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**EXECUTIVE COUNCIL  
Thirty-Second Ordinary Session  
22 – 26 January 2018  
Addis Ababa, ETHIOPIA**

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**REPORT OF THE 3<sup>RD</sup> ORDINARY SESSION OF THE SPECIALIZED  
TECHNICAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS,  
6 – 15 NOVEMBER 2017, ADDIS ABABA, ETHIOPIA**

**REPORT OF THE THIRD ORDINARY SESSION OF THE SPECIALISED  
TECHNICAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS  
ADDIS ABABA, ETHIOPIA, 14 – 15 NOVEMBER 2017**

## **I. INTRODUCTION**

1. The Third Ordinary Session of the Specialized Technical Committee (STC) on Justice and Legal Affairs was held in Addis Ababa, Ethiopia from 06 to 11 November 2017 (Expert Session) and 14 to 15 November 2017 (Ministerial Session).

2. The Third Ordinary Ministerial Session was attended by forty-four (44) Member States and two organs of the African Union viz the African Union Commission on International Law and the African Committee of Experts on the Rights and Welfare of the Child.

3. The purpose of the meeting was to finalize thirteen (13) Draft Legal Instruments prior to their submission to and adoption by the Policy Organs.

4. Consequently, the meeting adopted the following twelve (12) Draft Legal Instruments:

- i) Draft Rules of Procedure of the Specialized Technical Committee on Gender and Women's Empowerment;
- ii) Draft Rules of Procedure of the Specialized Technical Committee on Trade, Industry and Minerals;
- iii) Draft Rules of Procedure of the Specialized Technical Committee on Agriculture, Rural Development, Water and Environment;
- iv) Draft Rules of Procedure of the Specialized Technical Committee on Transport, Infrastructure, Transcontinental and Interregional Infrastructures, Energy and Tourism;
- v) Draft Statute of the Trust Fund for victims of Hissene Habre crimes;
- vi) Draft Amendment to ECOSOCC Statute and Rules of Procedure;
- vii) Draft Statute of the African Institute for Remittances;
- viii) Draft Institutional and Regulatory Texts of the Yamoussoukro Decision;
- ix) Draft Protocol to the Treaty Establishing the African Economic Community relating to Free Movement of Persons, Rights of Residence and Right of Establishment and its Draft Implementation Roadmap;

- x) Draft African Union Model Law for the implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa;
- xi) Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disability in Africa;
- xii) Draft Statute of the African Space Agency.

**5.** The twelve (12) Draft Legal Instruments are being recommended for consideration by the Executive Council and thereafter by the Assembly.

**6.** The Third Ordinary Session did not recommend to the Executive Council the Draft Amendment to Article 5(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. The Session decided to defer the consideration of the Draft Amendment to the Protocol to the next session of the STC on Justice and Legal Affairs. The Third Ordinary Session requested the African Committee of Experts on the Rights and Welfare of the Child to prepare a comprehensive report on their mandate, challenges being faced and why the Committee would require to have access to the Court. Finally, the STC requested for an independent analysis of the legal implications of the amendment.

**7.** The Report containing recommendations and attached to it the Draft Legal Instruments adopted by the STC on Justice and Legal Affairs are attached hereto as annexes.

**REPORT OF THIRD ORDINARY SESSION OF THE SPECIALIZED TECHNICAL  
COMMITTEE ON JUSTICE AND LEGAL AFFAIRS (MINISTERIAL MEETING)  
NOVEMBER 2017, ADDIS ABABA, ETHIOPIA**

**I. INTRODUCTION**

1. Pursuant to the Rules of Procedure of the Specialized Technical Committee (STC) on Justice and Legal Affairs, the Commission in consultation with the Bureau, convened the Third Ministerial Ordinary Session of the STC on Justice and Legal Affairs from 14-15 November 2017 in Addis Ababa, Ethiopia to consider various draft legal instruments. The Ministerial Session was preceded and prepared by a meeting of Government Experts from 6 -11 November 2017.

2. The STC on Justice and Legal Affairs comprises Ministers of Justice and Attorneys General or Keepers of the Seals, Ministers responsible for Human Rights, Constitutionalism and the Rule of Law or such other Ministers or authorities duly accredited by the Governments of Member States.

**II. ATTENDANCE**

3. The following forty- four (44) Member States were in attendance:

**Algeria, Angola, Botswana, Benin, Burkina Faso, Burundi, Cameroon, Chad, Congo, Côte d'Ivoire, Democratic Republic of Congo, Egypt, Equatorial Guinea, Ethiopia, Eritrea, Gabon, Gambia, Ghana, Guinea, Kenya, Lesotho, Libya, Malawi, Mali, Mauritius, Mauritania, Morocco, Mozambique, Namibia, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic (SADR), Senegal, South Africa, South Sudan, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.**

4. The meeting was also attended by the following organs: African Union Commission on International Law, African Court on Human and Peoples 'Rights and the African Committee of Experts on the Rights and Welfare of the Child.

**III. OPENING OF THE MEETING**

**Statement by the Legal Counsel of the African Union Commission**

5. In her opening remarks, the Legal Counsel, Dr. Namira Negm, on behalf of the Chairperson of the African Union Commission, H.E Mr. Moussa Faki Mahamat, welcomed all the Honourable Ministers of Justice, Attorneys General, Ministers in charge of Human Rights and delegations to the Third Ordinary Session of the STC on Justice and Legal Affairs. She noted that the STC on Justice and Legal Affairs is instrumental in ensuring the harmonization of the norms, guiding principles and shared values of the Union.

6. The Legal Counsel recalled that the First and Second Ordinary Session of the STC have considered and endorsed a total of twenty nine (29) legal instruments setting out the norms and legal obligations over a broad range of issues, including peace and security, health, values and principles of local governance. She noted that

the STC has also considered and endorsed institutional texts including statutes establishing the legal aid fund, Africa Centres for Disease Control, Pan African Intellectual Property Organization, Science, Research and Innovation Council and the African Court of Justice, Human and Peoples' Rights. In addition, the STC has endorsed nine rules of procedure of STCs and other organs of the Union.

7. She informed the meeting of the work done by the Government Legal Experts in preparation for the Ministerial Session. The Legal Counsel highlighted the instruments deliberated by the Government Legal Experts and that are being recommended for endorsement at the Ministerial Session. She also presented the nature and purpose of each instrument as well as the consensus reached by the Government Legal Experts.

8. In concluding her statement, the Legal Counsel highlighted the recommendation by Government Legal Experts on the need to strengthen the capacity of the Office of the Legal Counsel so that it can offer effective support to the STC meetings. She then thanked the Honourable Ministers and delegations for their presence and wished them fruitful and successful deliberations.

#### **Statement by the Outgoing Chairperson**

9. The outgoing Chairperson, Honourable Laurent Ezzo, Minister of State, Minister of Justice, and Keeper of the Seals from the Republic of Cameroon recalled the large number of instruments that have been considered by the STC on Justice and Legal Affairs since its inaugural session in May 2014. He stated that considering the large number of instruments being submitted to the STC for consideration, there was need to improve the STC's working methods in order to ensure coherence and quality of the instruments being adopted.

10. The outgoing Chairperson emphasized the need for proper preparation by delegates as well as implementation of the legal instruments adopted at the national level. He concluded his statement by thanking the Ministers, Government Experts, and the Commission for the support extended to him and the Bureau during his tenure.

#### **IV. ELECTION OF THE BUREAU**

11. After consultations, the meeting constituted the Bureau as follows:

<b>Chairperson</b>	–	<b>Lesotho (South)</b>
<b>1st Vice Chairperson</b>	–	<b>The Gambia (West)</b>
<b>2<sup>nd</sup> Vice Chairperson</b>	–	<b>Libya (North)</b>
<b>3<sup>rd</sup> Vice Chairperson</b>	–	<b>Rwanda (East)</b>
<b>Rapporteur</b>	–	<b>Cameroon (Central)</b>

#### **Statement by the Incoming Chairperson**

12. In her statement, the incoming Chairperson, Dr. Mahadi Phamotse, Minister of Justice and Correctional Services from the Kingdom of Lesotho thanked the STC for

the trust and confidence conferred on the Kingdom of Lesotho. She indicated that the Bureau will work closely and consultatively with the Member States and the Commission in order for the STC to achieve its mandate.

13. She further thanked the outgoing Chairperson and the entire Bureau for the excellent manner in which the STC was led. She noted the number of instruments for consideration of the STC upon the recommendation of the Government Experts who had prepared the session of the Ministers.

14. She concluded by wishing the delegations successful deliberations.

### **Statement by Algeria**

15. Upon request, the Honourable Minister of Justice of Algeria delivered a statement. He emphasized the importance of the STC on Justice and Legal Affairs in strengthening the legal and normative framework of the Union. In this regard, he observed that for the STC to achieve its objectives, there must be respect of the rules and that delegations must have adequate preparations before the meetings.

## **V. CONSIDERATION AND ADOPTION OF AGENDA**

16. The meeting adopted the following Agenda:

1. Opening Ceremony;
2. Consideration and Adoption of the Draft Agenda;
3. Organization of Work;
4. Consideration of the Draft Report of the Meeting of Government Legal Experts;
5. Consideration of the Draft legal instruments:
  - i) *Draft Rules of Procedure of the Specialized Technical Committee on Gender and Women's Empowerment;*
  - ii) *Draft Rules of Procedure of the Specialized Technical Committee on Trade, Industry and Minerals;*
  - iii) *Draft Rules of Procedure of the Specialized Technical Committee on Agriculture, Rural Development, Water and Environment;*
  - iv) *Draft Rules of Procedure of the Specialized Technical Committee on Transport, Infrastructure, Transcontinental and Interregional Infrastructures, Energy and Tourism;*
  - v) *Draft Statute of the Trust Fund for victims of Hissene Habre crimes;*

- vi) *Draft Amendment to Article 5(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;*
  - vii) *Draft Amendment to ECOSOCC Statute and Rules of Procedure;*
  - viii) *Draft Statute of the African Institute for Remittances;*
  - ix) *Draft Institutional and Regulatory Texts of the Yamoussoukro Decision;*
  - x) *Draft Protocol to the Treaty Establishing the African Economic Community relating to Free Movement of Persons, Rights of Residence and Right of Establishment and its Draft Implementation Roadmap;*
  - xi) *Draft African Union Model Law for the implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa;*
  - xii) *Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disability in Africa;*
  - xiii) *Draft Statute of the African Space Agency*
6. Adoption of the Draft legal instruments and the Draft Report;
  7. Any Other Business;
  8. Closing Ceremony.

## **VI. CONSIDERATION OF THE DRAFT REPORT OF THE MEETING OF GOVERNMENT LEGAL EXPERTS**

**17.** The Chairperson of the meeting of the Government Legal Experts presented the Report of the meeting that took place from 6 to 11 November 2017. He highlighted the major conclusions and recommendations, which were being submitted for consideration by the Ministerial Session. He reiterated the recommendation on the need to strengthen the capacity of the Office of the Legal Counsel so that it can offer effective support to the STC meetings.

**18.** Following this presentation, the following comments and observations were made:

- a) There was need to align the different linguistic texts of the Report of the Government Legal Experts;
- b) That it was necessary for the Ministerial Session to consider each instrument.

**19.** The meeting adopted the Report of the Governments Experts.

**VII. CONSIDERATION OF THE DRAFT LEGAL INSTRUMENTS**

- i) **Draft Rules of Procedure of the Specialized Technical Committee on Gender and Women's Empowerment**
20. The meeting adopted the Draft Rules of Procedure without amendment.
- ii) **Draft Rules of Procedure of the Specialized Technical Committee on Trade, Industry and Minerals**
21. The meeting adopted the Draft Rules of Procedure without amendment.
- iii) **Draft Rules of Procedure of the Specialized Technical Committee on Agriculture, Rural Development, Water and Environment**
22. The meeting adopted the Draft Rules of Procedure without amendment.
- iv) **Draft Rules of Procedure of the Specialized Technical Committee on Transport, Infrastructure, Transcontinental and Interregional Infrastructures, Energy and Tourism**
23. The meeting adopted the Draft Rules of Procedure without amendment.
- v) **Draft Statute of the Trust Fund for victims of Hissène Habré crimes**
24. During the consideration of this Article, the following observations were made:
- a) Under Article 6 (1) (d) of the Draft Statute, there was no need for a representative from a civil society organization accredited to the AU considering that all victims are Chadians. In this regard, it was proposed that the representative from civil society organization should be replaced with a representative of the victims;
  - b) There was no need for rotational participation of the members of the victims' associations as provided under Article 6 (2) of the Draft Statute;
  - c) That decisions of the Board of Directors should be made by absolute majority (50 plus 1) and not by simple majority;
  - d) The need to align the provisions of the Draft Statute with the relevant Assembly decisions;



- e) Representatives of contributors should be based on region (s).

**25.** The meeting adopted the Draft Statute subject to the amendments to be made by the Office of the Legal Counsel in consultation with the delegation of Chad after taking into account the relevant Assembly decisions.

- vi) **Draft Amendment to Article 5(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights**

**26.** During the consideration of the Draft Amendment, the following observations were made:

- a) There is need to examine the implications of allowing the African Committee on the Rights and Welfare of the Child to submit cases before the Court particularly because not all States Parties to the African Charter on the Rights and Welfare of the Child are States Parties to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;
- b) Whether the Committee's eligibility to submit cases before the Court was within its mandate.

**27.** The Deputy Legal Counsel clarified that, the intention behind allowing the African Committee on the Rights and Welfare of the Child to submit cases before the Court was to reinforce and implement the mandate of the Committee which will ensure effective protection of the rights and welfare of the child in Africa. . She noted that this advice was line with the Advisory Opinion of the African Court on Human and Peoples' Rights on the standing of the African Committee of Experts on the Rights and Welfare of the Child before the African Court. She informed the Session that in the Advisory Opinion, the Court stressed that the Committee's access to the Court would facilitate the effective exercise of its mandate concerning serious violations of children's rights. She also clarified that the African Court on Human and Peoples' Rights has jurisdiction only on States Parties to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights and not otherwise.

**28.** The Session decided to defer the consideration of the Draft Amendment to the Protocol to the next session of the STC on Justice and Legal Affairs. The Third Ordinary Session requested the African Committee of Experts on the Rights and Welfare of the Child to prepare a comprehensive report on their mandate, challenges being faced and the added value that would come with its access to the Court. Finally, the STC requested for an independent analysis of the legal implications of the amendment.

vii) **Draft Amendment to ECOSOCC Statute and Rules of Procedure**

29. The meeting adopted the Draft Amendment to the ECOSOCC Statute and Rules of Procedure without amendment.

viii) **Draft Statute of the African Institute for Remittances.**

30. The meeting adopted the Draft Statute without amendment.

ix) **Draft Institutional and Regulatory Texts of the Yamoussoukro Decision**

31. The meeting adopted the Draft Institutional and Regulatory Texts of the Yamoussoukro Decision without amendment.

x) **Draft Protocol to the Treaty Establishing the African Economic Community relating to Free Movement of Persons, Rights of Residence and Right of Establishment and its Draft Implementation Roadmap**

32. During the consideration of the Draft Protocol, the following observations were made:

- a) In the definitions, some delegations suggested that the words ‘expulsion’, ‘deportation’ and ‘repatriation’, referred to in Article 21 should be defined. In accordance with Article 2 of the Draft articles on the expulsion of aliens (Adopted by the International Law Commission at its sixty-sixth session, in 2014) and the Glossary on Migration, edited by the International Organisation for Migration, the following definitions have been adopted:

**‘expulsion’** means a formal act or conduct attributable to a State by which an alien is compelled to leave the territory of that State; it does not include extradition to another State, surrender to an international criminal court or tribunal, or the non-admission of an alien to a State;

**‘deportation’** means The act of a State in the exercise of its sovereignty in removing an alien from its territory to a certain place after refusal of admission or termination of permission to remain;

**‘repatriation’** means the operation by which a State ensures the return of an alien to the territory of its State of origin.

- b) Libya entered a reservation and raised concern on the provisional application of the Draft Protocol and declared that it is not ready for such implementation in view of the increase of illegal migration, lack of strong border control and increase of terrorist activities on the national and continental levels;

- c) There were discussions on the alignment of sub paragraphs of Article 33. The meeting adopted the following order: (a) General principle, (b) exception to the principle;
  - d) It was further noted that the Report had also been changed by the Secretariat/Office of the Legal Counsel in paragraph 59. Grave concern was expressed on the changing of the sequencing of paragraphs in Article 33 by the Secretariat/Office of the Legal Counsel. In this regard, it was agreed that the Secretariat should correctly reflect agreements reached by Member States. Other delegations were of the view that the matter should be reported to the Chairperson of the AU Commission for an investigation into what had happened. However, other delegations objected to the investigation and requested that the issue be resolved in the meeting;
  - e) Under Article 31 (Settlement of Disputes), any reference to the African Court on Human and Peoples' Rights should be deleted because the Court is not yet in existence. However, other delegations noted that disputes will only be submitted to the Court when operational and by mutual consent. It was further noted that other AU legal instruments have made reference to the Court;
  - f) Article 31 (2) (b) (i) should be redrafted to indicate that the parties to the dispute shall each appoint one arbitrator;
  - g) To swap sub-articles 2 (a) and (b) so that arbitration comes before litigation;
  - h) To consider inserting 'may' in Article 5 (2) to make the application of the Implementation Roadmap discretionary. However, the meeting noted that this was a consensus provision and that it should not be changed;
  - i) The meeting then agreed with the recommendation of the Government Experts that the implementation plan shall not be binding but serve as guidance to Member States;
  - j) Insert correct cross references, linguistic alignment of the texts and use of correct words particularly in the French version;
33. Throughout the text of the Draft Protocol, the use of the terms 'Member State' and 'States Parties' should be checked and used appropriately;
34. The meeting adopted the Draft Protocol subject to the amendments.
- xi) **Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disability in Africa**
35. During the consideration of the Draft Protocol, the meeting agreed that the definitions should be properly formulated i.e. definition of persons with disabilities.

In addition, the meeting agreed that it should be indicated that campaigning for public office shall be done in accordance with national laws.

36. The meeting adopted the Draft Protocol without amendment.

xii) **Draft African Union Model Law for the implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa**

37. The meeting adopted the Draft Model Law without amendment.

xiii) **Draft Statute of the African Space Agency**

38. The meeting adopted the Draft Statute without amendment.

#### **VIII. ADOPTION OF THE DRAFT LEGAL INSTRUMENTS AND THE DRAFT REPORT**

39. The meeting adopted all the draft legal instruments submitted to it for consideration except the Draft Amendment to Article 5 (1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

40. The meeting emphasized that the Secretariat should always reflect what has been agreed during meetings and that the Secretariat has no power to change any agreement of Member States.

#### **IX. ANY OTHER BUSINESS**

41. Rwanda informed the Meeting about its withdrawal of its Declaration made under Article 34 (6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. Rwanda stated that she had been the sixth country to make the Declaration accepting the jurisdiction of the Court to receive cases submitted by individuals and Non-Governmental Organizations with observer status before the African Commission on Human and Peoples' Rights.

42. Rwanda reiterated that although this Declaration was made in good faith, it did not envisage that access to the Court would be granted to genocide convicts and fugitives from justice. Rwanda further informed the meeting that one such fugitive was one of the petitioners claiming that Rwanda had violated her citizen rights by conducting the 2015 referendum. This was in spite of an outstanding international arrest warrant against the petitioner, which Rwanda deemed as negating her *locus standi* before the Court. Rwanda concluded that in view of the above facts, it had to withdraw its Declaration and the withdrawal became effective on 31 March 2017.

43. Rwanda then reiterated that in accordance with Article 34 (6) of the Protocol it was entitled to withdraw, and therefore such a withdrawal was valid.

## **X. CLOSING CEREMONY**

**44.** In her Closing Remarks the Chairperson thanked the Ministers and Delegates, the Government Legal Experts, for their support and robust discussions as well as the Commission, for the guidance it provided. She further brought it to the attention of the meeting that out of all legal instruments submitted, only the draft amendment on Article 5 (1) of the Statute of the African Court on Human and People's Rights was deferred, and urged Member States to think deeply about the rights and welfare of children and what the amendment would do to such rights in considering the possibility of the proposed amendment.

**EX.CL/1048(XXXII)**

**Annex 1**

**RULES OF PROCEDURE OF THE SPECIALIZED TECHNICAL  
COMMITTEE ON GENDER EQUALITY AND  
WOMEN'S EMPOWERMENT**

## GENERAL PROVISION

The Executive Council,

Having regard to the Constitutive Act of the African Union, and in particular Articles 14, 15 and 16,

Having regard to Decisions Assembly/Dec. 227 (XII) and Assembly/Dec.365 (XVII) on Specialized Technical Committees,

**HAS ADOPTED THESE RULES OF PROCEDURE:**

### **RULE 1 DEFINITIONS**

In these Rules:

- “Assembly”** means the Assembly of Heads of State and Government of the African Union;
- “Bureau”** means the Bureau of the Specialized Technical Committee on Gender Equality and Women’s Empowerment;
- “Chairperson”** means the Chairperson of the Specialized Technical Committee on Gender Equality and Women’s Empowerment;
- “Commission”** means the Commission of the African Union;
- “Constitutive Act”** means the Constitutive Act of the African Union;
- “Executive Council”** means the Executive Council of Ministers of the African Union;
- “Gender”** time bound and changeable socially and culturally constructed differences, social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, typically masculine and feminine characteristics, abilities and

- expectations about how women and men should behave in society which give them unequal value and life chances;
- “Gender Equality”** the absence of discrimination on the basis of one’s sex in the allocation resources or benefits or in access to services;
- “Member State”** means a Member State of the African Union;
- “Rapporteur”** means the Rapporteur of the Specialized Technical Committee on Gender Equality and Women’s Empowerment;
- “STC”** means a Specialized Technical Committee of the African Union;
- “STCs Coordination Mechanism”** means the Bureau of all STCs of the African Union;
- “Union”** means the African Union established by the Constitutive Act;
- “Vice-Chairpersons”** unless specified otherwise, means the Vice-Chairpersons of the STC on Gender Equality and Women’s Empowerment.
- “Women’s Empowerment”** means the process of generating and building women’s capacities to gain power and exercise control over their own lives through expanded choices, awareness-raising, building self-confidence, increased access to and control over resources and actions to transform the structures and institutions which reinforce and perpetuate gender discrimination and inequality.

## **RULE 2 STATUS**

The STC on Gender Equality and Women’s Empowerment is an Organ of the Union in accordance with Article 5 (1) (g) of the Constitutive Act. It shall be responsible to the Executive Council.



### **RULE 3 COMPOSITION**

1. The STC on Gender Equality and Women's Empowerment shall be composed of the Ministers in Charge of Gender and Women's Affairs or such other Ministers or authorities duly accredited by the Governments of Member States.
2. The STC on Gender Equality and Women's Empowerment includes Experts from Member States responsible for sectors falling within the areas of competence of the STC on Gender Equality and Women's Empowerment, whose meetings shall precede the meetings at Ministerial level. Unless specified otherwise, meetings of Experts shall be governed, *mutatis mutandis*, by relevant provisions of these Rules.

### **RULE 4 DESIGNATION OF DELEGATES**

Delegations of Member States to sessions of the STC on Gender Equality and Women's Empowerment shall be duly designated and accredited representatives of Member States.

### **RULE 5 POWERS AND FUNCTIONS**

1. Pursuant to Article 15 of the Constitutive Act of the Union, the STC on Gender Equality and Women's Empowerment shall, inter-alia:
  - a. Prepare projects and programmes of the Union and submit to the Executive Council;
  - b. Ensure the supervision, follow-up and the evaluation of the implementation of decisions taken by the organs of the Union;
  - c. Ensure the coordination and harmonization of projects and programmes of the Union;
  - d. Submit to the Executive Council either on its own initiative or at the request of the Executive Council, reports and recommendations on the implementation of the provision of this Act;

- e. Advocate for the universal ratification, domestication and implementation of existing AU policies and instruments on gender equality, women's empowerment and women's rights.
- f. Advocate for the promotion and protection of all human rights of women as well as for the implementation of the States obligations and commitments under international human rights law in relation to the human rights of women, which were made at international, continental, regional, and Member States level.
- g. Advocate for the promotion of gender responsive practices as well as the realization of commitments to the human rights of women made at international, continental, regional and Member States levels;
- h. Encourage Member States to report per agreed reporting schedule on the Protocol to the Charter on Human and Peoples Rights on the Rights of Women in Africa, AU Solemn Declaration on Gender Equality in Africa, the African Women's Decade and Agenda 2063;
- i. Work to mainstream gender equality and women's empowerment in all policies and programmes of the AU organs and institutions, Member States and Regional Economic Communities to close the gender-gap by 2020 and to achieve women empowerment in Africa.
- j. Develop common positions and consensus on gender equality, women's rights and women's empowerment in Africa.
- k. Ensure harmonization of instruments and policies for gender equality and women empowerment.
- l. Mobilize resources for the Fund for African Women
- m. Advocate for the inclusion of women experts in all AU high level panel discussions
- n. Advocate for the inclusion of women in all AU high level reporting activities.

- o. Advocate for Member States to nominate competent women for international civil service positions
  - p. Advocate for Member States to propose competent women in their submission for AU chairperson and deputy chairperson and Commissioners per the rules of procedure of elections.
  - q. To mainstream gender equality and women's empowerment in all programs of the African Union
  - r. Carry out any other functions assigned to it by the Executive Council or the Assembly.
2. The STC on Gender Equality and Women's Empowerment may set up such Sub-committees or *ad hoc* working groups, as it deems necessary and shall determine their mandate, composition and functioning.

## **RULE 6**

### **VENUE**

1. The Sessions of the STC on Gender Equality and Women's Empowerment shall be held at the Headquarters of the Union, unless a Member State offers to host any such session.
2. In the event the session is held outside the Headquarters of the Union, the host Member State shall be responsible for all extra expenses incurred by the Commission as a result of holding the session outside the Headquarters.
3. In conformity with Rule 5 (3) of the Rules of Procedure of the Assembly, Member States offering to host sessions of the STC on Gender Equality and Women's Empowerment shall not be under sanctions and shall be required to meet predetermined criteria, including adequate logistical facilities and a conducive political atmosphere.
4. Where two (2) or more Member States offer to host a session, the STC on Gender Equality and Women's Empowerment shall decide on the venue by a simple majority.

5. Where a Member State that had offered to host a session of the STC on Gender Equality and Women's Empowerment is unable to do so, the session shall be held at the Headquarters of the Union, unless a new offer is received and accepted by Member States.

### **RULE 7 CONVENING OF SESSIONS**

The Commission shall be responsible for convening and servicing all the meetings of the STC on Gender Equality and Women's Empowerment.

### **RULE 8 QUORUM**

1. The quorum for a Ministerial session of the STC on Gender Equality and Women's Empowerment shall be two-thirds majority of the Member States eligible to vote.
2. The quorum for meetings of Experts, Sub-committees or *ad hoc* working groups of the STC on Gender Equality and Women's Empowerment shall be a simple majority.

### **RULE 9 ORDINARY SESSIONS**

The STC on Gender Equality and Women's Empowerment shall meet in ordinary session once every year.

### **RULE 10 AGENDA OF ORDINARY SESSIONS**

1. The STC on Gender Equality and Women's Empowerment shall adopt its Agenda at the opening of each session.
2. The Provisional Agenda of an ordinary session shall be drawn up by the Commission in consultation with the Bureau of the STC on Gender Equality and Women's Empowerment and may include item (s) proposed by Member States. The Commission shall communicate it as well as the working documents to Member States at least thirty (30) days before the opening of the session.

**RULE 11**  
**OTHER ITEMS INCLUDED IN THE AGENDA**

Any additional agenda item, which a Member State wishes to raise at a session of the STC on Gender Equality and Women's Empowerment, shall only be considered under the agenda item "Any Other Business". Such agenda items shall be for information only and not subject to debate or decision.

**RULE 12**  
**EXTRAORDINARY SESSIONS**

1. The STC on Gender Equality and Women's Empowerment may meet in an extraordinary session, subject to availability of funds, at the request of:
  - a) the policy organs of the Union;
  - b) the STC on Gender Equality and Women's Empowerment itself; or
  - c) any Member State, upon approval by a two-thirds majority of the Member States.
2. The extraordinary sessions shall be held in conformity with Rule 6 above.

**RULE 13**  
**AGENDA OF EXTRAORDINARY SESSIONS**

1. The Commission shall communicate the Provisional Agenda and working documents of an extraordinary session to Member States at least fifteen (15) days before the opening of the session.
2. The Agenda of an extraordinary session shall comprise only of the item(s) requiring the urgent attention of the STC on Gender Equality and Women's Empowerment.

**RULE 14**  
**OPEN AND CLOSED SESSIONS**

All the sessions of the STC on Gender Equality and Women's Empowerment shall be closed. The STC on Gender Equality and Women's Empowerment may, however, decide by a simple majority whether any of its sessions shall be open.

**RULE 15**  
**WORKING LANGUAGES**

The working languages of the STC on Gender Equality and Women's Empowerment shall be those of the Union.

**RULE 16**  
**BUREAU**

1. The STC on Gender Equality and Women's Empowerment shall, on the basis of rotation and geographical distribution, elect, after due consultations, a Chairperson. He/she shall be assisted by other members of the Bureau, namely, three (3) Vice-Chairpersons as well as a Rapporteur, elected on the basis of agreed geographical distribution and after due consultations.
2. The Members of the Bureau shall hold office for a period of two (2) years.
3. The Bureau will meet at least once every year.

**RULE 17**  
**DUTIES OF THE CHAIRPERSON**

1. The Chairperson shall:
  - a) preside over all the proceedings of the Ordinary and Extraordinary sessions;
  - b) open and close the sessions;
  - c) submit for approval the records of the sessions;
  - d) guide the proceedings;
  - e) submit to a vote matters under discussion and announce the results of the vote taken;
  - f) rule on points of order.
2. The Chairperson shall ensure order and decorum during the proceedings of the sessions.
3. In the absence of the Chairperson or in case of a vacancy, the Vice-Chairpersons or the Rapporteur in order of their election shall act as the Chairperson.

4. The Chairperson shall attend the sessions of the Executive Council and take part in the annual meeting of the STCs Coordination Mechanism.

### **RULE 18 ATTENDANCE AND PARTICIPATION**

1. In accordance with Rule 4, the Ministers in charge of Gender and Women Affairs shall attend and participate personally in the sessions. In the event that they are not in a position to attend personally, duly accredited representatives shall represent them.
2. The Representatives of the Organs of the Union and of Regional Economic Communities (RECs) shall be invited to attend the sessions of the STC on Gender Equality and Women's Empowerment.
3. The STC on Gender Equality and Women's Empowerment may invite, as Observer, any person or Institution to attend its sessions. Such Observer may be invited to make written or oral interventions but shall not be entitled to vote.

### **RULE 19 MAJORITY REQUIRED FOR DECISIONS**

1. The STC on Gender Equality and Women's Empowerment shall take all its decisions by consensus, failing which:
  - a) at the Ministerial level, by a two-thirds majority of the Member States present and eligible to vote;
  - b) at the Experts' level, by a simple majority of the Member States present and eligible to vote.
2. Decisions on questions of procedure shall be taken by a simple majority of Member States eligible to vote.
3. Decisions on whether or not a question is one of procedure shall also be determined by a simple majority of Member States eligible to vote.

4. Abstention by a Member State eligible to vote shall not prevent the adoption by the STC on Gender Equality and Women's Empowerment of decisions by consensus.

**RULE 20  
AMENDMENT OF DECISIONS**

1. A proposed decision or an amendment (s) thereof may at any time, prior to it being submitted to a vote, be withdrawn by the initiator.
2. Any other Member State may reintroduce the proposed decision or amendment that has been withdrawn.

**RULE 21  
POINT OF ORDER**

1. During deliberations on any matter, a Member State may raise a point of order. The Chairperson, in accordance with these Rules, shall immediately decide on the point of order.
2. The Member State concerned may appeal against the ruling of the Chairperson. The ruling shall immediately be put to a vote and decided upon by simple majority.
3. In raising a point of order, the Member State concerned shall not speak on the substance of the issue under discussion.

**RULE 22  
LIST OF SPEAKERS AND USE OF THE FLOOR**

1. The Chairperson shall, subject to Article 23 of the Constitutive Act, during the debate, grant the use of the floor in the order in which the speakers indicate their intention.
2. A delegation or other invitee shall not have the floor without the consent of the Chairperson.
3. The Chairperson may, during the debate:



- a) read out the list of speakers and declare the list closed;
  - b) call to order any speaker whose statement deviates from the issue under discussion;
  - c) accord the right of reply to any delegation where in his/her opinion a statement made after the list is closed justifies the right of reply; and
  - d) limit the time allowed to each delegation irrespective of the issue under discussion, subject to sub Rule 4 of this Rule.
4. The Chairperson shall, on procedural questions, limit each intervention to a maximum of three (3) minutes.

### **RULE 23**

#### **Closure of Debate**

When a matter has been sufficiently discussed, the Chairperson shall close the debate at his/her discretion.

### **RULE 24**

#### **SUSPENSION OR ADJOURNMENT OF THE MEETING**

During the discussion of any matter, a Member State may move for the suspension or adjournment of the meeting. No discussion on such motions shall be permitted. The Chairperson shall immediately put such motion to a vote.

### **RULE 25**

#### **ORDER OF PROCEDURAL MOTIONS**

Subject to Rule 21 of these Rules of Procedure, the following motions shall have precedence in the order listed below, over all other proposals or motions before the meeting:

- a) suspend the meeting;
- b) adjourn the meeting;
- c) adjourn the debate on the item under discussion;
- d) close the debate on the item under discussion.

**RULE 26**  
**VOTING RIGHTS**

1. Each eligible Member State shall have one vote.
2. Member States, subject to sanctions under Article 23 of the Constitutive Act, shall not have the right to a vote.

**RULE 27**  
**CONSENSUS AND VOTE ON DECISIONS**

After the debate has been closed, and there is no consensus, the Chairperson shall immediately put the proposal with all the amendments to a vote. The vote shall not be interrupted except on a point of order related to the manner in which the vote is being taken.

**RULE 28**  
**VOTE ON AMENDMENTS**

1. When there is no consensus, the Chairperson shall put all amendments to a vote.
2. A proposal shall be considered as an amendment to a text if it adds or removes therefrom.

**RULE 29**  
**METHODS OF VOTING**

The Methods of Voting shall be determined by the STC on Gender Equality and Women's Empowerment.

**RULE 30**  
**DECISIONS AND REPORTING**

1. The Ministerial session of the STC shall take decisions on issues falling within its competence, except where there are attendant financial and structural implications in accordance with Decisions/ Assembly/AU/Dec.582(XXV) on streamlining of the AU Summit and its working methods.

2. Without prejudice to sub paragraph 1 of this rule, the Executive Council may, if necessary, consider decisions of the STC at the request of any member state.

**RULE 31**  
**EVALUATION OF IMPLEMENTATION OF RECOMMENDATIONS**

The Commission shall present a report to the STC on Gender Equality and Women's Empowerment.

**RULE 32**  
**IMPLEMENTATION**

The STC on Gender Equality and Women's Empowerment may lay down guidelines and supplementary measures to give effect to these Rules.

**RULE 33**  
**AMENDMENTS**

The STC on Gender Equality and Women's Empowerment may propose amendments of these Rules to the Executive Council for consideration.

**RULE 34**  
**ENTRY INTO FORCE**

These Rules shall enter into force upon their approval by the Executive Council.

**ADOPTED BY .....HELD IN....., ON.....**

**EX.CL/1048(XXXII)**  
**Annex 2**  
**Original: English**

**RULES OF PROCEDURE OF THE SPECIALIZED TECHNICAL  
COMMITTEE ON TRADE, INDUSTRY AND MINERALS**

## GENERAL PROVISIONS

The Executive Council,

**HAVING REGARD** to the Constitutive Act of the African Union, and in particular Articles 14, 15 and 16;

**RECALLING** the provisions of Article 25 of the Treaty Establishing the African Economic Community;

**HAVING REGARD** to Decisions Assembly/Dec. 227 (XII) and Assembly/Dec.365 (XVII) on Specialized Technical Committees;

**HAS ADOPTED THESE RULES OF PROCEDURE:**

### **RULE 1** **Definitions**

In these Rules:

- (a) **“Assembly”** means the Assembly of Heads of State and Government of the African Union;
- (b) **“Bureau”** means the Bureau of the Specialized Technical Committee on Trade, Industry and Minerals
- (c) **“Chairperson”** means the Chairperson of the Specialized Technical Committee on Trade, Industry and Minerals;
- (d) **“Commission”** means the Secretariat of the African Union;
- (e) **“Constitutive Act”** means the Constitutive Act of the African Union;
- (f) **“Executive Council”** means the Executive Council of Ministers of the African Union;
- (g) **“Member State”** means a Member State of the African Union;
- (h) **“Minerals”** means solid, gas and liquid natural resources;
- (i) **“Observer”** means any person or institution including civil society invited to attend a session of the Specialized Technical Committee on Trade, Industry and Minerals without a right to vote;
- (j) **“Rapporteur”** means the Rapporteur of the Specialized Technical Committee on Trade, Industry and Minerals;
- (k) **“Sanctions”** means the sanctions imposed by the Union under Articles 23 and 30 of the Constitutive Act;
- (l) **“STC”** means a Specialized Technical Committee of the African Union;
- (m) **“Union”** means the African Union established by the Constitutive Act;
- (n) **“Vice-Chairpersons”** unless specified otherwise, mean the Vice-Chairpersons of the STC on Trade, Industry and Minerals.

**RULE 2****Status**

The STC on Trade, Industry and Minerals is an Organ of the Union in accordance with Article 5 (1) (g) of the Constitutive Act. It shall be responsible to the Executive Council.

**RULE 3****Composition**

1. The STC on Trade, Industry and Minerals shall be composed of Ministers in charge of Trade, Industry and Minerals or such other Ministers or authorities duly accredited by the Governments of Member States.
2. The STC on Trade, Industry and Minerals includes Experts from member States responsible for sectors falling within the areas of competence of the STC on Trade, Industry and Minerals, whose meetings shall precede the Meetings at Ministerial level. Unless specified otherwise, meetings of Experts shall be governed, *mutatis mutandis*, by relevant provisions of these Rules.

**RULE 4****Designation of delegates**

Delegations of Member States to sessions of the STC on Trade, Industry and Minerals shall be duly accredited representatives of Member States.

**RULE 5****Powers and Functions**

1. In addition to the functions provided for in Article 15 of the Constitutive Act of the Union, the STC on Trade, Industry and Minerals shall:
  - i) Formulate recommendations on continental trade, industry and mineral resources policies;
  - ii) Take stock, review and assess developments in the trade, industry and mineral resources sectors;
  - iii) Coordinate the harmonisation of policies affecting trade, industry and mineral resources;
  - iv) Develop programmes and projects aimed at achieving the goals of enhanced intra-African trade and integration as envisioned in the Abuja Treaty Establishing the African Union;

- v) Develop programmes and projects aimed at achieving the objectives of the Africa Mining Vision;
  - vi) Develop programmes and projects aimed at achieving the objectives of the Industrial development of Africa contained in the Action Plan For The Accelerated Industrial Development Of Africa ( AIDA );
  - vii) Develop common views, positions and strategies for Africa's engagement in international trade, industry and minerals negotiations;
  - viii) provide guidance on the development of common strategies for engaging with cooperating and development partners;
  - ix) ensure effective co-ordination of the respective sectoral policies processes to achieve streamlined policy framework for achieving the overall goals of enhanced intra-African trade, rapid industrialization, ocean development, diversification and value addition, mineral beneficiation, competitiveness for sustainable economic growth and development;
  - x) provide guidance on the effective co-ordination of activities between the continental, regional and national levels;
  - xi) provide guidance on the establishment, where necessary, of specific mechanisms for the attainment of specific tasks and activities in the respective sectoral areas, or from cross-sectoral perspectives;
  - xii) carry out any other functions assigned to it by the Executive Council or the Assembly.
2. The STC on Trade, Industry and Minerals may set up Sub-committees and temporary working groups, as it deems necessary;
  3. The functioning, mandate, composition of such Sub-committees and temporary working groups shall be determined by the STC on Trade, Industry and Minerals.
  4. The STC shall receive progress reports from Member States on the domestication of policy provisions adopted by the African Union policy organs in the domain of Trade, Industry and Minerals.

## **RULE 6**

### **Venue**

1. The Sessions of the STC on Trade, Industry and Minerals shall be held at the Headquarters of the Union unless a Member State offers to host any such Session.

2. In the event the session is held outside the Headquarters of the Union, the host Member State shall be responsible for all extra expenses incurred by the Commission as a result of holding the session outside the Headquarters.
3. In conformity with Rule 5 (3) of the Rules of Procedure of the Assembly, Member States offering to host sessions of the STC on Trade, Industry and Minerals shall not be Member States that are under sanctions and shall be required to meet pre-determined criteria, including adequate logistical facilities and a conducive political atmosphere.
4. Where two (2) or more Member States offer to host a session, the STC on Trade, Industry and Minerals shall decide on the venue by simple majority.
5. Where a Member State that had offered to host a session of the STC on Trade, Industry and Minerals is unable to do so, the session shall be held at the Headquarters of the Union, unless a new offer is received and accepted by Member States.

#### **RULE 7**

#### **Convening of Sessions**

The Commission shall be responsible for convening and servicing all the meetings of the STC on Trade, Industry and Minerals.

#### **RULE 8**

#### **Quorum**

1. The quorum for a Ministerial session of the STC on Trade, Industry and Minerals shall be two-thirds majority of the Member States eligible to vote.
2. The quorum for meetings of Senior Officials, Sub-committees or temporary working groups of the STC on Trade, Industry and Minerals shall be a simple majority.

#### **RULE 9**

#### **Ordinary Sessions**

The STC on Trade, Industry and Minerals shall meet once every two (2) years.



**RULE 10****Agenda of Ordinary Sessions**

1. The STC on Trade, Industry and Minerals shall adopt its Agenda at the opening of each session.
2. The Provisional Agenda of an ordinary session shall be drawn up by the Commission in consultation with the Bureau of the STC on Trade, Industry and Minerals and may include item(s) proposed by Member States. The Commission shall communicate the provisional agenda and the working documents to Member States at least thirty (30) days before the opening of the session.

**RULE 11****Other Items included in the Agenda**

Any additional agenda item, which a Member State wishes to raise at a session of the STC on Trade, Industry and Minerals, shall only be considered under the agenda item "Any Other Business". Such agenda items shall be for information only and not subject to debate or decision.

***RULE 12******Extraordinary Sessions***

1. The STC on Trade, Industry and Minerals may meet in an extraordinary session, subject to availability of funds at the request of :
  - a) the policy organs of the union;
  - b) The STC on specialized technical committee on trade, industry and minerals itself; or
  - c) Any member State, upon approval by a two-thirds majority of the Member States
2. The extraordinary sessions shall be held in conformity with Rule 6 above.

**RULE 13****Agenda of Extraordinary Sessions**

1. The Commission shall communicate the Provisional Agenda and working documents of an extraordinary session to Member States at least fifteen (15) days before the opening of the session.

2. The Agenda of an extraordinary session shall comprise only of the item(s) requiring the urgent attention of the STC on Trade, Industry and Minerals.

#### **RULE 14**

#### **Open and Closed Sessions**

All the sessions of the STC on Trade, Industry and Minerals shall be closed. It may, however, decide by simple majority whether any of its sessions shall be open.

#### **RULE 15**

#### **Working Languages**

The working languages of the STC on Trade, Industry and Minerals shall be those of the Union.

#### **RULE 16**

#### **Bureau**

1. The STC on Trade, Industry and Minerals shall, on the basis of rotation and geographical distribution, elect, after due consultations, a Chairperson. He/she shall be assisted by other members of the Bureau, namely, three (3) Vice-Chairpersons as well as a Rapporteur, elected on the basis of agreed geographical distribution and after due consultations.
2. The Members of the Bureau shall hold office for a period of two (2) years.
3. The Bureau will meet at least once every year.

#### **RULE 17**

#### **Duties of the Chairperson and other members of the Bureau**

1. The Chairperson shall:
  - a) Preside over all the proceedings of the Ordinary and Extraordinary sessions;
  - b) open and close the sessions;
  - c) submit for approval the records of the sessions;
  - d) guide the proceedings;
  - e) submit to a vote matters under discussion and announce the results of the vote taken;
  - f) rule on points of order.

2. The Chairperson shall ensure order and decorum during the proceedings of the sessions.
3. In the absence of the Chairperson or in case of a vacancy, the vice-Chairpersons or the rapporteur in order of their election shall act as the chairperson.
4. The Chairperson shall attend the sessions of the Executive Council and the annual meeting of the STCs Coordination Mechanism.

### **RULE 18**

#### **Attendance and Participation**

1. In accordance with Rule 4, the Ministers in charge of Trade, Industry, and Minerals shall attend and participate personally in the sessions. In the event that they are not in a position to attend personally, duly accredited representatives shall represent them.
2. The Representatives of the Organs of the Union and Regional Economic Communities (RECs) shall be invited to attend the sessions of the STC on Trade, Industry and Minerals.
3. The STC on Trade, Industry and Minerals may invite, as Observer, any person or institution to attend its sessions. Such Observer may be invited to make written or oral interventions but shall not be entitled to vote.

### **RULE 19**

#### **Majority required for decisions**

1. The STC on Trade, Industry and Minerals shall take all its decisions by consensus failing which:
  - a) at the Ministerial level, by a two-thirds majority of the Member States present and eligible to vote.
  - b) at the Experts' level, by a simple majority of the Member States present and eligible to vote.
2. Decisions on questions of procedure shall be taken by a simple majority of Member States eligible to vote.
3. Decisions on whether or not a question is one of procedure shall also be determined by a simple majority of Member States eligible to vote.

- 4 Abstentions by Member States eligible to vote shall not prevent the adoption by the STC on Trade, Industry and Minerals of decisions by consensus.

## **RULE 20**

### **Amendment of Decisions**

1. A proposed decision or an amendment (s) thereof may at any time, prior to it being submitted to a vote, be withdrawn by the initiator.
2. Any other Member State may reintroduce the proposed decision or amendment that has been withdrawn.

## **RULE 21**

### **Point of Order**

1. During deliberations on any matter, a Member State may raise a point of order. The Chairperson, in accordance with these Rules, shall immediately decide on the point of order.
2. The Member State concerned may appeal against the ruling of the Chairperson. The ruling shall immediately be put to a vote and decided upon by simple majority.
3. In raising a point of order, the Member State concerned shall not speak on the substance of the issue under discussion.

## **RULE 22**

### **List of Speakers and Use of the Floor**

1. The Chairperson shall, subject to Article 23 of the Constitutive Act, during the debate, grant the use of the floor in the order in which the speakers indicate their intention.
2. A delegation or other invitee shall not have the floor without the consent of the Chairperson.
3. The Chairperson may, during the debate:
  - a) read out the list of speakers and declare the list closed;
  - b) call to order any speaker whose statement deviates from the issue under discussion;

- c) accord the right of reply to any delegation where in his/her opinion a statement made after the list is closed justifies the right of reply; and
  - d) limit the time allowed to each delegation irrespective of the issue under discussion, subject to sub Rule 4 of this Rule.
4. The Chairperson shall, on procedural questions, limit each intervention to a maximum of three (3) minutes.

**RULE 23**  
**Closure of Debate**

When a matter has been sufficiently discussed, the Chairperson shall close the debate at his/her discretion.

**RULE 24**  
**Suspension or Adjournment of the Meeting**

During the discussion of any matter, a Member State may move for the suspension or adjournment of the meeting. No discussion on such motions shall be permitted. The Chairperson shall immediately put such motion to a vote.

**RULE 25**  
**Order of Procedural Motions**

Subject to Rule 21, the following motions shall have precedence in the order listed below, over all other proposals or motions before the meeting:

- a) Suspend the meeting;
- b) Adjourn the meeting;
- c) Adjourn the debate on the item under discussion;
- d) Close the debate on the item under discussion.

**RULE 26**  
**Voting Rights**

- 1. Each eligible Member State shall have one vote.
- 2. Member States, subject to sanctions under Article 23 of the Constitutive Act, shall not have the right to a vote.

## **RULE 27**

### **Consensus and Vote on Decisions**

After the debate has been closed, the Chairperson shall immediately put to a vote the proposal with all the amendments. The vote shall not be interrupted except on a point of order related to the manner in which the vote is being taken.

## **RULE 28**

### **Vote on Amendments**

1. When there is no consensus, the Chairperson shall put all amendments to vote.
2. A proposal shall be considered as an amendment to a text if it adds or removes there from.

## **RULE 29**

### **Methods of Voting**

The Methods of Voting shall be determined by the STC on Trade, Industry and Minerals.

## **RULE 30**

### **Decisions and Reporting**

1. The Ministerial session of the STC shall take decisions on issues falling within its competence, except where there are attendant financial and structural implications in accordance with Decision/Assembly/AU/Dec.582 (XXV) on streamlining of the AU Summit and its working methods.
2. Without prejudice to paragraph 1 of this Rule, the Executive Council may, if necessary, consider decisions of the STC at the request of any Member State.

## **RULE 31**

### **Evaluation and Implementation of Recommendations**

The Commission shall present report to the STC on Trade, Industry and Minerals on the implementation of its previous recommendations.

**RULE 32**

**Reports and Recommendation**

The STC on Trade, Industry and Minerals shall submit reports and recommendations arising from its deliberations to the Executive Council for consideration.

**RULE 33**

**Implementation**

The STC on Trade, Industry and Minerals may lay down guidelines and supplementary measures to give effect to these Rules.

**RULE 34**

**Amendments**

The STC on Trade, Industry and Minerals may propose to the Executive Council amendments to these Rules.

**RULE 35**

**Entry into Force**

These Rules shall enter into force upon their approval by the Executive Council.

**Adopted by the.....Ordinary Session of the Executive Council, held...**

**EX.CL/1048(XXXII)**  
**Annex 3**

**RULES OF PROCEDURE OF THE SPECIALIZED TECHNICAL  
COMMITTEE ON AGRICULTURE, RURAL DEVELOPMENT,  
WATER AND ENVIRONMENT**



## GENERAL PROVISION

The Executive Council,

Having regard to the Constitutive Act of the African Union, and in particular Articles 14, 15 and 16,

Having regard to Decisions Assembly/Dec. 227 (XII) and Assembly/Dec.365(XVII) on Specialized Technical Committees,

**HAS ADOPTED THESE RULES OF PROCEDURE:**

### **RULE 1** **Definitions**

In these Rules:

**“Assembly”** means the Assembly of Heads of State and Government of the African Union;

**“Bureau”** means the Bureau of the Specialized Technical Committee on Agriculture, Rural Development, Water and Environment

**“Chairperson”** means the Chairperson of the Specialized Technical Committee on Agriculture, Rural Development, Water and Environment;

**“Commission”** means the Commission of the African Union;

**“Constitutive Act”** means the Constitutive Act of the African Union;

**“Executive Council”** means the Executive Council of Ministers of the African Union;

**“Member State”** means a Member State of the African Union;

**“Observer”** means any person or institution including civil society invited to attend a session of the Specialized Technical Committee on Agriculture, Rural Development, Water and Environment; without a right to vote;

**“Sanctions”** means the sanctions imposed by the Union under Articles 23 and 30 of the Constitutive Act;

“**STC**” means a Specialized Technical Committee of the African Union;

“**STCs Coordination Mechanism**” means the Bureaus of all STCs of the African Union;

“**Union**” means the African Union established by the Constitutive Act;

“**Vice-Chairpersons**” unless specified otherwise, means the Vice-Chairpersons of the STC on Agriculture, Rural Development, Water and Environment.

## **RULE 2**

### **Status**

The STC on Agriculture, Rural Development, Water and Environment is an Organ of the Union in accordance with Article 5 (1) (g) of the Constitutive Act. It shall be responsible to the Executive Council.

## **RULE 3**

### **Composition**

1. The STC on Agriculture, Rural Development, Water and Environment shall be composed of Ministers in charge of Agriculture, Rural Development, Water, and Environment, Disaster Risk Reduction, Livestock, Forestry, Fisheries and Aquaculture, from Member States or such other Ministers or authorities duly accredited by the Governments of Member States.
2. The STC on Agriculture, Rural Development, Water and Environment includes Experts from Member States responsible for sectors falling within the areas of competence of the STC on Agriculture, Rural Development, Water and Environment, whose meetings shall precede the Meetings at Ministerial level. Unless specified otherwise, meetings of Experts shall be governed, *mutatis mutandis*, by relevant provisions of these Rules.

## **RULE 4**

### **Designation of delegates**

Delegations of Member States to sessions of the STC on Agriculture, Rural Development, Water and Environment shall be duly designated and accredited representatives of Member States.

**RULE 5**  
**Powers and Functions**

1. In addition to the functions provided for in Article 15 of the Constitutive Act of the Union, the STC on Agriculture, Rural Development, Water and Environment shall, inter-alia:
  - a) Prepare, review and submit projects and programmes of the Union to the Executive Council;
  - b) review, examine and consider adoption of policies and strategic frameworks designed for the development of African agriculture, the rural economy, water and the environment;
  - c) follow up and review progress on, and provide strategic guidance for, the implementation of relevant AU Decisions, policies, strategies and action plans on agriculture, rural development, water and environment;
  - d) initiate, develop and promote African common positions on strategic areas and themes in matters that concern agriculture, rural development, water and environment, and advocate for Africa's representation with a united voice in global negotiations;
  - e) follow up and advocate for the alignment and harmonization of national policies and strategies with continental policies, frameworks and strategies adopted by the AU in the areas of agriculture, rural development, water and environment;
  - f) ensure harmonization and coordination of initiatives, policies, programmes and strategies espoused by various actors at continental and regional levels in the areas of agriculture, rural development, water and environment; and ensure that overall political guidance and coordination is provided by the African Union;
  - g) review and examine strategic partnerships in the areas of agriculture, rural development, water and environment with a view to ensuring effectiveness of the partnerships and mutual accountability;
  - h) carry out any other functions assigned to it by the Executive Council or the Assembly.
  
2. The STC on Agriculture, Rural Development, Water and Environment may set up such Sub-committees and ad-hoc working groups, as it deems necessary and shall determine their mandate, composition and functioning.

## **RULE 6**

### **Venue**

1. The Sessions of the STC on Agriculture, Rural Development, Water and Environment shall be held at the Headquarters of the Union, unless a Member State offers to host any such Session.
2. In the event the session is held outside the Headquarters of the Union, the host Member State shall be responsible for all extra expenses incurred by the Commission as result of holding the session outside the Headquarters.
3. In conformity with Rule 5 (3) of the Rules of Procedure of the Assembly, Member States offering to host sessions of the STC on Agriculture, Rural Development, Water and Environment shall not be under sanctions and shall be required to meet pre-determined criteria, including adequate logistical facilities and a conducive political atmosphere.
4. Where two (2) or more Member States offer to host a session, the STC on Agriculture, Rural Development, Water and Environment shall decide on the venue by a simple majority.
5. Where a Member State that had offered to host a session of the STC on Agriculture, Rural Development, Water and Environment is unable to do so, the session shall be held at the Headquarters of the Union, unless a new offer is received and accepted by Member States.

## **RULE 7**

### **Convening of Sessions**

1. The Commission shall be responsible for convening and servicing all the meetings of the STC on Agriculture, Rural Development, Water and Environment.
2. The sub-committees shall be convened by the respective bureau and the modalities for their holding shall be determined by the STC taking into account the specificity of each Sub-Committee.

**RULE 8**  
**Quorum**

1. The quorum for a Ministerial session of the STC on Agriculture, Rural Development, Water and Environment shall be two-third majority of the Member States eligible to vote.
2. The quorum for meetings of Experts, Sub-committees or ad-hoc working groups of the STC on Agriculture, Rural Development, Water and Environment shall be a simple majority.

**RULE 9**  
**Ordinary Sessions**

The STC on Agriculture, Rural Development, Water and Environment shall meet in ordinary session once every two (2) years.

**RULE 10**  
**Agenda of Ordinary Sessions**

1. The STC on Agriculture, Rural Development, Water and Environment shall adopt its Agenda at the opening of each session.
2. The Provisional Agenda of an ordinary session shall be drawn up by the Commission in consultation with the Bureau of the STC on Agriculture, Rural Development, Water and Environment and may include item (s) proposed by Member States. The Commission shall communicate it as well as the working documents to Member States at least thirty (30) days before the opening of the session.
3. The Commission shall communicate the draft annotated Agenda to Member States at least 60 days before the meeting.
4. Amendments to the Agenda should be communicated to the Commission at least 30 days before the commencement of the meeting.
5. Any additional agenda item, which a Member State wishes to raise at a session of the STC on Agriculture, Rural Development, Water and Environment, shall only be considered under the agenda item "Any Other Business". Such agenda items shall be for information only and not subject to debate or decision.

**RULE 11****Other Items included in the Agenda**

Any additional agenda item, which a Member State wishes to raise at a Session of the STC on Agriculture, Rural Development, Water and Environment, shall only be considered under the agenda item "Any Other Business". Such agenda item shall be for information only and not subject to debate or decision.

**RULE 12****Extraordinary Sessions**

3. The STC on Agriculture, Rural Development, Water and Environment may meet in an extraordinary session, subject to availability of funds, at the request of:
  - a) the policy organs of the Union;
  - b) the STC on Agriculture, Rural Development, Water and Environment itself; or
  - c) any Member State, upon approval by a two-thirds majority of the Member States.
4. The extraordinary sessions shall be held in conformity with Rule 6 above.

**RULE 13****Agenda of Extraordinary Sessions**

3. The Commission shall communicate the Provisional Agenda and working documents of an extraordinary session to Member States at least fifteen (15) days before the opening of the session.
4. The Agenda of an extraordinary session shall comprise only of the item(s) requiring the urgent attention of the STC on Agriculture, Rural Development, Water and Environment.

**RULE 14****Open and Closed Sessions**

All the sessions of the STC on Agriculture, Rural Development, Water and Environment shall be closed. The STC on Agriculture, Rural Development, Water and Environment may, however, decide by simple majority whether any of its sessions shall be open.

**RULE 15**  
**Working Languages**

The working languages of the STC on Agriculture, Rural Development, Water and Environment shall be those of the Union.

**RULE 16**  
**Bureau**

1. The STC on Agriculture, Rural Development, Water and Environment shall, on the basis of rotation and geographical distribution, elect, after due consultations, a Chairperson. He or she shall be assisted by other members of the Bureau, namely, three (3) Vice-Chairpersons as well as a Rapporteur, elected on the basis of agreed geographical distribution and after due consultations.
2. The Members of the Bureau shall hold office for a period of two (2) years.
3. The Bureau will meet at least once every year.

**RULE 17**  
**Duties of the Chairperson**

5. The Chairperson shall:
  - g) preside over all the proceedings of the Ordinary and Extraordinary sessions;
  - h) open and close the sessions;
  - i) submit for approval the records of the sessions;
  - j) guide the proceedings;
  - k) submit to a vote matters under discussion and announce the results of the vote taken;
  - l) rule on points of order.
6. *The Chairperson shall ensure order and decorum of the proceedings of the sessions.*
7. In the absence of the Chairperson or in case of a vacancy, the Vice-Chairpersons or the Rapporteur in order of their election shall act as the Chairperson.

8. The Chairperson shall attend the sessions of the Executive Council and take part in the annual meeting of the STCs Coordination Mechanism.

### **RULE 18**

#### **Attendance and Participation**

1. In accordance with Rules 3 and 4, Ministers in charge of Agriculture, Rural Development, Water, and Environment from Member States or such other Ministers or authorities duly accredited by the Governments of Member States shall attend the sessions. In the event that they are not in a position to attend personally, duly accredited representatives shall represent them.
2. The Representatives of the relevant Organs of the Union and of Regional Economic Communities (RECs) shall be invited to attend the sessions of the STC on Agriculture, Rural Development, Water and Environment.
3. The Chairperson of STC on Agriculture, Rural Development, Water and Environment in consultation with the Bureau may invite, as Observer, any person or Institution to attend its sessions. Such Observer may be invited to make written or oral interventions but shall not be entitled to vote.

### **RULE 19**

#### **Majority Required for Decisions**

3. The STC on Agriculture, Rural Development, Water and Environment shall make all its recommendations by consensus , failing which:
  - a) at the Ministerial level, , by a two-thirds majority of the Member States present and eligible to vote;
  - b) at the Experts' level, by a simple majority of the Member States present and eligible to vote.
4. Decisions on questions of procedure shall be taken by a simple majority of Member States eligible to vote.
5. Decisions on whether or not a question is one of procedure shall also be determined by a simple majority of Member States eligible to vote.
6. Abstention by a Member State eligible to vote shall not prevent the adoption by the STC on Agriculture, Rural Development, Water and Environment of decisions by consensus.



**RULE 20**  
**Amendment of Decisions**

3. A proposed decision or amendment (s) thereof may at any time, prior to it being submitted to a vote, be withdrawn by the initiator.
4. Any other Member State may reintroduce the proposed decision or amendment that has been withdrawn.

**RULE 21**  
**Point of Order**

1. During deliberations on any matter, a Member State may raise a point of order. The Chairperson, in accordance with these Rules, shall immediately decide on the point of order.
2. The Member State concerned may appeal against the ruling of the Chairperson. The ruling shall immediately be put to a vote and decided upon by simple majority.
3. In raising a point of order, the Member State concerned shall not speak on the substance of the issue under discussion.

**RULE 22**  
**List of Speakers and Use of the Floor**

1. The Chairperson shall, subject to Article 23 of the Constitutive Act, during the debate, grant the use of the floor in the order in which the speakers indicate their intention.
2. A delegation or other invitee shall not have the floor without the consent of the Chairperson.
3. The Chairperson may, during the debate:
  - a) read out the list of speakers and declare the list closed;
  - b) call to order any speaker whose statement deviates from the issue under discussion;
  - c) accord the right of reply to any delegation where in his/her opinion a statement made after the list is closed justifies the right of reply; and
  - d) limit the time allowed to each delegation irrespective of the issue under discussion, subject to sub Rule 4 of this Rule.

4. The Chairperson shall, on procedural questions, limit each intervention to a maximum of three (3) minutes.

**RULE 23**  
**Closure of Debate**

When a matter has been sufficiently discussed, the Chairperson shall close the debate at his/her discretion.

**RULE 24**  
**Suspension or Adjournment of the Meeting**

During the discussion of any matter, a Member State may move for the suspension or adjournment of the meeting. No discussion on such motions shall be permitted. The Chairperson shall immediately put such motion to a vote.

**RULE 25**  
**Order of Procedural Motions**

Subject to Rule 21 of these Rules of Procedure, the following motions shall have precedence in the order listed below, over all other proposals or motions before the meeting:

- a) suspend the meeting;
- b) adjourn the meeting;
- c) adjourn the debate on the item under discussion;
- d) close the debate on the item under discussion.

**RULE 26**  
**Voting Rights**

1. Each eligible Member State shall have one vote.
2. Member States, subject to sanctions under Article 23 of the Constitutive Act, shall not have the right to a vote.

**RULE 27**  
**Consensus and Vote on Decisions**

After the debate has been closed, and there is no consensus, the Chairperson shall immediately put the proposal with all the amendments to a vote. The vote shall not

be interrupted except on a point of order related to the manner in which the vote is being taken.

**RULE 28**  
**Vote on Amendments**

1. When there is no consensus, the Chairperson shall put all amendments to a vote.
2. A proposal shall be considered as an amendment to a text if it adds or removes there from.

**RULE 29**  
**Methods of Voting**

The Methods of Voting shall be determined by the STC on Agriculture, Rural Development, Water and Environment.

**RULE 30**  
**Decisions and Reporting**

3. The Ministerial session of the STC shall take decisions on issues falling within its competence, except where there are attendant financial and structural implications in accordance with Decision/Assembly/AU/Dec.582 (XXV) on streamlining of the AU Summit and its working methods.
4. Without prejudice to paragraph 1 of this Rule, the Executive Council may, if necessary, consider decisions of the STC at the request of any Member State.

**RULE 31**  
**Evaluation and Implementation of Recommendations**

The Commission shall present report to the STC on Agriculture, Rural Development, Water and Environment on the implementation of its previous recommendations.

**RULE 32**  
**Reports and recommendations**

The STC on Agriculture, Rural Development, Water and Environment shall submit reports and recommendations arising from its deliberations to the Executive Council for consideration.

**RULE 33**  
**Implementation**

The STC on Agriculture, Rural Development, Water and Environment may lay down guidelines and supplementary measures to give effect to these Rules.

**RULE 34**  
**Amendments**

The STC on Agriculture, Rural Development, Water and Environment may propose amendments to these Rules to the Executive Council for consideration.

**RULE 35**  
**Entry into Force**

These Rules shall enter into force upon their approval by the Executive Council.

**Adopted by the.....Ordinary Session of the Executive Council, held.....**

**EX.CL/1048(XXXII)**  
**Annex 4**

**RULES OF PROCEDURE OF THE SPECIALIZED TECHNICAL  
COMMITTEE ON TRANSPORT, TRANSCONTINENTAL AND  
INTERREGIONAL INFRASTRUCTURE, ENERGY AND TOURISM**

## GENERAL PROVISION

The Executive Council,

Having regard to the Constitutive Act of the African Union, and in particular Article 14, 15 and 16,

Having regard to Decisions *Assembly/Dec.227 (XII) and Assembly/Dec. 365 (XVII)* on Specialized Technical Committees,

**HAS ADOPTED THESE RULES OF PROCEDURE:**

### **RULE 1** **Definitions**

In these Rules:

- (a) **“Assembly”** means the Assembly of Heads of State and Government of the African Union;
- (b) **“Bureau”** means the Bureau of the Specialized Technical Committee on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism
- (c) **“Chairperson”** means the Chairperson of the Specialized Technical Committee on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism;
- (d) **“Commission”** means the Commission of the African Union;
- (e) **“Constitutive Act”** means the Constitutive Act of the African Union;
- (f) **“Executive Council”** means the Executive Council of Ministers of the African Union;
- (g) **“Member State”** means a Member State of the African Union;
- (h) **“STC”** means a Specialized Technical Committee of the African Union;

- (i) **“Union”** means the African Union established by the Constitutive Act;
- (j) **“Vice-Chairpersons”** unless otherwise specified, means the Vice-Chairpersons of the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism.

## **RULE 2**

### **Status**

The STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism is an Organ of the Union in accordance with Article 5 (1) (g) of the Constitutive Act. It shall be responsible to the Executive Council.

## **RULE 3**

### **Composition**

1. The STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism shall be composed of Ministers in charge of Transport, Infrastructure, Energy and Tourism from Member States or authorities duly accredited by the Governments of Member States.
2. The session of the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism includes Experts from member States responsible for sectors falling within the areas of competence of the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism, whose meetings shall precede the meetings at Ministerial level. Unless specified otherwise, meetings of the experts shall be governed, *mutatis mutandis*, by relevant provisions of these Rules.

## **RULE 4**

### **Designation of Delegates**

Delegation of Member States to sessions of the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism shall be duly designated and accredited representatives of Member States.

## RULE 5 Powers and Functions

1. In addition to the functions provided for in Article 15 of the Constitutive Act of the Union, the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism shall inter-alia:
  - xiii) consider critical issues and challenges relating to the development of continental transport, infrastructure, energy and tourism networks and related services and make recommendations on appropriate remedial actions;
  - xiv) elaborate continental policies, development strategies, regulations and standards as well as programmes and projects of the Union including safety and security standards for the transport, infrastructure, energy and tourism sectors and submit them to the Executive Council and Assembly for their consideration;
  - xv) ensure oversight, monitoring and evaluation of the implementation of decisions taken by the policy organs of the Union on sector and sub-sector policies, programmes and projects;
  - xvi) ensure coordination of programmes and projects undertaken by various regional, continental and international partners in collaboration with the African Union for the development of Africa's transport, infrastructure, energy and tourism networks and related services;
  - xvii) monitor relations with international partners and recommend adoption of advocacy strategies for championing Africa's interests in the fields of transport, infrastructure, energy and tourism in the global economy;
2. The STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism may set up sub-committees and temporary working groups, as it deems necessary.
3. The functioning, mandate, composition of such sub-committees and temporary working groups shall be determined by the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism.



**RULE 6****Venue**

1. The Sessions of the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism shall be held at the Headquarters of the Union, unless a Member State offers to host any such Session.
2. In the event the session is held outside the Headquarters of the Union, the host Member State shall be responsible for all extra expenses incurred by the Commission as a result of holding the session outside the Headquarters.
3. In conformity with Rule 5 (3) of the Rules of Procedure of the Assembly, Member States offering to host sessions of the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism shall not be Member States that are under sanctions and shall be required to meet pre-determined criteria, including adequate logistical facilities and a conducive political atmosphere.
4. Where two (2) or more Member States offer to host a session, the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism shall decide on the venue by simple majority on the basis of rotation and equitable geographical distribution.
5. Where a Member State that had offered to host a session of the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism is unable to do so, the session shall be held at the Headquarters of the Union, unless a new offer is received and accepted by Member States.

**RULE 7****Convening of Sessions**

The Commission will be responsible for convening and servicing all the meetings of the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism.

**RULE 8****Quorum**

1. The quorum for a Ministerial session of the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism shall be two-thirds majority of the Member States eligible to vote.

2. The quorum for meetings of the Experts, Sub-committees or temporary working groups of the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism shall be a simple majority.

### **RULE 9**

#### **Ordinary Sessions**

The STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism shall meet in ordinary session once every two (2) years.

### **RULE 10**

#### **Agenda of Ordinary Sessions**

1. The STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism shall adopt its Agenda at the opening of each session.
2. The Provisional Agenda of an ordinary session shall be drawn up by the Commission in consultation with the Bureau of the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism and may include item(s) proposed by Member States. The Commission shall communicate the provisional agenda and the working documents to Member States at least thirty (30) days before the opening of the session.

### **RULE 11**

#### **Other Agenda Items**

Any additional agenda item, which a Member State wishes to raise at a session of the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism, shall only be considered under the agenda item "Any Other Business". Such agenda items shall be for information only and not subject to debate or decision.

### **RULE 12**

#### **Extraordinary Sessions**

5. The STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism may meet in an extraordinary session subject to availability of funds, at the request of :-
  - (a) the policy organs of the Union,

- (b) the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism itself, or
  - (c) any member state, upon approval by a two-thirds majority of the Member States subject to the availability of funds.
6. The extraordinary sessions shall be held in conformity with Rule 6 above.

### **RULE 13**

#### **Agenda of Extraordinary Sessions**

5. The Commission shall communicate the Provisional Agenda and working documents of an extraordinary session to Member States at least fifteen (15) days before the opening of the session.
6. The Agenda of an extraordinary session shall only comprise of the item(s) requiring the urgent attention of the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism.

### **RULE 14**

#### **Open and Closed Sessions**

All the sessions of the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism shall be closed. The STC Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism may, however decide by simple majority whether any of its sessions shall be open.

### **RULE 15**

#### **Working Languages**

The working languages of the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism shall be those of the Union.

### **RULE 16**

#### **Bureau**

1. The STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism shall, on the basis of rotation and geographical distribution, elect after due consultations, a Chairperson. He/she shall be assisted by other members of the Bureau, namely three (3) Vice-Chairpersons as well as a

Rapporteur, elected on the basis of agreed geographical distribution and after due consultations.

2. The Members of the Bureau shall hold office for a period of two (2) years.
3. The Bureau will meet once every year.

### **RULE 17**

#### **Duties of the Chairperson**

9. The Chairperson shall:
  - a) preside over all the proceedings of the Ordinary and Extraordinary sessions;
  - b) open and close the sessions;
  - c) submit for approval the records of the sessions;
  - d) guide the proceedings;
  - e) submit to a vote matters under discussion and announce the results of the vote taken;
  - f) rule on points of order.
10. *The Chairperson shall ensure order and decorum during the proceedings of the sessions.*
11. In the absence of the Chairperson or in case of a vacancy, the vice-Chairpersons or the Rapporteur in order of their election shall act as the Chairperson.
12. The Chairperson shall attend the sessions of the Executive Council and take part in the annual meeting of the STCs Coordination Mechanism.

### **RULE 18**

#### **Attendance and Participation**

1. In accordance with Rule 4, the Ministers in charge of Transport, Infrastructure, Energy and Tourism shall attend and participate personally in the sessions. In the event that they are not in a position to attend personally, duly accredited representatives shall represent them.
2. The Representatives of the Organs of the Union and of Regional Economic Communities (REC) shall be invited to attend the sessions of the STC on

Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism.

3. The STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism may invite, as Observer, any person or Institution to attend its sessions. Such observer may be invited to make oral or written interventions but shall not be entitled to vote.

### **RULE 19**

#### **Majority Required for Decisions**

1. The STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism shall take all its decisions by consensus or, failing which:
  - a) at the Ministerial level, by a two-thirds majority of the Member States eligible to vote;
  - b) at the Experts' level, by a simple majority of the Member States eligible to vote.
2. Decisions on questions of procedure shall be taken by a simple majority of Member States eligible to vote.
3. Decisions on whether or not a question is one of procedure shall also be determined by a simple majority of Member States eligible to vote.
4. Abstentions by a Member State eligible to vote shall not prevent the adoption by the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism of decisions by consensus.

### **RULE 20**

#### **Amendment of Decisions**

1. A proposed decision or amendment (s) thereof may at any time, prior to it being submitted to a vote be withdrawn by the initiator.
2. Any other Member State may reintroduce the proposed decision or amendment that has been withdrawn.

**RULE 21**  
**Point of Order**

1. During deliberations on any matter, a Member State may raise a point of order. The Chairperson, in accordance with these Rules, shall immediately decide on the point of order.
2. The Member State concerned may appeal against the ruling of the Chairperson. The ruling shall immediately be put to a vote and decided upon by simple majority.
3. In raising a point of order, the Member State concerned shall not speak on the substance of the issue under discussion.

**RULE 22**  
**List of Speakers and Use of the Floor**

1. The Chairperson shall, subject to Article 23 of the Constitutive Act, during the debate, grant the use of the floor in the order in which the speakers indicate their intention.
2. A delegation or other invitee shall not have the floor without the consent of the Chairperson.
3. The Chairperson may, during the debate:
  - a) read out the list of speakers and declare the list closed;
  - b) call to order any speaker whose statement deviates from the issue under discussion;
  - c) accord the right of reply to any delegation where in his/her opinion a statement made after the list is closed justifies the right of reply; and
  - d) limit the time allowed to each delegation irrespective of the issue under discussion, subject to sub Rule 4 of this Rule.
4. The Chairperson shall, on procedural questions, limit each intervention to a maximum of three (3) minutes.

**RULE 23**  
**Closure of Debate**

When a matter has been sufficiently discussed, the Chairperson shall close the debate at his/her discretion.

**RULE 24**  
**Suspension or Adjournment of the Meeting**

During the discussion of any matter, a Member State may move for the suspension or adjournment of the meeting. No discussion on such motions shall be permitted. The Chairperson shall immediately put such motion to a vote.

**RULE 25**  
**Order of Procedural Motions**

Subject to Rule 21 of these Rules of Procedure, the following motions shall have precedence in the order listed below, over all other proposals or motions before the meeting:

- a) suspend the meeting;
- b) adjourn the meeting;
- c) adjourn the debate on the item under discussion;
- d) close the debate on the item under discussion.

**RULE 26**  
**Voting Rights**

1. Each eligible Member State shall have one vote.
2. Member States, subject to sanctions under Article 23 of the Constitutive Act, shall not have the right to a vote.

**RULE 27**  
**Consensus and Vote on Decisions**

After the debate has been closed, and there is no consensus, the Chairperson shall immediately put the proposal with all the amendments to a vote. The vote shall not be

interrupted except on a point of order related to the manner in which the vote is being taken.

### **RULE 28**

#### **Vote on Amendments**

1. When there is no consensus, the Chairperson shall put all amendments to vote.
2. A proposal shall be considered as an amendment to a text if it adds or removes there from.

### **RULE 29**

#### **Methods of Voting**

The methods of voting shall be determined by the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism.

### **RULE 30**

#### **Decisions and Reporting**

1. The Ministerial session of the STC shall take decisions on issues falling within its competence, except where there are attendant financial and structural implications in accordance with Decision/Assembly/AU/Dec.582 (XXV) on streamlining of the AU Summit and its working methods.
2. Without prejudice to paragraph 1 of this Rule, the Executive Council may, if necessary, consider decisions of the STC at the request of any Member State.

### **RULE 31**

#### **Evaluation and Implementation of Recommendations**

The Commission shall present report to the STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism on the implementation of its previous recommendations.



**RULE 32**  
**Implementation**

The STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism may lay down guidelines and supplementary measures to give effect to these Rules.

**RULE 33**  
**Amendments**

The STC on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism may propose amendments to these Rules to the Executive Council for consideration.

**RULE 34**  
**Entry into Force**

These Rules shall enter into force upon their approval by the Executive Council.

**Adopted by the.....Ordinary Session of the Executive Council, held.....**

**EX.CL/1048(XXXII)**  
**Annex 5**

**DRAFT**  
**STATUTE OF THE TRUST FUND**  
**FOR VICTIMS OF HISSÈNE HABRÉ'S CRIMES**

**DRAFT**  
**STATUTE OF THE TRUST FUND FOR VICTIMS OF**  
**HISSÈNE HABRÉ'S CRIMES**

**PREAMBLE:**

**The Assembly,**

**Recalling** Decision Assembly/AU/Dec.103 (VI) adopted by the Assembly of the Union in January 2006, in Khartoum, The Sudan, on the establishment of the Extraordinary African Chambers (EAC);

**Recalling** Decision Assembly/AU/Dec.401 (XVIII) adopted on 31 January 2012 by the Assembly of Heads of State and Government of the African Union requesting the African Union and the Government of Senegal to consider the practical modalities and the legal and financial implications of a trial for international crimes committed on Chadian territory during the period from 07 June 1982 to 1 December 1990;

**Recalling** Decision Assembly/AU/Dec.615 (XXVII) adopted by the Assembly of the Union in July 2016 in Kigali, Rwanda, on the establishment of a Trust Fund on reparations for the rightful victims of crimes within the jurisdiction of the Extraordinary African Chambers;

**Recalling** the Statute of the Extraordinary African Chambers within Senegalese jurisdiction for proceedings for international crimes committed on the territory of the Republic of Chad during the period from 7 June 1982 to 1 December 1990;

**Noting** the objectives and principles of the African Union on the respect of democratic principles, human rights, the rule of law and good governance;

**Bearing in mind** Articles 27 and 28 of the Statute of the Extraordinary African Chambers which provides for reparations and the establishment of a Trust Fund for victims;

**Taking note** of the judgements rendered by the Extraordinary African Chambers on 29 July 2016 and 27 April 2017 awarding reparations to the victims of Hissène Habré;

Have agreed as follows:

## **Article 1 Definitions**

For the purpose of this Statute:

«**African Union**» or «**Union**» means the African Union established by the Constitutive Act adopted on 11 July 2000 and which entered into force on 26 May 2001;

«**Assembly**» means the Assembly of Heads of State and Government of the African Union;

«**Board**» means the Board of Directors of the Trust Fund;

«**Chairperson**» means the Chairperson of the Board of Directors of the Trust Fund;

«**Constitutive Act**» means the Constitutive Act of the African Union;

«**Executive Council**» means the Executive Council of Ministers of the Union;

«**Fund**» means the Trust Funds for victims of Hissène Habré's crimes;

«**Member States**» means Member States of the Union;

«**Secretariat**» means the Secretariat of the Trust Funds for victims of Hissène Habré's crimes;

«**Statute**» means the Statute of the Trust Fund for victims of Hissène Habré's crimes;

«**Victim**» means victim as defined in the ruling of the Extraordinary African Chambers of 27 April 2017.

## **Article 2 Establishment**

1. The Trust Fund for victims of the crimes of Hissène Habré shall be established pursuant to Articles 27 and 28 of the Statute of the Extraordinary African Chambers and Decision Assembly/AU/Dec.615 (XXVII), adopted by the Assembly of the Union in July 2016 in Kigali, Rwanda.

2. The Fund shall have legal personality.

### **Article 3**

#### **Purpose**

1. The purpose of this Statute is to establish an institutional framework for compensation and reparations for victims of Hissène Habré's crimes.
2. The Trust Fund shall be established to serve as the implementing body for the decision on reparations pronounced by the Extraordinary African Chambers, in order to mobilize the necessary funds and pay the said reparations to the victims of Hissène Habré's crimes.

### **Article 4**

#### **Principles**

The principles of confidentiality, transparency, non-discrimination, impartiality, efficiency, independence, and equity shall guide the management and control structures for the disbursement of funds and the pursuit of activities within the scope of their respective mandates.

### **Article 5**

#### **Structure of the Fund**

The governance structures of the Fund shall be as follows:

- (a) the Board of Directors; and
- (b) the Secretariat.

### **Article 6**

#### **Composition of the Board of Directors**

1. The Board of Directors shall be composed of the following members:
  - a) One (1) representative of the African Union Commission (AUC);
  - b) One (1) representative of the Republic of Chad;
  - c) Two (2) representatives of victims from the three major victims' associations;
  - d) One (1) representative from a Civil Society Organization with proven expertise, in consultation with the victims' legal counsel.

2. The participation of members of victims' associations shall be based on rotation according to alphabetical order, for a period of six (6) months, between the said associations and according to the modalities agreed upon by them.
3. Two (2) additional representatives of victims' associations may be invited to take part in the deliberations of the Board as observers.
4. One (1) or several representatives of contributors shall participate in the Board sessions as observers.
5. The Board of Directors may admit other members as observers.
6. The Legal Counsel of the African Union or his/her representative shall attend Board meetings to provide any legal advice that may be necessary.
7. The Secretary of the Fund shall act as the Secretariat of the Board.
8. Members of the Board must demonstrate high standards of integrity, impartiality and proven skills in the area of compensation and reparations for victims within the meaning of the Statute.

### **Article 7**

#### **Functions of the Board**

1. The functions of the Board shall be to:
  - a) Decide on the allocation by the Secretariat of the proceeds of confiscated property and all other assets of the convicted person to the Fund;
  - b) Direct the Secretariat on the necessary measures to be taken, particularly by the mechanism for judicial assistance, to locate and recover assets belonging to the convicted person, whose direct link to the latter can be established in implementation of the ruling on his case;
  - c) Determine the guidelines and actions to be carried out by the Secretariat with a view to implementing collective and moral reparations, in collaboration with the Government of Chad, interested States and organizations, as well as the associations of civil parties;

- d) Consider the assets awarded as compensation under Articles 27 and 28 of the Statute of the Extraordinary African Chambers for receipt by the Secretariat;
  - e) Consider requests for recognition of Victim Status from persons who did not participate in the proceedings and those whose requests were rejected pursuant to the ruling of the Extraordinary African Chambers of 27 April 2017;
  - f) Decide on the organisation by the Secretariat of donors' conferences with a view to collecting voluntary contributions to the Fund;
  - g) Supervise the activities of the Secretariat relating to the collection of voluntary contributions and ensure that the Secretariat makes sustained efforts to raise funds;
  - h) Approve the draft budget of the Fund for its functioning and activities related to its mandate;
  - i) Decide on the disbursement and actual payment of reparations and compensation to victims and their beneficiaries;
  - j) Carry out supervision and monitoring in order to ensure responsible and appropriate use of funds in conformity with the applicable regulations of the African Union;
  - k) Adopt the Handbook of Procedures proposed by the Secretariat;
  - l) Provide strategic guidelines for the Secretariat in conformity with the relevant rules and procedures of the African Union;
  - m) Consider the reports and proposals of the Secretariat;
  - n) Report to the Executive Council of the African Union through the Commission;
  - o) Define the structure, the operating procedures of the Secretariat and the remuneration of its Members.
2. The Fund may call on the assistance of independent experts within the framework of its mandate.

## **Article 8**

### **Chair of the Board**

The Board shall be chaired by the Representative of the African Union Commission, as appointed by the Chairperson of the Commission, taking into account the criteria of competence, probity and integrity.

## **Article 9**

### **Meetings**

1. The Board of Directors shall meet in ordinary sessions at least once every quarter during each year, at the Headquarters of the Secretariat.
2. The Board may meet in extraordinary sessions when circumstances so require, and the Chairperson shall determine the start date, duration and venue of each extraordinary session. Extraordinary sessions may be held in person, by telephone, internet or video conference. The Chairperson may consult the Board Members, by telephone or via the Internet, on issues of form and procedure, as well as on any other practical arrangements.
3. The Secretariat shall propose, in consultation with the Chairperson, the provisional agenda of ordinary and extraordinary sessions. The Secretariat may receive proposals for items to be included on the agenda from other Board members. Any proposed item shall be accompanied by an explanatory statement, and where possible, documents or a draft decision. All documents shall be circulated to Board members at least one month prior to the session. The provisional agenda shall be submitted for consideration by the Board of Directors at the beginning of the relevant session.
4. The Executive Secretary of the Fund shall attend sessions of the Board as a resource person.
5. The Board may invite other persons with relevant skills to attend some of its sessions, if need be, and make oral or written statements and advise on issues under consideration.
6. Meetings of the Board shall be held in closed sessions, unless it is decided otherwise. Decisions and minutes of the Board shall be made public, subject to confidentiality, and shall be communicated to interested parties. At the end of a meeting of the Board of Directors, the Chairperson may make a communication through his/her Secretariat.



7. The quorum for a Board meeting shall be an absolute majority (50 + 1).

### **Article 10 Working Languages**

1. The working languages of the Board shall be English and French.
2. The Board may decide that one of the other working languages of the African Union be used when the language is understood and spoken by the majority of persons concerned, and its use will facilitate the conduct of the deliberations of the Board.

### **Article 11 Decisions of the Board**

1. Decisions of the Board shall be taken at ordinary or extraordinary sessions.
2. Every effort shall be made to reach decisions by consensus. If a consensus cannot be reached, all decisions shall be adopted by the simple majority of voting Board members.
3. The Board shall adopt its rules of procedure.

### **Article 12 Remuneration of Board Members**

1. Members of the Board shall not receive any remuneration to serve on the Board, apart from the reimbursement of eligible expenses relating to activities of the Board, in conformity with the Handbook of Procedures of the Fund.
2. Reimbursements shall be made from voluntary contributions to the General Fund.

### **Article 13 Secretariat**

1. The Chairperson of the Commission, on the recommendation of the Board, shall appoint the Chief Executive of the Secretariat;
2. The functions of the Secretariat shall be as follows:

- a) Provide the necessary assistance for the smooth functioning of the Board;
- b) Implement the reparations decided on by the Board, in conformity with the Handbook of Procedures;
- c) Allocate the proceeds of confiscated property or any other assets of the convicted person to the Fund in conformity with the decisions of the Board;
- d) Take all necessary measures, pursuant to decisions by the Board, particularly by the mechanism for legal assistance, to locate and recover assets belonging to the convicted person, whose direct link to the latter can be established in implementation of the ruling on his case;
- e) Seek, pursuant to the Board's decision, with the Government of Chad, interested States and organizations, as well as associations of civil parties, the realization and implementation of collective and moral reparations;
- f) Receive, pursuant to the Board's decision, the assets awarded as compensation under Articles 27 and 28 of the Statute of the Extraordinary African Chambers;
- g) Receive and submit to the Board for consideration, requests for recognition of Victim Status from persons who did not participate in the proceedings and those whose requests were rejected pursuant to the ruling of the Extraordinary African Chambers of 27 April 2017;
- h) Organize, pursuant to the Board's decision, donors' conferences to obtain voluntary contributions for the Fund;
- i) Seek and collect voluntary contributions;
- j) Submit the draft budget of the Fund to the Board for adoption;
- k) Ensure the disbursement and actual payment of reparations and compensation to victims and their beneficiaries, in accordance with the decisions of the Board;
- l) Propose a Handbook of Procedures for adoption by the Board;
- m) Prepare regular reports for consideration by the Board;

3. The Secretariat may call on the assistance of independent experts within the framework of its mandate.
4. The Headquarters of the Secretariat shall be based in N'Djamena, Republic of Chad. The modalities for the headquarters of the Executive Secretariat shall be determined in a Headquarters Agreement signed between the Republic of Chad and the the African Union Commission.

#### **Article 14** **Submission of Reports**

The Secretariat shall submit half-yearly reports to the Board on:

- a) its activities;
- b) the financial management of the Fund;
- c) implementation of decisions of the Board.

#### **Article 15** **Financing of the Fund**

1. The Fund shall be financed from the recovering of the assets of persons sentenced in accordance with the verdict of the Extraordinary Chambers of Africa, including through the Judicial mutual assistance mechanism and by the voluntary contributions of Member States, foreign governments, international institutions, non-governmental organisations and other entities willing to support the victims.
2. The Board shall, within the framework of its annual report to the Executive Council of the African Union on the activities and projects of the Fund, appeal as many times as necessary, for voluntary contributions to the Fund.
3. All other voluntary contributions received by the Fund should emanate from sources that conform to the Financial Rules and Regulations of the AU.
4. The Fund shall accept only subsidies, donations or other benefits that conform to the objectives of the AU.
5. The Board shall develop mechanisms that would enhance the verification of the origin of money received by the Fund.
6. Voluntary contributions from Governments shall not be transferred. Voluntary contributions emanating from other sources may be transferred by the donor

to a maximum of one-third of the contribution, and provided that such transfer:

- a) Benefit the victims and, when individuals are concerned, to their families;
  - b) Will not lead to discrimination based on race, colour, gender, language, religion, political leaning or other, nationality, ethnic group or other, assets, birth or any other status, on condition that the contributions are intended to assist those who are enjoying a specific protection in accordance with international law are not considered as discriminatory.
7. When a contribution is transferred and where the corresponding objective cannot be attained, the Board shall transfer the contribution to its general account subject to the consent of the donor.
8. The Council regularly reviews the nature and level of voluntary contributions to ensure that the conditions in paragraph 6 are consistently met..
9. The Board shall not accept voluntary contributions:
- a) That are deemed incompatible with the objectives and activities of the Fund;
  - b) That are deemed to have been transferred in a manner that does not conform to the provisions of Paragraph 6. Before turning down such a contribution, the Board shall request from the donor the possibility of cancelling the transfer or to modify it in order to make it acceptable;
  - c) Which would compromise the independence of the Fund;
  - d) Whose distribution would lead to a clearly unequal distribution of the Fund and available assets to the various groups of victims.

### **Article 16**

#### **Functioning of the Fund**

1. The bank accounts of the Fund shall be opened in accordance with the Financial Rules and Regulations of the African Union and with the Procedural Handbook of the Fund.
2. The accounting system of the Fund shall enable the separation of funds in order to facilitate the introduction of transferred contributions.

3. The resources of the Fund shall not be used for purposes other than those related to the fulfillment of the mandate of the Fund.
4. The Fund shall be audited in accordance with the Financial Rules and Regulations of the AU.
5. The Secretariat shall receive the resources that the Extraordinary African Chambers may decide to transfer to the Fund. It shall take note of the sources and the amounts received as well as all other information relating to the use of the money.

### **Article 17** **Beneficiaries**

The resources of the Fund shall serve to compensate:

- a) The victims of the crimes of Hissène Habré that fall under the jurisdiction of the Extraordinary African Chambers, as set out in the verdict of the Extraordinary African Chambers.
- b) People who did not participate in the procedure and those whose applications have been rejected, in accordance with the verdict of the Extraordinary African Chambers of 27 April 2017.

### **Article 18** **General Principles**

1. The Board of Directors may decide to consult the victims and, in the case of individuals, their families as well as their legal representatives and may consult any competent expert or any organisation of experts within the framework of the conduct of its activities and projects.
2. For the purposes of this Statute and in accordance with the Procedural Handbook and the verdict of the Extraordinary African Chambers, the Fund shall be considered as seized when the Board of Directors shall deem it necessary to offer a physical or psychological reparation or material support to victims and their families.

### **Article 19 Sensitization**

1. Once the Fund goes operational, the Chairman of the Board of Directors shall issue a statement through his/her Secretariat.
2. The statement may indicate the basis of its activities and its projects, and if need be, provide any additional information. An appeal for voluntary contributions may accompany the statement.
3. The Board of Directors shall launch a sensitization and information campaign which it shall deem appropriate with a view to increasing voluntary contributions. The Board may, in this regard, solicit assistance from the Secretariat.

### **Article 20 Verification**

1. The Secretariat shall ensure that all persons who submit applications to the Fund are part of the beneficiaries, in accordance with the principles set out in the verdict of the Extraordinary African Chambers.
2. Subject to the stipulations set out in the verdict of the Extraordinary African Chambers, the Board of Directors shall define the norms provided for the verification exercise, taking into account the current situation of the group of beneficiaries and available evidence.

### **Article 21 Disbursement of Reparations**

1. The Fund shall define the modalities for the disbursement of reparations to beneficiaries taking into account their current situation and their place of residence, in accordance with the principles set out in Article 4.
2. The Fund may decide to resort to the services of middlemen in order to facilitate the disbursement of reparations, if need be, provided it would facilitate access to groups of beneficiaries and avoid conflicts of interests. The middlemen may be national or international non-governmental organisations working in close proximity with groups of beneficiaries and representatives of beneficiaries.
3. The Secretariat should put in place procedures that would ensure that reparation allowances have been duly received by beneficiaries, in

accordance with the implementation plan of a disbursement programme. The beneficiaries shall be bound to acknowledge receipt of the reparation in writing or by other means of identification and these registers should be preserved by the Secretariat. Additional random checks and the monitoring of the reparation register should be executed in order to avoid unexpected difficulties or the risk of fraud and corruption.

## **Article 22**

### **Information Requirements**

1. The Board of Directors shall submit an annual written report on the activities of the Fund to the Executive Council through the Commission.
2. The annual report of the Board of Directors shall be made public, subject to confidentiality.

## **Article 23**

### **Privileges and Immunities**

1. The Funds, its representatives and its staff shall enjoy, on the territory of each Member State, the privileges and immunities provided for in the 1965 General Convention on Privileges and Immunities of the Organisation of African Unity and other relevant international instruments.
2. The Headquarters Agreement concluded between the Fund and the host country of the Fund, shall govern the relations between the Fund and the host country.

## **Article 24**

### **Amendments**

Amendments to this Statute may be proposed by the Board of Directors and shall enter into force upon adoption by the Assembly of the Union.

## **Article 25**

### **Entry into Force**

This Statute shall enter into force upon its approval by the Assembly of the Union.

**EX.CL/1048(XXXII)**

**Annex 6**

**DRAFT AMENDMENT TO STATUTES OF THE ECONOMIC, SOCIAL  
AND CULTURAL COUNCIL OF THE AFRICAN UNION (ECOSOCC),  
JULY 2004 AND RULES OF PROCEDURE**



**DRAFT AMENDMENT TO STATUTES OF THE ECONOMIC, SOCIAL AND  
CULTURAL COUNCIL OF THE AFRICAN UNION (ECOSOCC), JULY 2004 AND  
RULES OF PROCEDURE**

**Draft Amendment to Statutes of the Economic, Social and Cultural Council of the  
African Union (ECOSOCC)**

**Article 10  
The Standing Committee**

4. The term of office of the members comprising the Standing Committee shall be two (2) years renewable only once.

**Article 14  
Seat of the ECOSOCC**

1. The seat of the Economic Social and Cultural Council of the African Union and its Secretariat shall be located in the Republic of Zambia.
2. The Economic Social and Cultural Council may convene in the territory of any Member State at the invitation of that Member State.

**Draft Amendment to Rules of the Economic, Social and Cultural Council of the  
African Union (ECOSOCC)**

**Rule 37  
Seat of the ECOSOCC**

1. The seat of the Economic Social and Cultural Council of the African Union and its Secretariat shall be located in the Republic of Zambia.

**EX.CL/1048(XXXII)**  
**Annex 7**

**DRAFT STATUTE OF THE AFRICAN INSTITUTE  
FOR REMITTANCES (AIR)**

**DRAFT STATUTE OF THE AFRICAN INSTITUTE  
FOR REMITTANCES (AIR)  
EX.CL/Dec.683(XX)**

**PREAMBLE**

We, the Member States of the African Union;

**MINDFUL** of the Executive Council Decision EX.CL/ Dec. 683(XX) in January 2012, which acknowledges the establishment of an African Institute for Remittances (AIR) will facilitate remittances leverage for economic and social development in Africa;

**BEARING IN MIND** the resolution (Resolution 892(XLV)) of the 5<sup>th</sup> AU-ECA Joint Annual Meeting of the AU Conference of Ministers of Economy and Finance and ECA Conference of African Ministers of Finance, Planning and Economic Development, in March 2012, which recognized remittances, if well harnessed and formulated, could contribute to growth and development in Africa;

**ACKNOWLEDGING** the Declaration of the Global African Diaspora Summit, Sandton, Johannesburg, South Africa, 25 May 2012, (Diaspora/Assembly/AU/ /Decl (I)) that adopted the African Institute for Remittances as one of the five Legacy Projects of the African Union;

**RECALLING** our Decision (Assembly/AU/Dec.440(XIX)) adopted during the 19<sup>th</sup> Ordinary Session in July 2012, which endorsed the establishment of the African Institute for Remittances;

**CONSIDERING** the Executive Council Decision EX.CL/ Dec. 808(XXIV) in January 2014, that accepted the offer of the Republic of Kenya to host the African Institute for Remittances (AIR);

**HEREBY AGREE AS FOLLOWS:**

**Article 1  
Definitions**

In this Statute:

“**AIR**” means the African Institute for Remittances;

**“Assembly”** means the Assembly of Heads of State and Government of the African Union;

**“AU” or “Union”** means the African Union established by the Constitutive Act of the African Union adopted by the Heads of States and Government of the Organization of African Unity (OAU) in Lomé, Togo, in July, 2000;

**“Board”** means the Governing Board of the AIR;

**“Constitutive Act”** means Constitutive Act of the African Union adopted by the Heads of States and Government of the Organization of African Unity (OAU) in Lomé, Togo, in July, 2000;

**“Commission”** means the Commission of the African Union;

**“Development Partners”** means the multilateral institutions, development agencies, donors, foundations and others that have contributed financially or otherwise to the establishment and continue supporting the Institute;

**“Executive Council”** means the Council of Ministers of the African Union;

**“Forum”** means the Consultative Forum of the AIR;

**“Host country”** means the Government of the Republic of Kenya;

**“Institute”** means the African Institute for Remittances (AIR);

**“Member State”** means a Member State of the African Union;

**“Policy Organs”** means the Assembly, the Executive Council and the Permanent Representatives Committee (PRC) of the African Union;

**“Private Sector”** means the Remittances Service Providers (RSPs), i.e., Banks, Telecoms, Money Transfer Operators (MTOs), Non-bank Financial Institutions such as Microfinance Institutions, Saving and Credit Cooperatives (SACCOs) and Post Offices;

**“Remittances” means transactions** between residents and non-residents involving financial and non-financial items that represent foreign income to households of an economy from households or entities of another economy;

“**Secretariat**” means the AIR Secretariat;

“**Stakeholders**” means organizations, individuals and or anyone who has interest on African Remittances and or on the African Institute for Remittances (AIR);

“**Statute**” means the present Statute of the African Institute for Remittances;

“**STC**” means the AU Specialized Technical Committee on Finance, Monetary Affairs, Economic Planning and Integration;

In this Statute, words expressed in the singular term shall be construed to include the plural and vice versa.

## **Article 2**

### **Establishment of the African Institute for Remittances**

1. The AIR is hereby established as a Specialized Technical Office of the Commission.
2. The objectives, structure, mandate and functions of the AIR shall be defined as herein in the Statute.

## **Article 3**

### **Legal Status of AIR**

The AIR shall possess full juridical personality and, in particular, full capacity:

- a) To enter into agreements with members, non-members and other international organizations.
- b) To contract;
- b) To acquire and dispose of immovable and movable property; and
- c) To institute and to respond to legal proceedings.

## **Article 4**

### **Objectives**

The objectives of the AIR shall be to:

- a) Improve the statistical measurement, compiling and reporting capabilities of Member States on remittances data;
- b) Promote appropriate changes to the legal and regulatory frameworks for remittances, payment and settlement systems as well as use of innovative technology so as to promote greater competition and efficiency, resulting in reductions of transfer costs;
- c) Leverage the potential impact of remittances on social and economic development of Member States, as well as promoting financial inclusion.

### **Article 5**

#### **Functions and Activities of the AIR**

1. In order to attain the above objectives, the AIR shall function in accordance with the provisions of this Statute;
2. The functions and activities of the AIR shall be to:
  - a) Assist Member States, remittance senders and recipients and other stakeholders to develop and implement concrete strategies and operational instruments to leverage remittances as development tools for poverty eradication;
  - b) Provide technical assistance to government institutions (Central Banks, Ministries, financial and non-financial institutions) on establishing and operating the necessary regulatory frameworks on remittances;
  - c) Promote adoption and implementation of the General Principles for International Remittance Services (GPs) by Member States, including transparency and consumer protection, an accessible payment systems infrastructure, an enabling legal and regulatory environment, a balanced market structure and competition as well as sound governance and risk management;
  - d) Conduct empirical research on remittance markets, to address the main market inefficiencies and explore best practices in the area of remittances and disseminate findings;
  - e) Collect and disseminate data on remittances and manage the remittances price database including Send Money Africa (SMA);
  - f) Engage with private sectors players to address market failure, particularly to act as a catalyst in fostering investment in remittances, innovating in service delivery and promoting technology usage by Remittance Service Providers (RSPs) including non-bank financial institutions;

- g) Improve capacities of non-bank financial institutions to strengthen their ability to offer remittance services in rural areas;
- h) Foster effective ways of networking, coordination and cooperation among Member States and stakeholders to address remittances issues in a more strategic and programmatic manner;
- i) Enable development of content and technology platforms for country-based payment and settlement systems for remittances;
- j) Promote policies that improve the development impact of remittances;
- k) Establish an Information center on remittances in Africa;
- l) Establish partnerships with Remittances Sending Countries to facilitate the transfer and management of remittances, to address existing challenges and to harmonise bilateral or multilateral policies and agreements.

### **Article 6** **Governance of the AIR**

The AIR shall be governed by the following bodies:

- a) The Governing Board;
- b) The Consultative Forum;
- c) The Secretariat.

### **Article 7** **The Governing Board (The Board)**

1. The Board shall oversee the management of the AIR.
2. The Board shall meet in ordinary session once every year.
3. The Board may also be convened in an extraordinary session, in conformity with its rules of procedure, subject to availability of funds, at the request of:
  - a) One half of its members;
  - b) The policy organs of the Union; or
  - c) The Secretariat, in the event of a situation that necessitates holding of the Board meeting.

### **Article 8** **Board Composition Tenure of Office**

1. The Board shall be composed of eleven (11) members, as follows:
  - a) Five (5) Ministers of Finance and Economic Planning representing the five Regions of the African Union nominated by their Regions, failing which they shall be nominated by the STC;
  - b) A representative of the Commission;
  - c) A representative of the Host country;
  - d) Two (2) Governors of Central Banks representing the Association of African Central Banks (AACB);
  - e) A representative of the African Private Sector;
  - f) Chairperson of the Consultative Forum.
2. The Legal Counsel of the Commission or his/her representative shall be a non-voting member of the Board to provide legal advice as may be required;
3. The Board may invite such expertise, from relevant professionals, as may be necessary.
4. The Executive Director of the AIR shall act as the Secretary of the Board.
5. Where applicable, the term of office of members of the Board shall be a nonrenewable period of three (3) years;
6. The Board shall elect from among its members, one of the Five (5) Ministers as its Chairperson, on a regional rotational basis for three (3) years.
7. In the event of the Chairperson vacating his/her position before the expiration of his/her tenure of office for whatever reason, he/she shall be replaced by a Minister to be designated by his/her Region.

### **Article 9**

#### **Functions of the Board**

The functions of the Board shall be to:

- a) Examine and consider the plan of action and activities of the AIR;
- b) Provide strategic guidance to the Secretariat;
- c) Oversee the management of the AIR;



- d) Adopt its own rules of procedure and the rules of procedure of the Forum;
- e) Recommend amendments to this Statute;
- f) Ensure that Remittances agenda is integrated with continental, regional and national development strategy;
- g) Assist the Secretariat in mobilizing funds;
- h) Submit annual reports to the Policy Organs on implemented activities and achievements of the AIR.

### **Article 10**

#### **Quorum and Decision Making Procedures of the Board**

1. The quorum for Board meetings shall be two thirds of the total membership of the Board.
2. The Board shall adopt its own Rules of Procedure.

### **Article 11**

#### **The Consultative Forum (The Forum)**

The Forum shall serve as an Advisory and Technical Body of the AIR.

### **Article 12**

#### **Composition and Tenure of the Forum**

1. The Forum shall be composed of Twenty three (23) members as follows:
  - a) Two (2) Representative of the Commission;
  - b) Five (5) representatives from the Diaspora/Migrant organizations representing each of the five Regions of the African Union;
  - c) Five (5) representatives from development partners;
  - d) Three (5) representatives from the Private Sector (Banks, Money Transfer Operators, etc.) organizations;
  - e) Five (5) representatives from the Association of African Central Banks (AACB);
  - f) A representative from the Host Country;
2. The Executive Director of the AIR shall serve as the Secretary of the Forum;
3. The Forum may invite such expertise from relevant stakeholders as necessary.

4. Members of the Forum shall serve for a non-renewable term of three (3) years
5. The Forum shall elect its own Chairperson and Vice Chairperson by a simple majority and they shall serve for a non-renewable term of three (3) years and two (2) years respectively.

### **Article 13** **Functions of the Forum**

The functions of the Forum shall be to:

- a) Recommend strategic/activity plans to the Board and the Secretariat;
- b) Advise the Board and Secretariat on emerging issues and other related matters on remittances;
- c) Advise the Board and the Secretariat on the implementation of decisions by the Policy Organs.

### **Article 14** **Meetings, Quorum, Decision Making Procedures of the Forum**

1. The quorum for the Forum meetings shall be two thirds of the total membership of the Forum.
2. The Forum shall adopt its own Rules of Procedure.

### **Article 15** **The Secretariat**

1. The AIR shall be managed and administered by an Executive Director.
2. The Executive Director shall be appointed by the Commission on the approval of the Board and shall serve for a period of four (4) years;
3. The Executive Director shall not serve for a period of more than 2 terms;
4. Under the supervision of the Director for Social Affairs of the Commission, the Executive Director shall be responsible for:

- a) the implementation of the decisions of the policy organs of the Union and the Board of the AIR;
- b) the implementation of the Statute of the AIR, as well as, other conventions and decisions of the Governing Board of the AIR;
- c) the preparation of the Annual budget of the AIR;
- d) oversee the recruitment process of staff members, pursuant to the Staff Regulations and Rules of the Commission except for the appointment of the Executive Director as stipulated in this Statute.

### **Article 16**

#### **Function of the Executive Director**

The functions of the Executive Director shall be to, inter-alia:

- a) Direct and Supervise the overall management of the AIR;
- b) Act as authorizing officer of the AIR;
- c) Act as the AIR's official representative;
- d) Implement directives from the Board and the Commission as may be applicable;
- e) Prepare and submit to the Board and the Commission the annual activity programs, budget, financial statements and operational report of the AIR;
- f) Propose to the Board strategic alliances and partnerships for the joint execution of programs and activities with development partners as well as mobilization of funding;
- g) Organize the collection and dissemination of remittance related researches;
- h) Ensure the production and publication of periodical bulletin of the AIR;
- i) Oversee the execution of the Host Country Agreement;
- j) Act as Secretary of the Board;
- k) Perform any other functions as may be assigned in line with the objectives of the AIR.

### **Article 17**

#### **Budget**

1. The budget of the AIR shall be within the budget of the Union.
2. In addition to the regular budget of the Union, other sources of funding the AIR may include:

- a) Voluntary contributions from AU Member States and partners;
  - b) Contributions from Development Partners of the Union and the Commission;
  - c) Contributions from the Private Sector;
  - d) National and regional financial institutions and other financing mechanisms;
  - e) AU Science, Technology and Innovation Fund when established; and
  - f) Any other source of funding in accordance with AU Rules.
3. The budget calendar of the AIR shall be that of the Union.

**Article 18**  
**Headquarters of AIR**

1. The headquarters of the AIR shall be in Nairobi, in the Republic of Kenya.
2. The Host Country Agreement shall govern the relations between AIR and the Host Country.
3. The Secretariat may authorize the convening of meetings and conferences in the territory of any Member State at the invitation of that Member State.

**Article 19**  
**Code of Conduct**

1. In the performance of their duties, the Executive Director and any other staff of the AIR shall not accept nor receive instructions from any government or any authority other than the AIR.
2. Each member state shall undertake to respect the exclusive nature of the responsibilities of the Executive Director and any other staff member of the AIR and shall not influence or seek to influence them in the performance of their duties.
3. The Executive Director and the other staff of the AIR shall not, in the discharge of their duties, engage in any activity or conduct incompatible with the proper discharge of their duties. They are required to avoid conflict between professional and personal interests or obligations sufficient to influence the impartial exercise of their official duties or responsibilities.

4. Where the Executive Director of the AIR fails to comply with his/her obligations, an ad hoc Committee approved by the Governing Board shall 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 Staff Rules and the AU Regulations shall be applied. The staff member concerned shall have the right to appeal in accordance with the Staff Rules and Regulations.
6. The Executive Director and other staff of the AIR may accept, on behalf of the Commission, gifts, bequests and other donations made to the AIR, provided that such donations are consistent with the objectives and principles of the AIR and shall remain the property of the AIR.

#### **Article 20**

#### **Relation with Member States, Development Partners and Other Stakeholders**

1. In carrying out its functions, the AIR shall dedicate necessary resources to building partnerships aimed at improving the effectiveness of its operations;
2. Within the African continent, the AIR shall maintain working ties with development partners and stakeholders, particularly with international financial institutions, Diaspora and civil society organizations, Regional Economic Communities (RECs), private sector players and other organs of the Union in pursuit of its purposes;
3. The AIR shall develop partnerships with Member States' central banks and shall also coordinate its operations with regional and continental institutions that finance development projects across Africa;
4. In pursuance of its objectives, the AIR shall closely cooperate with international financial institutions and such cooperation shall strive to ensure synergy and partnership.
5. The AIR may be requested by the Member States, the RECs, the Commission, other Organs of the Union, and international organizations to provide scientific or technical assistance in any field within its competence.

**Article 21**  
**Privileges and Immunities**

The AIR shall enjoy in the territory of the Host Country, the privileges and immunities specified in the General Convention on Privileges and Immunities of the Organization of African Unity adopted in Accra, Ghana on 25 October 1965.

**Article 22**  
**Amendments**

1. The present Statute may be amended by the Assembly upon the recommendation of the STC.
2. The amendments shall enter into force upon their adoption by the Assembly.

**Article 23**  
**Working Languages**

The working languages of the AIR shall be those of the AU.

**Article 24**  
**Entry into Force**

The present Statute shall enter into force upon its adoption by the Assembly.

**ADOPTED BY THE ..... SESSION OF THE ASSEMBLY, HELD IN**  
**.....**

**Annex 1:** AU Executive Council Decision, January 2012:

**DECISION ON THE ESTABLISHMENT OF AN AFRICAN  
INSTITUTE FOR REMITTANCES  
Doc. EX.CL/703(XX)**

**The Executive Council,**

1. **TAKES NOTE** of the Report of the Commission on the Preparatory Project for the establishment of an African Institute for Remittances (AIR);
2. **ACKNOWLEDGES** that the establishment of an African Institute for Remittances (AIR) will facilitate Remittances leverage for economic and social development;
3. **CALLS UPON** Member States and the Pan-African Parliament as well as the Regional Economic Communities, the private sector, the Civil Society and all other stakeholders to actively participate in the implementation process;
4. **REQUESTS** the Commission to submit to the African Union Ministers of Finance the final report on the implementation of the preparatory project and recommendations pertaining to the establishment of AIR;
5. **ALSO REQUESTS** the Permanent Representatives' Committee through its relevant Sub-Committees, including the Sub Committee on Structural Reforms and the Sub-Committee on Administrative, Budgetary and Financial Matters the implications of establishing AIR for consideration and necessary action;
6. **CALLS UPON** the African Development Bank, the European Commission, the World Bank, the International Organization for Migration and other relevant partners to continue to support the preparatory project and resources for the AIR;
7. **REQUESTS** the Commission to report on regular basis on the implementation of this Decision to the Executive Council.

**Annex 2: 5<sup>th</sup> Joint AU-ECA Ministerial Conference Resolution on AIR, March 2012:**

E/ECA/CM/45/S/Rev.1  
AU/CAMEF/EX/Rpt(VII)/Rev.1  
Annex  
Page 5

**Resolution 892(XLV)**

**Establishment of an African Institute  
for Remittances**

**The Conference of Ministers,**

*Recognizing* that remittances, if well harnessed and formalized, could contribute to growth and development in Africa,

*Appreciating* the increasing contribution of remittances to economic and social development in Africa,

*Recognizing* that the establishment of an African Institute for Remittances could be leveraged for economic and social development,

*Recalling* decision EX.CL/Dec.683(XX) adopted by the Executive Council of the African Union at its twentieth session, held in Addis Ababa in January 2012, in which the Council requested the African Union Commission to submit to the Ministers of Finance recommendations pertaining to establishment of the Institute,

*Welcoming* the report of the African Union Commission on the Preparatory Project for the Establishment of an African Institute for Remittances and the recommendations contained therein,

1. *Takes note* of the decision of the Executive Council (EX.CL/Dec.683(XX)) on the establishment of an African Institute for Remittances as a specialized technical office of the African Union Commission;
2. *Requests* the African Union Commission to submit the mandate of the Institute, and its organizational structure, which should be lean and sustainable, to the African Union Permanent Representatives Committee through its relevant subcommittees; and
3. *Welcomes* the offer made by Mauritius to host the Institute as well as the interest of Djibouti, Egypt and Kenya in hosting it, and requests the African Union Commission to examine the offer of Mauritius and the interest expressed by the other countries in line with the established criteria governing the hosting of organs of the African Union.



**Diaspora/Assembly/AU/ /Decl (I)**

**DECLARATION OF THE AFRICAN DIASPORA SUMMIT  
SANDTON, JOHANNESBURG, SOUTH AFRICA  
25 MAY 2012**

**LEGACY PROJECTS**

We further agree to adopt five legacy projects as a way of giving practical meaning to the Diaspora programme and in order to facilitate the post-Summit implementation programme. These are: a) the production of a Skills Database of African Professionals in the Diaspora; b) the establishment of the African Diaspora Volunteers Corps; c) the African Diaspora Investment Fund; d) a programme on the Development Marketplace for the Diaspora, as a framework for facilitating innovation and entrepreneurship among African and Diaspora; and e) The African Remittances Institute.

**Done at Johannesburg, South Africa 25 May 2012**

**Annex 4: AU Assembly Decision, July 2012:**

Assembly/AU/Dec.440(XIX) Page 1

**DECISION ON ESTABLISHMENT OF AN AFRICAN INSTITUTE  
FOR REMITTANCES (AIR)  
Doc. EX.CL/724(XXI)**

**The Assembly,**

**1. TAKES NOTE** of the Report of the Fifth Joint Annual Meetings of the African Union (AU) Conference of Ministers of Economy and Finance and United Nations Economic Commission for Africa (ECA) Conference of African Ministers of Finance, Planning and Economic Development relating to the establishment of an African Institute for Remittances (AIR);

**2. RECALLS** the Declaration of the Global Diaspora Summit of May 2012 in South Africa that adopted the establishment of the African Institute for Remittances as one of the five legacy projects of the African Union;

**3. ENDORSES** the establishment of the African Institute for Remittances and requests the AUC to work on the modalities for its structures and location and submit to relevant organs to facilitate its early operationalization;

**4. CALLS UPON** the African Development Bank (AfDB), World Bank, United Nations Economic Commission for Africa (UNECA) and other partners to support the implementation of this initiative.

**DECISION ON THE LOCATION OF THE AFRICAN  
INSTITUTE FOR REMITTANCES (AIR)  
EX.CL/Dec.808(XXIV)**

**The Executive Council,**

1. **RECALLS** its Decision EX.CL/Dec.736(XXII) of January 2013 on the location of the African Institute for Remittances (AIR);
2. **ACCEPTS** the offer of the Republic of Kenya to host the African Institute for Remittances (AIR);
3. **REQUESTS** the Commission to conclude the Host Agreement with the Republic of Kenya so as to ensure the formal take-off of the Institute in 2014;
4. **ALSO REQUESTS** the Commission in collaboration with the World Bank, the African Development Bank, IOM and European Commission, and Development Partners to support the Institute.

**Annex 6:** 9<sup>th</sup> Joint AU-ECA Ministerial Conference Resolution on AIR, April 2016:

**946(XLIX). Draft statute of the African Institute for Remittances**

*The Conference of Ministers,*

*Recalling* decision Assembly/AU/Dec.440 (XIX), in which the Assembly of the African Union at its nineteenth session, held in Addis Ababa in July 2012, endorsed the establishment of the African Institute for Remittances,

*Recalling* decision Ex.CL/Dec.808 (XXIV), in which the Executive Council of the African Union at its twenty-fourth session, held in Addis Ababa in January 2014, selected Kenya to host the African Institute for Remittances and requested the African Union Commission to conclude the host agreement with Kenya so as to ensure the formal launch of the Institute in 2014,

*Welcoming* the formal take-off of the African Institute for Remittances,

*Welcoming* the preparation of the draft statute of the African Institute for Remittances,

1. *Requests* the member states of the African Union to review the draft statute of the African Institute for Remittances and provide their comments to the African union, in writing, within four months;

2. *Request* the African Union Commission to submit the amended version of the draft statute of the African Institute for Remittances to the legal experts of the African Union for their review before submitting it for consideration and adoption by the relevant organs of the African Union.

IE15081

EX.CL/1048(XXXII)  
Annex 8

**REGULATORY AND INSTITUTIONAL TEXTS FOR  
THE IMPLEMENTATION OF THE YAMO USSOUKRO DECISION AND  
FRAMEWORK TOWARDS THE ESTABLISHMENT OF A SINGLE  
AFRICAN AIR TRANSPORT MARKET**

**COMPETITION RULES AND GUIDELINES**

**ANNEX 5 TO THE YAMO USSOUKRO DECISION:  
Regulations on Competition in Air Transport Services within Africa**

**CHAPTER ONE: DEFINITION, OBJECT AND SCOPE OF APPLICATION**

Article 1 Definitions

Article 2 Object and Scope of Application

**CHAPTER TWO: PROHIBITED PRACTICES, AGREEMENTS AND DECISIONS**

Article 3 Anti-Competitive Practices, Agreements and Decisions

Article 4 Abuse of Dominant Position

Article 5 Non-discrimination in national legislation and administrative measures

Article 6 Subsidies

Article 7 Exemptions and Safeguard Measures

**CHAPTER THREE: ENFORCEMENT, INVESTIGATION NEGOTIATION,  
ARBITRATION AND JUDICIAL REVIEW**

Article 8 The Executing Agency and Regional Competition Authorities

Article 9 Complaints

Article 10 Investigation and Procedural Fairness

Article 11 Hearing of the Parties Concerned

Article 12 Outcome of Complaint

Article 13 Provisional Measures

Article 14 Cooperation with State Party Authorities and Access to Information

Article 15 Penalties

Article 16 Review by the Court of Justice and Tribunal

Article 17 Dispute Settlement

Article 18 Professional secrecy

Article 19 Publication of decisions

Article 20 Implementation provisions

Article 21 Amendments

Article 22 Entry into Force

**PREAMBLE**

WE, the Ministers responsible for Transport, Infrastructure, Energy and Tourism meeting at the First Ordinary Session of the African Union Specialized Technical Committee on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism in Lomé, Togo, 17th March 2017 have adopted these Regulations developed by the Bureau of the Conference of African Ministers of Transport, meeting in Malabo, Republic of Equatorial Guinea, on 18th and 19th December 2014, on the occasion of the Fourth Meeting of the Bureau of the Conference of African Ministers of Transport dedicated mainly to implement the Executive Council Decisions EX.CL/Dec.826(XXV) endorsing the report of the Third Session of the Conference of African Ministers of Transport (CAMT);

**CONSIDERING** the Constitutive Act of the African Union adopted in Lomé on 11<sup>th</sup> July 2000, namely its Article 3, 5, 6, 9, 13, 14, 15, 16 and 20;

**CONSIDERING** the Treaty establishing the African Economic Community signed in Abuja on 3<sup>rd</sup> June 1991, namely its articles 8, 10, 11, 13, 25 to 27;

**CONSIDERING** the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of air transport markets access in Africa of 14<sup>th</sup> November 1999, hereinafter called the Yamoussoukro Decision;

**CONSIDERING** the African Union Commission's Statutes adopted by the Assembly of the African Union in Durban (South Africa) on 10<sup>th</sup> July 2002;

**CONSIDERING** EX.CL/Dec.359 (XI) wherein the Executive Council endorsed the Resolution of the 3<sup>rd</sup> Session of the Conference of African Ministers of Transport (CAMT) in Malabo, Equatorial Guinea in 2014 entrusting the functions of the Executing Agency of the Yamoussoukro Decision of 1999 to the African Civil Aviation Commission (AFCAC), hereinafter called the Executing Agency

**CONSIDERING** the Resolution on the follow-up of the implementation of the Yamoussoukro Decision of 1999 adopted by the First African Union Conference of Ministers responsible for air transport in Sun City (South Africa) in May 2005;

**CONSIDERING** the Resolution on air transport safety in Africa adopted by the Second Conference of African Union Ministers responsible for air transport in Libreville (Gabon) in May 2006;

**CONSIDERING** the need to speed-up the full implementation of the Yamoussoukro Decision with a view to giving a boost to the operations of African airlines and other air transport service providers and effectively meeting the challenges of globalisation of international air transport;

**DESIROUS OF** ensuring fair opportunity on a non-discriminatory basis for the designated eligible African airlines, to effectively compete in providing air transport services within the African Air Transport Market.

**HEREBY MAKE THE FOLLOWING REGULATIONS:**

## **CHAPTER ONE**

### **PURPOSE, DEFINITIONS, OBJECTIVES AND THE SCOPE OF APPLICATION**

#### **Article 1 Definitions**

In these Regulations, unless the context otherwise requires:

**“Abuja Treaty”**: the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3<sup>rd</sup> day of June, 1991 and which entered into force on 12 May 1994.

**“African Air Transport Executing Agency”**: the Executing Agency provided for in the Article 9 of the Yamoussoukro Decision.

**“Airline”**: an air transport enterprise holding a valid Air Operating Certificate and operating air transport services within the territory of a State Party.

**“Aeronautical Authority”**: any Governmental authority, body corporate or organ duly authorised to perform any function to which these Regulations relate.

**“Capacity”**: the number of seats and cargo space offered to the general public on air services over a given period and in a given sector.



**“Concerted practice”**: means co-ordination between airlines that, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical co-operation to the exclusion of competition;

**“Competent authority”**: means anybody established in each State Party charged with regulating competition in the air transport sector, or in absence of such an institution, the Civil Aviation Authority.

**“Dominant position”**: means a position of one or more airlines which enables them to prevent effective competition being maintained within the market or apart of thereof, by giving them the power to behave to an appreciable extent independently of their competitors, their suppliers, their customers or end users.

**“Excessive capacity”**: means more capacity than that reasonably required on a route or in a given sector.

**“Excessively high price”**: means the price of a service which bears no reasonable relation to the economic value of that service and reasonable profit margin.

**“Excessively low price”**: means the price of a service which bears no reasonable relation to the economic value of those services.

**“Market”**: means a relevant geographic area, including routes or sector thereof and a relevant air transport service provided by an airline.

**“Member State”**: means a Member State of the African Union.

**“Regional competition authority”**: means an authority set up by a regional economic community with mandate to regulate and supervise the implementation of these regulations.

**“Regional Economic Community”**: means a regional economic community recognised as such by the African Union.

**“Regional YD Authority”**: means an authority set up by a regional economic community with mandate to regulate and supervise the implementation of the Yamoussoukro Decision within the territory of the regional economic community concerned.

**“State Party”**: means each African State signatory to the Abuja Treaty and such other African country which, though not a party to the said Treaty, has declared in writing its intention to be bound by the Yamoussoukro Decision and these Regulations.

**“Scheduled and non-scheduled air services”**: bear the same meaning assigned to them in the Chicago Convention of 1944 and in resolutions of the Council of the International Civil Aviation Organization (ICAO).

**“Trade association”**: an association of airlines with the aim of promoting co-operation activities of its members.

## **Article 2**

### **Object and Scope of Application**

1. The purpose of these Regulations is to promote and guarantee free and fair competition in air transport services within Africa in order to develop the air transport industry and to contribute to the welfare of the citizens of the State Parties.
2. This Decision shall apply to scheduled and non-scheduled air transport services within the State Parties, including any practice, agreement or conduct thereto which might have an anti-competitive effect within the separate and joint territories of the regional economic communities and within the entire African continent.

## **CHAPTER TWO**

### **PROHIBITED PRACTICES, AGREEMENTS AND DECISIONS**

#### **Article 3**

#### **Anti-competitive Practices, Agreements and Decisions**

1. Any practice, agreement or decision which negates the objective of free and fair competition in air transport services shall be prohibited. To this end, State Parties shall undertake to ensure that any agreement between airlines, any decision taken by associations of airlines and any concerted practice which negatively affect the liberalization of air transport services within the continent of Africa and which has as its object or effect the prevention, restriction or distortion of competition within the continent of Africa, is prohibited.
2. Subject to paragraph 2(a) and Article 7 of these Regulations, anti-competitive practices and agreements, shall be deemed illegal. Such practices include, but are not limited to, any agreement between airlines, any decision by associations of airlines and any concerted practice which:
  - (a) directly or indirectly fixes purchase or selling or any other trading conditions including charging prices on routes at levels, which are in the

- aggregate, insufficient to cover the direct operating costs of providing the services to which they relate;
- (b) limits or controls markets, technical development, or investment;
  - (c) involves the addition of excessive capacity or frequency of services;
  - (d) divides markets or sources of supply by allocating passengers, territories, or specific types of services;
  - (e) applies dissimilar conditions to similar transactions with other airlines, thereby placing them at a competitive disadvantage;
  - (f) makes the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contract; and; has a detrimental effect on consumers.
3. (a) Any practice, agreement or decision prohibited or deemed illegal pursuant to this Article shall be void unless a party proves that technological efficiency or other pro-competitive gain outweighs the alleged anti-competitive effect.
- (b) Without prejudice to the generality of paragraph (a) any practice, agreement or decision shall not be deemed to be anti-competitive unless:
- i) it is sustained rather than temporary;
  - ii) it has an adverse economic effect on or cause economic damage to any competitor;
  - iii) it reflects an apparent intent or has the probable effect of crippling, excluding or driving any competitor from the market; or
  - iv) it limits the rights or interests of consumers.

#### **Article 4**

#### **Abuse of Dominant Position**

Any abuse by one or more airlines of a dominant position within State Parties shall be prohibited insofar as it may affect air transport services at the regional or at the African continent level. Such abuse may include:

- a) directly introducing unfair trading conditions to the prejudice of competitors such as:
  - i) the introduction on a route or sector thereof of excessive capacity, which is likely to have an adverse impact upon any competing airline;
  - ii) the introduction by an airline on a route or sector thereof of an excessively low price, which is likely to have an adverse impact on

- any competing airline and is likely to be perceived as specifically designed, targeted and intended to keep out a new airline or to drive out another airline; or
- iii) the introduction by an airline on route or sector thereof of an excessively high price because of lack of a price competition or collusion.
- b) limiting capacity or markets to the prejudice of consumers such as:
- i) charging excessively high prices to the detriment of consumers;
  - ii) the introduction by an airline on a route or sector thereof of capacity, which is designed, targeted and intended to drive out another airline;
  - iii) the intentional under-supply, by an airline, of capacity contrary to the set objectives of healthy and sustained competition; or
  - iv) the allocation of capacity by an airline on a route in a manner which is unduly discriminatory including requiring consumers not to use the services of a competitor;
- c) applying dissimilar conditions to similar transactions with other trading parties, thereby, placing them and/or resulting in other airlines being placed at a competitive disadvantage including discriminating between different consumers and competitors in equivalent transactions of services of like quality in terms of:
- i) the price charged;
  - ii) any discount, allowance, or rebate given or allowed in relation to the supply of services;
  - iii) the provision of services;
  - iv) payment for services; or
- d) making the conclusion of contracts subject to acceptance by the other parties, of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

### **Article 5**

#### **Non-discrimination in national and regional legislation and administrative measures**

1. Legislation or administrative measures in the territory of a State Party or of a regional economic community shall not discriminate against the provision of services by airlines or associations of airlines of State Parties.

2. A State Party or a regional economic community may, before enacting legislation or adopting administrative measures which in their view may have the effect of discriminating against airlines of other State Parties, invite The Executing Agency to review the legislation in question and recommend appropriate amendment of any provision that may directly or indirectly permit or promote anti-competitive behaviour.

### **Article 6 Subsidies**

1. These Regulations prohibit the granting of any subsidy by any State Party or regional economic community which distorts or threatens to distort competition.
2. The Executing Agency shall propose guidelines and implementing rules indicating circumstances under which subsidies may be granted.

### **Article 7 Exemptions and Safeguard Measures**

1. The Executing Agency may, by these Regulations, exempt any particular practices, agreements or decisions which may have been deemed illegal or prohibited under Article 3 hereof.
2. The Executing Agency may, on application by an airline of a State Party, approve measures designed to remedy any adverse effects the State may experience by reason of the implementation of the provisions of of these Regulations.
3. Copies of all applications for exemption under paragraph 1 hereof shall be sent to all relevant regional competition authorities and the Executing agency.
4. Notwithstanding paragraph 1 of this Article, in the event of negative economy factors prevailing in a State Party following the application of the provisions of these Regulations, the State Party concerned shall, after informing the relevant regional competition authority and the Executing Agency take the necessary safeguard measures pending the written approval of the regional competition authority and/or the Agency.
5. These safeguard measures shall remain in force for a maximum period of one year and shall not distort or threaten to distort competition.

6. The regional competition authority and or the Executing Agency shall examine the method of application and the effects of these safeguard measures while they remain in force and shall in all cases determine whether any measure taken pursuant to Article 7(5) hereof distorts, threatens to distort or has the effect of distorting competition.
7. The regional competition authority and/or the Executing Agency shall recommend the withdrawal, determination or suspension of such a safeguard measure in the event of a negative determination in terms of the impact thereof.
8. Any recommendation for the withdrawal, termination or suspension shall clearly specify the grounds for making such determination, the latest date for the withdrawal, termination or suspension, and the grounds of appealing the recommendation. Such a recommendation shall be classified as a decision under the terms of Article 6 of the Regulation on the Powers, Functions and Operations of the Executing Agency of the Yamoussoukro Decision]
9. The regional competition authority and or the Executing Agency may decide to take interim measures that it deems fit when it determines that the State Party concerned has failed to take any action to address the recommendation addressed to it pursuant to Article 7(5) hereof.
10. Such interim measures shall apply for a period not exceeding ninety (90) days.
11. The relevant authority may extend the interim measures for a period not exceeding thirty (30) days thereafter in the event that subsequent to an objective assessment of the circumstances such extension is deemed necessary.

**CHAPTER THREE  
ENFORCEMENT, INVESTIGATION, NEGOTIATION, ARBITRATION AND  
JUDICIAL REVIEW**

**Article 8**

**The Executing Agency and Regional Competition Authorities**

The Executing Agency shall be responsible for supervising and implementing these regulations and shall be responsible for:

- a) implementing measures to increase transparency in the air transport sector;

- b) implementing measures to develop public awareness of the provisions of these Regulations;
- c) investigating and evaluating alleged violations of these regulations;
- d) granting, refusing or revoking exemptions in terms of Article 7;
- e) reviewing legislation or administrative measures of Member States in terms of Article 5;
- f) reporting to CAMT on any matter relating to the application of these Regulations; and
- g) performing any other function assigned to it under these Regulations.

### **Article 9 Complaints**

1. Any State Party, undertaking, regional competition authority or any interested party may lodge a complaint with the Joint Competition Authority against an undertaking concerning an alleged breach of these Regulations by that undertaking.
2. The Executing Agency may, on its own motion, initiate an investigation into a suspected breach of these Regulations by an undertaking.
3. The Executing Agency shall within 30 days of receipt of a complaint made under paragraph 1, forward a copy of such complaint to the competent authorities of the Member States.
4. Such competent authorities shall have the right of audience before the Executing Agency.

### **Article 10 Investigation and Procedural Fairness**

1. In the execution of its duties under these Regulations, the Executing Agency, the relevant regional competition authority, or the competent authorities of State Parties as required by the relevant competition authorities may undertake all necessary investigations into undertakings and associations of undertakings.
2. The Executing Agency shall within a reasonable time, prior to the envisaged investigation inform the competent authorities of the State Parties of the proposed investigation and the identity of the authorised officials. The competent authorities of the Member States shall assist the officials of the Executing Agency if so requested.

3. In the execution of its duties, the Executing Agency shall act with due regard for the rules of natural justice.

### **Article 11**

#### **Hearing of the Parties Concerned**

Before taking any decision under these Regulations affecting undertakings or associations of undertakings, the Executing Agency shall give the undertakings or associations of undertakings concerned the opportunity of being heard. There shall be a written record of the hearing.

### **Article 12**

#### **Outcome of Complaint**

1. Where the Executing Agency finds that there has been an infringement of any provision of Chapter Two of these Regulations, it shall direct the undertaking or association of undertakings concerned to bring such an infringement to an end.
2. If the Executing Agency, acting on a complaint concludes that, on the evidence before it, there are no grounds for intervention in respect of any agreement, decision or concerted practice, it shall reject the complaint.
3. The Executing Agency shall simultaneously send a copy of its decision to the competent authorities of the Member States in whose territory the head office of the undertaking or association of undertakings is situated.

### **Article 13**

#### **Provisional Measures**

1. Where there is *prima facie* evidence before the Executing Agency that certain practices are contrary to these Regulations and have the object or effect of directly jeopardising the existence of an undertaking it may decide to take such provisional measures that it deems fit to ensure that these practices are not implemented, or where implemented they are stopped.
2. Such provisional measures shall apply for a period not exceeding ninety (90) days.
3. The Executing Agency may extend the provisional measures for a period not exceeding thirty (30) days.



**Article 14**  
**Cooperation with Member State Authorities and**  
**Access to Information**

1. The Executing Agency shall execute its powers and procedures in collaboration with the regional competition authorities and competent authorities of the Member States.
2. In carrying out the duties assigned to it by these Regulations, the Executing Agency may request all necessary information from the competent authorities of the Member States and from an undertaking or association of undertakings.
3. A copy of the request to an undertaking or association of undertakings shall also be sent to the competent authorities of the Member States in whose territory the head office of the undertaking or association of undertakings is situated.
4. The Executing Agency shall in its request clearly state the legal basis and purpose of the request and also the penalties for the supply of incorrect information or non-supply of information within a fixed time limit.

**Article 15**  
**Penalties**

1. The Executing Agency may decide, depending on the gravity and the duration of the infringement, to impose penalties on an undertaking or association of undertakings where they intentionally or negligently:
  - (a) infringe any provision of these Regulations; or
  - (b) supply incorrect or misleading information in connection with an application; or
  - (c) supply incorrect information in response to a request made, or do not supply information within the time limit fixed by a decision.
2. The Executing Agency shall from time-to-time review such penalties.
3. In the case of a second or subsequent infringement, the Executing Agency may impose a stiffer penalty.

**Article 16**  
**Review of the Decisions of the Executing Agency**

Any party whose rights, interests or legitimate expectations have been affected by a decision of the Executing Agency may have recourse to Part One of the Dispute Settlement Regulation.

**Article 17**  
**Dispute Settlement among State Parties**

If any dispute arises between State Parties relating to the interpretation or application of these Regulations, the State Parties concerned shall have recourse to the Dispute Settlement Regulation.

**Article 18**  
**Professional Secrecy**

1. Information acquired as a result of the application of these Regulations shall be used only for the purpose of the relevant request or investigation.
2. The Executing Agency and the competent authorities of the State Parties, their officials and other servants shall not disclose information of a kind covered by the obligation of professional secrecy and which has been acquired by them as a result of the application of these Regulations.

**Article 19**  
**Publication of Decisions**

1. The Executing Agency shall publish the decisions which it makes under these Regulations.
2. In publishing any decision the Executing Agency shall state the names of the parties and the main contents of the decision. In so doing, the Executing Agency shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

**Article 20**  
**Implementation Provisions**

The Executing Agency shall formulate implementing provisions for adoption by the relevant institutions on, *inter alia*:

- a) guidelines on subsidies in terms of Article 6;

- b) rules of procedure on exemptions granted in terms of Article 7;
- c) the standard form, content and other details pertaining to:
  - (i) applications submitted in terms of Article 7; and
  - (ii) complaints submitted in terms of Article 9 and outcomes of complaints in terms of Article 12;
- d) the rules on hearings provided for in Article 11;
- e) penalties imposed in terms of Article 15;
- f) guidelines and rules of procedure for the implementation of these Regulations; and
- g) guidelines dealing with frivolous complaints.

### **Article 21 Amendments**

1. Each State Party may propose amendments to this Decision.
2. Any proposal for amendment to these Regulations shall be submitted to the Executing Agency in writing, which shall within thirty (30) days of its receipt communicate it to the State Parties.
3. Amendments to this Decision shall enter into force after their approval by the Conference of Heads of State and Government of the African Union.

### **Article 22 Entry into Force**

This Regulation shall enter into immediately force following its endorsement by Assembly of Heads of State and Government.

### ***APPENDIX A TO ANNEX 5 TO THE YAMO USSOUKRO***

<b>GUIDELINES AND PROCEDURES FOR THE IMPLEMENTATION OF THE REGULATIONS ON COMPETITION IN AIR TRANSPORT SERVICES WITHIN AFRICA</b>
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Whereas the Regulations on Competition in Air Transport Services within Africa (hereinafter cited as the Competition Regulations) calls for a number of guidelines, implementing provisions and rules of procedure for the application of the Regulations by the regional competition authorities and the Executing Agency:

Now therefore the following Guidelines and Procedures shall apply:

### **Article 1**

The following airline industry standards shall normally not be considered as a violation of Article 3 of the Competition Regulations and shall be presumed excepted under Article 3 (3) (a) (b) of the Competition Regulations:

- (a) certain technical agreements and concerted practices, to the extent that their sole object and effect is to achieve technical improvements or co-operation: the introduction or uniform application of mandatory or recommended technical standards for aircraft, aircraft parts, equipment and aircraft supplies, where such standards are set by an organisation normally accorded international recognition, or by an aircraft or equipment manufacturer; the introduction or uniform application of technical standards for fixed installations for aircraft, where such standards are set by an organisation normally accorded international recognition; the exchange, leasing, pooling, or maintenance of aircraft, aircraft parts, equipment or fixed installations for the purpose of operating air services and the joint purchase of aircraft parts, provided that such arrangements are made on a non-discriminatory basis; the introduction, operation and maintenance of technical communication networks, provided that such arrangements are made on a non-discriminatory basis; and the exchange, pooling or training of personnel for technical or operational purposes;
- (b) agreements or concerted practices between airlines with respect to capacity, frequency and scheduling co-operation, provided that joint planning and co-ordination of capacity, frequencies and flight schedules to be provided on scheduled air services be limited to agreements and practices that help to ensure a spread of services at the less busy times of a week or day, or on less busy routes, and/or improve inter-regional connectivity, provided any partner may withdraw without penalty from agreements or practices by giving not more than three months' notice of its intention not to participate in such joint planning and co-ordination for future (summer or winter) seasons;
- (c) consultations and agreements on interlining and tariff co-ordination, for the purpose of promoting the establishment of fully interlineable air fares and rates, upon the following conditions: that the inter-carrier consultations (inside or outside the framework of global or regional airlines organizations) on the development of interlineable tariffs

(passenger fares and cargo rates) be transparent and open to all carriers operating direct or indirect services on air routes concerned; and that the consultations are not binding upon participants that is, following consultations, airline participants retain the right to act independently in respect of passenger and cargo tariffs;

- (d) provision of common rules for the appointment of airlines agents, whether developed inside or outside the IATA (International Air Transport Association) Agency Conferences, as long as those rules are limited to the professional and financial fitness of agents (accreditation) and do not limit the number of agency establishments in any Member State, and do not fix agency commission rates; systems for the clearing of accounts between airlines or between airlines and agents should normally not be considered as anti-competitive;
- (e) airline alliances and other commercial arrangements between airlines, provided that these arrangements do not go beyond code-sharing and blocked space agreements, and that in the case of blocked space agreements the purchasing airline will sell the purchased seats as its own, at its own prices and at its own risk; where the arrangements go beyond code-sharing and blocked space agreements, and involve common pricing, common capacity provision, common scheduling and/or revenue and/or cost pooling (joint ventures), such arrangements shall normally not be permissible under Article 3 of the Regulations, save where an exemption is obtained from the relevant authority under Article 7 of the Regulations;
- (f) slot co-ordination agreements and practices between airlines at airports, provided that all air carriers concerned are entitled to participate in such agreements and arrangements, that the national and multilateral procedures (including, but not limited to IATA Scheduling Conferences) for such agreements and arrangements are transparent, and that they take into account any constraints and distribution rules defined by national and international authorities and any rights which air carriers may have historically acquired; and
- (g) agreements and arrangements on the joint ownership and operation or participation in Global Distribution Systems (GDS), on condition that all airlines of State Parties have access to such systems on equal terms, that participating carriers have their services listed on a non-discriminatory basis, that any participant may withdraw from the system on giving reasonable notice, and that the system operate in accordance

with the policies and regulatory framework of the International Civil Aviation Organization (ICAO).

## **Article 2**

The following shall apply to the implementation of State subsidies under the terms of Articles 6 of the Competition Regulations:

- a) in the context of granting or denying subsidies, State Parties shall not discriminate between publicly-owned, state-owned and privately-owned airlines;
- b) a State Party may grant a subsidy to an airline, provided that it is for airline restructuring purposes, or in extraordinary circumstances beyond the control of the airline, including acts of war;
- c) the prohibition on subsidies does not prevent the operation by a State Party of an essential air services programme or of public service obligations, where certain air services cannot be operated profitably;
- d) Where the relevant authority finds that a subsidy has been granted illegally by a State Party or is about to be given by a State Party, it may issue a cease and desist order against the State Party in question; and
- e) Where the relevant authority finds that a subsidy, illegally given by a State Party, has already been paid in fact, it may order that the moneys given as illegal subsidy be paid back to the State Party in question, in whole or in part.

## **Article 3**

Where a State Party wishes to obtain a prejudicial ruling from the regional competition authority or the Executing Agency (hereafter, relevant authorities) on non-discrimination in national legislation and administrative measures under Article 5 of the Competition Regulations:

- a) that State shall submit a written request to that effect to the relevant authority through diplomatic channels, giving reasons for its request;
- b) the relevant authority shall endeavour to respond to such a request within ninety days from its reception in an advice;
- c) where the relevant authority is of the opinion that the proposed legislation or administrative measure in question needs amendment, it shall give reasons therefore in its advice; and
- d) the relevant authority shall send copies of its advice to all competent authorities of the State Parties.

#### Article 4

Applications by any undertaking, or association of undertakings to the EXECUTING AGENCY for exemptions under Article 7(1) of the Regulations shall be made using Form A provided for in the Schedule to these Guidelines, Provisions and Procedures.

#### Article 5

In addition to the information and procedures contained in Form A of the Schedule mentioned in Article 5, the relevant authority:

- a) shall render decisions on applications for exemptions under Article 7 of the Regulations within ninety days from their submission;
- b) shall not take legal action under the Regulations against an applicant for an exemption, before the application has been decided upon; and
- c) may revoke an exemption granted, before its normal expiry date, considering also that the maximum duration of validity of an exemption is five years, where there has been any material change on any of the facts upon which the exemption was based; or where the parties breach any condition attached to the exemption; or the granting of the exemption was based on incorrect information or induced by deceit; or where the parties abuse the exemption as provided for under Article 4 of the Regulations.

#### Article 6

Where a State Party wishes to apply to the relevant authority to approve safeguard measures under Article 7(2) of the Regulations:

- a) the application shall be in writing, through diplomatic channels, giving reasons for the application;
- b) the relevant authority shall send copies of such applications for approval of safeguard measures to the competent authorities of the State Parties;
- c) the relevant authority shall decide upon an application for approval of safeguard measures within ninety days from its reception, giving reasons for its decision;
- d) The relevant authority may approve or disapprove the application, or approve it subject to conditions; and
- e) The approval of an application for safeguard measures may be valid for one year. A State Party may apply for an extension provided such State Party shall furnish proof that it has taken the necessary and reasonable steps to overcome or correct imbalances for which safeguard measures

are being applied and that the measures applied are on the basis of non-discrimination.

## **RULES OF PROCEDURE**

### **Article 7**

- (a) Complaints, lodged with the relevant authority by any undertaking or association of undertakings, shall be made using Form B provided for in the Schedule to these Guidelines and Procedures; and
- (b) Relevant shall advise the complainant of its decision within a period of ninety days from receipt of the complaint. Where it is not in a position to do so, it shall advise the complainant of the procedure to be followed under Articles 7, 8, 9, 10, and 11 of these Guidelines, Provisions and Procedures.

### **Article 8**

In addition to the provisions contained in Form B of the Schedule to these Guidelines, Provisions and Procedures, the relevant authority, in carrying out investigations under Article 8 of the Competition Regulations, shall:

- a) appoint and empower officials to examine the books and other business records, make copies of or extracts from the books and business records, demand oral or written explanations and enter any premises, land and vehicles used by undertakings or associations of undertakings provided that, in performing their duties, the authorised officials shall respect applicable national laws and regulations pertaining to privileged information on the part of the undertakings;
- b) ensure its authorised officials shall exercise their powers upon production of written authorisation, specifying the subject matter and purpose of the investigation and the penalties provided for in Article 13 of the Regulations in cases where production of the required books or business records is incomplete, provided that the relevant authority shall inform the competent authority of the State Party, in whose territory same is to be made, of the investigation and the identity of the authorised officials;
- c) specify the subject matter and purpose of the investigation, indicate the date on which the investigation will commence, indicate the penalties as provided for in Article 13 of the Competition Regulations and the right to



have the decision of the Executing Agency under Article 10 and any penalties reviewed under Article 16 of the Regulations.

In addition:

- d) Undertakings and associations of undertakings shall submit to investigations authorised by the Executing Agency. The authorisation shall specify the subject matter and purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provide for in Article 15 of the Competition Regulations, and the right to have the decision of the Executing Agency under Article 12 and any penalties reviewed under Article 16 of the Competition Regulations;
- e) Officials of the competent authorities of the State Parties in whose territory the investigation is to be made should assist the officials of the relevant authority in carrying out their duties, at the request of such authority, and they shall observe the privileges and secrecy of information as provided under Article 10(b) of these Guidelines and Procedures; and
- f) Where an undertaking or association of undertakings opposes an investigation authorised pursuant to these procedures, the State Party concerned shall afford the necessary assistance to the officials authorized by the Executing Agency to enable them to carry out their investigation.

### **Article 9**

Where, under the Competition Regulations, the Executing Agency must hear an undertaking or association of undertakings, the following rules of procedure shall apply:

- a) Before taking a decision negatively affecting an undertaking or association of undertakings, the Executing Agency shall give such undertaking or association the opportunity to be heard on (the) matter(s) to which the Agency objects; affected undertakings and associations of undertakings shall be so informed in writing;
- b) Officials of interested State Parties shall be entitled to attend oral hearings;
- c) If the Agency, upon its own motion or upon the recommendation of interested State Parties, finds it necessary, it may also hear other natural or legal persons. Applications to the Executing Agency by such persons to be heard shall be granted when they show sufficient interest;

- d) Before the oral hearing, the affected undertaking or association of undertakings may submit its views on the objection(s) raised in writing; it may in its written comment set out all matters relevant to its defense; it may attach any relevant documents in proof of the facts set out. It may also propose that the Executing Agency hear persons who may corroborate those facts;
- e) The Executing Agency shall in its decision deal only with those objections raised against undertakings and associations of undertakings in respect of which they have been afforded the opportunity of making known their views;
- f) The Executing Agency shall summon the persons to be heard to attend on such date as it shall appoint; copy of the summons shall be sent to the officials of interested State Parties;
- g) Hearings shall be conducted by the persons appointed for that purpose by the Agency;
- h) Persons summoned to attend shall either appear in person or by a duly authorised legal representative, and may be assisted by lawyers, duly admitted to the practice of law in their respective States of principal residence;
- i) Hearings shall not be public. Persons shall be heard separately or in the presence of other persons summoned to attend. In the latter case, regard shall be had to the legitimate interests of the undertakings in the protection of their business secrets; and
- j) The essential content of the statements made by each person heard shall be recorded in minutes, which shall be read and approved by such person. In case of refusal to approve, the person in question shall nevertheless sign that he has read the minutes.

### **Article 10**

The Executing Agency shall, in making decisions in accordance with Article 12 of the Regulations, adhere to the following rules of procedure:

- a) where the Executing Agency is of the opinion that there has been an infringement in terms of Article 12(1) of the Regulations, it may render a decision containing a cease and desist order;
- b) the decision shall be in writing and accompanied by reasons for judgment;
- c) the decision may be accompanied by an imposition of penalties in accordance with Article 15 of the Regulations;
- d) in the event of a prohibited subsidy under Article 6 of the Regulations, the Executing Agency may, in addition to the cease and desist order,

- order that the moneys given as prohibited subsidy be paid back to the relevant State Party, in whole or in part;
- e) in the event of abuse of an exemption under Article 7 of the Regulations, the Executing Agency may also revoke such exemption;
  - f) where the Executing Agency is of the opinion that a complaint is ill founded in law and/or in fact in the sense of Article 12(2) of the Competition Regulations, it shall reject the complaint in a written decision accompanied by reasons for judgment;
  - g) where the Executing Agency is of the opinion that a complaint is frivolous in the sense of Article 20(g) of the Regulations, it may dismiss it summarily;
  - h) the Executing Agency shall apportion the costs among the parties engaged in the proceedings; and
  - i) in all cases, the Executing Agency shall abide by the rules of Article 12(3) of the Regulations.

#### **Article 11**

Where the Executing Agency is of the opinion that provisional measures must be ordered in terms of Article 13 of the Regulations, the following rules of procedure shall apply:

- a) where there is evidence of anti-competitive behaviour by one undertaking or association of undertakings, seriously threatening the existence of another undertaking, the Executing Agency may suspend the practices, agreements or decisions of the former undertaking or association for a period not exceeding ninety days, provided that such suspension can only be renewed once for thirty days. Such decision by the Executing Agency shall be taken within a period of thirty days from the receipt of the complaint; and
- b) without limiting the generality of the foregoing, such suspension may include the withdrawal of the excessively high or excessively low prices charged by the undertaking or association of undertakings involved, and, where excessively high or excessively low frequencies have been introduced by the undertakings involved, either decrease or increase them accordingly.

#### **Article 12**

Where, in terms of Article 14 of the Regulations, the Executing Agency finds it necessary to communicate with Member States or undertakings or associations of undertakings, the Executing Agency shall:

- a) conduct such communications preferably through diplomatic channels;  
and
- b) conduct communications with undertakings or associations of undertakings through registered mail or other appropriate means.

### **Article 13**

In imposing penalties under Article 15 of the Regulations, the Executing Agency shall apply the following rules of procedure and schedule of penalties and fines:

- a) The Executing Agency may impose fines on undertakings or associations of undertakings, not less than one hundred special Drawing Rights and not more than five thousand special Drawing rights per infringement, where, intentionally or negligently, they supply incorrect or misleading information in connection with an application for an exemption or in connection with the revocation of an exemption, or where they file a frivolous complaint, or where they supply incorrect information in response to a request made, or do not supply information within the limit fixed by the Executing Agency, or do not or incompletely produce books or business records in the framework of an investigation, or refuse to submit to an investigation;
- b) the Executing Agency may impose fines on undertakings or associations of undertakings of no less than one thousand Special Drawing Rights and no more than one hundred thousand Special Drawing Rights, or a sum in excess thereof but not exceeding 10 percent of the turnover in the preceding business year of the undertaking or association of undertakings participating in the infringement, where, either intentionally or negligently, they infringe Articles 3 and/or 4 of the Regulations, or do not comply with a cease and desist order under Article 12 of the Regulations;
- c) in fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement;
- d) in the event of a second or subsequent infringement of the same nature and perpetrated by the same offending undertaking or association of undertakings, the Executing Agency may double or triple a previously imposed fine, without nevertheless exceeding the maximum amounts indicated in (a) and (b) above; and
- e) The Executing Agency shall periodically review the Schedule of penalties and fines.

## SCHEDULE

### Form A

#### **Application for an exemption**

By the Executing Agency

Under Article 7(1) of the Competition Regulations for competition in air transport services

#### **Identity of the parties:**

##### **1. Identity of applicant**

Full name and address, telephone, telex and facsimile numbers, and brief description of the undertaking(s) or association(s) of undertakings submitting the application.

##### **2. Identity of other parties**

Full name and address and brief description of any other parties to the agreement, decision or practice (hereinafter referred to as the "arrangements")

#### **Purpose of the application:**

Applicant(s) to state for which length of time an exemption is sought. The maximum duration is five years

#### **Full description of the arrangements:**

Applicant(s) should provide details of the arrangements, including financial details (which enjoy professional secrecy under Article 18 of the Regulations) (if necessary, Appendixes to the application may be used)

#### **Reasons for an exemption:**

Applicant(s) must state why the sought exemption is merited, in fact and in law (if necessary, Appendixes to the application may be used). In particular, applicant(s) must comment upon the effects of the sought exemption on competition in the relevant geographical markets (air routes) and product markets (air transportation *versus* other modes of transportation)

**Notice to applicant(s)**

- (a) Copy of this signed application and any Appendixes thereto will be sent to the competent authorities of State Parties according to Article 7(3) of the Competition Regulations;
- (b) Applicant(s) will receive an acknowledgement of receipt of the application, accompanied by the text of the Regulations, any implementing provisions and rules of procedure;
- (c) The Joint Competition Authority may ask applicant(s) for any additional information (which will enjoy professional secrecy under Article 18 of the Regulations) and may set a deadline for the provision of such information;
- (d) Applicant(s) should realise that the provision of any late, incorrect or misleading information may lead to the imposition of a penalty under Article 16 of the Regulations;
- (e) Where the Joint Competition Authority, on the basis of the written evidence, is of the opinion that an exemption should be granted, it may do so in writing for a period not exceeding five years, either unconditionally or subject to conditions;
- (f) Where the Joint Competition Authority tends towards a rejection of the application, it shall so inform the applicant(s) who remain(s) entitled to a hearing under Article 11 of the Regulations;
- (g) Where the Joint Competition Authority rejects the application, it shall give written reasons therefore;
- (h) An exemption that has been granted may be revoked for reasons set out in the implementing provisions, referred to under (b) above.

**Place and date:**

**Signature(s):**

**Form B****Complaint**

To the Executing Agency

Under Article 9 of the Competition Regulations for competition in air transport services

**Identity of the complainant(s):**

Full name and address, telephone, telex and facsimile numbers of the complainant or complainants.

**Object of the complaint:**

Complainant(s) to state which practice(s), agreement(s), decision(s), abuse(s) of dominant position or abuse(s) of exemption it contests.

**Subject of the complaint:**

Complainant(s) to state against which undertaking(s) (or association[s] of undertakings) the complaint is addressed.

**Remedy(ies) sought:**

Complainant(s) to state which remedy or remedies they seek under Article 12 (cease and desists orders) and/or Article 15 (penalties)

**Full description of the fact(s):**

Complainant(s) to describe the fact or facts leading to the complaint, including financial details (which enjoy professional secrecy under Article 18 of the Regulations) (if necessary, Appendixes to the complaint may be used)

**Reasons for the complaint:**

Complainant(s) to state why the complaint is justified, in fact and in law (if necessary, Appendixes to the complaint may be used). In particular, complainant(s) must comment upon the effects of the attacked practice, agreement, decision, abuse of dominant position or abuse of exemption on competition in the relevant geographical markets (air routes) and product markets (air transportation *versus* other modes of transportation).

**Notice to applicant(s):**

- (a) Copy of this signed complaint and any Appendixes thereto will be sent to the competent authorities of Member States according to Article 9(3) of the Regulations;
- (b) Complainant(s) will receive an acknowledgement of receipt of the complaint, accompanied by the text of the Regulations, any implementing provisions and rules of procedure. The Executing Agency shall advise the complainant of its decision within ninety days or advise the complainant of further procedures to be followed;
- (c) The Executing Agency may ask complainant(s) for any additional information (which will enjoy professional secrecy under Article 18 of the Regulations) and may set a deadline for the provision of such information;
- (d) Complainant(s) should realise that the provision of any late, incorrect or misleading information may lead to the imposition of a penalty under Article 15 of the Regulations;
- (e) The undertaking (or association of undertakings) against whom a complaint has been made be entitled to a hearing under Article 11 of the Regulations;
- (f) The Executing Agency shall endeavour to render a decision on the complaint under Article 12 of the Regulations (cease and desist orders) and/or Article 15 of the Regulations (Penalties) within a period of thirty days from receipt of the complaint;
- (g) Complainant(s) is (are) reminded that frivolous complaints are forbidden and may result in fines under the Regulations and provisions implementing these.

**Place and date:**

**Signature(s):**



**ANNEX 6 TO THE YAMMOUSSOUKRO DECISION:  
REGULATIONS ON THE PROTECTION OF CONSUMERS OF AIR TRANSPORT  
SERVICES**

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## Regulation on Protection of Consumers of air Transport Services

### Preamble

**WE**, the Ministers responsible for Transport, Infrastructure, Energy and Tourism meeting at the First Ordinary Session of the African Union Specialized Technical Committee on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism in Lomé, Togo, 17th March 2017 have adopted these Regulations developed by the Bureau of the Conference of African Ministers of Transport, meeting in Malabo, Republic of Equatorial Guinea, on 18th and 19th December 2014, on the occasion of the Fourth Meeting of the Bureau of the Conference of African Ministers of Transport dedicated mainly to implement the Executive Council Decisions EX.CL/Dec.826(XXV) endorsing the report of the Third Session of the Conference of African Ministers of Transport (CAMT);

**CONSIDERING** the Constitutive Act of the African Union adopted in Lomé on 11<sup>th</sup> July 2000, namely its Article 3, 5, 6, 9, 13, 14, 15, 16 and 20;

**CONSIDERING** the Treaty establishing the African Economic Community signed in Abuja on 3<sup>rd</sup> June 1991, namely its articles 8, 10, 11, 13, 25 to 27;

**CONSIDERING** the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of air transport markets access in Africa of 14<sup>th</sup> November 1999, approved by the Conference of Heads of State and Government of OAU and signed by the current Chairman in Lomé on 12<sup>th</sup> July 2000, hereinafter called the Yamoussoukro Decision;

**CONSIDERING** the African Union Commission's Statutes adopted by the Assembly of the African Union in Durban (South Africa) on 10<sup>th</sup> July 2002;

**CONSIDERING** the Decision EX. Cl/Dec.369 (XI) of the Assembly of Heads of State and Government of the African Union establishing the Executing Agency of the Yamoussoukro Decision of 1999, hereinafter called the Executing Agency of 27<sup>th</sup> July 2007;

**CONSIDERING** the resolution on the follow-up of the implementation of the Yamoussoukro Decision of 1999 adopted by the First African

Union Conference of Ministers responsible for Air Transport in Sun City(South Africa) in May 2005;

**CONSIDERING** the resolution on air transport safety in Africa adopted by the Second Conference of African Union Ministers responsible for air transport in Libreville (Gabon) in May 2006;

**CONSIDERING** the need to speed-up the full implementation of the Yamoussoukro Decision with a view to giving a boost to the operations of African airlines and other air transport service providers and effectively meeting the challenges of globalisation of international air transport;

**OBSERVING** the need to strike a balance between the right of airlines to operate efficiently in a liberalised and increasingly competitive market and the right of the consumer to be assured of sufficient protection and information of his rights;

**RECOGNISING** the need to assist the travelling public through time saved by the legitimate (non-targeted) passenger while undergoing normal arrival formalities and thereby enhance quality of travel;

**NOTING** that passengers suffer considerable delays, overbookings, flight cancellations and often live in uncertainties;

**CONCERNED** that the increasingly liberalised environment requires the protection of consumers on the African continent.

**HEREBY MAKE THE FOLLOWING REGULATIONS:**

**Article 1 – Citation**

These Regulations shall be cited as “*Regulation on Protection of Consumers, provision of an African Air Transport Fund and liability of service providers in passenger air transport services*”.

**Article 2 – Definitions**

For the purposes of this Regulation, the following expressions shall mean:

**‘Airport’** means any area of land especially adapted for the landing, taking-off and manoeuvres of aircraft, including the ancillary installations which these operations

may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services

**'Airlines'**, unless the context otherwise requires include eligible airlines, non-eligible African Airlines, and non African airlines as defined in these Regulation

**'Consumer'** means the person who takes or agrees to take the package ('the principal contractor'), or any person on whose behalf the principal contractor agrees to purchase the package ('the other beneficiaries') or any person to whom the principal contractor or any of the other beneficiaries transfers the package ('the transferee');

**'Consumer Protection Agency'** means the institution or organisation authorised by this Regulation to regulate consumer protection under the Yamoussoukro Decision, by the regional economic communities or by state parties

**'Eligible airline'** mean any airline licensed duly licensed by a State Party and Certificated as an eligible airline to operate under the terms of the Yamoussoukro Decision and actually operating the flight in question under these regulations.

**'Ground handling'** means the services provided to airlines at airports and comprise the following sub-categories:

**Passenger handling** comprises any kind of information and assistance including those provided to arriving, departing, transfer or transit passengers, including checking tickets and travel documents, registering baggage and carrying it to the sorting area.

**Baggage handling** comprises handling baggage in the sorting area, sorting it, preparing it for departure, loading it on to and unloading it from the devices designed to move it from the aircraft to the sorting area and vice versa, as well as transporting baggage from the sorting area to the reclaim area.

**Freight handling** comprises physical handling of export, transfer and import freight, handling of related documents, customs procedures and implementation of any security procedure agreed between the parties or required by the circumstances;

**Mail handling** includes physical handling of incoming and outgoing mail, handling of related documents and implementation of any security procedure agreed between the parties or required by the circumstances.

**Ramp handling** comprises marshalling the aircraft on the ground at arrival and departure; assistance to aircraft packing and provision of suitable devices; communication between the aircraft and the air-side supplier of services; the loading

and unloading of the aircraft, including the provision and operation of suitable means, as well as the transport of crew and passengers between the aircraft and the terminal, and baggage transport between the aircraft and the terminal; the provision and operation of appropriate units for engine starting; the moving of the aircraft at arrival and departure, as well as the provision and operation of suitable devices and the transport, loading on to and unloading from the aircraft of food and beverages.

**Aircraft services** comprise the external and internal cleaning of the aircraft, and the toilet and water services; the rearrangement of the cabin with suitable cabin equipment, the storage of this equipment.

**Fuel and oil handling** comprises the organization and execution of fuelling and refuelling operations, including the storage of fuel, also if adjacent to the airport, and the control of the quality and quantity of fuel deliveries; the replenishing of oil and other fluids.

**Aircraft maintenance** comprises routine services performed before flight; non-routine services requested by the airline; the provision and administration of spare parts and suitable equipment; the request for or reservation of a suitable parking and/or hangar space.

**Flight operations and crew administration** comprise the preparation of the flight at the departure airport or at any other point; in-flight assistance, including re-dispatching if needed; post-flight activities; crew administration.

**Surface transport** comprises the organization and execution of crew, passenger, baggage, freight and mail transport between different terminals of the same airport, but excluding the same transport between the aircraft and any other point within the perimeter of the same airport and any special transport requested by the airline.

**‘Licence’** means a valid licence granted by the Civil Aviation Authority or its equivalent under valid Regulations of States Parties to an airline, a travel agent, a tour operator

**‘Non-eligible African airline’** means any airline duly licensed by a State Party and authorised to operate international routes but has not been certificated as an eligible airline to operate under the terms of the Yamoussoukro Decision and actually operating the flight in question under these regulations.

**‘Non-African airline’** means an airline licensed by a third party state and authorised by a state party to lift and put down passengers, cargo and mail in the territory of one or more state parties and actually operating the flight in question under these regulations.

**'State Party'** shall include each African State signatory to the Abuja Treaty and such other African country which, though not a party to the said Treaty, has declared in writing its intention to be bound by the Yamoussoukro Decision

### **Article 3 – Scope of application of the Regulations**

- (1) This Regulation shall apply to the implementation of Article 9.6 of the Yamoussoukro Decision.
- (2) It prescribes rights of the passengers originating from or destined for the territory of a State Party and lays down responsibilities of airlines and other service providers.
- (3) This Regulation shall not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public. However, it shall apply to passengers having tickets issued under a frequent flyer programme or other commercial programme by an airline or tour operator.

### **Article 4 – Objectives and principles**

The objective of these Regulations is to protect the consumer of air transport services provided in the territories of state parties of the Yamoussoukro Decision from suffering unfair treatment in the provision of services and lack of or inadequate information on services provided leading to a poor treatment.

## **PART ONE CONSUMER LOSSES**

### **Article 5 – Interruption of services**

- (1) No airline, travel agency, consolidator, packaged tour operator, shall accept payment to lift passengers, mail and cargo from the territory of any state party into another state party or the territory of a state not party to the Abuja Treaty unless it has insurance coverage to fulfill the contract with consumers in case of interruption of services.
- (2) The Executing Agency shall establish a framework for mitigating losses incurred by consumers resulting from the interruption of services by airlines, travel agents, consolidators and packaged tour suppliers.
- (3) An airline, travel agent, package tour operator, consolidator or any other individual or organisation may not be permitted to accept payment for any

service for air transportation, tour or tour component from a consumer, unless it has a valid insurance as required by Article 6.7 of the Yamoussoukro Decision.

## **PART TWO PROHIBITIONS**

### **Article 6 – Prohibitions: Unfair and deceptive practices**

- (1) On the initiative of the Executing Agency, a Regional YD Authority, a State Party (hereafter, Consumer Protection Agency), or the complaint of a consumer, an association or associations of consumers, an eligible airline, a non-eligible African airline, a non-African airline, or a air ticket agent, and if the Executing Agency, the Regional YD Authority or the State Party considers it is in the public interest, it may investigate and decide whether an eligible airline, a non-eligible African airline, a non African airline or ticket agent has been or is engaged in an unfair or deceptive practice in air transportation or the sale of air transportation.
- (2) If the Consumer Protection Agency in question, after notice and an opportunity for a hearing, finds that an airline or ticket agent is engaged in an unfair or deceptive practice, it shall order that eligible airline or ticket agent to stop the practice or method.
- (3) In enforcing this Article against an eligible airline, the Consumer Protection Agency may opt to apply Article 4 (1) of the Competition Regulations].
- (4) S  
subject to the power of the Consumer Protection Agency to review, the following are inherently unfair practices and in breach of paragraph 1 of this provision:

a) **Misleading Advertising**

- i. It shall be considered a misleading advertisement; an unfair marketing and deceptive practice for any seller of scheduled air transportation within, to or from any country in Africa, or of a tour (i.e., a combination of air transportation and ground or cruise accommodations), or tour component (e.g., a hotel stay) that includes scheduled air transportation within, to or from any state party, to increase the price of that air transportation, tour or tour component to a consumer, including but not limited to an increase in the price of the seat, an increase in the price for the carriage of



passenger baggage, or an increase in an applicable fuel surcharge, after the air transportation has been purchased by the consumer, except in the case of an increase in a government-imposed tax or fee. A purchase is deemed to have occurred when the full amount agreed upon has been paid by the consumer.

ii. No airline or travel agent shall charge or collect additional fare (whether taxes, commissions, brokerage fees, administrative charges, or any other fees) from passengers not expressly advertised, displayed in the marketing material or expressly communicated to the consumer at the initial inquiry displayed.

b) Disclosure Requirement for Sellers of Tickets for Flights

(5) Where an eligible airline, a non-eligible African airline, a non-African airline, or a air ticket agent fails to disclose, whether verbally in oral communication or in writing in written or electronic communication, prior to the purchase of a ticket

- i. (A) the name of the air carrier providing the air transportation; and
- ii. (B) if the flight has more than one flight segment, the name of each air carrier providing the air transportation for each such flight segment.

c) Internet offers

(6) In the case of an offer to sell tickets described in subsection (l) on an Internet Web site, disclosure of the information required by paragraph (1) shall be provided on the first display of the Web site following a search of a requested itinerary in a format that is easily visible to a viewer.

(7) It is an unfair and deceptive practice if an airline persistently denies boarding to passengers involuntarily, without requesting for volunteers or where so requested fails to allow a reasonable time for passengers to volunteer or persistently fails to pay the accepted amount of compensation.

(8) It is an unfair and deceptive marketing practice if an airline persistently denies checked-in passengers their right to sit on the seat classes they have paid for and / or have been assigned to them at check-in as a result of the imposition of a free seating policy.

(9) The Consumer Protection Agency shall monitor the terms, conditions and extent of compliance by airlines of their obligations under the Warsaw Convention applicable in any State Party. Where it is observed that any practice, conduct, policy or procedure adopted by an airline consistently falls short of the required obligations including but not limited to compelling

consumers to accept compensation regimes less than what they are entitled to, imposing additional burdens calculated at or capable of frustrating their efforts to obtain compensation, or where compensation, though paid is paid under such terms as to nullify the usefulness of such compensation. Such practices shall be considered as unfair and deceptive practice.

- (10) Failure by an eligible airline to obtain and, at all material times, maintain the required insurance cover shall be adjudged unfair practice and deceptive practice. The Consumer Protection Agency may demand that details of the insurance schedule and any amendments thereto be filed with it.
- (11) A chronically delayed flight shall be considered as unfair and defective practice. Flights shall be considered chronically delayed flight as a flight by an airline, that is operated at least 30 times in a calendar quarter and arrives more than 15 minutes late, or is cancelled, more than 70 percent of the time during that quarter.

### **Article 7 - Obligations of Service Providers**

This section lays down general and specific obligations of service providers providing services directly to the passenger and includes airlines, tour operators, consolidator, travel agents, airport operators, Air Navigation Services Providers, Caterers and ground handling agencies whether operating as agents of one provider or not.

## **PART THREE OBLIGATIONS ON SERVICE PROVIDERS**

### **General Obligations**

#### **Article 8 - Maintaining adequate third party insurance cover**

- (1) Each service provider shall at all material times maintain an insurance cover as required by the laws of the state party in which it operates, including but not limited to third party liability, and shall visibly display the insurance schedule or certificate at a reception visited by or accessible to passengers visiting the premises.
- (2) Where demanded by public officials inspecting the airline under Article 19 of the Executive Council Regulation on the Powers and Functions of the Executing Agency, the service provider shall demonstrate compliance with this Article by providing the officials with a deposit of an insurance certificate or other evidence of a valid insurance from a recognised third party insurance company.

- (3) The Executive Council may, on a proposal from the Executing Agency approved by the Council of Ministers for Air Transport in Africa adopt rules on insurance designed to benefit the end-consumer.

#### **Article 9 – Non-Discrimination**

- (1) Within the scope of application of this Regulation, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality, race, sex, age, colour, creed, physical ability, physical stature, shall be prohibited.
- (2) The Executive Council may, on a proposal from the Executing Agency and adoption by the Conference (Committee) of Ministers of Transport of the Subcommittee of Ministers responsible for civil aviation and after consulting the African Parliament adopt rules designed to prohibit such discrimination.

#### **Article 10 – Means of communication**

- (1) Airlines, tour operators, consolidators and agents shall be obliged at all material times to obtain and hold a telephone number or email address of the passenger or, in the case of a group, the group leader or the person responsible for arranging the booking or for payment of the booking, and where more than one mode of communication is offered, obtain from the person concerned the preferred mode of communication in emergencies.
- (2) Subject to the data protection rules applicable in the territories of state parties, the contact details, including telephone number, fax or email address obtained shall only be used to contact the passenger to rearrange a flight, inform him of any possible delay or arrange for alternative means of transport or pass any essential information relevant to the flight in question.
- (3) Where a passenger is unable to offer either a telephone number or an email for any destination, the airline shall inform him of a telephone number at which the local office at the destination in question may be reached, in which language he can contact the local office and at what times the office will be open. Where such information is available on the website of the airline, it shall suffice that a reference is made either on the ticket, or the website, at the airport check-in desk, on board each flight, at the destination airport or in a leaflet made available to each passenger. In applying this provision the airline shall pay particular attention to the language barriers in the territories of the

state parties, and any difficulty any particular passenger may have in reading in any particular language.

- (4) Service providers concerned shall ensure that they utilise the preferred mode of contact of each passenger in cases involving anticipated cancellations, overbooking, delays, save that where the notice is in less than 12 hours of the departure of the flight in question, unless the passenger has confirmed that he is able to retrieve his emails on a mobile device, such notice shall be communicated by phone or SMS.
- (5) The burden of proof as to whether the preferred details of a passenger was obtained and when it was used to contact the passenger or alternatively whether alternative means of communication has been furnished and under what circumstances shall rest with the service provider in question.

#### **Article 11 - Information to the consumer**

- (1) The travel agent, airline, tour operator, and the ground handling agent shall be obliged at the time of purchase of the ticket and at check-in by the passenger shall be obliged to inform the passenger in a language understood by the passenger of his rights in the following situations:
  - a) to be informed in his own language of his obligation to supply a means of communication for emergencies;
  - b) to be informed at least 12 hours before the flight of any planned cancellations or long term delays anticipated;
  - c) to be informed of the airline's obligations in case of denied boarding, free seating, flight cancellation, delayed flight in particular in relation to alternative solutions and compensation
  - d) to request for documents, policies procedures on insurance, compensation, assistance, complaints procedures in line with these Regulations;
  - e) as an illiterate and/or visually impaired, and/or physically challenged to appropriate alternative means of communication;
  - f) Any other information the consumer protection agency may demand to be displayed to the passenger under the terms of this provision.
- (2) Airlines, travel agents, tour operators, airports, cargo handling agents, shall visibly display information at their premises, on their websites, marketing materials and brochures stating the rights of the consumer in relation to specific services provided by them to the consumer.

- (3) Information displayed under the terms of sub-paragraph 2 of this Article shall include (a) mission of the institution with specific regard to customer service, (b) right of the client to specific information regarding the services provided by the institution (c) right to complain against the institution in case of a failure of the service provider in question to meet the minimum service standard, (d) complaints procedures indicating the agency to whom the complaint may be submitted, and e) right to specific redress including but not limited to compensation as prescribed in this regulation and its Appendixes.

### **Article 12 - Complaints Procedures**

Every service provider shall establish a consumer relations desk and particularly at every airport it operates and shall appoint an officer to manage the desk for the purpose of receiving, resolving and channeling complaints to their Head offices, as well as liaising with the Civil Aviation Authority of the state party where necessary.

### **Article 13 – Filing of advanced flight and Passenger Information**

- (1) Airlines shall transmit in advance of arrival into the territory of a state party information on each flight and on each passenger carried on board into an airport of a state party whether or not the passenger in question is destined to enter the state.
- (2) The advanced flight and passenger information which shall be filed in accordance with national legislation of each state party shall be transmitted to the authorised recipient notified in schedule of this regulation and shall contain no less than the standard set of information notified numbers 1 and 2 of schedule 1. States party who require further information listed in number 3 of schedule 1 shall submit a specific requirements list to the airline.
- (3) The Executing Agency shall liaise with states parties and propose further measures to the Sub Committee on Transport of the Specialised Technical Committee (STC) No.4 on Transport, Intercontinental and Interregional Infrastructure, Energy and Transport. State parties may submit formal complaints to the Executing Agency against an airline which persistently fails to supply the required advanced information.
- (4) Without prejudice to paragraph 3 of this Article, the Executing Agency shall conduct a thorough review within 5 years of entry into force of these Regulations including but not limited to the need for a continental or regional administration of the data.

## Article 14 - Compliance with Warsaw Liability Regimes

Airlines shall strictly comply with compensation requirements under the Warsaw Liability as applicable to each passenger and shall not impose any onerous terms and conditions on the passenger or otherwise apply policies and procedures or make any such demands of the consumers as is calculated or may be interpreted as limiting or having the effect of limiting its relevant liabilities

## Article 15 - Denied Boarding

- (1) An airline shall, in overbooking a flight, utilise intelligent market analysis tools to assist it analyse regular loading patterns which may eventually result in certain flights being oversold but shall take all necessary measures including offering passengers SMS or online boarding facilities.
- (2) When, upon utilising pre-boarding facilities an airline reasonably expects to deny boarding on a flight, it shall, (where such can be established in excess of six hours before the flight, contact passengers by phone, SMS or email, where a passenger has offered to accept email in emergency communication) first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the airline but at any rate not which shall not be lower than the compensation scheme applied in **Article 23** to these Regulations. Airlines shall, in this regards, pay particular attention to passengers travelling furthest from the departing airport as a measure of preventing unnecessary hardship in aborted and shall for this matter compile information on which part of the territory passengers are likely to travel from.
- (3) In the event of the airline having to deny boarding at check-in or during boarding on the day of the flight, the airline shall be permitted to make discrete requests for volunteers subject to requested volunteers being informed of their rights as prescribed under Article (6 (iv), above under right of information).
- (4) If an insufficient number of volunteers come forward, the airline may then deny boarding to passengers against their will subject to the following conditions:
  - a) that the smallest practicable number of persons holding confirmed reserved space on that flight are denied boarding involuntarily;
  - b) that passengers are compensated in accordance with its compensation scheme which shall not be lower than the compensation scheme applied in **Article 23** to these Regulations

## Article 16 – Delay

When an airline reasonably expects a flight to be delayed beyond its scheduled time of departure:

- a. between two and four hours the airline shall:
  - i) inform the passengers every 45 minutes of the earliest time they will be expecting to depart, the specific reasons for the delay and, where the flight that is supposed to last for less than 3 hours, informed of their right to reschedule their flight without incurring any penalties and travel within an agreed period on the same route on a flight operated by the same airline;
  - ii) refreshments including water, soft drinks, confectioneries or snacks;
  - iii) two international telephone calls, SMS or e-mails, and
  - iv) that an announcement will be made at their airport of arrival of the new estimated time of arrival.
  
- b. for four hours or more, the airline shall:
  - i) inform the passengers every 45 minutes of the earliest time they will be expecting to depart, the specific reasons for the delay and, where the flight is supposed to last for less than 2 hours, informed of their right to reschedule the flight without incurring any penalties and travel within an agreed period on the same route on a flight operated by the same airline;
  - ii) refreshments including water, soft drinks, confectioneries or snacks;
  - iii) a meal;
  - iv) hotel accommodation;
  - v) two international telephone calls, SMS or e-mails, and
  - vi) transport between the airport and place of accommodation (hotel or other accommodation); and
  - vii) that an announcement will be made at their airport of arrival of the new estimated time of arrival.
  
- c. when the reasonably expected time of departure is at least six hours after the time of departure previously announced, the airline shall:
  - i) inform the passengers of their right to immediate reimbursement of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts

- already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return flight to the first point of departure, at the earliest opportunity;
- ii) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or
  - iii) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.
- d. In applying this provision the following additional terms shall apply when arrangements are made under paragraphs a – c above:
- i) In instances where a passenger opts to reschedule a flight under paragraph a(1) or b(1) above, the airline shall ensure itself of the availability of seats on the flight the passenger is requesting.
  - ii) When an airline offers a passenger a flight to an airport alternative to that for which the booking was made, the operating air carrier shall bear the cost of transferring the passenger from that alternative airport either to that for which the booking was made, or to another close-by destination agreed with the passenger.
  - iii) The airline shall, at all materials times, prioritize the needs of persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied minors.

### **Article 17 - Cancellation of Flight**

- (1) In case of cancellation of a flight,
- a) Where the decision to cancel the flight is taken less than 24 hours before the scheduled departure of the flight in question and the passengers are informed at the airport, or where the passenger on a connecting flight may have begun the earlier part of his flight hours before the decision to cancel the flight and may only know of the cancellation on arrival at the airport, the airline shall:
    - i) inform the passengers of the specific reasons for the cancellation and, inform them of their rights under this provision including but not limited to:
      - (i) Right to cancel their booking in accordance



- (ii) Right to be re-routed or offered an alternative means of transport, where convenient to the passenger in question, and
  - (iii) Right to compensation.
  - (iv) Offer refreshments including water, soft drinks, confectioneries or snacks;
  - (v) two international telephone calls, SMS or e-mails.
  
- b) Where the decision to cancel is taken at least 24 hours before the flight the airline shall immediately contact passengers affected by the decision, offer them the option not to travel to the airport if they have not already set off and advise them of their rights under this provision including but not limited to:
  - i) Right to cancel their booking;
  - ii) Right to be re-routed or offered an alternative means of transport, where convenient to the passenger in question; and
  - iii) Right to compensation.
  
- (2) When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport which may include but not be limited to travel on the same airline but on a different date or time whether or not from the same airport, travel on another airline from the same airport on a different date or time whether or not from the same airport, travel on another mode of transport, where reasonable and convenient to the passenger.
  
- (3) Passengers shall have the right to compensation by the airline for a cancelled flight unless:
  - a) they are informed of the cancellation at least two weeks before the scheduled time of departure; or
  - b) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or
  - c) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

- (4) An airline shall not be obliged to pay compensation in accordance with Article 22, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.
- (5) The burden of proof concerning the questions as to whether and when the passenger was informed of the cancellation of the flight or of the alleged extraordinary circumstances shall rest with the airline.

### **Article 18 – Downgrading**

- (1) If an airline places a passenger in a class lower than that for which the ticket was purchased, including but not limited to operating a free seating policy, it shall within seven days reimburse,
  - (a) 25 % of the price of the ticket for all flights of 3 hours duration or less, or
  - (b) 50 % of the price of the ticket for all flights of more than 3 or more hours duration.
- (2) If an airline places a passenger in a class higher than that for which the ticket was purchased, it shall not be entitled to any supplementary payment.

### **Article 19 – Travel Agents and Package Tour Operators**

Subject to the general obligations in this Part of the Regulations, where applicable the travel agent and or tour operator, in a contract that involves air travel provided by an airline as well as other services including but not limited to accommodation and other tourist services, shall:

- a) provide the consumer, in writing or any other appropriate form, before the contract is concluded, with general information on passport and visa requirements applicable to nationals of the State Party concerned and in particular on the periods for obtaining them, as well as with information on the health formalities required for the journey and the stay;
- b) provide the consumer, in writing or any other appropriate form, with the following information in good time before the start of the journey:
  - i) the times and places of intermediate stops and transport connections as well as details of the place to be occupied by the consumer;
  - ii) the name, address and telephone number of the organizer's and/or retailer's local representative or, failing that, of local

agencies on whose assistance a consumer in difficulty could call.

- iii) Where no such representatives or agencies exist, the consumer must in any case be provided with an emergency telephone number or any other information that will enable him to contact the agent;
- iv) in the case of journeys or stays abroad by minors, information enabling direct contact to be established with the child or the person responsible at the child's place of stay;
- v) information on the optional conclusion of an insurance policy to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness.
- vi) Where the consumer is prevented from proceeding with the package, he may transfer his booking, having first given the organizer or the retailer reasonable notice of his intention before departure, to a person who satisfies all the conditions applicable to the package. The transferor of the package and the transferee shall be jointly and severally liable to the organizer or retailer party to the contract for payment of the balance due and for any additional costs arising from such transfer.

#### **Article 20 - Airport Operators**

Subject to the general obligations in this Part of the Regulations, Passengers and all other persons attending the airport in any capacity excluding those waving off, dropping of, picking up or welcoming passengers, shall, subject to national security and safety legislation, be entitled to:

- a) Visible notices on passengers rights
- b) decent and healthy toilet facilities
- c) reasonable seating space before check-in, after security and passport checks and while waiting for arriving or departing aircraft, and
- d) reasonably clean and safe environment

### **PART FOUR RIGHTS OF THE CONSUMER**

#### **Article 21 – Right to reimbursement**

- (1) When reference is made in this Regulation to the right of the passenger to reimbursement, reimbursement shall be made within seven days of the full cost of the ticket at the price at which it was bought, for the part or parts of the

journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return flight to the first point of departure, at the earliest opportunity.

- (2) The reimbursement shall be paid in cash, by electronic bank transfer, bank orders or, with the signed agreement of the passenger, in travel vouchers and/or other services.

### **Article 22 - Right to be re-routed**

Where passengers are offered the right of re-routing, passengers shall have the choice of:

- reimbursement within seven days of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant,
- a return flight to the first point of departure, at the earliest opportunity and accommodation;
- re-routing, under comparable transport conditions, to their final destination at the earliest opportunity and accommodation; or :
  - a) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.
  - b) When, in the case where a town, city or region is served by several airports, an airline offers a passenger a flight to an airport alternative to that for which the booking was made, the airline shall bear the cost of transferring the passenger from that alternative airport either to that for which the booking was made, or to another close-by destination agreed with the passenger.

### **Article 23 - Right to compensation**

- (1) Where reference is made to this Regulation to the passenger's right to compensation, other than compensation pursuant to the Warsaw Convention as applicable in the state party, passengers shall receive compensation amounting to:
- a) USD 250 for all flights with an estimated duration of 3 hours or less for the entire flight;

- b) USD 400 for all flights an estimated duration between 3 hours and 6 hours for the entire flight;
  - c) USD 600 for all flights with an estimated duration of more than 6 hours for the entire flight.
- (2) In determining the duration of the flight, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time and shall include all scheduled stop over, transit or any other scheduled break in the flight.
- (3) When passengers are offered re-routing to their final destination on an alternative flight pursuant to Article 22, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked:
- a) by two hours, in respect of all flights of 3 hour duration or less; or
  - b) by three hours, in respect of flights lasting between 3 and 6 hours; or
  - c) by four hours, in respect of all flights in excess of 6 hours.
- (4) The airline may reduce the compensation provided for in paragraph 1 by 50%.
- (5) The compensation shall be paid in cash, by electronic bank transfer, bank orders or, with the signed agreement of the passenger, in travel vouchers and/or other services.

## **PART FIVE ADMINISTRATION**

### **Article 24 - Administrative Procedures**

- (1) Each Civil Aviation Authority shall appoint a customer relations officer at each airport to whom complaints may equally be addressed.
- (2) The Executing Agency and the Regional Yamoussoukro Decision (RYA) Authority shall establish consumer protection units and advertise their details, including but not limited to their contact details and their procedures on a website dedicated to the implementation of this regulation.
- (3) A complainant may make a complaint to the Civil Aviation Authority against a service provider, or failing a satisfactory resolution to the RYA or the Executing Agency, in relation to the breach of these Regulations by filling and submitting a Complaint Form, after the consumer must have notified the service provider in question of such a breach and the complaint remains unresolved.

- (4) A complaint may be made in writing as in the prescribed form and transmitted to the Civil Aviation Authority.
- (5) Every complaint shall be accompanied by:
  - a) a copy of the airline ticket;
  - b) a copy of the letter to the air service provider in question stating a claim for breach of the regulations;
  - c) any response or responses or correspondence thereto;
  - d) any other relevant document(s).
- (6) Where a Complaint has been made in a representative capacity, the representative shall provide the complainant's written authority to act on his or her behalf.
- (7) Complainants can present a class action before the Civil Aviation Authority especially in relation to a service provider that owes them a duty of care under Article 25, but must appoint a representative for the class.

#### **Article 25 – Investigation**

- (1) The Executing Agency, the RYA or the Authority shall cause an investigation to be carried out on the substance of the complaint and the response of the service provider within a reasonable period of time after the receipt thereof.
- (2) In carrying out any assessment under these Regulations, an officer designated by the Authority shall have all the powers of investigation under national law or under the provisions of the Dispute Resolution Regulation, and in addition may request for submissions to be made by any interested person(s) in relation to a complaint.
- (3) The Authority shall amongst other things:
  - (a) Notify the Respondent that a request has been lodged under these rules;
  - (b) Require the Respondent to respond to the complaint within 7 days;
  - (c) Require the Respondent to describe the procedure it has taken to resolve the matter.

#### **Article 26 - Determination of Complaints**

- (1) After every assessment, the investigator shall make an assessment report and shall make recommendations therein.

- (2) Upon a consideration of the assessment report, the nature of the conduct alleged against the Respondent, the extent of the claim by the complainant, public interest and other relevant factors, the Authority shall make a determination in one of the following respects:
  - a) the complaint lacks merit pursuant to which the complaint would be struck out;
  - b) the complaint is of such a nature as to advise the parties to resolve the dispute through mediation;
  - c) the complaint is of such a nature as to be subjected to the Authority's administrative hearing procedure in accordance with national law.
- (3) The Authority shall give notice of its determination to the interested parties.

#### **Article 27 – Penalty**

- (1) Any service provider that violates any provision of these Regulations shall, subject to national law, be liable to penalties imposed by the Authority.
- (2) The penalties imposed by the Authority under Section shall be dissuasive, proportionate to both the gravity of the case, and the economic capacity of the service provider concerned. The defaulter's compliance record shall also be considered.
- (3) It shall be unlawful for any service provider, their employees or agent to obstruct or prevent the Authority or any of its designated officers from carrying out investigations or refuse to provide information requested by the Authority, relating to any violation of these Regulations.
- (4) The Executive Council may, on a proposal from the Executing Agency and adoption by the Council of Ministers for Air Transport and after consulting the African Parliament adopt and maintain in place a schedule of penalties to be imposed for breach of provisions of this regulation.

### **PART SIX MISCELLANEOUS**

#### **Article 28 - Duty of Care**

- (1) Consumers shall have no claim against air navigation service providers, airports, ground handling companies, travel agents, consolidators, cargo handling companies, freight forwarders, tour operators and other service

providers for any delay, cancellation or overbooking of their flights or the failure by the airline to transport their cargo and or mail which delay, cancellation, overbooking or failure to transport cargo or mail is the direct action or omission of the airline.

- (2) Without prejudice to the generality of the paragraph 1 of this Article [7], service providers in a contractual relationship with the airline owe a duty of care to the consumer not to negligently or recklessly provide unsafe services to the airline as may if relied on by the airline without exceptional caution make the aircraft or the operation of the aircraft unsafe and endanger the lives of passengers on board the aircraft or cause damage to cargo or mail on board the aircraft.
- (3) The consumer shall, without prejudice to paragraph 2 of this Article, be required to prove the damage, the negligence or recklessness of the third party service provider and the causal relationship between defective service rendered to the airline and damage sustained.
- (4) Consumers shall have no claim on any service provider for the delay, or cancellation of their flights or the failure by the service to transport or effect the transportation of their cargo and or mail which delay, cancellation, or failure to transport cargo or mail is the direct consequence of a natural disaster and over which no service provider shall have been able to control.
- (5) Where, as a result of the provisions of this Regulation, two or more service providers are liable for the same damage, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the rights of contribution or recourse.
- (6) The Executive Council may, on a proposal from the Executing Agency and adoption by the concerned Ministerial Organ of the African Union and after consulting the African Parliament adopt appropriate rules on liability of service providers in relation to unsafe services.

### **Article 29 - Service providers right of redress**

In cases where an airline pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any service provider, including third parties, in accordance with the law applicable in the state party. In particular, this Regulation shall in no way restrict the airline's right to seek reimbursement from a travel agent, ground handling company, airport operator, air



navigation service provider, tour operator or another person with whom the operating air carrier has a contract. Similarly, no provision of this Regulation may be interpreted as restricting the right of a travel agent or tour operator or a third party, other than a passenger, with whom an airline has a contract, to seek reimbursement or compensation from the airline in accordance with applicable laws.

### **Article 30 - Review by the Executing Agency**

Within 2 years of entry into force of this Regulation, the Executing Agency shall report to the concerned Ministerial Organ of the African Union on the operation and the results of this Regulation. The report shall be accompanied where necessary by legislative proposals.

### **Article 31 - Entry into Force**

This Regulation shall enter into force immediately following its endorsement by the Assembly of Heads of State and Government.

**Schedule 1**

In relation to Article 13 the following constitute the data to be supplied by each airline:

<u>Data relating to the flight</u>		
No.	Data Required	Data Description
1	<b>Flight Identification</b>	IATA Airline code and flight number
2	<b>Scheduled Departure Date</b>	Date of scheduled departure of aircraft based on local time of departure location
3	<b>Scheduled Departure Time</b>	Time of scheduled departure of aircraft (based on local time of departure location)
4	<b>Scheduled Arrival Date</b>	Date of scheduled arrival of aircraft (based on local time of arrival location)
5	<b>Scheduled Arrival Time</b>	Time of scheduled arrival of aircraft (based on local time of arrival location)
6	<b>Last Place/Port of Call of Aircraft</b>	Aircraft departed from this last foreign place/port of call to go to "place/port of aircraft initial arrival"
7	<b>Place/Port of Aircraft Initial Arrival</b>	Place/port in the country of destination where the aircraft arrives from the "last place/port of call of aircraft"
8	<b>Subsequent Place/Port of Call within the country</b>	Subsequent place/port of call within the country
9	<b>Number of Passengers</b>	Total number of passengers on the flight

<u>Data relating to each individual passenger :</u>		
(a) Core Data Elements as may be found in the Machine Readable Zone of the Official Travel Document		
1	<b>Official Travel Document Number</b>	Passport or other official travel document number
2	<b>Issuing State or Organization of the Official Travel Document</b>	Name of the State or Organization responsible for the issuance of the official travel document
3	<b>Official Travel Document Type</b>	Indicator to identify type of official travel document
4	<b>Expiration Date of Official Travel Document</b>	Expiration date of the official travel document
5	<b>Surname/Given Name(s)</b>	Family name and given name(s) of the holder as it appears on the official travel document.
6	<b>Nationality</b>	Nationality of the holder
7	<b>Date of Birth</b>	Date of birth of the holder
8	<b>Gender</b>	Gender of the holder
(b) Additional Data elements		
9	<b>Visa Number</b>	Number of the Visa issued
10	<b>Issue Date of the Visa</b>	Date of the Visa issuance
11	<b>Place of Issuance of the Visa</b>	Name of the place where the Visa was issued

12	<b>Other Document Number Used for Travel</b>	The other document number used for travel when the official travel document is not required
13	<b>Type of Other Document used for Travel</b>	Indicator to identify type of document used for travel
14	<b>Primary Residence</b>	
a.	<b>Country of Primary Residence</b>	Country where the traveller resides for the most of the year
b.	<b>Address</b>	Location identification such as street name and number
c.	<b>City</b>	City
d.	<b>State/Province/County</b>	Name of the State, Province, County, as appropriate
e.	<b>Postal code</b>	Postal code
15	<b>Destination Address</b>	
a.	<b>Address</b>	Location identification such as street name and number
b.	<b>City</b>	City
c.	<b>State/Province/County</b>	Name of the State, Province, County, as appropriate
d.	<b>Postal code</b>	Postal code
16	<b>Place of Birth</b>	Place of birth such as city and country
17	<b>Traveller's Status</b>	Passenger, Crew, In-transit
18	<b>Place/Port of Original Embarkation</b>	Place/port where traveller originates foreign travel, refer to 8.1.6
19	<b>Place/Port of Clearance</b>	Place/port where the traveller is cleared by the border control agencies
20	<b>Place/Port of Onward Foreign Destination</b>	Foreign place/port where traveller is transiting to, refer to 8.1.7
21	<b>Passenger Name Record Locator Number (or unique identifier)</b>	As available in the traveller's Passenger Name Record in the carrier's airline reservation system

## Schedule 2

## Details of Recipients of API Data and required mode of communication

Country	Main Contact Point	Receiving Authority	Addresses	Mode of Communication
<a href="#">People`s Democratic Republic of Algeria</a>				
<a href="#">Republic of Angola</a>				
<a href="#">Republic of Benin</a>				
<a href="#">Republic of Botswana</a>				
<a href="#">Burkina Faso</a>				
<a href="#">Republic of Burundi</a>				
<a href="#">Republic of Cameroon</a>				
<a href="#">Republic of Cape Verde</a>				
<a href="#">Central African Republic</a>				
<a href="#">The Republic of Chad,</a>				
<a href="#">Union of the Comoros</a>				
<a href="#">Republic of the Congo</a>				
<a href="#">Republic of Cote d'Ivoire</a>				
<a href="#">Democratic Republic of the Congo</a>				
<a href="#">Republic of Djibouti</a>				
<a href="#">Arab Republic of Egypt</a>				
<a href="#">Republic of Equatorial Guinea</a>				
<a href="#">State of Eritrea</a>				
<a href="#">Federal Democratic Republic of Ethiopia</a>				
<a href="#">Gabonese Republic</a>				
<a href="#">Republic of the Gambia</a>				
<a href="#">Republic of Ghana</a>				
<a href="#">Republic of Guinea</a>				
<a href="#">Republic of Guinea-Bissau</a>				
<a href="#">Republic of Kenya</a>				
<a href="#">Kingdom of Lesotho</a>				
<a href="#">Republic of Liberia</a>				
<a href="#">Libya</a>				
<a href="#">Republic of Madagascar</a>				
<a href="#">Republic of Malawi</a>				
<a href="#">Republic of Mali</a>				

Country	Main Contact Point	Receiving Authority	Addresses	Mode of Communication
<a href="#">Republic of Mauritania</a>				
<a href="#">Republic of Mauritius</a>				
<a href="#">Kingdom of Morocco</a>				
<a href="#">Republic of Mozambique</a>				
<a href="#">Republic of Namibia</a>				
<a href="#">Republic of Niger</a>				
<a href="#">Federal Republic of Nigeria</a>				
<a href="#">Republic of Rwanda</a>				
<a href="#">Republic Arab Saharawi Democratic</a>				
<a href="#">Democratic Republic of sao Tome and Principe</a>				
<a href="#">Republic of Senegal</a>				
<a href="#">Republic of Seychelles</a>				
<a href="#">Republic of Sierra Leone</a>				
<a href="#">Somali Republic</a>				
<a href="#">Republic of South Africa</a>				
<a href="#">Republic of South Sudan</a>				
<a href="#">Republic of The Sudan</a>				
<a href="#">Kingdom of Swaziland</a>				
<a href="#">United Republic of Tanzania</a>				
<a href="#">Togolese Republic</a>				
<a href="#">Tunisian Republic</a>				
<a href="#">Republic of Uganda</a>				
<a href="#">Republic of Zambia</a>				
<a href="#">Republic of Zimbabwe</a> <a href="#">Republic of Wusrtern Sahara</a>				

**ANNEX 4 TO THE YAMO USSOUKRO DECISION:  
REGULATIONS  
ON THE POWERS, FUNCTIONS AND OPERATIONS OF THE EXECUTING  
AGENCY OF THE YAMO USSOUKRO DECISION**

**Executing Agency**

WE, the Ministers responsible for Transport, Infrastructure, Energy and Tourism meeting at the First Ordinary Session of the African Union Specialized Technical Committee on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism in Lomé, Togo, 17th March 2017 have adopted these Regulations developed by the Bureau of the Conference of African Ministers of Transport, meeting in Malabo, Republic of Equatorial Guinea, on 18<sup>th</sup> and 19<sup>th</sup> December 2014, on the occasion of the Fourth Meeting of the Bureau of the Conference of African Ministers of Transport dedicated mainly to implement the Executive Council Decisions EX.CL/Dec.826(XXV) endorsing the report of the Third Session of the Conference of African Ministers of Transport (CAMT);

**CONSIDERING** the Constitutive Act of the African Union adopted in Lomé on 11<sup>th</sup> July 2000, namely its Article 3, 5, 6, 9, 13, 14, 15, 16 and 20;

**CONSIDERING** the Treaty establishing the African Economic Community signed in Abuja on 3<sup>rd</sup> June 1991, namely its articles 8, 10, 11, 13, 25 to 27;

**CONSIDERING** the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of air transport markets access in Africa of 14<sup>th</sup> November 1999, , hereinafter called the Yamoussoukro Decision;

**CONSIDERING** the African Union Commission's Statutes adopted by the Assembly of the African Union in Durban (South Africa) on 10<sup>th</sup> July 2002;

**CONSIDERING** EX.CL/Dec.359 (XI) wherein the Executive Council took note of the Resolution of the 3<sup>rd</sup> Session of the Conference of African Ministers of Transport (CAMT) in Malabo, Equatorial Guinea in 2014 entrusting the functions of the Executing Agency of the Yamoussoukro Decision of 1999 to the African Civil Aviation Commission (AFCAC), hereinafter called the Executing Agency ;

- CONSIDERING** the Resolution on the follow-up of the implementation of the Yamoussoukro Decision of 1999 adopted by the First African Union Conference of Ministers responsible for Air Transport in Sun City(South Africa) in May 2005;
- CONSIDERING** the Resolution on air transport safety in Africa adopted by the Second Conference of African Union Ministers responsible for air transport in Libreville (Gabon) in May 2006;
- CONSIDERING** the need to speed-up the full implementation of the Yamoussoukro Decision with a view to giving a boost to the operations of African airlines and other air transport service providers and effectively meeting the challenges of globalisation of international air transport;
- RECOGNISING** the need for an effective institutional structure to manage liberalization of the air transport sector on the continent and direct safety, security, dispute resolution, consumer protection among others;
- NOTING** the importance of the harmonization of legislation and policies in air transport necessary to achieve the objectives of the Yamoussoukro Decision;
- MINDFUL** of the interests of the African consumer and the need to protect such interests through active continental, regional and national policies that enhance their sense of safety and eases their burden on travelling in the continent;
- CONSIDERING** the important role that airlines and other air transport service providers play in the process of liberalization and the integration of African economies and the need to support their efforts.

**HEREBY MAKE THE FOLLOWING REGULATIONS:**

**Article 1**  
**Definitions**

For the purposes of this Decision, the following expressions shall mean:

In these Regulations, unless the context otherwise requires:

**“Abuja Treaty”**: the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3<sup>rd</sup> day of June, 1991 and which entered into force on 12 May 1994.

**“Aeronautical Authority”**: any Governmental authority, body corporate or organ duly authorised to perform any function to which these Regulations relate.

**“Executing Agency”**: the Executing Agency provided for in Article 9 (4) of the Yamoussoukro Decision.

**“Airline”**: an air transport enterprise holding a valid Air Operators Certificate and operating air transport services.

**“Air Transport Services”** mean any scheduled or unscheduled air service performed by aircraft for the public transport of passengers, mail or cargo.

**“Air Transport Service Providers”** shall include airports, air navigation service providers, airport ground passenger and cargo handling companies, travel agents, suppliers of computer reservations systems or global distribution systems, and all other categories of services provided to airlines directly at the airports.

**“African Aviation Tribunal”** means the arbitral tribunal established by the Regulations on Dispute Settlement Mechanisms Relating to the Implementation of the Yamoussoukro Decision.

**“Board of Appeal”** means the Board of Appeal established by the Regulations on Dispute Settlement Mechanisms Relating to the Implementation of the Yamoussoukro Decision Yamoussoukro Decision.

**“Organ of the African Union”** shall refer to Organs of the African Union as provided for in the Constitutive Act of the African Union.

**“Organ of the Decision”** means the bodies in the Yamoussoukro Decision tasked with the supervision and follow up of its implementation and includes include the Executing Agency, the Monitoring Body, the Sub-Committee on Air Transport of the Committee on Transport, the Conference of African Ministers of Transport or any such body or bodies as are appointed to replace them by them.

**“Regional Yamoussoukro Decision Authority”** means the authority or agency established or constituted by a regional economic community recognized by the



African Union under the Abuja Treaty and invested with powers to supervise and manage the implementation of the Yamoussoukro Decision within the region.

**“State Party”** means a Member State that has ratified and acceded to the Abuja Treaty and such other African country which, though not a party to the said Treaty, has declared in writing its intention to be bound under the Yamoussoukro Decision

## **Article 2**

### **Scope of Application**

1. This Regulation shall apply to the implementation of the Yamoussoukro Decision and the liberalisation of air transport throughout the territories of State Parties.
2. It prescribes rights and obligations, and shall be binding on relevant organs of the African Union, regional economic communities, State Parties to the Decision, organs of the Decision and airlines.

## **Article 3**

### **Object and Basic Principles**

1. The key objective of this Regulation is to empower AFCAC as the Executing Agency (Hereinafter Executing Agency or Agency) and enable it to supervise and manage the liberalisation of air transport in Africa and the effective implementation of the Decision and its implementing rules and regulations.
2. To achieve this objective the Executing Agency, the State Parties, Organs of the African Union and of the Decision, the regional economic communities and airlines shall be guided by the following basic principles:
  - a) All air transport activities undertaken on the African continent shall aim at achieving smooth, safe, comfortable and efficient intra-African travel.
  - b) All air transport activities shall be conducted in the interest of the consumer and whose interests shall be considered as protected by all stakeholders.
  - c) Airlines shall be encouraged to operate profitably with least operating cost, preferably utilising all logical fifth freedom routes and assisted to identify potentially attractive routes based on long term focused economic activities in different localities of Africa.
  - d) Maximum utilisation of airport slots and airports infrastructure and services during the day and thereby encourage economic activities at and around all African airports.

- e) Active cooperation between eligible airlines and multiple establishment in different regional economic communities.
- f) The consideration of liberalised routes as a public good held for the use of and interest of the African continent.

#### **Article 4**

#### **Criteria for eligibility**

Subject to Article 6.9 of the Yamoussoukro Decision, the Agency may develop rules and regulations regarding the eligibility of airlines for consideration and approval of organs of the African Union.

### **Chapter 1 Powers and Functions**

#### **Article 5**

#### **Functions of the Executing Agency**

1. For the purpose of implementing the Yamoussoukro Decision and in particular paragraph 4 of Article 9 thereof, the African Civil Aviation Commission is entrusted with the responsibility of the Executing Agency and charged to supervise and manage and enforce the liberalization of African air transportation.
2. The Executing Agency shall specifically undertake the following functions:
  - a) Outline, stipulate and enforce conditions under which a state may limit its commitment under Article 3.2 of the Yamoussoukro Decision;
  - b) Continuously review, recommend and, where applicable, enforce modern and effective measures of tariff notification under Article 4, frequency and capacity notification under Article 5.1, designation and authorization of eligible airlines under Article 6.1, 6.2 and 6.3 of the Yamoussoukro Decision;
  - c) Develop and enforce the criteria for eligibility under Article 6.9 of the Yamoussoukro Decision and safety of airline operations;
  - d) Conduct studies, monitor and enforce competition and consumer protection rules;
  - e) Ensure ICAO safety and security standards;
  - f) On its own initiative, or at the request of the Monitoring Body any Organ of the African Union, undertake action aimed at assisting and advising the Monitoring Body in relation to its function provided for under sections a, b, d, g, h, i, j, k of Annex A to the Yamoussoukro Decision.

## Article 6 Powers of the Agency

1. The Agency shall have the power to:
  - a) Ensure that the Decision is applied consistently throughout the African continent;
  - b) Enforce relevant decisions, resolutions, regulations and directives of the Organs of the African Union and the Monitoring Body.
  - c) Formulate opinions, make decisions, guidelines and guidance materials including clarifications of provisions of the Decision and acceptable means of compliance.
  - d) Ensure that senior management of civil aviation authorities or any such senior personnel in State Parties who are directly involved in the implementation of the Decision are reasonably trained in the understanding of their global responsibilities in relation to the Decision.
  - e) Request specific action of State Parties and other stakeholders, including but not limited to, data and reports.
  - f) Make determinations on the state of compliance of the Decision and any relevant implementing rules and regulations and recommend or take appropriate remedial action.
  - g) Make recommendations to the Monitoring Body or organs of the African Union on imposition of sanctions on State Parties, where appropriate.
  - h) Impose sanctions on airlines including fines, penalty payments.
  - i) Require that a breach or infringement be brought to an end.
  - j) Order interim measures.
  - k) Accept commitments of compliance from State Parties and eligible airlines.
  - l) Report annually or as often as is determined from time to time on the status of implementation of the Decision.
  - m) Conduct investigations in the territories of the State Parties and undertake all necessary measures within the powers conferred on it by this Regulation or other legislation.
  - n) Exercise such other powers and perform such other functions as are vested in or conferred on it by the Executive Council, or any other organ of the African Union or the Yamoussoukro Decision.
  
2. In exercising the above functions the Executing Agency shall have full regard of the sovereign rights of State Parties and the commercial interests of eligible airlines, save that no civil aviation authority shall of its own have the power to dictate the terms and conditions of operations of the Agency.

## **Article 7**

### **Acts of the Agency**

Subject to the provisions of Articles 13, 15, 17, 18, 20, and 21 of the Constitutive Act of the African Union and paragraphs 1 and 3 of Article 9 of the Decision, the Agency shall, where appropriate:

- a) make **recommendations** for the consideration of the relevant organs of the African Union and the Decision.
- b) issue **opinions** either on its own initiative or upon request of the Monitoring Body, relevant organs of the African Union.
- c) take appropriate **decisions** for the application of Article 5 of this Regulation.
- d) issue **guidelines and recommendations** to State Parties, airlines and other service providers.

## **Chapter 2 Operations of the Agency**

### **Article 8**

#### **Implementing Measures at National and Regional Levels**

The Agency shall recommend the establishment by regional economic communities and states parties of regional and national monitoring groups for the implementation of the Decision.

### **Article 9**

#### **Training of Senior Management**

1. Having regard to its function under paragraph e of Article 6 of this Regulation, the Agency shall encourage, conduct or facilitate training of senior management personnel directly involved in national authorities' implementation of the Decision and are likely to be involved in any investigations and inspections to be conducted under Articles 12 and 13 of this Regulation.
2. The training may be conducted at the regional level or continental levels and, in the case of regional training, shall be conducted or facilitated by the regional economic communities.
3. The Agency shall adopt rules on training and sponsorship of senior personnel.

## Article 10 Monitoring, Evaluation and Reporting

1. Having regard to the object of this Regulation, the Agency shall, in close cooperation with the regional economic communities, monitor the application of the Decision by civil aviation authorities, airlines and other service providers.
2. The Agency shall submit annual reports to the Monitoring Body and the Conference of African Ministers of Transport (Hereafter CAMT) or any other organ of the African Union as appropriate.
3. The Agency shall, in fulfilment of its reporting function outlined in this Article, shall:
  - a) conduct regular investigations,
  - b) carry out evaluations,
  - c) request for and review national aviation regulations including but not limited to economic regulations, air services agreements, and operational statistics of air transport falling within its field of competence.
4. The Agency shall publish a **state report** on each State Party every 5 years on the level and effectiveness of application of the Decision and any relevant implementing rules and regulations.
5. The Agency shall submit the following additional annual reports to the relevant organs of the African Union:
  - a) report of its activities including a summary of activities of each regional economic community and in particular the state of implementation by eligible airlines of regional routes.
  - b) report on implementation of competition regulations,
  - c) report on implementation consumer protection regulations,
  - d) reports on sanctions imposed or recommended,
  - e) report on complaints and dispute resolution and,
  - f) Request reports from regional economic communities, State Parties, airlines and other service providers.

## Article 11 Research and Development

1. The Agency shall encourage research in areas of its competence.

2. It shall encourage African universities, other educational institutions and research institutes to conduct such research as will enhance understanding and further promote air transport liberalisation in Africa
3. The Agency shall maintain a publicly available database of research undertaken by itself, State Parties, regional economic communities, organs of the African Union and other regional organisations, academic and research institutions.
4. The Agency may develop, finance and undertake financed research in so far as it relates to the improvement of activities in its field of competence and particularly under the following conditions:
  - a) It shall coordinate its research activities with those of the African Union, the regional economic communities and State Parties so as to ensure that policies and actions are mutually consistent and to prevent duplication of efforts.
  - b) Results of research funded, facilitated, coordinated by or in any way owned by the Agency that are not classified as confidential shall be published in the manner the Agency deems it. Where published as a commercial publication, at least the executive summary of such reports shall be made available on the Agency's website and shall be made freely available to interested parties.

## **Article 12**

### **Annual Planning**

1. The Agency shall, within 6 months of the entry into force of this Regulation, submit an annual work plan to the relevant organs of the African Union for approval.
2. The Agency shall, within 6 months of entry into force of this Regulation, submit an annual list of proposed regulatory activities to be undertaken in pursuance of Article 16 of this Regulation to the relevant organs of the African Union for approval.
3. The annual work plan and the list of proposed regulatory activities shall be submitted on the anniversary of the date of submission in accordance with paragraphs 1 and 2 above.

**Article 13**  
**Database, Website, Privacy and Publication**

1. The Agency, civil aviation authorities, regional economic groupings, airlines, and the African Union Commission and the Monitoring Body, shall be encouraged to exchange information among themselves using the most secure, expeditious, efficient and cost effective means of communication. In this regard, the Agency shall:
  - a) encourage the use of modern means of information technology to transact its business.
  - b) ensure that national authorities and members of the regional implementation groups have direct access to its information network and database and are able to communicate seamlessly and securely using such information technology.
  - c) facilitate the use by airlines and other service providers to utilise the website of the Agency to communicate with the Agency, State Parties, regional economic communities and other institutions.
  - d) The Agency shall create an internet platform and establish conditions for consumer and hazard reporting.
2. The Agency shall compile a central database of air transport on all aspects of its competence.
3. In giving effect to this Regulation the Agency shall be guided by openness, transparency and a willingness to publish relevant documentation to all interested parties, including the general public.
4. Without prejudice to paragraph 3 of this Article, measures for the dissemination to interested parties of information shall be based on the need:
  - a) to provide persons and organisations with the information they need to enable them undertake their obligations under the Yamoussoukro Decision;
  - b) to limit the dissemination of information to what is strictly required for the purpose of its users, in order to ensure appropriate confidentiality of that information.
5. Civil aviation authorities and regional economic communities, organs of the Union and airlines shall take necessary measures to ensure appropriate confidentiality of the information received by them in application of this Regulation.

6. The Agency shall have an official publication.

#### **Article 14** **Investigation**

1. In supervising and managing the liberalisation of air transport in Africa, the Agency shall, working closely with the regional economic communities, monitor the application of this regulation and its implementing rules by conducting investigations of civil aviation authorities of State Parties. Investigations shall be carried out in compliance with the legal provisions of State Parties in which they are undertaken.
2. The Agency shall only be entitled to conduct investigations in a State Party after exhausting the following:
  - a) Making a determination of non-compliance or persistent breaches of provisions of the Decision and submitting the same to the Monitoring Body.
  - b) Offering the State Party the opportunity to comply within a specified time period.
  - c) Taking a decision of non-compliance of its determination made under sub-paragraph a and reporting the same to the Monitoring Body.
3. Officials of the Agency, regional economic communities, or of State Parties shall be authorised to undertake such tasks for and on behalf of the Agency and are thus empowered in compliance with the legal provisions of the State Parties concerned to:
  - a) examine statutes, rules, policies, statements, guidelines, relevant records, data, procedures and any other material relevant to the achievement of the objectives of the Decision in accordance with this Regulation and implementing rules and regulations;
  - b) take copies of or extracts from such records statutes, rules, policies, statements, guidelines, relevant records, data, procedures and other material relevant;
  - c) request for oral interviews and explanation;
  - d) enter any relevant premises.
4. The officials of the Agency, regional economic communities and State Parties authorised for the purpose of these investigations shall exercise their powers upon the production of an authorisation in writing specifying the subject matter, the purpose of the investigation and the date on which it is to begin. In



good time before the inspection, the Agency shall inform the State Party concerned of the investigation of the identity of the authorised officials.

5. The State Party concerned shall assist the agency in conducting its investigations.
6. Reports drawn up in application of this Article shall be made available in the official language of the State Party concerned.

### **Article 15**

#### **Inspections of service providers**

1. The Agency may itself conduct or allocate to the regional economic community, civil aviation authorities, or qualified entities all necessary investigation of eligible airlines and other service providers. Inspections shall be carried out in compliance with the legal provisions of State Parties in which they are undertaken. To that end the persons authorised under this Regulation are empowered:
  - a) To examine the relevant records, data, procedures and any other relevant material;
  - b) Take copies of or extracts from such records, data, procedures and other material;
  - c) Request for oral interviews and explanation;
  - d) To enter any relevant premises.
2. The persons authorised for the purpose of these investigations shall exercise their powers upon production of an authorisation in writing specifying the subject matter and the purpose of the investigation.
3. In good time before the investigation, the Agency shall inform the State Party concerned in whose territory the investigation is to be made, of the investigation and of the identity of the authorised persons. Officials of the State Parties shall, at the request of the Agency or the regional economic community, assist the authorised persons in carrying out their duties.

### **Article 16**

#### **Imposition of Sanctions**

1. The Agency may determine the appropriate sanctions to be imposed for breaches of the Yamoussoukro Decision and its implementing rules and regulations.

2. The Agency shall submit a Regulation on sanctions to be imposed under the Yamoussoukro Decision and its Implementing Regulations to the relevant organs of the African Union.
3. The regulation shall clearly stipulate:
  - a) detailed conditions under which the sanctions regulation will be implemented;
  - b) modality for the enforcement of imposed sanctions;
  - c) conditions for prior notification of intended sanction;
  - d) confidentiality in the period before the imposition of any intended sanction;
  - e) publication of any sanction imposed;
  - f) the right of subjects of any intended sanction to be permitted to rectify the cause of the intended sanction;
  - g) right of appeal against the sanction; and
  - h) liability of the Executing Agency for wrongful imposition of a sanction.

#### **Article 17**

#### **Procedures for Development of Opinions, Procedures, Plans, Specifications**

1. When the Agency develops opinions, procedures, plans, specifications of eligible airlines, and guidance material to be applied by State Parties, it shall establish a procedure for consulting the State Parties, the regional economic communities, eligible airlines, service providers and all interested parties.
2. The Agency shall adopt rules through the procedure of Notification of Proposed Rulemaking on the Yamoussoukro Decision (Hereinafter, YDNPR).
3. The Agency shall, within 6 months of entry into force of this Regulation, adopt detailed procedures for issuing opinions, taking decisions and making recommendations, guidelines and guidance material.
4. The Agency shall submit the procedures to the Chairperson of the African Union for approval.
5. Those procedures shall:
  - a) Draw on expertise available in standing and ad-hoc AFCAC Committees, civil aviation authorities and the regional economic communities and airlines;

- b) Involve appropriate experts from relevant interested parties, including but not limited to African Universities and Research institutions;
- c) Ensure that the Agency publishes documents widely with interested parties according to a timetable and a procedure which includes an obligation on the Agency to submit written responses to the consultation process.

### **Article 18**

#### **Procedures for taking enforcement decisions**

1. The Agency shall establish transparent procedures for taking decisions affecting State Parties, eligible airlines and other service providers.
2. Those procedures shall:
  - a) If they are intended to affect State Parties, ensure that State Parties have been given ample time to remedy the cause of the eventual decision and that such an enforcement decision is based on an Executive Council Directive;
  - b) If they are intended to affect eligible airlines or service providers, ensure a hearing of the airlines to be addressed in the decision and of any other party with a direct and individual interest;
  - c) Provide for notification of a decision to an airline or service provider and its publication;
  - d) Provide for information to the eligible airline or service provider to whom a decision is addressed, and any other parties to proceedings, of the legal remedies available to that airline or service provider under this Regulation;
  - e) Ensure that the decision contains adequate reasons

## **Chapter 3 Institutional Arrangements**

### **Article 19**

#### **Management of the Executing Agency**

1. In accordance with Section II of the AFCAC Constitution, the Plenary of AFCAC, acting as the supreme organ of the Executing Agency shall:
  - a) adopt the reports of the Agency in accordance with Article 8 and cause further action to be taken;
  - b) adopt the Agency's annual programme in accordance with Article 10
  - c) establish procedures for making decisions by the Secretary General;

- d) carry out its functions relating to the Agency's budget pursuant to Chapter 4 of this Regulation;
  - e) recommend a list of the members of the African Aviation Tribunal, the Board of Appeal and Mediators pursuant to Appendix 2 to the Decision for approval by the Chairperson of the African Union;
  - f) make recommendations for the imposition of sanctions against a State Party
  - g) approve sanctions imposed by the Secretary General on eligible airlines and service providers;
  - h) approve the Notification of Proposed Rulemaking on the Yamoussoukro Decision pursuant to Article 17.
2. The Plenary may advise the Secretary General on any matter strictly related to strategic development of air transport liberalisation, including research as defined in Article 10.
  3. The Plenary shall, in coordination with regional economic communities, encourage the establishment of the national YD Implementation groups.

#### **Article 20**

#### **The Secretary General**

1. The Agency shall be managed by the Secretary General of AFCAC, who shall be completely independent in the performance of his/her duties. Without prejudice to the respective competencies of the Plenary, the Secretary General shall neither seek nor take instructions from any government or from any other body.
2. Relevant organs of the African Union may invite the Secretary General of the Agency to report on the carrying out of his/her tasks.

#### **Article 21**

#### **Functions and Powers of the Secretary General**

1. In addition to the function and powers provided for in Article 11 of the AFCAC Constitution, the Secretary General shall have the following functions and powers to:
  - a) approve the measures of the Agency as defined in Article 5 of this Regulation, its implementing rules and any applicable law;
  - b) liaise with the regional economic communities and other organs of the African Union to ensure the implementation of harmonised rules necessary to ensure the liberalisation of air transport

- c) decide on investigations and inspections as provided for in Articles 14 and 15;
- d) allocate tasks to the Regional YD Authority (RYA);
- e) take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with the provisions of this Regulation;
- f) prepare each year a general report and all other reports stipulated in Article 9 and submit it to the Plenary and relevant organs of the African Union;
- g) prepare a provisional budget for Agency pursuant to Article 22, and implement the budget pursuant to Article 23;
- h) delegate his/her powers to other members of the Agency's staff.

## **Chapter 4 Financial Arrangements**

### **Article 22**

#### **Budget**

1. The revenues of the Agency shall consist of:
  - a) contributions the African Union and any State Party,
  - b) grants from stakeholders and development partners.
  - c) Donations, penalties, charges for publications, training, and any other services provided by the Agency as may be approved from time to time.
2. The expenditure of the Agency shall include the staff, administrative, infrastructure and operational expenses.
3. The Agency shall, within 6 months of this Regulation, at the latest, adopt the estimates, including the approved or preliminary work plan, and forward the same to the Chairperson of the African Union Commission.
4. Any modification to the budget shall follow the procedure referred to in paragraphs 3 of this Article.

### **Article 23**

#### **Implementation and control of the budget**

1. The Secretary General shall implement the budget of the Agency.
2. Control of commitment and payment of all expenditure and control of the existence and recovery of all revenue of the Agency shall be carried out by the Financial Controller of the African Union Commission.

3. By 31<sup>st</sup> December each year at the latest, the Secretary General shall submit to the AU Commission, Plenary and the AU Auditors the detailed accounts of all revenue and expenditure from the previous financial year.
4. The relevant organ of the Union shall give a discharge to the Secretary General of the Agency in respect of the implementation of the budget.

#### **Article 24**

##### **Fees**

1. The Agency shall within 90 days of the entry of this Regulation submit a regulation on fees and charges for approval by the relevant organs of the African Union and in consideration of ICAO policies.
2. The fees and charges regulation shall determine in particular the matters for which fees and charges are due, the amount of the fees and charges and the way in which they are to be paid. All fees and charges shall be expressed, and payable, in US Dollars.

#### **Final Provisions**

##### **Article 25**

##### **Entry into force**

This Regulation shall enter into force following its endorsement by the Assembly of Heads of State and Government.

**APPENDIX A TO THE REGULATIONS ON POWERS, FUNCTIONS AND  
OPERATIONS OF THE EXECUTING AGENCY OF THE YAMO USSOUKRO  
DECISION**

**Procedure to be applied by the Executing Agency for the Issuing of Decisions,  
Regulations and Guidelines  
("Rulemaking Procedure")**

**Section 1 – basic principles and applicability**

**Article 1**

**Scope**

This Decision prescribes the procedures for the development and issuing of recommendations, opinions, decisions, guidelines and guidance material by the Agency.

**Article 2**

**Definitions**

For the purposes of this Decision:

'Rulemaking' shall mean the development and issuance of rules for the implementation of the YD.

'Rules' comprises the following:

- decisions of the Agency
- opinions concerning the scope, implementation, compliance with and content of the Yamoussoukro Decision and its implementing rules;
- recommendations of the Agency to the Monitoring Body, CAMT or any organ of the African Union intended to result in the application of a sanction against a State Party
- guidelines
- guidance material, which is non-binding material that helps to illustrate the logical procedures, processes and materials in implementing a rule and which does not provide presumption of compliance.

## Section 2 – Rulemaking Procedure

### Article 3 Programming

1. The Secretary General shall establish an annual rulemaking programme in consultation with the Monitoring Body and the regional economic communities.
2. The rulemaking programme shall take account of:
  - i. the object and basic principles set out in Article 3 of the Regulation on the Powers and Functions of the Executing Agency;
  - ii. the object of implementing a liberalised air transport market in Africa;
  - iii. significant protection of the interest of the African air transport consumer;
  - iv. the need to ensure a vibrant but safe, economically viable, efficient and healthy African airline sector; and
  - v. the objective of developing an efficient, transparent and responsive continental regulatory system.
3. Any person or organisation may propose the development of a new rule or an amendment thereto. The Secretary General shall consider such requests in the context of the revision of the rulemaking programme.
4. Proposals, including the identification of the proposer, the proposed text and the justification for the proposal, shall be sent to the Agency and shall be individually acknowledged.
5. The Secretary General shall provide the proposer with justification for his or her decision on whether to act on his or her proposal.
6. The rulemaking programme shall be supported by an analysis of the priority accorded to each task taking into account the resources at the disposal of the Agency and potential continental impact of the proposal.
7. The Secretary General shall adapt the rulemaking programme as appropriate in the light of unforeseen and urgent rulemaking demands. The Monitoring Body shall be informed of any such changes.
8. The adopted rulemaking programme shall be published in the Agency's official publication.



9. The Secretary General shall conduct regular reviews of the impact of the rules issued under this Regulation on Rulemaking Procedure.

#### **Article 4 Initiation**

1. Rulemaking activities shall be initiated in accordance with the rulemaking priorities set out in the annual rulemaking programme.
2. The Secretary General shall draw up terms of reference for each rulemaking task after consulting the Monitoring Body. The terms of reference, which shall be published in the Agency's official publication, shall include the following:
  - i. a clear definition of the task;
  - ii. a timetable for completion of the task; and
  - iii. the format of the deliverable.

Where a drafting group is set up, whether by recourse to the standing Committee on Air Transport or its ad hoc Committee on Legal Issues or other ad hoc group, the terms of reference shall also include details of the composition of the group, its working methods and reporting requirements.

3. The Secretary General shall choose between the use of a drafting group, consultants or Agency resources for the fulfilment of each rulemaking task, taking into account the complexity of the task at hand and the need to draw upon the expertise of persons involved in the implementation of the rule envisaged. This decision shall be taken after consulting the Monitoring Body.
4. When a drafting group is convened, the Secretary General shall determine its exact composition, which shall draw upon technical expertise available among national authorities and, where necessary, airlines and other interested parties, as well as within the Agency itself.
5. The Agency shall provide drafting groups with the administrative and logistical support necessary for the fulfilment of their tasks, including the provision of standard operating procedures, to be adapted as necessary by the groups themselves according to their specific circumstances.
6. The Agency shall adopt standardised working methods for drafting groups, in particular the following:
  - i) Chair/Secretary elections;
  - ii) obtaining of consensus and resolution of conflicts;

- iii) the preparation of minutes; and
- iv) access to the AFCAC website or online facilities to assist in drafting.

### **Article 5** **Drafting**

1. New rules or amendments thereto shall be drafted in accordance with the terms of reference referred to in article 4 of this Regulation on Rulemaking Procedure].
2. The Secretary General may amend the terms of reference as appropriate in the light of progress with the rulemaking task.
3. The Secretary General shall inform the Monitoring Body of any such changes.
4. Drafting of rules shall take into account the following:
  - i) The Abuja Treaty and Constitutive Act of the African Union
  - ii) The Yamoussoukro Decision, Regulation on Legal Powers and Functions of the Executing Agency including subsidiary rules and regulations;
  - iii) Competition Rules;
  - iv) Consumer Protection Rules;
  - v) ICAO Standards and Recommended Practices;
  - vi) Timely implementation of the proposed rules, taking into account translation delays;
  - vii) Compatibility with existing rules and in particular rules adopted by the regional economic communities and the courts;
5. Upon completion of the drafting of the proposed rule, the Secretary General shall verify that the rule satisfies the terms of reference established for the rulemaking task and shall publish a Notice of Proposed Rulemaking (YDNPR) in the Agency's official publication, including the following information:
  - the proposed rule;
  - an explanatory note describing the development process;
  - full details of significant or contentious or interface issues identified during the drafting process;
  - details of the situation with respect to the Yamoussoukro Decision;
  - the role of the regional economic communities, the Monitoring Body and other organs of the African Union.

6. As regards guidance material, it is sufficient that the Notice of Proposed Rulemaking contains a justification (including a paragraph showing that the material complies with the definition of guidance material) and the proposed new or amended guidance material.

### **Article 6 Consultation**

1. All State Parties all eligible airlines and any person or organisation with an interest in the rule under development shall be entitled to comment on the basis of the published Notice of Proposed Rulemaking.
2. All consultation shall be treated in accordance with the rules on access to documents under relevant provisions of the Executive Council Decision on Legal Functions and Powers of the Executing Agency
3. Copies of all YDNPR shall be transmitted to States Parties, the regional economic communities, the Pan-African Parliament, NPCA and the African Development Bank.
4. The consultation period shall be 4 months from the date of publication of the YDNPR.
5. The Secretary General may, prior to the start of the consultation period, specify a shorter or longer consultation period to that specified in paragraph 4. This decision shall take account of the potential impact and complexity of the rules envisaged and the opinions of the Monitoring Body. Notification of the length of this revised period shall be published at the same time as the YDNPR in question.
6. During the consultation period, the Secretary General may, in exceptional and strictly justified circumstances, extend the consultation period specified in paragraphs 4 and 5 at the request of States Parties, airlines or interested parties. Such changes to the length of the consultation period shall be published in the official publication of the Agency.
7. Comments shall be forwarded to the Secretary General and shall contain the following elements:
  - i) identification of the commentator;
  - ii) YDNPR reference code; and
  - iii) position of the commentator, relative to the proposal (including justification for the position taken).

## **Article 7**

### **Review of comments**

1. The Secretary General shall ensure that comments are reviewed by appropriately qualified experts not directly involved in the drafting of the proposed rule together with the Agency staff or drafting group tasked with the drafting of the rule in question.
2. Further consultation with consultees may be undertaken as necessary for the sole purpose of securing a better understanding of comments submitted.
3. The Secretary General shall review the comments received from consultees and publish detailed a Response to YDNPR in the Agency's official publication within 3 months of the expiry of the consultation period.
4. The Response to YDNPR shall include the following:
  - a) a summary of the original YDNPR
  - b) publication and commentary dates
  - c) summary of key rules
  - d) a list of all parties commenting on the rule in question; and
  - e) a summary of comments received and the Agency's responses thereto.
5. If, based on the number of comments received, the Secretary General is unable to publish the Response to YDNPR referred to in paragraph 4 by the deadline specified, he or she shall publish an amended timetable for the rulemaking process.
6. If the result of the review of comments is that the revised text differs significantly from that circulated at the start of the consultation process, the Secretary General shall consider a further consultation round in accordance with this Decision.
7. If the comments received from State Parties/civil aviation authorities indicate major objections to the proposed rule, the Secretary General shall consult the Committee on Air Transport to discuss the rule further. In those cases where additional consultation results in continuing disagreement regarding the rule, the Secretary General shall include in the Response to YDNPR the results of this consultation and the impact and consequences of his/her decision regarding the issue at stake.

**Article 8**  
**Adoption and Publication**

1. The Secretary General shall issue his/her decision in respect of the rule in question no earlier than 2 months following the date of publication of the Response to YDNPR in order to allow sufficient time for consultees to respond to its contents.
2. Rules issued by the Agency shall be published in the Agency's official publication, together with an explanatory memorandum.

**EX.CL/1048(XXXII)**  
**Annex 9**

**DRAFT PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN  
ECONOMIC COMMUNITY RELATING TO FREE MOVEMENT OF  
PERSONS, RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT**



**DRAFT PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC  
COMMUNITY RELATING TO FREE MOVEMENT OF PERSONS, RIGHT OF  
RESIDENCE AND RIGHT OF ESTABLISHMENT**

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**DRAFT PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC  
COMMUNITY RELATING TO FREE MOVEMENT OF PERSONS, RIGHT OF  
RESIDENCE AND RIGHT OF ESTABLISHMENT**

**PREAMBLE**

**We**, the Heads of State and Government of the Member States of the African Union;

**RECALLING** our commitment to conclude a Protocol on the free movement of persons, right of residence and right of establishment, under article 43(2) of the Treaty Establishing the African Economic Community, which was adopted in Abuja, Nigeria on 3<sup>rd</sup> June, 1991 and entered into force on 12<sup>th</sup> May, 1994;

**MINDFUL** of article 3(a) of the Constitutive Act of the African Union which promotes the achievement of greater unity and solidarity between the African countries and the people of Africa; and the Treaty Establishing the African Economic Community which promotes economic, social and cultural development and the integration of African economies;

**REITERATING** our shared values which promote the protection of human and people's rights as provided in the Universal Declaration of Human Rights of 1948 and the African Charter on Human and Peoples Rights which guarantees the right of an individual to freedom of movement and residence;

**GUIDED** by our common vision for an integrated, people-centred and politically united continent and our commitment to free movement of people, goods and services amongst the Member States as an enduring dedication to Pan Africanism and African integration as reflected in Aspiration 2 of the African Union Agenda 2063;

**RECALLING** our commitment under article 4 (2)(i) of the Treaty Establishing the African Economic Community, to gradually remove obstacles to the free movement of persons, goods, services and capital and the right of residence and establishment among Member States;

**BEARING IN MIND** the strategies of the Migration Policy Framework for Africa adopted in Banjul, in The Gambia in 2006 which encourage Regional Economic Communities and their Member States to consider the adoption and implementation of appropriate protocols in order to progressively achieve the free movement of persons and to ensure

the enjoyment of the right of residence, establishment and access to gainful employment in the host countries;

**RECOGNIZING** the contribution and building on the achievements of the Regional Economic Communities and other intergovernmental organizations towards progressively achieving the free movement of persons and ensuring the enjoyment of the right of residence and the right of establishment by citizens of Member States;

**AWARE** of the challenges of implementing the free movement of persons in the regional economic communities which are at different levels of implementing the frameworks providing for free movement of persons;

**ENVISAGING** that the free movement of persons, capital, goods and services will promote integration, Pan-Africanism, enhance science, technology, education, research and foster tourism, facilitate intra-Africa trade and investment, increase remittances within Africa, promote mobility of labour, create employment, improve the standards of living of the people of Africa and facilitate the mobilization and utilization of the human and material resources of Africa in order to achieve self-reliance and development;

**AWARE** of the need to ensure that effective measures are put in place in order to prevent situations whereby upholding the freedom of movement of people will not lead to situations whereby the arrival and settlement of migrants in a given host country will create or exacerbate inequalities or will constitute challenges to peace and security;

**NOTING** that the free movement of persons in Africa will facilitate the establishment of the Continental Free Trade Area endorsed by the African Union 18<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government;

**NOTING FURTHER** the decision of the Peace and Security Council adopted at its 661<sup>st</sup> meeting (PSC/PR/COMM.1 (DCLXI) held on 23<sup>rd</sup> February 2017, in Addis Ababa, Ethiopia, where the Council acknowledged that the benefits of free movement of people, goods and services far outweigh the real and potential security and economic challenges that may be perceived or generated;

**RECALLING FURTHER** the decision of the Peace and Security Council adopted at the 661<sup>st</sup> meeting of the Peace and Security Council (PSC/PR/COMM.1 (DCLXI) held on 23<sup>rd</sup> February 2017 in Addis Ababa, Ethiopia, in which the Peace and Security Council underlined the need to ensure a phased approach in implementing AU policy decisions on free movement of people and goods, mindful of the variances in the legitimate security concerns of Member States;

**REAFFIRMING** our belief in our common destiny, shared values and the affirmation of the African identity, the celebration of unity in diversity and the institution of the African citizenship as expressed in the Solemn Declaration of the 50<sup>th</sup> Anniversary adopted by the 21<sup>st</sup> Ordinary Session of the Assembly of Heads of State and Government in Addis Ababa on 23<sup>rd</sup> May, 2013;

**DETERMINED** to enhance the economic development of Member States through a prosperous and integrated continent;

**MINDFUL** of the decision of the Assembly adopted in July, 2016 in Kigali, Rwanda (**Assembly/AU/Dec.607(XXVII)**) welcoming the launch of the African Passport and urging Member States to adopt the African Passport and to work closely with the African Union Commission to facilitate the processes towards its issuance at the citizen level based on international, continental and citizen policy provisions and continental design and specifications:

**HAVE AGREED as follows:**

## PART I – DEFINITIONS

### Article 1 DEFINITIONS

For the purpose of this Protocol:

**“Assembly”** means the Assembly of Heads of State and Government of the African Union;

**“Commission”** means the Commission of the African Union;

**“Dependant”** means a child or other person who, a national of a Member State is required to support and maintain as defined by the laws of the host Member State;

**“Executive Council”** means the Executive Council of Ministers of the Union;

**“Free movement of persons”** means the right of nationals of a Member State to enter move freely and, reside in another Member State in accordance with the laws of the host Member State and to exit the host Member State in accordance with the laws and procedures for exiting that Member State;

**“Member State”** means a Member State of the African Union;

**“Regional arrangement”** means agreements, measures or mechanisms on free movement of persons developed and implemented by regional economic communities;

**“Right of entry”** means the right of a national of a Member State to enter and move freely in another Member State in accordance with the laws of the host Member State;

**“Right of establishment”** means the right of a national of a Member State to take up and pursue the economic activities specified in Article 17(2), in the territory of another Member State;

**“Right of residence”** means the right of a national of one Member State to reside and seek employment in another Member State other than their Member State of origin; **in accordance with the national law of the host Member State**”.

**“State Parties”** means any Member States of the African Union which have ratified, or acceded to this Protocol and deposited the instrument of ratification or accession with the Chairperson of the African Union Commission.

**“Territory”** means the land, airspace and waters belonging to or under the jurisdiction of a Member State;

**“Travel document”** means a passport which complies with the International Civil Aviation Organization standards for travel documents, or any other travel document identifying a person issued by or on behalf of a Member State or by the Commission which is recognized by the host Member State;

**“Treaty”** means the Treaty Establishing the African Economic Community adopted in Abuja, Nigeria on 3rd June, 1991 and entered into force on 12th May, 1994;

**“Union”** means the African Union established by the Constitutive Act of the African Union;

**“Vehicle”** means any means in or by which a person travels, is carried or conveyed into, by land, the territory of a Member State;

**“Visa”** means the authority granted to a national of a Member State to enter into the territory of the host Member State.

## PART II- OBJECTIVE AND PRINCIPLES OF THE PROTOCOL

### **Article 2 OBJECTIVE**

The objective of this Protocol is to facilitate the implementation of the Treaty Establishing the African Economic Community by providing for the progressive implementation of free movement of persons, right of residence and right of establishment in Africa.

### **Article 3 PRINCIPLES**

1. The free movement of persons, right of residence and right of establishment in Member States shall be guided by the principles guiding the African Union provided in article 4 of the Constitutive Act.
2. In addition to the principles in paragraph 1, the implementation of this Protocol shall be guided by:
  - (a) non-discrimination;
  - (b) respect for laws and policies on the protection of national security, public order, public health, the environment, and any other factors that would be detrimental to the host State; and
  - (c) transparency.

### **Article 4 NON- DISCRIMINATION**

1. States Parties shall not discriminate against nationals of another Member State entering, residing or established in their territory, on the basis of their nationality, race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status as provided by Article 2 of the African Charter on Human and Peoples Rights.
2. It shall not be discrimination for a States Party, as a result of reciprocity or deeper integration, to give more favourable treatment to nationals of another States Party or region, in addition to the rights provided for in this Protocol.

3. A citizen of another States Party entering, residing or established in a States Party in accordance with the provisions of this Protocol, shall enjoy the protection of the law of the host States Party, in accordance with the relevant national policies and laws of the host States Party.

**Article 5**  
**PROGRESSIVE REALIZATION**

1. The free movement of persons, right of residence and right of establishment shall be achieved progressively through the following phases:
  - (a) phase one, during which States Parties shall implement the right of entry and abolition of visa requirements;
  - (b) phase two, during which States Parties shall implement the right of residence;
  - (c) phase three, during which States Parties shall implement the right of establishment.
2. The Roadmap annexed to this Protocol serves as a guideline to help, as appropriate, with the implementation of the above phases.
3. Nothing in this Protocol shall:
  - (a) affect more favourable provisions for the realisation of the free movement of persons, right of residence and right of establishment contained in national legislation, regional or continental instruments; or
  - (b) prevent the accelerated implementation of any phase of free movement of persons, right of residence and right of establishment by a regional economic community, sub-region or Member State before the time set by this Protocol or the Assembly for the implementation of that phase.

## PART III- FREE MOVEMENT OF PERSONS

### **Article 6 RIGHT OF ENTRY**

1. In accordance with this Protocol, nationals of a Member State shall have the right to enter, stay, move freely and exit the territory of another Member State in accordance with the laws, regulations and procedures of the host Member State.
2. Member States shall implement the right of entry by permitting nationals of Member States to enter into their territory without the requirement of a visa.
3. The right to enter the territory of a Member State shall be enjoyed in accordance with articles 7.
4. A Member State permitting a national of another Member State to enter into their territory shall permit that national to move freely or stay for a maximum period of ninety (90) days from the date of entry or such further period determined by Member States or through bilateral or regional arrangements.
5. A national of a Member State who wishes to stay in the host Member State beyond the period provided in paragraph 4 shall seek an extension of stay in accordance with the procedures established by the host Member State.

### **Article 7 ENTRY IN MEMBER STATE**

1. Entry into the territory of a Member State shall be permitted for a person:
  - (a) entering the Member State through a designated point or official port of entry;
  - (b) with a recognized and valid travel document as defined in Article 1; and
  - (c) who is not prohibited from entering the Member State by the laws of that Member State for the protection of national security, public order or public health.
2. A host Member State may impose other conditions, which are not inconsistent with this Protocol, according to which a national of a Member State may be refused entry into the territory of the host Member State.



**Article 8**  
**DESIGNATED OR OFFICIAL POINTS OF ENTRY AND EXIT**

1. Member States shall designate and share with other Member States information relating to their official entry and exit points or ports.
2. Member States shall in line with national or regional procedures keep the designated official entry and exit points open to facilitate the free movement of persons, subject to reciprocity and the protection measures a Member State may take.

**Article 9**  
**TRAVEL DOCUMENTS**

1. Member States shall issue to their nationals valid travel documents to facilitate free movement.
2. Member States shall mutually recognize and exchange specimens of the valid travel documents issued by the Member State.
3. Member States shall cooperate in the process of identification and issuance of travel documents.

**Article 10**  
**AFRICAN PASSPORT**

1. States Parties, shall adopt a travel document called “African Passport” and shall work closely with the Commission to facilitate the processes towards the issuance of this Passport to their citizens.
2. The Commission shall provide technical support to Member States to enable them to produce and issue the African Passport to their citizens.
3. The African Passport shall be based on international, continental and national policy provisions and standards and on a continental design and specifications.

**Article 11**  
**USE OF VEHICLES**

1. States Parties shall permit nationals of another Member State using vehicles to enter into their territory and move freely for a maximum period of 90 (ninety) days from the date of entry, upon presentation of the following valid documents to the competent authorities in the host Member State:
  - (a) a driver's license;
  - (b) evidence of ownership or registration of the vehicle;
  - (c) certificate of road worthiness;
  - (d) certificate of axle load limit;
  - (e) an insurance policy in respect of the vehicle by the host Member State.
2. The use of vehicles by persons in the territory of a host Member State shall be subject to the laws of the host Member State.
3. Member States shall establish and contribute to a continental database on registration of vehicles to facilitate the use of vehicles in the free movement of persons.

**Article 12**  
**FREE MOVEMENT OF RESIDENTS OF BORDER COMMUNITIES**

1. States Parties shall through bilateral or regional agreements establish measures, to identify and facilitate the free movement of residents of border communities without compromising the security or public health of host Member States.
2. States Parties shall endeavour to amicably resolve any legal, administrative, security, cultural or technical impediment likely to hamper the free movement of border communities.

**Article 13**  
**FREE MOVEMENT OF STUDENTS AND RESEARCHERS**

1. States Parties shall permit nationals of another Member State who are holders of registration or pre-registration documents, to take up education or research in their territory in accordance with the policies and laws of the host Member State.

2. A host States Party shall in accordance with national or regional policies issue student permits or passes to nationals of other Member States who are admitted to pursue studies in the host Member State.
3. States Parties shall develop, promote and implement programmes to facilitate exchange of students and researchers among Member States.

**Article 14**  
**FREE MOVEMENT OF WORKERS**

1. Nationals of a Member State shall have the right to seek and accept employment without discrimination in any other Member State in accordance with the laws and policies of the host Member State.
2. A national of a Member State accepting and taking up employment in another Member State may be accompanied by a spouse and dependants.

**Article 15**  
**PERMITS OR PASSES**

1. A host States Party shall issue residence permits, work permits, or other appropriate permits or passes to nationals of other Member State seeking and taking up residence or work in the host Member State.
2. Permits and passes shall be issued in accordance with the immigration procedures applicable to persons seeking or taking up residence or work in the host Member State.
3. The procedures referred to in paragraph 2 shall include the right of a national of another Member State to appeal against a decision denying them a permit or pass.

**PART IV - RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT**

**Article 16**  
**RIGHT OF RESIDENCE**

1. Nationals of a Member State shall have the right of residence in the territory of any Member State in accordance with the laws of the host Member State.

2. A national of a Member State taking up residence in another Member State may be accompanied by a spouse and dependants.
3. States Parties shall gradually implement favourable policies and laws on residence for nationals of other Member States.

**Article 17**  
**RIGHT OF ESTABLISHMENT**

1. Nationals of a Member State shall have the right of establishment within the territory of another Member State in accordance with the laws and policies of the host Member State.
2. The right of establishment shall include the right to set up in the territory of the host Member State:
  - (a) a business, trade, profession, vocation; or
  - (b) an economic activity as a self-employed person.

PART V - GENERAL PROVISIONS

**Article 18**  
**MUTUAL RECOGNITION OF QUALIFICATIONS**

1. States Parties shall individually or through bilateral, multilateral or regional arrangements, mutually recognize academic, professional and technical qualifications of their nationals to promote the movement of persons among the Member States.
2. States Parties shall establish a continental qualifications framework to encourage and promote the free movement of persons.

**Article 19**  
**PORTABILITY OF SOCIAL SECURITY BENEFITS**

States Parties shall, through bilateral, regional or continental arrangements, facilitate the portability of social security benefits to nationals of another Member State residing or established in that Member State.

**Article 20**  
**MASS EXPULSION**

1. The mass expulsion of non-nationals shall be prohibited.
2. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

**Article 21**  
**EXPULSION, DEPORTATION AND REPATRIATION**

1. A national of a Member State lawfully admitted into the territory of a host Member State may only be expelled, deported or repatriated from the host Member State by virtue of a decision taken in accordance with the law in force in the host Member State.
2. A host States Party shall notify the national of a Member State and the Government of that national of the decision to expel deport or repatriate that citizen from the territory of the host Member State.
3. The Expenses relating to:
  - (a) the expulsion or deportation shall be borne by the Member State expelling or deporting a person;
  - (b) repatriation shall be borne by the person being repatriated or by the state of origin.
4. Where entry into a territory of a Member State is refused, the person responsible for transportation, shall at the request of competent border authorities re-route the persons denied entry back to the point of embarkment, or where this is not possible, to the Member State that issued the citizen's travel documents or any other place where the admission of the citizen will be accepted.

**Article 22**  
**PROTECTION OF PROPERTY ACQUIRED IN HOST MEMBER STATE**

1. A national of a Member State entering, residing or established in the territory of another Member State, may acquire property in the host Member State in accordance with the laws, policies and procedures of the host Member State.

2. Property lawfully acquired by a national of a Member State in the host Member State, shall not be nationalised, expropriated, confiscated or acquired by the host Member State except in accordance with the law and after fair compensation being paid to that national.
3. Property lawfully acquired by a national of a Member State shall be protected by the host Member State in the event of a dispute between the Member State where the national originates and the host Member State.
4. A host States Party shall not deprive a national of another Member State who is expelled, deported or repatriated by the host Member State, of his/her property lawfully acquired by that national in the host Member State except in accordance with the laws and procedures of the host Member State.

### **Article 23 REMITTANCES**

States Parties shall through, bilateral, regional, continental or international agreements facilitate the transfer of earnings and savings of nationals of other Member States working, residing or established in their territory.

### **Article 24 PROCEDURES FOR MOVEMENT OF SPECIFIC GROUPS**

1. States Party may in addition to the measures provided for by international, regional and continental instruments, establish specific procedures for the movement of specific vulnerable groups including refugees, victims of human trafficking and smuggled migrants, asylum seekers and pastoralists.
2. Procedures established by a Member State under this article shall be consistent with the obligations of that Member State under the international, regional and continental instruments relating to the protection of each group of persons referred to in paragraph 1.

## PART VI – IMPLEMENTATION

### **Article 25**

#### **COOPERATION BETWEEN MEMBER STATES**

1. States Parties shall in accordance with the African Union Convention on Cross-Border Cooperation coordinate their border management systems in order to facilitate the free and orderly movement of persons.
2. States Parties shall record, document, and upon request, make available all forms of aggregated migration data at the ports or points of entry or exit from their territory.
3. States Parties shall through bilateral or regional arrangements-cooperate with each other by exchanging information related to the free movement of persons and the implementation of this Protocol.

### **Article 26**

#### **COORDINATION AND HARMONISATION**

1. In accordance with article 88 of the Abuja Treaty and guided, as appropriate, by the implementation Roadmap annexed to this Protocol, States Parties shall harmonise and coordinate the laws, policies, systems and activities of the regional economic communities of which they are members which relate to free movement of persons with the laws, policies, systems and activities of the Union.
2. States Parties shall harmonise their national policies, laws and systems with this Protocol and guided, as appropriate, by the Implementation Roadmap annexed to this Protocol.

### **Article 27**

#### **ROLE OF MEMBER STATES**

1. States Parties shall be responsible for implementing this Protocol.
2. States Parties shall adopt necessary legislative and administrative measures to implement and give effect to this Protocol.
3. States Parties shall harmonize all laws, policies, agreements and immigration procedures and other procedures to ensure compliance with this Protocol.

**Article 28**  
**ROLE OF REGIONAL ECONOMIC COMMUNITIES**

1. Regional Economic Communities shall be the focal points for promoting, following up and evaluating implementation of this Protocol and reporting the progress towards free movement of persons in their respective regions.
2. Each Regional Economic Community shall submit periodic reports to the Commission on the progress of implementation of this Protocol within their respective region.
3. Regional Economic Communities shall harmonise their Protocols, policies and procedures on free movement of persons with this Protocol.

**Article 29**  
**ROLE OF THE COMMISSION**

1. The Commission shall follow up and evaluate the implementation of this Protocol by the Member States and shall through the relevant Specialised Technical Committees submit periodic reports to the Executive Council on the status of implementation of this protocol.
2. The Commission shall in coordination with Member States develop and apply a continental follow up and coordinating mechanism for assessing the status of implementing this Protocol.
3. The follow up and coordinating mechanism shall include the collection and analysis of data nationally and regionally in order to assess the state of the free movement of persons.

**Article 30**  
**REMEDIES**

1. States Parties shall provide appropriate administrative and judicial remedies in their national laws for nationals of other Member States affected by decisions of a Member State relating to the implementation of this Protocol.
2. A National of a Member State who is denied the enjoyment of the right of entry, residence, establishment or other related rights provided in this Protocol, having



exhausted all legal remedies in the host Member State, may refer the matter to the African Commission on Human and Peoples Rights.

## PART VII- FINAL PROVISIONS

### **Article 31 SETTLEMENT OF DISPUTES**

1. Any dispute or difference arising between States Parties with regard to the interpretation, application and implementation of this Protocol shall be settled by mutual consent between States concerned, including through negotiations, mediation, conciliation or other peaceful means.
2. In the event of failure by the disputing parties to settle the dispute or difference, the disputing Parties may:
  - (a) By mutual consent, refer the dispute to an Arbitration Panel of three (3) Arbitrators whose decision shall be binding on the Parties; or
  - (b) Refer the dispute to the African Court of Justice, Human Rights and Peoples' Rights, when operational.
3. The appointment of the Panel of Arbitrators shall be as follows:
  - (i) The Parties to the dispute shall each appoint one arbitrator; and
  - (ii) The Chairperson of the Commission shall appoint the third Arbitrator who shall be the President of the Panel.
4. Pending the operationalization of the Court referred to in sub article (2)(a) above, the decision of the Panel of Arbitrators shall be binding.

### **Article 32 SIGNATURE, RATIFICATION AND ACCESSION**

1. This Protocol shall be open to Member States of the Union for signature, ratification or accession.
2. The instrument of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission who shall notify all Member States of the dates of the deposit of the instruments of ratification or accession.

**Article 33**  
**ENTRY INTO FORCE**

1. The Protocol shall, enter into force thirty (30) days after the date of receipt by the Chairperson of the Commission of the fifteenth (15<sup>th</sup>) instrument of ratification.
2. Any Member State may, at the time of adoption of the Protocol by the Assembly, declare that it will apply provisionally the provisions of the Protocol pending its entry into force.
3. For any Member State that deposit its instrument of ratification, acceptance or accession subsequent to the entry into force of this Protocol, this Protocol shall enter into force for that State thirty days (30) days following the date of the deposit of its instrument of acceptance or accession.

**Article 34**  
**RESERVATIONS**

1. A State Party may, when, ratifying or acceding to this Protocol, submit in writing a reservation with respect to any of the provisions of this Protocol. Reservation shall not be incompatible with the object and purpose of this Protocol.
2. Unless otherwise provided, a reservation may be withdrawn at any time.
3. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States Parties of the withdrawal accordingly.

**Article 35**  
**DEPOSITORY**

This Protocol shall be deposited with the Chairperson of the African Union Commission, who shall transmit a certified true copy of the Protocol to the Government of each signatory State.

**Article 36**  
**REGISTRATION**

The Chairperson of the Commission upon the entry into force of this Protocol shall register this Protocol with the United Nations Secretary General in conformity with Article 102 of the Protocol of the United Nations.

**Article 37**  
**SUSPENSION AND WITHDRAWAL**

1. Any State Party may suspend, temporarily, the implementation of the provisions of the present Protocol in case of grave threats to national security, public order and public health.
2. At any time after three years from the date of entry into force of this Protocol, a State Party may withdraw by giving written notification to the Depository.
3. Withdrawal shall be effective one year after receipt of notification by the Depository, or on such later date as may be specified in the notification.
4. Withdrawal shall not affect any obligation of the withdrawing State Party prior to the withdrawal.

**Article 38**  
**AMENDMENT AND REVISION**

1. Any State Party may submit proposal(s) for the amendment or revision of this Protocol. Such proposal(s) shall be adopted by the Assembly.
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit such proposals to the Assembly at least six months before the meeting at which it shall be considered for adoption.
3. Amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority.
4. The amendment or revision shall enter into force in accordance with the procedures outlined in Article 33 of this Protocol.

**Article 39**  
**AUTHENTIC TEXTS**

This Protocol is drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic.

**ADOPTED BY THE ..... EXTRA/ORDINARY SESSION OF THE  
ASSEMBLY, HELD IN .....**

**Third Ordinary Session of the Specialized  
Technical Committee on Justice and Legal  
Affairs (Experts Meeting)  
6 – 11 November 2017  
Addis Ababa, Ethiopia**

**STC/Legal/ Exp / 11 (I) Rev. 1  
Annex 9**

**DRAFT IMPLEMENTATION ROADMAP  
FOR THE DRAFT PROTOCOL TO THE TREATY ESTABLISHING THE  
AFRICAN ECONOMIC COMMUNITY RELATING TO FREE  
MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND RIGHT OF  
ESTABLISHMENT**

No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
1.	Article 32	<p><b><u>Signature/Ratification/Accession of Protocol</u></b></p> <p>(a) Implementation/initiation of ratification proceedings in the Member State</p> <p>(b) Deposit instruments of ratification with Chairperson of the Commission</p>	<p>Member States</p> <p>Member States</p> <p>AUC to follow up on ratification by Member States</p>	<p>January 2018</p> <p>December 2018</p>
2.	Article 5(3)(a) and (b)	<p><b>Accelerated implementation</b></p> <p>1. Establish and provide more favourable mechanisms for realisation of free movement of persons, right of residence and right of establishment</p> <p>2. Use of variable geometry in implementation of Protocol ✓ Implementation of any provision of the Protocol at different speed and time</p> <p>3. Establish regional and bilateral arrangements for accelerated implementation</p>	<p>Member States and Regional Economic Communities</p> <p>Member States and Regional Economic Communities</p>	Anytime upon coming into force of Protocol
3.	Parts III, IV and V, Article 5 and 26	<p><b>Common facilitators of effective implementation of free movement of persons, right of residence and right of establishment</b></p> <p>1. Establish, upgrade and strengthen national civil registry systems</p> <p>a. Use of biometric and other technology in registration systems</p> <p>b. Register nationals and non-nationals and capture data onto the civil register</p> <p>c. Put in place security measures to maintain the</p>	Member States	Continuous starting 2018

No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
		<p>integrity of the national civil register</p> <p>d. Link national civil register with all official entry and exit points</p> <p>2. Establish and strengthen movement control systems</p> <p>a. Use technology for surveillance, communication, information collection and processing, and biometric identification of travellers</p> <p>b. Establish and strengthen alert, notice or warning mechanisms</p> <p>c. Link movement control system and alert or warning mechanism to regional and international alert, notice or warning systems (INTERPOL, AFRIPOL, Advanced Passenger Information Systems, etc.)</p> <p>3. Improve the capacities of border governance mechanisms and personnel by optimizing new border governance technologies:</p> <p>a. improve the integrity and security of travel documents;</p> <p>b. equip all official entry and exit points with up to date border management information systems to fight against fraudulent documents;</p> <p>c. upgrade inspection, data collection (advanced passenger information systems (APIS) and communication systems;</p> <p>d. provide technical training for those involved in border management and migration policy.</p>	<p>Member States</p> <p>Member States with assistance from Regional Economic Communities and Commission</p> <p>Member States with assistance from Regional Economic Communities and Commission</p>	<p>Continuous starting 2018</p> <p>Continuous starting 2018</p> <p>Continuous starting 2018</p>

No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
<b>PHASE ONE – RIGHT OF ENTRY AND ABOLITION OF VISA REQUIREMENTS</b>				
4.	Article 5 (1)a, 6 and 27	<p><b>Right of entry</b></p> <p>(a) Implement a relaxed visa regime (Facilitate the issuance of visas for certain categories (students, researchers...etc..))</p> <ul style="list-style-type: none"> <li>✓issuing visas on arrival to citizens of African Union Member States</li> <li>✓use of simplified visa processing procedures and mechanisms <ul style="list-style-type: none"> <li>➤ e-visa</li> <li>➤ online applications</li> <li>➤ multiple entry and multi-year visas</li> </ul> </li> <li>✓relax and revise visa fees</li> </ul> <p>(b) Establish clear, consistent and transparent criteria or admission into Member State.</p> <p>(c) use travel documents recognized by host Member States (regional Passport, National ID, etc..)</p> <p>(d) provide for granting up to 90 days stay from the date of arrival for nationals of African Union Member States</p> <p>(e) Total abolition of visa requirements for citizens of African Union Member States</p>	<p>Member States</p> <p>Member States</p> <p>Member States</p>	<p>December, 2023 (gradual and continuous process)</p> <p>(a) By Dec, 2018</p> <p>(b) 2018</p> <p>(c) 2019</p> <p>(d) By Dec 2023</p> <p>(e) Dec 2023</p>
5.	Article 7 (2)	<p><b>Other conditions for denying entry to nationals of Member States</b></p> <p>Publish any other conditions prescribed by a Member State which are not inconsistent with this Protocol according to</p>	Member States	2018 and every time the conditions are revised by a Member State



No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
		which nationals of a Member State may be denied entry into a Member State		
6.	Article 8	<p><b>Share designated official points of entry and exit with other Member States</b></p> <p>(a) Publicise or share information on official points of entry and exit with other member states</p>	Member States and the Commission	2018 Continuous
7.	Article 26 and 28 (3)	<p><b>Harmonisation of national laws, policies and procedures</b></p> <p>(a) Immigration laws, policies and procedures:</p> <p>(i) Review laws, policies and procedures for conformity with Protocol</p> <p>(ii) Establish policies and procedures which facilitate and promote free movement of persons in conformity with Protocol</p> <p>(b) Laws policies and procedures relating to study and research:</p> <p>(i) Identification of laws relating to study and research by non-nationals</p> <p>- Admission of non-nationals into education institutions</p> <p>(ii) Review of laws relating to study and research by non-nationals</p> <p>(c) Labour laws, policies and procedures</p> <p>Review policies, laws and procedures on employment of non-nationals</p>	Member States and RECs (RECs shall coordinate the harmonization of laws, policies and procedures within each region)	<p>(a) 2023</p> <p>(b) 2023</p> <p>(c) 2023</p>

No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
		(i) harmonising immigration policies with labour laws (d) Laws, policies and procedures relating to social security		(d) 2023
8.	Article 9	<b>Travel documents</b> (a) Use of ICAO standard travel documents Upgrade passports from Machine Readable Passports (MRP) to e-Passports (b) Use of travel documents other than Passports (c) mutual recognition and exchange of specimens of the valid travel documents issued by a Member State	Member States  Member States RECs  Member States	Continuous from 2017  Continuous from 2017  Continuous from 2017
9.	Article 10	<b>African Passport</b> (a) Establish the continental design and technical specifications of the African Passport: <ul style="list-style-type: none"> <li>✓ Propose basic common specifications of the African Passport to Member States for consideration</li> <li>✓ Provide Technical specifications of African Passport to Member States</li> <li>✓ Facilitate a meeting of Heads of Immigration, Emigration of member states to develop modalities and guidelines for the design, features, production, issuance, usage and any other requirements of the African passport</li> <li>✓ Settle the Continental design of African Passport (biometrics)</li> </ul> (b) Issue the African Passport to citizens.	(a) Commission and Member States        (b) AU Commission and	June 2018

No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
		<ul style="list-style-type: none"> <li>✓ Harmonization of laws, policies and procedures to accommodate issue and use of African Passport</li> <li>✓ Domestic design of African Passport</li> <li>(c) Public awareness to promote and popularise the African Passport</li> </ul>	<p>Member States</p> <p>(c) Member States, Commission and RECs</p>	<p>Continuous from 2018</p> <p>Continuous from July 2016</p>
10.	Article 11	<p><b>Use of vehicles</b></p> <ul style="list-style-type: none"> <li>(a) Share specimen of biometric drivers licences with other Member States</li> <li>(b) Harmonise systems and procedures for use of vehicles in different Regional Economic Communities</li> <li>(c) Recognise valid drivers licences of other Member States (harmonize systems)</li> <li>(d) establishment of a Continental Database on registration of vehicles</li> <li>(e) Link Member States vehicle registration systems to the Continental Database on registration of vehicles</li> </ul>	<p>Member States</p> <p>Member States</p> <p>Commission</p> <p>Member States with assistance from Commission</p>	<p>2018</p> <p>2018</p> <p>2018</p> <p>2019</p>
11.	Article 12	<p><b>Free movement of residents of border communities</b></p> <ul style="list-style-type: none"> <li>1. Ratify and accelerate the implementation of the African Union Convention on Cross-border Cooperation (Niamey Convention) <ul style="list-style-type: none"> <li>(a) Develop and implement programs aimed at</li> </ul> </li> </ul>	<p>Member States with assistance of Commission and Regional Economic</p>	<p>Continuous</p>

No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
		cross border cooperation  (b) establish coordinated border management systems to regulate migration flows  (c) Coordination of cross-border programs to avoid duplication  2. Define, delimit and demarcate inter-state borders <ul style="list-style-type: none"> <li>✓ Develop and implement a national policy on border matters</li> <li>✓ Establish national bodies responsible for border matters</li> <li>✓ Establish national or joint boundary commissions to define, demarcate and delimit undefined terrestrial and maritime inter-state borders in accordance with the AU policies and principles on borders</li> <li>✓ Jointly submit the geographical coordinates and bilateral/trilateral boundary treaties to the Commission for inclusion in the African Union Border Information System</li> </ul> 3. Resolve all differences and disputes related to national boundary lines <ul style="list-style-type: none"> <li>(a) strengthen border dispute resolution mechanisms</li> <li>(b) refer border disputes to the attention of the African Union Panel of the Wise</li> <li>(c) use the competent regional or international bodies of preventive diplomacy, mediation, arbitration, and conflict resolution for the</li> </ul>	Communities    Commission and Regional Economic Communities             Member States with assistance of Commission and RECs	                          2022                          2022

No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
		<p style="text-align: center;">peaceful settlement of border-related disputes</p> <p>4. Identify communities in the border lands</p> <p>5. Identify and register residents of communities in the border lands</p> <p style="padding-left: 20px;">✓ Sensitize the populations living in border zones on prevailing laws and the role they can play in conflict mitigation and border governance regimes</p> <p>6. Adopt and provide specific border community identification documents</p> <p>7. Establish soft borders, easing restrictions for mobility and interaction between borderland communities</p> <p style="padding-left: 20px;">✓ Establish specific border community crossing points or mechanisms</p> <p>8. Establish and reinforce bilateral and national cross-border security regimes allowing for intelligence-sharing, joint military operations, joint patrols, and joint anti-cattle-rustling and anti-crime-units and conclude hot-pursuit agreements</p>	<p>Member States</p> <p>Member States</p> <p>Member States</p> <p>Member States</p>	<p>By December 2023</p> <p>By December, 2023</p> <p>By December, 2023</p> <p>By December, 2023</p> <p>2023</p>
12.	Article 13	<p><b>Movement of students and researchers</b></p> <p>1. Harmonisation of higher education programmes in accordance with the AU Higher Education Harmonisation Strategy and the Continental Education Strategy for Africa (2016 -2025)</p> <p style="padding-left: 20px;">(a) foster cooperation in information exchange;</p>	<p>Member States and RECs</p> <p>Member States</p>	<p>2025</p> <p>2025</p>

No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
		<ul style="list-style-type: none"> <li>(b) harmonise higher education procedures and policies;</li> <li>(c) standardise curricula.</li> </ul> <p>2. Review national requirements and procedures for students from other African Union Member States taking up research and study</p> <p>3. Enhance the mobility of students and academic staff among African universities to improve on teaching and collaborative research</p> <ul style="list-style-type: none"> <li>(a) Establish Joint Curriculum Development and Student Mobility Schemes</li> <li>(b) develop, promote and implement programmes to facilitate exchange of students:</li> <li>(c) establish and implement Continental Student Exchange Programmes <ul style="list-style-type: none"> <li>➤ identify areas of study in which to promote student exchange</li> <li>➤ identify educational institutions within the Union to support and facilitate student exchange programmes</li> </ul> </li> <li>(d) Establish and coordinate regional student exchange programmes</li> </ul>	<p>Member States, Pan African University</p> <p>Member States</p> <p>Member States, Pan-African University</p> <p>Member States, Commission, Pan African University</p> <p>Member States, Commission, Pan African University</p> <p>Member States, Regional Economic Communities (RECs)</p>	<p>2025</p> <p>2025</p> <p>2025</p> <p>2025</p> <p>2025</p> <p>2025</p> <p>2025</p>
13.	Article 14	<p><b>Free movement of workers</b></p> <p>1. Identify and assess existing categories of workers and skills within the African Union in accordance with the Migration Policy Framework for Africa</p>	<p>Member States with technical assistance of Commission</p>	<p>By 2023</p> <p>From June, 2018</p>

No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
		<p>2. Classify the priority of skills (skills gaps) and workers required by individual Member States and RECs</p> <p>3. Share information on the skills and workers required in each Member State</p> <p>(a) Establish and update Labour Market Information Systems</p> <p>(b) Harmonise standards and tools for data collection on international labour migration in Africa</p> <p>(c) Establish regional labour exchanges aimed at facilitating the employment of available human resources of one Member State in other Member States</p> <p>(d) Undertake skills forecasting to determine the skills that will be required in the short term, medium and long term.</p> <p>4. Share and disseminate information relating to the conditions and procedures for employment and work permits in each Member State.</p> <p>(a) Maintain open and continued contact between Member States of origin and Member States of destination to ensure fair working conditions for nationals working abroad.</p> <p>5. Establish transparent and accountable labour recruitment and admissions systems based on clear labour laws that are harmonised with immigration policies and procedures.</p>	<p>Member States, Commission and RECs</p> <p>Member States, Commission and RECs</p> <p>Member States, Commission and RECs</p> <p>Member States</p> <p>Member States</p>	<p>By December, 2019</p> <p>Continuous from June, 2019</p> <p>From 2019</p> <p>2019</p> <p>2019</p>

No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
		<p>(a) Monitor and enforce compliance with recruitment procedures to ensure transparency and fairness</p> <p>6. Promote respect for, and protection of, the rights of labour migrants including combating discrimination and xenophobia through civic education and awareness-raising activities:</p> <p>(a) abolish any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment</p> <p>7. operationalize the AU Labour Migration Advisory Committee</p>	<p>Member States</p> <p>Commission</p>	<p>2019</p> <p>2019</p>
<b>PHASE TWO – RIGHT OF RESIDENCE</b>				
14.	Article 16	<p><b>Right of Residence</b></p> <p>(a) Adopt policies and procedures for granting residence permits to nationals of Member States:</p> <ul style="list-style-type: none"> <li>✓ Specify the conditions attached to each category of nationals of Member States seeking residence.</li> <li>✓ Specify whether work or sufficient means of support (in the absence of work) are required for residence</li> <li>✓ Specify the registration and administrative procedures required for nationals of Member</li> </ul>	Member States	<p>From 2023</p> <p>Date determined by the Executive Council after review of implementation of Phase One and Phase Two by the Commission</p>



No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
		<p>States</p> <ul style="list-style-type: none"> <li>✓ Specify the procedures relating to spouses and dependants of nationals seeking residence</li> </ul> <p>(b) Gradually implement more favourable policies and laws on residence for nationals of other Member States</p> <ul style="list-style-type: none"> <li>✓ Adopt measures that give favourable treatment to nationals of Member States seeking residence</li> <li>✓ Relax the conditions for seeking and taking up residence in the case of nationals of Member States based on region or agreement (uniform fees for residence permits)</li> </ul>		
<b>PHASE THREE- RIGHT OF ESTABLISHMENT</b>				
15.	Article 17	<p><b>Right of establishment</b></p> <p>(a) Remove restrictions on nationals of Member States establishing businesses</p> <ul style="list-style-type: none"> <li>✓ Identify the restrictions on establishment of business, calling or profession</li> <li>✓ Review policies, laws and procedures providing restriction to nationals of Member States establishing business, trade, profession or calling</li> </ul> <p>(b) simplify the processes and procedures for obtaining licenses, permits and other relevant</p>	<p>Member States</p> <p>Member States with assistance of Commission and RECs</p> <p>Member States</p>	<p>Date determined by the Executive Council after review of implementation of Phase One and Phase Two by the Commission</p>

No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
		<p>documents for establishment of business, trade profession, vocation or calling</p> <ul style="list-style-type: none"> <li>✓ specify and harmonise conditions for obtaining licenses, permits and other authorisations</li> </ul> <p>(c) harmonise fees payable for obtaining and processing necessary authorisations, licenses and permits</p> <p>(d) provide for equality of nationals of Member States setting up business, trade profession or vocation with nationals of Member State:</p> <ul style="list-style-type: none"> <li>✓ guarantee right to join professional or trade organizations</li> <li>✓ provide equal protection of the law</li> <li>✓ provide equal working conditions</li> <li>✓ Provide for protection of assets, capital and business of nationals of a Member State established in Member State</li> </ul>	Member States	
16.	Article 18	<p><b>Mutual recognition of qualifications</b></p> <ol style="list-style-type: none"> <li>1. Ratify the African Union Revised Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in African States</li> <li>2. Adopt a Continental and regional qualifications frameworks: <ol style="list-style-type: none"> <li>(a) Develop and maintain a Continental</li> </ol> </li> </ol>	<p>Member States</p> <p>Commission, Regional Economic Communities and Member States</p>	<p>2025</p> <p>2025</p>

No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
		<p>Framework for Higher Education Qualifications.</p> <p>(b) Create Minimum Standards in Targeted Qualifications.</p>		
17.	Article 19	<p><b>Portability of social security benefits</b></p> <p>(a) Make social security benefits available to workers from other Member States.</p> <ul style="list-style-type: none"> <li>✓ Classify and categorise social security benefits: <ul style="list-style-type: none"> <li>• Pension, unemployment benefits, health or medical benefits etc.</li> </ul> </li> <li>✓ Establish social security schemes to which non-nationals working in a host Member State may contribute</li> <li>✓ Adopt social security measures that prevent abuse and exploitation of social security benefits by non-nationals working in host Member State</li> <li>✓ Categorise and classify workers and residents and the social security benefits attached to each category: <ul style="list-style-type: none"> <li>• Persons working or resident for less than 3 months</li> <li>• Persons working or resident for more than 3 months</li> <li>• Persons resident without working</li> <li>• Self-employed persons etc.</li> </ul> </li> </ul> <p>(b) Promote the regional integration and collaboration of social security schemes in Member States</p>	Member States	2023

No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
		(c) Establish mechanisms for workers from other Member States to access their social security benefits in their own countries and in other Member States	RECs and Member States  Member States	2023  2023
18.	Article 21	<p><b>Expulsion, Deportation and Repatriation</b></p> <ol style="list-style-type: none"> <li>1. Streamline laws, policies and procedures on expulsion, deportation and repatriation of nationals of African Union Member States</li> <li>2. Conclude bilateral repatriation agreements               <ol style="list-style-type: none"> <li>(a) Reinforce cooperation between Member States in order to facilitate identification and repatriation of their nationals</li> </ol> </li> <li>3. Conclude extradition agreements in accordance with international and continental legal instruments</li> </ol>	Member States	2018  2018  2018
19.	Article 22	<p><b>Protection of property acquired in host Member State</b></p> <ol style="list-style-type: none"> <li>(a) Provide by law for nationals of Member States to acquire property in host Member State               <ul style="list-style-type: none"> <li>✓ Review laws on ownership of property to provide for the possibility nationals of Member States to</li> </ul> </li> </ol>	Member States	2023

No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
		<p>acquire property.</p> <p>(b) Protect by law, property acquired by non-nationals in Member State</p> <ul style="list-style-type: none"> <li>✓ Establish clear and transparent procedures for acquiring property of non-nationals.</li> <li>✓ Provide for procedures for compensating non-nationals for acquisition of their property acquired in a host Member State</li> </ul>	Member States	2023
20.	Article 23	<p><b>Remittances</b></p> <p>(a) Establish mechanisms for persons working, residing or established in a host Member State to transfer earnings or savings to their countries of origin:</p> <p>(b) Coordinate the regional/ international mechanisms for transfer of earning or savings within the regions</p> <ul style="list-style-type: none"> <li>✓ Collect and disseminate data on the remittances within the region</li> <li>✓ Provide guidelines on improving the policy on remittances within the region with specific focus on reducing transaction cost and encouraging more remittances through safe and secure financial system</li> </ul>	<p>Member States</p> <p>Regional Economic Communities, Commission, African Institute for Remittances (AIR)</p>	<p>2019</p> <p>2019</p>
21.	Article 24	<p><b>Procedures for movement of specific groups</b></p> <p>(a) Establish measures for movement of refugees</p> <ul style="list-style-type: none"> <li>✓ Establish measures and procedures for screening</li> </ul>	Member States	By 2023

No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
		<p>and examining applicants for refugee status</p> <ul style="list-style-type: none"> <li>✓ Register and provide identification and travel documents to refugees</li> <li>✓ Adopt other specific procedures for movement of refugees</li> </ul> <p>(b) Establish measures for movement of victims of human trafficking</p> <p>(c) Establish measures for movement of asylum seekers</p> <p>(d) Establish measures for movement of pastoralists</p>	<p>Member States</p> <p>Member States</p> <p>Member States</p>	<p>2023</p> <p>2023</p> <p>2023</p>
22.	Article 25	<p><b>Cooperation by Member States</b></p> <p>(a) cross-border management</p> <ul style="list-style-type: none"> <li>✓ Ratify the Convention on Cross-Border Cooperation</li> <li>✓ Coordinate cross border management systems</li> </ul> <p>(b) sharing and exchange of information on free movement of persons</p> <ul style="list-style-type: none"> <li>✓ record and document all forms of disaggregated migration data at the ports or points of entry or exit</li> </ul>	<p>Member States</p> <p>RECs</p> <p>Member States</p>	<p>2018</p> <p>2018</p> <p>Continuous</p> <p>2018</p>
23.	Article 28	<p><b>Role of Regional Economic Communities (RECs)</b></p> <p>(a) focal points for, promoting, monitoring and evaluating implementation of Protocol</p> <ul style="list-style-type: none"> <li>✓ promote implementation of Protocol</li> <li>• design and implement strategies for</li> </ul>	<p>Regional Economic Communities (RECs)</p>	<p>2018</p>



No.	Relevant Provisions of the Protocol	Main Activities	Role and Responsibilities	Indicative dates
		<p>Protocol by the Member States</p> <ul style="list-style-type: none"> <li>✓ Coordinate monitoring and evaluation with RECs</li> </ul> <p>(d) Submit periodic reports to the Executive Council through the relevant Specialised Technical Committees on the status of implementation of the Protocol.</p> <ul style="list-style-type: none"> <li>✓ Identify challenges to implementation</li> <li>✓ Identify success stories and case study-Member States on implementation of the Protocol</li> <li>✓ Make recommendations on the measures to improve implementation</li> </ul> <p>(e) collect and analyze data nationally and regionally to assess the state of free movement of persons</p>	<p>Commission</p> <p>Commission</p>	<p>2020 and thereafter every 2 years</p>
25.	Article 30	<p><b>Remedies</b></p> <p>Provide appropriate administrative and judicial remedies in national laws for persons affected by decisions of a Member State relating to the implementation of this Protocol</p> <ul style="list-style-type: none"> <li>✓ adopt policies, laws and procedures that provide persons aggrieved by decisions of any administrative body relating to right of entry, right of residence, and right of establishment to have recourse to other administrative or judicial body</li> <li>✓ bring the available administrative or judicial mechanisms to the attention of persons affected by decisions relating to exercise of their rights under the Protocol</li> </ul>	Member States	2018



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**Annex 10**

**REPORT OF THE DRAFT AU MODEL LAW FOR THE  
IMPLEMENTATION OF THE AFRICAN UNION CONVENTION  
FOR THE PROTECTION OF AND ASSISTANCE TO  
INTERNALLY DISPLACED PERSONS IN AFRICA  
ANNEX: THE DRAFT AU MODEL LAW**

**By**

**Minelik Alemu Getahun (Ambassador)**  
**AUCIL Special Rapporteur**  
**27 November 2014**

## I. Introduction

1. The plight of internally displaced persons (IDPs) has rightly received increased attention in recent years. Nevertheless, unrelenting armed conflicts and strife, disasters, effects of climate change and gross human rights violations continue to subject millions of people around the world to forced displacement, extreme suffering and deprivation. This is felt with particular severity in Africa, affecting greater number of people, where there is high mortality rates, among IDPs, who are "...vulnerable to round up, forcible resettlement, arbitrary detention, arrest, forcible conscription or sexual assault, and suffer more often from a lack of food and health care."<sup>1</sup> Increased urbanization and development projects have also posed increased risks of displacement. It is thus no wonder the African Union and Regional Economic Communities (RECs) have continued the trend set by the OAU and have taken the lead in adopting measures aimed at protecting IDPs.<sup>2</sup>

2. The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) was adopted on 23<sup>rd</sup> October 2009 by the Special summit of the African Union held in Kampala, Uganda. The Convention came into force on 6 December 2012 following the accession to the Convention by Swaziland as the 15<sup>th</sup> ratifying State. The Kampala Convention builds on regional and international standards regarding the protection and assistance of IDPs in Africa. It is a demonstration of the determination of a continent disproportionately affected by internal displacement to put in place legal and institutional frameworks to better protect and assist IDPs.<sup>3</sup> The Special Summit also adopted the Kampala Declaration on Refugees, Returnees, and IDPs with extensive provisions.<sup>4</sup> Different regional human rights instruments provide protection to IDPs. For instance, the 1969 OAU Refugee Convention Governing the Specific Aspects of Refugee Problems in Africa has already set higher standards for refugee protection. The African Charter on the Rights and Welfare of the Child provides protection to internally displaced children

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<sup>1</sup> The former Representative of the UN Secretary General on Internal Displacement notes the difficulties of ascertaining the number of displaced persons due to reluctance of Governments to admit existence of the problem, lack of consistent methodology and institutional capacity and organization. A/50/558 of 20 October 1995, p 3 and 4.

<sup>2</sup> The Explanatory Note by the AU Commission On the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa lists the various decisions by the policy organs of AU leading to the Adoption of the Kampala Convention.

<sup>3</sup> The Special Rapporteur of the Human Rights Council said that the Kampala Convention "...represents the will and determination of African States to address the problem of internal displacement in Africa,..." A/HRC/16/43, this and other documents cited in this report are available at <http://www.ohchr.org/EN/Issues/IDPersons/Pages/IDPersonsIndex.aspx>. Also Allehone Mulugeta Abebe, *The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope and Enforcement Challenges*, Refugee Survey Quarterly, Vol. 29, No. 3, p. 28, September 2010, p.29., Won Kidane, *Managing Forced Displacement by Law in Africa : The Role of the New African Union IDPs Convention*, 44 Vand.J.Transnat'L.1., p.34.

<sup>4</sup> Ext/Assembly/AU/PA/Draft/Decl.(I) Rev.1 <http://www.unhcr.org/refworld/publisher/AU,,,4af0623d2,0.html>.

on equal level as accorded to refugee children.<sup>5</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa also provides for protection of internally displaced women in Africa.<sup>6</sup> The signatories of the 2006 Pact on Security, Stability and Development in the Great Lakes of Africa adopted a number of protocols relevant to the protection and assistance of IDPs, including the Protocol on Protection and Assistance to Internally Displaced Persons on 30 November 2006.<sup>7</sup>

**3.** In 2004, the African Commission on Human and Peoples' Rights established the position of Special Rapporteur on Refugees, Asylum-Seekers and IDPs in Africa with extensive promotional and protection responsibilities on the rights of refugees, asylum seekers and IDPs in Africa. Thus far, the Special Rapporteur has undertaken several activities and submitted Reports on the situation of refugees and IDPs on the continent.<sup>8</sup>

**4.** It is also important to note that at the national level, a number of African countries have promulgated national laws, policies and strategies on internal displacement such as Angola, Burundi (in the context of peace agreement and national program), Liberia, Sierra Leon, Sudan, Uganda and Kenya. In Nigeria, DRC and Somali, governments are working with partners in developing national policies and instruments.

**5.** As of October 2014, 39 AU Member States have signed the Kampala Convention, while 22 have deposited their instruments of ratification.

**6.** It is a landmark instrument as it codifies for the first time detailed obligations of States and other actors to prevent forced internal displacement, and protect IDPs during displacement and ensure that durable solutions around for IDPs, with their active participation. This is major progress in the development of international law on internal displacement since the publication of the United Nations Guiding Principles of Internal Displacement (hereinafter "the Guiding Principles") in 1998.<sup>9</sup> Until then, the norms protecting IDPs under international human rights law and, international humanitarian law remained scattered. The progress made since the publication of the Guiding Principles is significant. The work done to disseminate the Guiding Principles and encourage States to adopt laws and policies to implement these principles has made important progress International organizations and mandate holders of the United

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<sup>5</sup> Article 23(4) of the Charter says « The provisions of this Article apply mutatis mutandis to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused. »

[http://www.au.int/en/sites/default/files/Charter\\_En\\_African\\_Charter\\_on\\_the\\_Rights\\_and\\_Welfare\\_of\\_the\\_Child\\_AddisAbaba\\_July1990.pdf](http://www.au.int/en/sites/default/files/Charter_En_African_Charter_on_the_Rights_and_Welfare_of_the_Child_AddisAbaba_July1990.pdf).

<sup>6</sup> For texts and status of ratification of AU Treaties : <http://www.au.int/en/treaties>.

<sup>7</sup> <https://icglr.org/spip.php?article2>.

<sup>8</sup> [http://www.achpr.org/english/info/index\\_rdp\\_en.html](http://www.achpr.org/english/info/index_rdp_en.html)

<sup>9</sup> A global first: a Convention for the displaced, <http://www.ohchr.org/EN/NewsEvents/Pages/ConventionForTheDisplaced.aspx>

Nations and the African Commission on Human and Peoples' Rights (the Commission) have done important work in advancing the use of the Guiding principles. It is still important to point out that the specific needs of IDPs and their particular vulnerable situation is yet to be addressed by a comprehensive and global binding instrument.

### **Background to the Draft Model Law**

7. The publication of a Model Law for the Kampala Convention is likely to generate debate on the merits of proposing a model law for countries with a variety of legal traditions. Some might think that such Model Law might water down obligations in the Kampala Convention. Others might fear that new obligations not foreseen in the Kampala Convention might be proffered in the Draft Model Law. Some have even expressed concern that the diversity of legislative traditions particularly among countries following common law and continental systems, the need for laws on internal displacement to address the specific problems faced by IDPs, and a prepared Model Law might not allow for an inclusive process of consultations with all relevant stakeholders in its development and analysis.<sup>10</sup> While these are legitimate concerns, model laws have been increasingly used to encourage the development of national laws, both at the regional level and at the level of the United Nations.<sup>11</sup> Such model laws are useful tools for reference and to provide wider context for national drafters. These instruments have lasting impact in allowing deeper reflections into the substance of obligations and best possible ways of devising domestic legislation.

8. The Model Law will help expedite State Parties' implementation of their obligation to "Incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law."<sup>12</sup> It will also assist in the implementation of the Convention as a framework for regional and

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<sup>10</sup> The Manual for Law and Policymakers published by the Brookings Institution-University of Bern Project on Internal Displacement in October 2008.

<sup>11</sup> Draft Model Legislation on the Implementation of the Protocol on Protection and Assistance to Internally Displaced Persons, <http://www.internal-displacement.org/8025708F004BE3B1/>, Draft Model Legislation on Property Rights of Returning Persons <http://www.internal-displacement.org/8025708F004BE3B1/> of the Great Lakes Region, the Great Lakes Pact and the rights of displaced people, A guide for civil society, IDMC and the International Refugee Rights Initiative, 2008 says of the Great Lakes Model Law that "...the model legislation offers a guide to some of the possible administrative and institutional steps which could be taken in order to implement the Protocol into national law..."; Model Laws prepared by UNCITRAL [http://www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration.html) and UNODC <http://www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html> are good examples:

<sup>12</sup> Article 3(2) the Kampala Convention  
[http://au.int/en/sites/default/files/AFRICAN\\_UNION\\_CONVENTION\\_FOR\\_THE\\_PROTECTION\\_AND\\_ASSISTANCE\\_OF\\_INTERNALLY\\_DISPLACED\\_PERSONS\\_IN\\_AFRICA\\_\(KAMPALA\\_CONVENTION\).pdf](http://au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_FOR_THE_PROTECTION_AND_ASSISTANCE_OF_INTERNALLY_DISPLACED_PERSONS_IN_AFRICA_(KAMPALA_CONVENTION).pdf)

international cooperation with respect to which the African Union is expected to play a more proactive role in its implementation.<sup>13</sup>

## II. **Methodology and Sources**

**9. Methodology:** The drafting of the Model Law followed a comprehensive approach to make it possible for national authorities to adapt it to a multitude of manifestations of internal displacement. Attempt has been made to be faithful to the letter and spirit of the Kampala Convention. Whenever the Kampala Convention only provides general obligations, the sources described below have been used to draft the relevant articles. As a consequence, there are a number of articles drawn from either treaty or soft law sources with only slight adjustments for national law contexts. The Special Rapporteur is convinced that the Kampala Convention provides a broader scope and that the Draft Model Law and any further supplements to the Model Law or other instruments such annotations could be used to support the implementation and wider dissemination of the emerging international law of internal displacement.

**10. International and African human rights treaties and other treaty based sources:** The Kampala Convention is the principal basis for the Model Law, which itself is adopted under the umbrella of the Constitutive Act of the African Union<sup>14</sup>. The Convention is thus founded on the objectives and principles of the African Union as enshrined in the Constitutive Act. The latter includes a number of key provisions dealing with topics relevant to the protection of IDPs such as the encouragement of international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights; the promotion of democratic principles and institutions, popular participation and good governance and the promotion and protection of human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments. The Kampala Convention is thus guided by the general application of the principles enshrined in the Constitutive Act or by direct incorporation, including the right of the African Union to intervene in a Member State pursuant to a decision of the Assembly of Heads of State and Governments of the African Union in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity; respect for democratic principles, human rights, the rule of law and good governance; and promotion of social justice to ensure balanced economic development; respect for democratic principles, human rights, the rule of law and good

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<sup>13</sup> The Kampala Convention provides for the obligation for the African Union. Article 8(d) d states that the African Union shall "Cooperate directly with African States and international organizations and humanitarian agencies, civil society organizations and other relevant actors, with respect to appropriate measures to be taken in relation to the protection of and assistance to internally displaced persons."

<sup>14</sup> [http://www.au.int/en/sites/default/files/Constitutive\\_Act\\_en\\_0.htm](http://www.au.int/en/sites/default/files/Constitutive_Act_en_0.htm)

governance; respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities.<sup>15</sup>

**11.** The Protocol Relating to the Establishment of the Peace and Security Council of the African Union of 2002 also provides an additional important foundation for the Kampala Convention and the Model Law on IDPs. The protocol recognizes the relationship between conflict and forced displacement, provides for the role of the PSC in humanitarian coordination and also explicitly acknowledges that that conflicts have forced millions of people in Africa, including women and children.<sup>16</sup>

**12.** The African Charter on Democracy, Elections, and Governance of 30 January 2007, under Article 8 requires State Parties to adopt legislative and administrative measures to guarantee the rights of women, ethnic minorities, migrants, people with disabilities, refugees and displaced persons and other marginalized and vulnerable social groups.<sup>17</sup>

**13.** Other regional treaties with much more general scope of application such as the African Charter on Human and Peoples' Rights<sup>18</sup> and treaties such as the African Charter on the Rights and Welfare of the Child with a provision extending to displaced children and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa are also relevant. The Great Lakes Protocol on Internally Displaced Persons has also been used in the drafting of the Model Law.

**14.** IDPs enjoy the protection of their human rights as accorded to nationals in the jurisdiction of that particular State. Paramount protection has been provided to all persons by the Universal Declaration of Human Rights of 1948 and global and regional human rights treaties ratified by the State as well as national laws.

**15.** As most African States are parties to global human rights treaties, the draft Model Law has also incorporated the rights enshrined in a number of relevant treaties. In addition to a number of other key international and regional instruments, the Special Rapporteur has consulted the following key international human rights instruments: the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, the International Covenant on Economic, Social and Cultural Rights of 1967, the

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<sup>15</sup> [Article 3 and 4 of the AU Constitutive Act.](#)

<sup>16</sup> [The Preamble and Article 14 of the Protocol Relating to the Establishment of the Peace and Security Council](#)

[http://www.au.int/en/sites/default/files/Protocol\\_peace\\_and\\_security.pdf](http://www.au.int/en/sites/default/files/Protocol_peace_and_security.pdf).

<sup>17</sup>[http://www.au.int/en/sites/default/files/AFRICAN\\_CHARTER\\_ON\\_DEMOCRACY\\_ELECTIONS\\_AND\\_GOVERNANCE.pdf](http://www.au.int/en/sites/default/files/AFRICAN_CHARTER_ON_DEMOCRACY_ELECTIONS_AND_GOVERNANCE.pdf), has entered in to force 15 February 2011.

[http://www.au.int/en/sites/default/files/Charter%20on%20Democracy%20and%20Governance\\_0.pdf](http://www.au.int/en/sites/default/files/Charter%20on%20Democracy%20and%20Governance_0.pdf)

<sup>18</sup> The decisions of the African Commissions on Human and Peoples' Rights on different communications with direct relations with internal displacement have been consulted, in particular Articles 18, 22 and 22 of the Charter:

[http://www.achpr.org/english/\\_info/Decision\\_subject.html](http://www.achpr.org/english/_info/Decision_subject.html).

International Covenant on Civil and Political Rights of 1967, the Convention on the Elimination of All Forms of Discrimination against Women of 1979, the Convention on the Rights of the Child of 1989, the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of 25 May 2000, the Convention on the Rights of Persons with Disabilities of 2006, the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, the International Convention for the Protection of all Persons against Enforced Disappearances of 2006, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990, and the Indigenous and Tribal Peoples ILO Convention No. 169 of 1989.<sup>19</sup>

**16. National laws and policies:** The draft Model Law has considered national laws and policies from Africa and other parts of the world whenever they exist.<sup>20</sup> Currently over 28 countries have adopted instruments on internal displacement. Mexico became the first country to adopt a sub-national policy at a regional congress in Chiapas in 2011. Kenya has adopted a major legislation in 2012. In the drafting process has consulted laws from Angola, Burundi, Liberia, Sierra Leone, Sudan and Uganda.<sup>21</sup>

**17. International Humanitarian Law:** International humanitarian law is incorporated in the Kampala Convention, though no definition or description of international humanitarian law has been provided in the text. The generic terminology of international humanitarian law is used throughout the body of the Kampala Convention, including in reference to acts prohibited under general international law.<sup>22</sup> As most obligations of international humanitarian law are drawn from the Fourth Geneva Convention and the Additional Protocols, the implementation could follow the relevant articles.<sup>23</sup> In as much

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<sup>19</sup> Some of these key international instruments are directly referred to in the preamble of the Kampala Convention.

<sup>20</sup> Laws/ policies, from around the world have been considered, for instance from Africa [Angola](#), [Burundi](#), [Liberia](#), [Sierra Leone](#), [Sudan](#), [Uganda](#) and from Latin America Colombia, and other made available at <http://www.brookings.edu/about/projects/idp/laws-and-policies/idp-policies-index>, the website also has articles on national laws and policies that should be considered. Furthermore, the discussion and recommendations on the draft bill and draft policy in Kenya by the Special Rapporteur on the Human Rights of IDPs of the UN Human Rights Council has also been considered. [http://www.ohchr.org/Documents/Issues/IDPersons/A.HRC.19.54.Add%202\\_en.pdf](http://www.ohchr.org/Documents/Issues/IDPersons/A.HRC.19.54.Add%202_en.pdf)

<sup>21</sup> <http://www.brookings.edu/about/projects/idp/laws-and-policies>

<sup>22</sup> Article 3(e) of the Kampala Convention lays down as one of the General Obligations “Respect and ensure respect for international humanitarian law regarding the protection of internally displaced persons” and under Article 4(4)(b) and (c) as obligations of State Parties relating to protection from internal displacement of “Individual or mass displacement of civilians in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian law;” and “Displacement intentionally used as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict;” and on Obligations of States Parties Relating to Protection and Assistance during Internal Displacement, under Article 9 (1)(b) t, it provides that “Genocide, crimes against humanity, war crimes and other violations of international humanitarian law against internally displaced persons; and on its provision entitled Saving Clause under Article 20(2)(b) it provides that “This Convention shall be without prejudice to the human rights of internally displaced persons under the African Charter on Human and Peoples’ Rights and other applicable instruments of international human rights law or international humanitarian law. Similarly, it shall in no way be understood, construed or interpreted as restricting, modifying or impeding existing protection under any of the instruments mentioned herein.”

<sup>23</sup> Articles 49, 147, of the Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Article 85(4)(a), Article 85(4)(a), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Articles 4(3)(b), 17,

as the generic terminology of ‘International humanitarian law’ includes international crimes provisions of the Statutes of the International Criminal Court (ICC), the jurisprudence of the Court and of other ad hoc international criminal courts, the extent of the obligations other than those general obligations of international law binding on all states could deserve separate treatment by AUCIL. It would suffice for the purpose of the drafting of this Model Law that the terminology could be understood to include the universally applicable Geneva Conventions and their Additional Protocols, those parts of the Statutes of the ICC that incorporated in the Constitutive Act of the African Union<sup>24</sup>. This discussion and the drafting process have benefited from ICRC’s work on Customary International Humanitarian Law, Chapter 38 on Internal Displacement and Displaced Persons, in particular Rules 129-133.<sup>25</sup> Since these rules are prepared based on extensive State practice and a variety of sources, they provide clear guidance for national mechanisms preparing legislations.<sup>26</sup>

**18. The Guiding Principles:** The UN Guiding Principles on Internal Displacement are considered by the United Nations General Assembly at 2005 World Summit Outcome “... as an important international framework for the protection of internally displaced persons and resolve to take effective measures to increase the protection of IDPs.”<sup>27</sup> The Draft Model Law is principally based on the Kampala Convention, which in turn is largely drawn from the Guiding Principles. The Kampala Convention in fact recognizes “... the inherent rights of IDPs as provided for and protected in international human rights and humanitarian law and as set out in the 1998 United Nations Guiding Principles on Internal Displacement, which are recognized as an important international framework for the protection of IDPs.”<sup>28</sup>

**19.** The Draft Model Law has also been developed based on the provisions of the Guiding Principles and work of the mandate holders on internal displacement. The appointment of Mr. Francis Deng in July 1992 as the Representative of the United Nations Secretary General on IDPs<sup>29</sup> led to the elaboration of the Guiding Principles and to a series of reports that provided clearer perspectives on the situation of IDPs

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Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.  
<http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument/>

<sup>24</sup> Article 4(h) of the Constitutive Act of the African Union on ‘the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity’ [http://au.int/en/sites/default/files/Constitutive\\_Act\\_en\\_0.htm](http://au.int/en/sites/default/files/Constitutive_Act_en_0.htm)

<sup>25</sup> [http://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter38](http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter38)

<sup>26</sup> [http://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter38\\_covers\\_act\\_of\\_displacement\\_transfer\\_of\\_civilian\\_population\\_into\\_occupied\\_territories\\_treatment\\_of\\_internally\\_displaced\\_person\\_property\\_rights](http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter38_covers_act_of_displacement_transfer_of_civilian_population_into_occupied_territories_treatment_of_internally_displaced_person_property_rights). Also Jean-Marie Henckaerts, Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict, International Review of the Red Cross, Vol. 85, no 857, March 2005. [http://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0860.pdf](http://www.icrc.org/eng/assets/files/other/icrc_002_0860.pdf)

<sup>27</sup> A/RES/60/1, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>

<sup>28</sup> Preamble, the Kampala Convention.

<sup>29</sup> A/48/579 of 9 November 1993.



around the world. Reports by Mr. Deng and subsequently by Mr. Walter Kälin and the current Special Rapporteur of the United Nations Human Rights Council on the Human Rights of Internally Displaced Persons, Mr. Cheloka Beyani on their country visits and legal analysis and commentaries have been comprehensively consulted. The extensive work done by these mandate holders and the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa of the African Commission on Human and Peoples' Rights, have also enhanced global and regional understanding of internal displacement, and the responsibilities of States towards IDPs.

**20.** The wide acceptance of the Guiding Principles as a nonbinding normative framework by restating existing international law and providing clearer guidance for effective responses has become critical for any work on internal displacement.<sup>30</sup> The Reports by the Special Rapporteurs on IDPs, in addition to the detailed discussions on contemporary challenges of internal displacement, provide systematic discussions on fundamental parts of a legal framework.<sup>31</sup> These Reports also contain some examples, conclusions and recommendations, which have served as excellent sources to elaborate certain provisions of the Draft Model Law.<sup>32</sup> The adoption of additional instruments such as the Operational Guidelines on the Protection of Persons in Situations of Natural Disasters and the Framework on Durable Solutions for Internally Displaced Persons adopted by the Inter-Agency Standing Committee, are important milestones for the practical use of the Guiding Principles and for the drafting of national legal frameworks.<sup>33</sup>

**21.** The various other documents prepared to further elaborate the Guiding Principles, principally the Annotations to the Guiding Principles and documents aimed at assisting States and other actors apply the Principles or draft and adopt national instruments such as the Handbook for Applying the Guiding Principles on Internal Displacement of 1999<sup>34</sup> and the Manual for Law and Policymakers published by the Brookings Institution-University of Bern Project on Internal Displacement in October 2008 are critical in the discussions on the Model Law.<sup>35</sup>

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<sup>30</sup> A/58/393 of 26 September 2003

<sup>31</sup> A/60/338 of 7 September 2005, for instance includes important discussion on access to assistance, non-discrimination, protection of women and children, access to education, loss of documentation, participation of internally displaced persons, durable solutions, and property issues. P 16-18.

<sup>32</sup> A/HRC/4/38 of 3 January 2007, draft bench marks discussion at p. 12. A/HRC/19/19/54 of 26 December 2011, discussions on internally displaced persons, host communities, durable solutions, and important conclusions and recommendations p.13-21., A/HRC/19/54/Add.2 of February 2012, in his Report of the Mission to Kenya, the Special Rapporteur of the Human Rights Council on the Human Rights of Internally Displaced Persons has made conclusions and recommendations with global relevance and important for consideration national framework.

<sup>33</sup> A/66/285, of 6 August 2011, A/HRC/16/43/Add.5 or A/HRC/19/19/54 of 26 December 2011.

<sup>34</sup> <http://www.brookings.edu/fp/projects/idp/resources/HEnglish.pdf>.

<sup>35</sup> [http://www.brookings.edu/~media/Files/rc/papers/2008/1016\\_internal\\_displacement/10\\_internal\\_displacement\\_manual.pdf](http://www.brookings.edu/~media/Files/rc/papers/2008/1016_internal_displacement/10_internal_displacement_manual.pdf).

**22.** Furthermore, the studies, and reports of country visits submitted by the mandate holders on Internal Displacement shed light on the gravity of the situation of IDPs and the manner in which many countries across the world have been approaching these challenges, including through national laws, strategies and policies.

**23. Disaster law:** In 2007, the United Nations International Law Commission decided to include the “protection of persons in the event of disasters” in its program of work and the General Assembly, in resolution 62/66 of 6 December 2007, took note of the Commission’s decision to include the topic in its program of work.<sup>36</sup> Since then the Commission has provisionally adopted a number of articles based the reports presented by the [Special Rapporteur](#) of the International Law Commission on the topic of the protection of person in the event of disasters, Mr. Eduardo Valencia-Ospina, and the Drafting Committee of the Commission, including the one on the definition of “Disaster” which was adopted by the Special Rapporteur in the Draft Model Law. The articles of the Commission on definition, the roles of the affected State, on the duty of the affected State to seek humanitarian assistance, consent of the affected State to the delivery of humanitarian assistance<sup>37</sup> have been very useful in preparing the articles of the Draft Model Law.

**24.** The International Red Cross and Red Crescent Movement has adopted Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance.<sup>38</sup> The implementation of a project by the International Federation of Red Cross and Red Crescent Societies on a “Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance,”<sup>39</sup> with extensive provisions on different aspects of facilitating relief work has also provided a useful resource for the drafting of the Model Law.

**25.** The Operational Guidelines on Human Rights and Natural Disasters<sup>40</sup> prepared and further development by the mandate holders on internal displacement<sup>41</sup> also serves as an important source for elaboration or direct application by States in situation of natural disasters.

**26. Other Legal Sources:** The Special Rapporteur has also consulted a multitude of resolutions, declarations, guidelines, and other non-binding instruments adopted by the

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<sup>36</sup> <http://www.un.org/law/ilc/index.htm>

<sup>37</sup> Report of the International Law Commission Sixty-third session (26 April–3 June and 4 July–12 August 2011) <http://untreaty.un.org/ilc/reports/2011/2011report.htm>

<sup>38</sup> 30th International Conference Geneva, 26-30 November 2007,

<http://www.ifrc.org/Global/Governance/Meetings/International-Conference/2007/final-resolutions/ic-r4.pdf>.

<sup>39</sup> [http://www.ifrc.org/PageFiles/88609/Pilot%20Model%20Act%20on%20IDRL%20\(English\).pdf](http://www.ifrc.org/PageFiles/88609/Pilot%20Model%20Act%20on%20IDRL%20(English).pdf).

<sup>40</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/105/12/PDF/G0710512.pdf?OpenElement>

<sup>41</sup> See Report by Special Rapporteur <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-43.pdf>

African Union, the United Nations bodies, and other regional organizations. The African Union has adopted resolutions and decisions on internal displacement.<sup>42</sup> Some of these latest decisions are referred in the Preamble of the Kampala Convention. The Khartoum Declaration, which was adopted during the OAU at a Ministerial Meeting on Refugees, Returnees and Internally Displaced Persons in Africa, in December 1998, encapsulates the different resolutions and decisions adopted by the regional organizations over the years. Some of the main points of the Declaration emphasize the need for adopting national legislation, administrative regulations and procedures to ensure the effective and full implementation of the instruments to which they have acceded, calling for durable solutions to the problem of forced population displacement, urging the protection of humanitarian workers and to ensure their safety and security and asking organizations and aid workers to abide by the national laws and regulations of the countries where they operate.<sup>43</sup>

**27.** In the context of the United Nations human rights framework, the Vienna Declaration and Program of Action, of the 1993 World Conference on Human Rights provides that “in the light of the comprehensive approach, the World Conference on Human Rights emphasizes the importance of giving special attention including through intergovernmental and humanitarian organizations and finding lasting solutions to questions related to internally displaced persons including their voluntary and safe return and rehabilitation.”<sup>44</sup>

**28.** The United Nations Human Rights Council, consistent with the tradition of the former United Nations Commission on Human Rights has been making active contribution to the development of the protection regime on the human rights of IDPs. In addition to the central work done by the Special Rapporteur on the Human Rights of Internally Displaced Persons, different mandate holders of the Human Rights Council are contributing in their own mandate areas and directly promoting the rights and wellbeing of the internally displaced persons. The 2007 UN Declaration on the Rights of Indigenous Peoples for instance provides specific recognition to indigenous peoples with respect to their land, resources, identity and protection from dispossession and relocation, has a direct bearing on the overall protection accorded to IDPs.<sup>45</sup>

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<sup>42</sup> The African Union passes resolutions on refugees, returnees and IDPs and also within the context of peace and security related resolutions :the Executive Council of the African Union in Decision EX/CL.413 (XIII) of July 2008 at Sharm El Sheikh, Egypt, to Executive Council Decisions EX.CL/Dec.129 (V) and EX.CL/127 (V) of July 2004 in Addis Ababa,

<sup>43</sup>[http://www.issafrica.org/AF/RegOrg/unity\\_to\\_union/pdfs/oau/keydocs/KHARTOUM\\_DECLARSON\\_REFUGEES.pdf](http://www.issafrica.org/AF/RegOrg/unity_to_union/pdfs/oau/keydocs/KHARTOUM_DECLARSON_REFUGEES.pdf)

<sup>44</sup> Vienna Declaration and Program of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, <http://www2.ohchr.org/english/law/pdf/vienna.pdf>

<sup>45</sup> A/RES/61/295 of 13 September 2007, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>

**29.** The “Pinheiro” Principles on Housing and Property Restitution for Refugees and Displaced Persons 46 and the Basic Principles and Guidelines on Development-Based Evictions and Displacement submitted to the UN Human Rights Council in 2006<sup>47</sup> of the Human Rights Council have furnished important instruction for the provisions of the Draft Model Law on these critical issues, particularly for the durable solutions for internally displaced persons. At its 19<sup>th</sup> Regular Session, held from 27 February to 23 March 2012, the Human Rights Council passed a resolution on adequate housing as a component of the right to an adequate standard of living in the context of disaster settings. The resolution “*encourages* States and relevant actors to respect, protect and fulfill the right to adequate housing as a component of the right to an adequate standard of living in their broader disaster risk reduction, prevention and preparedness initiatives, as well as in all phases of disaster response and recovery;”<sup>48</sup> There are also studies, recommendations on specific situations and of general application and instruments produced by Human Rights mechanisms, including the treaty bodies and humanitarian bodies of the United Nations system that are directly relevant for the development of national legislation on IDPs.

**30.** Over the years, UNHCR has developed important expertise on internal displacement and issued, within the framework of the Global Protection Cluster, instruments such as a Handbook relevant for IDP operations.<sup>49</sup> This Handbook, for instance has detailed information in terms of sources of law and background material that could serve as additional source of information for national stakeholders in the process of drafting national legislation or policy.

### **III. The Draft Model Law**

**31.** The Draft AU Model Law is divided into 14 Chapters and 63 articles. The draft articles are organized to follow the structure of the Kampala Convention covering all aspects of internal displacement: prevention, protection, assistance and durable solution. It also contains provisions for compensation, remedy and penal provisions to prevent arbitrary internal displacement and prosecution of criminal acts against IDPs.

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<sup>46</sup> (E/CN.4/Sub.2/2005/17 and E/CN.4/Sub.2/2005/17/Add.1),  
[http://www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf)

<sup>47</sup> (A/HRC/4/18, Annex I) [http://www2.ohchr.org/english/issues/housing/docs/guidelines\\_en.pdf](http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf)

<sup>48</sup> A/HRC/19/L.4 of 15 March 2012 which includes important standards critical for further development of the protection regime for internally displaced persons. <http://daccess-dds-ny.un.org/doc/RESOLUTION/LTD/G12/119/94/PDF/G1211994.pdf?OpenElement>.

<sup>49</sup> Handbook for the Protection on Internally Displaced Persons, Global Protection Cluster Working Group, March 2010. PROTECTION RISKS: PREVENTION, MITIGATION AND RESPONSE (Action Sheets) Part V, Documentation Program for Internally Displaced Persons, Colombia, UNHCR.

**32.** Chapter I deals with general provisions of definitions, objectives and scope of the legislation, and principles. These obligations aim at respecting and ensuring respect for international humanitarian law. Chapter II on Prevention of Internal Displacement where the substantive provisions of the Model Law start with prevention, as this is the most important responsibility of States. takes all this into account and proposes articles that could enable States to take measures to prevent internal displacement. Prevention is a stage in a displacement process with daunting challenges in terms of resources and capacity to prevent internal displacement especially in the context where the possible cause of the internal displacement is natural disaster or climate change. Chapter III deals with Internal Displacement caused by disasters with articles highlighting the primary responsibility of States to protect people and take measures to mitigate the repercussions of internal displacement on the affected people. This part has included climate change induced displacement as one important challenge. The terminology is not defined in the Kampala Convention and it is not attempted in the Draft Model Law. The elements of what constitutes climate change are most acutely known in Africa, which is suffering from persistent droughts, floods, desertification and other calamities.<sup>50</sup> It is thus felt important to include it in the text.

**33.** Chapter IV deals with internal displacement triggered by human rights violations, armed conflicts and generalized violence. Here the focus is on the protection of displaced persons during conflicts and violence. It is about recalling the obligations of States and non-state actors under international humanitarian law and human rights law. It should not be taken as reinventing the wheel. The protection of civilians, including those displaced or forcefully displaced during conflicts is well regulated under the Geneva Conventions and the Additional Protocols.<sup>51</sup> That protection system is equally applicable throughout the world. The role of the ICRC as in the protection of civilians during armed conflicts as enshrined in those instruments and its assistance work remain critical. The provisions of the Draft Model Law in this and other chapters underline the importance of international humanitarian law.

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<sup>50</sup> <http://www2.ohchr.org/english/> the discussions at the Human Rights Council are instructive of the linkages between Human Rights and Climate Change. Also <http://www.unisdr.org/archive/21934>

<sup>51</sup> In the commentaries to the Geneva Convention it is stated that "...Article 49 of the fourth Convention already laid down some norms as protection against deportations, transfers and evacuations in or from occupied territories, and it was not considered necessary to supplement these rules in Protocol I..." » <http://www.icrc.org/ihl.nsf/COM/475-760023?OpenDocument> and under Protocol II Article 17, Art 17. Prohibition of forced movement of civilians: 1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition. 2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict. <http://www.icrc.org/ihl.nsf/FULL/475?OpenDocument>

**34.** Chapter V deals with displacement induced by projects. This refers to the relocation of people to give way for implementation of development activities that result in relocating people to give way to these projects. As Africa endeavors to come out of deep-seated poverty and underdevelopment, this challenge will continue to be felt more acutely in the coming decades. It is thus timely for the Convention to focus on addressing displacement generated by projects. The provisions of this chapter follow the multifaceted approach of the Convention starting with finding alternatives to the proposed projects to prevent displacement and ensuring that the affected people are included in the decision making process, and when it is necessary to continue with the project to safeguard their rights. This appears to be a difficult undertaking but if Governments adopt predictable and transparent rules in advance to guide the process, it would at least lessen the burden on those likely to be adversely affected by the projects.<sup>52</sup>

**35.** Chapter VI covers the protection of IDPs. To make it more meaningful in terms of the areas covered by the Kampala Convention and related instruments mentioned above as sources, this part highlights the rights that are of particular importance to IDPs due to the difficult situation they face in light of the lack of support structure that existed before their movement. It thus covers critical civil and political rights, economic, social and cultural rights, family reunification, registration issues and others that are critical for their survival and continuation of their livelihoods as productive citizens.

**36.** Chapter VII examines the question of assistance to IDPs with its focus being on those requiring special treatment due to their particular vulnerabilities. The primary duty of the State to provide assistance cannot be disputed. It is thus reiterated that such reaffirmation will not be enough for States with limited means. They should be able to seek assistance. They should also make it possible for those in need to receive assistance.

**37.** Chapter VIII on humanitarian assistance to IDPs is in effect the continuation of the previous chapter on assistance but also adds responsibilities for the humanitarian actors. The purpose is to put a proper perspective of the duty of States to seek international assistance, to receive good faith offers of assistance and give consent and facilitate this assistance whenever it is not in a position to provide this assistance for those in need in an adequate manner. It also provides minimum standards to be followed by humanitarian actors.

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<sup>52</sup> For the World Bank's GLOBAL PROGRAM ON FORCED DISPLACEMENT  
<http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1265299949041/6766328-1265299960363/FY11-GPFD-Annual-Progress-Report.pdf>.

**38.** Chapter IX is about the protection of property. When people are displaced in almost all causes considered in the Model Law, they do not have time or luxury of thinking about their property. The urgency is about saving their lives and the lives of their families. The articles in the Chapter are about the necessary protection for property and its eventual recovery. Chapter X deals with remedies—the legal mechanisms for IDPs to take their case to court or seek effective redress such as compensation or other forms of satisfaction to a particular loss they suffered due to forced displacement.

**39.** Chapter XI is about durable solutions—last part of the continuum from displacement, protection and assistance during displacement and finally finding a lasting solution either by way of local integration or resettlement. Here as well, the draft articles are crafted or chosen from different sources to give meaning to the word ‘durable’. Chapter XII is about national coordination and implementation mechanism as one specific requirement of the Kampala Convention and a must for any national law to have a meaning and any chance of being effectively realized to the benefit of IDPs.

**40.** The last substantive part under Chapter XIII is on Offences related to internal displacement and it is about defining what elements of crimes enumerated in the Convention and those that are natural outgrowths of the provisions of the Convention and necessary for its national implementation and are incorporated in the Model Law consistent with its substantive provisions. While sentencing is left for national jurisdictions and different legal traditions, some minimum elements of offences are mentioned for this law to serve as dissuasive force to ensure that abhorrent abuses are not committed against internally displaced persons.

#### **IV. Use of the AU Draft Model Law**

**41.** The Model Law is intended to be used as a resource in the drafting process of national legislation to implement the Kampala Convention at the national level. The Model Law is designed in a manner that allows flexible adaptation to specific situations in terms of causes and challenges of displacement of each country, making it easily adaptable for different legal systems.

**42.** As foreseen under Article 3(2) (c) of the Kampala Convention, national policies and strategies on internal displacement, including at local level would provide a better domestic framework for protection and assistance to IDPs. The drafting and implementation of domestic law on internal displacement would be highly facilitated by the process of developing strategies and policies, which could help the country assess the extent, causes and severity of internal displacements, their causes, the severities and degree of vulnerabilities faced by IDPs as well as in identification of laws and practices that affect rights and welfare of IDPs in the country. It would also provide the

opportunity to consult with IDPs and all stakeholders on the specific situation of the country and possible needs of protection, assistance and durable solutions.

**43.** The Model Law recognizes the role, contribution and responsibilities of non-state actors.

**44.** The Model Law also envisages further subsidiary legislations to be elaborated according to the specific tradition of the legal system. Possible areas include instruments on forced evictions for different situations, consultation procedures and guidelines for large scale development projects, instrument for the establishment of stand-alone compensation and mechanisms and simplified procedure to guarantee timely access to justice, procedure on informed and voluntary consent on relocation, procedure on return, local integration or resettlement, and modalities for the registration or data collection and management. The Special Rapporteur considers it important to coordinate with AU Commission to develop sample instruments to be included as supplement to the final text of the Model Law.

## **V. Procedures for the finalization of the AU Model Law**

**45.** The preparation of the attached draft Model Law enjoyed contributions from members of AUCIL, and most of the relevant personalities and institutions with experience and expertise including mandate holders at the regional or global mandate on internal displacement. The Special Rapporteur circulated electronically a revised text. The African Union on International Law conducted its first reading of the Preliminary Report and the Draft Model Law at its Fourth Ordinary Session, held from 4 to 13 April 2012, in Addis Ababa, Ethiopia. Following the presentation of the revised report and model law by the Special Rapporteur, Members of AUCIL provided comments on the text and encouraged the Special Rapporteur to submit the final draft. Some Members of AUCIL provided rewritten comments. Member States of the African Union, AU Organs and AU Partners were thereafter invited to comment on these draft articles and respond to the questioner. AUCIL then considered the evolution of the text of the Model Law in 2013 and 2014, including comments from few Member States, the African Commission on Human and Peoples' Rights, UNHCR, and ICRC. The Special Rapporteur wishes to extend its appreciation to Member States, the African Commission on Human and Peoples' Rights for their valuable inputs at meetings organized by AUC.

**46.** The Special Rapporteur is pleased that in addition to general comments, participants considered different parts of the Model Law and provided extensive comments. The Special Rapporteur would like to recognize that UNHCR provided substantial and very constructive comments and proposal for improvements of the Model Law. As appropriate, these comments are fully integrated in the text. Professor



Walter Kaelin, former UN Special Rapporteur on the Human Rights of IDPs and ICRC provided written comments, which have been fully integrated in the text. The Special Rapporteur expresses his gratitude to Professor Kaelin and Dr. Allehone M. Abebe, for their keen interest, support and encouragement from early stages of this work.

**47.** At the same time, the Special Rapporteur would like to acknowledge the African Union Commission's effort in encouraging the wider ratification of the Kampala Convention. To cite a few, the Political Department of the African Union Commission on the signing and ratification of the Kampala Convention were held in Mombasa, Kenya from 11-12 June 2012, Lusaka, Zambia from 18 to 19 July 2013 and the 12 to 14 August 2014 of the meeting in Accra, Ghana. The Workshops were held with the view of evaluating progress made in the ratification of the Kampala Convention, addressing challenges faced and identifying the way forward in domestication of the said Convention, as it "has a direct link to all international and regional instruments that have a bearing on the IDPs including Human Rights instruments, Women and children, Disasters, Development and the International Humanitarian Law among others."<sup>53</sup>

**48.** The Special Rapporteur has endeavored to incorporate into the text the various comments from Representatives of Member States, and Members of AUCIL in as much as these comments are specific, consistent with the Kampala Convention and other applicable standard. Finally, it would be advisable that further work on this matter is better coordinated to collectively advance the cause of enhancing the protection of IDPs in Africa. As such, future consultations and processes leading to the consideration and endorsement of the Model Law by the Assembly should be closely coordinated with AUCIL.

## **VI. Decision**

**49.** At its 9<sup>th</sup> Ordinary Session, the African Union Commission on International Law, AUCIL:

1. *Expressed* its appreciation to the Special Rapporteur for the Report and the Draft Model Law.
2. *Also expressed* its appreciation to UNHCR and those mentioned in this Report for the support provided for this work,
3. *Submits* the Report of the Study and the annex Draft Model Law for adoption by African Union Summit, and for the subsequent publication.

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<sup>53</sup> African Union Workshop on the Signing and Ratification of the Kampala Convention, 12-14 August 2013, Accra, Ghana, Para. 1)

**AFRICAN UNION MODEL LAW  
FOR THE IMPLEMENTATION OF THE AFRICAN UNION CONVENTION FOR THE  
PROTECTION OF AND ASSISTANCE TO INTERNALLY DISPLACED PERSONS IN  
AFRICA**

**CHAPTER I  
General Provisions**

**Article 1  
Short Title**

This legislation shall be cited as “Protection of and Assistance to Internally Displaced Persons Act”<sup>54</sup> and shall serve as a guideline in the drafting process of national legislation to implement the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa at the national level.

**Article 2  
Definitions**

For the purpose of this legislation:

- (1) “Arbitrary displacement” means arbitrary displacement as referred to in Article 54 of this Act.
- (2) “Armed Groups” means dissident armed forces or other organized armed groups that are distinct from the armed forces of the State.
- (3) “Disaster” means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, displacement of population or large-scale material or environmental damage, thereby seriously disrupting the functioning of society.
- (4) “Harmful Practices” means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of persons, such as but not limited to their right to life, health, dignity, education, and mental and physical integrity.

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<sup>54</sup> States may choose different titles for their legislations depending on their practices.

- (5) “Internal Displacement” means the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognised State borders.
- (6) “Internally Displaced Persons” means persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situation of generalised violence, violation of human rights or natural or human-made disasters and who have not crossed an internationally recognised State border.
- (7) “Non-state actors” means private-actors who are not public officials of the State, including other armed groups not referred to in article 2(2) above, and whose acts cannot be officially attributed to the State.

### **Article 3**

#### **Objectives and Scope of the legislation**

1. This legislation shall have the following objectives:
  - a) Provide for the prohibition of arbitrary displacement in the State.
  - b) Establish legal and institutional framework for the prevention or mitigation, and elimination of root causes of internal displacement, and protecting and assisting as well as the provision for durable solutions for internally displaced persons in the country.
  - c) Respect and ensure the respect of the human rights of internally displaced persons as provided for under international instruments to which the state is a party, the Constitution and other relevant subsidiary laws.
  - d) Give effect to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, and other relevant international and regional treaties to which the State is a party.
  - e) Provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organizations.

- f) Provide a basis for the development of policies, strategies and implementation plans on internal displacement.
  - g) Establish a national coordination mechanism for the implementation of this legislation and define its power and responsibilities.
2. The Provisions of this legislation shall apply to all situations of internal displacement irrespective of their causes.

#### **Article 4** **Principles**

1. This legislation shall be interpreted and implemented in accordance with the following principles:
- (1) Protection against arbitrary internal displacement.
  - (2) Non- discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, place of displacement or on any other similar criteria.
  - (3) Respect to the rights of IDPs provided under regional and international human rights treaties to which the State is a party.<sup>55</sup>
  - (4) The primary duty and responsibility of the State in preventing internal displacement, protecting and assisting internally displaced persons and creating conditions conducive to durable solutions.
  - (5) Specific protection and assistance activities which take into account the specific circumstances and needs of marginalized/vulnerable groups such women, communities with special attachment to land, single-headed households, elderly, and children, including those unaccompanied or separated from their families, the elderly, persons living with disabilities and persons belonging to national, or ethnic, religious and minority groups.
  - (6) The responsibility of every person, including public authorities, involved in the protection and assistance of internally displaced persons to act in

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<sup>55</sup> Member States may maintain any national statutory provisions, which provide more favorable treatment to IDPs than this Model Law.

accordance with this legislation and to give due regard to the needs of displacement affected populations and host communities.

2. The implementation of provisions of this legislation shall not be construed to grant a distinct legal status to internally displaced persons.

## **CHAPTER II**

### **Prevention of Arbitrary Displacement**

#### **Article 5**

#### **Prevention of Arbitrary Displacement**

The competent authorities, armed groups, non-state actors and individual persons shall respect and ensure respect of their obligations under international law, including human rights and international humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to arbitrary displacement of persons. Competent authorities shall in particular:

- (1) Take measures to address factors and prevent and avoid conditions that have the potential to result in the arbitrary displacement of persons.
- (2) Review of relevant national laws and policies as well as practices to ensure that they incorporate basic international law protections as set out including in the Kampala Convention.
- (3) Undertake public awareness, sensitization, training and education on the causes, impact and consequences of internal displacement, means of prevention, early warning, disaster risk reduction and relocation.

## **CHAPTER III**

### **Internal Displacement Caused by Disasters**

#### **Article 6**

#### **Disaster Induced Displacements**

- (1) Competent authorities bear the primary duty to protect people and give particular attention to the special needs of the people most vulnerable to and most affected by climate change, environmental hazards, and other disasters, including IDPs, hosting communities and those at the risk of displacement.

- (2) Competent authorities shall take measures to prevent and mitigate displacement induced by effects of climate change, environmental hazards, and other disasters. These measures shall comply with human rights standards and be guided by the fundamental principles of humanity, human dignity, human rights and international cooperation, and shall be guided by consent, empowerment, participation and partnership and to reflect age, gender and diversity aspects.
- (3) Competent authorities should take specific measures to integrate internal displacement in their contingency planning and adaptation programs.
- (4) Climate change, environmental hazards, and other disasters related processes at the national and local levels should involve a meaningful and informed participation of communities likely to be affected by internal displacement.
- (5) Mitigation measures involving relocation of populations or communities shall be undertaken with full participation and consultation with affected communities and should comply with human rights standards and norms.

**Article 7**  
**Protection of internally displaced persons**

Competent authorities shall:

- (1) Take measures to ensure that persons displaced by disasters have unimpeded and non-discriminatory access to basic services necessary to meet their needs.
- (2) Protect those displaced by disaster against the dangers of potential secondary hazards and other disaster risks.
- (3) Take effective measures to ensure the security of populations affected by disasters.
- (4) Establish camps only as a last resort and ensure that settlements are established as long as the possibility of self-sustainability or fast rehabilitation assistance does not exist.
- (5) Be responsible for maintaining law and order in the camps and their vicinity, evacuation sites and sites where the displaced settle spontaneously.

- (6) Take measures to grant priority access to such groups as women, communities with special attachment to land, single-headed households, the elderly, persons with disabilities, and unaccompanied and separated children.
- (7) Take measure to ensure that those displaced by disasters are given access to psychosocial assistance and social services, when necessary. Special attention should be given to the health needs of groups with specific needs, including provision of appropriate clothing and hygienic supplies, access to female healthcare providers and such services as reproductive health care.
- (8) Ensure that forced evacuations of individuals in cases of natural or human made disasters or other causes are not undertaken unless such measures are justified by considerations of the safety and health of those affected.
- (9) Ensure that internally displaced persons are provided with effective remedies as provided for under Chapter IX of this legislation.
- (10) Endeavor to establish a system to trace the fate of persons missing and cooperate with international organizations working in this area. Next of kin shall be informed of the result of ongoing investigation.
- (11) Endeavor to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next-of-kin or dispose of them respectfully.

### **Article 8**

#### **Protection of internally displaced persons during evacuation**

In situations where the imminent natural disaster created a serious risk for the life, physical integrity or health of affected individuals and communities, the competent authorities shall, consistent with human rights standards and norms:

- (1) Take all appropriate measures necessary to protect those in danger, including in particular vulnerable groups.
- (2) Ensure that evacuation measures should be carried out in a manner that fully respects the right to life, dignity, liberty and security of all those

affected, in particular members of vulnerable groups. They shall in particular:

- a) Safeguard homes and common assets left behind by evacuated persons;
  - b) Register evacuated persons and monitor their evacuation;
  - c) Ensure that evacuated persons enjoy full access to protection and assistance provided to internally displaced persons
  - d) Guarantee that after the emergency phase, evacuated persons should be granted the opportunity to choose freely whether they want to return to their homes and places of origin, to remain in the area to which they have been displaced, or to resettle to another part of the country.
- (3) The right of choice to return may not be subjected to any restrictions except those which are provided by law, and are necessary to protect national security, the safety and security of affected populations, public order (*ordre public*), safety, public health or morals or the rights and freedoms of others.

## **Article 9**

### **Needs Assessment and Initiation of International Assistance**

- (1) Immediately after the onset of or prior to a major disaster, the National Mechanism established under Chapter XII of this legislation shall, upon consultation with relevant government authorities at all levels and based on an initial estimate, shall assess the needs of internally displaced person and make a determination whether local capacities are sufficient to effectively respond to the needs of internally displaced persons and affected communities. In the event of determination that domestic response capacities are not likely to be sufficient, the National Mechanism shall, without any further delay, advice the highest executive organ to request an international assistance.
- (2) A determination that domestic capacities are likely to be sufficient and international assistance is therefore not necessary shall be regularly reviewed based on information on the needs and magnitude of internally displaced persons and the affected population.



**Article 10**  
**Termination of International Assistance**

- (1) The decision to terminate international assistance including international relief efforts shall be made on the basis of effective assessment of the needs of the internally displaced persons as well as the affected population based on a broad-based and effective consultation with internally displaced persons and international organisations providing such assistance.
- (2) The termination date shall be announced three months prior to the date when the termination will be effective.
- (3) All disaster response actors shall undertake measures to minimise the negative impacts on the affected population including internally displaced persons from such termination.

**Article 11**  
**Safeguards and Relocation Procedures During Disasters**

- (1) Measures to relocate the affected populations shall not involve actions more than what is proportionate and necessary.
- (2) Relocation measures shall fully take into account and be carried out in a manner that fully respects the right to life, dignity, liberty, and security of internally displaced persons and shall be based on an effective consultation and participation of these persons.
- (3) The involvement of law enforcement bodies and the military shall comply with applicable human rights standards.
- (4) All communities affected by a natural disaster shall be entitled to easily accessible information concerning:
  - a) the nature and level of the disaster they are facing;
  - b) the possible risk mitigation measures that can be taken;
  - c) early warning information; and
  - d) Information on on-going humanitarian assistance, recovery efforts and their respective entitlements, if any.

- (5) Measures should be taken to safeguard homes and assets left behind by affected populations.

**CHAPTER IV**  
**Internal Displacement Caused by Human Rights violations,**  
**Armed conflicts and generalized violence**

**Article 12**  
**Obligations of the Government and Non-state actors**

- (1) The competent authorities, armed groups and any other person, irrespective of their legal status, shall respect and ensure compliance with their obligations under international humanitarian law and human rights law to prevent conditions that might lead to internal displacement of persons.
- (2) Competent authorities shall take all measures to safeguard areas where internally displaced persons are located, and protect such locations against infiltration by armed groups or elements and disarm and separate such groups or elements from internally displaced persons.
- (3) All parties shall refrain from attacking camps, settlements, or any other areas where internally displaced persons might be located.
- (4) All parties shall respect the right of internally displaced persons to voluntarily return in safety and dignity to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.

**Article 13**  
**Protection of Internally Displaced Persons**

- (1) All parties to armed conflicts shall not forcefully displace civilian populations unless the measure is intended to ensure the security of the civilians involved or the imperative military reasons so demand.
- (2) Internally displaced persons shall be protected from:
  - a) Genocide, murder, summary or arbitrary executions, and enforced disappearances;
  - b) Direct or indiscriminate attack or other acts of violence;

- c) Starvation as method of war;
  - d) the use of civilians as a shield for military objectives;
  - e) Rape, mutilation, torture, cruel, inhuman, or degrading treatment, or punishment and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution, sale and trafficking in persons, illegal organ transfer and any other form of indecent assault;
  - f) Direct participation and recruitment of children in armed conflicts;
  - g) Slavery or any other contemporary forms of slavery, including sale into forced marriage, sexual exploitation, forced labour, child exploitation;
  - h) Acts of terror;
  - i) Internment or confinement into a camp;
  - j) Discriminatory forced recruitment into the military or any forms of forced recruitment in the armed groups.
- (3) In case of internal displacement, all possible measures shall be taken in order to ensure that persons are received under satisfactory conditions of shelter, hygiene, health, safety, nutrition, and that members of the family are not separated and they receive appropriate psychosocial support.
- (4) The property and possession of internally displaced persons shall be protected against:
- a) Pillage;
  - b) Direct or indiscriminate attacks or other forms of violence;
  - c) Being used to shield military operation or objectives;
  - d) Reprisal;
  - e) Being destroyed or appropriated as a form of collective punishment, and destruction, and arbitrary and illegal appropriation or use.
- (5) Internally displaced persons should not be relocated without being given adequate information or meaningful options.

- (6) Parties to the conflict shall respect the freedom of individuals to movement including the right to freely move in and out of camps or any other forms of shelter.
- (7) Parties to the conflict shall ensure the protection of family unity in accordance with this Legislation.
- (8) Parties to the conflict shall not recruit children or allow children to take part in hostilities.

**Article 14**  
**Penalties**

- (1) Any person who has caused the arbitrary displacement of individuals and groups in violation of provisions under this Chapter shall be punished in accordance with Chapter XIII of this legislation.
- (2) Order issued by the military, the police or any other law enforcement section of the government shall not be used to justify such actions.

**CHAPTER V**  
**Displacement Induced by Projects**

**Article 15**  
**Principles and Obligations**

- (1) Competent authorities and non-state actors shall give priority to exploring strategies that minimize internal displacement.
- (2) Competent authorities, as much as possible, shall prevent displacement caused by projects carried out by public or private actors. Public authorities and non-state actors including companies involved in projects shall endeavour to prevent displacement.
- (3) Competent authorities shall ensure that the stakeholders concerned will explore feasible alternatives, with full information and consultation of persons likely to be displaced by projects.
- (4) Competent authorities and non-state actors including companies involved in projects and with the participation of the affected communities shall carry out

socio-economic and environmental impact assessment of a proposed project prior to undertaking such a project.

- (5) The Government shall ensure the rights of internally displaced persons to receive protection their right to adequate housing and without discrimination.
- (6) Internally displaced persons have the right to be resettled, including the right to alternative provision of land or housing of equal or comparable quality.
- (7) Public authorities and non-state actors including companies shall refrain from evicting or displacing individuals and communities from their land and property.

#### **Article 16**

#### **Environnemental and Socio-economic Impact Assessment**

- (1) Competent authorities shall institute comprehensive and holistic environmental and socio-economic impact assessments as a requirement prior to the initiation of any project that could result in internal displacement.
- (2) The impact assessment should also include exploration of alternatives and strategies for minimizing harm.
- (3) Impact assessments must take into account the differential impacts of forced evictions on women, children, and the elderly, and marginalized or vulnerable persons. All such assessments should be based on the collection of disaggregated data.

#### **Article 17** **Relocation**

In situations where displacement from projects occurs, the following procedures and guarantees shall be applicable:

- (1) The measure shall be taken by competent authorities fully empowered by law.
- (2) Individuals and groups who will be affected by the measure shall have full access to information on the reasons and procedure for the displacement, and where applicable, also information on compensation and relocation.

- (3) Priority should be given to efforts aimed at securing free and informed consent or the cooperation of those to be displaced while reserving legitimate enforcement action as measures last recourse.
- (4) Legal protection and opportunity for those opposing the relocation measure to challenge the decision and ask for review before a body constituted for this purpose or before ordinary courts/tribunals.
- (5) Law enforcement measures, where required, shall be carried out by competent authorities and shall be carried out in full compliance with applicable human rights standards.
- (6) Identified relocation sites shall fulfil the criteria for adequate housing according to applicable human rights standards.
- (7) Relocation measures should safeguard the rights of women, children, persons with disabilities and other groups and individuals requiring particular protection, including their right to property and access to basic services and resources.
- (8) Relevant entities shall provide all necessary amenities, services and economic opportunities at the proposed site.
- (9) The relocation process should be carried out with full participation of affected persons, groups and communities. Special efforts should be undertaken to involve women, children, persons with disabilities, people with special attachment to, and dependency on land due to their particular culture and spiritual values, as well as others working on their behalf, have the right to be involved in the planning and implementation of development projects and shall be provided with adequate and timely information.
- (10) The competent authorities shall give due consideration to all alternative plans proposed by the affected persons, groups and communities.

**Article 18**  
**Protection during Project Related Displacement**

- (1) Displacement or relocation resulting from projects shall not be carried out in a manner that violates the dignity and the rights of those affected.

- (2) Competent authorities shall ensure the protection of vulnerable groups. They shall take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected.
- (3) Competent authorities shall take steps to ensure that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children, or arbitrarily deprived of property or possessions as a result of demolition, arson and other forms of deliberate destruction, negligence or any form of collective punishment.
- (4) Property and possessions left behind involuntarily should be protected against destruction and arbitrary and illegal appropriation, occupation or use.
- (5) Regardless of circumstances and without discrimination, competent authorities shall ensure that all persons are provided with access to health, food, water, sanitation and health services.

**Article 19**  
**Safeguards and Procedures during Relocation**

- (1) Identified relocation sites shall fulfil the criteria for adequate housing according to applicable human rights standards.
- (2) Resettlement must ensure that the human rights of women, children, and other vulnerable groups are equally protected, including their right to property ownership and access to resources.
- (3) Competent authorities shall provide all necessary amenities, services and economic opportunities at the proposed site. Relocation sites chosen must provide for economic opportunities securing livelihoods as least equal to those before relocation.
- (4) The entire resettlement process should be carried out with full participation of affected persons, groups and communities.
- (5) The competent authorities shall give due consideration to all alternative plans proposed by the affected persons, groups and communities.

**Article 20**

### **Effective Remedies**

- (1) The competent authorities shall ensure that fair and just reparation is made for any loss of life, real or other property or goods, including rights or interests in property.
- (2) Decision on remedies shall be reviewed by competent legal authorities in accordance with this law.
- (3) Reparation shall be provided for any economically quantifiable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services. Quantum of compensation for property loss should be based on prevailing fair market value to be paid before the internal displacement or relocation.
- (4) Women and men must be co-beneficiaries of all reparation packages. Single women and widows should be entitled to their own compensation without discrimination.
- (5) Competent authorities should facilitate the provision of free legal advisory services for affected indigent persons.

## **CHAPTER VI Protection of Internally Displaced Persons**

### **Article 21 Civil and political rights**

- (1) Internally displaced persons shall exercise the full civil and political rights enjoyed by persons under the jurisdiction of the State.
- (2) Internally displaced persons shall, whether they are located in camps or not, enjoy, among others, the following rights without any discrimination:
  - a) Freedom of thought, conscience, religion, or belief, opinion or expression.



- b) The right to seek freely opportunities for employment and participate in economic activities.
  - c) civil and political rights, particularly public participation, the right to vote and to be elected to public office in accordance with the relevant laws.
- (3) The Government shall protect the rights of internally displaced persons regardless of the cause of displacement by refraining from, and preventing, the following acts, amongst others:
- a) Genocide, crimes against humanity, war crimes and other violations of International Humanitarian Law;
  - b) Arbitrary killing, summary execution, arbitrary detention, abduction, enforced disappearance or torture and other forms of cruel, inhuman or degrading treatment or punishment;
  - c) Sexual and gender based violence in all its forms, notably rape,
  - d) Enforced prostitution, sexual exploitation and harmful practices, slavery, forced labour, and
  - e) Recruitment of children and their use in hostilities, and
  - f) Human trafficking and smuggling; and
  - g) Starvation.
- (4) No one shall be subjected to discriminatory or arbitrary detention on account of her or his displacement.
- (5) Internally displaced persons shall be protected against adverse reaction for exchanging information or expressing their opinions and concerns regarding the disaster relief, recovery and reconstruction efforts.
- (6) Competent authorities shall ensure that internally displaced persons are provided with the opportunity to conduct peaceful assemblies or to form associations.
- (7) Competent authorities should take measures to ensure that internally displaced persons can exercise their right to vote in elections and to be eligible for election.

Such measures may include voter registration and arrangements for absentee voting. Competent authorities shall also take specific measures to:

- a) Provide and facilitate procedures for internally displaced persons to be registered as voters even during displacement and for a waiver of requirements that would prevent internally displaced persons from registering at the site of displacement.
- b) Guarantee procedures for internally displaced persons to cast their vote at the location of displacement, for either the constituency of origin or that of displacement.

## **Article 22**

### **Family Reunification**

- (1) Competent authorities shall take measures to realize the rights of every person to his or her family life. They shall respect the rights of family members, whose movement is temporarily restricted including in camps, to stay together.
- (2) Competent authorities shall cooperate with international and local humanitarian organisations engaged in the task of family reunification.
- (3) Competent authorities shall facilitate the reunification, without undue delay, of families separated by displacement and assist them in that regard. They shall take special measures to reunify separated and unaccompanied children with their families.
- (4) Competent authorities shall facilitate inquiries made by family members.
- (5) Competent authorities should allow members of displaced families who wish to remain together to do so during the emergency phase and in the context of return or resettlement.
- (6) Relevant actors should ensure that family reunification is conducted in the best interest of the child. Whenever there are objective reasons to believe that there are reasonable risks that such a reunion would lead to the violation of fundamental rights of the child, it should not be pursued.

- (7) All efforts should be made to return an unaccompanied or separated child to his or her parents except where further separation is necessary for the best interests of the child, taking full account of the right of the child to express his or her views.

### **Article 23**

#### **Economic, Social, and Cultural Rights**

- (1) Competent authorities shall respect and ensure the rights of all internally displaced persons to economic, social and cultural rights including an adequate standard of living in a progressive manner and subject to available resources as recognized under international and regional human rights instruments as well as national laws.
- (2) As a minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
  - a) Essential food and potable water.
  - b) Basic shelter and housing.
  - c) Appropriate clothing.
  - d) Essential medical services and sanitation.
  - e) Education, and
  - f) Animal health services.
- (3) Competent authorities shall take specific measures to ensure the full participation of women, children and persons living with disabilities in the planning and distribution of these basic services.

### **Article 24**

#### **Basic Shelter and Housing**

Internally displaced persons have the right to basic shelter and housing as it is recognized in international and regional human rights instruments as well as national laws. In particular, competent authorities shall:

- (1) Respect the right of internally displaced persons to housing and shelter.
- (2) At the minimum, regardless of the circumstances, and without discrimination, provide internally displaced persons with and ensure safe access to basic housing and shelter.

- (3) Seek and accept support from the humanitarian organizations when the needs of internally displaced persons cannot be sufficiently satisfied at the domestic level.
- (4) Establish procedures to identify and prioritize beneficiaries of basic shelter and adequate housing on the basis of need and particular vulnerability.
- (5) Remove legal and administrative obstacles that could be contained in building codes and similar instruments, for the construction of transitional shelters or the rebuilding of houses in return or relocation areas.
- (6) Protect internally displaced persons against forced evictions.

## **Article 25** **Education**

Internally displaced persons have the right to education as it is recognized in international and regional human rights instruments as well as national laws. In particular, competent authorities shall:

- (1) Take measure to ensure respect for the right of every internally displaced person to education;
- (2) Ensure that displaced persons, in particular displaced children, receive education, which shall be free and compulsory at the primary level. Internally displaced children should enjoy access to education, which respects the cultural identity, language and religion of internally displaced persons;
- (3) Undertake special efforts to ensure the full and equal participation of women and girls in educational programmes;
- (4) Undertake measures to facilitate the accessibility of education to internally displaced persons in areas where the formal school system might not be available or easily accessible;
- (5) Ensure that education and training facilities shall be made available to internally displaced persons, in particular adolescents and women.

## **Article 26**

### **Health**

Internally displaced persons have the right to education as it is recognized in international and regional human rights instruments as well as national laws. In particular, competent authorities shall:

- (1) Take measures to ensure that all wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones.
- (2) Guarantee that internally displaced persons shall have access to psychological and social services.
- (3) Give special attention to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.
- (4) Provide special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.
- (5) Seek and accept from the international community if needs cannot be sufficiently satisfied at the domestic level.
- (6) Establish procedures to identify and prioritize beneficiaries of health services on the basis of need and particular vulnerabilities, including the provision animal health services.
- (7) Provide for the waiver of standard and universal requirements such as specific documentation, residency requirements, health insurance coverage that limit or exclude access of Internally displaced persons to health services, and for free access to such services on the basis of needs and particular vulnerabilities.

**Article 27**  
**Food, Water and Sanitation**

Internally displaced persons have the right to food, water and sanitation as it is recognized in international and regional human rights instruments as well as national laws. In particular, competent authorities shall:

- (1) Guarantee the rights of internally displaced persons to essential food and potable water.
- (2) Seek and accept from the international community if the needs of internally displaced persons to food and potable water cannot be sufficiently satisfied at the domestic level.
- (3) Establish procedures to identify and prioritize beneficiaries of food, nutritional aid, water and sanitation services on the basis of need and particular vulnerability.
- (4) Facilitate the importation of food aid including with exemption from import restrictions and quotas, custom duties and other taxes.

**Article 28**  
**Employment, Economic Activities and Social Protection**

Competent authorities shall:

- (1) Take measures to recognize the right to work and the right to social security for internally displaced persons;
- (2) Take specific measures to protect internally displaced persons against discrimination in the labour market and access to social security benefits;
- (3) Promote measures such as provisional work programs, micro-credit systems, vocational training, distribution of agricultural inputs that help former Internally displaced persons to regain their livelihoods or engage in new economic activities at the locations where they find durable solutions.

**Article 29**  
**Registration and Personal Documentation**

- (1) Competent authorities shall establish a mechanism for the registration and collection of information on internally displaced persons.
- (2) Competent authorities shall take all necessary measures to facilitate the registration of internally displaced persons whether they are located in urban areas, rural environment or any other forms of settlements or living within communities.
- (3) Competent authorities shall facilitate timely and efficient issuance of all necessary documentations including passports, personal IDs, birth certificates, marriage certificates, licences and education certificates which might have been lost or damaged during their displacement.
- (4) Due consideration shall be given to the special needs of women, children, and persons with disabilities. Persons with disabilities, women and unaccompanied or separated children shall be issued with the necessary documents in their own name.
- (5) The competent authorities shall elaborate a simplified, (gender, age, and disability sensitive) procedure for issuing the necessary documentations upon applications by internally displaced persons. These procedures shall be publicised to areas where internally displaced persons are located.
- (6) Competent authorities shall, as it deems appropriate, establish modalities for collaboration with international humanitarian and civic organisations in the registration and collection of data and information.
- (7) Loss or lack of personal documentation or lack of registration should not be used to justify the denial of essential food and relief services; to prevent individuals from travelling to safe areas or from returning to their homes; or to impede their access to employment opportunities.
- (8) Competent Authorities shall respect, as appropriate, the confidentiality of the documents of IDPs.

**Article 30**  
**Access to Information**

- (1) Competent authorities shall establish procedure to allow internally displaced persons and organisations working on the promotion of the rights of internally displaced persons access to data collected.
- (2) Competent authorities shall establish procedures for sharing and exchanging of personally identifiable information concerning internally displaced persons with humanitarian organisations involved in the provision of humanitarian and protection services, inter alia, for the purpose of avoiding imminent death or physical harm to individuals, or grave harm to public health or safety, or for facilitating family reunification.
- (3) Competent authorities should provide accessible information to affected communities about the disaster, the possible risk mitigation measures that can be taken and early warning information, humanitarian aid and recovery effort, provision and their entitlements.

**Article 31**  
**Consultation**

- (1) Internally displaced persons shall be consulted in the design; implementation and review of programs aimed at providing protection, assistance and durable solutions to internally displaced persons.
- (2) The National Coordinating and Implementation Mechanism established under Chapter IX of this legislation shall serve as the platform for consultation with representatives of internally displaced persons.
- (3) Competent authorities shall ensure that the views and special needs of children, to other internally displaced persons with special needs as referred to under Article 34 of this legislation are fully taken in account during in the consultation processes.

**Article 32**  
**Freedom of Movement**

- (1) Internally displaced persons are should enjoy the freedom to move freely and chose their areas of residence.



- (2) Competent authorities shall ensure that a person's freedom of movement and choice of place of residence will not be subject to any restrictions save those maintained by the law as they are deemed necessary, justified and proportionate for reasons pertaining to national security, public order or health, morals or other people's rights and freedoms.
- (3) The competent authorities shall respect and ensure respect the right of internally displaced persons to seek safety in another part of the country and to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.
- (4) The right of internally displaced persons to move freely in and out of camps or other settlements shall not be restricted unless it is done under transparent rules based on public necessity.
- (5) Competent authorities should abolish administrative obstacles that may hinder the possibility of internally displaced persons to reach safe areas or when conditions allow, to return to their homes.
- (6) Internally displaced persons shall enjoy the right to leave the country without discrimination and seek asylum in another country.

## **CHAPTER VII**

### **Assistance to Internally Displaced Persons**

#### **Article 33**

#### **General principles for the provision of assistance**

While providing assistance to internally displaced persons, competent authorities shall:

- (1) Bear the primary duty and responsibility to providing for the needs of internally displaced persons within the territory or jurisdiction of the State without discrimination of any kind;
- (2) Take necessary measures to ensure that internally displaced persons are received, without discrimination of any kind and live in satisfactory conditions of safety, dignity and security;
- (3) Recognize the particular situation of pastoralist populations;

- (4) Request for international assistance when its available resource is not adequate to enable it to provide the required assistance to the affected population;
- (5) Allow and facilitate a rapid and unimpeded access by humanitarian organizations and personnel;
- (6) Refrain from persecuting, or punishing internally displaced persons for peacefully requesting or seeking assistance in accordance with relevant national and international laws.
- (7) Uphold and ensure respect for the humanitarian principles of humanity, neutrality, impartiality and independence of humanitarian actors.
- (8) Ensure the participation of internally displaced persons in the planning, execution and evaluation of humanitarian assistance programs.

#### **Article 34**

##### **Internally Displaced Persons with special needs**

- (1) Competent authorities shall provide special protection for and assistance to internally displaced persons with special needs, including children, female heads of households, expectant mothers, mothers with young children, single mothers, the elderly, and persons with disabilities, the wounded and the sick or those with communicable diseases.
- (2) Assistance to persons with special needs shall take into account the specific needs required by their individual circumstance and shall take into account their health needs, reproductive health care as well as appropriate counselling including access to psychological and social counselling.
- (3) Competent authorities shall undertake, including by cooperating with relevant international humanitarian organisations, to trace and reunify unaccompanied minors with their families pursuant to Article 23 of this legislation.
- (4) The best interests of an internally displaced child, whether unaccompanied or accompanied by parents, legal guardians or close relatives, shall be a paramount consideration in providing for protection and assistance.

- (5) Competent authorities shall effectively/fully cooperate with international organizations working in tracing family members.
- (6) The Government shall adopt strategies and programs to address the problem of traditional harmful practices including those that specifically affect internally displaced women and children.
- (7) Competent authorities shall take special measures to protect and provide for the reproductive and sexual health of internally displaced women.
- (8) Competent authorities shall adopt specific measures under criminal law to combat sexual and gender based violence, and provide appropriate psycho-social support for internally displaced persons who have become victims of sexual and other related abuses.
- (9) Competent authorities should take into account all appropriate measures as quickly as possible to protect affected populations, in particular women and children, against forced or compulsory labour and human trafficking or other contemporary forms of slavery such as sale into marriage, forced prostitution, and sexual exploitation.

### **Article 35**

#### **Communities with special dependency and attachment to land**

With respect to communities with special attachment to, and dependency on land, the competent authorities shall:

- (1) Ensure that their special interest to land is duly recognized and protected.
- (2) Ensure that land leases and agreements take into account their rights and interests.
- (3) Guarantee that they are not displaced from their land except for compelling and overriding public interest.
- (4) Endeavour to protect their particular culture and spiritual values from being displaced from such lands.
- (5) Ensure that through their representatives, they are duly allowed to participate in the process of elaboration of land leases agreements.

- (6) Take appropriate measures, whenever possible, to restore their lands of communities with special dependency and attachment to such lands upon return.

**CHAPTER VIII**  
**Humanitarian Assistance and International Cooperation**

**Article 36**  
**Humanitarian Assistance**

- (1) The competent authorities shall provide internally displaced persons, at the minimum and without any discrimination whatsoever,
  - a) adequate food, water, clothing;
  - b) basic shelter and housing;
  - c) essential medical services including psychosocial support.
- (2) The competent authorities shall implement these obligations, where appropriate, with assistance from international organizations and humanitarian agencies, civil society organizations, and other relevant actors.
- (3) The competent authorities shall ensure humanitarian assistance is delivered to internally displaced persons without discrimination and used only for its intended purpose.
- (4) All actors involved in humanitarian assistance shall carry out their activities in accordance with humanitarian principles and without distinction.

**Article 37**  
**Humanitarian Access**

- (1) The competent authorities may provide technical arrangements under which humanitarian access will be permitted. These conditions should be provided in a publicly accessible instrument.
- (2) The competent authorities shall:
  - a) Allow rapid and unimpeded passage of all relief consignments, equipment and personnel to internally displaced persons.

- b) Enable and facilitate the role of local and international organizations and humanitarian agencies, civil society organizations and other relevant actors, to provide protection and assistance to internally displaced persons.

### **Article 38**

#### **Facilitation of the work of humanitarian actors**

Based on the recommendation by the National Mechanism established under Chapter XII of this legislation, the competent authorities shall carry out specific measures to expedite the entry of humanitarian goods, personnel and transportation.

### **Article 39**

#### **Protection of Humanitarian Personnel**

- (1) The competent authorities shall guarantee the security and protection of humanitarian personnel.
- (2) Humanitarian supplies shall not be an object of attacks and other acts of violence by any actor.

### **Article 40**

#### **Obligations relating to International Organizations and Humanitarian Agencies**

International organizations and humanitarian agencies, in providing assistance to internally displaced persons, shall:

- a) Respect the rights of internally displaced persons in accordance with international law.
- b) Conduct their activities in conformity with international law and laws of the country in which they operate.
- c) Respect the relevant international standards and codes of conduct,
- d) Respect primary responsibility of the Government in protecting and assisting internally displaced persons.

- e) Be bound by the principles of humanity, neutrality, impartiality and independence of humanitarian actors, and ensure respect for relevant international standards and codes of conduct.

## **CHAPTER IX Remedies**

### **Article 41 Access to Judicial mechanisms**

- (1) Internally displaced persons shall have full access to judicial organs, administrative and mediation mechanisms and national human rights mechanisms to seek appropriate compensation consistent with international human rights treaties ratified by the State.
- (2) In case of forced displacement caused by projects, affected individuals and groups shall be entitled to get decisions causing their displacement reviewed.
- (3) Internationally displaced persons shall not be prosecuted, persecuted or otherwise negatively affected for seeking compensations and other remedies.
- (4) The Government shall provide legal aid scheme to assist internally displaced persons enjoy full access to judicial mechanisms and other recourses.

### **Article 42 Compensation and other forms of Reparations**

A national mechanism for the provision of fair and effective compensation and other appropriate forms of reparation consistent with applicable human rights standards is hereby established. The specific modalities of such mechanism shall be determined by implementing legislation.

- (1) Internally displaced persons have the right to reclaim any housing and/or land and properties they might have been deprived of arbitrarily or unlawfully.
- (2) The military, law enforcement agencies, the police or any agency of the government shall be liable to pay compensation where their actions and omission in the context of internal displacement results in the death of persons, physical, physiological, financial harm or any other harm.

- (3) Non-state actors whose action caused arbitrary internal displacement shall be liable to pay compensation.

## **Chapter X The Right to Property**

### **Article 43 Protection of the Right to Property**

- (1) The competent authorities shall take measures to protect, to the maximum extent possible, against looting, destruction, and arbitrary or illegal appropriation, occupation or use of property and possessions left behind by displaced persons or communities.
- (2) The competent authorities shall:
  - a) Restore land deeds and property documents that are destroyed or lost to owners of land and property without undue delay. Where necessary to respond adequately to such situations, the government may temporarily enact simplified procedures in this regard and also taking into account the needs of pastoralist communities.
  - b) Facilitate access to existing procedures for owners to reclaim their original land and property without undue delay, regardless of whether ownership is based on formal land deeds and property documents or tradition of adverse possession.
- (3) The competent authorities shall facilitate access to existing procedures to consider competing claims to land and property. Where such procedures are overwhelmed by the case load, the government shall temporarily enact simplified procedures providing for due process guarantees and decision making without undue delay.
- (4) Specific arrangements shall be made to enable women, particularly widows, as well as orphans and vulnerable children to (re-)claim housing, land or property and to acquire housing or land, and get the title deeds through their legal guardian or at emancipation in their own name.

**Article 44**  
**Dispute Settlement**

- (1) The competent authorities, including the local government authorities concerned, have the duty and responsibility to assist returned and or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement.
- (2) When recovery of such property and possessions is not possible, competent authorities, including the local government units concerned, shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.
- (3) The Competent authorities shall ensure the rights to property restitution and compensation to all internally displaced persons, including in particular women and children, regardless of existing obstacles to ownership and inheritance. Where appropriate, legal arrangement shall be made for holding property of children in trust based on the principle of the best interest of the child.
- (4) With respect to the role of customary or traditional institution, the government shall:
  - a) Recognize their role as alternative and informal community based mechanisms and processes for resolving property disputes, with simple requirements of proof of ownership based upon reliable and verifiable testimony;
  - b) Recognize, as much as it does not violate any provisions of this legislation or other law in the State, the customary holding of land tenure system.

**CHAPTER XI**  
**Durable Solutions**

**Article 45**  
**Obligations**

- (1) Competent authorities shall discharge the primary duty and responsibility of the Government to establish conditions that allow internally displaced persons to return voluntarily, in safety and dignity, to their homes or places of habitual



residence, or to integrate locally or to resettle voluntarily in another part of the country.

- (2) Competent authorities shall ensure the protection of internally displaced persons from human rights violations, attacks or threat of attacks to their safety and security.
- (3) Competent authorities shall, where appropriate, cooperate with the African Union, the United Nations, and international humanitarian organizations, and civil society organizations in the process of finding and implementing durable solutions and shall grant rapid and unimpeded access to internally displaced persons to assist their resettlement and reintegration.
- (4) The competent authorities shall enable internally displaced persons to make free and informed choice on whether to return, integrate locally or relocate by consulting them on these and other options and ensuring their participation in finding durable solutions.
- (5) The return of internally displaced persons to their homes or places of habitual residence should only be prohibited if these homes or places are in areas where there are real dangers of potential secondary hazards and other disaster risks. Such restrictions should only last as long as such dangers and risks exist and only be implemented if other less intrusive measures of protection are not available or possible.

#### **Article 46**

##### **Procedure for Return, and integration**

- (1) Relevant entities shall ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.
- (2) Any plan to relocate internally displaced persons shall be undertaken on the basis of the free consent of the individual concerned.

#### **Article 47**

##### **Guarantees upon Return, and integration**

- (1) Competent authorities shall ensure the following guarantees of human rights of internally displaced persons in the areas of their return and integration.

- a) Full protection for long-term safety and security.
  - b) Enjoyment of an adequate standard of living without discrimination, including adequate shelter, housing, food, water, sanitation, as well as health and medical care, education.
  - c) Equal and unimpeded access to generally available public programmes, such as social housing or welfare measures, poverty alleviation programmes.
  - d) Access to employment and livelihoods.
  - e) Access to documentation.
  - f) Family reunification and the establishment of the fate and whereabouts of missing relatives.
  - g) Equal participation in public affairs.
  - h) Access to justice without discrimination.
- (2) Competent authorities shall take measures to eliminate gender inequality and should give special attention to claims of protection by returning spouses, single parents, and single women with respect to disputes on the ownership of family or other property when a displaced spouse is deceased.
- (3) Competent authorities shall guarantee the full protection of children including right to inherit family property when in the event of death of parents and the establishment of legal arrangements for holding these children's inheritance of property in trust that comply with the best interests of the child principle.
- (4) The competent authorities shall recognize special protection of the property of returning communities, pastoralists and other groups whose mode of livelihood depends on special attachment to their lands in situations where such communities or groups exist. These communities, pastoralists or other groups,
- a) shall be reintegrated in areas previously occupied them;
  - b) shall be provided in all possible cases with lands at least equal in value to those previously occupied by them;

- c) Where alternative lands of equal value cannot be allocated, an appropriate compensation package shall be made available as provided for in the national legislation of the Member States.
- (5) Relevant public authorities shall ensure that internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. Returnee internally displaced persons shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

**CHAPTER XII**  
**National Coordination and Implementation**  
**Mechanisms on Internal Displacement**

**Article 48**  
**Establishment/Designation of a National Coordinating and**  
**Implementation Mechanism<sup>56</sup>**

- (1) The Government shall establish or designate a National Coordinating and Implementation Mechanism to coordinate the government's effort regarding prevention, mitigation and response to internal displacement.
- (2) The Government shall allocate the necessary funds, to the extent of available resources, for the effective implementation of the powers and responsibilities of the Mechanism.
- (3) As appropriate, the government in consultation with local authorities may establish sub-national coordination mechanisms. The membership, responsibilities and powers of such mechanisms shall be determined by implementing legislation.

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<sup>56</sup> The State would have a number of institutional choices, it could follow this model law with two institutions one for early warning and one for national coordination or the early warning could subsumed under the national coordination or it could simply establish a national ministry or specific institution dedicated to this protection and assistance of internally displaced person.

## **Article 49 Membership**

- (1) The Government's highest executive decision-making organ shall designate members of the coordination mechanism. It shall also appoint the chairperson of the Coordination Mechanism.
- (2) The National Coordination Mechanism shall include as its members:
  - a) Relevant ministries;
  - b) Representatives of Provincial/Regional States;
  - c) National Disaster Early Warning, Preparedness and Management Mechanism;
  - d) National human rights institution;
  - e) The Office of the Ombudsman;
  - f) National Red Cross and Red Crescent Society;
  - g) Representatives of civil society organisations;
  - h) Representatives of internally displaced persons;
  - i) Representatives to be selected by independent humanitarian agencies as observers.

## **Article 50 Powers and responsibilities**

The National Coordination Mechanism shall have the following powers and responsibilities. It shall:

- (1) Serve as the focal point for the implementation of the Kampala Convention, including the preparation of implementation Report;
- (2) Monitor and evaluate the implementation of this legislation and other relevant laws and policies affecting internally displaced persons;
- (3) Coordinate the development of plans, policies and strategies including prevention, early warning, mitigation, and response on internal displacement;
- (4) Assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and of host communities;

- (5) Carry out, by collaborating with the national human rights institution and other relevant bodies, periodic assessment on the human rights situations of internally displaced persons;
- (6) Facilitate the provision of training and capacity building programs;
- (7) Raise public awareness and sensitization, and promote educational programs on the causes, and consequences to the internally displacement, rights and welfare of internally displaced persons and impact on host societies;
- (8) Facilitate the participation of internally displaced persons and other vulnerable groups in the planning, execution and monitoring of implementation of policies, strategies and programs on internal displacement;
- (9) Coordinate with relevant regional and international actors;
- (10) Facilitate humanitarian access to internally displaced persons for relief and assistance;
- (11) Determine and establish the modalities for the participation of internally displaced persons in decisions affecting them, at all levels of Government;
- (12) Determine and establish modalities for close consultation and cooperation with United Nations bodies, relevant international organizations or agencies;
- (13) Carry out such other activities that may be necessary to fully implement its powers and responsibilities.

**Article 51**  
**National Disaster Early Warning, Preparedness and**  
**Management Mechanism**

- (1) As part of the National Coordination Mechanism, a National Disaster Early Warning, Preparedness and Management Mechanism is hereby established. The National Mechanism shall, inter alia, have the following functions:
  - a) Establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures.

- b) Establish national plans for enterprises, factories, construction sites, buildings, engineering structures, transport and communication links, with potential dangerous exposure to people and the environment, with the necessary levels of safety and reliability and observance and monitoring systems.
  - c) Monitoring trends and patterns of disasters that may potentially cause arbitrary displacement.
  - d) Monitoring areas inhabited by persons at risk of displacement.
  - e) Identify and submit areas suitable for designation by the Government for settlement of internally displaced persons in the State.
  - f) Prepare periodic reports and recommendations on the situation of areas of high risk and submit them to the Government.
- (2) The competent authorities shall facilitate the involvement of internally displaced persons and relevant civil society actors in the development and implementation of early warning system, disaster reduction strategies, emergency and disaster preparedness and management measures.

## **Article 52**

### **Coordination and Administration of Settlement Areas**

- (1) The National Disaster Early Warning, Preparedness and Management Mechanism of the National Coordination Mechanism shall coordinate the National Focal Point and local authorities on internal displacement with the view to fully integrating the needs of internally displaced persons in the administration of settlement areas, inter alia, in the following areas:
- a) Ensure adequate provision of basic social and health services;
  - b) Safeguard and maintain the civilian character of settlement;
  - c) Take preventive and rehabilitative measures to protect the environment of the settlement areas from degradation.
- (2) International and national actors involved in providing humanitarian assistance shall fully take into account the protection needs of internally displaced persons.

**Article 53**  
**Education, Training and Capacity Building**

- (1) Public authorities shall promote public awareness about the causes, impact, and consequences of internal displacement as well as on means of prevention, protection and assistance to internally displaced persons.
- (2) Public authorities in collaboration with all relevant actors including the national coordination mechanism including educational institutions and civil society organizations, shall provide training, sensitization and awareness programmes on the causes, impact and consequences of internal displacement, as well as on means of prevention, protection and assistance to internally displaced persons.

**CHAPTER XIII**  
**Offences related to internal displacement<sup>57</sup>**

**Article 54**  
**Arbitrary Displacement**

Whosoever;

- (1) Displaces persons based on policies of racial discrimination or other similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the population;
- (2) Displaces civilians individually or in mass in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian law;
- (3) Intentionally displaces persons using as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict;
- (4) Displaces by generalized violence or violations of human rights;
- (5) Displaces by harmful practices;

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<sup>57</sup> Depending on the legal tradition of the country, penalties could be incorporated in a criminal or penal codes. The applicable provisions on extradition will be applicable for the offences in this chapter. This could be made more explicit in the relevant national legislation

- (6) Causes forceful evacuations in cases of natural or human made disasters or other causes if the evacuations are not required by the safety and health of those affected;
- (7) Causes displacement using collective punishment;
- (8) Causes displacement by any act of comparable gravity to all of the above and which is not justified under international law, including human rights and international humanitarian law;
- (9) Acts of arbitrary displacement amounting to genocide, war crimes or crimes against humanity,

shall be punishable in accordance with [to be determined according to national legal systems].

#### **Article 55** **Offences against Internally Displaced Persons**

Whosoever:

- (1) Restricts the freedom of movement of internally displaced persons within and outside their areas of residence.
- (2) Recruits internally displaced children or requiring or permitting them to take part in hostilities under any circumstances;
- (3) Forcibly recruits internally displaced persons, kidnaps, abducts or takes hostage, engages in sexual slavery and trafficking in persons especially internally displaced women and children shall be punishable with sentences [to be determined according to national legal systems].

#### **Article 56** **Offences against Humanitarian Workers Personnel**

Whosoever attacks or otherwise harms humanitarian personnel shall be punishable with sentences [to be determined according to national legal systems].



**Article 57**  
**Offences against Humanitarian Assistance**

Whosoever;

- (1) Denies internally displaced persons the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter; and separating members of the same family.
- (2) Impedes humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons.
- (3) Attacks or otherwise harms resources or other materials deployed for the assistance or benefit of internally displaced persons or destroyed, confiscated or diverted such materials shall be punished with sentences.
- (4) Violates the civilian and humanitarian character of the places where internally displaced persons are sheltered.
- (5) Steals, loots, destroys, abuses, misuses or diverts humanitarian assistance intended for internally displaced persons, shall be punishable with sentences [to be determined according to national legal systems]

**Article 58**  
**Penalties and procedure**

The punishment for an offence under this Chapter is:

- (1) Where the offence involves the wilful killing of a person protected by this law, imprisonment (to be determined according to national legal systems); and
- (2) In any other case, imprisonment for (to be determined according to national legal systems.)
- (3) While awarding punishment, the Court shall take into account, where they exist, penalties for serious violations of the Geneva Conventions and their Additional Protocols.

- (4) An offence under this Chapter shall not be prosecuted in a court except by indictment by or on behalf of the (Attorney General/Director of Public Prosecutions, or Prosecutor General).
- (5) Liability for prosecution extends to conduct outside the territory of (xxxx) to citizens of (xxxxx).

**Article 59**  
**Breach of this law**

Whosoever contravenes provisions of this legislation shall be punishable with sentences [to be determined according to national legal systems].

**Article 60**  
**Jurisdiction of Courts**

The competent civilian/ordinary courts shall have jurisdiction over the offences of arbitrary displacement and offences against humanitarian assistance as penalised by this legislation.

**CHAPTER XIV**  
**Miscellaneous Provisions**

**Article 61**  
**Repealing clause**

All laws, decrees, executive orders, ordinances, practises or any parts thereof, which are inconsistent with the provisions of this legislation, shall be deemed repealed from the effective date of this legislation.

**Article 62**  
**Implementing Subsidiary Legislations**

The Government may adopt policies, regulations, directives and guidelines for implementation of this legislation.

**Article 63**  
**Interpretation**

- (1) This legislation shall be interpreted and implemented consistent with international law particularly international humanitarian law and international human rights treaties and the Kampala Convention, international humanitarian law and other applicable African Union and international treaties ratified by the State.
- (2) This legislation shall not be interpreted as restricting, modifying or impairing the provisions of the Kampala Convention or any international or regional human rights or international law instruments to which the State is a party or rights granted to persons under domestic legislation.
- (3) This legislation shall be interpreted in light of the Constitution and the international and regional instruments, including the Kampala Convention, to which the State is a party. In so doing, any reasonable interpretation that favours the rights of internally displaced persons must be preferred to any adverse interpretation.

**Article 64**  
**Effective/commencement date**

This legislation shall take effect on.....

**EX.CL/1048(XXXII)**

**Annex 11**

**DRAFT PROTOCOL TO THE AFRICAN CHARTER ON HUMAN  
AND PEOPLES' RIGHTS ON THE RIGHTS OF PERSONS WITH  
DISABILITIES IN AFRICA**

## Preamble

We, the Heads of State and Government of the Member States of the African Union:

**Considering** that Article 66 of the African Charter on Human and Peoples' Rights of 27 June 1981 provides that special protocols or agreements, if necessary, may supplement the provisions of the African Charter;

**Further considering** that Article 18 (4) of the African Charter on Human and Peoples' Rights of 27 June 1981 provides that persons with disabilities shall have the right to special measures of protection in keeping with their physical or moral needs;

**Noting** that the Constitutive Act of the African Union of 11 July 2000 identifies respect for democratic principles, human rights, the rule of law and good governance as essential principles for the proper functioning of the African Union;

**Recognising** that the African Union and its agencies as well as States Parties to the African Charter have made various efforts towards ensuring the rights of persons with disabilities;

**Noting** that Articles 60 and 61 of the African Charter on Human and Peoples' Rights of 27 June 1981 recognise regional and international human rights instruments and African practices consistent with international norms on human and peoples' rights as important reference points for the application and interpretation of the African Charter;

**Further noting** that human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated, and that the rights of every individual are recognised in international human rights instruments, including the Universal Declaration of Human Rights of 10 December 1948, the International Covenant on Economic, Social and Cultural Rights 16 December 1966 and the International Covenant on Civil and Political Rights 16 December 1966;

**Recalling** that the rights of persons with disabilities are affirmed in the Convention on the Rights of Persons with Disabilities 13 December 2006;

**Further recalling** that various African Union human rights instruments, including the African Charter on the Rights and Welfare of the Child of 11 July 1990, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 11 July 2003, the African Youth Charter of 2 July 2006, the African Charter on

Democracy, Elections and Governance of 30 January 2007, and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa 23 October 2009 make provisions for the rights of persons with disabilities;

**Considering further** paragraph 20 of the Kigali Declaration on Human Rights of 8 May 2003, which “calls upon States Parties to develop a Protocol on the protection of the rights of the elderly and persons with disabilities”;

**Recalling** that the Decision 750 (XXII) of the Executive Council at its Twenty-Second Ordinary Session held in Addis Ababa, Ethiopia, from 21 to 25 January 2013, endorsed the African Union Disability Architecture (AUDA), of which a Protocol on the Rights of Persons with Disabilities to the African Charter is a central legal pillar;

**Acknowledging** that persons with disabilities have inherent dignity and individual autonomy including the freedom to make one’s own choices;

**Cognizant of** the importance of full and effective participation and inclusion of persons with disabilities in society;

**Recognising** the diversity of persons with disabilities;

**Appreciating** the value of persons with disabilities, including those with high support needs, as full members of society;

**Noting** that persons with disabilities experience extreme levels of poverty;

**Concerned** that persons with disabilities continue to experience human rights violations, systemic discrimination, social exclusion and prejudice within political, social and economic spheres;

**Gravely concerned** by the harmful practices that persons with disabilities often experience;

**Alarmed** in particular, by the maiming or killing of persons with albinism in many parts of the continent;

**Concerned** at the multiple forms of discrimination, high levels of poverty and the great risk of violence, exploitation, neglect and abuse that women and girls with disabilities face;

**Recognising** that families, guardians, caregivers and community play essential roles in the lives of persons with disabilities;

**Concerned** that adequate effective measures have not been taken to ensure that persons with disabilities may exercise their full rights on an equal basis with others;

**Recalling** the lack of a substantive binding African normative and institutional framework for ensuring, protecting and promoting the rights of persons with disabilities;

**Conscious** of the need to establish a firm legal African Union framework as a basis for **laws**, policies, administrative actions and resources to ensure the rights of persons with disabilities;

**Determined** that the rights and dignity of persons with disabilities should be promoted, protected to enable them enjoy fully and equally all their human rights and fundamental freedoms;

**Have agreed as follows:**

### **Article 1** **Definitions**

For the purpose of the present Protocol:

**“African Charter”** means the African Charter on Human and Peoples’ Rights adopted by the Heads of States and Government of the Organization of African Unity (OAU) in Banjul, Gambia, in June, 1981;

**“African Commission”** means the African Commission on Human and Peoples’ Rights established by the African Charter on Human and Peoples’ Rights adopted by the Heads of States and Government of the Organization of African Unity (OAU) in Banjul, Gambia, in June, 2000;

**“African Court”** means the African Court on Human and Peoples’ Rights or any successor court including the African Court of Justice and Human Rights established by the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights adopted by the Heads of States and Government of the Organization of African Unity (OAU) in Ouagadougou, Burkina Faso, in June 1998;

**“Assembly”** means the Assembly of Heads of State and Government of the African Union.

**“AU” or “Union”** means the African Union established by the Constitutive Act of the African Union adopted by the Heads of States and Government of the Organization of African Unity (OAU) in Lomé, Togo, in July, 2000;

**“Commission”** means the Commission of the African Union;

**“Deaf culture”** means the way deaf people interact, it includes a set of social beliefs, behaviours, art, literary traditions, history, values, and shared institutions of communities that are influenced by deafness and which use sign languages as the main means of communication.

**“Discrimination on the basis of disability”** means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human and people’s rights in the political, economic, social, cultural, civil or any other field. Discrimination on the basis of disability shall include denial of reasonable accommodation;

**“Habilitation”** means inpatient or outpatient health care services such as physical therapy, occupational therapy, speech-language pathology, audiology that address the competencies and abilities needed for optimal functioning to in interaction with their environments: enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social, and vocational ability, full inclusion and participation in all aspects of life;

**“Harmful practices”** include behaviour, attitudes and practices based on tradition, culture, religion, superstition or other reasons, which negatively affect the human rights and fundamental freedoms of persons with disabilities or perpetuate discrimination;

**“Legal capacity”** means the ability to hold rights and duties and to exercise those rights and duties;

**“Persons with disabilities”** include those who have physical, mental, psycho-social, intellectual, neurological, developmental or other sensory impairments which in interaction with environmental, attitudinal or other barriers hinder their full and effective participation in society on an equal basis with others;



**“Protocol”** means the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa;

**“Reasonable accommodation”** means necessary and appropriate modifications and adjustments where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human and people’s rights;

**“Rehabilitation”** means inpatient or outpatient health care services such as physical therapy, occupational therapy, speech-language pathology and psychiatric rehabilitation services that help a person keep, restore or improve skills and functioning for daily living and skills related to communication that have been lost or impaired because a person was sick, injured or disabled.

**“Ritual killings”** means the killing of persons motivated by cultural, religious or superstitious beliefs that the use of a body or a body part has medicinal value, possesses supernatural powers and brings good luck, prosperity and protection to the killer.

**“Situations of risks”** means any situation that poses grave risk to the general population, including disasters and all forms of armed conflict

**“States Parties”** mean any Member States of the African Union which have ratified or acceded to this Protocol and deposited the instruments of ratification or accession with the Chairperson of the African Union Commission;

**“Universal design”** means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design, and shall not exclude assistive devices for particular groups of persons with disabilities where this is needed;

**“Youth”** means every person between the ages of 15 and 35 years.

## **Article 2**

### **Purpose**

The purpose of this Protocol is to promote, protect and ensure the full and equal enjoyment of all human and people’s rights by all persons with disabilities, and to ensure respect for their inherent dignity.

## **Article 3**

## General Principles

This Protocol shall be interpreted and applied in accordance with the following general principles:

- a) Ensuring respect for and protection of the inherent dignity, privacy, individual autonomy including the freedom to make one's own choices, and independence of persons;
- b) Non-discrimination;
- c) Full and effective participation and inclusion in society;
- d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e) Equality of opportunity;
- f) Accessibility;
- g) Reasonable accommodation
- h) Equality between men and women;
- i) The best interests of the child
- j) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

## Article 4

### General Obligations

States Parties shall take appropriate and effective measures, including policy, legislative, administrative, institutional and budgetary steps, to ensure, respect, promote, protect and fulfil the rights and dignity of persons with disabilities, without discrimination on the basis of disability, including by:

- a) Adopting appropriate measures for the full and effective implementation of the rights recognised in the present Protocol;
- b) Mainstreaming disability in policies, legislation, development plans, programmes and activities and in all other spheres of life;
- c) Providing in their constitutions and other legislative instruments and taking other measures to modify or abolish existing policies, laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- d) Modifying, outlawing, criminalising or campaigning against, as appropriate, any harmful practice applied to persons with disabilities;
- e) Promoting positive representations and empowerment of persons with disabilities through training and advocacy;

- f) Taking measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise;
- g) Refraining from engaging in any act or practice that is inconsistent with the present Protocol and ensuring that public authorities, institutions and private entities act in conformity with the Protocol;
- h) Providing assistance and support as necessary and appropriate to enable the realisation of the rights set out in the present Protocol;
- i) Putting in place adequate resources, including through budget allocations, to ensure the full implementation of this Protocol;
- j) Ensuring effective participation of persons with disabilities or their representative organisations including women and children with disabilities, in all decision-making processes including in the development and implementation of legislation, policies and administrative processes to this Protocol.
- k) Ensuring, where persons with disabilities are lawfully deprived of any rights or freedoms contained in this protocol that they are on an equal basis with others, entitled to guarantees in accordance with international human rights law and the objects and principles of the present Protocol.

### **Article 5**

#### **Non-discrimination**

1. Every person with a disability shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in this Protocol without distinction of any kind on any ground including, race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.
2. States Parties shall:
  - a) Prohibit discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
  - b) Take steps to ensure that specific measures, as appropriate, are provided to persons with disabilities in order to eliminate discrimination and such measures shall not be considered discrimination.
  - c) Take effective and appropriate measures to protect the parents, children, spouses, other family members closely related to the persons with disabilities, caregivers or intermediaries from discrimination on the basis of their association with persons with disabilities.

## **Article 6**

### **Right to Equality**

1. Every person with a disability is equal before the law and has the right to equal protection and benefit of the law.
2. Equality includes the full and equal enjoyment of all human and people's rights.
3. State Parties shall take all appropriate legislative, administrative, budgetary and other measures in order to promote equality for persons with disabilities.

## **Article 7**

### **Equal Recognition before the Law**

1. States Parties shall recognise that persons with disabilities are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall take all appropriate and effective measures to ensure that:
  - a) Persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life;
  - b) Non-State actors and other individuals do not violate the right to exercise legal capacity by persons with disabilities;
  - c) Persons with disabilities are provided with effective legal protection and support they may require in enjoying their legal capacity consistent with their rights, will and specific needs;
  - d) Appropriate and effective safeguards are put in place to protect persons with disabilities from abuses that may result from measures that relate to the enjoyment of their legal capacity;
  - e) Policies and laws which have the purpose or effect of limiting or restricting the enjoyment of legal capacity by persons with disabilities are reviewed or repealed;
  - f) Persons with disabilities have the equal right to hold documents of identity and other documents that may enable them to exercise their right to legal capacity;
  - g) Persons with disabilities have the equal right to own or inherit property and are not arbitrarily dispossessed of their property;

- h) Persons with disabilities have equal rights to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit.

### **Article 8** **Right to Life**

1. Every person with a disability has the inherent right to life and integrity.
2. States Parties shall take effective and appropriate measures to ensure:
  - a) Protection, respect for life and the dignity of persons with disabilities, on an equal basis with others;
  - b) That persons with disabilities have access to services, facilities and devices to enable them to live with dignity and to realise fully their right to life.

### **Article 9** **Right to Liberty and Security of Person**

1. Every person with a disability has the right to liberty and security of person.
2. States Parties shall take appropriate and effective measures to ensure that persons with disabilities, on an equal basis with others:
  - a) Enjoy the right to liberty and security of person and are not deprived of their liberty unlawfully or arbitrarily;
  - b) Are not forcibly confined or otherwise concealed by any person or institution;
  - c) Are protected, both within and outside the home, from all forms of exploitation, violence and abuse.
3. States Parties shall take appropriate measures to prevent deprivation of liberty to persons with disabilities, to prosecute perpetrators of such abuse and to provide effective remedies for the victims.
4. Where persons with disabilities are lawfully deprived of their liberty, States Parties shall ensure that they are on an equal basis with others entitled to guarantees in accordance with international human rights law and the objects and principles of the present Protocol.

5. The existence of a disability or perceived disability shall in no case justify deprivation of liberty.

### **Article 10**

#### **Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment**

1. Every person with a disability shall have the right to the respect of his/her inherent dignity and to be free from torture or cruel, Inhuman or degrading treatment, slavery, forced labour or unlawful punishment.
2. States Parties shall take appropriate and effective measures to ensure that persons with disabilities, on an equal basis with others:
  - a) Are not subjected to torture or cruel, inhuman or degrading treatment or punishment;
  - b) Are not subjected without their free, prior and informed consent to medical or scientific experimentation or intervention;
  - c) Are not subjected to sterilisation or any other invasive procedure without their free, prior and informed consent;
  - d) Are protected, both within and outside the home, from all forms of exploitation, violence and abuse.
3. States Parties shall take appropriate measures to prosecute perpetrators of such abuse and to provide remedies for the victims.

### **Article 11**

#### **Harmful Practices**

1. States Parties shall take all appropriate measures and offer appropriate support and assistance to victims of harmful practices, including legal sanctions, educational and advocacy campaigns, to eliminate harmful practices perpetrated on persons with disabilities, including witchcraft, abandonment, concealment, ritual killings or the association of disability with omens.
2. States Parties shall take measures to discourage stereotyped views on the capabilities, appearance or behaviour of persons with disabilities, and they shall prohibit the use of derogatory language against persons with disabilities.

## **Article 12**

### **Situations of Risk**

States Parties shall:

- a) Take specific measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, forced-displacements, humanitarian emergencies and natural disasters;
- b) Ensure that persons with disabilities are consulted and participate in all aspects of planning, implementation and monitoring of pre and post-conflict reconstruction and rehabilitation.

## **Article 13**

### **Right to Access Justice**

1. States Parties shall take measures to ensure that persons with disabilities have access to justice on an equal basis with others, including through the provision of procedural, age and gender-appropriate accommodations, in order to facilitate their effective roles as participants in all legal proceedings.
2. States Parties shall take reasonable steps to ensure that customary law processes are inclusive and should not be used to deny persons with disabilities their right to access appropriate and effective justice.
3. All law enforcement and justice personnel shall be trained at all levels to effectively engage with and ensure the rights of persons with disabilities are recognised and implemented without discrimination.
4. States Parties shall ensure legal assistance including legal aid to persons with disabilities.

## **Article 14**

### **Right to Live in the Community**

1. Every person with a disability has the right to live in the community with choices on an equal basis with others.
2. States Parties shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of the right to live in the community, on an equal basis with others, including by ensuring that:

- a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live;
- b) Persons with disabilities who require intensive support and their families have adequate and appropriate facilities and services, including caregivers and respite services;
- c) Persons with disabilities have access to a range of in-home, residential and other community support services necessary to support living and inclusion in the community;
- d) Persons with disabilities have personal mobility with the greatest possible independence;
- e) Community-based rehabilitation services are provided in ways that enhance the participation and inclusion of persons with disabilities in the community;
- f) Community living centres organised or established by persons with disabilities are supported to provide training, peer support, personal assistance services and other services to persons with disabilities; and
- g) Community services and facilities for the general population, including health, transportation, housing, water, social and educational services, are available on an equal basis to persons with disabilities and are responsive to their needs.

### **Article 15** **Accessibility**

- 1. Every person with a disability has the right to barrier free access to the physical environment, transportation, information, including communications technologies and systems, and other facilities and services open or provided to the public.
- 2. States Parties shall take reasonable and progressive step measures to facilitate full enjoyment by persons with disabilities of this right, and such measures shall, among others, apply to:
  - a) Rural and urban settings and shall take account of population diversities;
  - b) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
  - c) Information, communications, sign languages and tactile interpretation services, braille, audio and other services, including electronic services and emergency services;
  - d) Quality and affordable mobility aids, assistive devices or technologies and forms of live assistance and intermediaries; and



- e) The modification of all inaccessible infrastructure and the universal design of all new infrastructure.

### **Article 16**

#### **Right to Education**

1. Every person with a disability has the right to education.
2. States Parties shall ensure to persons with disabilities the right to education on an equal basis with others.
3. States Parties shall take, reasonable, appropriate and effective measures to ensure that inclusive quality education and skills training for persons with disabilities is realised fully, including by:
  - a) Ensuring that persons with disabilities can access free, quality and compulsory basic and secondary education;
  - b) Ensuring that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others, including by ensuring the literacy of persons with disabilities above compulsory school age;
  - c) Ensuring reasonable accommodation of the individual's requirements is provided, and that persons with disabilities receive the support required to facilitate their effective education;
  - d) Providing reasonable, progressive and effective individualised support measures in environments that maximise academic and social development, consistent with the goal of full inclusion;
  - e) Ensuring appropriate schooling choices are available to persons with disabilities who may prefer to learn in particular environments;
  - f) Ensuring that persons with disabilities learn life and social development skills to facilitate their full and equal participation in education and as members of the community;
  - g) Ensuring that multi-disciplinary assessments are undertaken to determine appropriate reasonable accommodation and support measures for learners with disabilities, early intervention, regular assessments and certification for learners are undertaken regardless of their disabilities;
  - h) Ensuring educational institutions are equipped with the teaching aids, materials and equipment to support the education of students with disabilities and their specific needs;

- i) Training education professionals, including persons with disabilities, on how to educate and interact with children with specific learning needs; and
  - j) Facilitating respect, recognition, promotion, preservation and development of sign languages.
4. The education of persons with disabilities shall be directed to:
- a) The full development of human potential, sense of dignity and self-worth;
  - b) The development by persons with disabilities of their personality, talents, skills, professionalism and creativity, as well as their mental and physical abilities, to their fullest potential;
  - c) Educating persons with disabilities in a manner that promotes their participation and inclusion in society; and
  - d) The preservation and strengthening of positive African values.

### **Article 17**

#### **Right to Health**

1. Every person with a disability has the right to the highest attainable standard of health.
2. States Parties shall take appropriate and effective measures to ensure persons with disabilities have, on an equal basis with others, access to health services, including sexual and reproductive health, such as by:
  - a) Providing persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons;
  - b) Providing those health services needed by persons with disabilities specifically because of their disabilities or health services designed to minimise or prevent further disability, the provision of medicines including pain relieving drugs;
  - c) Prohibiting discrimination against persons with disabilities by providers of health services or providers of insurance;
  - d) Ensuring that all health services are provided on the basis of free, prior and informed consent;
  - e) Providing persons with disabilities with health-care in the community;

- f) Ensuring that health-care services are provided using accessible formats and that communication between service providers and persons with disabilities is effective;
- g) Ensuring that persons with disabilities are provided with support in making health decisions, when needed;
- h) Ensuring that health campaigns include disability specific needs, but in a manner which does not stigmatise persons with disabilities, and designing services to minimise and prevent further disability; and
- i) Ensuring that the training of health-care providers takes account of the disability specific needs and rights of persons with disabilities, and ensuring that formal and informal health services do not violate the rights of persons with disabilities.

### **Article 18**

#### **Habilitation and Rehabilitation**

States Parties shall take effective and appropriate measures, including peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life, including by:

- a) Organising, strengthening and extending comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services;
- b) Promoting the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services;
- c) Promoting the availability, knowledge and use of appropriate, suitable and affordable assistive devices and technologies;
- d) Supporting the design, development, production, distribution and servicing of assistive devices and equipment for persons with disabilities, adapted to local conditions;
- e) Developing, adopting and implementing standards, including regulations on accessibility and universal design, suitable to local conditions.

### **Article 19**

#### **Right to Work**

1. Every person with a disability has the right to decent work, to just and favourable conditions of work, to protection against unemployment, to protection against exploitation and to protection from forced or compulsory labour.

2. States Parties shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right on an equal basis with others, including by:
  - a) Prohibiting discrimination on the basis of disability with regard to all matters concerning all forms of employment, including employment opportunities, vocational training, conditions of recruitment, hiring and employment, continuance of employment, promotion, career advancement, and safe and healthy working conditions;
  - b) Protecting the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work and the right by persons with disabilities to exercise their labour and trade union rights;
  - c) Promoting opportunities for persons with disabilities to initiate self-employment, entrepreneurship and to access financial services;
  - d) Employing persons with disabilities in the public sector, including by reserving and enforcing minimum job-quotas for employees with disabilities;
  - e) Promoting the employment of persons with disabilities in the private sector through appropriate policies and measures, including through the use of specific measures such as tax incentives;
  - f) Ensuring that reasonable accommodation is provided to persons with disabilities in the workplace;
  - g) Ensuring that employees with disabilities or those who become disabled are not unfairly dismissed from employment on the basis of their disability.
3. States Parties shall take legislative, administrative and budgetary measures to ensure that the principle of equal pay for equal work is not used to undermine the right to work for persons with disabilities.
4. States Parties shall take appropriate measures to recognise the social and cultural value of the work of persons with disabilities.

## **Article 20**

### **Right to Adequate Standard of Living**

1. Persons with disabilities have the right to an adequate standard of living for themselves and their families, including adequate food, access to safe drinking water, housing, sanitation and clothing, to the continuous improvement of living conditions and to social protection.

2. States Parties shall take appropriate and effective measures to facilitate full enjoyment by persons with disabilities of this right, on the basis of equality, including by:
  - a) Ensuring that persons with disabilities shall access appropriate and affordable services, devices and other assistance for disability-related needs, including accessible housing and other social amenities, mobility aids and caregivers;
  - b) Ensuring access by persons with disabilities to social protection programmes;
  - c) Putting financial measures in place to cover disability-related expenses, including through the use of tax exemptions or concessions, cash-transfers, duty waivers and other subsidies; and
  - d) Facilitating provision of assistance, including interpreters, guides, auxiliary and augmentative supporters and caregivers, while respecting the rights, will and preferences of persons with disabilities.

### **Article 21**

#### **Right to Participate in Political and Public Life**

1. Every person with a disability has the right to participate in political and public life.
2. States Parties shall take all appropriate policy, legislative and other measures to ensure this right, on the basis of equality, including through:
  - a) Undertaking or facilitating systematic and comprehensive civic education to encourage full participation of persons with disabilities in democracy and development processes, including by ensuring civic and voter education materials are available in accessible formats;
  - b) Encouraging the effective participation of persons with disabilities in political and public life including as members of political parties, electors and holders of political and public offices in accordance with national laws;
  - c) Putting in place reasonable accommodation and other support measures consistent with the secrecy of the ballot, including as appropriate, by ensuring accessibility to polling stations and facilitating assisted voting, for persons with disabilities to enable their effective participation in political and public life in accordance with national laws;

- d) Realising increased and effective representation and participation of persons with disabilities on an equitable basis as members of regional, sub-regional, national and local legislative bodies;
- e) Repealing or amending laws that on the basis of disability restrict the right of persons with disabilities to vote, stand for or remain in public office.

## **Article 22**

### **Self-representation**

States Parties shall recognise and facilitate the right of persons with disabilities to represent themselves in all spheres of life, including by promoting an environment that enables persons with disabilities to:

- a) Form and participate in the activities of organisations of and for persons with disabilities at national, regional and international levels;
- b) To build relationships and networks at national, regional and international levels;
- c) Form and participate in the activities of nongovernmental organisations and other associations;
- d) Effectively advocate for their rights and inclusion in their societies;
- e) Gain and enhance capacities, knowledge and skills for effectively articulating and engaging in issues of disability, including through direct collaboration with organisations for persons with disabilities and academic institutions and other organisations;
- f) Be actively consulted and involved in the development and implementation of all legislation, policies, programmes and budgets that impact persons with disabilities.

## **Article 23**

### **Right to Freedom of Expression and opinion**

1. Every person with a disability has the right to freedom of expression and opinion including the freedom to seek, receive and impart information and ideas through all forms of communication of their choice.

2. States Parties shall take policy, legislative, administrative and other measures to ensure that persons with disabilities can exercise these rights, on an equal basis with others.

#### **Article 24**

##### **Access to Information**

1. Every person with a disability has the right to access information.
2. States Parties shall take policy, legislative, administrative and other measures to ensure that persons with disabilities can exercise these rights, on the basis of equality, including by:
  - a) Providing information intended for the general public as well as information required for official interactions to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner, and without additional cost to persons with disabilities;
  - b) Requiring private entities that provide services to the general public, including through print and electronic media, to provide information and services in accessible and usable formats for persons with disabilities;
  - c) Recognising and promoting the use of sign languages and deaf culture; and
  - d) Ensuring that persons with visual impairments or with other print disabilities have effective access to published works including by using information and communication technologies.

#### **Article 25**

##### **Right to Participate in Sports, Recreation and Culture**

1. Every person with a disability has the right to participate in sports, recreation and cultural activities.
2. States Parties shall take effective and appropriate policy, legislative, budgetary, administrative and other measures to ensure this right, on the basis of equality, including through:
  - a) Ensuring that persons with disabilities have access to sports, recreational and cultural services and facilities, including access to stadia and other sporting facilities, theatres, monuments, entertainment establishments, museums, libraries and other historical sites;

- b) Encouraging and promoting the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
- c) Promoting disability-specific sporting and recreational activities and ensuring provision of appropriate infrastructure;
- d) Facilitating funding, research and other measures aimed at promoting the participation of persons with disabilities both in disability-specific and mainstream sporting and recreational activities;
- e) Enabling children with disabilities to participate in play within the learning environment;
- f) Facilitating access to audio, video, print and media technologies and services including theatre, television, film and other cultural performances and activities;
- g) Discouraging negative representations and stereotyping of persons with disabilities in both traditional and modern cultural activities and through the media;
- h) Encouraging and supporting creativity and talent among persons with disabilities for their own and the society's benefit;
- i) Putting in place measures to mitigate barriers that hinder access to cultural materials in accessible formats; and
- j) Recognising and supporting the cultural and linguistic identities of persons with disabilities, including deaf-blind and deaf culture, and sign languages.

### **Article 26**

#### **Right to Family**

1. Everyone with a disability has a right to marry and form a family with their full, prior and informed consent.
2. States Parties shall take all necessary and appropriate measures to eliminate discrimination against persons with disabilities including negative stereotypes in all matters with regard to family, marriage, parenthood, guardianship, adoption and relationships, on an equal basis with others, in order to ensure that:
  - a) Persons with disabilities may decide on the number and spacing of their children, and have access to family planning, and sexual and reproductive health education and services;
  - b) Persons with disabilities have the right to keep their children and not be deprived of their children on account of their disability.



**Article 27**  
**Women and Girls with Disabilities**

States Parties shall ensure that women and girls with disabilities have full enjoyment of human and people's rights on an equal basis with other persons, including by ensuring that:

- a) Women and girls with disabilities participate in social, economic and political decision-making and activities;
- b) Barriers that hinder the participation of women with disabilities in society are eliminated;
- c) Women with disabilities are included in mainstream women's organisations and programmes;
- d) Women and girls with disabilities are protected from discrimination based on disability and enjoy the right to be treated with dignity;
- e) Women with disabilities access information, communication and technology;
- f) Women with disabilities have access to employment and to professional and vocational training;
- g) Programmes to overcome social and economic isolation and removing systemic barriers in the labour market for women with disabilities are developed;
- h) Women with disabilities have access to income generating opportunities and credit facilities;
- i) Specific measures are developed and implemented to facilitate full and equal participation for women and girls with disabilities in sports, culture and technology;
- j) Women with disabilities are protected from sexual and gender based violence and are provided with rehabilitation and psychosocial support against sexual and gender based violence;
- k) The sexual and reproductive health rights of women with disabilities are guaranteed, and women with disabilities have the right to retain and control their fertility; and are not sterilised without their consent;
- l) Disability inclusive Gender perspectives are integrated in policies, legislation, plans, programmes, budgets and activities in all spheres that affect women with disabilities.

**Article 28**  
**Children with Disabilities**

1. States Parties shall ensure that Children with disabilities have full enjoyment of human and people's rights on an equal basis with other children.
2. States Parties shall respect and promote the right of children with disabilities, in particular, their right to preserve their identities and to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
3. States Parties shall ensure that the best interests of the child are the primary consideration in all actions undertaken by any person or authority concerning children with disabilities.
4. States Parties shall ensure the rights and welfare of children with disabilities by taking policy, legislative and other measures aimed at:
  - a) Ensuring children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children;
  - b) Providing children with disabilities, disability, age and gender-appropriate assistance to realise their rights;
  - c) Ensuring the life, survival, protection and development of children with disabilities;
  - d) Ensuring children with disabilities have a name, a nationality and that they are registered immediately after birth;
  - e) Ensuring children with disabilities are not abducted, sold or trafficked for any purpose or in any form for, sexual exploitation, child labour harvesting organs;
  - f) Ensuring that children with disabilities are protected from all forms of sexual exploitation, abuse and forced labour;
  - g) Protecting children from being separated from their parents, caregivers and guardians merely on the basis that either the children or their parents have a disability;
  - h) Taking specific measures to protect children with disabilities who require more intensive support;

- i) Ensuring children with disabilities have effective access to education, training and recreational opportunities in settings most conducive for them to achieve the fullest possible social inclusion, individual development and cultural and moral development;
- j) Fostering in all children from an early age an attitude of respect for the rights of persons with disabilities;
- k) Protecting children with disabilities from exploitation, violence and abuse within family, institutional and other settings;
- l) Ensuring that under no circumstances may children on account of their disabilities be sterilised.

### **Article 29**

#### **Youth with Disabilities**

1. States Parties shall ensure that Youth with disabilities have full enjoyment of human and peoples' rights on an equal basis with other youth.
2. States Parties shall take policy, legislative, administrative and other measures to ensure that all the rights of youth with disabilities are fully respected, including by:
  - a) Promoting full, inclusive and accessible education for youth with disabilities;
  - b) Promoting the inclusion of youth with disabilities in mainstream youth organisations, programmes, including training for leadership and governance skills for their participation at national, regional and international levels;
  - c) Removing barriers that hinder or discriminate against the participation of youth with disabilities in society;
  - d) Promoting training and access to information, communication and technology for youth with disabilities;
  - e) Developing programmes to overcome social and economic isolation, and removing systemic barriers in the labour market for youth with disabilities;
  - f) Ensuring access to credit facilities for youth with disabilities;
  - g) Developing and implementing specific measures to facilitate full and equal participation of youth with disabilities in sports, culture, science and technology;
  - h) Promoting sexual and reproductive health education for youth with disabilities;
  - i) Promoting the participation of youth with disabilities in political decision-making and activities.

**Article 30**  
**Older Persons with Disabilities**

1. State Parties shall ensure that older persons with disabilities have full enjoyment of human and peoples' rights on an equal basis with other older persons.
2. States Parties shall ensure that all the rights of older persons with disabilities are fully protected by taking policy, legislative and other measures, including for:
  - a) Ensuring that older persons with disabilities, on an equal basis with others, access social protection programmes;
  - b) Taking account of age and gender-related aspects of disability in programming and resourcing in accordance with the present Protocol;
  - c) Ensuring that older persons with disabilities exercise their legal capacity on an equal basis with others, and that appropriate measures and safeguards are put in place to provide older persons with all the support they may require to exercise their legal capacity;
  - d) Ensuring that older persons with disabilities have access to appropriate services that respond to their needs within the community;
  - e) Ensuring that older persons with disabilities are protected from neglect, violence, including violence on the basis of accusations or perceptions of witchcraft;
  - f) Ensuring that older persons with disabilities have access to appropriate sexual and reproductive health information and services.

**Article 31**  
**Duties of Persons with Disabilities**

1. States Parties shall recognise that persons with disabilities have duties on an equal basis with other person as elaborated in the African Charter.
2. States Parties shall ensure that persons with disabilities are rendered the forms of assistance and support, including reasonable accommodations, which they may require in performance of such duties.

### **Article 32**

#### **Statistics, Data and Other Surveys**

States Parties shall ensure the systematic collection, analysis, storage and dissemination of national statistics and data covering disability to facilitate the protection and promotion of the rights of persons with disabilities. Towards this end, States Parties shall:

- a) Disaggregate statistics and data, as appropriate, on the basis of disability, gender, age and other relevant variables, including by ensuring that national population census and other survey captures data on disability;
- b) Disseminate statistics and data in forms accessible to all persons including persons with disabilities;
- c) Ensure that the collection, analysis, storage and dissemination of statistics and data on persons with disabilities comply with acceptable ethical, confidentiality and privacy standards.
- d) Ensure effective involvement and participation of Persons with Disabilities in the design, collection and dissemination of data.

### **Article 33**

#### **Cooperation**

States Parties shall:

- a) Cooperate at the international, Continental, sub-regional and bilateral levels on capacity-building on issues of persons with disabilities, including by sharing research, technical, human and financial resources, information and good practices to support implementation of this Protocol;
- b) Ensure that regional and sub-regional cooperation programmes and institutions support the implementation of this Protocol and are accessible to Persons with Disabilities;
- c) Ensure full and effective participation of persons with disabilities in the implementation and monitoring of this Protocol.
- d) Support the African Union Commission to set up an Advisory Council on Disability [as an *ad hoc*] mechanism to facilitate the implementation and follow up of the continental policies and plans on disability.

### **Article 34**

#### **Implementation**

1. States Parties shall ensure the implementation of this Protocol, and shall indicate in their periodic reports submitted to the African Commission in accordance with Article 62 of the African Charter, the legislative and other measures undertaken for the full realisation of the rights recognized in this Protocol.
2. States Parties shall establish or designate national mechanisms, including independent national institutions, to monitor the implementation of the rights of persons with disabilities.
3. In the implementation of this Protocol, the African Commission shall have the mandate to interpret the provisions of the Protocol in accordance with the African Charter.
4. The African Commission may refer matters of interpretation and enforcement or any dispute arising from the application or implementation of this Protocol to the African Court on Human and Peoples' Rights.
5. In accordance with Articles 5 and 34(6) of the Protocol Establishing the Africa Court, the African Court on Human and Peoples' Rights shall have the mandate to hear disputes arising from the application or implementation of this Protocol.

### **Article 35**

#### **Popularization of the Protocol**

States Parties shall take all appropriate measures to ensure the widest possible dissemination of this Protocol in accordance with the relevant provisions and procedures of their respective constitutions.

### **Article 36**

#### **Safeguard Clause**

1. No provision in this Protocol shall be interpreted as derogating from the principles and values contained in other relevant instruments for the realisation of the rights of Persons with Disabilities in Africa.

2. In the event of a contradiction between two or more provisions of this Protocol, the interpretation which favours the rights of Persons with Disabilities and protects their legitimate interests shall prevail.

### **Article 37**

#### **Signature, Ratification and Accession**

1. This Protocol shall be open to Member States of the Union for signature, ratification or accession.
2. The instrument of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission who shall notify all Member States of the dates of the deposit of the instruments of ratification or accession.

### **Article 38**

#### **Entry into force**

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15<sup>th</sup>) instrument of ratification by a Member State.
2. The Chairperson of the Commission shall notify all Members States of the African Union of the entry into force of the present Protocol.
3. For any Member State of the African Union acceding to the present Protocol, the Protocol shall come into force in respect of that State on the date of the deposit of its instrument of accession.

### **Article 39**

#### **Reservations**

1. A State Party may, when, ratifying or acceding to this Protocol, submit in writing a reservation with respect to any of the provisions of this Protocol. Reservation shall not be incompatible with the object and purpose of this Protocol.
2. Unless otherwise provided, a reservation may be withdrawn at any time.
3. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States Parties of the withdrawal accordingly.

#### **Article 40**

#### **Depository**

This Protocol shall be deposited with the Chairperson of the African Union Commission, who shall transmit a certified true copy of the Protocol to the Government of each signatory State.

#### **Article 41**

#### **Registration**

The Chairperson of the Commission upon the entry into force of this Protocol shall register this Protocol with the United Nations Secretary General in conformity with Article 102 of the Protocol of the United Nations.

#### **Article 42**

#### **Withdrawal**

5. At any time after three years from the date of entry into force of this Protocol, a State Party may withdraw by giving written notification to the Depository.
6. Withdrawal shall be effective one year after receipt of notification by the Depository, or on such later date as may be specified in the notification.
7. Withdrawal shall not affect any obligation of the withdrawing State Party prior to the withdrawal.

#### **Article 43**

#### **Amendment and Revision**

5. Any State Party may submit proposal(s) for the amendment or revision of this Protocol. Such proposal(s) shall be adopted by the Assembly.
6. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit such proposals to the Assembly at least six months before the meeting at which it shall be considered for adoption.
7. Amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority.
8. The amendment or revision shall enter into force in accordance the procedures outlined in Article 26 of this Protocol.



**Article 44**  
**Authentic Texts**

This Protocol is drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic.

**IN WITNESS WHEREOF** the undersigned, being duly authorized to that effect, has signed this Protocol.

**ADOPTED BY THE ..... SESSION OF THE ASSEMBLY, HELD IN**

.....

**EX.CL/1048(XXXII)**  
**Annex 12**

**DRAFT STATUTE OF THE AFRICAN SPACE AGENCY**  
**(Draft Version 05)**

**23<sup>rd</sup> OCTOBER 2017**

**PREAMBLE****WE, MEMBER STATES OF THE AFRICAN UNION:**

**GUIDED** by the objectives and principles enshrined in the Constitutive Act of the African Union that underscores the importance of science, technology and innovation as tools and enablers for socio-economic transformation of the continent;

**RECALLING** Decisions EX.CL/Dec.744(XXII), EX.CL/Dec.746(XXII) and EX.CL/Dec.739(XXII) adopted by the 22<sup>nd</sup> Ordinary Session of the Executive Council in January,2013 in Addis Ababa Ethiopia and recommendations from sectorial Ministerial Conferences on the growing need for Africa to develop a well-structured Space Policy and Strategy that could guide the continent to implement a globally competitive Outer-Space Programme that would enable Member States to harness space resources in a more coordinated and systematic manner, address the continent's challenges, and develop an African space market and industry;

**FURTHER RECALLING** Decision Assembly/AU/Dec.589(XXVI) adopted by the Assembly in January 2016 in Addis Ababa Ethiopia, adopting the Africa Space Policy and Strategy with the view to formalizing an AU Agenda 2063 Outer-Space Flagship Programme for developing local capacities in Earth Observation, Satellite Communication, Navigation and Positioning, Space Science and Astronomy and requesting the African Union (AU) Space Working Group to develop the framework for the implementation of the African Space Policy and Strategy and the Governance Framework that covers the relevant legal requirements and protocols for an operational African Outer-Space Programme;

**RECOGNISING** the potential of space science, technology and innovation in Africa's development and the realization of the aspirations of our long term vision, AU Agenda 2063 through jointly addressing common development challenges such as natural hazards and disasters, climate-change mitigation and adaptation, agriculture and food insecurity, conflicts, disease outbreaks, provision of education and health services in rural and remote areas and connecting our citizens; and proactively managing, natural resources and the environment among others as outlined in the African Space Policy and Strategy.

**UNDERSCORING** the need for appropriate institutional arrangements for the effective governance, promotion and coordination of space activities on the continent in order to realize maximum benefits;

**HEREBY AGREE AS FOLLOWS:**

**Article 1**  
**Definitions**

In this Statute:

**“Agency”** means the African Space Agency hereby established;

**“Assembly”** means Assembly of Heads of States and Government of the African Union;

**“AU”** means the African Union established by the Constitutive Act of the African Union adopted by the Heads of States and Government of the Organization of African Unity (OAU) in Lomé, Togo, in July 2000;

**“Council”** refers to the African Space Council established by this Statute;

**“Executive Council”** means the Executive Council of the African Union;

**“Host Country”** means the country that hosts the headquarters or an activity centre of the Agency;

**“HSGC-EST”** refers to the Committee of 10 Heads of State and Government Championing the cause of Education, Science and Technology;

**“Member States”** means Member States of the African Union;

**“Policy”** means the African Space Policy;

**“RECs”** means Regional Economic Communities;

**“Statute”** means this Statute of the African Space Agency;

**“STC”** means Specialized Technical Committee of the African Union;

**“STC-EST”** means the African Union Specialized Technical Committee on Education, Science and Technology.

## **Article 2**

### **Establishment of the African Space Agency**

The African Space Agency (AfSA) is hereby established in accordance with Article 5(2) of the Constitutive Act as an Organ of the African Union, dedicated to promoting, advising and coordinating the development and utilisation of space science and technology in Africa and associated regulations for the benefit of Africa and the world and forging intra-African and international cooperation.

## **Article 3**

### **Legal Personality**

For the fulfillment of its Objectives, the Agency shall possess legal personality and capacity to:

- a. Enter into agreements;
- b. Acquire and dispose of moveable and immovable property;
- c. Institute legal proceedings.

## **Article 4**

### **Objectives**

The main objectives of the African Space Agency are to promote and coordinate the implementation the African Space Policy and Strategy and to conduct activities that exploit space technologies and applications for sustainable development and improvement of the welfare of African citizens. In particular, the Agency shall:

- a) Harness the potential benefits of space science, technology, innovation and applications in addressing Africa's socio-economic opportunities and challenges;
- b) Strengthen space missions on the continent in order to ensure optimal access to space-derived data, information, services and products;
- c) Develop a sustainable and vibrant indigenous space market and industry that promotes and responds to the needs of the African continent;
- d) Adopt good corporate governance and best practices for the coordinated management of continental space activities;
- e) Maximize the benefits of current and planned space activities, and avoid or minimize duplication of resources and efforts;
- f) Engage with its users through the establishment of Communities of Practice for each of the identified user requirements; and

- g) Promote an African-led space agenda through mutually beneficial partnerships.

**Article 5**  
**Functions of the Agency**

1. The primary function of the Agency is to Implement the African Space Policy and Strategy adopted by the AU Assembly vide the Decision Assembly/AU/Dec.589(XXVI).

In particular, the Agency shall:

- a) Promote and coordinate the implementation of programmes and activities approved by the African Space Council;
- b) Address user needs to ensure that space programmes will play a critical role in improving Africa's economy and the quality of life of its peoples;
- c) Support Member States and RECs in building their space programs and coordinate space efforts across the continent;
- d) Enhance and facilitate access to space resources and services in an effort to leverage space-derived benefits to the whole continent;
- e) Support Member States and RECs in building critical infrastructure and coherently develop, upgrade and operate cutting-edge African space infrastructure;
- f) Coordinate development of a critical mass of African capacities in space science, technology and innovation through appropriate education and training programmes;
- g) Foster regional coordination and collaboration;
- h) Promote strategic intra-continental and international partnerships;
- i) Strengthen research, development and innovation in space science and technology;
- j) Coordinate and promote Africa participation in international efforts for the peaceful use of space science and technology for the welfare of humanity;
- k) Raise awareness of the benefits of space programmes for Africa;
- l) Engage Member States in space-related activities and research in Africa with the aim of fostering cooperation and avoiding duplication of efforts;
- m) Take maximum advantage of national activities conducted by Member States and facilitate coordination of the activities of Member States;
- n) Operate on the basis of international cooperation.

2. The African Space Agency with other national and international institutions will coordinate a continent wide regulatory framework for space activities on the continent.
3. The African Space Agency will work directly with the national space agencies when interfacing with the Member States and in the co-management of space activities for the continent.
4. A common African position for multilateral engagements should be driven by the African Space Agency.

### **Article 6**

#### **Governance and Management of the African Space Agency**

1. The governance and management structure of the Agency shall comprise of:
  - a) The African Space Council;
  - b) Advisory Committee; and
  - c) The Secretariat;
  - d) Director General.
2. HSGC-EST shall provide political guidance and shall serve as champions for space science and technology at the continental level.
3. The STC-EST shall provide overall strategic guidance and orientation to the Agency through the Space Council and
4. The Director General of the Agency shall submit reports on its annual work to the Council who shall submit the same to the STC-EST for consideration and further submission to the policy Organs.

### **Article 7**

#### **Composition of the Council**

1. The Council shall be constituted as follows:
  - a) Ten (10) elected persons from Member States, two (2) per each region;
  - b) The following Representatives of the Commission:
    - i) Commissioner for Human Resources, Science and Technology (HRST) or his/her representative;
    - ii) Commissioner of Infrastructure and Energy or his/her representative;

- iii) Commissioner of Peace and Security or his/her representative;
  - iv) Commissioner of Rural Economy and Agriculture or his/her representative;
  - v) Two (2) Representatives of the Bureau of the Chairperson (Director of Communications and the Legal Counsel of the African Union).
2. The Chairpersons of the following STCs shall be invited to attend the sessions of the STC on Education, Science and Technology where the Council report will be considered:
    - i) Communication and ICT;
    - ii) Defense, Safety and Security;
    - iii) Agriculture Rural Development, Water and Environment;
    - iv) Transport, Transnational and Interregional Infrastructures, Energy and Tourism.
  3. The representatives of the Commission shall be Members of the Council with no voting rights.
  4. The Chairperson of the Advisory Committee shall be invited to attend the African Space Council meetings.
  5. The Director General of AfSA shall serve as the Secretary of the Council.

### **Article 8**

#### **Qualifications and Election of Council Members**

1. The African Space Council shall be composed of high level of Experts elected by the Assembly from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest institution of Space and Astronomy, Earth Observation, Satellite Communication and Navigation or related areas, The Candidates should be citizens of the AU Member States provided that no Members of the Council shall be nationals of the same Member State.
2. The Assembly shall elect the President and Vice President of the African Space Agency Council from the ten (10) elected Members referred in Article 9 sub-paragraph 1-a below.
3. The Assembly shall ensure merit and competence in the election of the Council members.



4. The Chairperson of the Commission shall communicate the list of candidates to Member States, at least thirty (30) days before the Ordinary Session of the Assembly or of the Executive Council during which the elections shall take place.

### **Article 9**

#### **Term of Office**

1. The Ten (10) Members of the Council representing the five (5) African Union regions shall be elected for a period of four (4) years term renewable once.
2. A new Member elected to replace another, whose term of office has not expired shall complete the term of office of his or her predecessor and shall be from the same region.
3. All the Council Members, except the President and the Vice President, shall perform their functions on a part-time basis.
4. The Term of the President and Vice President of the Council shall be determined in the Rules of Procedures of the Council, which shall be adopted by the Executive Council.

### **Article 10**

#### **Functions of the Council**

1. The African Space Council shall have authority to oversee the Agency, issue directives, and review and approve strategic plans, work plans, budgets, regulations, policies and guidelines to govern the administrative activities and operations of the Agency for adoption by the relevant policy organs of the AU.
2. The African Space Council shall report to the Assembly through the Heads of State and Government on Education, Science and technology (HSGC-EST)
3. The African Space Council shall meet once every year, after the meeting of the Advisory Committee of the African Space Council and prior to the annual meeting of the Heads of State and Government on Education Science and Technology (HSGC-EST)

## **Article 11**

### **Meetings of the Council**

1. The Council shall elaborate its own Rules of Procedure and shall be adopted by the Executive Council in accordance of the AU Rules.
2. The Council shall meet once every year in ordinary session. It may meet in extraordinary session at the request of Chairperson in consultation with the Agency. The extraordinary session shall be held at the request of:
  - a) AU Policy Organs;
  - b) The Chairperson of the STS-EST, its Bureau or as decided by the STC-EST;
  - c) The President of the council;
  - d) Two-thirds majority of the total membership of the African Space Council.
3. The quorum for the meeting shall be a simple majority of the total membership of the Council.
4. Decisions of the Council shall be adopted by a two-thirds majority of the members present and voting.
5. Except as otherwise determined by the Council, all meetings of the Council shall be held at the headquarters of the Agency.
6. The Council may invite, as Observer, any person or Institution to attend its sessions.

## **Article 12**

### **The Advisory Committee**

1. An advisory committee shall be established with the aim to provide necessary advice to the Council.
2. The Advisory Committee shall comprise of the following:
  - a) Five (5) Director Generals of the National Space Agencies of Member States, one (1) from each of the five (5) geographic regions of the African Union based on the principle of rotation and geographic representation, the selection shall be done at each region and the nominees shall be communicated to the Commission.

- b) One representative of the eight (8) RECs recognized by the African Union, for a term of two years on a rotational basis. The Commission shall lead that process for the selection of RECs.
  - c) Two (2) experts from the academia admitted through the African Academy of Sciences and whose membership shall be drawn from the five (5) regions of the African Union, based on the principle of rotation and geographic representation.
  - d) Four (4) Chief Executive Officers of four (4) African private sector entities, each representing one of the four space sectors, namely Earth Observation, Satellite Communication, Navigation, and Space & Astronomy
3. The Director General of AfSA shall serve as a secretary of the Advisory Committee.
  4. The Chairperson of the Advisory committee shall be elected among the five (5) Directors Generals of the National Space Agencies of Member states, on rotational bases and geographical distribution for a two (2) years term.
  5. The term of office of the Members of the advisory Committee shall be three (3) years term renewable once.

### **Article 13**

#### **Functions of the Advisory Committee**

1. The Advisory Committee shall review and recommend for approval by the African Space Council strategic plans, annual work plans, budgets, external audit reports, regulations, policies and guidelines to govern the administrative activities and operations of the Agency.
2. The Advisory Committee shall report to the African Space Council.
3. The Advisory Committee shall meet once every year, prior to the annual meeting of the African Space Council.
4. The Advisory Committee shall adopt its own Rules of Procedure.

### **Article 14**

#### **Meetings of the Advisory Committee**

1. The Advisory Committee shall meet once every year in ordinary session and as may be called upon to advise extraordinary sessions of the African Space Council.

2. The quorum for the meeting shall be a simple majority of the total membership of the Committee.
3. Except as otherwise determined by the African Space Council, all meetings of the Advisory Committee shall be held at the headquarters of the Agency.
4. The Director General of the African Space Agency shall present the report of the Advisory Committee to the African Space Council.

#### **Article 15**

##### **The Director General of the Agency**

1. The Director General shall be The Chief Executive Officer and legal representative of the Agency.
2. The Director General shall be responsible for the management of the Agency and shall be assisted by the necessary staff for the smooth running of the Agency
3. The Director General shall be appointed by the African Space Council for a term of four (4) years renewable once.
4. The powers and duties of the Director General shall be as set out in the Rules of Procedures.

#### **Article 16**

##### **Financing of the African Space Agency**

1. The budget of the Agency shall be borne by the African Union and shall be within the budget of the Union.
2. The budget calendar of the Agency shall be that of the African Union.
3. The Agency shall prepare and submit its budget to the Policy Organs of the Union for approval and inclusion in the Union's budget.

#### **Article 17**

##### **Headquarters of the Agency**

1. The Headquarters of the Agency shall be determined by the Assembly of the Union in accordance with the AU criteria adopted in 2005.

2. The AUC shall enter into a host agreement with the government of the host country in which the Agency Headquarters will be situated for the purposes of the efficient operation.
3. The Council shall hold its meetings at the Headquarters of the Agency.
4. Any Member State may offer to host the Council meeting in lieu of the headquarter country. In the event that a Member State offers to host the meeting, the Member State shall be responsible for all extra expenses as resulting from holding the meeting outside the Agency Headquarters.
5. A Member State offering to host the Council meeting shall not be under sanctions and shall be required to meet pre-determined criteria for hosting of such session.
6. Where two (2) or more Member States offer to host the meeting, the Council shall decide on the venue in consultation with the Secretariat.

#### **Article 18**

#### **Privileges and Immunities**

The African Space Agency and its staff shall enjoy within the territory of all AU Member States in particular the Host Country, privileges and immunities provided in the 1965 General Convention on the Privileges and Immunities of the Organization of African Unity and other relevant international agreements.

#### **Article 19**

#### **Working Languages**

The working languages of the Agency shall be those of the African Union.

#### **Article 20**

#### **Amendments**

1. The present Statute may be amended by the Assembly upon the recommendation of the STC
2. The amendments shall come into effect upon adoption by the Assembly.

**Article 21**  
**Entry into Force**

This Statute shall enter into force upon its adoption by the Assembly.

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**HELD IN .....**

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