

AFRICAN UNION

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**PROGRESS REPORT ON THE IMPLEMENTATION OF ASSEMBLY
DECISION, AU/Dec.372(XVII) ON THE TRANSFORMATION
OF THE AFRICAN UNION COMMISSION INTO THE
AFRICAN UNION AUTHORITY**

**PROGRESS REPORT ON THE IMPLEMENTATION OF ASSEMBLY DECISION,
AU/Dec.372(XVII) ON THE TRANSFORMATION OF THE AFRICAN UNION
COMMISSION INTO THE AFRICAN UNION AUTHORITY**

I. INTRODUCTION

1. During the Seventeenth Ordinary Session of the Assembly of the Union held in Malabo, Equatorial Guinea from 30 June to 1st July 2011 on the Assembly considered and took note of the Progress Report of the Commission on the Implementation of Decision Assembly/AU/Dec.341(XVI) on the Transformation of the African Union Commission (AU Commission) into the African Union Authority (AU Authority) adopted its Sixteenth Ordinary Session held in Addis Ababa, Ethiopia, from 30 to 31 January 2011. Following due consideration of the progress report, the Assembly adopted Decision Assembly/AU/Dec.372(XVII) which stipulated, *inter alia*, as follows:

“TAKES NOTE of the Progress Report of the Commission on the Implementation of Assembly Decision Assembly/AU/ Dec.341(XVI) on the Transformation of the African Union Commission into the African Union Authority adopted by the Sixteenth Ordinary Session of the Assembly held in Addis Ababa, Ethiopia on 31 January 2011;

DECIDES to defer consideration of this item to the next Ordinary Session of the Assembly in January 2012.”

2. The decision to defer the matter was taken after an exchange of views on the extensive work already done by Government Legal Experts towards finalization of the eleven (11) legal instruments identified as relevant to the process; the fact that most of the changes or amendments to the instruments were not substantive but nevertheless the instruments would still require to go through a process of ratification and accession by Member States and, finally, that there was need to decide whether it made sense to require the lengthy process of ratification and accession for amendments that were not substantive. Indeed, most of the proposed changes affected the Statutes of the Commission which could be amended without the need for ratification and accession.

3. The present report is intended to inform the Assembly on the progress made towards the transformation of the AUC into the AU Authority since the adoption of decision, Assembly/AU/Dec. 263 (XIII), also known as the Sirte Conclusions, by the Thirteenth Ordinary Session held in Sirte, Libya from 1 to 3 July 2009.

4. In implementation of that decision, the Commission prepared the eleven 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, the Commission convened several meetings of Government Experts to consider the draft legal instruments.

5. 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).
6. 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.
7. 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.
8. 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.
9. It should be noted that the two draft legal instruments relating to the African Court and the Pan African Parliament are subject to another ongoing 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) and requesting the Commission to initiate the review process of the Protocol relating to the Pan-African Parliament. The 5th Government Experts Meeting on the Transformation of the AUC into the AUA 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), respectively. These two decisions were adopted by the Twelfth Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, from 1 to 3 February 2009.
10. A follow-up 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 which will now be submitted to a meeting of Ministers of Justice and Attorneys General in February/March 2012 and subsequently to the policy organs through the PRC.

11. The amendments made to the eleven (11) legal instruments are largely of form and do not really change the substance of these instruments. Indeed, the different organs and bodies of the Union governed by the draft amended instruments largely kept their original structures, powers and functions. Furthermore, there is no fundamental change concerning the rules governing the functioning of the organs of the Union as well as the relations between them.

12. However, the amendments made to the Statutes of the Commission endows the Authority with “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. Also, the functions of the Authority were enlarged compared to those of the Commission to include additional areas related to the areas of competence mentioned above. Although the competence and the functions of the Authority were expanded, there is little substantive change because this does not mean that, in exercising its functions, it will have more power than the current Commission on the basis of the principle of Subsidiarity of the Authority with regard to Member States and Regional Economic Communities. Many of the amendments relating to the Commission may not require amendment to the Constitutive Act.

II. CONCLUSIONS/RECOMMENDATIONS

13. The Commission has discharged its responsibility by preparing 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 by convening meetings of Government Legal Experts. The Government legal experts have also discharged their responsibility by finalizing consideration of the eleven legal instruments.

14. The Assembly, by Decision Assembly/AU/Dec.372(XVII) adopted at its Seventeenth Ordinary Session held in Malabo, Equatorial Guinea, from 30 June to 1st July 2011, 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.

15. 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.

16. However, the process of amending the protocols relating to the African Court of Justice and Human and Peoples’ Rights and the Pan African Parliament will continue in accordance with the separate Assembly decisions thereof.

2012

Progress Report on the Implementation of Assembly Decision, Au/Dec.372(XVII) on the transformation of the African Union commission into the African Union authority

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