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**PROGRESS REPORT OF THE COMMISSION ON THE
TRANSFORMATION OF THE AFRICAN UNION COMMISSION
INTO THE AFRICAN UNION AUTHORITY [ON THE
IMPLEMENTATION OF DECISION
Assembly/AU/Dec.341(XVI)]**

**PROGRESS REPORT OF THE COMMISSION ON THE TRANSFORMATION
OF THE AFRICAN UNION COMMISSION INTO THE AFRICAN UNION
AUTHORITY [ON THE IMPLEMENTATION OF DECISION
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INTRODUCTION

1. During the Eighteenth Ordinary Session of the Assembly of the Union held in Addis Ababa, Ethiopia from 29 30 January 2012, the Assembly considered and took note of the Progress Report of the Commission on the Implementation of Decision Assembly/AU/Dec.372(XVI) on the Transformation of the African Union Commission (AU Commission) into the African Union Authority (AU Authority) adopted at its Seventeenth Ordinary Session held in Malabo, Equatorial Guinea, from 30 June to 1st July 2011. Following due consideration of the progress report, the Assembly adopted Decision Assembly/AU/Dec.415(XVIII) which stipulated, *inter alia*, as follows:

1. ***TAKES NOTE, of the Progress Report of the Commission on the implementation of Decision Assembly/AU/Dec.372(XVII) on the Transformation of the African Union Commission into the African Union Authority, adopted by the Seventeenth Ordinary Session of the Assembly held in Malabo, Equatorial Guinea, from 30 June to 1 July 2011;***
2. ***DECIDES to defer consideration of this matter to the next Ordinary Session of the Assembly in June/July 2012.***

2. The present Report is intended to recall the process that has led to the decision of the Assembly to transform the AU Commission into the AU Authority and to inform the Assembly on the progress made towards the transformation of the AU Commission into the AU Authority.

3. It will be recalled that the Assembly of the Union was seized with this matter for the first time during its Fourth Ordinary Session held in Abuja, Nigeria in January 2005. It should be noted that at the time, a number of proposals were made by a Member State (Libya), including the creation of posts of Ministers (such as Ministers of Defense, Foreign Affairs, Transport and Communication) and the cancellation of Customs and harmonization of custom tariffs among Member States. The Assembly decided to set up a Committee of Heads of States and Government known as the “*Museveni Committee*” since the said Committee was chaired by H.E. President Yoweri Museveni of Uganda (composed of Botswana, Chad, Ethiopia, Niger, Senegal and Tunisia) to consider with the Chairperson of the Commission the said proposals with a view to making appropriate recommendations to the Assembly at its next ordinary session [**Decision Assembly/AU/Dec.69(IV)**]

4. The Assembly meeting at its Fifth Ordinary Session in Sirte, Libya in July 2005 considered the set of recommendations from the “*Museveni Committee*” and was of the

view that there was need for deeper reflection on the said recommendations and also the other new ideas that emerged during the discussions on the matter needed to be taken into account. The Assembly decided to mandate another Committee of Heads of State and Government known as the “*Obasanjo Committee*” since the said Committee was chaired by H.E President Olusegun Obasanjo of Nigeria and Chair of the Union at the time (composed of Algeria, Kenya, Senegal, Lesotho, Uganda and Gabon). It should also be noted that at the time, the Committee was requested to make proposals on how to strengthen the Commission to enable it fulfill its mandate effectively [**Assembly/AU/Dec.90 (V)**].

5. The “*Obasanjo Committee*” presented its report and recommendations to the Assembly meeting at its Sixth Ordinary Session held in Khartoum, The Sudan in January 2006. The Assembly while “*reaffirming that the ultimate goal of the African Union is the full political and economic integration of the continent leading to the United States of Africa*” also requested the Commission to consider all the contributions and through consultations with all relevant stakeholders and experts submit a consolidated document to the next ordinary [**Decision Assembly/AU/Dec.99(VI)**]. The “Base Document” was presented to the Seventh Ordinary Session of the Assembly meeting held in Banjul, The Gambia in July 2006. The Assembly expressed the need for further reflection on the proposals, and in this regard, decided to refer the matter to the Executive Council [**Decision Assembly/AU/Dec.123 (VII)**].

6. The Executive Council meeting in extraordinary session in Addis Ababa, Ethiopia in November 2006 received two reports: i) the study on a African Union Government-Towards the United States of Africa and ii) the Report on the African Union Government-Implementation modalities. The main recommendations to the Assembly were as follows: i) that all Member States accepted the United States of Africa as a common and desirable goal, however, **differences existed over the modalities and timeframe for achieving this goal and the appropriate pace for integration**; ii) There was need for an **audit review of the state of the Union** in order to know where we were and the areas in which significant improvements had to be made in order to accelerate the process of integration, **including strengthening the Commission and other organs of the Union**. These recommendations were submitted to the Assembly meeting at its Eighth Ordinary Session held in Addis Ababa, Ethiopia in January 2007. The Assembly decided i) to devote its 9th Ordinary Session which was scheduled in Accra, Ghana in July 2007 to the theme: “Grand Debate on the Union Government” and in this regard it also decided that all other agenda items would, in principle, be transferred to the 10th Ordinary Session of the Assembly scheduled in January ...”. The Assembly also endorsed the proposal of the Executive Council, as part of this process, to hold a retreat of Ministers of Foreign Affairs to reflect on the state of the Union to be followed by an Extraordinary Session of the Executive Council [**Decision Assembly/AU/Dec.156(VIII)**].

7. At the end of the debate on the Union Government, the Assembly decided as follows: i) to rationalize and strengthen the Regional Economic Communities, and harmonize their activities, in conformity with its earlier decision, so as to lead to the creation of an African Common Market, through the stages set in the Treaty Establishing African Economic Community (Abuja Treaty), with a reviewed and shorter timeframe to

be agreed upon in order to accelerate the economic integration and where possible, political integration; and ii) to conduct immediately, **an Audit** of the Executive Council in terms of Article 10 of the Constitutive Act, the Commission as well as the other organs of the African Union in accordance with the Terms of Reference adopted by the 10th Extraordinary Session of the Executive Council held in Zimbali, South Africa on 10 May 2007 [**Declaration Assembly/AU/Decl.2(IX)**].

8. A Ministerial Committee on the Union Government chaired by Ghana in its capacity as Chair of the Executive Council and composed of Botswana, Cameroon, Egypt, Ethiopia, Gabon, Libya, Nigeria, Senegal and South Africa was also seized with the matter. The Committee held four (4) meetings between September 2007 and January 2008, the outcomes of which were submitted to the Tenth Ordinary Session of the Assembly held in Addis Ababa, Ethiopia in January 2008 through the Tenth Ordinary Session of the Executive Council. The Assembly noting that the Executive Council could not reach a general consensus on key issues and approaches in light of the Accra Declaration of 3 July 2007 due to time constraints, decided to refer the matter to a new Committee of Twelve Heads of State and Government known as the “*Kikwete Committee*” since it was chaired by H.E President Jakaya Kikwete of Tanzania as Chair of the Union and composed of Ghana (immediate past Chairperson of the Union), Botswana, Cameroon, Gabon, Egypt, Ethiopia, Libya, Nigeria, Senegal, South Africa and Uganda. [**Decision Assembly/AU/Dec.185(X)**]

9. In considering the Report of the Committee of Twelve at its Eleventh Ordinary Session held in Sharm El-Sheikh, Egypt in July 2008, the Assembly decided to devote a full day of its January 2009 Session to the consideration of this matter with a view to **bringing the debate to a final conclusion**. [**Decision Assembly/AU/Dec.205 (XI)**]. At the end of its special session, held in Addis Ababa, Ethiopia on 1 February 2009, the Assembly took a decision **to transform the African Union Commission into the African Union Authority**. However, the Executive Council was requested to elaborate upon the modalities for the transformation. The Assembly meeting at its Twelfth Ordinary Session in Addis Ababa, Ethiopia in February 2009 endorsed the recommendation of the Executive Council, which reads as follows:

“Pursuant to the Decision of the Assembly directing the Executive Council to elaborate upon its decision regarding the establishment of the African Union Authority:

The Executive Council received the decision:

1. *to transform the African Union Commission into an African Union Authority;*
2. *to strengthen the AU Authority;*
3. *that the Authority shall have a structure comprising of the President, the Vice President and Secretaries with portfolios based on areas of shared competencies as agreed upon.*

The Executive Council further took note of the Report submitted to it by the AU Commission in response to the decision of the Assembly.

The Executive Council recommended as follows:

1. *In order to transform the AUC into an Authority, the Constitutive Act should be amended in accordance with the provisions of Article 32 of the said Act and, thereafter, call upon Member States to expedite the ratification of the amendments;*
2. *There is a need to further study the proposals contained in the Report of the Commission with special regard to:*
 - a. *The functions of the African Union Authority*
 - b. *The size of the Authority*
 - c. *The functions of the Secretaries;*
 - d. *The financial implications of establishing such Authority.*

In view of the above, the Executive Council requests the Assembly to note that the time allocated for this assignment was inadequate. The Executive Council, therefore, recommends that the Assembly allows time for an Extraordinary Session of the Executive Council to be convened within the next three months to consider these proposals and submit a Report to the next Assembly. **[Decision Assembly/AU/Dec.233(XII)]**

10. At its Thirteenth Ordinary Session held in Sirte, Libya in July 2009, the Assembly requested the Commission to take all necessary measures to prepare, among others, the following:

- i) the legal instruments for amendments to the Constitutive Act, the Rules of Procedure of the Assembly, the Executive Council, the Peace and Security Council, the Permanent Representatives Committee (PRC), and the Statutes of the Commission related to the Creation of the African Union (AU) Authority, and in this regard, to convene a meeting of Government Experts to consider them;
- ii) the structure of the new AU Authority, taking into account the mandate given to the Authority, in collaboration with the PRC;
- iii) the financial implications of the transformation of the Commission into the AU Authority, in collaboration with the PRC **[Decision Assembly/AU/Dec.263 (XIII)]**.

11. The matter was not considered by the Assembly at its Fourteenth Ordinary Session held in Addis Ababa, Ethiopia in January 2010. However, meeting in Kampala, Uganda at its Fifteenth Ordinary Session, the Assembly requested the Commission to

convene a follow-up meeting of Government Experts open to members of the Permanent Representatives' Committee (PRC) for ten (10) working days to pursue consideration of the remaining legal instruments on the transformation of the African Union Commission into the African Union Authority. It also requested the Commission to convene a meeting of Ministers of Justice/Attorneys General of Member States to consider and approve the legal instruments on the transformation of the African Union Commission into the African Union Authority. [**Decision Assembly/AU/Dec.298(XV)**].

12. Further, the Assembly meeting at its Sixteenth Ordinary Session held in Addis Ababa, Ethiopia in January 2011, first reiterated its commitment to the transformation of the African Union (AU) Commission into the AU Authority in order to strengthen the institutional framework of the AU and to accelerate the economic and political integration of the continent. Second it welcomed the measures taken by the Commission and Member States for the implementation of Decision **Assembly/AU/Dec.298 (XV)** which had led to consideration by government experts of the amendments to the various legal instruments on the transformation of the AU Commission into the AU Authority. It finally requested the Commission to convene a fourth meeting of government experts to consider the remaining two documents followed by a meeting of Ministers of Justice/Attorneys General or any other Ministers in charge of the matter of Member States during the first half of 2011 to consider and finalize the legal instruments on the transformation of the AU Commission into the AU Authority for submission to the next ordinary session of the Assembly, through the Executive Council, for consideration [**Decision Assembly/AU/Dec.341 (XVI)**].

13. Meeting in Malabo, Equatorial Guinea, the Assembly decided to defer consideration of the agenda item on the transformation of the AU Commission into the AU Authority [**Assembly/AU/Dec372(XVII)**].

14. In implementation of Decision Assembly/AU/Dec. 263(XIII), also known as the Sirte Conclusions and the subsequent decisions of the Assembly on the transformation of the AU Commission into the AU Authority, the Commission prepared eleven (11) draft legal instruments on the transformation of the AUC into the AU Authority (the list of the draft legal instruments is attached hereto as Annex 1). Subsequently, in conformity with the decisions of the Assembly, the Commission convened four (4) meetings of Government Experts to consider the draft legal instruments:

- i) The First Government Experts Meeting on the transformation of the AU Commission into the AU Authority was held in Tripoli, Libya, from 11 to 15 April 2010. The meeting considered and finalized only one instrument, the draft Protocol on Amendments to the Constitutive Act of the African Union on the Transformation of the African Union Commission into the African Union Authority (AUA).
- ii) The Second Government Experts meeting took place in Addis Ababa, Ethiopia from 17 to 21 May 2010. The meeting considered and finalized only one instrument, the draft Statute of the African Union Authority.

- iii) The Third Meeting of Government Experts was held in Addis Ababa, Ethiopia, from 22 November to 3 December 2010. The meeting considered the remaining nine (9) draft legal instruments and finalized seven (7) of them.
- iv) The Fourth Meeting of Government Experts was held in Addis Ababa, Ethiopia, from 14 to 22 March 2011. The meeting considered the two (2) remaining draft legal instruments namely the Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights and, the Draft Protocol to the Constitutive Act of the African Union Relating to the Pan-African Parliament, as well as the Draft Protocol on the African Monetary Fund pursuant to Executive Council Decision EX.CL/Dec.643(XVIII) of the Eighteenth Ordinary Session, held in Addis Ababa, Ethiopia, from 24 to 28 January 2011.

15. As indicated in the introduction, the Assembly meeting in Malabo, Equatorial Guinea in July 2011 decided to defer consideration of the item on the transformation of the AU Commission into the AU Authority. However, the Commission convened a Fifth and Sixth meeting of Government experts to consider and finalize the two draft legal instruments relating to the African Court and the Pan African Parliament which are subject to another review process in conformity with Decision Assembly/AU/Dec.213(XII) on the Abuse of the Principle of Universal Jurisdiction requesting the Commission to examine the implications of the Court being empowered to try international crimes such as genocide, crimes against humanity and war crimes, and, Decision Assembly/AU/Dec.223(XII) on the Review of the Protocol Relating to the Pan African Parliament (PAP) requesting the Commission to initiate the review process of the Protocol relating to the Pan-African Parliament. The Fifth Government Experts Meeting on the Transformation of the AU Commission into the AU Authority was held at the Headquarters of the Union in Addis Ababa, Ethiopia, from 9 to 18 May 2011. The meeting considered and adopted the remaining articles of the Draft Protocol on the African Monetary Fund. It also continued consideration of the Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights; and the Draft Protocol to the Constitutive Act of the African Union Relating to the Pan-African Parliament, but in the framework of decisions Assembly/AU/Dec.213(XII) and Assembly/AU/Dec.223(XII) adopted by the Twelfth Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, from 1 to 3 February 2009.

16. A follow-up Government experts meeting on the protocols relating to the African Court and the Pan African Parliament was held in Addis Ababa from 30 October to 11 November 2011 and finalized the two instruments. The meeting of Ministers of Justice and Attorneys General was held in Addis Ababa, Ethiopia on 14 and 15 May 2012 preceded by a meeting of Legal experts for submission to the policy organs for consideration through the PRC in July 2012.

17. The decision to transform the AU Commission into the AU Authority was taken with the view to strengthening the institutional framework of the Commission and the purpose of the amendments made to the Statutes of the Commission was to endow the

Authority with enlarged “areas of competence” in particular on peace and security, transnational crimes, coordination of foreign and defense policies, international negotiations, health, and social and economic cooperation in the continent. It was also to enlarge the functions of the Authority to include additional areas related to the areas of competence mentioned above. Although the competence and the functions of the Authority were expanded, it does not appear that the objective of strengthening this organ was achieved in view of the fact that in exercising its functions it would have to do so on the basis of the **principle of Subsidiarity** with regard to Member States and Regional Economic Communities. It seems that many of the amendments relating to the Commission may not require amendment to the Constitutive Act. Further, it should be pointed out that the amendments to the other legal instruments were consequential amendments taking into account the transformation of the AU Commission into the AU Authority.

II. CONCLUSIONS/RECOMMENDATIONS

18. The Commission has discharged its responsibility by preparing and submitting to the government legal experts all the draft legal instruments on the Transformation of the AU Commission into the AU Authority as requested by the Assembly in its Decision Assembly/AU/Dec. 263 (XIII) adopted by the Thirteenth Ordinary Session held in Sirte, Libya from 1 to 3 July 2009 and subsequent relevant decisions. . It should also be indicated that the Government legal experts have also discharged their responsibility by finalizing consideration of the eleven (11) legal instruments.

19. The Assembly, by Decision **Assembly/AU/Dec.415(XVIII)** adopted at its Eighteenth Ordinary Session held in Addis Ababa, Ethiopia from 29 30 January 2012, decided to defer consideration of the item on the transformation of the AU Commission into the AU Authority to the present Ordinary Session of the Assembly.

20. The Commission recommends that the Assembly takes a final decision and provide guidance on the way forward with regard to the process of the Transformation of the AU Commission into the AU Authority.

21. However, the Permanent Representatives’ Committee may wish to assist the Assembly by recommending the following:

The Executive Council should recommend to the Assembly to:

- i) Take note of the Progress Report of the Commission on the transformation of the African Union Commission into the African Union Authority;
- ii) Reaffirm its conviction that the ultimate goal of the African Union is the political and economic integration of the continent towards the United States of Africa as envisaged by the founding fathers of the Organization Unity (OAU) as articulated in the Accra Declaration on July 2007;

- iii) Also reaffirm that in the meantime there is need to strengthen all the AU Organs and their relations with the Regional Economic Communities and other relevant stakeholders;
- iv) Commend the Government experts for the work done so far in implementing the relevant decisions of the Assembly on the transformation of the AU Commission into the AU Authority
- v) Decide to consider, in due course, all the issues relating to this matter including the creation of a Union Government in light of all the relevant Reports and recommendations and Declarations as well as our decisions made by our Assembly, the various Committees of Heads of State and Government, the Executive Council, the Ministerial Committees that have addressed the matter as well as the High Level Panel on the Audit of the Union;
- vi) Request the Commission in collaboration with the Permanent Representatives' Committee and in line with the established procedure as a first stage to make appropriate recommendations on the strengthening of the Commission taking into account the work already done in relation to the AU Authority to the ordinary session of the Assembly in July 2013.

2012

Progress Report of the commission on the transformation of the African Union commission in to the African Union authority on the implementation of decision assembly/Au/Dec.341(Xvi)

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