

AFRICAN UNION
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EXECUTIVE COUNCIL
Thirty-Sixth Ordinary Session
06 - 07 February 2020
Addis Ababa, Ethiopia

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**REPORT OF THE SUB-COMMITTEE ON RULES, STANDARDS
AND CREDENTIALS**

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**Meeting of the PRC Sub-Committee
On Rules, Standards and Credentials
Friday, 28 November 2019
10:00 Hours
Small Conference Room 2, NCC**

Original: English

DRAFT

**REPORT OF THE MEETING OF THE PRC SUB-COMMITTEE ON PRC
ON RULES, STANDARDS AND CREDENTIALS**

DRAFT REPORT OF THE MEETING OF THE PRC SUB-COMMITTEE ON PRC ON RULES, STANDARDS AND CREDENTIALS

I. INTRODUCTION

1. Pursuant with Decision **EX.CL/Dec.1040(XXXIV)** of the 34th Ordinary Session of the Executive Council in February 2019, the Executive Council requested the alignment of the legal instruments in line with the Institutional reform and requested the Commission to:

“Further review and finalize all relevant legal instruments and submit a report, as well as, the amended version of the legal instruments through the PRC and its Sub-Committee on Rules, Standards and Credentials to the 36th Ordinary Session of the Executive Council in February 2020.”

2. The members of the PRC Sub-Committee on Rules, Standard and Credentials (the “Sub-Committee”) met on 29 November 2019 at the African Union (AU) Headquarters in Addis Ababa, Ethiopia.
3. The meeting was chaired by H. E. Ambassador Mohammed Arrouchi, Permanent Representative of the Kingdom of Morocco to the African Union. The Office of the Legal Counsel (OLC) serves as the Secretariat of the Sub-Committee.

II. ATTENDANCE

4. The meeting had in attendance the following members of the PRC Sub-Committee:

1. Algeria	5. Morocco	9. Tanzania
2. Benin	6. Namibia	10. Zambia
3. Chad	7. Niger	11. Zimbabwe
4. Kenya	8. Rwanda	

III. CONSIDERATION OF THE AMENDED RULES OF THE PROCEDURES OF THE ASSEMBLY

5. The Chairperson, after welcoming the members of the Sub-Committee to the meeting, introduced the Draft Agenda with the following items for consideration:
 - i. Adoption of Agenda
 - ii. Consideration of the revised draft of the:
 - a) Rules of Procedure of the Assembly;
 - b) Rules of Procedure of the Executive Council;
 - c) Rules of Procedure of the Permanent Representative Committees
 - d) Statute of the Commission
 - iii. Any other Business
 - iv. Closing

6. The agenda of the meeting was adopted.
7. The Chairperson noted that the considerations of these rules is a vital element for the functioning of the AU. He further indicated that the consideration of these documents will also require a second reading and consultations, and the same will be arranged. He pledged his commitment to ensure that the Sub-Committee plays its role, which amongst others include the accurate implementation of the Rules of Procedure, improve the working method in line with best practices, and to ensure accreditation to meetings is respected.
8. In addressing the agenda before the meeting, the Chairperson reiterated that the discussion aims towards ensuring the efficiency and accurate utilization of the rules of the AU Policy Organs and that of the Commission. Following the Chairpersons remark, the following observations were made:
 - a. Congratulated the Kingdom of Morocco for assuming this Chairmanship and members pledged their commitment to support the work of the Sub-Committee;
 - b. Thanked the Commission for the preliminary draft that has incorporated the alignment in the Rules in line with the institutional reform;
 - c. Proposed the postponement of the consideration due to the late submission of documents to delegations;
 - d. Clarity was sought as to why the document is not submitted to Specialized Technical Committee on Justice and Legal Affairs (STC-JLA), prior to the consideration by the PRC and Executive Council;
 - e. Concerns were raised on the level of participation and members noted the need to provide advance notice to members of the Sub-Committee;
 - f. This Sub-Committee should play a role in ensuring the rules of the Union are respected.
9. The representative of OLC noted that the document before the meeting are alignments of decisions that have already superseded the Rules of Procedures and the Statute, and as such the alignments would not require the review of the STC-JLA. The representative further noted that postponement of the consideration will affect the deadlines for submissions of documents to the Policy Organs in 2020, and proposed that the OLC makes a presentation of the alignments to the Sub-Committee.
10. The meeting agreed that the OLC should present the documents, with clear citation that indicate the relevant decisions as the basis of the revisions that have been made.

IV. DELIBERATIONS

a) **On the Revised draft Rules of Procedure of the Assembly**

11. The representative of the OLC presented the key amendments in the revised draft Rules of Procedure of the Assembly, which mainly based its changes on matters related to the institutional reform. Referring to the amendments, the attention of

the Sub-Committee was drawn to changes in definition to reflect the correct name of the Court and the inclusion of the African Union Development Agency- New Partnership for Africa's Development (AUDA-NEPAD), following its integration by Decision Assembly/AU/Dec.635 (XXVIII) of January 2017.

12. Under Rule 4 (m) (n), the sub-paragraphs have been amended to reflect the election, appointment and termination procedure of Chairperson and the Deputy Chairperson of the Commission as stated under Ext/Assembly/AU/Dec.1 (XI), while under 4(p), the current practice of the Assembly which appoints the Bureau Members has been reflected instead of the Chairperson only. The interpretation of the Constitutive Act has been deleted as the Union has various legal bodies entrusted with this task, while the decision on the matter is vested for the highest policy organ.
13. Under Rule 5, a new sub (6) that addresses the decision on the venue of the Mid-Year Coordination meeting. Rule 7 has been amended to reflect that Session of the Assembly shall only be once in line with Decision Assembly/AU/Dec.635 (XXVIII) and Ext/Assembly/AU/Dec.1(XI). Rule 8 which speaks of additional agenda items clarifies that items shall be subject to prior analysis of legal, financial and structural implication and should relate to the theme of the year as stated in Para (2) (iii) of Assembly/AU/Dec.597 (XXVI) of January 2016. The use of official languages under Rule 14 has been amended to 'working languages', as reflected under Article 25 of the Constitutive Act of the Union.
14. Under Rule 15, the Election of the Chairperson has been replaced by the Election of the Bureau, and additional requirements reflected in AU decisions on geographic rotation, gender parity have been included. The concept of continuity has also been reflected in the proposal of having the outgoing Chairperson as Rapporteur. Similarly, Rule 38, 39, 40 and 41 address the election of the Chairperson and Deputy Chairperson, the requirement of transparency and meritocracy and the termination procedure have been reflected in these Rules.
15. In participation to meetings of the Assembly, Rule 17 (3) has been added to include all AU institutions, which encompasses of not only organs but also specialized agencies, specialized/technical offices, liaison offices and so forth. In line with decision Assembly/AU/Dec.582 (XXV), session of the Assembly are also closed so as to discuss strategic issues, and a new sub 4 has been added to clarify, guests and observers do not attend these sessions.
16. Rule 19 (3) has been amended to include that any matter before the assembly should be after the due process of analysing the financial, legal and structural implications. Rule 26 (2) has also be refined to add the omission of Article 30 of the Constitutive Act, which speaks on the issue of sanction as it related to voting. Rule 30 (3) further introduces the electronic voting system that is availed to the Union in conducting its elections.
17. Under Rule 33, and in addressing the categories of decisions, recommendations, opinions and resolutions have been removed from sub section c, as these forms of decisions do not appear at the Assembly. Similarly, Rule 34 has includes decisions in the implementation of decisions, which are automatically enforceable.

18. On the sanction regime, Rule 35 has been amended to reflect Decision Ext/Assembly/AU/Dec.3 (XI), of November 2018, Addis Ababa, Extra-ordinary Summit, which amongst others creates three categories, namely cautionary, Intermediate and comprehensive sanctions. Circumstances that may lead to waiver of the sanction and timelines has also been addressed under Rule 35 (3) and (4). Rule 37 also addresses the unconstitutional change of government.

b) On the Revised draft Rules of Procedure of the Executive Council

19. Regarding the revision of the rules of the Procedure of the Executive Council, the representative of OLC noted that the amendments stem mainly from Ext/Assembly/AU/Dec.1 (XI), which have been reflected in the previous discussion. In particular, it was noted that the revision includes that the empowered Executive Council to Elect and appoint commissioners as reflected in the amended Rule 5 (e) (f) (g). Rules 37 and 38 further address the details related to the Election and appointment of the Commissioners.
20. In line with para 13 and 14 of the delegated power under Assembly/AU/Dec.687 (XXX), the adoption of budget by the Executive Council in June/July has been reflected under Rule 5 (i). Appointment of Bureau of the Executive Council has been added Rule 5 (m).
21. Similar to the Rules of the Assembly, Rule 9 of the Executive Council addresses, the time line for proposing agenda item, and the requirements of financial, structural and legal implication and alignment with the theme of the year has been added; Rule 15 reflects the term “working language”; Rule 16 outlines the composition of the Bureau; Rule 18 (2) (b) includes all Institutions of the Union; Rule 27 supplements the sanction regime with Article 30 of the Constitutive Act; Rule 31 (2) reflects the electronic voting system availed during election; and Rule 35 clarifies the implementation of decisions.

c) On the Revised draft Rules of Procedure of the Permanent Representative Committees

22. In presenting the revised Rules of the Procedure of the Permanent Representative Committee (the “PRC”), the OLC representative noted that there are only few changed in the document, as the institutional reform did not affect the structure or the working method of the PRC. The revisions made include the addition of AUDA-NEPAD in the definition; reference to just two sub-committees in Rule 4 (2) has been deleted, as the PRC has various working groups and sub-committees; Rule 7 has been amended to include all institutions established under the AU.
23. In line with Article 25 of the Constitutive Act of the Union Rule 10 has been amended to reflect “working languages” instead of “official languages”. Following the structure of the Assembly and Executive Council, Rule 11 reflects the composition of the Bureau and finally Rule 25 adds the electronic voting system to the method of voting.

d) On the Revised Statute to the Commission

24. In revising the Statute to the Commission, the representative of OLC noted that, in line with the Ext/Assembly/AU/Dec.1 (XI) of November 2018, the Statute reflects the new structure of the Commission under Article 2, which is composed of the Chairperson, Deputy Chairperson and six (6) commissioners. The election procedure of the Commission is reflected under Article 6. The portfolio of the Commission, the nomination requirements, guiding principles for the selection process, the role of the high level panel, timelines and selection process addressed by the institutional reform have also been reflected from Article 12 to 17. The termination of member of the Commission, as outlined in Ext/Assembly/AU/Dec.1 (XI) has been added to Article 10.
25. In line with Article 1 of the AU Financial Rules and Regulations, Article 7 (c) has been amended to reflect that the Chairperson of the Commission is the Accounting Officer of the Union. Article 8 (v) reflects that the Commission works with all AU Institutions and not just organs. In line with the requests and the audit findings, the duty of the Chairperson to report to the Executive Council in cases of non-compliance of elected officials and the possibility of recommending termination has been added under Article 8 (w) (aa).
26. The Chairperson's also serves as the Peace and Security Council (PSC) and provides relevant information to the PSC in its deliberations. As such, the revised Article 8(2) addresses the role of the Chairperson in provision of the necessary information in cases of unconstitutional change of government.
27. In addressing the Privileges and immunities under Article 21, the representative brought to the meetings attention the proposed addition of a new article on Property, funds and Assets as follows:

PROPERTY, FUNDS AND ASSETS

1. The Property, Funds and assets of the Union wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case the Union has expressly waived its immunity. No waiver of immunity shall extend to any measure of execution.
 2. The property and assets of the Union wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.
28. Finally, the preparation of the budget and Program of the Union by the Commission has been addressed under Article 23 (1), and adoption of the budget by the Assembly has been deleted as it's the Executive Council that adopts the budget of the Union.
29. Following the presentation, the Sub-Committee made the following observations:
- a. There are some amendments which are outside the request of the Executive Council in alignment of the legal instruments;

- b. Alignment has to be made in all the languages and members noted that there is disparity in the French and English legal instrument. Delay in the translation to the other documents should also be fast-tracked;
 - c. Clarity was requested on whether the alignment can include other issues, such as the quorum for voting, and the challenges related to member states that are allowed to vote at the time of the meeting.
30. The OLC representative noted that the alignment reflected are based on existing requests for amendments. The Sub-Committee may however introduce new elements if the existing rules do not sufficiently cover the work of the policy organs.
31. Following the deliberation of the Subcommittee, the Chairperson provided the following deadlines as a way forward in finalizing the work:
- a. The Commission to circulate report of this meeting by 3rd December 2019, encouraging Member States to submit comments by 20 December 2019;
 - b. OLC is expected to compile and recirculate the document by 2nd of January 2020. This does not preclude members of the Sub-Committee from bringing additional comment on the matter while the discussion will be held in plenary.
 - c. Tentative meeting dates of the Sub-Committee was set for January 8 and 9 of 2020 from 09:00 – 13:00 and 15:00 to 18:00;
 - d. Reminder NVs to be sent three days before the meeting so as to ensure participation of all members of the Sub-Committee.

V) ANY OTHER BUSINESS

32. There were no matters raised under 'Any other Business.'

VI) CLOSING

33. The Chairperson closed the meeting.

2020-02-07

Report of the Sub-Committee on Rules, Standards and Credentials

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