

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

Addis Ababa, Ethiopia

P. O. Box 3243

Telephone: 5517 700

Fax: 5517844

Website: www.au.int

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

EX.CL/1221(XXXVI)vi
Original : English

DRAFT STATUTE

OF THE

CONTINENTAL OPERATIONAL CENTRE IN SUDAN
FOR COMBATING IRREGULAR MIGRATION

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 organised crime and human trafficking adopted by AU Member States;

RECALLING the February 2019 decision of the Assembly Decision AU/Dec. 728 (XXXII) of 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 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 3rd Africa-Arab Heads of State Summit on

Strengthening Africa-Arab Partnership (November 2013) which among others seeks to address migration between the 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 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 Regulations and Rules, 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 Agreement” means the Agreement between the Government of the Republic of The Sudan and the African Union on the hosting of the Centre;

“Host Country” means the of 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), UN Protocol to Prevent, Suppress and Punish trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Organized Crime, 2000)

“Member States” means a Member States 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), UN 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 (sub-national, 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 organised 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

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 on Human Rights and other relevant instruments.
3. Respect for 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

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 harmonised continental strategies between and among Member States to fight transnational organised 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.
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:
 - b. The Board of Directors (the Board);
 - c. 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;
 - 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;
 - 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 RECs, 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;
 - 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:
 - i) One half of its members; or
 - ii) The policy organs of the 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 Regulations and Rules 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 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 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;
- k. Ensure coordination of the Centre's activities in collaboration with other multi-lateral, 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 recognised 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 work-plan 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 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 African Union Commission in keeping with established processes and timelines.
- 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 work-plans, 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 work-plans of staff.
4. Ensure the implementation of the strategic goals and objectives and work-plans by staff.

5. Supervise reports by staff and prepare executive reports for management.
6. Work with staff to ensure overall agency compliance to 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 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
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 Centre shall be from the regular budget of the 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;
 - 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 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
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 Center, 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 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 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 (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 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 Centre may be requested by Member States, the RECs, the Commission, other Organs of the 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 text 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.

**Adopted by the Ordinary Session of the Assembly held in,..... on
..... 2020.**

Annex 1: AU Assembly Decision: Assembly/AU/Dec.728(XXXII)**DECISION ON THE ESTABLISHMENT OF CONTINENTAL OPERATIONAL CENTRE
IN KHARTOUM FOR COMBATING IRREGULAR MIGRATION - Doc.****EX.CL/1122(XXXIV)****The Assembly,**

- 1) **RECALLS** Declaration Assembly/AU/Decl.6 (XXV) adopted at the 25th Ordinary Session of the Assembly held in Johannesburg, South Africa, in June 2015, endorsing the initiative on migration on the Continent, especially combating human trafficking and migrant smuggling;
- 2) **ENDORSES** the Executive Council's proposal on the establishment of the Continental Operational Centre in Sudan, for combating irregular migration, as a specialized technical office of the Union, with particular focus on human trafficking and migrant smuggling on the Continent;
- 3) **REQUESTS** the Commission to expedite the elaboration of the structural, financial and legal implications, as well as, the Statute Establishing the Continental Operational Centre in Sudan for combating irregular migration for consideration by the relevant Policy Organs of the Union.

AFRICAN UNION UNION AFRICAINE

African Union Common Repository

<http://archives.au.int>

Organs

Council of Ministers & Executive Council Collection

2020-02-07

Draft Statute of the Continental Operational Centre in Sudan for Combating Irregular Migration

African Union

DCMP

<https://archives.au.int/handle/123456789/8796>

Downloaded from African Union Common Repository