, a customs union through the adoption of a common external tariff, shall be achieved within a shorter period in accordance with the Sirte Declaration.
3. Any REC may accelerate the process of integration and achieve the objectives set for each stage in advance of the time limits set out in Article 6 of the Abuja Treaty.
4. Each REC shall review and modify its existing technical committees to align their functions and structures to those of the STCs.

Article 15  
Coordinating Ministries or Authorities

For the purpose of the implementation of the provisions of paragraph 2 of Article 88 of the Abuja Treaty and of Article 4 of this Protocol, the Parties agree to invite their Member States to designate the same coordinating Ministry for the implementation of the Abuja Treaty and the treaties.

Article 16  
Joint Programmes and Closer Cooperation

1. The RECs may enter into cooperation arrangements under which they undertake joint programmes or activities or coordinate more closely their policies, measures and programmes.
2. The Commission and the Secretariats of the RECs shall cooperate in the preparation of the Mid-Year Coordination Meeting. The Commission should submit the preparation of the Mid-Year Coordination Meeting for consideration by AU Member States through the appropriate policy organs of the Union.
3. The Commission shall consult the RECs in the preparation of proposals and work programme for consideration by the STCs. The Parties shall attend their relevant STCs or equivalent meetings to allow for closer cooperation in every sector.
4. The Commission, the RECs, AUDA-NEPAD and the financial institutions of the Union shall each designate a focal point with which all the parties may communicate in connection with any matter arising out of the implementation and application of this Protocol and notify such designation to all the parties.

Chapter Five  
Participation in Meetings and the Binding Nature of Decisions

Article 17  
Participation in Meetings and Exchange of Expertise,  
Experience and Information among RECS

1. In order to strengthen horizontal integration, each REC shall invite the others to participate in meetings convened by it in which matters of mutual interest are to be discussed.
2. A REC may be invited, in line with modalities to be mutually agreed upon, to avail another of its experience by putting at its disposal the services of its personnel. The costs for such exchange of expertise shall be borne by the RECs.

84. REVISED PROTOCOL ON RELATIONS BETWEEN THE AFRICAN UNION AND  
THE REGIONAL ECONOMIC COMMUNITIES (2020)

3. Subject to necessary arrangements for the safeguarding of the confidentiality of certain information, the RECs shall exchange information and documents and keep each other informed of their policies, measures, programmes and activities in the implementation of this Protocol with a view to fostering closer coordination and cooperation for the achievement of the objectives of the Abuja Treaty and this Protocol.

Article 18

Participation in Meetings of the Union

1. The RECs shall attend and participate, without voting rights, in meetings of the Union in accordance with the rules of procedure of the Assembly, Executive Council, Permanent Representatives' Committee (PRC) and STCs.

2. Each REC shall submit through the Coordination Committee to the STCs, the Executive Council and the Assembly a report on progress achieved and difficulties encountered in the implementation of the provisions of this Protocol.

Article 19

Participation in Meetings of RECs

1. The Union shall attend and participate, without voting rights, in meetings of the RECs in accordance with their rules of procedure.

2. The Chairperson shall inform the meetings of the RECs on the implementation of the provisions of the Abuja Treaty and this Protocol.

Article 20

Permanent Representations

The Union and the RECs shall continue to take steps to have a permanent representation at their respective headquarters.

Article 21

Compliance with the Protocol and Binding Decisions of the Union

1. The Parties agree to comply with this Protocol and binding decisions of the Union.

2. The Union may, through its supreme organ, and after due consideration by the Mid-Year Coordination Meeting, take measures to address a situation where any Party is undertaking policies, measures and programmes which are incompatible with the objectives of the Abuja Treaty or whose implementation of its policies, measures, programmes and activities lag behind, without sufficient reason, the time limits set out in Article 6 of the Abuja Treaty or pursuant to this Protocol.

3. Where it is established that the delay in the implementation of the policies, measures, programmes and activities arising from the provisions of Article 6 of the Abuja Treaty is the result of action or omission by any Party, the Assembly shall take measures, after consultation with the Party concerned and shall address its directives to this concerned Party.

4. The Assembly shall take measures deemed appropriate. The modalities of such measures shall be agreed upon by the Assembly in line with the Constitutive Act and its rules of procedure.

Chapter Six

Financial Provisions

Article 22



84. REVISED PROTOCOL ON RELATIONS BETWEEN THE AFRICAN UNION AND  
THE REGIONAL ECONOMIC COMMUNITIES (2020)

Budget

1. The Union shall allocate in its regular budget resources for the implementation of this Protocol and related provisions of the Abuja Treaty.
2. A draft budget, for the implementation of the Protocol, for each financial year, shall be prepared by the Chairperson, in consultation with the chief executives of the financial institutions of the Union and AUDA-NEPAD.
3. Each REC shall also provide in its regular budget the necessary resources for the implementation of programmes, measures and policies in this Protocol and shall bear the relevant secretariat service and local transport costs when hosting meetings to this effect.
4. In the event of financial appropriation by the Union to a REC, the benefiting REC shall account for any financial resources provided by the Union.
5. Notwithstanding the provisions of paragraph 1 of this article, the resources of the budget may be derived from extrabudgetary sources.

Article 23  
Financial and Technical Support

The Parties recognize that the main obstacles to the full implementation of the policies, measures and programmes of the RECs include resource constraints, at the levels of the Union, the RECs and Member States and agree to cooperate through:

- (a) The collective mobilization of financial resources to assist the RECs to implement, in particular, policies, measures and programmes which shall facilitate the development of respective RECs from one stage to the next as set out in paragraph 2 (a) through (d) of Article 6 of the Abuja Treaty;
- (b) Human resource capacity and institution-building;
- (c) Mobilizing technical assistance for the RECs according to expressed needs; and
- (d) Monitoring the implementation and the conformity of programmes agreed upon at the level of the RECs and monitoring their compliance thereof so as to expedite the implementation of the Abuja Treaty.

Chapter Seven  
General and Final Provisions

Article 24  
Administrative Arrangements

1. The African Union Commission shall be responsible for all secretarial, administrative and conference arrangements for all meetings held at the Union Headquarters relating to the implementation of this Protocol.
2. In the event that the meetings are held outside the Headquarters of the Union, the offering Member State shall be responsible for all extra expenses incurred as a result of the meeting being held outside the Headquarters.
3. When the meetings are held at the invitation of one of the RECs, the Executive Secretariat of the REC concerned shall be responsible for all secretarial, administrative and conference arrangements.

84. REVISED PROTOCOL ON RELATIONS BETWEEN THE AFRICAN UNION AND  
THE REGIONAL ECONOMIC COMMUNITIES (2020)

4. The Union shall facilitate the participation of RECs in meetings of the Union, while bearing in mind the applicable rules of procedure.

Article 25  
External Relations

1. In the context of realizing its integration objectives, a regional economic community may enter into cooperation agreements with other international organizations or with third countries provided that such agreements do not conflict with the objectives of the Constitutive Act, the Abuja Treaty and the treaties.
2. Copies of the agreements referred to in paragraph 1 of this article shall be transmitted to the Chairperson by the RECs parties to them.

Article 26  
Harmonization of Mechanisms for Promotion of Peace, Security and Stability

1. For the purpose of implementing the provision of Article 3, subparagraph (a), of this Protocol, the Parties recall that the Protocol Establishing the Peace and Security Council of the African Union, stipulates, inter alia, the following:
  - (a) Harmonize and coordinate their activities in the field of peace, security and stability to ensure that these activities are consistent with the objectives and principles of the Union and those of the RECs;
  - (b) Work closely to ensure effective partnership between them in the promotion and maintenance of peace, security and stability. The modalities of such partnership shall be determined by the comparative advantage of each and the prevailing circumstances;
  - (c) The Parties shall be guided by their Memorandum of Understanding on Cooperation between the Commission and the RMs in line with Article 16, paragraph 9, of the Protocol establishing the Peace and Security Council.

Article 27  
Amendments

1. Any Party may propose amendments to this Protocol.
2. Proposals made pursuant to paragraph 1 of this article shall be submitted, in writing, to the Committee on Coordination, which shall make appropriate recommendations to the Mid-Year Coordination Meeting. The conclusions of the Mid-Year Coordination Meeting shall be submitted to the Assembly.
3. Amendments shall enter into force after consideration by the Parties and approval by the Assembly.

Article 28  
Dispute Resolution

1. Any dispute arising between the Parties from the interpretation or application of the provisions of this Protocol shall be resolved amicably by the Parties.
2. Upon failure to resolve the dispute amicably, the matter shall be referred to the Mid-Year Coordination Meeting.

84. REVISED PROTOCOL ON RELATIONS BETWEEN THE AFRICAN UNION AND  
THE REGIONAL ECONOMIC COMMUNITIES (2020)

3. Should the dispute remain unresolved, any concerned Party may request the referral of the matter to the Court of Justice of the Union in conformity with the Articles 18 and 19 of the Protocol of the Court. Pending the establishment of the Court, any dispute should be submitted to the Assembly, by a two-thirds vote.

Article 29  
Applicable Law and Interpretation

1. The Parties shall be governed by their respective legal instruments. In the event of inconsistency between the legal instruments and this Protocol, the latter shall prevail.

2. Any issues of interpretation arising from the application or implementation of this Protocol shall be referred to the Court of Justice or the Assembly in accordance with Article 28, paragraph 3.

Article 30  
Working Languages

For the purpose of this Protocol, the working languages shall be the AU working languages as stated in the AU Constitutive Act.

Article 31  
Entry into Force and Accession

1. This Protocol shall be formally endorsed by the Assembly.

2. This Protocol shall enter into force when signed by the Chairperson and by the Chief Executives of at least three (3) RECs.

3. Any REC which is not a party to this Protocol on the date of its entry into force may accede to it.

4. This Protocol shall enter into force in relation to an acceding REC on the date on which its instrument of accession is deposited with the Chairperson.

Article 32  
Termination of the 2008 Protocol

1. The operation of the Protocol on Relations between the African Union (AU) and the Regional Economic Communities (RECs), which entered into force on 27 January 2008, shall terminate upon entry into force of this Protocol.

2. Notwithstanding paragraph 1 above, the termination shall not affect the completion of all ongoing programmes and activities being carried out in accordance with its provisions and not fully executed at the time of its termination.

Article 33  
Depositary

This Protocol, prepared in all AU working languages, all texts being equally authentic, shall be deposited with the Chairperson, who shall transmit certified copies thereof to the Parties and to their Member States.



**STATUTE OF THE AFRICAN CENTRE FOR THE  
STUDY AND RESEARCH ON MIGRATION**



85.

**STATUTE OF THE AFRICAN CENTRE FOR THE STUDY AND RESEARCH ON MIGRATION**

**Adopted in Addis Ababa, Ethiopia, on 10 February 2020.**

**Entered into force upon adoption.**

Preamble

*We, the Member States of the African Union,*

*Guided* by the Executive Council Decision EX.CL/987 (XXXII) of January 2018 which requests the Commission in collaboration with the Government of the Republic of Mali to expedite the process towards the establishment of the Centre by submitting to the relevant AU organs the administrative, financial and legal implications of the establishment of the Centre,

*Recalling* the 2006 Executive Council and Assembly Decision EX.CL/314 (IX) which endorsed the establishment of the African Centre for the Study and Research on Migration in Mali, and requested the Commission in collaboration with the Government of Mali to monitor the implementation of this decision and oversee the process of establishing the Centre,

*Considering* the 2017 Evaluation of the 2006 AU Migration Policy Framework for Africa and its finding on the lack of reliable and up-to-date data on migration which is hindering informed national, regional and continental policy-making on migration,

*Reaffirming* the 2018 African Union Migration Policy Framework for Africa which recommends the establishment and strengthening of continental arrangements/capacities for migration research, data collection, analysis and sharing,

*Further considering* that evidence-based policy making is critical for effective governance of migration on the continent,

*Underscoring* that the Centre shall be a Specialized Technical Office of the AUC, with a continent-wide mandate,

*Noting* the decision of the Executive Council EX.CL/195 (VII) Rev.1 Annex III on the Criteria for Hosting AU Organs,

*Recognizing* the commitment of the Republic of Mali to host the African Centre for the Study and Research on Migration in line with the General Convention on the Privileges and Immunities of the Organization of African Unity (OAU) adopted by the Assembly of Heads of State and Government of the OAU on 25 October 1965 in Accra, Ghana, and the supplementary Host Country Agreement concluded between the African Union and the Republic of Mali in Addis Ababa, Ethiopia, on 11 February 2019,

*Agree* as follows:

Chapter One

Definition, Objectives and Core Functions of the Centre

Article 1

Definitions

For the purpose of this Statute, the following terms and expressions shall have the meaning assigned to them:

## 85. STATUTE OF THE AFRICAN CENTRE FOR THE STUDY AND RESEARCH ON MIGRATION (2020)

“Archives” includes records, correspondence, documents, manuscripts, still and motion pictures, films and sound recordings, electronic records, belonging to, or held by the African Centre for the Study and Research on Migration in furtherance of its official functions;

“Assembly” means the Assembly of Heads of State and Government of the African Union as provided by the Constitutive Act of the AU;

“AU” means the African Union as established by the Constitutive Act of the African Union adopted on 11 July 2000, which entered into force on 26 May 2001;

“Board” means the Board of the African Centre for the Study and Research on Migration;

“Centre” means the African Centre for the Study and Research on Migration, which serves as a Specialized Technical Office of the Commission;

“Commission” means the Secretariat of the African Union as provided by the Constitutive Act of the AU;

“Development partners” means the multilateral institutions, development agencies, donors, and foundations that have contribute financially or otherwise to the Centre;

“Executive Council” means the Executive Council of Ministers of the African Union, as provided by the Constitutive Act of the AU;

“Experts” mean individuals, other than officials, who owing to their special qualifications are recruited in accordance with the Staff Rules and Regulations on a temporary basis to perform specific assignments for the Centre;

“General Convention” means the General Convention on the Privileges and Immunities of the Organization of African Unity (OAU) adopted by the Assembly of Heads of State and Government of the OAU on 25 October 1965 in Accra, Ghana;

“Host Country Agreement” means the Agreement between the Government of the Republic of Mali and the African Union Commission on the hosting of the African Centre for the Study and Research on Migration;

“Host country” or “Government” means the Government of the Republic of Mali;

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

“Migration governance” means “the combined frameworks of legal norms, laws and regulations, policies and traditions as well as organizational structures (subnational, national, regional and international) and the relevant processes that shape and regulate States’ approaches with regard to migration in all its forms, addressing rights and responsibilities and promoting international cooperation;”

“Migration” means the movement of a person or group of persons from one geographical unit to another across an administrative or political border, with the intention of settling indefinitely or temporarily in a place other than their place of origin. It involves the crossing of one or several international borders, resulting in a change in the legal status of the individual concerned. Migration may be ‘temporary’ or ‘permanent,’ depending on the duration of absence from the place of origin and the duration of stay in the place of destination” (International Organization for Migration);

“Regional Economic Communities (RECs)” means the regional integration blocs recognized by the African Union;

“Secretariat” means the management body of the Centre;



## 85. STATUTE OF THE AFRICAN CENTRE FOR THE STUDY AND RESEARCH ON MIGRATION (2020)

“Statute” means the present legal instrument that defines the mandate of the African Centre for the Study and Research on Migration;

“STC” means the AU Specialized Technical Committee on Migration, Refugees and Internally Displaced Persons (IDPs);

“Vienna Convention” means the 1961 Vienna Convention on Diplomatic Relations.

In this Statute, words expressed in the singular term shall be construed to include the plural and vice versa.

### Article 2 Legal Status of the Centre

1. The Centre is hereby established as a Specialized Technical Office of the Commission.
2. The Centre shall possess in the territory of host country legal capacity necessary for the fulfilment of its objectives, and exercise of its functions, including the capacity:
  - (a) To enter into contracts;
  - (b) To acquire and dispose of immovable and movable property; and
  - (c) To enter and to respond to legal proceedings.

### Article 3 Purpose and Objectives

#### 1. Purpose

Undertake studies and research to improve the overall migration governance regime in Africa.

#### 2. Objectives

The Centre shall have the following objectives:

- (a) Advance the knowledge base of the African continent on migration and mobility issues;
- (b) Contribute to evidence-based interventions on migration in Africa; and
- (c) Support the other existing initiatives on migration notably the African Migration Observatory, the Continental Operational Centre in Sudan for Combating Irregular Migration, and migration research hubs in Africa and beyond.

### Article 4 Principles

The Centre shall function in accordance with the following principles:

1. Non-interference in the internal affairs of any Member State, respect for the sovereignty and national laws of Members States of the AU;

## 85. STATUTE OF THE AFRICAN CENTRE FOR THE STUDY AND RESEARCH ON MIGRATION (2020)

2. Respect for democratic principles, human rights, the rule of law and good governance in accordance with the Constitutive Act, the African Charter on Human and Peoples' Rights, the Universal Declaration on Human Rights and other relevant instruments;
3. Respect for the ethics of law enforcement agencies of Members States of the AU, the principles of neutrality, integrity and the presumption of innocence;
4. Respect and recognition of African ownership of the Centre.

### Article 5

#### Core Functions and Activities of the Centre

1. In order to attain the above objectives, the Centre shall function in accordance with the provisions of this Statute.
2. Working collaboratively with the African Migration Observatory, the Continental Operational Centre in Sudan for Combating Irregular Migration and migration research institutions in Africa and beyond, the Centre shall have the following core functions:
  - (a) Interpret migration data and compile periodic reports on migration trends and patterns in Africa and between Africa and other regions;
  - (b) Undertake empirical, applied research on all aspects of migration and mobility and facilitate actionable migration policy formulation and implementation for Member States and RECs;
  - (c) Prepare and disseminate a journal and periodic reports on the state of migration and migration governance in Africa;
  - (d) Prepare draft position papers on migration and mobility for consideration by the relevant policy organs of the AU;
  - (e) Promote policies that foster the development impact of migration and address its negative impacts on the continent;
  - (f) Evaluate the implementation of migration policies on the continent;
  - (g) Establish a platform for sharing and disseminating information on migration;
  - (h) Provide technical assistance, training and capacity-building on migration;
  - (i) Provide a platform for experts and the political, diplomatic and academic communities to debate migration and mobility issues on the continent;
  - (j) Serve as an interface between Members States, RECs, African/African Diaspora think tanks and civil society organizations on the migration debate; and
  - (k) Build the capacity on study and research for Member States and RECs in the area of migration management.

### Chapter Two

#### Governance and Structure of the Centre

### Article 6

Governance of the Centre

1. The Centre shall comprise the following bodies:

- (a) The Board of Directors (the Board);
- (b) The Secretariat.

Article 7

Functions of the Board of Directors

1. Reporting through the Commission to the relevant policy organ, the Board shall be the highest governance body of the Centre, and shall have overall oversight of the Centre.

2. The functions of the Board shall be to:

- (a) Oversee the overall governance of the Centre;
- (b) Provide strategic guidance to the Secretariat;
- (c) Consider and approve the Centre's strategic plans, annual action plans and budgets;
- (d) Oversee the implementation of strategic plans, including financial and budgetary issues;
- (e) Recommend amendments to the Statute of the Centre;
- (f) Assist the Secretariat in mobilizing resources to ensure that the Centre fulfills its mandate; and
- (g) Submit annual reports through the Commission to the AU policy organs on implemented activities and achievements of the Centre.

Article 8

Board Composition and Tenure of Office

1. The Board shall be composed as follows:

- (a) Two (2) experts on migration, from each of the five (5) regions of the AU for non-renewable term of two (2) years, with full voting rights. The experts shall be nominated by the STC on Migration, Refugees and Internally Displaced Persons, following consultations;
- (b) One (1) representative of Member States of each REC, with full voting powers;
- (c) One (1) representative of the host country with full voting powers;
- (d) One (1) representative of the Commission (Department of Social Affairs) (non-voting ex-officio);
- (e) The Director of the African Migration Observatory (1) (non-voting ex-officio);
- (f) The Director of the African Centre for the Study and Research on Migration (or his/her Deputy) who shall act as the Secretary of the Board (non-voting ex-officio);
- (g) The Director of the Continental Operational Centre in Sudan for Combating Irregular Migration (non-voting ex-officio);

- (h) The Executive Director of the African Union Institute for Statistics - STATAFRIC (non-voting ex-officio); and
  - (i) The Legal Counsel of the Commission or his/her representative who shall provide legal advice as may be required (non-voting ex-officio).
2. The Board may invite such expertise from relevant professionals to sit at its meetings on an ad hoc basis as may be necessary.
3. The Chairperson of the Board shall be elected from Member States represented in the Board.

Article 9

Meetings, Quorum and Decision-Making Procedures of the Board

1. The Board shall meet in ordinary session once every year.
2. The Board may be convened in extraordinary session, in conformity with its rules of procedure, subject to availability of funds at the request of:
- (i) One half of its members; or
  - (ii) The policy organs of the African Union.
3. The quorum for Board meetings shall be two thirds of the total membership of the Board.

Article 10

The Secretariat

1. The Secretariat shall be responsible for day-to-day execution of the strategies and activities of the Centre.
2. The Secretariat shall be headed by a Director. In the absence of the Director, the Deputy Director shall act in his/her stead.
3. The Director and the Deputy Director shall be appointed by the Commission on the approval of the Board of Directors in line with African Union Staff Rules and Regulations and shall be a regular staff members of the AU.

Article 11

The Director

1. The Director is the chief executive officer of the Centre.
2. Under the supervision of the Commissioner for Social Affairs of the Commission, the functions of the Director shall be to:
- (a) Implement directives of the Board and the Commission as may be applicable;
  - (b) Organize, coordinate, direct and supervise the overall day-to-day operations and management of the Centre in accordance with the strategic plans and policies approved by the Board and the AU;
  - (c) Plan, develop, and implement the Centre's policy and programme objectives, plans, and evaluate progress while ensuring efficiency and cost effectiveness;

## 85. STATUTE OF THE AFRICAN CENTRE FOR THE STUDY AND RESEARCH ON MIGRATION (2020)

- (d) Provide strategic planning, overall management and institutional representation of the Centre in fulfillment of its mission, goals, and strategic objectives;
- (e) Prepare and submit to the Board and the Commission strategic and operational plans, budgets, financial statements and operational reports of the Centre;
- (f) Ensure the vision, mission and guiding values of the Centre are developed, communicated, and implemented at all levels;
- (g) Propose to the Board strategic alliances and partnerships for the joint execution of programmes and activities with development partners;
- (h) Act as Secretary of the Board to effectively carry out the Board's governance roles;
- (i) Serve as the spokesperson and official representative of the Centre in continental and international partnerships and gatherings;
- (j) Promote an accountable, ethical, informed and transparent organizational culture;
- (k) Ensure coordination of the Centre's activities in collaboration with other multilateral, continental, regional and national institutions and partners;
- (l) Advocate on behalf of the Board and the Centre at large to ensure that the positions and actions of the Centre are successfully presented to all interested parties;
- (m) Represent the Centre at all meetings, conferences or similar venues where the Centre seeks to be recognized to advance its mission and strategic goals;
- (n) Provide expert advice to the Board, the African Union and its Member States, key stakeholders and partners;
- (o) Ensure the Centre has an annual workplan in place, in line with the financial resources necessary to achieve its core functions, outcome-oriented goals, and objectives;
- (p) Oversee the execution of the host country Agreement;
- (q) Oversee all legal agreements and seek guidance, in this regard, from the Board and the Commission when necessary;
- (r) Ensure compliance with all legal and regulatory requirements emanating from Host Government and other bodies;
- (s) Propose the annual budget to the Board and Commission in keeping with established processes and timelines; and
- (t) Perform any other functions as may be assigned by the Board in line with the mandate of the Centre.

### Article 12 The Deputy Director

Reporting to the Director, the duties and responsibilities of the Deputy Director include the following:

## 85. STATUTE OF THE AFRICAN CENTRE FOR THE STUDY AND RESEARCH ON MIGRATION (2020)

- (a) Advise and guide the Centre's management on programmatic, finance and administrative operations, including workplans, operational policies, procedures and systems, supporting critical and routine programme operations;
- (b) Facilitate programme management support, including financial management, human resources management, procurement, information technology networks and equipment, travel, facilities management and other functions executed at both headquarters and the Centre;
- (c) Supervise the development of programme objectives and workplans of staff;
- (d) Ensure the implementation of the strategic goals and objectives and workplans by staff;
- (e) Supervise reports by staff and prepare executive reports for management;
- (f) Work with staff to ensure overall agency compliance to AU Staff Rules and Regulations and Financial Rules and Regulations, including established documentation and procedures for transacting administrative support functions processed by AU service divisions;
- (g) Ensure periodic staff appraisals;
- (h) Facilitate and support the overall institutional accountability functions - including those necessary for auditing, budgeting, financial analysis, procurement, capital assets and property management and payroll and other operational systems and procedures - are implemented and monitored in accordance with the AU and the Centre's internal controls;
- (i) Serve as the principal manager of the Centre's budget;
- (j) Develop and manage budget frameworks and coordinate implementation and execution of these tools, keeping senior management informed as appropriate;
- (k) Serve as agency's point of contact with AU service divisions to resolve issues and problems preventing end-to-end service provision;
- (l) Review and process approvals for routine actions within multiple agency administrative systems, e.g., procurement and travel;
- (m) Oversee staff providing a full range of logistics support, procurement and travel; and
- (n) Perform other duties as assigned by the Director.

### Article 13 Other Staff

The Centre will have other staff members, in charge of, among others, surveys/data collection, analysis, publications, finance, human resource development, administration, events and seminars management, networking and operations who shall be hired by the Commission in accordance with the AU Staff Rules and Regulations within the approved structure and budget.

### Article 14 Budget and Budget Contributions

1. The regular budget of Centre shall be within the budget of the AU.

## 85. STATUTE OF THE AFRICAN CENTRE FOR THE STUDY AND RESEARCH ON MIGRATION (2020)

2. In addition to the regular budget of the AU, other sources of funding the Centre may include:
  - (a) Voluntary contributions from AU Member States;
  - (b) Contributions from development partners of the African Union and the Commission;
  - (c) Contributions from the private sector;
  - (d) Contributions from national and regional institutions; and
  - (e) Any other source of funding in accordance with AU Financial Rules and Regulations.
3. The budget calendar of the Centre shall be that of the AU.
4. Staff remuneration, administrative expenses and related budgets of the Centre shall be covered by the AU.
5. Programmes of the Centre shall be funded by resources from the AU, voluntary contributions by other Member States, or funding from development partners.
6. The budget of the Centre shall be prepared and considered in line with the AU Financial Rules and Regulations.

### Article 15 Headquarters of Centre

1. The headquarters of the Centre shall be in Bamako, the Republic of Mali.
2. In the event a Member State offers to host the meetings and conferences of the Centre, it shall be responsible for all extra expenses incurred by the Centre as a result of the session being held outside the host country.

### Article 16 Code of Conduct

1. In the performance of their duties, the Director and other staff of the Centre shall not accept nor receive instructions from any government or any authority other than the African Union.
2. Each Member State shall undertake to respect the exclusive nature of the responsibilities of the Director and any other staff member of the Centre, and shall not influence or seek to influence them in the performance of their duties.
3. The Director and the other staff of the Centre shall not, in the discharge of their duties, engage in any activity or conduct incompatible with the proper discharge of their duties. They shall avoid conflict between professional and personal interests or obligations sufficient to influence the impartial exercise of their official duties or responsibilities.
4. Where the Director of the Centre fails to comply with his/her obligations, an ad hoc committee approved by the Board shall conduct an inquiry and provide an appropriate report and recommendations for its consideration and decision.

## 85. STATUTE OF THE AFRICAN CENTRE FOR THE STUDY AND RESEARCH ON MIGRATION (2020)

5. Where a staff member fails to comply with his/her obligations, the internal procedures referred to in the Statute and the AU Staff Rules and Regulations shall be applied. The staff member concerned shall have the right of appeal in accordance with the Staff Rules and Regulations of the African Union.

6. The Director and other staff of Centre may accept, on behalf of the Commission, gifts, bequests and other donations made to the Centre, provided that such donations are consistent with the objectives and principles of the Centre and shall remain the property of the Centre. The Director shall report to the relevant policy organs on such donations.

### Article 17

#### Role of the Department of Social Affairs and the Relation with Member States, Development Partners and Other Stakeholders

1. The Department of Social Affairs as the focal department on the subject matter shall ensure synergy between the Centre and the Commission.

2. In carrying out its functions, the African Union shall dedicate necessary resources to building partnerships aimed at improving the effectiveness of its operations.

3. Within the African continent, the Centre shall maintain working ties with development partners and stakeholders, particularly with recognized think tanks, RECs, civil society organizations and other relevant organs of the African Union, and technical offices (especially the African Migration Observatory and the Continental Operational Centre for Combating Irregular Migration) in pursuit of its mandate.

4. The Centre shall develop partnerships with Member States and shall also coordinate its operations with regional and continental institutions that implement migration projects across Africa.

5. In pursuance of its objectives, the Centre shall closely cooperate with African Diaspora think tanks and other international think tanks working on migration issues, and such cooperation shall strive to ensure synergy and partnership.

6. The Centre may be requested by Member States, the RECs, the Commission, other organs of the African Union, and international organizations to provide technical assistance in any field within its competence.

### Article 18

#### Privileges and Immunities

1. The Centre shall enjoy in the territory of the host country, the privileges and immunities specified in the General Convention and the Vienna Convention.

2. The Host Country Agreement and applicable international law shall supplement the General Convention.

### Chapter Three Final Provisions

#### Article 19 Rules of Procedure

The Rules of Procedure of the Centre shall be approved by the Board and the Commission in conformity with AU rules and procedures.

#### Article 20 Amendment



## 85. STATUTE OF THE AFRICAN CENTRE FOR THE STUDY AND RESEARCH ON MIGRATION (2020)

1. The Statute may be amended upon the recommendation of:
  - (a) The Executive Council;
  - (b) The STC; or
  - (c) The Board or the AUC.
2. The amendments shall enter into force upon their adoption by the Assembly.

### Article 21 Working Languages

The working languages of the Centre shall be those of the AU.

### Article 22 Authentic Text

This Statute is drawn up in four (4) original texts in Arabic, English, French and Portuguese, all four texts being equally authentic.

### Article 23 Entry into Force

The Statute shall enter into force upon its adoption by the Assembly.



# **STATUTE OF THE AFRICAN MIGRATION OBSERVATORY**



86.

**STATUTE OF THE AFRICAN MIGRATION OBSERVATORY**

**Adopted in Addis Ababa, Ethiopia, on 10 February 2020.**

**Entered into force upon adoption.**

Preamble

*We, the Member States of the African Union,*

*Guided by the objectives and principals enshrined in the Constitutive Act of the African Union,*

*Noting that about two thirds of migration occurs on the continent, and less than 22 percent of migrants from Africa emigrate outside of Africa, with less than 15 percent of African migrants emigrating to Europe or North America,*

*Considering that since a great portion of African migration takes place on the continent, the need for up-to-date information on migration trends and patterns is critical for evidence-based interventions for the coherent management of the phenomenon for the benefit of Africa,*

*Acknowledging that the informal character of the majority of migratory movements, the porosity of borders, and the complexity of collecting data on human mobility at the continental level have rendered the management of migratory movements difficult,*

*Noting the 2017 Evaluation of the 2006 AU Migration Policy Framework for Africa and its finding on the lack of reliable and up-to-date data on migration which is hindering informed national, regional and continental policy-making on migration,*

*Acknowledging that well-managed migration can benefit Member States and the continent at large, and that the availability of quality and up-to-date migration data has the potential to facilitate a coherent migration regime on the continent,*

*Recognizing the commitment of the Kingdom of Morocco under the leadership of His Majesty King Mohammed VI, Champion of the AU on Migration, to improve migration governance in Africa,*

*Considering that the African Agenda on Migration presented by the Kingdom of Morocco to the Thirtieth Ordinary Session of the AU Conference proposed the creation of the African Observatory on Migration and the appointment of a Special Envoy for Migration in order to promote a better management of migration in the continent,*

*Noting Assembly Decision on the Establishment of the African Migration Observatory (Assembly/AU/Dec.695 (XXXI) and reiterating its concern on the migration situation in Africa, and endorsed the decision of the PSC at its 771st meeting held on 11 May 2018, which proposed the establishment of the African Migration Observatory in Morocco,*

*Recalling the Decision of the Assembly of Heads of State and Government of the African Union (Assembly/AU/Dec.695 (XXXI), which endorsed the establishment of the African Migration Observatory in the Kingdom of Morocco, following the proposal of His Majesty Mohammed VI, King of Morocco and AU Champion for Migration,*

*Reaffirming the 2018 AU Migration Policy Framework for Africa which recommends the establishment and strengthening of continental arrangements/capacities for migration research, data collection, analysis and sharing,*

## 86. STATUTE OF THE AFRICAN MIGRATION OBSERVATORY (2020)

*Recalling* the Global Compact on migration in its subparagraph (f) related to objective 1, which recommended the need to collect and utilize accurate and disaggregated data as a basis for evidence-based policies by establishing and strengthening regional centres/observatories on migration, such as the African Migration Observatory,

*Recalling* the Assembly Decision Assembly/AU/Dec.730 (XXXII) which requested the Commission to expedite the elaboration of legal, structural and financial implications as well as the statute of the AMO and welcoming the progress made by the Commission in collaboration with the Government of the Kingdom of Morocco in this regard,

*Underscoring* that the Observatory shall be a Specialized Technical Office of the AU Commission with a continent-wide mandate,

*Noting* the decision of the Executive Council EX.CL/195 (VII) Rev.1 Annex III on the Criteria for Hosting AU Organs,

*Recognizing* the commitment of the Government of the Kingdom of Morocco to host the African Migration Observatory in line with the General Convention on the Privileges and Immunities of the Organization of African Unity (OAU) adopted by the Assembly of Heads of State and Government of the OAU on 25 October 1965 in Accra, Ghana, and the supplementary Host Country Agreement concluded between the African Union and the Government of the Kingdom of Morocco in Marrakech on 10 December 2018,

*Agree* as follows:

### Chapter One

#### Article 1 Definitions

For the purpose of this Statute, the following terms and expressions shall have the meaning assigned to them:

“AMO” means the African Migration Observatory or the “Observatory”, which serves as a Specialized Technical Office of the Commission;

“Assembly” means the Assembly of Heads of State and Government of the African Union, as provided by the Constitutive Act of the African Union;

“AU” means the African Union as established by the Constitutive Act of the African Union adopted on 11 July 2000, which entered into force on 26 May 2001;

“Board” means the Board of the African Migration Observatory;

“Commission” means the Secretariat of the African Union, as provided by the Constitutive Act of the AU;

“Development partners” means the multilateral institutions, development agencies, donors and foundations that contribute financially or otherwise to the Observatory;

“Executive Council” means the Executive Council of Ministers of the African Union as provided by the Constitutive Act of the AU;

“Experts” means individuals, other than officials, who owing to their special qualifications are recruited in accordance with the Staff Rules and Regulations on a temporary basis to perform specific assignments for the Observatory;

## 86. STATUTE OF THE AFRICAN MIGRATION OBSERVATORY (2020)

“General Convention” means the General Convention on the Privileges and Immunities of the Organization of African Unity (OAU) adopted by the Assembly of Heads of State and Government of the OAU on 25 October 1965 in Accra, Ghana;

“Government” means the Government of the Kingdom of Morocco;

“Host Country Agreement” means the Host Country Agreement between the Government of the Kingdom of Morocco and the African Union on the hosting of the African Migration Observatory;

“Host country” means the Kingdom of Morocco;

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

“Migration governance” means “the combined frameworks of legal norms, laws and regulations, policies and traditions as well as organizational structures (subnational, national, regional and international) and the relevant processes that shape and regulate States’ approaches with regard to migration in all its forms, addressing rights and responsibilities and promoting international cooperation;”

“Migration” means “the movement of a person or group of persons from one geographical unit to another across an administrative or political border, with the intention of settling indefinitely or temporarily in a place other than their place of origin. It involves the crossing of one or several international borders, resulting in a change in the legal status of the individual concerned. Migration may be ‘temporary’ or ‘permanent,’ depending on the duration of absence from the place of origin and the duration of stay in the place of destination” (International Organization for Migration);”

“Observatory” means the African Migration Observatory;

“Regional Economic Communities (RECs)” means the regional integration blocs recognized by the African Union;

“Secretariat” means the management body of the Observatory;

“Statute” means the present legal instrument that defines the mandate of the Observatory;

“STC” means the AU Specialized Technical Committee on Migration, Refugees and Internally Displaced Persons (IDPs); and

“Vienna Convention” means the 1961 Vienna Convention on Diplomatic Relations.

In this Statute, words expressed in the singular term shall be construed to include the plural and vice versa.

### Article 2

#### Legal Status of the Observatory Centre

1. The Observatory is hereby established as a Specialized Technical Office of the Commission.
2. The Observatory shall possess in the territory of host country legal capacity for the fulfilment of its objectives, and exercise of its functions, including the capacity:
  - (a) To enter into contracts;
  - (b) To acquire and dispose of immovable and movable property; and
  - (c) To enter and to respond to legal proceedings.

Article 3  
Purpose and Objectives

1. Purpose

- (a) To improve overall migration governance in Africa; and
- (b) To work towards addressing migration data deficiencies and guide African countries in the elaboration of migration policies.

2. Objectives

The Observatory shall have the following objectives:

- (a) To provide the continent with a centralized, unified source of data on migration for further research;
- (b) To advance the knowledge base of the African continent on migration and mobility;
- (c) To contribute to evidence-based policies and interventions on migration in the AU; and
- (d) To support the other existing initiatives on migration notably the African Centre for the Study and Research on Migration, the Continental Operational Centre in Sudan for Combating Irregular Migration, the African Union Institute for Statistics (STATAFRIC), Member State's national bureaux of statistics and migration data hubs in Africa and beyond.

Article 4  
Principles

The Observatory shall function in accordance with the following principles:

- 1. Non-interference in the internal affairs of any Member State, respect for the sovereignty and national laws of Members States of the AU;
- 2. Respect for democratic principles, human rights, the rule of law and good governance in accordance with the Constitutive Act, the African Charter on Human and Peoples' Rights, the Universal Declaration on Human Rights and other relevant instruments;
- 3. Respect for the ethics of law enforcement agencies of Members States of the AU, the principles of neutrality, integrity and the presumption of innocence; and
- 4. Respect and recognition of African ownership of the Observatory.

Article 5  
Core Functions and Activities of the Observatory

1. In order to attain the above objectives, the Observatory shall have the following core functions:

- (a) Monitor migratory flows through data collection, analysis and their sharing, and to that purpose develop migration tools;
- (b) Set up a network of national African statisticians responsible of collecting migration data;



## 86. STATUTE OF THE AFRICAN MIGRATION OBSERVATORY (2020)

- (c) Harmonize data and improve their availability for a better understanding of interdependence between migration and development;
- (d) Establish regional migration data hubs in the RECs recognized by the African Union;
- (e) Establish an information system through the creation of a network between the Observatory and the RECs, in order to share regularly data and information;
- (f) Provide technical assistance, training and capacity-building on migration data collection, analysis and elaboration of migratory policies;
- (g) Promote the integration of migrants in the strategies for the reduction of poverty and in development plans;
- (h) Encourage the protection of personal data of migrants for their respect, dignity and well-being;
- (i) Prepare and disseminate reports on the state of migration in Africa and establish a permanent African System for the Elaboration of Reports on Migration;
- (j) Establish a network of existing research centres in Africa in order to provide policymakers with harmonized and credible data and analysis on intraregional and interregional migration; and
- (k) Create an African Portal on Migration offering access to updated data on intra- and extra-African migratory movements.

### Chapter Two Governance and Structure of the Observatory

#### Article 6 Governance of the Observatory

1. The Observatory shall comprise the following bodies:
  - (a) The Board of Directors (the Board); and
  - (b) The Secretariat.

#### Article 7 Functions of the Board

1. Reporting through the Commission to the relevant policy organ, the Board shall be the highest governance body of, and shall have overall oversight of the Observatory.
2. The functions of the Board shall be to:
  - (a) Oversee the overall governance of the Observatory;
  - (b) Provide strategic guidance to the Secretariat;
  - (c) Consider and approve the Observatory's strategic plans, annual action plans and budgets;
  - (d) Oversee the implementation of strategic plans, including financial and budgetary issues;

## 86. STATUTE OF THE AFRICAN MIGRATION OBSERVATORY (2020)

- (e) Recommend amendments to the Statute of the Observatory;
- (f) Assist the Secretariat in mobilizing resources to ensure that the Observatory fulfils its mandate; and
- (g) Submit annual reports through the Commission to the AU policy organs on the activities of the Observatory.

### Article 8

#### Board Composition and Tenure of Office

1. The Board shall be composed as follows:
  - (a) Two (2) experts on migration, from each of the five (5) regions of the AU for non-renewable term of two (2) years, with full voting rights. The experts shall be nominated by the STC on Migration, Refugees and Internally Displaced Persons, following consultations;
  - (b) One (1) representative of Member States of each REC, with full voting powers;
  - (c) One (1) representative of the host country with full voting powers;
  - (d) Two (2) representatives of the Commission (Department of Social Affairs, and Department of Economic Affairs) (non-voting, ex-officio);
  - (e) The Director of the African Migration Observatory (or his/her Deputy) who shall act as the Secretary of the Board (non-voting, ex-officio);
  - (f) The Director of the African Centre for the Study and Research on Migration (non-voting, ex-officio);
  - (g) The Director of the Continental Operational Centre in Sudan for Combating Irregular Migration (non-voting, ex-officio);
  - (h) The Executive Director of the African Union Institute for Statistics - STATAFRIC (non-voting, ex-officio); and
  - (i) The Legal Counsel of the Commission or his/her representative who shall provide legal advice as may be required, and shall be a non-voting member (1) (non-voting, ex-officio).
2. The Board may invite such expertise from relevant professionals to sit at its meetings on an ad hoc basis as may be necessary.
3. The Chairperson of the Board shall be elected from Member States represented in the Board.

### Article 9

#### Meetings, Quorum and Decision-Making Procedures of the Board

1. The Board shall meet in ordinary session once every year.
2. The Board may be convened in extraordinary session, in conformity with its rules of procedure, subject to availability of funds at the request of:
  - (i) One half of its members; or
  - (ii) The policy organs of the African Union.

## 86. STATUTE OF THE AFRICAN MIGRATION OBSERVATORY (2020)

3. The quorum for Board meetings shall be two thirds of the total membership of the Board.

### Article 10 The Secretariat

1. The Secretariat shall be responsible for the day-to-day execution of the strategies and activities of the Observatory.
2. The Secretariat shall be headed by a Director. In the absence of the Director, the Deputy Director shall act in his/her stead.
3. The Director and the Deputy Director shall be appointed by the Commission on the approval of the Board in line with African Union Staff Rules and Regulations and shall be a regular staff members of the Commission.

### Article 11 The Director

1. The Director is the Chief Executive Officer of the Observatory.
2. Under the supervision of the Commissioner for Social Affairs of the Commission, the functions of the Director shall be to:
  - (a) Implement directives of the Board and the Commission as may be applicable;
  - (b) Organize, coordinate, direct and supervise the overall day-to-day operations and management of the Centre in accordance with the strategic plans and policies approved by the Board and the AU;
  - (c) Plan, develop, and implement the Observatory's policy and programme objectives, plans, and evaluate progress while ensuring efficiency and cost effectiveness;
  - (d) Provide strategic planning, overall management and institutional representation of the Centre in fulfilment of its mission, goals, and strategic objectives;
  - (e) Prepare and submit to the Board and the Commission strategic and operational plans, budgets, financial statements and operational reports of the Observatory;
  - (f) Ensure the vision, mission and guiding values of the Observatory are developed, communicated, and implemented at all levels;
  - (g) Propose to the Board strategic alliances and partnerships for the joint execution of programmes and activities with development partners;
  - (h) Act as Secretary of the Board to effectively carry out the Board's governance roles;
  - (i) Serve as the spokesperson for the Observatory, and represent the Observatory in continental and international partnerships and gatherings;
  - (j) Promote an accountable, ethical, informed and transparent organizational culture;
  - (k) Ensure coordination of the Observatory's activities in collaboration with other multilateral, continental, regional and national migration statistics institutions and partners;

## 86. STATUTE OF THE AFRICAN MIGRATION OBSERVATORY (2020)

- (l) Advocate on behalf of the Board and the Observatory at large to ensure that the positions and actions of the Observatory are successfully presented to all interested parties;
- (m) Represent the Observatory at all meetings, conferences or similar venues where the Observatory seeks to be recognized to advance its mission and strategic goals;
- (n) Provide expert advice to the Board, the African Union and its Member States, key stakeholders and partners;
- (o) Ensure the Observatory has an annual workplan in place, in line with the financial resources necessary to achieve its core functions, outcome-oriented goals, and objectives;
- (p) Oversee the execution of the Host Country Agreement;
- (q) Oversee all legal agreements and seek guidance, in this regard, from the Board and the Commission when necessary;
- (r) In partnership with the Board, provide leadership and direction in efforts to identify and secure technical assistance support for the Observatory's programmes and initiatives;
- (s) Propose the annual budget to the Board and African Union Commission in keeping with established processes and timelines; and
- (t) Perform any other functions in line with the objectives of the Observatory and as entrusted by the Commission.

### Article 12 The Deputy Director

Reporting to the Director, the functions of the Deputy Director include the following:

1. The Deputy Director reports to the Director and supervises and provides guidance on programmatic, finance and administrative operations of the AMO;
2. The Deputy Director is responsible for ensuring implementation of high-quality business operation of the AMO by coordinating the daily work of staff, and ensuring compliance with AU rules and regulations as appropriate;
3. His/her major responsibilities shall be to:
  - (a) Advise and guide the Observatory's management on programmatic, finance and administrative operations, including workplans, operational policies, procedures and systems, supporting critical and routine programme operations;
  - (b) Facilitate programme management support, including financial management, human resources management, procurement, information technology networks and equipment, travel, facilities management and other functions executed at both headquarters and the Observatory;
  - (c) Supervise the development of programme objectives and workplans of staff;
  - (d) Ensure the implementation of the strategic goals and objectives and workplans by staff;
  - (e) Supervise reports by staff and prepare executive reports for management;

## 86. STATUTE OF THE AFRICAN MIGRATION OBSERVATORY (2020)

- (f) Work with staff to ensure overall agency compliance with AU rules and regulations, including established documentation and procedures for transacting administrative support functions processed by AU service divisions;
- (g) Ensure periodic staff appraisals;
- (h) Facilitate and support the overall institutional accountability functions - including those necessary for auditing, budgeting, financial analysis, procurement, capital assets and property management and payroll and other operational systems and procedures - are implemented and monitored in accordance with the AU and the Observatory's internal controls;
- (i) Serve as the principal manager of the Observatory's budget;
- (j) Develop and manage budget frameworks and coordinate implementation and execution of these tools, keeping senior management informed as appropriate;
- (k) Serve as the agency's point of contact with AU service divisions to resolve issues and problems preventing end-to-end service provision;
- (l) Review and process approvals for routine actions within multiple agency administrative systems, e.g., procurement and travel;
- (m) Oversee staff, providing a full range of logistics support, procurement and travel; and
- (n) Perform other duties as assigned by the Director.

### Article 13 Other Staff

The Observatory will have other staff members, in charge of, among others, surveys/data collection, analysis, publications, finance, human resource development, administration, events and seminars management, networking and operations who shall be hired by the Commission in accordance with the AU Staff Rules and Regulations and within the approved structure and budget.

### Article 14 Budget and Contributions

1. The regular budget of the Observatory shall be within the budget of the AU.
2. In addition to the regular budget of the African Union, other sources of funding the Observatory, in accordance with AU rules and regulations, may include:
  - (a) Voluntary contributions from AU Member States;
  - (b) Contributions from development partners of the African Union and the Commission;
  - (c) Contributions from the private sector;
  - (d) Contributions from national and regional institutions; and
  - (e) Any other source of funding in accordance with the AU Financial Rules and Regulations.
3. The budget calendar of the Centre shall be that of the African Union.

## 86. STATUTE OF THE AFRICAN MIGRATION OBSERVATORY (2020)

4. Staff remuneration, administrative expenses and related budgets of the Centre shall be covered by the African Union.
5. Programmes of the Centre shall be funded by resources from the AU, voluntary contributions by other Member States, or funding from development partners.
6. The budget shall be prepared and considered in line with the African Union Financial Rules and Regulations.

### Article 15 Headquarters of Observatory

1. The headquarters of the Observatory shall be in Rabat, the Kingdom of Morocco.
2. If a Member State offers to host the meetings and conferences of the Observatory, it shall be responsible for all extra expenses incurred by the Observatory as a result of the session being held outside the host country.

### Article 16 Code of Conduct

1. In the performance of their duties, the Director and other staff of the Observatory shall not accept nor receive instructions from any government or any authority other than the African Union.
2. Each Member State shall undertake to respect the exclusive nature of the responsibilities of the Director and any other staff member of the Observatory, and shall not influence or seek to influence them in the performance of their duties.
3. The Director and the other staff of the Observatory shall not, in the discharge of their duties, engage in any activity or conduct incompatible with the proper discharge of their duties. They shall avoid conflict between professional and personal interests or obligations sufficient to influence the impartial exercise of their official duties or responsibilities.
4. Where the Director of the Observatory fails to comply with his/her obligations, an ad hoc Committee approved by the Board shall conduct an inquiry and provide an appropriate report and recommendations for its consideration and decision.
5. Where a staff member fails to comply with his/her obligations, the internal procedures referred to in the Statute and the AU Staff Rules and Regulations shall be applied. The staff member concerned shall have the right of appeal in accordance with the Staff Rules and Regulations of the African Union.
6. The Director and other staff of the Observatory may accept, on behalf of the Commission, gifts, bequests and other donations made to the Observatory, provided that such donations are consistent with the objectives and principles of the Observatory and shall remain the property of the Observatory. The director shall report to the relevant policy organs on such donations.

### Article 17 Role of the Department of Social Affairs and the Relationship of the AMO with Member States, Development Partners and Other Stakeholders

1. The Department of Social Affairs as the focal department on the subject matter shall ensure synergy between the Observatory and the Commission.

## 86. STATUTE OF THE AFRICAN MIGRATION OBSERVATORY (2020)

2. In carrying out its functions, the African Union shall dedicate the necessary resources to building partnerships aimed at improving the effectiveness of its operations.

3. Within the African continent, the Observatory shall maintain working ties with development partners and stakeholders, particularly with recognized think tanks, RECs, civil society organizations and other relevant organs of the African Union and technical offices (especially the Africa Research and Study Centre on Migration and the Continental Operational Centre for Combating Irregular Migration) in pursuit of its mandate.

4. The Observatory shall develop partnerships with Member States and RECs, and shall also coordinate its operations with regional and continental institutions that collect migration data across Africa.

5. In pursuit of its objectives, the Observatory shall closely cooperate with African diaspora think tanks and other international think tanks working on migration data issues, and such cooperation shall strive to ensure synergy and partnership.

6. The Observatory may be requested by Member States, the RECs, the Commission, other organs of the African Union, and international organizations to provide technical assistance in any field within its competence.

### Article 18 Privileges and Immunities

1. The Observatory shall enjoy in the territory of the host country, the privileges and immunities specified in the General Convention and the Vienna Convention.

2. The Host Country Agreement and applicable international law shall supplement the General Convention.

### Chapter Three Final Provisions

#### Article 19 Rules of Procedure

The Rules of Procedure of the Observatory shall be approved by the Board and the Commission in conformity with AU rules and procedures.

#### Article 20 Amendment

1. The Statute may be amended upon the recommendation of:

- (a) The Executive Council;
- (b) The STC; or
- (c) The Board or the AUC.

2. The amendments shall enter into force upon their adoption by the Assembly.

#### Article 21 Working Languages

The working languages of the Observatory shall be those of the AU.

## 86. STATUTE OF THE AFRICAN MIGRATION OBSERVATORY (2020)

### Article 22 Authentic Text

This Statute is drawn up in four (4) original texts in Arabic, English, French and Portuguese, all four texts being equally authentic.

### Article 23 Entry into Force

The present Statute shall enter into force upon its adoption by the Assembly.



**STATUTE OF THE CONTINENTAL OPERATIONAL CENTRE IN  
SUDAN FOR COMBATING IRREGULAR MIGRATION**



87. STATUTE OF THE CONTINENTAL OPERATIONAL CENTRE IN SUDAN  
FOR COMBATING IRREGULAR MIGRATION (2020)

**87.**

**STATUTE OF THE CONTINENTAL OPERATIONAL CENTRE IN SUDAN FOR COMBATING IRREGULAR MIGRATION**

**Adopted in Addis Ababa, Ethiopia, on 10 February 2020.**

**Entered into force upon adoption.**

Preamble

*We, Member States of the African Union,*

*Recalling* the objectives and principles enshrined in the Constitutive Act of the African Union,

*Motivated* by a common political will to strengthen our collective efforts to contribute to security and development in Africa, as well as to intensify cooperation among Member States, and integration of the continent,

*Recalling* the Solemn Declaration on a Common African Defence and Security Policy (CADSP) which recognizes that organized cross-border crimes and human trafficking are factors that engender insecurity, and that security of one African country is inseparably linked to the security of other African countries, and the African continent as a whole, and calls for the integration and harmonization of continental initiatives on defence and security issues,

*Concerned* about the growing scale of irregular migration on the continent which is mainly facilitated through human trafficking and migrant smuggling,

*Cognizant* of the increasing sophistication of, and links between transnational organized criminal networks involved in human trafficking/migrant smuggling and other forms of criminal activities including arms and drug trafficking, terrorism, kidnapping-for-ransom, and money laundering,

*Guided* by the various instruments on the fight against transnational organized crime and human trafficking adopted by AU Member States,

*Recalling* the February 2019 decision of the Assembly Decision AU/Dec.728 (XXXII) of the Thirty-second Ordinary Session of the Assembly, which endorsed the establishment of the Continental Operational Centre in Sudan for combating irregular migration and requested the Commission to expedite the elaboration of the structural, financial and legal implications, as well as, the Statute establishing the Centre,

*Noting* the Fourth EU-Africa Summit Joint Declaration adopted in April 2014 in Brussels, Belgium, on Migration and Mobility to address trafficking in human beings, notably by strengthening partnership and cooperation on prevention, protection and prosecution,

*Recognizing* the importance and need for greater cooperation of police and security agencies in combating transnational organized crime, including human trafficking and migrant smuggling through the exchange of information and intelligence between and among Member States,

*Noting* the establishment of the Africa-Arab Technical and Coordination Committee on Migration (TCCM) through Resolution 4 of the Third Africa-Arab Heads of State Summit on Strengthening Africa-Arab Partnership (November 2013) which among others seeks to address migration between Africa and the Arabian Peninsula on the eastern migratory route,

*Convinced* of the need to collaborate and create synergies between and among similar initiatives and programmes on the continent to enhance the relevance of the outcome and benefits to all member countries,

*Determined* to establish an operational centre as a continental cooperation mechanism for the exchange of information among security agencies of Member States of the AU and between the Continental Operational

87. STATUTE OF THE CONTINENTAL OPERATIONAL CENTRE IN SUDAN  
FOR COMBATING IRREGULAR MIGRATION (2020)

Centre and other similar initiatives and processes on the continent and beyond (for example the AU-Horn of Africa Initiative, the Africa-Arab Technical Coordination Committee on Migration, the Khartoum Process, the Rabat Process, etc.) in combating human trafficking and migrant smuggling,

*Noting* the decision of the Executive Council EX.CL/195 (VII) Rev.1 Annex III on the Criteria for Hosting AU Organs,

*Agree* as follows:

Chapter One  
Definitions, Objectives and Core Functions of the Centre

Article 1  
Definitions

For the purpose of this Statute, the following terms and expressions shall have the meaning assigned to them:

“Archives” includes records, correspondence, documents, manuscripts, still and motion pictures, films and sound recordings, electronic records, belonging to or held by the Continental Operational Centre in Sudan for Combating Irregular Migration in furtherance of its official functions;

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

“AU” means the African Union established by the Constitutive Act of the African Union adopted on 11 July 2000, which entered into force on 26 May 2001;

“Centre” means the Continental Operational Centre in Sudan for Combating Irregular Migration;

“Commission” means the Secretariat of the African Union, as provided by the Constitutive Act of the AU;

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

“Cross-border crime” means any serious crime with a cross-border dimension committed at or along, or which is related to, the external borders that adversely affects the security of the external borders of Member States;

“Development partners” means the multilateral institutions, development agencies, donors, and foundations that contribute financially or otherwise to the Centre;

“Executive Council” means the Executive Council of Ministers of the African Union as provided by the Constitutive Act of the AU;

“Experts” mean individuals, other than officials, who owing to their special qualifications are recruited, in accordance with the Staff Rules and Regulations, on a temporary basis to perform a specific assignment for the Centre;

“General Convention” means the General Convention on the Privileges and Immunities of the Organization of African Unity (OAU) adopted by the Assembly of Heads of State and Government of the OAU on 25 October 1965 in Accra, Ghana;

“Government” means the Government of the Republic of the Sudan;

“Host Country Agreement” means the Agreement between the Government of the Republic of the Sudan and the African Union on the hosting of the Centre;

87. STATUTE OF THE CONTINENTAL OPERATIONAL CENTRE IN SUDAN  
FOR COMBATING IRREGULAR MIGRATION (2020)

“Host country” means the Republic of the Sudan;

“Human trafficking” 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 (Art. 3 (a), United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Organized Crime, 2000);

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

“Migrant smuggling” means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident (Art. 3 (a), United Nations Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000). Smuggling contrary to trafficking does not require an element of exploitation, coercion, or violation of human rights;

“Migration governance regime” means “the combined frameworks of legal norms, laws and regulations, policies and traditions as well as organizational structures (subnational, national, regional and international) and the relevant processes that shape and regulate States’ approaches with regard to migration in all its forms, addressing rights and responsibilities and promoting international cooperation” (International Organization for Migration, Glossary on Migration, 3rd Edition, 2018);

“Migration” means “the movement of a person or group of persons from one geographical unit to another across an administrative or political border, with the intention of settling indefinitely or temporarily in a place other than their place of origin. It involves the crossing of one or several international borders, resulting in a change in the legal status of the individual concerned. Migration may be ‘temporary’ or ‘permanent,’ depending on the duration of absence from the place of origin and the duration of stay in the place of destination” (International Organization for Migration);

“Premises” means the areas designated as offices of the Khartoum Centre or any space, buildings, structures, equipment and other installations and facilities as well as surrounding ground occupied temporarily or permanently by the Centre and recognized as such by the Government;

“Regional Economic Communities (RECs)” means the regional integration blocs recognized by the African Union;

“Secretariat” means the management body and Permanent Technical and Operational Office of the Centre;

“Statute” means the present legal instrument that defines the mandate of the Centre;

“STC” means the Specialized Technical Committee on Migration, Refugees and Internally Displaced Persons or its successor;

“Parties” means the African Union and the Government of the Republic of the Sudan;

“Transnational organized crime” means organized criminal activities coordinated across national borders, involving groups or networks of individuals working in more than one country to plan and execute illegal business ventures;

“Vienna Convention” means the 1961 Vienna Convention on Diplomatic Relations.

In this Statute, words expressed in the singular term shall be construed to include the plural and vice versa.

Article 2

87. STATUTE OF THE CONTINENTAL OPERATIONAL CENTRE IN SUDAN  
FOR COMBATING IRREGULAR MIGRATION (2020)

Legal Status of the Centre

1. The Centre is hereby established as a Specialized Technical Office of the Commission.
2. The Centre shall possess legal capacity necessary for the fulfilment of its objectives, and exercise of its functions and activities in accordance with this Statute, including the capacity:
  - (a) To enter into contracts;
  - (b) To acquire and dispose of immovable and movable property; and
  - (c) To enter and to respond to legal proceedings.

Article 3  
Purpose and Objectives

1. Purpose

To improve the overall migration governance regime in Africa, specifically the management of irregular migration and other transnational organized crimes.

2. Objectives

The Centre shall have the following objectives:

- (a) To provide a platform for sharing information on transnational organized crime, in particular human trafficking and migrant smuggling;
- (b) To support the other existing initiatives on migration notably the African Centre for the Study and Research on Migration, the African Migration Observatory, the AU-Horn of Africa Initiative, the Africa-Arab Technical Coordination Committee on Migration, the Khartoum Process, the Rabat Process, etc.) and other similar initiatives and processes in Africa and beyond in combating human trafficking and migrant smuggling.

Article 4  
Principles

The Centre shall function in accordance with the following principles:

1. Non-interference in the internal affairs of any Member State, respect for the sovereignty and national laws of Members States of the AU;
2. Respect for democratic principles, human rights, the rule of law and good governance in accordance with the Constitutive Act, the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights and other relevant instruments;
3. Respect for the ethics of law enforcement agencies of Members States of the AU, the principles of neutrality, integrity and the presumption of innocence; and
4. Respect and recognition of African ownership of the Centre.

Article 5  
Core Functions and Activities of the Centre

## 87. STATUTE OF THE CONTINENTAL OPERATIONAL CENTRE IN SUDAN FOR COMBATING IRREGULAR MIGRATION (2020)

The core functions and activities of the Centre shall be to:

1. Establish and provide a platform for cooperation and sharing of information and intelligence on human trafficking, and migrant smuggling and cross-border crimes among law enforcement agencies of Member States of the AU in accordance with national laws of the Member States;
2. Enhance coordination with similar initiatives on the continent and beyond in sharing information on transnational organized crime, in particular human trafficking and migrant smuggling;
3. Work towards the prevention, detection and investigation of human trafficking and migrant smuggling in collaboration with national, regional, continental and international law enforcement agencies;
4. Develop and facilitate mutual legal assistance, extradition arrangements and harmonized continental strategies between and among Member States to fight transnational organized crime, in particular human trafficking and migrant smuggling within the framework of relevant international and African Union policies;
5. Assist Member States of the AU to develop or improve good practices in the collection, analysis and dissemination of information on transnational organized crime, in particular human trafficking and migrant smuggling;
6. Commission research on trends in transnational organized crime, in particular human trafficking and migrant smuggling among Member States of the AU;
7. Carry out any other functions as requested by the relevant AU policy organs; and
8. Provide capacity-building and technical assistance in combating irregular migration (in human trafficking and migrant smuggling) and border management.

### Chapter Two Governance and Structure of the Centre

#### Article 6 Governance of the Centre

1. The Centre shall comprise the following bodies:
  - (a) The Board of Directors (the Board); and
  - (b) The Secretariat.

#### Article 7 Functions of the Board

1. Reporting through the Commission to the relevant policy organ, the Board shall be the highest governance body of the Centre, and shall have overall oversight of the Centre.
2. The functions of the Board shall be to:
  - (a) Oversee the overall governance of the Centre;
  - (b) Provide strategic guidance to the Secretariat;

87. STATUTE OF THE CONTINENTAL OPERATIONAL CENTRE IN SUDAN  
FOR COMBATING IRREGULAR MIGRATION (2020)

- (c) Consider and approve the Centre's strategic plans, annual action plans and budgets;
- (d) Oversee the implementation of strategic plans, including financial and budgetary issues;
- (e) Recommend amendments to the Statute of the Centre;
- (f) Assist the Secretariat in mobilizing resources to ensure that the Centre fulfills its mandate; and
- (g) Submit annual reports through the Commission to the AU policy organs on implemented activities and achievements of the Centre.

Article 8  
Board Composition and Tenure of Office

1. The Board shall be composed as follows:
  - (a) Two (2) experts on migration, from each of the five (5) regions of the AU for non-renewable term of two (2) years, with full voting rights. The experts shall be nominated by the STC on Migration, Refugees and Internally Displaced Persons, following consultations;
  - (b) One (1) representative of Member States of each REC, with full voting powers;
  - (c) The host country with full voting powers;
  - (d) One (1) representative of the Commission (Department of Social Affairs) (non-voting ex-officio);
  - (e) The Director of the Continental Operational Centre in Sudan for Combating Irregular Migration (or his/her Deputy) who shall act as the Secretary of the Board (non-voting ex-officio);
  - (f) The Director of African Observatory on Migration (non-voting ex-officio);
  - (g) The Director of African Centre for the Study and Research on Migration (non-voting ex-officio);
  - (h) The Executive Director of the African Union Institute for Statistics - STATAFRIC (non-voting ex-officio);
  - (i) One (1) representative of AFRIPOL; and
  - (j) The Legal Counsel of the Commission or his/her representative who shall provide legal advice as may be required (non-voting ex-officio).
2. The Board may invite such expertise from relevant professionals to sit at its meetings on an ad hoc basis as may be necessary.
3. The Chairperson of the Board shall be elected from Member States represented in the Board.

Article 9  
Meetings, Quorum and Decision-Making Procedures of the Board

1. The Board shall meet in ordinary session once every year.
2. The Board may be convened in extraordinary session, in conformity with its rules of procedure, subject to availability of funds at the request of:



87. STATUTE OF THE CONTINENTAL OPERATIONAL CENTRE IN SUDAN  
FOR COMBATING IRREGULAR MIGRATION (2020)

- (i) One half of its members; or
  - (ii) The policy organs of the African Union.
3. The quorum for Board meetings shall be two thirds of the total membership of the Board.

Article 10  
The Secretariat

- 1. The Secretariat shall be responsible for day-to-day execution of the strategies and activities of the Centre.
- 2. The Secretariat shall be headed by a Director. In the absence of the Director the Deputy Director shall act.
- 3. The Director and the Deputy Director shall be appointed by the Commission on the approval of the Board in line with African Union Staff Rules and Regulations and shall be regular staff members of the AU.

Article 11  
The Director

- 1. The Director is the Chief Executive Officer of the Centre.
- 2. Under the supervision of the Commissioner in charge of Social Affairs of the Commission, the functions of the Director shall be to:
  - (a) Implement directives of the Board and the Commission as may be applicable;
  - (b) Organize, coordinate, direct and supervise the overall day-to-day operations and management of the Centre in accordance with the strategic plans and policies approved by the Board and the AU;
  - (c) Plan, develop, and implement the Centre's policy and programme objectives, plans, and evaluate progress while ensuring efficiency and cost effectiveness;
  - (d) Provide strategic planning, overall management and institutional representation of the Centre in fulfillment of its mission, goals, and strategic objectives;
  - (e) Prepare and submit to the Board and the Commission strategic and operational plans, budgets, financial statements and operational reports of the Centre;
  - (f) Ensure the vision, mission and guiding values of the Centre are developed, communicated, and implemented at all levels;
  - (g) Propose to the Board strategic alliances and partnerships for the joint execution of programmes and activities with development partners;
  - (h) Act as Secretary of the Board;
  - (i) Serve as the spokesperson and official representative of the Centre in continental and international partnerships and gatherings;
  - (j) Promote an accountable, ethical, informed and transparent organizational culture;

87. STATUTE OF THE CONTINENTAL OPERATIONAL CENTRE IN SUDAN  
FOR COMBATING IRREGULAR MIGRATION (2020)

- (k) Ensure coordination of the Centre's activities in collaboration with other multilateral, continental, regional and national institutions and partners;
- (l) Advocate on behalf of the Board and the Centre at large to ensure that the positions and actions of the Centre are successfully presented to all interested parties;
- (m) Represent the Centre at all meetings, conferences or similar venues where the Centre seeks to be recognized to advance its mission and strategic goals;
- (n) Provide expert advice to the Board, the African Union and its Member States, key stakeholders and partners;
- (o) Ensure the Centre has an annual workplan in place, in line with the financial resources necessary to achieve its core functions, outcome-oriented goals, and objectives;
- (p) Oversee the execution of the Host Country Agreement;
- (q) Oversee all legal agreements and seek guidance, in this regard, from the Board and the Commission when necessary;
- (r) Ensure compliance with all legal and regulatory requirements emanating from the Host Government and other bodies;
- (s) Propose the annual budget to the Board and African Union Commission in keeping with established processes and timelines; and
- (t) Perform any other functions as may be assigned by the Board in line with the mandate of the Centre.

Article 12  
The Deputy Director

Reporting to the Director, the functions of the Deputy Director include the following:

1. Advise the Centre's management on programmatic, finance and administrative operations, including workplans, operational policies, procedures and systems, supporting critical and routine programme operations;
2. Facilitate programme management support, including financial management, human resources management, procurement, information technology networks and equipment, travel, facilities management and other functions executed at both headquarters and the Centre;
3. Supervise the development of programme objectives and workplans of staff;
4. Ensure the implementation of the strategic goals and objectives and workplans by staff;
5. Supervise reports by staff and prepare executive reports for management;
6. Work with staff to ensure overall agency compliance with AU rules and regulations, including established documentation and procedures for transacting administrative support functions processed by AU service divisions;
7. Ensure periodic staff appraisals;
8. Facilitate and support the overall institutional accountability functions - including those necessary for auditing, budgeting, financial analysis, procurement, capital assets and property management and payroll and

87. STATUTE OF THE CONTINENTAL OPERATIONAL CENTRE IN SUDAN  
FOR COMBATING IRREGULAR MIGRATION (2020)

other operational systems and procedures - are implemented and monitored in accordance with AU and the Centre's internal controls;

9. Serve as the principal manager of the Centre's budget;
10. Develop and manage budget frameworks and coordinate implementation and execution of these tools, keeping senior management informed as appropriate;
11. Serve as agency's point of contact with AU service divisions to resolve issues and problems preventing end-to-end service provision;
12. Review and process approvals for routine actions within multiple agency administrative systems;
13. Oversee staff providing a full range of logistics support, procurement and travel; and
14. Perform other duties as assigned by the Director.

Article 13  
Other staff

The Centre will have other staff members, in charge of, among others, information exchange, finance and administration who shall be hired by the Commission in accordance with the AU rules and regulations within the approved structure and budget.

Article 14  
Budget and Budget Contributions

1. The regular budget of the Centre shall be from the regular budget of the African Union.
2. In addition to the regular budget of the African Union, other sources of funding the Centre may include:
  - (a) Voluntary contributions from AU Member States;
  - (b) Contributions from development partners of the African Union and the Commission;
  - (c) Contributions from the private sector;
  - (d) Contributions from national and regional institutions; and
  - (e) Any other source of funding in accordance with AU Financial Rules and Regulations.
3. The budget calendar of the Centre shall be that of the African Union.
4. Staff remuneration, administrative expenses and related budgets of the Centre shall be covered by the African Union.
5. Programmes of the Centre shall be funded by resources from the AU, voluntary contributions by other Member States, or funding from development partners.
6. The budget of the Centre shall be prepared and considered in line with the African Union Financial Rules and Regulations.

Article 15

87. STATUTE OF THE CONTINENTAL OPERATIONAL CENTRE IN SUDAN  
FOR COMBATING IRREGULAR MIGRATION (2020)

Headquarters of the Centre

1. The headquarters of the Centre shall be in Khartoum, the Republic of the Sudan.
2. If a Member State offers to host the meetings and conferences of the Centre, it shall be responsible for all extra expenses incurred by the Centre as a result of the session being held outside the host country.

Article 16  
Code of Conduct

1. In the performance of their duties, the Director and other staff of the Centre shall not accept nor receive instructions from any government or any authority other than the Centre.
2. Each Member State shall undertake to respect the exclusive nature of the responsibilities of the Director and any other staff member of the Centre, and shall not influence or seek to influence them in the performance of their duties.
3. The Director and the other staff of the Centre shall not, in the discharge of their duties, engage in any activity or conduct incompatible with the proper discharge of their duties. They shall avoid conflict between professional and personal interests or obligations sufficient to influence the impartial exercise of their official duties or responsibilities.
4. Where the Director of the Centre fails to comply with his/her obligations, an ad hoc Committee approved by the Board shall conduct an inquiry and provide an appropriate report and recommendations for its consideration and decision.
5. Where a staff member fails to comply with his/her obligations, the internal procedures referred to in the Statute and the AU Staff Rules and Regulations shall be applied. The staff member concerned shall have the right of appeal in accordance with the Staff Rules and Regulations.
6. The Director and other staff of Centre may accept, on behalf of the Commission, gifts, bequests and other donations made to the Centre, provided that such donations are consistent with the objectives and principles of the Centre and shall remain the property of the Centre. The director shall report to the relevant policy organs on such donations.

Article 17  
Role of the Department of social Affairs and the relation with Member States,  
Development Partners and Other Stakeholders

1. The Department of Social Affairs as the focal department on the subject matter shall ensure synergy between the Centre and the Commission.
2. In carrying out its functions, the African Union shall dedicate necessary resources to building partnerships aimed at improving the effectiveness of its operations.
3. Within the African continent, the Centre shall maintain working ties with development partners and stakeholders, particularly with recognized think tanks, RECs, civil society organizations and other relevant organs of the African Union and technical offices (especially the African Migration Observatory, the African Union Institute for Statistics - STATAFRIC, and the African Centre for the Study and Research on Migration) in pursuit of its mandate.
4. The Centre shall develop partnerships with Member States and regional/continental police organizations, and shall also coordinate its operations with regional and continental institutions that combat irregular migration

87. STATUTE OF THE CONTINENTAL OPERATIONAL CENTRE IN SUDAN  
FOR COMBATING IRREGULAR MIGRATION (2020)

(especially human trafficking and migrant smuggling) across the continent, and such cooperation shall strive to ensure synergy and partnership.

5. In pursuit of its objectives, the Centre shall closely cooperate with African diaspora think tanks and other international think tanks working on migration data issues, and such cooperation shall strive to ensure synergy and partnership.

6. The Centre may be requested by Member States, the RECs, the Commission, other organs of the African Union, and international organizations to provide technical assistance in any field within its competence.

Article 18  
Privileges and Immunities

1. The Centre shall enjoy in the territory of the host country, the privileges and immunities specified in the General Convention and the Vienna Convention.

2. The Host Country Agreement and applicable international law shall supplement the General Convention.

Chapter Three  
Final Provisions

Article 19  
Rules of Procedure

The Rules of Procedure of the Centre shall be adopted by the Board and approved by the Commission in conformity with AU rules and procedures.

Article 20  
Amendment

1. The Statute may be amended upon the recommendation of:

- (a) The Executive Council;
- (b) The STC; or
- (c) The Board or the AUC.

2. The amendments shall enter into force upon their adoption by the Assembly.

Article 21  
Working Languages

The working languages of the Centre shall be those of the AU.

Article 22  
Authentic Text

This Statute is drawn up in four (4) original texts in Arabic, English, French and Portuguese, all four texts being equally authentic.

Article 23  
Entry into Force

87. STATUTE OF THE CONTINENTAL OPERATIONAL CENTRE IN SUDAN  
FOR COMBATING IRREGULAR MIGRATION (2020)

The present Statute shall enter into force upon its adoption by the Assembly.

**PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND  
PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY**





88.

**PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO SOCIAL PROTECTION AND SOCIAL SECURITY**

**Adopted in Addis Ababa, Ethiopia, on 6 February 2022.**

**The Protocol shall enter into force thirty days after the deposit of the fifteenth instrument of ratification or accession.**

Preamble

*We, the Heads of State and Government of the African Union,*

*Reaffirming* that the right to social protection is a human right,

*Considering* that Article 66 of the African Charter on Human and Peoples' Rights (African Charter) provides that special protocols or agreements, if necessary, may supplement the provisions of the African Charter,

*Recalling* Executive Council Decision EX.CL/Dec.876 (XXVII) adopted in Johannesburg, South Africa, whereby the Executive Council requested the African Union Commission, in collaboration with the African Commission on Human and Peoples' Rights, to develop an Additional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security,

*Taking into account* the provisions of Articles 5, 16, 17 and 18 of the African Charter on Human and Peoples' Rights, spelling out the rights of every individual and the commitment made by Member States of the African Union in Article 1 of the African Charter on Human and Peoples' Rights to recognize the human and peoples' rights enshrined in the Charter and to adopt legislative or other measures to give effect to them,

*Recalling* that the provisions of Articles 60 and 61 of the African Charter on Human and Peoples' Rights recognize regional and international human rights instruments and African practices consistent with international norms on human and peoples' rights as being important reference points for its application and interpretation,

*Mindful* of Articles 5, 13, 16, 18 and 19 of the African Charter on the Rights and Welfare of the Child, Articles III, IV, X, XIII, XXII, XXIII, and XXIV of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Articles 8, 15, 16, 17, 18, 19 and 20 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, Articles 6, 7, 10, 11, 12, 13, 15, 16 and 17 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, in relation to social protection, Articles 3, 4 and 5 of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, Article 5 of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, and Article 2 of the African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter), ratified by Member States,

*Acknowledging* the provisions of the Treaty Establishing the African Economic Community, the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment, and Aspiration 2 of the AU Agenda 2063 which calls for "An integrated continent, politically united, based on the ideals of Pan-Africanism and the vision of Africa's renaissance", and the embedded principle of an African citizenship,

*Taking into account* Aspiration 1 of the AU Agenda 2063 which projects "A prosperous Africa, based on inclusive growth and social development," and calls for "A high standard of living, quality of life and well-being for all citizens" and envisages social security and social protection as a priority area,

*Bearing in mind* the Tunis Declaration of the Assembly of Heads of State and Government on Social Development (1994), the African Common Position on Human and Social Development in Africa (1994), the Livingstone Call for

88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

Action (2006), the AU Social Policy Framework for Africa (2009), the Yaoundé Tripartite Declaration on the Implementation of the Social Protection Floors (2010), the Principles and Guidelines on the Interpretation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (2010), and the revised Ouagadougou Plan of Action on Employment Promotion and Poverty Alleviation (2014),

*Having regard to* the Universal Declaration of Human Rights, in particular Articles 22 and 25, the International Covenant on Economic, Social and Cultural Rights, in particular Articles 9, 11 and 12, and the Convention on the Rights of the Child (CRC) and its Optional Protocols, in particular CRC Articles 26, 27 and 32,

*In view of* the ILO social security standards, in particular the Social Security (Minimum Standards) Convention, 1952 (Number 102), the Recommendation concerning National Floors of Social Protection Recommendation, 2012 (Number 202), and the Recommendation concerning the Transition from the Informal to the Formal Economy, 2015 (Number 204),

*Realizing* the pillars of the Decent Work Agenda which are: employment creation, social protection, rights at work and social dialogue,

*Recognizing* the virtues of African traditions, values and practices of social and national solidarity which should inspire and characterize the provision of mutual social and communal care and support,

*Concerned* that the vast majority of people in Africa are not appropriately covered by formal social protection provisions,

*Have agreed* as follows:

Article 1  
Definitions

1. For the purpose of the present Protocol:

- (a) "African Charter" means the African Charter on Human and Peoples' Rights;
- (b) "African Commission" means the African Commission on Human and Peoples' Rights;
- (c) "African Court" means the African Court on Human and Peoples' Rights;
- (d) "Assembly" means the Assembly of Heads of State and Government of the African Union;
- (e) "AU" means the African Union;
- (f) "Blue economy" means sustainable economic development of oceans that use such technique as regional development to integrate the use of seas and oceans, coasts, lakes, rivers, and underground water for economic purposes, including but without being limited to, fisheries, mining, energy, aquaculture and maritime transport, while protecting the sea to improve social well-being;
- (g) "Citizen" means any natural person who, in accordance with the laws of an African Union Member State, is a national of that Member State;
- (h) "Commission" means the Secretariat of the African Union as provided by the Constitutive Act;
- (i) "Family" means a unit that consists of a man, a woman or women and, other persons who can be defined as such by national laws of States Parties;

88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

- (j) "Individual" means all natural persons in States Parties, including non-nationals;
- (k) "Informal economy" means all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by laws and policies;
- (l) "Kafala system" means a voluntary commitment made by a person (kafeel), according to the national law of the State Party, to undertake responsibility for the protection, upbringing and care of a child, in the same way as a parent would do for his or her own child;
- (m) "Member States" means the Member States of the African Union;
- (n) "Minimum package" refers to social protection provisions that cover essential basic benefits and services and which provide the platform for broadening, extending social protection and creation of more fiscal space;
- (o) "Social assistance" is a form of social security, funded from government revenue, which provides assistance in cash or in kind to persons who lack the means to support themselves and their dependants. It also includes payments financed from government revenue which are granted to designated categories deemed to have exceptional needs;
- (p) "Social allowances" means universal payments financed from government revenue which are granted to designated categories deemed to have exceptional needs (such as children, older persons and persons with disabilities). These benefits are not means tested;
- (q) "Social insurance" refers to a contributory form of social security designed to protect income earners and their dependants against a reduction or loss of income as a result of exposure to risks;
- (r) "Social protection" refers to public and private measures, or to mixed public and private measures, designed to protect individuals against life-cycle crises that curtail their capacity to meet their needs, and includes all forms of social security, and strategies and programmes aimed at supporting and ensuring a minimum standard of livelihood and access to essential social services and care for all people;
- (s) "Social security" includes the social protection concept, social assistance, social insurance and social allowances, public and private measures, or mixed public and private measures, designed to protect individuals and families against income insecurity caused by contingencies such as unemployment, employment injury, maternity, sickness, poor health, disability, old age, maintenance of children and death of a family member;
- (t) "States Parties" means Member States of the African Union that have ratified or acceded to this Protocol and deposited the instruments of ratification or accession with the Chairperson of the African Union Commission.

Article 2

Guiding Principles for Social Protection and State Obligations to Guarantee  
the Right to Social Protection and Social Security

In accordance with the principles enshrined in this Protocol, States Parties shall:

1. Ensure good governance and coordination among institutions responsible for the delivery of social protection;
2. Protect the rights of individuals to human dignity and the special rights of children to survival, development and protection, and subject to the provisions of this Protocol, to equal treatment in relation to social protection;

88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

3. Provide social protection benefits;
4. Develop policies, legislation and programmes that improve the standard of life of individuals and address the needs of vulnerable groups, including but not limited to children, persons with disabilities, women and older persons;
5. Ensure that social protection is human rights-based, follows a lifecycle approach, addresses vulnerability and inequality, and is inclusive, leaving no one behind;
6. Ensure continual progress in relation to the realization of the rights, obligations and commitments contained in this Protocol, and take immediate steps, within its means;
7. Adhere to the principle of non-discrimination, namely that every individual shall be entitled to the enjoyment of the rights recognized and guaranteed in this Protocol without distinction of any kind such as age, disability, race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status;
8. Ensure that the provisions of this Protocol shall apply to all citizens and comply with their international obligations in relation to social protection;
9. Develop an integrated and comprehensive social protection system, which:
  - (a) Ensures meaningful coverage in terms of, among others, social insurance schemes, social assistance measures and social services;
  - (b) Protects against special and collective risks, including political conflict, climate change and natural disasters;
  - (c) Prevents poverty, deprivation and livelihood loss;
  - (d) Integrates and, when necessary, reintegrates persons, including workers in the labour force and into society;
  - (e) Provides for social protection in national legislation in order to ensure an appropriate mandate for government to act, and for clarity and certainty of the rights, obligations and functions of all social protection stakeholders.

Article 3

Right to Social Protection and State Obligations

1. Every citizen has the right to social protection.
2. States Parties have the obligation to ensure that social protection is available, accessible, adequate, affordable and transparent.
3. To comply with the obligation provided under paragraph 2, States Parties shall progressively:
  - (a) Develop, maintain and expand an appropriate regulatory, institutional and operational framework for the provision of social protection and ensure good and democratic governance of social protection schemes and arrangements;
  - (b) Establish and maintain a system of social protection in accordance with the provisions of this Protocol;

88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

- (c) Provide a minimum package of essential social protection, which should at least cover the basic needs of all;
- (d) Ensure that every citizen who has insufficient means of subsistence to support themselves and their dependants is entitled to adequate social assistance and other services provided by the State;
- (e) Increase coverage of social protection and raise systems of social protection to a higher level, in accordance with the provisions of this Protocol and in accordance with the ratio of economic growth and the relevant national laws;
- (f) Encourage and regulate private and public sector participation, with regard to the provision and management of social protection.

Article 4  
Social Insurance

States Parties shall:

1. Review and adopt legislation that compels all employers to enrol all employees into social insurance schemes;
2. Establish health insurance schemes that cover all sections of the population;
3. Put in place measures that enable everyone, especially the youth, to prepare for retirement, and that give expression to the need to contribute to social insurance schemes;
4. Carry out periodic reviews of social insurance benefits to ensure that they are in line with inflation and prevailing economic conditions;
5. Adopt legislative and other measures to ensure that persons can benefit from their contributions even when they move between similar schemes or to other countries (portability of benefits);
6. Ensure the protection of social insurance benefits for those covered by bilateral or multilateral agreements;
7. Adopt legislative and other measures to ensure the sound management and administration of social insurance arrangements, the protection of social insurance funds against mismanagement, diversion for other purposes, cyclical fluctuations and market failure.

Article 5  
Informal and Rural Economies

In order to regulate and provide sufficient social protection to the informal and rural sectors, States Parties shall:

1. Ensure the participation of representatives of the informal and rural economy in the design, development and implementation of social protection policies and programmes;
2. Adopt a regulatory framework promoting appropriate and adequate social security of informal and rural workers, through the inclusion of these workers in general social security schemes adapted to suit the context of these workers, the provision or recognition of appropriate formal and informal social insurance and micro-insurance mechanisms, social assistance measures, and dedicated savings instruments;

88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

3. Develop and implement social security contribution modalities, qualifying conditions and benefits that are suited to the context of informal and rural workers;
4. Ensure access to a minimum package of social protection to informal and rural workers and their families;
5. Ensure that the special context of women is appropriately accommodated in social protection systems and, in particular, that maternity and health protection is extended to working mothers in the informal and rural economies to enable a better conciliation of work, family and care responsibilities;
6. Facilitate access to markets and credit for informal and rural workers to sustain their livelihood support and income-generating potential;
7. Ensure progressive formalization of the informal economy through enabling a legal and regulatory environment for sustainable enterprises, skills development, and progressive extension of labour and social protection;
8. Put in place measures to protect income earned from informal and rural activities and encourage workers in those sectors to enrol in social protection programmes.

Article 6  
Unemployment and Underemployment

States Parties shall:

1. Adopt proactive policies and legislative measures to promote inclusive economic and social development so as to eradicate poverty and absorb the majority of the labour force into productive employment and income generating activities;
2. Progressively provide unemployment benefits for all citizens, in particular by taking steps to establish unemployment insurance schemes, in accordance with national laws;
3. Adopt measures to increase investment in education and training, especially technical and vocational training, and stimulate and support job creation initiatives;
4. Introduce measures to engage those who can work but are not employed, and shall consider for this purpose, among others, public employment schemes and employment guarantee schemes;
5. Promote a culture of entrepreneurship to provide support structures, innovative, sex-sensitive training and skills development programmes, such as apprenticeship programmes, mentorship and business incubators;
6. Provide support structures to be set up to assist entrepreneurs in the establishment and development of small- and medium-sized enterprises and provide effective social protection coverage to workers in those enterprises;
7. Afford preferential employment opportunities to vulnerable groups, especially the youth, women, older persons and persons with disabilities, in accordance with national laws;
8. Significantly and progressively reduce the unemployment rate among, and increase participation in gainful employment of, women, persons with disabilities and young people, in accordance with national laws;
9. Take concrete steps to address the underemployment of workers, to align skills demand with skills supply and to strengthen the links between education, skills training and the labour market;

88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

10. Formulate strategies to enhance productivity as key to the efforts to reduce underemployment and poverty;
11. Ensure adequate protection against loss of employment, including protection against arbitrary and/or unfair dismissal.

Article 7

Cross-Border Migrants and Internally Displaced Persons

States Parties shall:

1. Adopt legislative, administrative and other measures to ensure that their citizens who are migrants, including migrant workers, are provided with social protection benefits;
2. In accordance with their capacities and national laws, introduce measures to facilitate the coordination and portability of social security entitlements and benefits, especially through the adoption of appropriate bilateral and multilateral agreements providing for equality of treatment between individuals from countries of origin and countries of destination, aggregation of insurance periods, maintenance of acquired rights and benefits, portability of benefits, pro-rata sharing of financial liability, institutional cooperation, and the avoidance of double taxation;
3. Develop mechanisms, services and effective financial products to facilitate the affordable transfer of remittances by migrants;
4. Ensure that displaced persons are included in social protection schemes or measures that are responsive to their needs and contexts.

Article 8

Women and Girls

States Parties shall:

1. Abolish all discriminatory laws, policies, customs and harmful traditional practices based on sex in their respective social protection systems and ensure that women and girls are also included in their own right in social protection schemes targeting the formal, informal and rural sectors;
2. Provide social protection to vulnerable women and girls, including those that are heads of families, from marginalized population groups and in the blue economy, and provide an environment suitable to their condition and their special physical, economic and social needs;
3. Adopt and promote policies that ensure that workers, particularly female workers, are able to balance occupational and family obligations;
4. Promote equal access to employment, equal pay for work of equal value and social protection;
5. Provide social assistance to girls and protect them against early marriages and other harmful practices;
6. Promote the provision of social protection schemes that support the enrolment and retention of girls in schools and other training institutions and the organization of programmes for women and girls who leave school prematurely;
7. Provide technical and financial assistance to women, as applicable, who embark on agriculture and improve their access to land, credit, including microfinance, training and invest in their financial empowerment;

88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

8. Make available social protection to women and girls exposed to gender-based violence.

Article 9  
Family

States Parties shall:

1. Ensure that the family, as a fundamental unit of society and the natural environment for the growth and well-being of all its members and particularly children, is appropriately assisted and protected. Member States should promote the legal, economic and social protection of family life;
2. Empower the family and enhance its capacity to enable it to meet its socio-economic needs through appropriate social protection in interventions;
3. Ensure that social protection systems and programmes reflect the reality and importance of the extended family, as understood in the national context;
4. Develop, integrate and implement effective social policies, programmes and strategies to address the social protection needs of families in vulnerable and crisis situations;
5. Adopt measures to promote and support community associations or networks which support families in times of need;
6. Provide a framework for the extension of appropriate family benefits;
7. Promote family reunification.

Article 10  
Older Persons

States Parties shall:

1. Develop policies and legislation that ensure that older persons are provided with adequate pensions and other forms of social security, including post-retirement health coverage and disability benefits;
2. Adopt mechanisms for the transfer of social assistance or social security mechanisms in order to ensure security of income for older persons who did not have the possibility of subscribing to a pension scheme;
3. Promote independent living and support institutional, residential, family, community and home-based care for older persons;
4. Establish, operationalize and implement national long-term care policies or strategies, including through appropriate complaint mechanisms and redress for care recipients;
5. Promote policies to encourage productive and dignified ageing and ensure that employment undertaken after retirement does not entail discrimination against older workers in relation to labour standards, conditions of employment and rates of remuneration;
6. Recognize and encourage the participation of organizations representing older persons, and national consultative councils of older persons according to relevant national laws.

Article 11  
Children, Adolescents and Youth



88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

States Parties shall:

1. Ensure that social protection programmes are sensitive to the needs of children and contribute to the fulfilment of their right to registration at birth, nationality and a standard of living adequate for the child's physical, mental, spiritual, moral and social development in accordance with relevant national laws;
2. Provide social protection services and transfers in cash and in kind to ensure that the basic needs of children are met;
3. Recognize the right for every child to benefit from social security, including social insurance, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child as appropriate;
4. Adopt measures to provide social protection schemes aimed at protecting children in conflict situations, orphans, children of mothers in prison and other vulnerable children;
5. Adopt specific protection measures in relation to the employment of children, including minimum age for admission to employment, and appropriate regulation of the hours and conditions of employment;
6. Support measures to protect, reintegrate and rehabilitate children in conflict with the law;
7. Invest in social protection schemes that contribute to early childhood development, including attention to adequate nutrition, good health, safety and protection, opportunities for early learning and responsive caregiving;
8. Put in place effective measures and provision for adequate care of children, among others, through kinship care, care under the kafala system, foster-care and adoption arrangements in accordance with relevant national laws;
9. Facilitate mentoring and support of child-headed households;
10. Ensure free primary and secondary education and institute clear steps to progressively extend access to free education beyond primary and secondary schooling, including pre-primary education;
11. Adopt social protection measures that contribute to ending child labour, exploitation, neglect and violence, child marriages, trafficking in persons, including child trafficking, and child soldiering;
12. Ensure that children and the youth participate in developing social protection programmes.

Article 12  
Persons with Disabilities

States Parties shall:

1. Adopt legislative policy and other measures and implement measures that will ensure the extension of social protection to all persons with disabilities so that they enjoy an adequate standard of living for themselves and their families, as well as care and support;
2. Ensure that social protection schemes provided to persons with disabilities improve their social and professional inclusion, including through measures such as habilitation, rehabilitation, vocational training, accessibility and mobility, provision of assistive devices and technologies, means of transport and housing and the appropriate organization of work and the working environment;

88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

3. Ensure that social protection schemes guarantee equality of access and coverage to and reasonable accommodation of persons with disabilities;
4. Mainstream access to social services for persons with disabilities;
5. Facilitate personal assistance to persons with disabilities to live independently and participate in the community;
6. Involve persons with disabilities, their families and their representative organizations in the revision, planning and design of national social protection strategies;
7. Initiate legal and policy reforms to promote adequate and flexible combination of income and disability related support for economic empowerment;
8. Raise awareness to persons with disabilities and their families on the existence of social protection programmes to ensure their participation.

Article 13  
Maternity and Paternity

States Parties shall:

1. Ensure that reproductive, maternity and paternity rights are protected in all social protection programmes in accordance with national laws;
2. Provide social protection measures that protect women against discrimination and dismissal in relation to maternity, and guarantee adequate and paid pre- and post-natal maternity leave, of at least fourteen weeks' duration, in both the private and public sectors;
3. Ensure that fathers are enabled to share responsibilities in pre- and post-natal care, including the granting of appropriate paternity leave;
4. Establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services, including hospitalization for women;
5. Ensure that, unless universal coverage and financing are provided for, maternity and paternity benefits shall be financed through compulsory social insurance paid by both the employer and the employees, without distinction of gender, through social assistance or social allowances. Appropriate provision shall be made for maternity benefits in the case of those involved in the informal economy.

Article 14  
Health Care, Protection and Sickness Benefits

States Parties shall:

1. Develop social protection programmes that ensure that every citizen has equal access to adequate, affordable and quality health care, including comprehensive sexual and reproductive health services and facilities for current, previous and future users of psychiatric services;
2. Put in place legislative policy and other measures to achieve universal health coverage and financing, and shall ensure that every citizen is covered by health insurance schemes;

88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

3. Ensure that health care shall be preventive, curative, rehabilitative and promotive, and shall include primary, secondary and tertiary health care and provision of essential pharmaceutical supplies;
4. Put in place palliative care and support to the terminally ill;
5. Adopt measures to regulate sickness and invalidity cash benefits;
6. Ensure relevant social protection to support the poorest families in their efforts to mitigate the economic and social impacts of epidemics and crises;
7. Put in place special measures to address the impact of the HIV/AIDS pandemic, malaria, tuberculosis, and other diseases;
8. Adopt and develop social protection measures to support survivors of rape and sexual abuse and harassment;
9. Reduce morbidity and end preventable mortality from communicable and non-communicable diseases and other health conditions in Africa;
10. Facilitate access to free medical and rehabilitative services for persons with disabilities;
11. Facilitate access to free detoxification services, including rehabilitation services, for persons in need of treatment for drug and alcohol dependence;
12. Put in place a legislative policy and institutional framework for the development and provision of safe traditional and other medicines.

Article 15

Occupational Health, Safety and Employment Injury

States Parties shall:

1. Take measures towards achieving progressively a safe, secure and healthy working environment;
2. Ensure that the organization of occupational safety and health shall be on the basis of cooperation involving all stakeholders at the national level;
3. Ensure that all workers are covered by employment injury benefit schemes and arrangements;
4. Adopt measures in accordance with international labour standards to ensure that workers shall be entitled to work-related illness and injury prevention, detection and rehabilitation services, adequate health care, as well as reasonable job security after illness and injury, and shall be entitled to reasonable compensation.

Article 16

Death and Survivor's Benefits

States Parties shall, in accordance with their capacities and national laws, ensure that social protection schemes provide protection in the event of death of a breadwinner so that non-discriminatory benefits become payable to beneficiaries and survivors, including a death grant, funeral costs and – subject to qualifying conditions – survivors' benefits, which should be in the form of periodical payments, aimed at the upkeep of survivors.

Article 17

Care and Support in Other Contexts

88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

States Parties shall, in accordance with their capacities and national laws:

1. Adopt social protection measures including special care services for children and women exposed to violence and exploitation, in all its forms, and aftercare services to ex-prisoners as well as drug users and substance abusers for their social reintegration;
2. Collectively and individually ensure that their social protection systems adequately provide appropriate individual and collective preventive measures within and across the borders of States Parties, and shall also provide for effective measures of relief, rehabilitation, reconstruction, reintegration and revival for communities so affected;
3. Adopt measures, at regional and national levels, to provide prevention, relief, reconstruction and rehabilitation in crisis and natural disaster contexts;
4. Develop a framework for training and support of caregivers;
5. Develop and implement a framework to plan, develop and support the workforce in the social service system.

Article 18  
Education

States Parties shall, in accordance with their capacities and national laws:

1. Adopt measures to progressively provide free and equitable access to quality inclusive education;
2. Support access to free adult education for marginalized groups, including indigenous persons, women, older persons and persons with disabilities;
3. Ensure an education, training, life-long learning and skills development system, supported by technology, that is sensitive to the objective of rationalizing admission requirements to education and training institutions and accreditation of qualifications, and which simultaneously addresses the needs for employability and sustainable human development;
4. Where appropriate, provide age appropriate and culturally sensitive comprehensive education on rights to sexual and reproductive health for adolescents and youth while involving parents and communities;
5. Encourage the introduction of special training programmes for teachers and instructors of persons with disabilities;
6. Develop and implement programmes that extend and expand:
  - (i) Early childhood education;
  - (ii) Primary health care to all school children; and
  - (iii) School feeding programmes to all primary school children;
7. Ensure the provision of education on the history of Africa focusing on its past greatness and prosperity as an inspiration for social protection.

Article 19

88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

Food and Nutrition

States Parties shall, in accordance with their capacities and national laws:

1. Provide social protection programmes that contribute to improved nutrition;
2. Establish mechanisms for developing and retaining adequate technical capacity in nutrition to implement effective nutrition programmes;
3. Support social protection programmes that boost agricultural productivity such as input subsidy schemes and crop insurance schemes;
4. Enact and implement legislation to preserve land for food crops and promote production of drought resistant crops, protection of intellectual property in traditional food crops, commercial farming, crop diversification for long-term food security, and marketing services;
5. Enhance the production, storage, transportation, availability, accessibility, utilization, safety and quality of food;
6. Improve the productivity of smallholder agriculture and livestock through extension of technological support, small-scale irrigation schemes, agri-business development, rural infrastructure, credit, subsidies and tax exemptions;
7. Provide support to female farmers and improve women's access to credit, including microfinance, and invest in training to ensure their empowerment, including in their financial literacy;
8. Enhance food and nutrition information dissemination, including information on genetically modified foods, through education and communication activities with the participation of the public.

Article 20

Water, Sanitation and Hygiene

States Parties shall, in accordance with their capacities and national laws:

1. Ensure universal, affordable and reliable access to clean and safe drinking water in a sustainable manner;
2. Establish efficient and effective water management systems;
3. Put in place measures to ensure adequate and inclusive sanitation and hygiene in all human dwellings.

Article 21

Housing, Shelter and Property

States Parties shall, in accordance with their capacities and national laws:

1. Facilitate social protection measures that contribute to the affordability of and access to adequate and inclusive housing and shelter;
2. Take all necessary legislative, administrative and other measures to prohibit the evictions that are not in conformity with regional and international human rights treaties ratified by States Parties;
3. Ensure that the rights of any person to property are protected;

88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

4. Ensure that adequate and effective legal or other appropriate remedies are available to any person whose property rights have been violated.

Article 22

Environment and Climate Change

States Parties shall, in accordance with their capacities and national laws:

1. Support measures to mitigate the effects of climate change and environmental degradation through social protection schemes;
2. Enhance investments for resilience-building initiatives, including social protection for rural workers and other vulnerable social groups, as well as vulnerable ecosystems, including the blue economy;
3. Support initiatives to grow crops that adapt to climate change in order to enhance food security.

Article 23

Governance and Administration of National Social Protection Systems

States Parties shall, in accordance with their capacities and national laws:

1. Take steps to include provisions in their constitutions and other national laws, in accordance with this Protocol, to ensure that an adequate framework for social protection is provided for;
2. Ensure inclusive and democratic governance of social protection institutions;
3. Improve management and coordination of social protection at all levels through a variety of methods, including the establishment of social registries and other social protection management information systems and frameworks;
4. Enhance the technical, infrastructural and institutional capacities of ministries responsible for social protection;
5. Create sound governance structures for all social protection programmes, at local and national levels, as appropriate, to guarantee the protection of beneficiaries;
6. Create appropriate legal and institutional frameworks for sound investment, auditing and risk management;
7. Put in place mechanisms to ensure that delivery and payment systems are efficient and effective;
8. Ensure the active participation of all stakeholders in the formulation of social protection policies, programme design, implementation, and monitoring and impact evaluation.

Article 24

Financing

States Parties shall, in accordance with their capacities and national laws:

1. Conduct periodic actuarial assessments to ensure the adequate funding of social protection systems through domestic financing by allocating specific and transparent budget lines and taking into account contributory capacities of different population groups;

88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

2. Develop and operationalize costed national plans for social protection to guarantee the provision of services and benefits;
3. Develop flexible feasibility, costing and sustainable funding strategies, combining contributory and non-contributory funding modalities for nationally defined programmes, to ensure sufficient funding for social protection programmes;
4. Commit themselves to progressively allocate a minimum percentage of public resources to social protection expenditure, in particular expenditure that will ensure universal access;
5. Ensure coordination and strengthening of development partner support for sustainable financing of social protection;
6. Take measures to avoid excessive administrative costs, and prevent fraud, illicit financial flows, tax evasion, non-payment of contributions and misuse of social protection funds.

Article 25  
Data Management

States Parties shall:

1. Adopt and implement mechanisms to collect, analyze, compile and publish social protection disaggregated data, statistics and indicators, with due regard to the need for data protection and an individual's right to privacy;
2. Ensure that social protection information/data is appropriately disaggregated (also with reference to sex, age, disability and migration status), collected and reported to facilitate planning and implementation.

Article 26  
Complaint and Appeal Mechanisms

States Parties shall:

1. Ensure that every claimant has the right to complain to the institution that took a decision affecting the claimant and, should the claimant be dissatisfied with the outcome of the complaint, the right to appeal to an independent institution, with regard to any violations of the rights established in this Protocol;
2. Develop and implement complaint and appeal mechanisms which accommodate both individual and collective complaints, in all social protection programmes;
3. Ensure that complaint and appeal mechanisms provide procedural guarantees for a fair hearing, are impartial, transparent, effective, simple, rapid, accessible and inexpensive, are completed within reasonable time limits, and ensure timely feedback to affected parties;
4. Ensure access to internal review, and independent adjudication institutions that have the power to finally determine social protection disputes;
5. Ensure that domestic remedies are exhausted;
6. Ensure that final resolutions of disputes are binding and shall be complied with;
7. Ensure that legal aid is available to any person whose rights have been violated.

88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

Article 27  
Duties

Individuals have responsibilities towards their families, their communities, the wider society and the State. In this regard, they shall:

1. Participate in social protection schemes that are designed to protect them and their families against risks;
2. Use the benefits derived as a result of this Protocol in a responsible manner;
3. Provide support and protection to family members as required by the State Party's legal system.

Article 28  
Implementation and Monitoring

States Parties shall:

1. Ensure the implementation of this Protocol and shall indicate in their periodic reports submitted to the African Commission in accordance with Article 62 of the African Charter, the legislative and other measures undertaken for the full realization of the rights recognized in this Protocol;
2. Establish or designate national mechanisms, including independent national institutions, to monitor the implementation of the rights enshrined in this Protocol;
3. Monitor and review the uptake, design and impact of social protection programmes for all vulnerable persons.

Article 29  
Interpretation

1. The African Commission shall be seized with matters of interpretation arising from the implementation of this Protocol.
2. The African Court shall be seized with matters of interpretation and application of this Protocol only for the States Parties to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

Article 30  
Popularization of the Protocol

States Parties shall take all appropriate measures to ensure the widest possible popularization of this Protocol in accordance with the relevant national laws.

Article 31  
Safeguard Clause

1. No provision in this Protocol shall be interpreted as derogating from the principles and values contained in other relevant instruments for the realization of the rights of persons covered under this Protocol.
2. In the event of seemingly contradictory provisions of this Protocol, the interpretation which favours the rights of citizens and protects their legitimate interests shall prevail.

Article 32



88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

Signature, Ratification and Accession

1. This Protocol shall be open to Member States for signature, ratification and accession.
2. The instruments of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission who shall notify all Member States of the dates of the deposit of the instruments of ratification or accession.

Article 33  
Entry into Force

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15) instrument of ratification or accession by a Member State.
2. The Chairperson of the African Union Commission shall notify all Member States of the entry into force of the present Protocol.
3. For any Member State ratifying or acceding to the present Protocol after its entry into force the Protocol shall come into force in respect of that State on the date of the deposit of its instrument of ratification or accession.

Article 34  
Reservations

1. A State Party may, when, ratifying or acceding to this Protocol, submit in writing a reservation with respect to any of the provisions of this Protocol.
2. Reservations should not be incompatible with the object of the present Protocol.
3. Unless otherwise provided, a reservation may be withdrawn at any time.
4. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States Parties of the withdrawal accordingly.

Article 35  
Depositary

This Protocol shall be deposited with the Chairperson of the Commission, who shall transmit a certified true copy of the Protocol to the Government of each Member State.

Article 36  
Registration

The Chairperson of the Commission upon the entry into force of this Protocol shall register this Protocol with the United Nations Secretary-General in conformity with Article 102 of the Charter of the United Nations.

Article 37  
Withdrawal

1. At any time after three (3) years from the date of entry into force of this Protocol, a State Party may withdraw at any time by giving written notification to the custodian.

88. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF CITIZENS TO  
SOCIAL PROTECTION AND SOCIAL SECURITY (2022)

2. Withdrawal shall be effective one (1) year after receipt of notification by the depositary, or on such later date as may be specified in the notification.
3. Withdrawal shall not affect any obligation of the withdrawing State Party prior to the withdrawal.

Article 38  
Amendment or Revision

1. Any State Party may submit proposal(s) for the amendment or revision of this Protocol. Such proposal(s) shall be adopted by the Assembly.
2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission who shall transmit such proposals to the Assembly at least six (6) months before the meeting at which they shall be considered for adoption.
3. Amendments or revisions shall be adopted by consensus or, failing which, by a two-thirds majority.
4. The amendment or revision shall enter into force in accordance with the procedures outlined in Articles 33 and 34 of this Protocol.

Article 39  
Authentic Texts

This Protocol is drawn up in five (5) original texts, in the Arabic, English, French, Portuguese, and Spanish languages, and all five (5) texts being equally authentic.