

**AFRICAN UNION**  
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**UNION AFRICAINE**  
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**EXECUTIVE COUNCIL**  
**Seventh Ordinary Session**  
**28 June– 2 July 2005**  
**Sirte, Libya**

**EX.CL/195 (VII) Rev.1**

**REPORT OF THE PRC AND LEGAL EXPERTS**  
**ON VARIOUS LEGAL MATTERS**

**AFRICAN UNION**

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**MEETING OF THE PRC AND LEGAL EXPERTS  
ON LEGAL MATTERS  
29 March- 1 April 2005  
Addis Ababa, ETHIOPIA**

**PRC/Leg.Expt/Legal Matters/Draft/Rpt**

**DRAFT REPORT OF THE MEETING OF THE PERMANENT REPRESENTATIVES'  
COMMITTEE AND LEGAL EXPERTS ON LEGAL MATTERS  
29 MARCH – 1 APRIL 2005**

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**29 MARCH – 1 APRIL 2005**

**I. INTRODUCTION**

1. Pursuant to decisions EX.CL/Dec. 165 (VI), EX.CL/Dec. 168 (VI), EX.CL/Dec. 174 (VI), EX.CL/Dec. 175 (VI), EX.CL/Dec. 177 (VI), EX.CL/Dec. 181 (VI) a meeting of the Permanent Representatives' Committee (PRC) and legal experts from Member States on legal matters was held at the AU Headquarters in Addis Ababa, Ethiopia, from 29 March to 1 April 2005.

**II. ATTENDANCE**

2. The following Member States were represented: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Chad, Côte d'Ivoire, Congo, DRC, Egypt, Equatorial Guinea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Kenya, Lesotho, Libya, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, SADR, South Africa, Senegal, Sierra Leone, Sudan, Swaziland, Tanzania, Tunisia, Uganda, Zambia and Zimbabwe.

3. Also in attendance were the following Regional Economic Communities (RECs): CEN-SAD, COMESA, ECCAS and ECOWAS.

**III. OPENING**

4. The Opening Session was chaired by H.E. Mr. Olusegun Akinsanya, Permanent Representative of the Federal Republic of Nigeria to the AU and Chairperson of the (PRC).

5. The Opening Statement of the Chairperson of the Commission, Mr. Alpha Oumar Konare, was delivered on his behalf by Adv. Bience P. Gawanas, Commissioner for Social Affairs. In the Statement, the Chairperson underlined the importance of the meeting, which was convened to consider a number of legal documents submitted to it by the AU policy organs for review and further enrichment.

6. He concluded by expressing the hope that at the end of the deliberations, the meeting will have achieved its mandate and would come out with concrete recommendations that will be submitted to the forthcoming sessions of the Executive Council and the Assembly in July 2005.

**IV. ADOPTION OF THE AGENDA**

7. The meeting adopted the following Agenda:

- a) Opening Ceremony;
- b) Adoption of the Draft Agenda;
- c) Organization of Work;
- d) Consideration of Agenda Items:
  - i) Draft Protocol on the Merger of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union;
  - ii) Draft Protocol on Relations between the AU and the RECs;
  - iii) Proposed amendments to the Rules of Procedure of the Assembly of the Union, the Executive Council, the Permanent Representatives' Committee and the Commission;
  - iv) Draft Criteria for Hosting AU Organs;
  - v) Criteria for Granting Observer status and a System of Accreditation within the AU; and
  - vi) Modalities for the Establishment of a Centre for the Study and Research on Terrorism. Centre;
- e) Any Other Business;
- f) Adoption of the Report;
- g) Closing Ceremony.

## **V. ORGANIZATION OF WORK**

8. The meeting adopted the following work programme:

- Morning: 9.00 to 13.00
- Afternoon: 15.00 to 19.00

## **VI. SCOPE OF THE REPORT**

9. This report is intended to give a summary account of the proceedings and the recommendations adopted by the meeting.

## **VII. CONSIDERATION OF AGENDA ITEMS**

<b><i>AGENDA ITEM (i)</i></b>	<b><u><i>Draft Protocol on the Merger of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union</i></u></b>
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10. In presenting this agenda item, the Legal Counsel indicated that in considering the issues relating to the implementation of the decision of the Assembly, the Commission had worked out two solutions but recommended the one that was less likely to delay the establishment of the African Court on Human and Peoples' Rights (the Human Rights Court). He informed the meeting that the draft legal instrument submitted to it for consideration contained amendments to certain articles of the Protocol on the Human Rights Court and the Protocol of the Court of Justice of the African Union (the

Court of Justice) so as to ensure that the two courts will function effectively as a single court.

11. In the debate that ensued, the following issues arose:

- i.) The Assembly had already decided in July 2004 that the Human Rights Court and the Court of Justice should be integrated and therefore the only mandate of the meeting with respect to this matter was to finalise the modalities for doing so.
- ii.) The decision of the Executive Council in January 2005, endorsed subsequently by the Assembly, was to the effect that the meeting should, as far as possible, avoid compromising the operationalisation of the Human Rights Court.
- iii.) Whether there is any distinction in law between “integrating into one” and “merger”.
- iv.) Whether the proposed draft protocol on the merger of the courts was intended to replace the protocols establishing the Human Rights Court and the Court of Justice or whether the previous two protocols would be retained.
- v.) The protocols on the courts contain their own provisions regarding the procedures for amendment.
- vi.) Although the Commission proposed the implementation of the merger through a short protocol, which was likely to pass with more ease and enter into force sooner, some participants expressed the view that there is no guarantee that the process of integration would indeed take place expeditiously through a short protocol as proposed.
- vii.) There was need to reach consensus on the option that least compromises the AU’s current human rights regime.
- viii.) Whether the mandate of the meeting from the decision of the Executive Council was limited to consideration of the options proposed by the Commission and precluded the examination of others for integrating the two courts into one.

12. The Commission was of the view that there is no distinction, in this case, between merging and integrating the two courts and that what is required is the implementation of the decision of the Assembly in a manner which will support the establishment of an effective justice system without marginalising the existing human rights mechanism.

13. The meeting subsequently decided to establish an open-ended committee comprising the legal experts from the various delegations. The mandate of the committee was to discuss the modalities for implementing the Assembly’s decision and,

in doing so, to pay particular attention to the task of studying all the relevant legal instruments and identifying areas which were likely to undermine the integrity of the two courts.

14. The committee began by identifying the key issues to be resolved in implementing the decision to integrate the two courts. It was noted that while there was clarity as to the objective, no consensus had as yet emerged on how the process of integration should be carried out. The main issues were as follows:

- i.) The implementation of the decision which will lead to the integration of the courts should be in accordance with applicable legal principles, the challenge being to remain faithful to the spirit of the decision while maintaining procedural exactitude. In this regard, the committee considered whether the procedures for amending the protocols on the two courts could be adhered to.
- ii.) Options other than an amending protocol should be explored in view of the fact that the Assembly had refrained from indicating a timeframe within which the courts should be integrated and the fact that integration should be viewed as a process.
- iii.) Whether the option of a single legal instrument, which had been ruled out by the Commission and the Group of Jurists, was not more appropriate.
- iv.) Whether it was possible to amend the provisions of a treaty which had not yet entered into force.
- v.) Whether the Human Rights Court could be operationalised pending the entry into force of the protocol on the merged court.

15. The committee agreed that its mandate, as per the decision of the Executive Council, was to consider the recommendations and the draft legal instrument proposed by the Commission and, in doing so, to consider any other option that may achieve the same result, and to make appropriate recommendations thereon.

16. By way of clarification, the Legal Counsel indicated that the Commission had proposed an amending protocol, as distinct from a single act, as it was less likely to delay the operationalisation of the Human Rights Court, a concern which was underscored in the Executive Council's decision of January 2005.

17. There were concerns from some delegations that it may not legally be possible to proceed by way of an amending protocol as a result of the amendment procedures stipulated in each protocol. In response, the Legal Counsel noted that:

- i.) Article 45 of the Protocol of the Court of Justice, for instance, provides that amendments may only be made upon a written request from a State Party

and that the Assembly may adopt the proposed amendment, *inter alia*, after the court has given its opinion thereon.

- ii.) As this protocol has not yet entered into force, a literal interpretation of article 45 would lead to the extraordinary situation where amendments, even if agreed to by all States Parties, could not be effected until the court has been set up and begins to operate and is in a position to give its opinion. This is even more clearly demonstrated where the proposed amendment pertains to the structure and functioning of the court itself, as is presently the case. Thus, in accordance with the basic tenet of interpretation to the effect that the law is presumed not to intend absurdities, the Legal Counsel indicated that it would, in the opinion of the Commission, be competent to proceed through an amending legal instrument in the circumstances.

18. The Legal Counsel also advised that the rules of international law do not proscribe the amendment of a treaty which has not yet entered into force, as was the case with the Anti-terrorism Convention.

### **OPTION 1**

19. Some members of the committee agreed with the view of the Commission and the Group of Jurists that the option of adopting a single legal instrument to establish a new integrated court, although complex and time consuming, was ideal, as it would take into account all the legal requirements. In this regard, it was also indicated that interim arrangements could be adopted while a new protocol is being elaborated or is awaiting entry into force.

20. However, the committee was in agreement that this option was complex, could reopen debate on all the issues and could delay the establishment of the merged court since new instruments of ratification and accession would be required for the single instrument relating to the merged court. Moreover, there were clear practical and legal difficulties relating to the mandate of the judges elected during the interim period as well as the Registry and seat of the court taking into account that different sets of countries had offered to host the two courts.

### **OPTION 2**

21. Some delegations suggested that the adoption of a short and simple amending protocol, proposed by the Commission, could chart the way forward and accelerate the establishment of the integrated court. In this connection, it was pointed out that through this process, the jurisdictional integrity of the African Court and the Court of Justice could be maintained. It was felt that this option, by stipulating for the provisional entry into force of the Protocol after fifteen (15) signatures, would allow for the early establishment of the merged court. It would also avoid the problems that would arise if the Human Rights Court were to be operationalised first, as outlined in paragraph 24 below.

22. At the end of its deliberations, the committee decided to consider the Draft Protocol on the Integration of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union proposed by the Commission and made further amendments. The Draft Protocol is attached herewith as **Annex I**.

23. In light of the procedural challenges associated with implementing the Assembly's decision, the committee members agreed that the draft protocol be examined, not as the sole feasible alternative, but as one of several. There were strong opinions to the effect that options 1 and 3 should, in addition, be considered in greater depth, focusing on their respective implications. Some delegations were not in favour of this option because of its procedural difficulties since it required each Member State to become a state party to each of the three legal instruments.

### **OPTION 3**

24. Two delegations jointly proposed, as a result of the conceptual and procedural difficulties inherent in the integration of the two courts, that a decision be recommended to the Assembly for adoption. The objective of the decision would be to expedite the functioning of the Human Rights Court, but to do so with a view to the eventual creation of a single court. Consequently, through this decision, the Assembly would:

- i) decide on the operationalisation of the Human Rights Court;
- ii) make the election of judges to the Human Rights Court conditional on the understanding that their election would be reviewed as soon as the Protocol of the Court of Justice enters into force;
- iii) make the appointment of a registrar and support staff for the court conditional on the understanding that the staff will also service the integrated court;
- iv) make the hosting of the Human Rights Court conditional on the understanding that the Court of Justice, once functional, should operate from the same premises; and
- v) provide that, once both protocols have entered into force, there will be a review conference with the objective of harmonising the protocols on both the Human Rights Court and the Court of Justice in order to fully merge the courts.

25. The Legal Counsel drew attention to the difficulties associated with the proposal, namely:

- i) It would be necessary to resolve the terms of office of the judges and the precise administrative arrangements envisaged in paragraph 24 (iii) above from the onset and, to the extent that such arrangements differed with the

Protocol on the Human Rights Court, to make the appropriate amendments to that Protocol.

- ii) Since the countries which have offered to host the Human Rights Court are not the same countries that have offered to host the Court of Justice, the operationalisation of the former before the merger issue has been resolved may result in a change in the seat and registry after the merged court is put in place, the terms of office of the judges and the costly adjustment of various other arrangements.

26. The Chairperson of the legal experts committee, Mr. L.K. Iyanda, reported to the plenary, indicating that the Committee had seen its mandate pursuant to the Council decision in Abuja, Nigeria in January 2005, as to consider and finalise the recommendations and the Draft legal instrument prepared by the Commission and any other relevant proposals that may be submitted by Member States. He noted that the legal experts had finalised consideration of the three options as well as the draft legal instrument. The major issues, which the experts discussed and agreed upon were the following:

- i) That, in view of the fact that only the Protocol on the Human Rights Court was in force, a merger of the two courts is likely to delay its operationalisation.
- ii) That the draft protocol must be finalised in accordance with the Abuja mandate irrespective of the existence of other options.
- iii) That, nevertheless, the meeting should not limit itself to a discussion of the draft legal instrument and should consider any other options for implementing the mandate of the Executive Council.
- iv) That the option jointly proposed by two delegations, as set out in paragraph 24, was a possible method of integrating the courts.
- v) That it was necessary to decide whether the amendment procedure stipulated in article 45 of the Protocol of the Court of Justice could be strictly followed since it would be impossible to consult the Court (as to any proposed amendment) until it had in fact come into existence.

27. Following the presentation of the Report to the Plenary, some delegations congratulated the Sub-Committee of legal experts, its chairperson as well as the Commission for accomplishing its mandate and for the quality of the Report. A number of observations intended to strengthen the report were made. At the same time, some delegations expressed preference for the various options citing the merits and demerits of each of the options.

28. The meeting agreed on the following recommendations:

- i) The Draft protocol should be enriched by setting out in full the preferred wording borrowed from either of the Protocol and submitted to the Executive Council as one of the options;
- ii) Options 1 and 3 should, as suggested by the committee, be considered further and some delegations were of the opinion that these options were the best means of implementing the Assembly's decision; and
- iii) The decision of the Assembly on the merger did not set out a time frame for integrating the two courts into one and accordingly there is nothing to prevent the meeting from recommending the ideal option of a single instrument as per option 1; and
- iv) Whilst the three options would be submitted to the Executive Council pursuant to the mandate given to the PRC and legal experts by the Abuja decision of January 2005, the meeting expressed its preference for Option 1.

**AGENDA ITEM (ii)      Draft Protocol on Relations between the AU and the RECs**

29. In the introductory remarks made by the Representative of the Department of Economic Affairs and the Legal Counsel, it was noted that the draft Protocol was necessitated by decision AHG/Dec. 160 (XXXVII), wherein the Assembly mandated the then OAU General Secretariat to revise and update the existing Protocol concluded under the aegis of the OAU, in order to align it with realities of the Constitutive Act and the AU as well as to provide a more comprehensive framework for relations between the AU and the RECs.

30. Furthermore, it was stated that the draft Protocol had been elaborated by the AU Commission in collaboration with the RECs, who had deemed it satisfactory and recommended it for signature. However, in light of decision EX.CL/Dec. 174 (VI) wherein the Executive Council mandated that the text be considered by a meeting of PRC and legal Experts, the meeting as convened could make appropriate recommendations thereon.

31. During the ensuing deliberations, participants took the floor to seek further clarification on some provisions of the Draft Protocol, propose amendments to the text or make general comments/recommendations. The issues raised were as follows:

- i) definitions in Article 1 of the draft Protocol should be aligned with the definitions provided for in other AU legal instruments, especially the Constitutive Act;
- ii) the need for proper definitions of "Regional Economic Communities" and "Region" in the draft Protocol;

- iii) the need for cost sharing between the AU and the RECs with regards to meetings and exchange programs, rather than the AU bearing all the costs as provided for in the draft Protocol;
- iv) clarification of the inclusion of the Executive Secretary of the UNECA and the President of the ADB as substantive members of the Coordination Committee with voting rights; and
- v) the need to align all the provisions relating to finance and budget with the procedure applicable within the AU;
- vi) the need to attend to the necessary textual amendments.

32. In their respective responses to address the issues raised, the Representatives of the RECs present at the meeting and the Legal Counsel noted that in practice, the costs for meetings and exchange programs are shared. They informed the meeting that the AU Commission defrays only the costs relating to the meetings of the Coordination Committee as well as that of the Secretariat officials, which are held back to back and on the margins of AU summits. In addition, it was stressed that there is still need for the AU to provide financial assistance to the RECs, which is one of the ways the latter could be strengthened.

33. With regard to the participation of the ADB and UNECA, it was noted that these are crucial financial and technical partners that make substantive contributions to the integration process and as such, their expertise and assistance is essential.

34. At the end of the deliberations, the meeting made the following recommendations:

- i) the Draft Protocol requires some textual amendments;
- ii) amendments proposed by the meeting should be reflected in the text;
- iii) consideration be given to the possibility of amending the provisions relating to financing of meetings and exchange programs to reflect the principle of cost sharing as is the current practice; and
- iv) the Draft protocol as amended should be circulated to the RECS for their comments and observations and resubmitted to the PRC well before the next session of the Executive Council in July 2005.

35. In conclusion, the meeting adopted the Draft Protocol in principle, subject to subsequent incorporation of the proposed amendments and textual changes.

**AGENDA ITEM (iii)      *Proposed amendments to the Rules of Procedure of the Assembly of the Union, the Executive Council, the Permanent Representatives' Committee and the Commission***

36. In introducing the item, the Legal Counsel recalled that the proposed amendments to the Rules of the AU organs is required in order to reflect in the rules, the various decisions adopted by the policy organs after the adoption of the Rules in Durban, South Africa in July 2003. These decisions include those of the Executive Council during its 2<sup>nd</sup> and 3<sup>rd</sup> ordinary sessions held respectively in N'djamena in March 2003 and in Maputo in June-July 2003, as well as decisions of the Assembly emanating from its sessions held in July 2003, July 2004 and January 2005. He further noted that the proposed amendments also address the difficulties encountered by the policy organs in the course of their work, particularly during elections.

37. In conclusion, he noted that the mandate of the meeting was to finalise the Draft Rules and the Statutes of the Commission for submission to Council in accordance with decision **EX.CL/Dec.181 (VI)** of the Sixth Ordinary Session of the Executive Council held in Abuja, Nigeria in January 2005.

38. Thereafter, the participants exchanged wide ranging views on whether the mandate of the meeting extended to all issues as pointed out by the Commission and whether member States were free to include new items.

39. The meeting took note of the fact that other Rules apart from those proposed by the Commission required amendments. In this regard, it was pointed out that Rule 37 of the Rules of Procedure of the Assembly empowered the Chairperson of the Assembly and the Chairperson of the Commission to take a number of actions in situations of unconstitutional changes of government. In similar situations, the Protocol on the Establishment of the Peace and Security Council of the African Union (PSC) which entered into force on 26 December 2003 empowered the PSC with the same functions. The meeting, therefore, decided that the Legal counsel should consider this issue **taking into account the views of the Peace and Security Council** so as to enable the PRC make appropriate recommendations to the Executive Council **at a later stage**.

40. The meeting also decided that any additional proposals for amendment could be forwarded to the Commission for circulation to Member States in order to enable the PRC consider them at a later session and make appropriate recommendations to the policy organs in July 2005.

41. Thereafter the meeting adopted the proposed amendments to the Rules and Statutes attached hereto as **Annex II (a – d)**

**AGENDA ITEM (iv)      *Draft Criteria for Hosting AU Organs***

42. In introducing this item, the Legal Counsel recalled that the document had been submitted to and considered by the PRC before the sessions of the Executive Council in

Addis Ababa, Ethiopia in July 2004 and in Abuja, Nigeria in January 2005. He indicated that the Commission had incorporated further amendments taking into account the comments made by the PRC whilst considering the document in its session in Abuja in 2005. He therefore expressed hope that the document could be finalized and submitted to the forthcoming sessions of the policy organs scheduled for July 2005, for consideration and adoption.

43. In the discussions that ensued, the following recommendations were made:

- i) a provision relating to the review of the criteria for hosting AU organs should be included.
- ii) the provisions on privileges and immunities should be amended to indicate that host countries must be parties to the relevant Conventions thereto.
- iii) the provisions relating to the conditions necessitating the transfer of the seat of an organ should be amended to take into account cases of non-compliance with the Criteria for Hosting AU organs or the host agreements as well as situations of natural and other disasters that have the effect of making the organ unable to function.
- iv) the criteria should be reformulated to incorporate the proposed amendments.
- v) the Criteria for hosting AU meetings should also be elaborated and submitted to the policy organs for consideration and adoption.

44. Thereafter the meeting adopted the draft criteria for hosting AU organs attached hereto as **Annex III**.

**AGENDA ITEM (v)                      Criteria for Granting Observer status and a System of Accreditation within the AU**

45. In his introduction, the Legal Counsel presented a brief background to the elaboration of the draft Criteria. He stressed, in particular, the necessity for the review of the existing criteria applicable under the OAU to reflect the realities of the AU, as well as the need for a formal system of accreditation particularly for Regional Integration and International Organisations as well as non-African States, in light of the increasing role of the AU in International Affairs. He reminded the meeting that the criteria for granting Observer status to NGOs had been considered and approved by the PRC during its meeting held in May 2004. He concluded by calling upon the meeting to critically analyse the Draft Criteria and make concrete recommendations thereon with the view to finalize it, as mandated by the Executive Council.

46. In the ensuing debate, participants sought clarification on some provisions of the Draft Criteria, proposed amendments to the text and made general comments/recommendations. The issues raised were as follows:

- i) the need for a definition section;
- ii) Whether granting of Observer Status to NGOs should be a political decision by Member States;
- iii) the need for the establishment of a PRC Subcommittee on granting Observer Status to NGOs to consider the applications;
- iv) the draft Criteria should apply to the management of the status of both existing and future Organisations and States;
- v) the draft Criteria should be harmonized for purposes of uniformity and consistency; and
- vi) the need to synchronize the text in all languages.

47. In his response to address the issues raised, the Legal Counsel underlined the willingness of the Commission to take on board the issues and proposals introduced by the meeting. However, he noted that whilst the criteria relating to Regional Integration and International Organisations as well as non-African States could still be harmonised a little further, the criteria for granting observer status to NGOs should continue to remain distinct. In addition, he noted that since the criteria relating to NGOs had already been considered and adopted by the PRC, the preferred option would be to leave it as is, and only reformulate the other parts of the text.

48. Finally, he noted that the proposal to establish a PRC subcommittee on Observer Status and Accreditation is fundamental and would be very useful in relation to the granting of observer status to NGOs only.

49. The meeting recommended the following:

- i) The form and substance of the Draft Criteria should be revised;
- ii) The revised text should take account of the comments and amendments proposed by the meeting; and
- iii) The revised Draft Criteria should be submitted to a meeting of the PRC for consideration and finalization.

50. Thereafter, the meeting adopted the Draft Criteria in principle, subject to inclusion of the proposed amendments. The Draft Criteria is annexed hereto as **Annex IV**.

**AGENDA ITEM (vi)**      **Modalities for the Functioning of the Centre for the Study and Research on Terrorism** Centre

51. This item was introduced by Ambassador Said Djinnit, Commissioner for Peace and Security. He provided a brief update on the measures taken thus far to operationalize the Centre in conformity with the relevant decisions of the Union. In this context, he informed the meeting that the Chairperson of the Commission had appointed the Interim Director of the centre, in accordance with the recommendation of the Second High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism, held in Algiers, from 13 to 14 October 2004. The Commissioner further noted that the Centre was now operational and that current and future measures are aimed at ensuring its effective functioning.

52. In presenting the Draft Modalities for the Functioning of the African Centre for the Study and Research on Terrorism, the Commissioner stressed that the document was essentially the Terms of Reference for the Centre, to guide its day-to-day activities. He reminded the meeting that the document had already been the subject of discussion by the policy Organs of the Union, noting that it was drafted for consideration by the Second High-Level Intergovernmental Meeting, in October 2004, and that it was considered by the PRC and the Executive Council sessions held in Abuja, in January 2005. He recalled that, it was due to lack of sufficient time to consider the Modalities in-depth in Abuja that, the Executive Council, in its decision EX.CL/Dec.177 (VI), requested the PRC to urgently consider and approve the document.

53. Amb. Djinnit emphasized that the Centre is a structure of the AU Commission with the status of other regional and technical offices of the Commission. Thus, the Centre is governed by the Rules and Regulations of the AU and is funded from the regular budget of the Union as well as extra-budgetary sources to be mobilized by the Commission. In order to ensure the effective participation of Member States and Regional Mechanisms, the Commissioner informed the meeting that the Modalities also attempts to build a relationships between the Centre and Member States as well as with Regional Mechanisms. In this regard, he highlighted the provision in Section III paragraph 5 of the Draft Modalities, which stipulates that the Centre shall function in coordination with National Focal Points, and appealed to Member States to designate, as soon as possible, their Focal Points.

54. Following the introductory remarks of the Commissioner, the meeting examined the Draft Modalities and raised the following points:

- i) The Centre should consult with Member States in developing its structure, curriculum, programmes and budget;
- ii) The status of the Centre as a structure of the Commission should be clarified, particularly in the Arabic version of the Draft Modalities (section III paragraph 1);
- iii) The Host Agreement to be signed by the Commission and the Host Country should spell out the conditions of work of the Centre;

- iv) The Modalities should also provide for a relationship between the Centre and the Peace and Security Council since the latter is responsible for preventing and combating terrorism on the continent;
- v) The functions of the Centre provided in Section V should be consistent with the Protocol to the OAU Convention on the Prevention and Combating of Terrorism;
- vi) The Modalities should provide for an oversight mechanism by the policy Organs of the Union;
- vii) The Modalities should clearly state that the recruitment of the Staff of the Centre shall be based on the rules and regulations of the African Union;
- viii) It was reiterated that the cooperation with National Focal Points was very important for ensuring Member States' participation;
- ix) The activity reports of the Centre should be considered by the policy Organs of the Union and shared with Member States;
- x) The financing of the Centre should be restricted to the regular budget and extra-budgetary sources of the Union. The Centre may assist the Commission in fundraising from extra-budgetary sources but should not be given the autonomy to raise funds from unknown sources. The meeting emphasized the need for precision on the funding sources of the Centre;
- xi) Some delegations questioned the need for an Advisory Board provided in Section VII of the Modalities. Many delegations accepted the idea but stressed that the appointment process of the members of the Board must be done in consultation with Member States. The meeting stressed the need for clarity on the nature/status, mandate, composition and functions of the Advisory Board as well as the criteria for membership. It was stressed that the appointment of members of the Board by the Chairperson of the Commission should be done in consultation with Member States.

55. In his response to some of the issues raised, Amb. Djinnit explained that the Centre will work in tandem with Member States and Regional Mechanisms and that the idea of National Focal Points was to ensure that as well as serve as an oversight mechanism of Member States. He also explained that, it was the view of the Commission that the activities of the Centre will be part of the statutory reports of the Commission which are considered by the policy Organs of the Union, which is to say, Member States will be kept informed of the activities of the Centre either through their Focal Points or through the activity reports of the Commission. He concurred with the proposal on the reformulation of paragraph 1 of Section VIII of the Modalities.

56. With regard to the Advisory Board, the Commissioner explained that the Board was envisaged as an internal arrangement of the Commission, composed of individuals with knowledge or expertise on terrorism issues, appointed by the Chairperson of the Commission. He also added that the role of the Board will be to review the curriculum and programmes of the Centre, in order to ensure its efficient performance.

57. Following these clarifications, the meeting adopted the Draft Modalities for the Functioning of the African Centre for the Study and Research on Terrorism as amended. The Draft Modalities is attached hereto as **Annex VI**.

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DRAFT PROTOCOL ON THE INTEGRATION OF THE AFRICAN  
COURT ON HUMAN AND PEOPLES' RIGHTS AND THE  
COURT OF JUSTICE OF THE AFRICAN UNION

DRAFT PROTOCOL ON THE INTEGRATION OF THE AFRICAN COURT ON  
HUMAN AND PEOPLES' RIGHTS AND THE COURT OF JUSTICE OF THE  
AFRICAN UNION

The Member States of the African Union, States Parties to the Protocol on the Establishment of the African Court on Human and Peoples' Rights and the Protocol of the Court of Justice of the African Union:

**CONSIDERING** that the Constitutive Act established the Court of Justice of the African Union as the principal judicial organ of the Union;

**NOTING** that the Protocol on the Establishment of the African Court on Human and Peoples' Rights entered into force on 25 January 2004;

**RECALLING** Decision Assembly/AU/Dec.45 (III) adopted by the Third Ordinary Session of the Assembly of the Union meeting in Addis Ababa, Ethiopia from 6 to 8 July 2004 to integrate the African Court on Human and Peoples' Rights and the Court of Justice of the African Union into one court, and requesting the Chairperson of the Commission to work out the modalities for implementing that decision;

**RECALLING FURTHER Decision EX.CL/162 (VI) of the Executive Council at its Sixth Ordinary Session held in Abuja, Nigeria from 24 to 28 January 2005 referring the recommendations of the Commission and the PRC on the integration of the courts, as well as the draft legal instrument prepared by the Commission, to a meeting of the PRC and Government Legal Experts for finalisation and submission to the Seventh Ordinary Session of the Executive Council in July 2005, without prejudice to the operationalisation of the African Court on Human and Peoples' Rights as far as possible;**

**REAFFIRMING** the commitment of the Union to the strengthening and enhancement of the protection of human and peoples' rights in Africa;

**RECOGNIZING** that the integration of the two courts will enhance their capacity to attain the objectives of the two courts and of the Union as a whole;

**FURTHER RECOGNISING** that the decision to integrate the two courts was based on the need to rationalise the judicial structures of the Union and to make them more efficient and effective; and

**FIRMLY CONVINCED** of the urgent need for the early operationalisation of the Court of Justice and Human Rights of the African Union that is created by the integration of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union;

**HAVE AGREED AS FOLLOWS:**

**Article 1: DEFINITIONS**

In this Protocol, unless otherwise specifically stated:

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

“Chamber” means a Chamber of the Court established in accordance with this Protocol and the Rules of Court;

“Commission” means the Commission of the Union;

“Court” means the court established in terms of article 2 of this Protocol;

“Court of Justice” means the Court of Justice of the African Union;

“Division” means a Division of the Court established in accordance with this Protocol and the Rules of Court;

“Human Rights Court” means the African Court on Human and Peoples' Rights;

“President” means the person or persons elected as such in accordance with this Protocol;

“Regions” means the geographical regions into which the continent of Africa, at any time, is divided in accordance with a decision of the Assembly;

“Rules of Court” means the Rules made under Articles 33 and 58 respectively of the Protocols on the Human Rights Court and the Court of Justice;

“Vice-President” means the person or persons elected as such in accordance with this Protocol.

## **ARTICLE 2: ESTABLISHMENT OF THE COURT**

1. Article 1 of the Protocol on the Human Rights Court and Article 2 paragraph (1) of the Protocol of the Court of Justice are deleted and substituted with the following provision:

“The Court of Justice and Human Rights of the African Union hereby established shall function in accordance with the provisions of the Protocol on the Court of Human Rights and the Protocol of the Court of Justice.”

2. Article 2 paragraph (2) of the Protocol of the Court of Justice is amended to read as follows:

“2. The Court shall be the principal judicial organ of the Union and shall be committed to the promotion of justice and protection of human and peoples’ rights in Africa.”

3. Article 2 of the Protocol of the Court of Justice is amended by the insertion after paragraph 2 of the following provision:

“3. The Court shall be constituted by a Specialized Human and Peoples’ Rights Judicial Division established under this Protocol and any other Judicial Division established by decision of the Assembly after obtaining the opinion of the Court or upon recommendation of the Court and which shall operate under the provisions of this Protocol.”

## **ARTICLE 3: COMPOSITION**

1. Article 3 paragraph 1 of the Protocol of the Court of Justice (Composition) is amended to read as follows:

“1. The Court shall consist of fifteen (15) judges who are nationals of States Parties, at least seven (7) of whom shall have competence in human and peoples’ rights.”

2. Article 3 of the Protocol of the Court of Justice is amended by the insertion, after paragraph 1 as amended in paragraph 1 above and with

consequential re-numbering of the subsequent paragraphs, of the following provision:

**“2. In the composition of the Court, the Assembly shall ensure that there is equal gender representation.”**

3. Article 11 of the Protocol on the Human Rights Court is deleted.

#### ARTICLE 4: QUALIFICATIONS

Article 4 of the Protocol of the Court of Justice (Qualifications) is deleted and substituted with the following provision:

“1. The Court shall be composed of impartial and independent Judges elected in an individual capacity from among jurists of high moral character.

“2. A judge of the Court shall possess the necessary practical, judicial or academic qualifications required in his or her country for appointment to the highest judicial offices, or shall be a jurist of recognized competence and experience in the field of international law and/or human and peoples’ rights.”

#### **ARTICLE 5: SUBMISSION OF CANDIDATES**

Article 12 paragraphs 1 and 2 of the Protocol on the Human Rights Court and Article 5 paragraphs 2 and 3 of the Protocol of the Court of Justice are deleted and substituted with the following provision:

“Each State Party may nominate up to two (2) of its nationals as candidates possessing the required qualifications stipulated in this Protocol, at least one (1) of whom shall be a woman.”

#### **ARTICLE 6: TERM OF OFFICE**

Paragraphs 1 and 2 of Article 15 of the Protocol on the Human Rights Court are deleted and substituted with the following provision:

- “1. The Judges shall be elected for a period of six (6) years and may be re-elected only once. The term of five (5) Judges elected at the first election shall expire at the end of four (4) years and the other Judges shall serve the full term.
2. The Judges whose terms are to expire at the end of the initial period of four (4) years shall be chosen by lot to be drawn by the Chairperson of the Assembly after the first election has been completed.”

## **ARTICLE 7: OATH OF OFFICE**

Article 16 of the Protocol on the Human Rights Court is deleted and substituted with the following provision:

- “1. Before taking up his or her duties each Judge shall, in open court, take the following oath:  
  
‘I,.....,do solemnly swear (or affirm or declare) that I shall faithfully exercise the duties of my office as Judge of the Court of Justice and Human Rights of the African Union impartially and conscientiously, without fear or favour, affection or ill-will and that I will preserve the secrecy of the deliberations of the Court.’
2. The oath of office shall be administered by the Chairperson of the Assembly or his or her duly authorised representative.”

## **ARTICLE 8: PRESIDENCY OF THE COURT**

Article 10 of Protocol of the Court of Justice is deleted and substituted with the following provision:

- “1. The Court shall elect its President and one Vice-President for a period of two years. They may be re-elected only once.
2. The President shall perform judicial functions on a full-time basis and reside at the Court.
3. The functions of the President and the Vice-President shall be set out in the Rules of Procedure of the Court.”

**ARTICLE 9: RESIGNATION, SUSPENSION AND REMOVAL FROM OFFICE**

1. Article 11 of the Protocol of the Court of Justice is amended to read as follows:

a) in paragraph 1:

“A judge may resign his or her position in writing addressed to the President for transmission to the Chairperson of the Assembly. The resignation shall take effect thirty (30) days after notification to the Chairperson of the Assembly.”

b) in paragraph 3:

“The President shall communicate in writing, the resignation or the recommendation for suspension or removal of a judge to the Chairperson of the Assembly and the Chairperson of the Commission.”

c) in paragraph 4:

“A recommendation of the Court to suspend a Judge shall become final unless set aside by the Assembly and a recommendation to remove a judge shall take effect upon its endorsement by the Assembly.”

2. Article 19 of the Protocol on the Human Rights Court is deleted and substituted with Article 11 of the Protocol of the Court of Justice as amended in paragraph 1 of this Article.

**ARTICLE 10: VACANCIES**

1. Article 12 of the Protocol of the Court of Justice is amended by the insertion after paragraph 2, with consequential re-numbering of the subsequent sub-paragraphs, of the following provision:

“3. The Assembly shall replace the judge whose office became vacant unless the remaining period of the term is less than one hundred and eighty (180) days.”

2. Article 20 of the Protocol on the Human Rights Court is deleted and replaced by Article 12 of the Protocol of the Court of Justice as amended above.

#### **ARTICLE 11: INDEPENDENCE**

1. Article 13 paragraph 2 of the Protocol of the Court of Justice is amended to read as follows:

“2. No Judge may participate in the decision of any case in which he or she has an interest or where he or she has previously taken part as agent, counsel or advocate for one of the parties, or as a member of a national or international court, or commission of inquiry, or in any other capacity.”

2. Article 17 paragraph 2 of the Protocol on the Human Rights Court is amended to read as follows:

“2. No judge may hear any case in which the same judge has an interest or where he or she has previously taken part as agent, counsel or advocate for one of the parties, or as a member of a national or international court, or a commission of enquiry, or in any other capacity. Any doubt on this point shall be settled by decision of the Court.”

#### **ARTICLE 12: QUORUM**

1. Article 16 paragraph 1 of the Protocol of the Court of Justice is amended to read as follows:

“1. The full Court shall sit except where it is expressly provided otherwise in this Protocol or by the Rules of Court.”

2. Article 16 paragraph 2 of the Protocol of the Court of Justice is amended to read as follows:

“2. The Court shall only examine cases brought before it, if it has a quorum of at least seven (7) Judges.”

3. Article 16 of the Protocol of the Court of Justice is amended by the insertion, after paragraph 2 as amended in paragraph 2 of this article,

with consequential re-numbering of the subsequent sub-paragraphs, of the following provision:

“3. The quorum for a specialized judicial Division shall be set out in the Rules of Court.”

4. Article 16 of the Protocol of the Court of Justice is amended by the insertion, after paragraph 3 and with consequential re-numbering of the subsequent sub-paragraphs, of the following provision:

“4. The Court may, in accordance with the Rules of Court, establish Special Chambers.”

5. Paragraph 3 of the Protocol of the Court of Justice shall become paragraph 5.

### **ARTICLE 13: SIGNATURE AND RATIFICATION OR ACCESSION**

1. Subject to the provisions of paragraph 2 of this article, this Protocol shall be open for signature and ratification or accession by States Parties to the Protocol on the Human Rights Court and the Protocol of the Court of Justice in accordance with their respective constitutional procedures.

2. A Member State that has not ratified either the Protocol on the Human Rights Court or the Protocol of the Court of Justice may do so only provided that, at the time of ratification or accession to this Protocol, it makes a declaration in writing that its ratification or accession shall be taken to also amount to ratification of or accession to either of the protocols aforesaid, as the case may be.

3. The instruments of ratification shall be deposited with the Chairperson of the Commission.

4. Any Member State acceding to this Protocol after its entry into force shall deposit the instrument of accession with the Chairperson of the Commission.

5. A State making a declaration under paragraph 4 of this article shall deposit such declaration with the Chairperson of the Commission, who shall transmit copies thereof to the States Parties.

### **ARTICLE 14: ENTRY INTO FORCE**

1. This Protocol shall provisionally enter into force thirty (30) days after being signed by at least fifteen (15) Member States.

2. It shall finally enter into force thirty (30) days after the deposit of the instrument of ratification by fifteen (15) Member States.

**ARTICLE 15: SAVINGS**

In the event of any inconsistency between the provisions of this Protocol and any provision of the Protocol on the Human Rights Court or the Protocol of the Court of Justice, the provisions of this Protocol shall, to the extent of the inconsistency, take precedence.

**ARTICLE 16: REVIEW OF THE PROTOCOL**

The Assembly may, at such intervals and in such manner as it may deem fit, provide for a review of the functioning of the Court and for the elaboration of a single legal instrument relating thereto, provided that the review aforesaid shall be carried out not more than six (6) years after the entry into force of this Protocol.

**AFRICAN UNION**

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**EX.CL/195 (VII)**

**Original: English**

**Annex II**

**REPORT ON THE PROPOSED AMENDMENTS TO THE RULES  
OF PROCEDURE OF THE ASSEMBLY, THE EXECUTIVE  
COUNCIL, THE PRC AND THE  
STATUTES OF THE COMMISSION**



**REPORT ON THE PROPOSED AMENDMENTS TO THE RULES OF PROCEDURE  
OF THE ASSEMBLY, THE EXECUTIVE COUNCIL, THE PRC AND THE  
STATUTES OF THE COMMISSION**

**I. INTRODUCTION**

1. It will be recalled that the Executive Council during its 2<sup>nd</sup> Ordinary Session held in N'djamena, Chad in March 2003, adopted the recommendations of the Dean of the African Diplomatic Corps in paragraph 26 (d) of the plenary report in which amongst other things, the latter recommended that; “the Legal Counsel should examine the issue of the apparent contradiction between the provisions which stipulate that the chair of the Executive Council shall be for one (1) year and those provisions that allow the Foreign Minister of a country hosting any Council session to preside over the session, and formulate appropriate recommendations thereon.”
2. The Executive Council during its 3<sup>rd</sup> Ordinary Session in Maputo, Mozambique in July 2003, in the light of constraints faced during the elections of Commissioners, requested the Permanent Representatives Committee (PRC) to examine, in collaboration with the Commission, the provisions relating to elections and any other proposals from Member States and to submit appropriate proposals for consideration by the Executive Council.
3. The Office of the Legal Counsel undertook the review of the various Rules and Statutes and made recommendations through the PRC to the Fifth Ordinary Session of the Executive Council held in Addis Ababa, Ethiopia, from 25 June to 3 July 2004. The Executive Council, by decision. EX/CL/Dec.134 (V), requested the PRC to undertake a thorough examination of the proposed amendments and to submit a report thereon to the 6<sup>th</sup> Ordinary Session of Council.
4. The Office of the Legal undertook another review of the Rules and Statutes of the organs of the Union, and through this Report addresses the two issues referred to above in addition to proposals received from a number of Member States in that regard. The Commission is of the view that the process of review will benefit from the experience of implementing the Rules for a period of over two years since their adoption in Durban, South Africa in July 2002.



**II. PROPOSED AMENDMENTS TO THE RULES OF PROCEDURE OF THE ASSEMBLY**

**a. Rule 5 Paragraph 5: Venue**

5. This Rule stipulates that:

“Where a Member State that had offered to host a session of the Assembly is unable to do so, the session shall be held at the Headquarters of the Union.”

**b. Proposed Amendment**

6. The proposal relates to the fact that there is need to cater for the case where another Member State offers to host that same session. Thus, it is proposed that Rule 5 be amended to read as follows: “Where a Member State that had offered to host a session of the Assembly 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 the Assembly.”

**c. Rule 7 Paragraph 1: Ordinary Sessions**

7. This Rule provides that the “the Assembly shall meet in ordinary session at least once a year”.

**d. Proposed Amendment**

8. In conformity with decision Assembly/AU/Dec.53 (III) on periodicity of its ordinary sessions, adopted by the Third Ordinary Session of the Assembly held in Addis Ababa, Ethiopia in July 2004, the Assembly is to meet twice a year. Therefore, this Rule should be amended to read as follows: “The Assembly shall meet in ordinary session twice a year. Furthermore, the amendment to this Rule necessitates an amendment to Rule 8 paragraph 1 of the Rules of Procedure of the Executive Council.

**e. Rule 8 Paragraphs 2 (a) and (d) and Paragraph 3: Agenda of Ordinary Sessions**

9. According to this Rule, “The provisional Agenda of an Ordinary Session shall be drawn up by the Executive Council and shall comprise the following: “Items which the Assembly decides to place on its agenda” and “Items proposed by a Member State provided that the proposal is submitted sixty (60) days before the opening of the session and the supporting document(s) and draft decision(s) has been communicated to the Chairperson of the Commission at least

thirty (30) days before the opening of the meeting.” Further, Rule 8 (3) stipulates, “The provisional Agenda shall be divided into two parts.”

**f. Proposed Amendment**

10. Rule 8 (2) (a): in view of the fact that it is the Executive Council which draws up the provisional agenda of the Assembly, it is suggested that the Rule be more specific and that Rule 8 (2) (a) should read as follows: “Items which the Assembly decided, at a previous session, to place on its agenda.”
11. Rule 8 paragraph 2 (d): It has been suggested that although these items should remain on the agenda of the Assembly as proposed by the Member States, the Executive Council should have the opportunity of considering such items and making recommendations to the Assembly. The rationale for this is that such a process would lighten the work of the Assembly and ensure that the latter has more time to discuss the critical issues on its agenda. It would also ensure that items submitted to the Assembly by Member States for its consideration would have taken into account technical advice and have been subjected to a process of critical appraisal and where possible, consensus reached. This would avoid situations where agenda items proposed by Member States have to be referred back to the Executive Council for further examination.
12. Thus, Rule 8 paragraph 2 (d) should be amended to read as follows: “Items proposed by a Member State provided that the proposal is submitted sixty (60) days before the opening of the session and the supporting document(s) and draft decision(s) have been communicated to the Chairperson of the Commission at least thirty (30) days before the opening of the meeting. Provided that the Assembly shall examine such items upon the recommendation of the Executive Council.”

**g. Rule 11: Extraordinary Sessions**

13. This Rule does not have a provision on who presides over its proceedings.

**h. Proposed Amendment**

14. It is being proposed for purposes of clarity that Rule 11 be amended to include an additional paragraph, as follows: “The Chairperson of the Assembly shall preside over the proceedings of the Extraordinary Sessions.”

**i. Rule 15 Paragraph 1: Election of Chairperson**

15. Further, this Rule provides that “The Assembly shall, on the basis of rotation and agreed criteria, elect a Chairperson for a period of one (1) year. He/she shall be assisted by other members of the Bureau, namely, fourteen (14) Vice-Chairpersons elected on the basis of agreed geographical distribution and after due consultations.” However, the composition of the Bureau at fifteen (15) members addressed, *inter alia*, the specific need of membership of the Central Organ, which was composed of the Bureau of the Assembly plus the incoming and outgoing chairpersons. This need is no longer there since the membership of the Peace and Security Council is not tied to the Bureau of the Assembly.

**j. Proposed Amendment**

16. It is being proposed that the Bureau of the Assembly be set at four (4) so that it will be possible to have, if it is so agreed, the same Bureau for all meetings of the policy organs such as the Executive Council, the Specialised Technical Committees, the Permanent Representatives Committee, etc.
17. Thus, Rule 15 (1) should be amended to read as follows: “The Assembly shall, on the basis of rotation and agreed criteria, elect a Chairperson for a period of one (1) year. He/she shall be assisted by other members of the Bureau, namely, four (4) Vice-Chairpersons elected on the basis of agreed geographical distribution and after due consultations.”
18. If the proposed amendment to Rule 15 is accepted, there would be consequential amendments to Rule 16 and Rule 11 of the Rules of Procedure of the Executive Council and the PRC respectively.

**k. Rule 42: Voting Procedure for the Election of Members of the Commission**

19. Rule 42 needs to be amended to make it conform to the existing practice based on interpretation of the rule that where, initially there are only two (2) candidates, the candidate with fewer votes would withdraw after the third round.

**1. Proposed Amendment**

20. Thus, a new paragraph should be added to Rule 42 to read as follows: “Where there are only two candidates initially and neither

candidate obtains the majority required after the third ballot, the candidate with fewer votes shall withdraw and the remaining candidate shall proceed to the next round.”

21. If the proposed amendment to Rule 42 above is accepted, there would be consequential amendments to Rule 38 of the Rules of Procedure of the Executive Council and Article 16 of the Statute of the Commission.
23. Further, in view of the amendment proposed above, Rule 42 (5) would read as follows: “If the remaining candidate, or where there is only one candidate initially and he/she, fails to obtain the two-thirds majority required in that round, the Chairperson shall suspend the election”.
22. Rule 42 seems to suggest that the provisions contained therein relate to elections of Members of the Commission only, when in actual fact it should clearly indicate that the same procedure would apply to all elections conducted by the Assembly for other Organs.
23. Therefore, it is being proposed that Rule 42 be amended to include an additional paragraph, which would read as follows: “This voting procedure provided for in paragraphs 2, 3, 4 and 5 above shall be applicable to all elections conducted by the Assembly in respect of other Organs of the African Union.”

### III. PROPOSED AMENDMENTS TO THE RULES OF PROCEDURE OF THE EXECUTIVE COUNCIL

#### **a. Rule 6: Venue**

24. In view of the decision that Assembly shall meet twice a year in ordinary session, it has been proposed that **Rule 6 Paragraph 1** be replaced with the following: “The Ordinary Sessions of the Executive Council shall be held at the same venue as those of the Assembly”.

#### **b. Rule 9 Paragraph 2(g): Agenda of Ordinary Sessions**

25. According to this Rule, the agenda of the PRC may comprise of “Items proposed by a Member State provided that the proposal is submitted sixty (60) days before the opening of the session and the supporting document(s) and draft decision(s) have been communicated to the Chairperson of the Commission at least thirty (30) days before the opening of the session.”

#### **c. Proposed Amendment**

26. It has been suggested that although these items should remain on the agenda of the Executive Council as proposed by the Member States, the PRC should have the opportunity of considering such items and making recommendations to the Executive Council. The rationale for this is that such a process would lighten the work of the Executive Council and ensure that the latter has more time to discuss the critical issues on its agenda. It would also ensure that items submitted to the Executive Council by Member States for its consideration would have taken into account technical advice and have been subjected to a process of critical appraisal and where possible, consensus reached. This would avoid situations where agenda items proposed by Member States have to be referred back to meetings of the PRC and or experts for further examination.
27. Thus, Rule 9 paragraph 2 (g) should be amended to read as follows: "Items proposed by a Member State provided that the proposal is submitted sixty (60) days before the opening of the session and the supporting document(s) and draft decision(s) have been communicated to the Chairperson of the Commission at least thirty (30) days before the opening of the session. Provided that the Executive Council shall examine such items upon the recommendation of the Permanent Representatives Committee."

**d. Rule 16 Paragraph 1: Chairperson**

28. Rule 16 (1) should be amended to provide that the bureau of the Executive Council shall have the same membership as that of the Assembly.

**e. Proposed Amendment**

29. If the proposal to amend Rule 15 of the Rules of Procedure of the Assembly is accepted (see paragraph 11 above), it is being proposed that Rule 16 (1) be amended to read as follows: "The sessions of the Executive Council shall be chaired by the Minister of Foreign Affairs or any competent authority whose country holds the Chairmanship of the Assembly. He/she shall be assisted by other members of the Bureau, namely, three (3) Vice-Chairpersons and a Rapporteur, whose countries are Members of the bureau of the Assembly."

**f. Rule 16 Paragraph 2: Chairperson**

30. This Rule states inter alia; "Where the Executive Council accepts an invitation from a Member State in conformity with the criteria adopted by the Assembly, the Minister of Foreign Affairs of the host country shall have the right to preside over the Executive Council." In the implementation of this rule, it became evident that there was

an inherent contradiction between the provisions of Rule 16 (1), which stipulates that “The sessions of the Executive Council shall be chaired by the Minister of Foreign Affairs or any competent authority whose country holds the Chairmanship of the Assembly...”, which is for one (1) year, and those provisions of Rule 16 (2) that allow the Foreign Minister of a country hosting any Council session to preside over the session.

**g. Proposed Amendment**

31. It is being proposed that Rule 16 (2) be amended to read as follows: “Where the Executive Council accepts an invitation from a Member State in conformity with the criteria adopted by the Assembly, the Chairperson shall preside over the Session. However, the Minister of Foreign Affairs or any competent authority of the Host Country shall preside over the opening and closing Sessions.”

**h. Rule 38: Voting Procedure**

32. Rule 38 needs to be amended to align it with Rule 42 of the Rules of Procedure of the Assembly.
33. Further, Rule 38 seems to suggest that it relates to elections of Commissioners only, when in actual fact it should clearly indicate that the same procedure would apply to all elections conducted by the Executive Council for other Organs.

**i. Proposed Amendments**

34. Thus, a new paragraph should be added to Rule 38 to read as follows: “Where there are only two candidates initially and neither candidate obtains the majority required after the third ballot, the candidate with fewer votes shall withdraw and the remaining candidate shall proceed to the next round”.
35. Rule 38 seems to suggest that it relates to elections of Commissioners only, when in actual fact it should clearly indicate that the same procedure would apply to all elections conducted by the Executive Council for other Organs.
36. It is also being proposed that Rule 38 be amended to include an additional paragraph, which would read as follows: “This voting procedure shall be applicable to all elections conducted by the Executive Council in respect of other Organs of the African Union.”

#### **IV. STATUTES OF THE COMMISSION**

##### **a. Article 16: Voting Procedure for Election of Commissioners**

37. If the proposed amendment to Rule 42 of the Assembly and Rule 38 of the Executive Council are accepted, Article 16 needs to be amended to make it conform to the existing practice based on interpretation of the rule that where there are only two (2) candidates, the candidate with fewer votes would withdraw after the third round.

##### **b. Proposed Amendment**

38. Thus, a new paragraph should be added to Article 16 to read as follows: “Where there are only two candidates initially and neither candidate obtains the majority required at the third ballot, the candidate with fewer votes shall withdraw”.
39. Further, it is being proposed that Article 16 be amended to include an additional paragraph, which would read as follows: “This voting procedure shall be applicable to all elections in respect of other Organs of the African Union.”

#### **V. RULES OF PROCEDURE OF THE PERMANENT REPRESENTATIVES COMMITTEE**

##### **a. Rule 6: Quorum**

40. In view of the fact that the Quorum for sessions of the Assembly and the Executive Council are two-thirds of the total membership of the Union, it is necessary to align Rule 6 of the Rules of Procedure of the PRC to the other texts.

##### **b. Rule 11: Election of Chairperson**

41. Rule 11 should be amended to provide that the bureau of the Permanent Representatives Committee shall have the same membership as that of the Assembly.

##### **c. Proposed Amendment**

42. If the proposed amendments to Rule 15 and Rule 16 of the Rules of Procedure of the Assembly and Executive Council respectively, are accepted, Rule 11 should be amended to read as follows: “The session of the PRC shall be chaired by the Permanent Representative

whose country holds the Chairmanship of the Assembly. He/she shall be assisted by other members of the Bureau, namely, three (3) Vice-Chairpersons and a Rapporteur from among Permanent Representatives whose countries are Members of the bureau of the Assembly.”

## **VI. CONCLUSIONS AND RECOMMENDATIONS**

43. The Commission is of the view that the amendments proposed to these Rules of Procedures would rectify the inherent contradictions in these Rules as well as facilitate their implementation.
44. The Executive Council is therefore invited to consider the proposed amendments to the Rules of Procedure of the Assembly, its own Rules and those of the PRC as well as the Statutes of the Commission.
45. The Commission also proposes that the Rules of Procedure of the Executive Council should be used for all sectoral meetings and Specialised Technical Committees pending the elaboration and adoption of their own Rules.
46. In this regard, the Commission proposes that the Executive Council adopt a decision to that effect.

**Annexes: Rules of procedure of the Assembly**  
**Rules of procedure of the Executive Council**  
**Rules of procedure of the PRC**  
**Statutes of the Commission**



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**EX.CL/195 (VII)**

**Annex II - a**

**RULES OF PROCEDURE OF THE ASSEMBLY**  
**OF THE UNION**



**AFRICAN  
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ASSEMBLY OF THE AFRICAN UNION

First Ordinary Session

9 - 10 July 2002

Durban, SOUTH AFRICA

**Assembly/AU/2(I) – a Rev.2**

**RULES OF PROCEDURE OF THE ASSEMBLY  
OF THE UNION**

**(With amendments proposed by the PRC and Legal Experts for the  
consideration of the 7<sup>th</sup> Ordinary Session of the Executive Council)**



GENERAL PROVISION

The Assembly of the Union,

Having regard to the Constitutive Act of the African Union, and in particular Article 8,

**HAS ADOPTED THESE RULES OF PROCEDURE:****RULE 1  
Definitions**

In these Rules:

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

**“Chairperson”** unless specified otherwise means the Chairperson of the Assembly;

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

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

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

**“Council”** means the Economic, Social and Cultural Council of the Union;

**“Court”** means the Court of Justice of the Union;

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

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

**“Members of the Commission”**, means the Chairperson, the Deputy Chairperson and the Commissioners;

**“OAU”** means the Organization of African Unity;

**“Parliament”** means the Pan-African Parliament of the Union;

**“PRC”** means the Permanent Representatives’ Committee of the Union;

**“PSC”** means the Peace and Security Council of the Union;

**“RECs”** means the Regional Economic Communities;

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

**“Vice-Chairpersons”** unless specified otherwise means the Vice-Chairpersons of the Assembly;

**CHAPTER I**THE ASSEMBLYSECTION I**COMPOSITION, POWERS AND FUNCTIONS****RULE 2**Status

The Assembly shall be the supreme organ of the Union.



### **RULE 3**

#### **Composition**

The Assembly shall be composed of Heads of State and Government or their duly accredited representatives.

### RULE 4

#### Powers and Functions

1. The Assembly shall:

- a) determine the common policies of the Union, establish its priorities and adopt its annual programme;
- b) monitor the implementation of policies and decisions of the Union as well as ensure compliance by all Member States through appropriate mechanisms;
- c) accelerate the political and socio-economic integration of the continent;
- d) give directives to the Executive Council, the PSC or the Commission on the management of conflicts, wars, acts of terrorism, emergency situations and the restoration of peace;
- e) decide on intervention in a Member State in respect of grave circumstances namely, war crimes, genocide and crimes against humanity;
- f) decide on intervention in a Member State at the request of that Member State in order to restore peace and security;
- g) determine the sanctions to be imposed on any Member State for non payment of assessed contributions, violation of the principles enshrined in the Constitutive Act and these rules, non-compliance with the decisions of the Union and unconstitutional changes of government;
- h) consider and decide on requests for membership of the Union;
- i) adopt the budget of the Union, oversee and direct the financial matters of the Union in accordance with the Financial Rules and Regulations of the Union;
- j) establish any other organ of the Union;
- k) establish new Committees as it may deem necessary;



- l) establish such Specialized Agencies, *Ad hoc* Committees and Commissions, and temporary working groups, as it may deem necessary;
  - m) appoint and terminate the appointment of the Chairperson of the Commission, his/her Deputy and the Commissioners;
  - n) appoint and terminate the appointment of the judges of the Court;
  - o) receive, consider and take decisions on reports and recommendations from the other organs of the Union;
  - p) elect the Chairperson and other Office bearers;
  - q) decide on the venue of its meetings;
  - r) amend the Constitutive Act in conformity with the laid down procedures;
  - s) interpret the Constitutive Act pending the establishment of the Court;
  - t) determine the structure, functions and regulations of the Commission; and
  - u) determine the structure, functions, powers, composition and organization of the Council.
2. The Assembly may delegate any of its powers and functions to any other organ of the Union.

## SECTION II

### SESSIONS

#### **RULE 5**

##### **Venue**

1. The **January** Sessions of the Assembly shall be held at the Headquarters of the Union. **The July Sessions shall also be held at the Headquarters of the Union** unless a Member State invites the Assembly to hold a session in its country.
2. In the event a Member State invites the Assembly to hold a session in its country, that Member State shall be responsible for all extra expenses incurred by the Commission as a result of the session being held outside the Headquarters.



3. Member States offering to host sessions of the Assembly shall not be under sanctions and shall be required to meet pre-determined criteria to be adopted by the Assembly, including adequate logistical facilities and a conducive political atmosphere.
4. Where two (2) or more Member States offer to host a session, the Assembly shall decide on the venue by simple majority.
5. Where a Member State that had offered to host a session of the Assembly 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 6

##### Quorum

The quorum for a session of the Assembly shall be two-thirds of the total membership of the Union.

#### **RULE 7**

##### **Ordinary Sessions**

The Assembly shall meet in ordinary session ~~at least twice~~ a year.

#### RULE 8

##### Agenda of Ordinary Sessions

1. The Assembly shall adopt its Agenda at the opening of each session.
2. The provisional Agenda of an Ordinary Session shall be drawn up by the Executive Council and shall comprise the following:
  - a) Items which the Assembly decided, at a previous session, to place on its agenda;
  - b) Items proposed by the Executive Council;
  - c) Items proposed by the other Organs of the Union that do not report directly to the Executive Council;
  - d) Items proposed by a Member State, provided that the proposal is submitted sixty (60) days before the opening of the session and the supporting document(s) and draft decision(s) have been communicated to the Chairperson of the Commission at least thirty (30) days before the opening of the meeting. **The Assembly shall examine such items together with the recommendations of the Executive Council.**



3. The provisional Agenda shall be divided into two parts as follows:

Part A: Items for adoption without discussion are those on which the Executive Council has reached agreement and for which approval by the Assembly is possible without discussion.

Part B: Items for discussion are those on which agreement has not been reached by the Executive Council, requiring debate before approval by the Assembly.

#### RULE 9

##### Other Agenda Items

Any additional agenda items, which a Member State wishes to raise at a session of the Assembly, 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 10

##### **Opening and Closing Ceremonies**

1. During the opening ceremony of sessions, the following personalities shall be entitled to address the Assembly:
  - a) Chairperson or Head of State or Government of the Host Country;
  - b) Outgoing Chairperson;
  - c) Incoming Chairperson;
  - d) The Secretary General of the UN, in person;
  - e) Chairperson of the Commission.
2. During the closing ceremony of sessions, the following personalities shall be entitled to address the Assembly:
  - a) Chairperson or Head of State or Government ~~if not the Chairperson of the Assembly~~ of the Host Country;
  - b) The personality pronouncing the Vote of thanks.
3. The Assembly may invite any other personality to address the Assembly at the Opening and Closing ceremonies.

#### RULE 11

##### Extraordinary Sessions

1. The Assembly shall meet in extraordinary session at the request of the Chairperson or any Member State. The extraordinary session shall be held upon approval by a two-thirds majority of the Member States.



2. The Chairperson of the Commission shall notify all Member States of the request within seven (7) days of the receipt of such request and advise them to communicate, in writing, their response within a specified period.
3. If the specified period has elapsed and the two-thirds majority required has not been attained, the Chairperson of the Commission shall notify all Member States that the extraordinary session shall not take place.
4. The extraordinary sessions shall be held at the Headquarters of the Union unless a Member State invites the Assembly to hold the session in its country.

#### RULE 12

##### Agenda of Extraordinary Sessions

1. The Chairperson of the Commission shall communicate the provisional agenda 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 the item(s) submitted for consideration in the request for convening the session.

#### RULE 13

##### Open and Closed Sessions

All the sessions of the Assembly shall be closed. The Assembly may, however, decide by simple majority whether any of its sessions shall be open.

#### **RULE 14**

##### **Working Languages**

1. The working languages of the Assembly shall be, if possible, African languages, **including Kiswahili**, Arabic, English, French, Portuguese, and Spanish.
2. Any Head of State or Government may make a statement in any African language provided that he/she makes available simultaneous interpretation into at least one of the working languages, other than an African language, without financial implications to the Union.

#### **RULE 15**

##### **Election of Chairperson**

1. The Assembly shall, on the basis of rotation and agreed criteria, elect a Chairperson for a period of one (1) year. He/she shall be assisted by other members of the Bureau, namely, ~~fourteen (14)~~ **four (4)** Vice-Chairpersons elected on the basis of agreed geographical distribution and after due consultations.



2. Where the Assembly accepts an invitation from a Member State in conformity with the criteria laid down in Rule 5 of these Rules, **the Chairperson shall preside over the Session. However, the Head of State or government or any competent authority of the Host Country shall preside over the opening and closing sessions.**

**3. The Chairperson of the Assembly shall preside over the proceedings of the Extraordinary Sessions.**

### **RULE 16** **Duties of the Chairperson**

1. The Chairperson shall:

- a) convene the sessions of the Assembly;
- b) open and close the sessions;
- c) submit for approval the records of the sessions;
- d) guide the proceedings;
- e) submit to a vote, **where required**, 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 of the proceedings of the Assembly.**

3. In between sessions, the Chairperson **of the Assembly**, in consultation with the Chairperson of the Commission, shall represent the Union in conformity with the fundamental objectives and principles enshrined in the Constitutive Act.

4. In the absence of the Chairperson or in case of a vacancy, the first Vice-Chairperson shall act as the Chairperson.

### RULE 17

#### Attendance and Participation

- 1. The Heads of State or Government shall endeavour to participate personally in the sessions of the Assembly. In the event that they are not in a position to attend personally, they shall be represented by duly accredited representatives.
- 2. The following personalities shall attend the sessions of the Assembly in their official capacity:



- a) The Chairperson of the Commission, his/her Deputy and the Commissioners;
  - b) The President of the Parliament and the Heads of the other organs of the Union; and
  - c) The Chief Executives of the RECs.
3. The Assembly may invite any other personality to attend its sessions.

### SECTION III

#### DECISION-MAKING PROCEDURES

#### RULE 18

##### Majority Required

1. The Assembly shall take all its decisions by consensus or, failing which, by a two-thirds majority of the Member States eligible to vote.
2. **Decisions on** questions of procedure shall **require 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 the Member States eligible to vote.
4. Abstentions by Member States eligible to vote shall not prevent the adoption by the Assembly of decisions by consensus.

#### RULE 19

##### Decisions

1. The text of all proposed decisions shall, upon recommendation by the Executive Council, be submitted in writing to the Assembly for consideration.
2. The original mover of a proposed decision or amendment may, **at any time**, withdraw the decision or amendment. Any Member State may reintroduce the proposed decision or amendment that has been withdrawn.
3. A draft decision shall only be adopted after the Commission has provided its financial implications.



**RULE 20**  
**List of Speakers and Use of Floor**

1. The Chairperson shall, subject to Rule 35 of these Rules, during the debate, grant the use of the floor in the order in which the speakers indicate their intention.
2. A delegation 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 herein.
4. The Chairperson shall, on procedural questions, limit each intervention to a maximum of five (5) minutes.

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

1. During deliberations on any item, 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 vote and decided upon by simple majority.
3. In raising a point of order, the Member State concerned may not speak on the substance of the issue under discussion.

**RULE 22**  
**Closure of Debate**

When a matter has been sufficiently discussed, a Member State may move for the closure of the debate on the item under discussion. In addition to the proposer of the motion, two (2) other Member States may briefly speak in favour of and two (2) others against such motion. The Chairperson shall immediately thereafter put the motion to a vote.



**RULE 23****Adjournment of Debate**

During the discussion of any item, a Member State may move for the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, one (1) Member State may speak in favour of and ~~one~~ **(1) another** against the motion. The Chairperson shall immediately thereafter put the motion to a vote.

**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 20, the following motions shall have precedence, in the order listed below, over all other proposals or motions before the meeting:

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

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

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

**RULE 27****Vote on Decisions**

After the debate has been closed **on an item under discussion**, the Chairperson shall immediately put the proposed decision 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 taking place.



## **RULE 28**

### **Vote on Amendments**

1. A proposal shall be considered as an amendment to a text if it adds or removes parts therefrom or modifies it.
2. When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Assembly shall first vote on the amendment furthest removed in substance from the original proposal. The meeting shall then vote on the amendment next furthest removed therefrom, and so on, until all amendments have been put to a vote.
3. If one or several amendments are adopted, the amended proposal is then put to a vote. If no amendment is adopted, the proposal shall be put to the vote in its original form.

## **RULE 29**

### **Vote on Separate Parts of an Amendment**

Parts of an amendment shall be voted on separately when so requested by a Member State. If this is done, the text resulting from the series of votes shall be put to a vote as a whole. If all operative parts of an amendment have been rejected, the amendment shall be considered to have been rejected as a whole.

## **RULE 30**

### **Methods of Voting**

1. Voting on substantive issues shall be by secret ballot of Member States eligible to vote.
2. Voting on procedural matters shall be taken by any other method as may be determined by the Assembly.

## RULE 31

### **Voting at Elections**

**Elections shall be by secret ballot, except in respect of the Chairperson and the Vice-Chairpersons of the Assembly.**

## SECTION IV

### ASSEMBLY DECISIONS

## **RULE 32**

### **Authentication of Decisions**

Decisions adopted by the Assembly shall be authenticated by the signature of its Chairperson and the Chairperson of the Commission. They shall



be published in all the working languages of the Union in the ‘*Official Journal of the African Union*’ within fifteen (15) days after signature and shall be transmitted to **all** Member States, other organs of the Union and the RECs.

### **RULE 33**

#### **Categorisation of Decisions**

1. The Decisions of the Assembly shall be issued in the following forms:
  - a) Regulations: these are applicable in all Member States which shall take all necessary measures to implement them;
  - b) Directives: these are addressed to any or all Member States, to undertakings or to individuals. They bind Member States to the objectives to be achieved while leaving national authorities with power to determine the form and the means to be used for their implementation;
  - c) Recommendations, Declarations, Resolutions, Opinions etc: These are not binding and are intended to guide and harmonise the viewpoints of Member States.
2. The non-implementation of Regulations and Directives shall attract appropriate sanctions in accordance with Article 23 of the Constitutive Act.

### **RULE 34**

#### **Implementation of Regulations and Directives**

1. Regulations and Directives shall be automatically enforceable thirty(30) days after the date of the publication in the Official Journal of the African Union or as specified in the decision.
2. Regulations and Directives shall be binding on Member States, Organs of the Union and RECs.

### **SECTION V**

#### **SANCTIONS**

### **RULE 35**

#### **Sanctions for Arrears**

1. The Assembly shall determine, on the basis of recommendations of the Executive Council and the PRC, as well as information provided by the Commission, sanctions to be imposed under Article 23 (1) of the Constitutive Act.



2. Subject to paragraph 1 of this Rule, sanctions against a Member State that defaults in the payment of its contributions to the budget of the Union shall be implemented by the Assembly in the following manner:
- a) When in arrears of payment amounting to two (2) years but not exceeding five (5) years of its assessed contributions, suspension of the Member State's right to:
    - i) Speak, vote and receive documentation at meetings of the Union;
    - ii) Offer to host sessions of the Assembly or of the Executive Council or any other meetings of the Union; and
    - iii) Present a candidate for any position or post within the Union;
  - b) When in arrears of payment of contributions amounting to five (5) years or more, in addition to the sanctions in paragraph 2 (a) of this Rule, suspension of the Member State's right to:
    - i) Have the contracts of employment of its nationals renewed; and
    - ii) Provision, by the Union, of funds for new projects in the Member State.
3. When a Member State is under sanctions for non-payment of its contributions as described in the preceding paragraphs, the sanctions may be lifted temporarily if the Member State pays at least 50% of its outstanding arrears, provided that such payment is made **at least** thirty (30) days before the commencement of the session of the Executive Council preceding that of the Assembly.

### **RULE 36**

#### **Sanctions for Non-compliance with Decisions and Policies**

1. The Assembly shall approve, upon the recommendation of the Executive Council, the imposition of sanctions under Article 23 (2) of the Constitutive Act on a Member State that fails, without good and reasonable cause, to comply with the decisions and policies of the Union.
2. Such sanctions may include denial of transport and communication links with other Member States and other measures of a political and economic nature to be determined by the Assembly.
3. When taking any decision in this regard, the Assembly shall stipulate the time frame for compliance and indicate when the failure to comply with that decision will trigger the sanctions regime provided for under Article 23 (2) of the Constitutive Act and this Rule.



4. Member States under sanctions may present their case to the Assembly.

### **RULE 37**

#### **Sanctions for Unconstitutional Changes of Government**

1. Pursuant to Article 30 of the Constitutive Act, **the** Member States in which Governments accede to power by unconstitutional means shall be suspended and shall not participate in the activities of the Union.
2. In conformity with the Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government, the situations to be considered as unconstitutional change shall be, among others:
  - a) Military and other coups d'état against a democratically elected Government;
  - b) Intervention by mercenaries to replace a democratically elected government;
  - c) Replacement of democratically elected governments by armed dissident groups and rebel movements; and
  - d) Refusal by an incumbent government to relinquish power to the winning party after a free and fair election.
- 3. The overthrow and replacement of a democratically elected government by elements assisted by mercenaries shall also be considered as an unconstitutional change of government.**
- 4. Whenever an unconstitutional change of Government takes place, the Chairperson and the Chairperson of the Commission shall:**
  - a) Immediately, on behalf of the Union, condemn such a change and urge the speedy return to constitutional order;
  - b) Convey a clear and unequivocal warning that such an illegal change shall not be tolerated or recognized by the Union;
  - c) Ensure consistency of action at the bilateral, interstate, sub-regional and international levels;
  - d) Request the PSC to convene in order to discuss the matter;
  - e) Immediately suspend the Member State from the Union and from participating in the organs of the Union, provided that exclusion from



participating in the organs of the Union shall not affect that State's membership of the Union and its obligations towards the Union.

5. The Assembly shall immediately apply sanctions against the regime that refuses to restore constitutional order, including but not limited to:
  - a) Visa denials for the perpetrators of the unconstitutional change;
  - b) Restriction of Government to Government contacts;
  - c) Trade restrictions;
  - d) The sanctions provided for in Article 23 (2) of the Constitutive Act and in these Rules;
  - e) Any additional sanction as may be recommended by the PSC.
6. The Chairperson of the Commission in consultation with the Chairperson shall:
  - a) Gather the facts relevant to the unconstitutional change of Government;
  - b) Establish appropriate contacts with the perpetrators with a view to ascertaining their intentions regarding the restoration of constitutional order in the country, without recognizing or legitimizing the perpetrators;
  - c) Seek the contribution of African leaders and personalities in order to get the perpetrators of the unconstitutional change to cooperate with the Union;
  - d) Enlist the cooperation of the RECs to which the country concerned belongs.

## CHAPTER II

### **THE COMMISSION**

#### **SECTION I MEMBERS OF THE COMMISSION**

##### **RULE 38**

##### **Election of the Chairperson and Deputy Chairperson**

1. The Assembly shall elect the Chairperson of the Commission and his/her Deputy by secret ballot and two-thirds majority of Member States eligible to vote.



2. The Chairperson of the Commission and his/her Deputy shall be competent women or men with proven experience in the relevant field, commensurate leadership qualities and a good track record in government, parliament, international organizations or other relevant sectors of society.
3. Candidatures for the Office of the Chairperson of the Commission and his/her Deputy shall be circulated to Member States at least three (3) months before the election.
4. The Chairperson of the Commission and his/her Deputy shall not be from the same region.

### **RULE 39**

#### **Commissioners**

1. The Assembly shall appoint eight (8) Commissioners on the basis of equal geographical distribution. In this regard, the respective regions from which the Chairperson of the Commission and his/her Deputy shall be appointed shall be entitled to only one (1) Commissioner each.
2. The Commissioners shall be competent women or men with proven experience in the relevant field, commensurate leadership qualities and a good track record in government, parliament, international organizations or other relevant sectors of society.
3. Candidatures for the Office of Commissioner shall be circulated to Member States at least three (3) months before the election.

### **RULE 40**

#### **Term of Office**

The term of office of the members of the Commission shall be four (4) years. It shall be renewable only once.

### **RULE 41**

#### **Termination of Appointment**

The Assembly may, by two-thirds majority and following due process conducted by the Executive Council, terminate the appointment of the Chairperson of the Commission, his/her Deputy and the Commissioners on grounds of incompetence, gross misbehaviour or inability to perform the functions of his/her office for reason of permanent incapacity certified by a medical board.

### RULE 42

#### Voting Procedure for the Election of the Members of the Commission



1. The voting shall commence with the election of the Chairperson of the Commission, followed by the Deputy Chairperson, thereafter the Assembly shall ~~endorse~~ appoint the Commissioners elected by the Executive Council.
2. In any election for the Chairperson of the Commission, or his/her Deputy, the balloting shall continue until one of the candidates obtains the two-thirds majority required. Provided that, if the third ballot remains inconclusive, the next ballot shall be restricted to the two candidates who obtained the highest number of votes in the third ballot.
3. If after three further ballots neither of the two (2) candidates obtains the majority required, the candidate with fewer votes shall withdraw.
4. **Where there are only two candidates initially and neither candidate obtains the majority required after the third ballot, the candidate with fewer votes shall withdraw and the remaining candidate shall proceed to the next round.**
5. If the remaining candidate fails to obtain the two-thirds majority required in that round, the Chairperson shall suspend the election.
6. Where there is only one (1) candidate initially and he or she fails to obtain the two-thirds majority required after the third ballot the Chairperson shall suspend the election.
7. The Deputy Chairperson of the Commission shall take over the Chairmanship of the Commission on an interim basis until new elections are held. If the impasse is in respect of the Deputy Chairperson, the most senior Commissioner by length of tenure, or by age where length of tenure is the same, shall be designated to act as the Deputy Chairperson until new elections are held.
8. **This voting procedure provided for in paragraphs 2, 3, 4 and 5 above shall be applicable to all elections conducted by the Assembly in respect of other Organs of the African Union.**

### CHAPTER III

### **FINAL PROVISIONS**

#### **RULE 43 Implementation**

The Assembly may lay down guidelines and supplementary measures to give effect to these Rules.



**RULE 44**  
**Saving Clause**

These Rules shall not adversely affect the decisions of the Assembly of Heads of State and Government of the OAU whose implementation has not started or has started but has not been completed provided that such decisions are not inconsistent with the provisions of the Constitutive Act.

RULE 45  
Amendments

The Assembly may amend these Rules by a two-thirds majority.

RULE 46  
Entry into force

**These Rules shall enter into force upon their adoption by the Assembly.**



**AFRICAN UNION**

**الاتحاد الأفريقي**



**UNION AFRICAINE**

**UNIÃO AFRICANA**

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**EX.CL/195 (VII)**

**Annex II-b**

**RULES OF PROCEDURE OF THE EXECUTIVE COUNCIL**

**(With amendments proposed by the PRC and Legal Experts for the  
consideration of the 7<sup>th</sup> Ordinary Session of the Executive Council)**



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ASSEMBLY OF THE AFRICAN UNION

First Ordinary Session

9 - 10 July 2002

Durban, SOUTH AFRICA

**Assembly/AU/2(I) – b Rev.2**

**RULES OF PROCEDURE OF THE EXECUTIVE COUNCIL**



## GENERAL PROVISION

The Executive Council,

Having regard to the Constitutive Act of the African Union, and in particular Article 12,

**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 Union;
- (b) **“Chairperson”** unless specified otherwise, means the Chairperson of the Executive Council;
- (c) **“Commission”** means the Secretariat of the Union;
- (d) **“Committee”** means a Specialized Technical Committee of the Union;
- (e) **“Constitutive Act”** means the Constitutive Act of the African Union;
- (f) **“Executive Council”** means the Executive Council of Ministers of the Union;
- (g) **“Member State”** means a Member State of the Union;
- (h) **“Members of the Commission”** means the Chairperson, the Deputy Chairperson and the Commissioners;
- (i) **“OAU”** means the Organization of African Unity;
- (j) **“Parliament”** means the Pan-African Parliament of the Union;
- (k) **“PRC”** means Permanent Representatives’ Committee of the Union;
- (l) **“RECs”** means Regional Economic Communities;
- (m) **“Union”** means the African Union established by the Constitutive Act;
- (n) **“Vice-Chairpersons” unless specified otherwise, means the Vice-Chairpersons of the Executive Council;**



## **CHAPTER I EXECUTIVE COUNCIL**

### **SECTION I COMPOSITION, ACCREDITATION, POWERS AND FUNCTIONS**

#### RULE 2

##### **Status**

The Executive Council shall be responsible to the Assembly.

#### **RULE 3 Composition**

The Executive Council shall be composed of Ministers of Foreign Affairs or such other Ministers or authorities duly accredited by the Governments of Member States.

#### RULE 4 Accreditation

1. Delegations of Member States to sessions of the Executive Council shall be duly accredited.
2. The Executive Council shall establish a Credentials Committee.
3. The Rules of Procedure of the Credentials Committee shall be adopted by the Executive Council.

#### RULE 5 Powers and Functions

1. The Executive Council shall:
  - a) prepare the sessions of the Assembly;
  - b) determine the issues to be submitted to the Assembly for decision;
  - c) coordinate and harmonize the policies, activities and initiatives of the Union in areas of common interest to Member States;
  - d) monitor the implementation of the policies, decisions and Agreements adopted by the Assembly;
  - e) elect the Commissioners to be appointed by the Assembly;



- f) elect members of the African Commission on Human and Peoples' Rights, and the African Committee of Experts on the Rights and Welfare of the Child and submit to the Assembly for appointment;
- g) take appropriate action on issues referred to it by the Assembly;
- h) examine the Programme and Budget of the Union and submit them to the Assembly for consideration;
- i) promote cooperation and coordination with the Regional Economic Communities, the African Development Bank (ADB), other African Institutions and the United Nations Economic Commission for Africa (UNECA);
- j) determine policies for cooperation between the Union and Africa's partners and ensure that all activities and initiatives regarding Africa are in line with the objectives of the Union;
- k) decide on the dates and venues of its sessions on the basis of criteria adopted by the Assembly;

**l) appoint its Chairperson and the other office bearers in conformity with the Bureau of the Assembly;**

- m) receive, consider and make recommendations on reports and recommendations from other Organs of the Union that do not report directly to the Assembly;
- n) set up such ad-hoc committees and working groups as it may deem necessary;
- o) consider the reports, decisions, projects and programmes of the Committees;
- p) approve the Rules of the Committees, oversee, monitor and direct their activities;
- q) consider the Staff Rules and Regulations and the Financial Rules and Regulations of the Commission and submit them to the Assembly for adoption;
- r) approve the agreements for hosting the Headquarters, other Organs and Offices of the Union;
- s) consider the structures, functions and Statutes of the Commission and make recommendations thereon to the Assembly;



- t) determine the conditions of service including salaries, allowances and pensions of the Staff of the Union;
  - u) ensure the promotion of gender equality in all programmes of the Union.
2. The Executive Council may delegate any of its powers and functions to the Committees.
  3. The Executive Council may give instructions to the PRC.
  4. The Executive Council may assign tasks to the Commission.

## SECTION II

### SESSIONS

#### **RULE 6**

1. **The Ordinary Sessions of the Executive Council shall be held at the same venue as those of the Assembly.**
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 the session being held 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 Executive Council shall not be under sanctions and shall be required to meet pre-determined criteria to be adopted by the Assembly, including adequate logistical facilities and a conducive political atmosphere.
4. Where two (2) or more Member States offer to host a session, the Executive Council shall decide on the venue by simple majority.
5. Where a Member State that had offered to host a session of the Executive Council is unable to do so, the session shall be held at the Headquarters of the Union.

#### **RULE 7**

### Quorum

**The quorum for a session of the Executive Council shall be two-thirds of the total membership of the Union.**



## RULE 8 Ordinary Sessions

1. The Executive Council shall meet twice a year **in ordinary session. in February and July, or in exceptional cases, on such other dates as shall be agreed, at the initiative of the Commission, in consultation with the Chairperson and Member States. The sessions shall precede those of the Assembly.**
2. **The Executive Council shall examine the Programme and Budget for the next Biennium during its session immediately preceding the July session of the Assembly.**

## RULE 9

### Agenda of Ordinary Sessions

1. The Executive Council shall adopt its Agenda at the opening of each session.
2. The Provisional Agenda of an ordinary session shall be drawn up by the PRC. The Chairperson of the Commission shall communicate it to Member States at least thirty (30) days before the opening of the session. The Agenda may comprise the following:
  - (a) the Report of the Commission;
  - (b) the Report of the PRC;
  - (c) items which the Assembly has referred to the Executive Council;
  - (d) items which the Executive Council decided at a preceding session to place on its agenda;
  - (e) the Draft Programme and Budget of the Union;
  - (f) items proposed by the other organs of the Union;
  - (g) items proposed by a Member State, provided that the proposal is submitted sixty (60) days before the opening of the session and the supporting document(s) and draft decision(s) have been communicated to the Chairperson of the Commission at least thirty (30) days before the opening of the session. The Executive Council shall examine such items together with the recommendation of the Permanent Representatives' Committee.**



- (h) Any Other Business which shall be for information purposes only and shall not be subject to debate or decision.

**3. The Provisional Agenda shall be divided into two parts as follows:**

- Part A: Items for adoption without discussions are those on which the PRC has reached agreement and for which approval by the Executive Council is possible without discussion,
- Part B: Items for discussion are those on which agreement has not been reached by the PRC, requiring debate before approval by the Executive Council.

**RULE 10  
Other Agenda Items**

Any additional agenda item which a Member State wishes to raise at a session of the Executive Council, 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  
Opening and Closing Ceremonies**

1. During the opening ceremony of sessions, the following personalities shall be entitled to address the Executive Council:
  - a) **Chairperson** or Minister of Foreign Affairs or any other competent authority of the Host Country;
  - b) Outgoing Chairperson;
  - c) Incoming Chairperson;
  - d) The Executive Secretary of the United Nations Economic Commission for Africa in person;
  - e) Chairperson of the Commission.
2. During the closing ceremony of sessions, the following personalities shall be entitled to address the Executive Council:
  - a) **Chairperson or Minister of Foreign Affairs of the host country or any other competent authority of the Host Country;**
  - b) The personality pronouncing the Vote of Thanks.
3. The Executive Council may invite any other personality to address the session at the opening or closing ceremonies.



RULE 12Extraordinary Sessions

1. The Executive Council shall meet in extraordinary session at the request of **the Assembly**, the Chairperson, any Member State or the Chairperson of the Commission in consultation with the Chairperson of the Assembly. The extraordinary session shall be held upon approval by a two-thirds majority of the Member States.
2. The Chairperson of the Commission shall notify all Member States of the request within seven (7) days of the receipt of such a request and invite them to communicate, in writing, their response within a specified period.
3. If the specified period has elapsed and the two-thirds majority required has not been attained, the Chairperson of the Commission shall notify all Member States that the extraordinary session shall not take place.
4. The extraordinary sessions shall be held at the Headquarters of the Union unless a member state invites the Executive Council to meet in its Country.

**5. Where two (2) or more Member States offer to host an Extraordinary Session, Member States shall decide on the venue by simple majority.**

**RULE 13**Agenda of Extraordinary Sessions

1. The Chairperson of the Commission shall communicate the Provisional Agenda 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 the item(s) submitted for consideration in the request for convening the session.

RULE 14Open and Closed Sessions

All the sessions of the Executive Council shall be closed. The Executive Council may, however, decide by simple majority whether any of its sessions shall be open.



## RULE 15 Working Languages

1. The working languages of the Executive Council shall be, if possible, African languages **including Kiswahili**, Arabic, English, French, Portuguese, and Spanish.
2. Any Head of Delegation may make a statement in any African language provided that he/she makes available simultaneous interpretation into at least one of the other working languages, other than an African Language, without financial implications to the Union.

## RULE 16 Chairperson

1. The sessions of the Executive Council shall be chaired by the Minister of Foreign Affairs or any competent authority whose country holds the Chairmanship of the Assembly. He/she shall be assisted by other members of the Bureau, namely, **four (4) Vice-Chairpersons whose countries are Members of the Bureau of the Assembly. The Bureau shall appoint a Rapporteur.**
2. Where the Executive Council accepts an invitation from a Member State in conformity with the criteria adopted by the Assembly, **~~the Minister of Foreign Affairs of the host country shall have the right to preside over the Executive Council. the Chairperson of the Executive Council shall preside over the Session. However, the Minister of Foreign Affairs or any competent authority of the Host Country shall preside over the opening and closing sessions.~~**
3. **The Chairperson shall preside over the proceedings of the Extraordinary Sessions of the Executive Council.**

## RULE 17 Duties of the Chairperson

1. The Chairperson shall:
  - a) convene the sessions of the Executive Council;
  - 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 of the proceedings of the Executive Council.**

~~In between sessions, the Chairperson in consultation with the Chairperson of the Commission shall represent the Union, in conformity with the fundamental objectives and principles enshrined in the Constitutive Act.~~

3. In the absence of the Chairperson or in case of a vacancy, the first vice-Chairperson shall act as the Chairperson.

#### RULE 18

##### Attendance and Participation

1. The Ministers of Foreign Affairs shall participate personally in the sessions of the Executive Council. In the event that they are not in a position to attend personally, they shall be represented by duly accredited representatives.
2. The following personalities shall attend the sessions of the Executive Council in their official capacity:
  - a) the Chairperson of the Commission, and his/her Deputy and the Commissioners;
  - b) the President of the Parliament and the Heads of the other organs of the Union;
  - c) the Chief Executives of the RECs.
3. The Executive Council may invite any other personality to attend its sessions.

#### SECTION III

##### DECISION MAKING PROCEDURES

#### RULE 19

##### Majority Required

1. The Executive Council shall take all its decisions by consensus or, failing which, by a two-thirds majority of the Member States eligible to vote.
2. **Decisions on** questions of procedure shall **require 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 Executive Council of decisions by consensus.

## RULE 20

### Decisions

1. The text of all proposed decisions shall, upon recommendation by the PRC, be submitted in writing to the Executive Council for consideration.
2. The original mover of a proposed decision or amendment may **at any time**, prior to it being submitted to a vote, withdraw the decision or amendment. Any **other** Member State may reintroduce the proposed decision or amendment that has been withdrawn.
3. A draft decision shall only be adopted after the Commission has provided its financial implications.

## **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 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 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 herein.
4. The Chairperson shall, on procedural questions, limit each intervention to a maximum of five (5) minutes.

### **RULE 23**

#### **Closure of Debate**

**When a matter has been sufficiently discussed, a Member State may move for the closure of the debate on the item under discussion. In addition to the proposer of the motion, two other Member States may briefly speak in favour of and two against such motion. The Chairperson shall immediately thereafter put the motion to a vote.**

### RULE 24

#### Adjournment of Debate

During the discussion of any item, a Member State may move for the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, one (1) Member State may speak in favour of and **one another** against the motion. The Chairperson shall immediately thereafter put the motion to a vote.

### **RULE 25**

#### **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 26**

#### **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) ~~to~~ suspend the meeting;
- b) ~~to~~ adjourn the meeting;
- c) ~~to~~ adjourn the debate on the item under discussion;
- d) ~~to~~ close the debate on the item under discussion.

#### RULE 27

##### Voting Rights

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

#### **RULE 28**

##### **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 29**

##### **Vote on Amendments**

- 1. A proposal shall be considered as an amendment to a text if it adds or removes parts therefrom or modifies it.
- 2. When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Executive Council shall first vote on the amendment furthest removed in substance from the original proposal. The meeting shall then vote on the amendment next furthest removed therefrom, and so on, until all amendments have been put to a vote.
- 3. If one or several amendments are adopted, the amended proposal shall be put to a vote. If no amendment is adopted, the proposal shall be put to a vote in its original form.



**RULE 30**  
**Vote on Separate Parts of an Amendment**

Parts of an amendment shall be voted on separately when so requested. If this is done, the text resulting from the series of votes shall be put to the vote as a whole. If all operative parts of an amendment have been rejected, the amendment shall be considered to have been rejected as a whole.

**RULE 31**  
**Methods of Voting**

1. Voting on substantive issues shall be by secret ballot of Members States eligible to vote.
2. Voting on procedural matters shall be taken by any other method as may be determined by the Executive Council.

**RULE 32**  
**Voting at Elections**

**Elections shall be by secret ballot, except in respect of the Chairperson of the Executive Council, the Vice-Chairpersons and the Rapporteur.**

**SECTION IV**  
**EXECUTIVE COUNCIL DECISIONS**

**RULE 33**  
**Authentication of Decisions**

Decisions adopted by the Executive Council shall be authenticated by the signature of the Chairperson and the Chairperson of the Commission. They shall be published in all the working languages of the Union in the “*Official Journal of the African Union*” within fifteen (15) days after signature and shall be transmitted to **all** Member States, other organs of the Union and the RECs.

**RULE 34**  
**Categorisation of Decisions**

1. The Decisions of the Executive Council shall be issued in the following forms:



- a) Regulations: these are binding and applicable in all Member States; and national laws shall, where appropriate, be aligned accordingly;
  - b) Directives: these are addressed to any or all Member States, to undertakings or to individuals. They bind Member States to the objectives to be achieved while leaving national authorities with power to determine the form and the means to be used for their implementation;
  - c) Recommendations, declarations, resolutions, opinions etc: These are not binding and are intended to guide and harmonise the view points of Member States;
2. The non-implementation of regulations and directives shall, after approval by the Assembly, attract appropriate sanctions in accordance with Article 23 of the Constitutive Act.

#### RULE 35

##### Implementation of Regulations and Directives

- 1. Regulations and directives shall be automatically enforceable thirty (30) days after the date of the publication in the Official Journal of the African Union or as specified in the decision.
- 2. Regulations and directives shall be binding on Member States, and Organs of the Union.

#### **RULE 36**

##### **Sanctions**

The Executive Council shall apply the sanctions imposed by the Assembly in respect of:

- a) arrears of contributions;
- b) non-compliance with decisions and policies; and
- c) unconstitutional changes of government; as specified in Rules 35, 36, and 37 of the Rules of Procedure of the Assembly.

#### CHAPTER II

##### APPOINTMENT OF THE COMMISSIONERS

#### **RULE 37**

##### **Commissioners**



1. The Executive Council shall, in accordance with the Rules of Procedure of the Assembly and the Statutes of the Commission, elect eight (8) Commissioners on the basis of equal geographical distribution and submit the names to the Assembly for appointment. In this regard, the respective regions from which the Chairperson of the Commission and the Deputy Chairperson shall be appointed by the Assembly, shall be entitled to only one (1) Commissioner each.
2. The Commissioners shall be competent women or men with proven experience in the relevant field, commensurate leadership qualities and a good track record in government, parliament, international organizations or other relevant sectors of society.

### RULE 38

#### Voting Procedure

1. In any election of the Commissioners, the balloting for each portfolio shall continue until one of the candidates obtains the two-thirds majority required. Provided that, if the third ballot remains inconclusive, the next ballot shall be restricted to the two (2) candidates who obtained the highest number of votes in the third ballot.
2. If after three (3) further ballots neither of the two (2) candidates obtains the majority required, the candidate with fewer votes shall withdraw.
3. Where there are only two candidates initially and neither candidate obtains the majority required after the third ballot, the candidate with fewer votes shall withdraw and the remaining candidate shall proceed to the next round.
4. If the remaining candidate, ~~or where there is only one candidate initially and he/she~~, shall proceed to the next round. If he/she fails to obtain the two-thirds majority required in that round, the Chairperson ~~of~~ shall suspend the election.
5. Where there is only one (1) candidate initially and he or she fails to obtain the two-thirds majority required after the third ballot the Chairperson shall suspend the election.
6. This voting procedure shall be applicable to all elections conducted by the Executive Council in respect of other Organs of the African Union.

## CHAPTER III FINAL PROVISIONS

### RULE 39



### **Financial Year**

The Financial Year of the Union shall begin on 1 January and close on 31 December.

### **RULE 40 Implementation**

The Executive Council may lay down guidelines and supplementary measures to give effect to these Rules.

### **RULE 41 Saving Clause**

These Rules shall not affect decisions of the Council of Ministers of the OAU whose implementation has not started or has started but has not been completed provided that such decisions are not inconsistent with the provisions of the Constitutive Act.

### RULE 42 Amendments

The Executive Council may amend these Rules by a two-thirds majority.

### RULE 43 Entry into Force

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



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**EX/CL/195 (VII)**

**Annex II -c**

**RULES OF PROCEDURE OF THE PERMANENT REPRESENTATIVES'**  
**COMMITTEE**

**(With amendments proposed by the PRC and Legal Experts for the  
consideration of the 7<sup>th</sup> Ordinary Session of the Executive Council)**



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ASSEMBLY OF THE AFRICAN UNION

First Ordinary Session

9 - 10 July 2002

Durban, SOUTH AFRICA

**Assembly/AU/2(I) - c Rev. 2**

**RULES OF PROCEDURE OF THE PERMANENT REPRESENTATIVES'**  
**COMMITTEE**



GENERAL PROVISION

The Executive Council,

Having regard to the Constitutive Act of the African Union, and in particular Article 5 and 21 of the Constitutive Act,

**HAS ADOPTED THESE RULES OF PROCEDURE:**

**Rule 1  
Definitions**

In these Rules:

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

**“Chairperson”** unless otherwise specified means the chairperson of the PRC;

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

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

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

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

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

**“NEPAD”** means the New Partnership for Africa’s Development;

**“OAU”** means the Organization of African Unity;

**“Parliament”** means the Pan-African Parliament of the Union;

**“PRC”** means the Permanent Representatives’ Committee;

**“RECs”** means the Regional Economic Communities;

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

**“Vice-Chairpersons” means the Vice-Chairpersons of the PRC.**

**CHAPTER I  
The PRC**

**SECTION I  
COMPOSITION, POWERS AND FUNCTIONS**

**Rule 2  
Status of the PRC**

The PRC shall be responsible to the Executive Council.

**Rule 3  
Composition**

1. The PRC shall be composed of Permanent Representatives accredited to the Union and other duly accredited plenipotentiaries of Member States.



2. Member States shall ensure that they are represented in the PRC by a Permanent Representative, resident at the Headquarters of the Union or other duly accredited Plenipotentiaries. Pending full implementation of this recommendation, a Member State, not represented at the Headquarters, may designate another country from its region to represent it.

**Rule 4  
Powers and Functions**

1. The PRC shall, inter-alia:
  - (a) act as an advisory body to the Executive Council;
  - (b) prepare its Rules of Procedure and submit them to the Executive Council;
  - (c) prepare the meetings of the Executive Council, including the agenda and draft decisions;
  - (d) make recommendations on areas of common interest to Member States particularly on issues on the agenda of the Executive Council;
  - (e) facilitate communication between the Commission and the capitals of Member States;
  - (f) consider the Programme and Budget of the Union as well as administrative, budgetary and financial matters of the Commission and make recommendations to the Executive Council;
  - (g) consider the Financial Report of the Commission and make recommendations to the Executive Council;
  - (h) consider the Report of the Board of External Auditors and submit written comments to the Executive Council;
  - (i) consider reports on the implementation of the budget of the Union;
  - (j) propose the composition of the Bureaus of the organs of the Union ad-hoc committees and sub-committees;
  - (k) consider matters relating to the programmes and projects of the Union particularly issues relating to the socio-economic development and integration of the Continent and make recommendations thereon to the Executive Council;



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- (l) consider reports on the implementation of the policies, decisions and agreements adopted by the Executive Council;
  - (m) participate in the preparation of the Programme of Activities of the Union.
  - (n) participate in the preparation of the calendar of meetings of the Union;
  - (o) consider any matter assigned to it by the Executive Council;
  - (p) carry out any other functions that may be assigned to it by the Executive Council.
2. The PRC may set up such ad-hoc committees and temporary working groups, as it deems necessary, including a sub-committee on Headquarters and Host Agreements, NEPAD and the Cairo Plan of Action of the Africa/Europe Summit.

**3. The functioning, mandate, composition and term of office of such ad-hoc committees and temporary working groups shall be determined by the PRC. The quorum for meetings of such Sub-Committees or temporary working groups shall be a simple majority.**

**SECTION II  
SESSIONS**

**Rule 5  
Venue**

1. The sessions of the PRC shall be held at the Headquarters of the Union at least once a month;
2. The sessions of the PRC preceding the sessions of the Executive Council may be held at the same venue as those of the Executive Council.

**Rule 6**

Quorum

**The quorum for a session of the PRC shall be two-thirds of the total membership of the Union ~~Member States eligible to vote.~~**

**Rule 7  
Agenda of Ordinary Sessions**

1. The PRC shall adopt its agenda at the opening of each Session.



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2. The Provisional Agenda for each session shall be drawn up by the Chairperson, in consultation with the Bureau and **the Chairperson of the Commission.**
3. **Any Member State, organ of the Union, or REC may propose items for inclusion in the Provisional Agenda,** and shall submit to the Chairperson of the Commission all relevant documentation at least five (5) working days prior to the session.
4. The Provisional Agenda shall consist of those items in respect of which a request for inclusion **and relevant documentation have** reached the Chairperson of the Commission at least five (5) working days before the date of the session. **Thereafter the Chairperson of the Commission shall circulate the Provisional Agenda as soon as possible.**
5. The only items which shall form the Provisional Agenda shall be those in respect of which the relevant documentation has been transmitted to the Commission in time to be circulated to the members of the PRC in accordance with paragraph (3) of this Rule.

**Rule 8  
Extraordinary Sessions**

The PRC shall meet in extraordinary session to prepare for the extraordinary sessions of the Executive Council. The Agenda shall comprise only item(s) submitted for consideration in the request for convening the meeting of the Executive Council.

Rule 9  
Open and Closed Sessions

All the sessions of the PRC shall be closed. The PRC may, however, decide, by simple majority, whether any of its sessions shall be open.

**Rule 10  
Working Languages**

The working languages of the PRC shall be, if possible, African languages, **including Kiswahili**, Arabic, English, French, Portuguese, and Spanish.

**Rule 11  
~~Election of~~ Chairperson**

The session of the PRC shall be chaired by the Permanent Representative whose country holds the Chairmanship of the Assembly. He/she shall be assisted by other members of the Bureau, namely, **four (4) Vice-Chairpersons whose countries are members of the Bureau of the**



**Assembly.** The Bureau shall appoint a Rapporteur in conformity with the Bureau of the Executive Council.

**Rule 12**  
**Duties of the Chairperson**

7. The Chairperson shall:

- a) convene the sessions of the PRC;
- 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.

**8. The Chairperson shall ensure order and decorum of the proceedings of the PRC.**

**9. In the absence of the Chairperson or in case of a vacancy, the first vice-Chairperson shall act as the Chairperson.**

SECTION III

DECISION MAKING PROCEDURES

Rule 13

Majority Required

1. The PRC shall take all its decisions by consensus or, failing which, by a two-thirds majority of Member States **eligible to vote.**
2. **Decisions on** questions of procedure shall **be taken by** a simple majority of the Member States **of the Union 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.**

Rule 14

Decisions

1. The text of all proposed decisions shall be submitted in writing to the Executive Council for consideration.
2. The original mover of a proposed decision or amendment may, prior to **it** being submitted to a vote, withdraw the decision or amendment. Any other Member State may reintroduce the proposed decision or amendment that has been withdrawn.



**Rule 15  
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 shall not speak on the substance of the issue under discussion.

**Rule 16  
List of Speakers and Use of Floor**

1. The Chairperson shall, subject to Rule 15, during the debate, grant the use of the floor in the order in which the speakers indicate their intention.
2. A delegation 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 the Chairperson's 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.
4. The Chairperson shall, on procedural questions, limit each intervention to a maximum of five (5) minutes.

**Rule 17  
Closure of Debate**

When a matter has been sufficiently discussed, a Member State may move for the closure of the debate on the item under discussion. In addition to the proposer of the motion, two (2) Member States may briefly speak in favour of



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and two others against such motion. The Chairperson shall immediately thereafter put the motion to a vote.

Rule 18

Adjournment of Debate

During the discussion of any item, a Member State may move for the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, one (1) Member State may speak in favour of and ~~one~~ **another** against the motion. The Chairperson shall immediately thereafter put the motion to a vote.

**Rule 19**

**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 motion shall be permitted. The Chairperson shall immediately put such motion to a vote.

**Rule 20**

**Order of Procedural Motions**

Subject to Rule 15, the following motions shall have precedence in the order listed below, over all other proposals or motions before the meeting:

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

Rule 21

Voting Rights

1.  
State shall have one vote.

Subject to sub-rule 2, each Member

2.  
in terms of Article 23 of the  
right to vote.

Member States, subject to sanctions  
Constitutive Act, shall not have the



**Rule 22**  
**Vote on Decisions**

After the debate has been closed, the Chairperson shall immediately put to the vote the draft decision 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 23**  
**Vote on Amendments**

1. A proposal shall be considered as an amendment to a text if it adds or removes parts therefrom or modifies it.
2. When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the PRC shall first vote on the amendment furthest removed in substance from the original proposal. The meeting shall then vote on the amendment next furthest removed therefrom, and so on, until all amendments have been put to the vote.
3. If one or several amendments are adopted, the amended proposal is then put to the vote. If no amendments are adopted, the proposal shall be put to the vote in its original form.

**Rule 24**  
**Vote on Separate Parts of an Amendment**

Parts of an amendment shall be voted on separately when so requested. If this is done, the text resulting from the series of votes shall be put to a vote as a whole. If all operative parts of an amendment have been rejected, the amendment shall be considered to have been rejected as a whole.

**Rule 25**  
**Methods of Voting**

1. On substantive issues, the PRC shall take decisions by consensus or, failing which, by votes taken by secret ballot and by two-thirds majority of Member States eligible to vote.
2. Decisions on procedural matters shall be taken by any other method as may be determined by the PRC by simple majority.



**CHAPTER II**  
**FINAL PROVISIONS**

**Rule 26**  
**Decisions**

Decisions of the PRC shall be recommendations until adopted by the Executive Council.

**Rule 27**  
**Implementation**

The PRC shall lay down guidelines and supplementary measures for the implementation of these Rules.

**Rule 28**  
**Amendments**

The PRC may propose to the Executive Council amendments to these Rules.

**Rule 29**

**Entry into force**

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



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**EX.CL/195 (VII)**

**Annex II-d**

**STATUTES OF THE COMMISSION OF THE AFRICAN UNION**



**AFRICAN UNION**  
**الاتحاد الأفريقي**



**UNION AFRICAINE**  
**UNIÃO AFRICANA**

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Addis Ababa, ETHIOPIA    P. O. Box 3243    Telephone 517 700    Cables: OAU, ADDIS ABABA

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ASSEMBLY OF THE AFRICAN UNION  
First Ordinary Session  
9 - 10 July 2002  
Durban, SOUTH AFRICA

**Assembly/AU/2(I) – d Rev. 3**

**STATUTES OF THE COMMISSION**  
**OF THE AFRICAN UNION**



## GENERAL PROVISION

The Commission shall be the Secretariat of the Union and shall act as such in conformity with articles 5 and 20 of the Constitutive Act of the African Union.

### Article 1 Definitions

In these Statutes:

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

**“Chairperson”** means the Chairperson of the Commission unless otherwise specified;

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

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

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

**“Council”** means the Economic, Social and Cultural Council of the Union;

**“Court”** means the Court of Justice of the Union;

**“CSSDCA”** means the Conference on Security, Stability, Development and Co-operation in Africa;

**“Deputy Chairperson”** means the Deputy Chairperson of the Commission unless otherwise specified.

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

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

**“Members of the Commission”** means the Chairperson, the Deputy Chairperson and the Commissioners;

**“NEPAD”** means the New Partnership for Africa’s Development.

**“OAU”** means the Organization of African Unity;

**“Parliament”** means the Pan-African Parliament of the Union;

**“PRC”** means the Permanent Representatives’ Committee of the Union;

**“RECs”** means the Regional Economic Communities;

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

### Article 2 Composition

1. The Commission shall be composed of the following members:

- a) a Chairperson;
- b) one Deputy Chairperson; and
- c) eight (8) Commissioners.

2. The Assembly may, when it deems necessary, review the number of Commissioners.



3. The Members of the Commission shall be assisted by the necessary staff for the smooth functioning of the Commission.

### Article 3

#### Functions

1. The Commission shall carry out the functions assigned to it under the Constitutive Act, those specified in Protocols thereto, decisions of the Union as well as those established in these Statutes.
2. The Commission shall:
  - a) represent the Union and defend its interests under the guidance of and as mandated by the Assembly and the Executive Council;
  - b) initiate proposals for consideration by other organs;
  - c) implement the decisions taken by other organs;
  - d) organise and manage the meetings of the Union;
  - e) act as the custodian of the Constitutive Act, its protocols, the treaties, legal instruments, decisions adopted by the Union and those inherited from the OAU;
  - f) establish, on the basis of approved programmes, such operational units as it may deem necessary;
  - g) coordinate and monitor the implementation of the decisions of the other organs of the Union in close collaboration with the PRC and report regularly to the Executive Council;
  - h) assist Member States in implementing the Union programmes and policies, including, CSSDCA and NEPAD;
  - i) work out draft common positions of the Union and coordinate the actions of Member States in international negotiations;
  - j) prepare the Union's Programme and Budget for approval by the policy organs;
  - k) manage the budgetary and financial resources including collecting the approved revenue from various sources, establishing fiduciary, reserve and special Funds with the appropriate approvals, and accepting donations and grants that are compatible with the objectives and principles of the Union;



- l) manage the assets and liabilities of the Union according to laid down regulations and procedures;
- m) prepare strategic plans and studies for the consideration of the Executive Council;
- n) take action in the domains of responsibility as may be delegated by the Assembly and the Executive Council. The domains shall include the following:
  - i) control of pandemics;
  - ii) disaster management;
  - iii) international crime and terrorism;
  - iv) environmental management;
  - v) negotiations relating to external trade;
  - vi) negotiations relating to external debt;
  - vii) population, migration, refugees and displaced persons;
  - viii) food security;
  - ix) socio-economic integration; and
  - x) all other areas in which a common position has been established.
- o) mobilize resources and devise appropriate strategies for self-financing, income generating activities and investment for the Union;
- p) promote integration and socio-economic development;
- q) strengthen cooperation and co-ordination of activities between Member States in fields of common interest;
- r) ensure the promotion of peace, democracy, security and stability;
- s) provide operational support to the Peace and Security Council;
- t) elaborate, promote, coordinate and harmonise the programmes and policies of the Union with those of the RECs;
- u) prepare and submit an annual report on the activities of the Union to the Assembly, the Executive Council and the Parliament;
- v) prepare the Staff Rules and Regulations for approval by the Assembly;
- w) implement the decisions of the Assembly regarding the opening and closing down of sections, administrative or technical offices;



- x) follow up and ensure the application of the Rules of Procedure and Statutes of the organs of the Union;
- y) negotiate, in consultation with the PRC, with the host countries, the Host Agreements of the Union and those of its administrative or technical offices;
- z) build capacity for scientific research and development for enhancing socio-economic development in the Member States;
- aa) strive for the promotion and popularization of the objectives of the Union;
- bb) collect and disseminate information on the Union and set up and maintain a reliable database;
- cc) ensure the mainstreaming of gender in all programmes and activities of the Union;
- dd) undertake research on building the Union and on the integration process;
- ee) develop capacity, infrastructure and maintenance of intra-continental information and communication technology; and
- ff) prepare and submit to the Executive Council for approval, administrative regulations, standing orders and Rules and Regulations for the management of the affairs of the Union and keeping proper books of accounts.

#### **Article 4**

#### **Obligations**

1. In the performance of their duties, the Members of the Commission and the other staff shall not seek or receive instructions from any government or from any other authority external to the Union. They shall refrain from any action which may reflect adversely on their position as international officials responsible only to the Union.
2. Each Member State undertakes to respect the exclusive character of the responsibilities of the Members of the Commission and the other staff and shall not influence or seek to influence them in the discharge of their responsibilities.
3. The Members of the Commission and the other staff shall not, in the discharge of their duties, engage in any other occupation, whether gainful or not. When taking up their duties they shall give a solemn undertaking



that, both during and after their term of office, they shall respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion and to regulate their conduct with only the interests of the Union in view, and not to seek or accept instructions from the Government of any Member State or authority external to the Union.

4. In the event of any breach of these obligations, the Assembly may, on application by the Executive Council or the Commission, decide disciplinary measures to be applied to the Members of the Commission.
5. In the event of breach of these obligations, by other staff, the internal procedures set out in the Staff Rules and Regulations shall be applied provided that the staff member concerned shall have a right of appeal, after exhausting all the internal administrative measures, to the Court.

#### **Article 5** **Headquarters of the Commission**

1. The Commission shall be based at the Headquarters of the Union in the city of Addis Ababa, Ethiopia.
2. The Headquarters is for the official use of the Union.
3. The Chairperson may authorise the holding of meetings or social functions at the Headquarters or other offices of the Union when such meetings or functions are closely linked or are compatible with the objectives and principles of the Union.

#### **Article 6** **Election of Members of the Commission**

1. The election of Members of the Commission shall be governed by the Rules of Procedure of the Assembly, of the Executive Council and these Statutes.
2. The region from which the Chairperson and the Deputy Chairperson are appointed, shall be entitled to one (1) Commissioner each. All other regions shall be entitled to two (2) Commissioners.
3. At least one (1) Member of the Commission from each region shall be a woman.

#### **Article 7** **The Chairperson**

1. The functions and responsibilities of the Chairperson shall be:
  - a) ~~the~~ Chief Executive Officer;



- b) ~~the~~ legal representative of the Union;
  - c) ~~the~~ Accounting Officer of the Commission;
2. The Chairperson shall be directly responsible to the Executive Council for the effective discharge of his/her duties.

### **Article 8**

#### **Functions of the Chairperson**

1. The functions of the Chairperson shall be to, *inter alia*:
- a) chair all meetings and deliberations of the Commission;
  - b) undertake measures aimed at promoting and popularising the objectives of the Union and enhancing its performance;
  - c) promote cooperation with other organizations for the furtherance of the objectives of the Union;
  - d) participate in and keep records of the deliberations of the Assembly, the Executive Council, the PRC, the Committees and any other organs of the Union as may be required;
  - e) submit reports requested by the Assembly, the Executive Council, the PRC, the Committees and any other organs of the Union as may be required;
  - f) prepare, in conjunction with the PRC, and submit the Staff Rules and Regulations to the Executive Council, for approval;
  - g) prepare, together with the PRC, and transmit to Member States the Budget, Audited Accounts and Programme of Work at least one (1) month before the commencement of the sessions of the Assembly and the Executive Council;
  - h) act as depository of all Union and OAU Treaties and other legal instruments of the Union and perform depository functions thereof;
  - i) act as a depository for instruments of ratification, accession or adherence of all international agreements concluded under the auspices of the Union and communicate information in this respect to Member States;
  - j) receive copies of international agreements entered into between or amongst Member States;



- k) receive the notification of Member States which may desire to renounce their membership in the Union as provided for in Article 31 of the Constitutive Act;
- l) communicate to Member States, and include in the Agenda of the Assembly, as provided in Article 32 of the Constitutive Act, written requests of Member States for amendments or revisions to the Constitutive Act;
- m) circulate the provisional agenda of sessions of the Assembly, the Executive Council and the PRC to Member States;
- n) receive proposals, together with explanatory notes, for the inclusion of items on the agenda of the Assembly and the Executive Council at least sixty (60) days prior to the session;
- o) receive and circulate requests which conform to the correct Rules of Procedure of the Assembly or the Executive Council, from any Member State, for the convening of an extraordinary session of the Assembly or the Executive Council;
- p) in conjunction with the PRC, assess the need for branches, administrative and technical offices as may be considered necessary for the adequate functioning of the Commission, and create or abolish them as necessary, with the approval of the Assembly;
- q) consult and coordinate with the Governments and other institutions of Member States and the RECs, on the activities of the Union;
- r) appoint the staff of the Commission in accordance with the provisions of Article 18 of these Statutes;
- s) assume overall responsibility for the administration and finances of the Commission;
- t) prepare an Annual Report on the activities of the Union and its organs;
- u) carry out diplomatic representations of the Union;
- v) liaise closely with the organs of the Union to guide, support and monitor the performance of the Union in the various areas to ensure conformity and harmony with agreed policies, strategies, programmes and projects;



- w) carry out such other functions as may be determined by the Assembly or the Executive Council;
  - x) supervise the functioning of the Headquarters and other offices of the Union;
  - y) coordinate all activities and programmes of the Commission related to gender issues.
2. The Chairperson may delegate any of his/her functions to the Deputy Chairperson ~~of the Commission~~ and in the absence of the latter, to one of the Commissioners.

### **Article 9** **The Deputy Chairperson**

1. The Deputy Chairperson shall, in the discharge of his/her responsibilities, be accountable to the Chairperson. He/she shall have, *inter alia*, the following functions:
  - (a) assist the Chairperson in the exercise of his/her functions;
  - (b) exercise the functions delegated to him/her by the Chairperson;
  - (c) shall be in charge of the administration and finance of the Commission;
  - (d) act as Chairperson in case of death or permanent incapacity of the latter, pending the appointment of a new Chairperson;
  - (e) act as Chairperson in the absence or in case of temporary incapacity of the latter.
2. In case of absence, death, temporary or permanent incapacity of the Deputy Chairperson, the Chairperson shall, in consultation with the Chairperson of the Assembly, appoint one (1) of the Commissioners to act as the Deputy Chairperson, pending the return of the incumbent or the appointment of a new Deputy Chairperson, as the case may be.

### **Article 10** **Term of Office and Termination of Office**

1. The term of office of the members of the Commission shall be four (4) years. The Members may be eligible to compete for re-election for another term of four (4) years.



2. When so required for the good functioning of the Union, the Assembly may terminate the appointment of a Member of the Commission, based on the provisions of these Statutes.
3. Where, due to any reason, a Commissioner is unable to take up office or complete his/her term of office, the region from which that Commissioner was appointed, shall be given the opportunity to present a candidate to complete the remaining term.

### **Article 11** **The Commissioners**

Each Commissioner shall be responsible for the implementation of all decisions, policies and programmes in respect of the portfolio for which he/she has been elected, and be accountable to the Chairperson.

### **Article 12** **Portfolios of the Commission**

1. The portfolios of the Commission shall be as follows:
  - a) PEACE AND SECURITY (Conflict Prevention, Management and Resolution, and Combating Terrorism...);
  - b) POLITICAL AFFAIRS (Human Rights, Democracy, Good Governance, Electoral Institutions, Civil Society Organizations, Humanitarian Affairs, Refugees, Returnees and Internally Displaced Persons);
  - c) INFRASTRUCTURE AND ENERGY (Energy, Transport, **Communications**, Infrastructure and Tourism...);
  - d) SOCIAL AFFAIRS (Health, Children, Drug Control, Population, Migration, Labour and Employment, Sports and Culture...);
  - e) HUMAN RESOURCES, SCIENCE AND TECHNOLOGY (Education, Information Technology Communication, Youth, Human Resources, Science and Technology...);
  - f) TRADE AND INDUSTRY (Trade, Industry, Customs and Immigration Matters...);
  - g) RURAL ECONOMY AND AGRICULTURE (Rural Economy, Agriculture and Food Security, Livestock, Environment, Water and Natural Resources and Desertification...);
  - h) ECONOMIC AFFAIRS (Economic Integration, Monetary Affairs, Private Sector Development, Investment and Resource Mobilization...).
2. Considering that gender issues are cross-cutting through all the portfolios of the Commission, a special unit shall be established in the Office of the Chairperson to coordinate all activities and programmes of the Commission related to gender issues.



### **Article 13**

#### **Nomination of the Commissioners**

There shall be a pre-selection process at the regional level. Each region shall nominate two (2) candidates, including a woman, for each portfolio. The nomination process shall be based on modalities to be determined by the region. The candidates selected at the regional level shall form part of the continental pool without prejudice to the scrupulous respect of the provisions of Article 6 (2) of these Statutes.

### **Article 14**

#### **Central Pre-selection Process**

1. A panel consisting of two (2) representatives from each region shall be established for the central selection exercise.
2. The panel shall be made up of Ministers assisted by a team of independent consultants.
3. The panel shall submit, for election by the Executive Council, a list of at least two (2) candidates for each portfolio. The shortlist of candidates shall take into account the agreed regional geographic distribution formula.

### **Article 15**

#### **Qualifications and Experience of the Commissioners**

1. The Commissioners shall possess minimal educational qualifications not below the first degree, or equivalent, from a recognized university.
2. They shall also possess a significant and wide-ranging working experience with a good track record in government, parliament, international organizations, a recognized university, multinational or private sector organizations.
3. Only nationals of Member States shall be appointed as Commissioners, provided that no two (2) Commissioners shall be nationals of the same Member State. A minimum age criteria of thirty-five (35) years shall apply.

### **Article 16**

#### **Voting Procedure for Election of Commissioners**



1. Nominations for the office of Commissioners shall be circulated to Member States at least three (3) months before election.
2. Where no candidate obtains, in the first ballot, the two-thirds majority required for his/her election, the balloting shall continue until one of the candidates obtains the two-thirds majority required. If the third ballot remains inconclusive, the next ballot shall be restricted to the two (2) candidates who obtain the greatest number of votes in the third ballot.
3. **Where there are only two candidates initially and neither candidate obtains the majority required after at the third ballot, the candidate with fewer votes shall withdraw.**
4. If after three further ballots neither of the two (2) candidates obtains the majority required, the candidate with the fewer votes shall **be obliged to** withdraw. ~~— The ballot shall then proceed to elect the remaining candidate.~~
5. If the remaining candidate, fails to secure the required two-thirds majority, the election shall be suspended until the next session of the Executive Council. The Chairperson shall, in consultation with the Chairperson of the Executive Council, appoint one of the Commissioners to act until a new Commissioner has been appointed in accordance with these Statutes.
6. Where there is only one (1) candidate initially and he or she fails to obtain the two-thirds majority required after the third ballot, the Chairperson of the Executive Council shall suspend the elections and the provisions in paragraph 5 above shall apply.

### **Article 17**

#### **Rules of Procedure**

The Commission shall adopt its own Rules of Procedure.

### **Article 18**

#### **VIII. Appointment of other Staff of the Commission**

1. The Members of the Commission shall be assisted, in the discharge of their functions, by a corps of suitably qualified, experienced and well-motivated senior administrative, professional and technical staff.
2. Appointment of senior administrative, professional and technical staff of the Commission shall be made by a Recruitment Board, comprising the



Members of the Commission, the Head of Human Resources, the Legal Counsel and a Representative of the Staff Association.

3. The recruitment of senior administrative, professional and technical staff of the Commission shall be undertaken after consultation with the ~~Advisory Sub Committee on Administrative, Budgetary and Financial Matters of the PRC.~~
4. The remaining general/ancillary staff of the Commission shall be recruited and appointed in terms of a mechanism and procedures contained in reviewed Staff Rules and Regulations.
5. The recruitment process shall be conducted in accordance with elaborate recruitment procedures calculated to ensure the utmost transparency and objectivity.
6. In recruiting senior administrative, professional and technical staff, the Recruitment Board shall:
  - a) uphold the principles of equitable geographical representation and gender equality; and
  - b) apply a quota system recommended by the Executive Council and approved by the Assembly on the basis of a minimum number of posts allocated to a Member State, and additional posts allocated on the basis of agreed criteria including assessed contributions.
7. Paramount in the employment of the staff referred to in the preceding paragraph shall be the need to guarantee the highest standards of competence, efficiency and integrity.
8. Nationals of Member States which are under sanctions for defaulting in the payment of assessed contributions to the budget of the Union amounting to two (2) years or more or for failure to comply with the decisions and policies of the Union shall not be eligible for appointment.
9. The preceding provision shall also be applicable to recruitment for projects financed by extra-budgetary resources/funds.
10. The promotion and advancement of the senior administrative, professional and technical staff of the Commission shall be carried out by a Promotions Board, based on the following criteria, among others:
  - a) annual performance evaluation reports;
  - b) result of competitive examination and interviews to be conducted by a Board made up of representatives of the Commission, and the Staff Association.



11. A Disciplinary Board, which shall be composed of representatives of the Commission shall be set up under the Staff Rules and Regulations. The type of misconduct to attract disciplinary measures shall be spelt out in the Staff Rules and Regulations to be drawn up by the Commission and approved by the Executive Council.
12. The Commission shall maintain a package of remuneration and conditions of service comparable to those obtainable in other international organizations, multilateral institutions and the private sector organizations of equivalent status, in order to attract and retain the appropriate calibre of employees.

### **Article 19** **Privileges and Immunities**

- 1. The Headquarters of the Union, other organs and administrative and technical offices of the Union shall be governed by Host Agreements negotiated by the Commission with the Host countries and approved by the Executive Council and reviewed periodically to ensure strict compliance and facilitate the smooth functioning of the Commission.**
2. The Headquarters and other organs and administrative and technical offices of the Union shall enjoy the privileges and immunities stipulated in the General Convention on Privileges and Immunities of the OAU/AU, the Vienna Convention on Diplomatic Relations and the Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations.

### **FINANCES OF THE UNION**

#### **Article 20** **Programme and Budget**

- 1. The Commission shall prepare the Programme and Budget of the Union every two (2) years and shall submit it, through the PRC and the Executive Council, to the Assembly for consideration.**
2. The proposed Programme and Budget shall include:
  - a) the programme of activities of the Commission;
  - b) the expenses of the Assembly, the Executive Council, the Committees and other organs of the Union;



- c) a list of contributions made by Member States in accordance with the scale of assessment established by the Executive Council;
- d) an estimate of the various incomes of the Union;
- e) a description of the financial status of the Working Fund as created under these Statutes;
- f) staff nominal rolls of the Commission.

**3. In preparing the Programme and Budget of the Union, the Commission shall consult the different organs of the Union.**

**Article 21  
Financial Resources**

- 1. The Chairperson shall, as soon as the Assembly approves the Budget, communicate it to the Member States, with all pertinent documents, at least three (3) months before the first day of the Financial Year.
- 2. The budget shall be accompanied by a list indicating the assessed annual contributions in respect of each Member State.
- 3. The assessed annual contribution of each Member State becomes due on the first day of the Financial Year, namely 1 January.
- 4. The Chairperson shall submit to Member States a quarterly statement on payments of contributions and outstanding contributions.

**Article 22  
General Fund**

**1. There shall be a General Fund, in which the following categories of accounts shall be maintained:**

- a) annual Contributions of Member States;
- b) miscellaneous income including donations and grants; and
- c) advances from the Working Fund.

**2. All expenditures established in the budget shall be met from the General Fund.**

**Article 23**

**Special Funds**



**The Chairperson may establish Special Funds including fiduciary funds, reserve funds, with the approval of the Executive Council. The objectives and limitations of these funds shall be defined by the Executive Council. These funds shall be administered in separate accounts, as provided for in the Financial Rules and Regulations of the Union.**

#### **Article 24**

##### **Gifts and Other Donations**

1. The Chairperson, may accept, on behalf of the Union, gifts, bequests and other donations made to the Union, provided that such donations are consistent with the objectives and principles of the Union and shall remain the property of the Union.
2. In the case of monetary donations for specific purposes, these funds shall be treated as fiduciary or special funds as provided for in Article 23 of these Statutes. Monetary donations for no specific purposes shall be considered as miscellaneous income.

#### **Article 25**

##### **Deposit of Funds**

The Commission shall determine the financial Institutions in which the funds of the Union shall be deposited. The interests accrued by such funds, including the Working Fund, shall be entered as miscellaneous income.

#### **Article 26**

##### **Accounts and Auditing**

1. The accounts of the Union shall be maintained in the currencies specified by the Executive Council on the proposal of the Commission.
2. The Chairperson shall ensure that the accounts of the Union are audited by external auditors at the end of each Financial Year, including the accounts of projects funded through extra-budgetary resources.
3. The Chairperson shall submit to the Executive Council for its approval, at the earliest possible moment, the complete regulations governing the accounting method of the Union, in accordance with established international accounting standards.

#### **Article 27**

##### **Amendments**



These Statutes of the Commission may be amended by the Assembly.

**Article 28**  
**Entry into Force**

These Statutes shall enter into force upon their adoption by the Assembly.



**AFRICAN UNION**

**الاتحاد الأفريقي**



**UNION AFRICAINE**

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EX.CL/195 (VII) **Rev.1**  
Annex III.

**THE DRAFT CRITERIA FOR HOSTING**  
**THE AU ORGANS**



## **THE DRAFT CRITERIA FOR HOSTING THE AU ORGANS**

### **I. INTRODUCTION**

1. The hosting of an organ of the Union in a Member State entails rights and obligations for the African Union as well as for the host country. Normally, the State Party offering to host an organ indicates what facilities it wishes to place at the disposal of the organ. It is, therefore, customary for the host country to extend certain facilities such as premises for the offices of the Union and to provide the requisite privileges and immunities to the staff and Member State representatives.

2. The relevant decisions EX.CL/Dec. 98 (V); EX.CL/Dec.132 (V); and Assembly/AU/Dec. 39 (III) of the Policy Organs of the Union taken in July 2004 with regard to the hosting of the Organs of the Union point to the establishment of a harmonized criteria. Such criteria would aim at ensuring that wherever the organs are located they shall carry out their functions effectively in an enabling atmosphere, not only for the Member States who will be utilizing their services but also for the members of staff as well as their families.

### **II. SET OF CRITERIA**

3. Member States hosting or proposing to host AU organs should meet the following minimum basic requirements:

- a) The host country shall provide, at its expense a secure structure with furnished and equipped office premises for the seat of the organ on the basis of the objective requirements of office space;
- b) The premises offered by the host country should be such that the organ shall be easily accessible;
- c) The host country shall meet the requirements of a conducive political atmosphere and adequate logistical facilities;
- d) There should be appropriate and efficient modern infrastructure especially telecommunication facilities to enable the office to function efficiently;
- e) There shall be available housing, hotel accommodation and health infrastructure to meet the functional needs of the organ.



- f) Without prejudice to these criteria, nothing in these criteria shall be taken to preclude a member state from offering more facilities. In this regard, a member state offering to host an organ of the Union is encouraged to provide, at its expense, where the Head of the Organ is required to be resident at the seat, an appropriate furnished and equipped official residence;
4. A Member State **hosting or** wishing to host any of the organs of the Union should have ratified the General Convention on Privileges and Immunities of the OAU, the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations.
5. The Commission shall communicate this criteria and the model Headquarters Agreement it shall elaborate to all the Member States. .
6. An independent team shall be set up by the Commission and shall make a fact-finding mission to Member States offering to host organs of the Union to inspect the proposed site and submit a report thereon to the Executive Council.
7. All the offers for hosting the seat of an organ of the Union shall be submitted to the Executive Council for consideration. Selection of the host country shall be made, in accordance with the Rules of the Executive Council, by consensus, failing which, by a two-thirds majority. The Executive Council shall select a Host country, and submit a recommendation thereon to the Assembly for decision.
8. The Assembly shall decide on the seat of the organ in accordance with its Rules, by consensus, failing which, by a two-thirds majority.
9. Thereafter, the Commission shall ensure that the Host Agreement is signed between it and the Member State concerned.
10. The Assembly may decide on the transfer of an organ of the Union, in the event that the Member State concerned is in breach of these criteria or the host country agreement, or in case of natural or other disaster that has the effect of making the organ unable to function. The decision shall be taken in accordance with the Rules of the Assembly, by consensus, failing which, by a two-thirds majority.
11. The present criteria shall be reviewed periodically when deemed appropriate by the policy organs.



**AFRICAN UNION**

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## **EXECUTIVE COUNCIL**

### **Seventh Ordinary Session**

**01 – 02 July 2005**

**Sirte, LIBYA**

EX.CL/195 (VII)  
Original: English  
Annex IV

## **DRAFT CRITERIA FOR GRANTING OBSERVER STATUS** **AND FOR A SYSTEM OF ACCREDITATION** **WITHIN THE AU**

**May 2005**



## Preamble

### THE MEMBER STATES THE AFRICAN UNION,

- **BEARING IN MIND** the aims and objectives of the African Union as set forth in the Constitutive Act to encourage international cooperation; establish necessary conditions which enable the continent to play its rightful role in the global economy and international negotiations, promote international cooperation in all fields of human endeavour;
- **GUIDED** by the common vision as set forth in the Constitutive Act of a united and strong Africa and by the need to build a partnership between governments and all segments of civil society, in particular women, youth and the private sector, in order to strengthen solidarity and cohesion among our peoples;
- **CONVINCED** of the need to review and update the Criteria for Granting Observer Status within the OAU (Doc. AHG/192 (XXIX) Rev I) adopted by the Twenty-Ninth Ordinary Session of the Assembly of Heads of State and Government in Cairo, Egypt, in June 1993, with a view to align it with the new realities of the AU;
- **RECOGNIZING** the need to create a more dynamic medium to ensure that Organisations granted Observer Status within the Union play a more constructive and visible role in the affairs of the Union;
- **COGNISANT** of the increasing role of the AU in International Affairs and the need for a formal system of accreditation of well defined Regional and International Organisations and Non-African States on a reciprocal basis;

### HAVE AGREED AS FOLLOWS:

#### DEFINITIONS

#### In these Criteria:

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



“African Diaspora” means the African Diaspora as defined by the Executive Council of the African Union;

“Chairperson” means the Chairperson the African Union Commission;

“Chairperson of the meeting” means the Chairperson presiding over an AU meeting at any particular time;

“Commission” means the Commission of the Union;

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

“ECOSOCC” means the Economic, Social and Cultural Council of the Union;

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

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

“NGOs” means Non-Governmental Organisations at the sub-regional, regional or inter-African levels as well as those in the Diaspora as may be defined by the Executive Council;

“Organisation” means a regional integration or international organisation, including sub-regional, regional or inter-African Organisations that are not recognized as Regional Economic Communities;

“PRC” means Permanent Representatives Committee of the Union;

“Regional Integration Organisation” means an organisation that has been established with the aim of ensuring socio-economic integration, and to which some countries have ceded certain competences to act on their behalf

“STCs” means Specialized Technical Committees as established under Article 14 of the Constitutive Act;

“Union” means the African Union established by the Constitutive Act.

PART I  
DRAFT CRITERIA FOR GRANTING AFRICAN UNION  
OBSERVER STATUS TO NON-GOVERNMENTAL ORGANISATIONS (NGOs)

SECTION I  
Principles to be applied in granting Observer Status  
with the African Union

1. The aims and purposes of NGOs requesting Observer Status shall be in conformity with the spirit, objectives and principles of the Constitutive Act of the African Union.
2. The NGO shall undertake to support the work of the African Union and to promote knowledge of its principles and activities in conformity with its aims and purposes and the nature and scope of its competence and activities.
3. The present Criteria shall apply to the management of existing and future grants of Observer Status to NGOs.
4. The NGO shall be of recognised standing within the particular field of its competence. Where there exists a number of NGOs with similar objectives, interests and basic views in a given field, they shall be encouraged, for the purposes of observer status with the African Union, to form a joint Committee or other body for the group as a whole.
5. The NGO shall:
  - a) Be registered in a Member State of the Union without any restriction to undertake regional and continental activities; and
  - a) Show a minimum of three (3) years proof of registration as either an African or an African Diaspora Civil Society Organization prior to the date of submission of the application, including proof of operation for those years.
6. The NGO shall have:
  - a) An established headquarters with an Executive body;
  - b) A democratically adopted constitution, a copy of which shall be deposited with the Chairperson of the AU Commission.
  - c) A representative structure and possess appropriate mechanisms of accountability to its members, who shall exercise effective control



over its policies through appropriate democratic and transparent decision-making processes.

- d) A management with a majority of African citizens or Africans in the Diaspora as may be defined by the Executive Council.
7. The basic resources of such an NGO shall substantially, at least two-thirds, be derived from contributions of its members. Where external voluntary contributions have been received, their amounts and donors shall be faithfully revealed in the application for membership. Any financial or other support or contribution, direct or indirect, from a government to the NGO shall be declared and fully recorded in its financial records.
8. An NGO that discriminates on the basis of specific criteria, such as gender, colour, religion, ethnicity, tribe or race, shall not be eligible for observer status.

## SECTION II

### Application Process

1. An NGO wishing to apply for Observer Status shall be required to submit:
  - a) A written application to the Commission indicating its intention at least six (6) months before it can be considered by the Executive Council, in order to allow for sufficient time for processing the application;
  - b) Its Constitution or Charter; up-to-date list of membership; sources of its finances including copies of its most recent balance sheet; and memorandum of its activities.
2. The memorandum of activities should contain the past and present activities of the NGO; its connections, including any connections external to Africa, and any other information, which will assist in determining its identity, and especially its scope of activities.
3. All the documents should be submitted in at least two of the official languages of the African Union and in sufficient quantities to facilitate circulation to representatives of Member States.
4. If the application for observer Status is being made by an NGO in the Diaspora, it shall, in addition, also provide full particulars and names of at least two (2) Member States of the Union or two (2) Civil Society Organisations

recognized by the Union that have intimate knowledge of it and are prepared to attest to its authenticity.

5. No application for Observer Status by an NGO shall be submitted for consideration of the Executive Council, unless it has been submitted at least six (6) months before the session of the Executive Council at which the application will be considered and fully processed by the Commission and submitted to the Executive Council through the Permanent Representatives Committee.

### **SECTION III**

#### **Observer Organisations participation in the proceedings of the African Union**

Representatives of NGOs granted observer status may:

1. Be present in the public galleries for the open sessions of AU Meetings relevant to their field;
2. Participate in the meetings of AU Organs only in accordance with the conditions laid down in this part;
3. Have access to AU documents provided that they are
  - a) Not of a confidential nature;
  - b) Dealing with matters of interest to the observers concerned.
4. Distribution of AU documents shall be in accordance with the system of classification of documents.
5. Be invited to attend closed meetings during discussion of a subject in which they are concerned.
6. With the authorisation of the Chairperson of a meeting, participate in the proceedings of meetings to which they are invited, without the right to vote.
7. Be authorised by the Chairperson of the meeting to make a statement on a matter with which they are concerned, subject to the text of the statement being communicated before, through the Chairperson of the AU Commission.
8. Be given the floor by the Chairperson of the meeting in order to enable them to reply to questions, which might be addressed to them by Member States.

## **SECTION IV**

### **Special provisions dealing with participation of observers in the work of the Economic, Social and Cultural Council (ECOSOCC) and other Specialised Technical Committees (STCs)**

1. Observer Status shall be granted to the following category:
  - a) Inter-African non-governmental Organisations;
  - b) Non-governmental organisations of the Diaspora.
2. Observers in this category may:
  - a) Attend the public sessions of the ECOSOCC and relevant STCs during discussion of a matter concerning them;
  - b) Communicate a written declaration to the Commission.

## **SECTION V**

### **Relations between the African Union and the Observers**

1. The NGO enjoying Observer Status shall undertake to establish close relations of cooperation with the African Union and enter into regular consultations with the latter on all matters of common interest.
2. All NGOs enjoying observer status with the African Union shall be required to submit a summary report on their activities every three (3) years. Such reports which shall:
  - a) indicate its financial status and viability;
  - b) its activities over that period and specifically as regards the support they have given to the work of the AU or the African Economic Community; and
  - c) the office bearers, when elected and whether the elections were held in accordance with the statutes of the NGO.
3. The Commission shall submit an annual summary report on the status and activities of NGOs granted observer status to the PRC.
4. The Chairperson of the Commission may authorize any NGO enjoying observer status which has legally changed its name or which has legally succeeded an NGO previously granted observer status to continue to enjoy such status under the new name.

5. The Executive Council may on the recommendation of the PRC suspend or withdraw the Observer Status, if it appears that an NGO enjoying such status has ceased to satisfy the requirements laid down in this criteria, such as to be viable or to exist, to function properly, has lost representative character or its independence.

6. The granting, suspension and withdrawal of observer status of an NGO, are the prerogative of the African Union and shall not be the subject of adjudication in any Court of Law or tribunal.

#### SECTION VI Final Provisions

1. The granting of Observer Status to an NGO entails no obligation on the Commission to grant a subvention or any material assistance to that NGO

2. Observers shall themselves be responsible for expenses incurred as a result of their travel to and from, and their stay at the venue of the Conference.

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### **PART II**

## **DRAFT CRITERIA FOR ACCREDITATION OF NON AFRICAN STATES AND REGIONAL INTEGRATION AND INTERNATIONAL ORGANISATIONS**

### **SECTION I**

#### **Principles to be applied in the accreditation Process**

The accreditation of Non-African States and Regional Integration and International Organisations shall be in accordance with the following principles:

1. The aims and purposes of Non-African States or Organisations wishing to be accredited to the AU shall be in conformity with the spirit, objectives and principles of the Constitutive Act of the African Union.

2. The Non- African State or Organisation shall undertake to cooperate with and support the work of the African Union and to promote knowledge of its principles and activities.

3. The present Criteria shall apply to the management of existing and future grants of Accreditation to Non-African States and Organisations..

### **SECTION II** **Process of Accreditation**

1. A Non-African State or Organisation wishing to be accredited to the AU shall communicate its request to the Chairperson of the AU Commission.
2. The Chairperson shall consider such requests on the basis of the principles and objectives of the Constitutive Act, relevant decisions of the AU organs and these Criteria.
3. In the case of an application by a non- African State, the Chairperson shall consider such a request bearing in mind the supreme interest of the Union and the known views and concerns of member states. If in his considered view, there are no reasons why such a request should not be acceded to, the Chairperson shall accept the letter of accreditation of the Head of mission or representative of the concerned state and thereafter notify periodically the Member States and the AU policy organs of the names and designations of the accredited representatives.
4. In the case of an application by an Organisation, the Chairperson shall make arrangements to receive the letter of accreditation and thereafter notify periodically the Member States and the AU policy organs of the names and designations of the accredited representatives.
5. In the event of any subsequent objection by any Member State to the accreditation of a non-African State or an international organization, the Chairperson shall place the matter at the next session of the Executive Council.

### **SECTION III**

#### **Rights of Accredited Non- African States and Organisations in proceedings of the African Union**

The Heads of Mission or Representatives of Non-African States or Organisations accredited to the AU may:

1. Be present for the open sessions of AU Conferences relevant to their field;
2. Participate in the meetings of AU Organs only in accordance with the conditions laid down in this part;
3. Have access to AU documents provided that they are:
  - a) not of a confidential nature;
  - b) dealing with matters of interest to the Non-African States or Organisations concerned.

4. Distribution of AU documents shall be in accordance with the system of classification of documents;
5. With the authorisation of the Chairperson of the meeting, participate in the proceedings of meetings to which they are invited, without the right to vote;
6. Be authorised by the Chairperson of the meeting to which they are invited to make a statement on a matter with which they are concerned, subject to the text of the statement being communicated before hand to the Chairperson of the meeting, through the Chairperson of the Commission; and
7. Be given the floor by the Chairperson of the meeting in order to enable them to reply to questions, which might be addressed to them by Member States.
8. Accredited Organisations, may be associated in the preparatory work of AU meetings, in particular those of the Ministerial Bodies and Specialized Technical Committees (STCs), under the leadership of the relevant departments of the Commission as may be mutually agreed.

## **SECTION IV**

### **Relations between the African Union**

#### **and the Accredited Non-African States and Organisations**

1. The accredited Non-African State or Organisation shall undertake to establish close relations of cooperation with the African Union and enter into regular consultations with the latter on all matters of common interest.
2. The Executive Council may on the recommendation of the PRC suspend or withdraw the Accreditation, if it appears that a Non-African State or Organisation enjoying such status has ceased to satisfy the requirements laid down in this criteria, or has lost its representative character.
3. The granting, suspension and withdrawal of accreditation of a Non-African State or Organization, is the prerogative of the African Union and shall not be the subject of adjudication in any Court of Law or tribunal.

## **SECTION VI**

### **Final Provisions**

1. The provisions of the General Convention on Privileges and Immunities, and those relating to the Headquarters Agreement of the Union, shall be applicable to accredited Non-African States or Organisations, only on reciprocal basis.

Accredited Non-African States or Organisations shall themselves be responsible for expenses incurred as a result of their travel to and from, and their stay at the venue of the Conference.

AFRICAN UNION

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EX.CL/195 (VII) **Rev.1**  
Annex V

**DRAFT**

- IX. MODALITIES FOR THE**
- X. FUNCTIONING OF THE AFRICAN CENTRE**
- FOR THE STUDY**
- XI. AND RESEARCH ON TERRORISM (ACSRT)**



**XII. DRAFT****MODALITIES FOR THE  
FUNCTIONING OF THE AFRICAN CENTRE FOR THE STUDY  
AND RESEARCH ON TERRORISM (ACSRT)****I. ESTABLISHMENT**

1. The African Centre for the Study and Research on Terrorism (hereinafter referred to as the Centre) is established as constituted under Section H, Paragraphs 19 to 21 of the AU Plan of Action on the Prevention and Combating of Terrorism and pursuant to the relevant decisions adopted by the policy Organs of the Union including in particular, Assembly/AU/Dec.15 (II); EX.CL/Dec.13 (II); EX/CL/Dec.82 (IV); and EX.CL/Dec.126 (V).

2. The Centre is established as a structure of the Commission, in conformity with the Protocol to the OAU Convention on the Prevention and Combating of Terrorism, which confer on the Peace and Security Council of the African Union, the responsibility for implementing regional, continental and international counter-terrorism instruments as well as harmonize and coordinate continental efforts in the prevention and combating of terrorism.

**II. HEADQUARTERS**

The Headquarters of the Centre shall be in Algiers, Algeria. The African Union shall enter into a Host Agreement with the host country based on the practice and principles of the African Union and the international rules governing such agreements.

**III. OPERATIONAL STATUS****1. The Centre shall:**

- i) be a structure of the Commission of the African Union, to strengthen the capacity of the Union to deal with issues relating to the prevention and combating of Terrorism. It shall function as a research centre of excellence in matters concerning the prevention and combating of terrorism in Africa;



- ii) serve the interest of the African Union, in providing expertise in matters relating to the prevention and combating of terrorism in Africa;
- iii) be guided by the objectives and principles enshrined in the Constitutive Act of the African Union, the Protocol Relating to the Establishment of the Peace and Security Council of the African Union, the OAU Convention on the Prevention and Combating of Terrorism and its Protocol thereto, and the Plan of Action adopted in September 2002, and other relevant instruments and decisions of the Union, as well as the Charter of the United Nations, and other relevant international legal instruments that African countries have acceded to;
- iv) function in coordination with National Focal Points designated by Member States;
- v) develop its curriculum, programme of activities and budget for each year, in consultation with the National Focal points.

#### **IV. PURPOSE**

The purpose of the Centre is to contribute to and strengthen the capacity of the African Union in the prevention and combating of terrorism in Africa, with the ultimate objective of eliminating the threat posed by terrorism to peace, security, stability and development in Africa. To this end, the Centre shall serve to collect and centralize information, studies and analyses on terrorism and terrorist groups and develop training programs by organizing, with the assistance of international partners, training schedules, meetings and symposia.

#### **V. FUNCTIONS**

1. Pursuant to the purpose stated in Section IV above, the functions of the Centre shall be to:

- i) assist Member States of the African Union in developing strategies for the prevention and combating of terrorism;
- ii) establish operating procedures for information gathering, processing and dissemination;

- iii) provide technical and expert advice on the implementation of the African Union counter-terrorism regimes, in particular, the 1999 OAU Convention and its Protocol thereto, the Plan of Action on the Prevention and Combating of Terrorism, as well as on the updating and strengthening of policies and programmes of the Union relating to counter-terrorism;
- iv) develop and maintain a database on a range of issues relating to the prevention and combating of terrorism, particularly on terrorist groups and their activities in Africa, as well as on experts and technical assistance available. Such a database as well as analyses shall be accessible by all Member States of the Union;
- v) promote the coordination and standardization of efforts aimed at enhancing the capacity of Member States to prevent and combat terrorism;
- vi) initiate and disseminate research studies and policy analyses periodically to sensitize Member States, based on the current trends, and/or on the demand of Member State(s). The Centre shall publish, periodically its research and analyses, in an "African Journal for the Prevention and Combating of Terrorism";
- vii) develop cooperation and assistance programmes with similar and/or interested institutions at the national, regional, continental and international levels, in the areas of research, information gathering and analyses on issues relating to the prevention and combating of terrorism;
- viii) undertake research and converging studies on other global security problems with links to terrorism, which pose a threat to peace and security in Africa;
- ix) develop capacity for early warning to encourage early response, integrating the concept of Preventive Management of Crisis;
- x) provide technical and expert advice on how best Africa can contribute in a more meaningful way to the international campaign against terrorism, particularly the implementation of relevant international instruments by Member States of the African Union;

- xi) undertake studies and make recommendations on strengthening and standardization of legal norms and cooperation in matters of information-sharing among Member States, mutual assistance, extradition, police and border control (including land, maritime and air) in Africa;
  - xii) conduct studies and analyses on the best strategies and methods for suppressing the financing of terrorism;
  - xiii) organize workshops, seminars, symposia and training programs **for** enhancing the capacity of Member States and Regional Mechanisms in the prevention and combating of terrorism in Africa;
  - xiv) submit annual reports on its activities to the Chairperson of the Commission, for consideration by the policy Organs of the Union. The annual report shall include a financial statement on the activities undertaken in the previous year and the budget of activities envisaged for the next fiscal year.
2. The Centre may also carry out such duties as may be assigned to it by the Commission of the African Union or the Peace and Security Council, on matters relating to the prevention and combating of terrorism in Africa.

## **VI. CONDUCT OF BUSINESS**

1. Given the sensitive nature of the issues the Centre will be dealing with, and in order to safeguard its credibility, the Centre shall:
- i) maintain a degree of confidentiality and tight security procedures, in the collection and dissemination of information and data on terrorism;
  - ii) ensure that the information it publishes or disseminates is reliable and verifiable;
  - iii) be guided by the academic and ethical code of conduct for research and analysis;

- iv) organize regularly, symposia, at the level of all Member States to raise awareness, address the prevailing challenges, and to promote efforts aimed at preventing and combating terrorism in Africa.

## **VII. COMPOSITION & STRUCTURE**

1. The Centre shall be headed by a Director. The Director shall report to the Chairperson of the Commission through the Commissioner for Peace and Security. The Commission shall work out a detailed Organigram and structure of the Centre for consideration and approval by the relevant policy Organs of the Union.
2. The Centre shall be equipped with a Library, technical/electronic equipment (hardware and software);
3. The Centre shall comprise of international and local staff. The recruitment of Staff of the Centre shall be governed by the rules and regulations of the Union.
4. The Director shall be assisted by an Advisory Board, appointed by the Chairperson of the Commission for one year renewable term. The composition of the Board shall include one (1) representative from each of the five regions and one (1) representative from each of the RECs, drawn from the Focal Points of the Centre, in consultation with Member States and the RECs as well as representatives from the Commission. The Board shall serve as a mechanism of the Commission for the periodic review and/or evaluation of the curriculum, programmes, budget and finance, and other operational and administrative aspects of the Centre for the purpose of ensuring the efficient performance of the Centre, in line with the rules and regulations of the Union. It shall, among others, perform the following functions:
  - i) Review and assess the curriculum and programmes of the Centre to ensure that they are focused and practicable within a given timeframe, consistent with the mandate and functions of the Centre as contained in this Modalities, and up-to-date with prevailing trends on terrorism as well as meet the needs of Member States of the Union;

- ii) Review the structure and budget of the Centre vis-à-vis its activities and needs with the view to making recommendations to the policy Organs of the Union;
- iii) Make recommendations to the Chairperson of the Commission on how achieve the maximum performance of the Centre.

## **VIII. FUNDING**

1. Without Prejudice to the autonomy and status of the Centre as a structure of the Commission,
  - i) It shall be funded from the regular budget and Extra-budgetary sources of funding to be mobilized by the Commission;
  - ii) It shall prepare and submit its annual budget to the AU Commission for consideration and approval by the relevant policy Organs of the Union.

## **X. CONDITIONS OF SERVICE**

The conditions of work and terms of Service, including remuneration of Staff of the Centre shall be based on the AU Staff Rules and Regulations.

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# Report of the PRC and Legal Experts on Various Legal Matters

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