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UNION AFRICAINE

UNIÃO AFRICANA

Addis Ababa, ETHIOPIA

P. O. Box 3243

Telephone: 517 700

Fax: 5130 36

website: [www. www. au. int](http://www.wwww.aau.int)

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PROGRESS REPORT OF MINISTERIAL COMMITTEE
ON THE CHALLENGES OF RATIFICATION/ACCESSION AND
IMPLEMENTATION OF THE OAU/AU TREATIES

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INTRODUCTION

1. Since the inception of the Organization of African Unity (OAU) in 1963 and the African Union (AU) in 2002, the policy organs of both structures have adopted forty-nine (49) treaties, the most recent being the Protocol on the Establishment on the African Monetary Fund and the Statute of the African Monetary Fund, the African Union Convention on Cross-Border Cooperation (Niamey Convention), the African Union Convention on Cyber Security and Personal Data Protection, the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development, the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Right and the last one, the Protocol to the Constitutive Act of the African Union relating to the Pan-African Parliament, adopted by the Assembly in Malabo, Equatorial Guinea in June 2014.

2. Thirty-four (34) of these treaties have entered into force. Three (3) additional treaties, namely: the Constitution of the Association of the African Trade Promotion Organization (1974), the African Maritime Transport Charter (1994), and the Constitution of the African Civil Aviation Commission (revised version) (2009) are in force provisionally in conformity with the provisions of the respective treaties which allow for provisional entry into force. The pace of signature, ratifications/accession has increased considerably during this year with the process of sensitization of Member States. Indeed, it should be noted that thirty-five (35) new signatures were appended to the treaties compared to the nineteen (19) signatures recorded during last year, and twenty-one (21) instruments of ratification/accession were deposited compared to the twenty-six (26) received during last year.

3. It should be recall that in order to address the slow pace of ratification or accession and implementation of OAU/AU Treaties, the Executive Council requested the Commission to prepare and submit the modalities for the establishment of a Ministerial Committee on challenges of ratification/Accession and Implementation of OAU/AU Treaties within the context of the 50th Anniversary of the OAU to deal with the issue of political unwillingness and technical inability.

4. As a result, the Executive Council by a Decision **EX.CL/847 (XXV)** adopted in Malabo, Equatorial Guinea in June 2014 the Rules of Procedure of the AU Ministerial Committee on the Challenges of Ratification and Implementation of the OAU/AU Treaties.

5. Rule 4 of the said Rules of Procedure proved that there may be established a National Sectorial Committee in every Member State and the National Sectorial Committees shall liaise with various Ministries at the national level inter alia to facilitate the implementation of national policies and decisions related to the ratification of OAU/AU Treaties.

6. On the implementation of the said decision, the Committee in collaboration with the Commission assisted some Member States on the establishment of the National Sectorial Committee in order set up a national focal point to transmit information to the Ministerial Committee on the efforts made by each Member State in relation to the signature, ratification/accession and implementation of OAU/AU Treaties and the challenges faced to accelerate the ratification issues.

7. The Committee proposed that in accordance with the reality of each country on the issue of ratification/accession and implementation of OAU/AU Treaties, the National Sectorial Committee can be composed as follows: Representative(s) from the Ministry Foreign of Affairs/External Relations as (focal point); Representative(s) from National Parliament; Representative(s) from the Ministry of Justice; Representative(s) from Sectorial Ministry.

I. ESTABLISHMENT OF THE NATIONAL SECTORIAL COMMITTEE IN SOME MEMBER STATES

8. So far, the Members of the Ministerial Committee assisted by the Commission have undertaken visits to Zambia, Cameroon and Angola to sensitize the countries on the need to establish the National Sectorial Committees. These visits were welcomed by Zambia, Cameroon and Angola as they came out at the highest levels to commit to setting up the National Sectorial Committee or strengthen and ensure proper coordination of existing mechanism. After the visit of the Members of the Ministerial Committee to Cameroon, the country ratified and deposited with the Commission, instruments of ratification of some of the treaties.

9. In order to continue the sensitization of Member States, Members of the Ministerial Committee at the Experts level assisted by the Commission will be visiting Namibia, Guinea Bissau, Senegal, Botswana, Sao Tomé e Príncipe, the Democratic Republic of Congo and Central Africa Republic in the next couple of months and will report to the Executive Council through the Ministerial Committee.

II. FIRST MEETING OF THE STANDING COMMITTEE OF EXPERTS OF THE MINISTERIAL COMMITTEE ON THE CHALLENGES OF RATIFICATION/ACCESSION AND IMPLEMENTATION OF OAU/AU TREATIES

10. In accordance with rule 3 of the Ministerial Committee on the challenges of ratification/accession and implementation of OAU/AU Treaties, members of the standing committee hold their first meeting in Luanda, Angola from 27 to 30 November 2015.

11. The objective of the meeting was to discuss and identify strategies to encourage Member States to organize political consultations and debates within the regional domestic spheres to determine both the feasibility and desirability of harmonizing the constitutional approaches and legislative procedure and practices for ratification of OAU/AU Treaties as well as to develop guidelines outlining the modalities for the

meeting of the National Sectorial Committees on the Challenges of Ratification/Accession and Implementation of OAU/AU Treaties.

12. The meeting discussed and deliberated on strategies to address challenges such as lack of political commitment, administrative red tape, lack of required administrative coordination and technical capacity; and the strategies to encourage Member States to organize political consultation and debates within the regional domestic spheres to determine both the feasibility and desirability of harmonizing the constitutional approaches and legislative procedures and practices for ratification of OAU/AU Treaties.

13. Members of the Committee categorized the challenges of ratification/accession into three categories; namely political, technical and participation challenges. They elaborated that political reasons included the lack of internal stability. On the technical level, the Meeting stated that some Member States lacked the technical ability to follow up the process of ratification.

14. The meeting underscored the importance of nominating a local focal point, with institutional memory and who will be tasked with the role of coordinating with other relevant authorities on matters of ratification and domestication. Participation by the relevant sectorial ministries as well as by civil society was also emphasized as an important precondition to expedite ratification and accession processes. Particular emphasis was made on the role of civil society organizations, which can carry out the role of advocacy for ratification and implementation of treaties. It was noted that Member States are eager to ratify the United Nations Treaties rather than the African Union Treaties, despite their relevance and importance.

15. During the discussion, the Committee noted that lack of ratification/implementation can be attributed to lack of political will to be bound by some of the legal instruments, which necessitates that the AUC does not attempt to introduce any instrument for approval by Member States unless it has attained the highest degree of consensus. Constitutional requirements were also highlighted as potential impediments to ratification, particularly for treaties that bear financial consequences on Member States.

16. The Committee re-emphasized the willingness of the Office of the Legal Counsel to extend all possible assistance to Member States in overcoming the challenges they may experience with ratification and domestication processes. Nevertheless, the Committee clarified that funding and human resource constraints hinder in the Office of the Legal Counsel from carrying out this task in the envisaged manner. The Committee called upon Member States to consider allocating the necessary human and financial resources to the Office of the Legal Counsel for that purpose. The Committee also explained that the Office of the Legal Counsel will organize, in collaboration with external partners, a brief training program during 2016 with the aim of training Member States on treaty drafting.

17. On the strategies to address challenges to ratification of OAU/AU Treaties an analysis of the ratification pattern of Member States of the African Union, where

indicated that while most of them are comfortable ratifying foundational, institutional and human rights treaties that further strengthen the integration agenda of the Union, there is, however some reluctance to ratify economic, environmental, treaties on specific groups and judicial related treaties. It was underscored that, the slow pace of ratification might be attributed to cost implication of ratifying these treaties and possible overlaps or tension between AU treaties and national or international commitments of member states.

18. To improve ratification rate of OAU/AU outstanding treaties, it was recommended that a comprehensive cost benefit analysis of ratifying OAU/AU treaties be carried out as part of continental campaign to encourage States to ratify and/or report on treaties they have ratified. Furthermore, the Commission should consider developing toolkits on ratification, such as ratification and implementation manuals.

19. Regarding the strategies for Harmonization of OAU/AU Treaties, the meeting noted that the reasons for the low rate of ratification/accession were among others; leadership problems, lack of political will to ratify, complex ratification procedures and lack of time, inconsistencies between different linguistic texts of OAU/AU Treaties, weak capacity for ratification available in different Member States, lack of knowledge and awareness within Member States of the existence and content of some instruments, lack of involvement of African citizens and civil society organizations, economic and financial implications of ratification and domestication, indifference, weak continuity and follow-up mechanisms by both national parliaments and cabinet, and inefficient support structures available at national, regional and continental levels.

20. It was aforementioned that some factors have caused Member States to be “charter drunk”, in the sense that there are indeed too many legal instruments with a lot of overlap, necessitating some prioritization by Member States. The Committee further elaborated that existing African legal instruments can indeed help in carrying out such planning function, since they set out respective obligations for AUC and Member States in respect of ratification of treaties, including the following:

- a) **Responsibilities of Member States;** requiring governments to act as central coordinating structures at national level, initiating appropriate measures (legislative, executive & administrative) to bring national laws in conformity with AU treaties, ensure wider in-country dissemination of African legal instruments, promote political will, and incorporate provisions of African legal instruments into national policies and strategies.
- b) **Responsibilities of AUC;** act as the central coordinating structure at continental level, coordinate monitoring and evaluation of compliance with treaty provisions jointly with other key organs of AU including the Pan-African Parliament, Peace and Security Council, the African Commission on Human and People’s Rights, the African Court of Justice and Human Rights, the Economic, Social and Cultural Council etc., develop benchmarks for implementation of provisions of African legal instruments and monitor and evaluate compliance, facilitate harmonization of policies and laws among

Member States, provide the needed technical and advisory assistance and resources to Member States in support of ratification and domestication processes, build in-situ capacities (at AUC, within RECs, & State-level) on various aspects of treaty-making (including negotiation, ratification, domestication and reporting), and to develop toolkits and other virtual online and offline resources for supporting Member States.

21. The Committee noted that there already exists, within some departments at the AUC and other AU Organs, good practices relating to the ratification of AU treaties. It was highlighted the experience of the Pan-African Parliament (PAP) advocating for the ratification of the African Charter of Democracy Elections and Governance (ACDEG), as well as the comprehensive approach taken by the Conference of African Ministers of Public Service (CAMPS) to assign service champions, develop a long-term strategy and management guides as well as training for Management Development Institutes (MDIs) and directors within Member States Public Service Ministries.

III. RECOMMENDATIONS OF THE STANDING COMMITTEE OF EXPERTS

22. Following deliberations, the Standing Committee of Experts agreed to present the recommendations to the Ministerial Committee as follows:

- 1) **Encourages** the Commission for its work on sensitization of Member States to expedite ratification/accession and implementation of the various OAU/AU legal instruments;
- 2) **Recommends** for consideration by AU policy organs the enhancement of financial and human resources available to the Office of the Legal Counsel, in order to empower it to carry out its tasks in accordance to a plan of action to be prepared and submitted to the Ministerial Committee meeting in June/July 2016;
- 3) **Also recommends** that Member States place special emphasis, when considering ratification/accession and domestication, on legal instruments representing African shared values, instruments promoting African integration, as well as instruments serving Africa's development agenda 2063;
- 4) **Also encourages** Member States to expedite ratification/accession and domestication of legal instruments, which pose no apparent contradiction with domestic legislation already in place;
- 5) **Further encourages** Member States, through their respective sectoral national committees, to bring on board civil society organizations and media to assist in the advocacy strategy to popularize African legal instruments domestically;

- 6) **Requests** the Commission to prepare a detailed program of action to be presented to the Ministerial Committee meeting in June/July 2016 together with the recommendations adopted in this report. The program of action shall provide statistics and analyzed patterns on ratification and accession of Member States to existing legal instruments. It shall also include a draft time frame of sensitization missions scheduled to Member States. While preparing such list, **country emphasis** shall be placed on Member States with the lowest levels of ratification/accession on the one hand, while **thematic emphasis** shall be made on the legal instruments comprising shared values on the other hand, with the view of attaining universality of such instruments.
- 7) **Also requests** the Commission to consider holding a brainstorming session of the challenges of ratification for all National Sectorial Committees of Member States at Regional Level;
- 8) **Further requests** the Ministerial Committee together with the Commission to identify mechanisms for monitoring implementation of OAU/AU Treaties to facilitate compliance by Member States;
- 9) **Further requests** the Commission to ensure the review and alignment of legal instruments of the African Union to avoid duplication of issues;
- 10) **Further requests** the Ministerial Committee to meet in ordinary sessions once a year on the margins of the ordinary session of the Executive Council in June/July instead of January as provided in Rule 5 of the Rules of Procedure of the AU Ministerial Committee on the Challenges of Ratification/Accession and Implementation of the OAU/AU Treaties. The Ministerial Committee shall hold its sessions at the same venue as the ordinary sessions of the Executive Council and present its report to the Executive Council.

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Progress report of ministerial committee on the challenges of ratification/accession and implementation of the OAU/AU treaties

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