

**AFRICAN UNION**

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**ASSEMBLY OF THE UNION**

**Twenty-Third Ordinary Session**

**26 - 27 June 2014**

**Malabo, EQUATORIAL GUINEA**

**Assembly/AU/8(XXIII)**

**Original: English**

**THE REPORT, THE DRAFT LEGAL INSTRUMENTS AND  
RECOMMENDATIONS OF THE SPECIALIZED TECHNICAL  
COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

**THE REPORT, THE DRAFT LEGAL INSTRUMENTS AND RECOMMENDATIONS  
OF THE SPECIALIZED TECHNICAL COMMITTEE ON  
JUSTICE AND LEGAL AFFAIRS**

1. The First Meeting of the Specialised Technical Committee (STC) on Justice and Legal Affairs (*former Conference of Ministers of Justice/Attorneys or Keepers of the Seal from Member States but now including Ministers responsible for issues such as human rights, constitutionalism and rule of law*) was held in Addis Ababa, Ethiopia, from 6 to 14 May 2014 (Experts) and 15-16 May 2014 (Ministers).
2. The First Ministerial Session of the STC was attended by thirty eight (38) Member States, two (2) AU Organs and one (1) Regional Economic Community (REC).
3. The purpose of the meeting was to finalize seven (7) Draft Legal Instruments prior to their submission to and adoption by the Policy Organs.
4. Consequently, the STC considered the following Draft Legal Instruments:
  - a) Draft African Union Convention on Cross-border Cooperation (Niamey Convention);
  - b) Draft African Charter on the Values and Principles of Decentralization, Local Governance and Local Development;
  - c) Draft Protocol and Statute on the Establishment of the African Monetary Fund;
  - d) Draft African Union Convention on Cyber-Security and Protection of Personal Data;
  - e) Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights;
  - f) Draft Protocol to the Constitutive Act of the African Union on the Pan-African Parliament; and
  - g) Draft Rules of Procedure of the Specialized Technical Committee (STC) on Justice and Legal Affairs.
5. The Council will recall that the Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights was considered by its session held in July 2012. The major amendments to the new Draft Protocol are the following:
  - a) The deletion of the provision on the phenomenon of popular uprising within the context of the crimes of unconstitutional changes of Government until the Peace and Security Council Decision had defined “popular uprising” in

the context of unconstitutional changes of government and the said definition had been endorsed by the Assembly;

- b) The insertion of a new Article on the immunities of Sitting Heads of State and Government and Other Senior State Officials in accordance with the Decision Ext/Assembly/AU/Dec.1(Oct.2013) on Africa's Relationship with the International Criminal Court (ICC) adopted by the Extraordinary Session of the Assembly held on 12 October 2013;
  - c) The transformation of the Defence Office as an Organ of the Court instead of being a Division of Registry as provided in the previous Draft Protocol.
- 6.** The Ministerial Session of the STC on Justice and Legal Affairs adopted the above-mentioned Draft Legal Instruments and made recommendations to the Assembly of the Union through the Executive Council for consideration and adoption.
- 7.** The Report containing Recommendations and the Draft Legal Instruments adopted by the STC on Justice and Legal Affairs are attached hereto as annexes.

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**First Ministerial Meeting of the Specialized Technical Committee  
on Justice and Legal Affairs  
15 and 16 May 2014  
Addis Ababa, Ethiopia**

**STC/Legal/Min/Rpt.  
Original: English**

**REPORT**

## REPORT

### I. INTRODUCTION

1. Pursuant to Decision Assembly/AU/Dec.365(XVII) adopted by the 17<sup>th</sup> Ordinary Session of the Assembly of the African Union held in Malabo, Equatorial Guinea, in July 2011, and the Decision EX. CL/Dec.701(XXI) adopted by the 21<sup>st</sup> Ordinary Session of the Executive Council of the African Union held in Addis Ababa, Ethiopia, in July 2012, the African Union Commission convened the first Ministerial Meeting of the Specialized Technical Committee (STC) on Justice and Legal Affairs to consider various Draft Legal instruments. The STC on Justice and Legal Affairs comprises Ministers of Justice and Attorneys General or Keepers of the Seals, Ministers responsible for Human Rights, Constitutionalism and the rule of law.

### II. ATTENDANCE

2. The following Member States were in attendance:

**Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Chad, Congo, , DR Congo, Djibouti, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Libya, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Nigeria, Niger, Rwanda, SADR, Senegal, South Africa, Sudan, Tanzania, Togo, Tunisia, Zambia and Zimbabwe.**

3. The meeting was also attended by the following: the African Court on Human and Peoples' Rights (AfCHPR), the Pan African Parliament (PAP), the Common Market for Eastern and Southern Africa (COMESA).

### III. OPENING OF THE MEETING

#### ***Statement by the Deputy Chairperson of the AU Commission***

4. In his opening remarks the Deputy Chairperson of the AU Commission, H.E. Mr. Erastus Mwencha, on behalf of the Chairperson, H.E. Dr. Nkosazana Dlamini Zuma, welcomed all the honourable Ministers and delegations to the capital of Ethiopia and indeed of Africa for the inaugural session of the STC on Justice and Legal Affairs. He stated that the on-going developments in this city, just as in many others in Africa, bear witness to the integration of Africa and its determination to achieve the objective of Unity and Integration of the continent.

5. In his brief, he brought to the attention of the Honourable Ministers some of the the documents at hand; in particular, he pointed out that the Draft Protocol on the Establishment of the African Monetary Fund (AMF) aimed to foster macroeconomic stability, sustainable shared economic growth and balanced progress in the region; the Draft African Union Convention on Cross-Border Cooperation aimed to strengthen co-operation in border management and development; the draft African Union Cyber-Security Convention aimed to bolster existing Information and Communications

legislations of Member States and the Regional Economic Communities; the Draft Protocol to the Constitutive Act of the African Union relating to the Pan African Parliament, with respect to the legislative and oversight powers of the Parliament and the Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, with the objective of expanding the jurisdiction of the current African Court to try international crimes.

6. In his concluding remarks he thanked the Honourable Ministers and delegations for their presence and wished them fruitful and successful deliberations that will be able to resolve some of the long outstanding issues, in order to ensure that the Draft Protocols are adopted and Africa is provided with credible mechanisms to deal with its own issues.

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

7. After consultations, the meeting elected the following Bureau:

Chair:	Cameroon
1 <sup>st</sup> Vice Chair:	Lesotho
2 <sup>nd</sup> Vice Chair:	Niger
3 <sup>rd</sup> Vice Chair:	Mauritania
Rapporteur:	Rwanda

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

8. The meeting adopted the draft Agenda without amendments, as follows:

- 1) Opening Ceremony
- 2) Election of the Bureau
- 3) Consideration and Adoption of the Draft Agenda
- 4) Organization of Work
- 5) Presentation and consideration of the Report of the meeting of the Legal Experts of the STC on Justice and Legal Affairs
- 6) Consideration of the draft legal instruments:
  - i) Draft African Union Convention on Cross-border Cooperation (Niamey Convention);
  - ii) Draft African Charter on the Values and Principles of Decentralization, Local Governance and Local Development;

- iii) Draft Protocol and Statute on the Establishment of the African Monetary Fund;
  - iv) Draft African Union Convention on Cyber-Security and Protection of Personal Data;
  - v) Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights;
  - vi) Draft Protocol to the Constitutive Act of the African Union on the Pan-African Parliament;
  - vii) Draft Rules of Procedure of the Specialized Technical Committee (STC) on Justice and Legal Affairs; and
  - viii) Draft African Model Law on Biosafety.
- 7) Any Other Business
  - 8) Adoption of the draft legal instruments and the Report
  - 9) Closing Ceremony

## **VI. ORGANISATION OF WORK**

9. The meeting adopted its organisation of work as follows:

- Morning: 10.00 to 13.00
- Afternoon: 14.30 to 18.00

## **VII. PRESENTATION AND CONSIDERATION OF THE REPORT OF GOVERNMENT LEGAL EXPERTS OF THE STC ON JUSTICE AND LEGAL AFFAIRS**

10. The Chairperson of the meeting of Government Legal Experts, Mr. Charles Tchatchouang presented the Report of the meeting that took place from 6 to 14 May 2014. He concluded his presentation by highlighting the major conclusions and recommendations, which were being submitted for consideration by the Ministerial Session of the STC on Justice and Legal Affairs.

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

- i) The Sudan removed its reservation on Paragraph 77 of the Report of Government Legal Experts which it previously entered in regard to Article 28(E) (3) of the Draft Protocol on the Statute of the African Court of Justice and Human Rights relating to the phenomenon of popular uprising;

- ii) The Date of the Meeting of the Conference of Ministers of ICT must be reflected in Paragraph 63 of the Report of Government Legal Experts;
- iii) Paragraph 74 of the English version of the Report of Legal Experts relating to the proposal from the Working group on looking at the phenomenon of popular uprisings should be aligned with the French version which gives wider interpretation than the English one;
- iv) Paragraph 25 of the Report of Experts Meeting should be amended in order to reflect properly the proposal of the President of the Republic of Senegal on the establishment of a Supreme Council of Local Communities which was approved in principle and endorsed by the Assembly of the Union in January 2013.

12. Following the observations and comments, the Ministerial Session of the STC on Justice and Legal Affairs took note of the Report of Government Legal Experts Meeting.

#### **VIII. CONSIDERATION OF THE DRAFT AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION (NIAMEY CONVENTION)**

13. The Legal Counsel presented the Draft Convention on Cross-Border Cooperation (Niamey Convention). Following this presentation, the meeting considered the Draft Convention.

14. At the end of its deliberations, the meeting adopted the Draft Convention without amendments and recommended it for consideration by the Assembly through the Executive Council.

#### **IX. CONSIDERATION OF THE DRAFT AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF DECENTRALIZATION, LOCAL GOVERNANCE AND LOCAL DEVELOPMENT**

15. The Legal Counsel presented the Draft African Charter on the Values and Principles of Decentralization, Local Governance and Local Development.

16. Following this presentation, the meeting considered and adopted the Draft Charter and recommended it for consideration by the Assembly through the Executive Council.

#### **X. CONSIDERATION OF THE DRAFT PROTOCOL AND DRAFT STATUTE ON THE ESTABLISHMENT OF THE AFRICAN MONETARY FUND**

17. The Legal Counsel presented the Draft Protocol and draft Statute on the Establishment of the African Monetary Fund.



18. Following this presentation, the meeting considered and adopted the Draft Protocol and draft Statute on the Establishment of the African Monetary Fund and recommended it for consideration by the Assembly through the Executive Council.

#### **XI. CONSIDERATION OF THE DRAFT AFRICAN UNION CONVENTION ON CYBERSECURITY AND PERSONAL DATA PROTECTION**

19. The Legal Counsel presented the Draft African Union Convention on Cybersecurity and Personal Data Protection.

20. Following the presentation, the meeting considered and adopted the Draft Convention and recommended it for consideration by the Assembly through the Executive Council

#### **XII. CONSIDERATION OF THE DRAFT PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS**

21. In introducing the Draft Protocol on Amendments to the Protocol of the African Court of Justice and Human and Peoples' Rights, the Legal Counsel highlighted the two outstanding Articles to be considered by the meeting, namely Article 28 E and 46A *Bis*, as well as the minor technical improvements that the Commission had made to the Draft Protocol and Statute, which had been endorsed by the Meeting of Experts.

#### **Consideration of Article 28E – The Crime of Unconstitutional Change of Government**

22. After the presentation, the meeting made the following observations and comments:

- i) Some Delegations raised concerns regarding including the phenomenon of “popular uprising” in the draft Protocol when it had not yet been defined by the Peace and Security Council. Other Delegations observed it was precisely because the Peace and Security Council had not defined the phenomenon that such a provision was required;
- ii) The proposed paragraph (3) should therefore be deleted in view of a lack of consensus on the need to have the provision in the Draft Protocol.

23. After extensive deliberations, and because of the lack of a consensus on the what constituted the phenomenon of popular uprising within the context of unconstitutional changes of government, the meeting agreed to delete paragraph (3) until the Peace and Security Council had defined “popular uprising” in the context of unconstitutional changes of government and the said definition had been endorsed by the Assembly. The meeting encouraged the Peace and Security Council to take urgent measures to define popular uprising within the context of unconstitutional changes of government.

## Consideration of Article 46A *bis* – Immunities

24. The Legal Counsel presented Article 46A *Bis* relating to Immunities and explained that, pursuant to the relevant Assembly Decisions, this Article was introduced in order to address the categories of individuals who should be covered by immunities while serving their tenure.

25. During the consideration of Article 46A *Bis* of the Draft Protocol, delegations raised concerns regarding extension of immunities to senior state officials and its conformity with international law, domestic laws of Member States and jurisprudence, underlining the challenges inherent in widening immunities, and especially considering the lack of a precise definition of “*senior state official*”, as well as the difficulty in providing an exhaustive list of persons who should be included in the category of senior state officials.

26. After exhaustive deliberations, taking into consideration the relevant Decisions of the Assembly of the Union, and appreciating that some senior state officials are entitled to functional immunities by virtue of their functions, the meeting resolved that Article 46 A *Bis* should include the provision “senior state officials based on their functions.” The meeting further resolved that interpretation of “senior state official” would be determined by the Court, on a case-by-case basis taking their functions into account in accordance with international law. Thus, the revised text of Article 46A *bis* reads as follows:

### *Article 46A bis*

***“No charges shall be commenced or continued before the Court against any serving African Union Head of State or Government, or anybody acting or entitled to act in such capacity, or other senior state officials based on their functions, during their tenure of office”.***

27. At the end of the deliberations, the STC on Justice and Legal Affairs adopted the draft Protocol on the Statute of the African Court of Justice and Human and Peoples’ Rights and recommended it for consideration by the Assembly through the Executive Council.

## **XIII. CONSIDERATION OF THE DRAFT PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION ON THE PAN-AFRICAN PARLIAMENT**

28. The Legal Counsel presented the Draft Protocol to the Constitutive Act of the African Union on the Pan-African Parliament (PAP) and pointed out to the meeting that its mandate is limited to looking at Article 8(1)(a) and 8(2) in accordance with the decision of the policy organs which called for more consultations on the legislative and oversight powers of the PAP taking into account the current level of integration of the continent.

29. Following the presentation, the Ministerial Meeting made observations and comments as follows:

- i. There is a need to take into account the reality of the continent and the integration objectives of the Union;
- ii. The PAP should continue to exercise consultative and advisory powers for the time being;
- iii. There ought to be more confidence in PAP as a result of which it should be granted power to legislate for the Union;
- iv. There may be a need to articulate the legislative power in the Preamble of the Draft Protocol;
- v. The payment of the members of PAP should be the responsibility of the Union and not the individual States Parties.;

**30.** The Legal Counsel made clarifications as follows:

- a. The existing Protocol on PAP, in its Article 11, envisages legislative power to be determined by the Assembly; however, the PAP currently only has consultative and advisory powers, which was limited to the first Parliament;
- b. That while legislative power is not mentioned in the Preamble, it is provided for in Article 11 of the existing Protocol and in Article 8 of the Draft Protocol under consideration;
- c. The Draft Protocol aims to begin the incremental realization of the legislative power of the PAP but within the confines of the Assembly's authorization on the areas that the PAP may legislate or propose model laws;
- d. That the current revision of the Draft Protocol has removed the contention about the oversight powers of the PAP with regards to other organs of the Union.
- e. That the legislative power envisaged for the PAP under the Draft Protocol is one to be determined by the Assembly only and thus would not be controversial or aimed at eroding the sovereignty of any AU Member State.

**31.** At the end of its deliberations on the envisaged legislative power of the PAP, the Ministerial Meeting adopted the Draft Protocol to the Constitutive Act of the African Union on the Pan-African Parliament (PAP), paying particular attention to Article 8 (1)(a) and 8(2) as revised. The meeting agreed that the PAP may exercise limited legislative powers or propose model laws on the subjects/areas that the Assembly shall determine. The meeting agreed on the amendment of Article 8 as follows:

**“Article 8  
Functions and Powers**

1. ***The Pan African Parliament shall be the legislative organ of the African Union. In this regard:***
  - a) ***The Assembly shall determine the subjects/areas on which the Pan African Parliament may legislate or propose draft model laws;***
  - b) ***The Pan African Parliament may on its own make proposals on the subjects/areas on which it may legislate, submit or recommend draft Model Laws to the Assembly for its consideration and approval”.***
  
2. ***The Pan African Parliament shall also:***
  - a) ***Receive and consider reports of other organs of the African Union as may be referred to it by the Council or the Assembly, including audit and other reports and make recommendations thereon;***
  - b) ***Debate and discuss its own budget and the budget of the Union and make recommendations thereon to the relevant policy organs;***
  - c) ***Establish any Parliamentary Committee and determine its functions, mandate, composition and term of office;***
  - d) ***Discuss any matter relevant to the African Union and make recommendations to the Council or the Assembly as it may deem appropriate;***
  - e) ***Make proposals to the Council on the structure of the Secretariat of the Parliament taking into account its needs;***
  - f) ***Request the attendance of officials of the other organs of the African Union at its sessions to offer assistance to the Parliament in the discharge of its duties;***
  - g) ***Promote the programmes and objectives of the African Union in Member States;***
  - h) ***Receive, consider and submit opinions on draft legal instruments, treaties and other international agreements as may be referred to it by the Council or Assembly;***

***i) Liaise with National Parliaments or other deliberative bodies and the Parliaments of the Regional Economic Communities on all matters relating to the African Union and regional integration in Africa***

***j) Carry out such other activities as it deems appropriate to achieve the objectives set out in Article 3 of this Protocol.”***

#### **XIV. CONSIDERATION OF THE DRAFT RULES OF PROCEDURE OF THE SPECIALIZED TECHNICAL COMMITTEE (STC) ON JUSTICE AND LEGAL AFFAIRS**

**32.** The Legal Counsel presented the Draft Rules of Procedure of the Specialized Technical Committee (STC) on Justice and Legal Affairs. Following this presentation, the meeting considered the Draft Rules of Procedure.

**33.** At the end of its deliberations, the meeting adopted the Draft Rules of Procedure of the Specialized Technical Committee (STC) on Justice and Legal Affairs without amendments and recommended it for approval by the Executive Council.

#### **XV. CONSIDERATION OF THE DRAFT AFRICAN MODEL LAW ON BIOSAFETY**

**34.** The Legal Counsel presented the Draft the African Draft Model Law on Biosafety.

**35.** Following this presentation, the Ministerial Session considered and adopted the African Draft Model Law on Biosafety..

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

**36.** The Ministerial Session of the STC on Justice and Legal Affairs adopted the eight draft legal instruments and recommended them for consideration by the Assembly through the Executive Council. The meeting stressed the need for legal instruments to be prepared in legally appropriate language and requested the Commission to review the wording of some of the draft legal instruments to ensure that they read well and are properly aligned across the four working languages of the Union.

**37.** Following the adoption of the Draft Legal Instruments, the Meeting recommended that the human and financial resources of the Office of the Legal Counsel of the AU Commission should be strengthened in order for it to carry out its functions with respect to the operationalization of the STC on Justice and Legal Affairs.

#### **XVII. ANY OTHER BUSINESS**

**38.** No item was considered.

## **XVIII. CLOSING CEREMONY**

**39.** In his Closing Remarks the Chairperson of the meeting, Prof. FOGUI Jean Pierre, Minister Delegate to the Minister of Justice/Attorney General of the Republic of Cameroon thanked the Ministers and Delegates, the Government Legal Experts, the Legal Counsel and staff of the Office of the Legal Counsel, the Representatives of various Departments, Interpreters, Translators and Technicians for their support and cooperation.

**EX.CL/846(XXV)**  
**Annex 1**

**DRAFT**  
**PROTOCOL ON THE ESTABLISHMENT OF THE AFRICAN**  
**MONETARY FUND**

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**First Meeting of the Specialized Technical Committee  
on Justice and Legal Affairs  
15-16 May 2014  
Addis Ababa, Ethiopia**

**STC/Legal/MIN/3(I)Rev.1**

**DRAFT**

**PROTOCOL ON THE ESTABLISHMENT OF THE AFRICAN  
MONETARY FUND**



**Preamble**

**The Member States of the African Union;**

**Considering** the vision of the African Heads of States in 1963 for the establishment of Africa's sovereign financial institutions

**Considering** that the Constitutive Act of the African Union established the African Monetary Fund in its Article 19(b);

**Considering** the Treaty Establishing the African Economic Community, adopted in Abuja, Nigeria, in June 1991;

**Recalling** Assembly Decision AU/Dec.64 (IV) on the location of the Headquarters of African Union institutions in the regions of the continent, adopted in Abuja, Nigeria, in January 2005;

**Further recalling** Executive Council Decision Ex.CL/Dec.329 (10) on the establishment of the African Union financial institutions adopted in Addis Ababa, Ethiopia, in January 2007;

**Considering** the General Convention on the Privileges and Immunities of the Organization of African Unity /African Union;

**Desiring** to address collectively the main economic development challenges facing the African continent; and

**Convinced** that the attainment of the objectives of the African Union and the creation of a common African currency requires the establishment of the African Monetary Fund

**HAVE AGREED AS FOLLOWS:**

**Article 1: Definitions**

In this Protocol, unless otherwise specifically stated:

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

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

**“Board of Governors”** means the Board of Governors of the African Monetary Fund;

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

**“Court”** means the African Court of Justice and Human and People's Rights;

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

“**Fund**” means the African Monetary Fund;

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

“**Protocol**” means the Protocol establishing the African Monetary Fund and its annexes;

“**REC**” means Regional Economic Community;

“**Region**” means the geographical regions of Africa as defined by the Council of Ministers, in its Resolution CM/Res.464(XXVI), adopted at its 26<sup>th</sup> Ordinary Session in Addis Ababa, Ethiopia in March 1976.

“**State Party**” means a Member State that has ratified or acceded to the Protocol;

“**Statute**” means the Statute of the African Monetary Fund annexed to this Protocol;

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

**Article 2: Establishment of the Fund**

1. The Fund is hereby established as an organ of the Union in conformity with Articles 5 (1) (i) and 19 (b) of the Act.
2. The Fund shall function in accordance with the relevant provisions of the Constitutive Act, the Protocol and the Statute.
3. The Fund shall have legal personality with capacity and power to enter into contract, acquire, own or dispose of movable or immovable property and to sue and be sued.
4. In the territory of each State Party, the Fund shall, pursuant to paragraph 3 of this Article, have such legal capacity as is necessary for the proper exercise of its functions and the fulfilment of its purposes.

**Article 3: Purpose and objectives of the Fund**

1. The purpose of the Fund shall be to foster macroeconomic stability, sustainable shared economic growth and balanced development in the Continent, so as to facilitate the effective and predictable integration of African economies.
2. The objectives, functions and activities of the Fund shall be defined in the Statute.

**Article 4: Headquarters of the Fund**

1. The Headquarters of the Fund shall be in Yaoundé, the Republic of Cameroon.
2. Other offices of the Fund may be established outside the Headquarters upon the approval of the Board of Governors.

**Article 5: Working languages of the Fund**

The working languages of the Fund shall be those of the Union.

**Article 6: Dissolution**

1. Upon the recommendation of the Board of Governors, the Assembly may decide to dissolve the Fund and determine the terms and conditions of sharing the remaining assets and liabilities.
2. After such dissolution, the Fund shall forthwith cease all activities, with the exception of those incidentals to the orderly realization, conservation and safeguard of its assets and settlement of its obligations.

**Article 7: Interpretation**

1. The Court shall be seized with matters of interpretations arising from the application or implementation of this Protocol.
2. Pending its establishment, such matters shall be submitted to the Assembly of the Union, which shall decide, accordingly.

**Article 8: Signature, Ratification and Accession**

1. This Protocol shall be open for signature, ratification or accession by Member States, in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession to this Protocol shall be deposited with the Chairperson of the Commission.

**ARTICLE 9: ENTRY INTO FORCE**

1. This Protocol and the Statutes annexed to it shall enter into force thirty (30) days after the deposit of the fifteenth instrument of ratification and the payment of at least 25 per cent of the minimum paid-up capital.
2. For each Member State which shall accede to it subsequently, this Protocol and the Statute annexed to it shall enter into force on the date on which the instruments of accession are deposited with the Chairperson of the Commission.

**Article 10: Amendment and Revision**

1. This Protocol or the Statute annexed to it may be amended or revised by a decision of the Assembly.
2. Any State Party or the Fund may propose, in writing to the Chairperson of the Commission, any amendment or revision to the Statute.
3. The Chairperson of the Commission shall notify the proposal to all State Parties at least thirty (30) days before the meeting of the Board of Governors which will consider the proposal before submitting to the Assembly.
4. Amendments or revisions shall be adopted by the Assembly and submitted, for ratification, to all Member States, in compliance with their respective constitutional procedures. They shall enter into force thirty (30) days after the deposit of the fifteenth instrument of ratification.

**Article 11: Depository**

1. This Protocol and the Statute annexed to it, drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic, shall be deposited with the Chairperson of the Commission who shall transmit a certified true copy to the Government of each Member State.
2. The Chairperson of the Commission shall notify Member States of the dates of deposit of the instruments of ratification or accession and shall, upon the entry into force of this Protocol, register the same with the Secretariat of the United Nations.

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

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**First Meeting of the Specialized Technical Committee  
on Justice and Legal Affairs  
15-16 May 2014  
Addis Ababa, Ethiopia**

**STC/Legal/MIN/3(I)Rev.1**

**DRAFT STATUTE OF THE AFRICAN MONETARY FUND**

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**CHAPTER I  
GENERAL PROVISIONS**

**Article 1  
Definitions**

In this Statute:

- “Act”** means the Constitutive Act of the African Union dated 11<sup>th</sup> July 2000;
- “African Unit Account”** means the unit of account adopted by the Board of Governors and that the Fund uses in its dealings with the States Parties
- “Annex”** means an annex to this Statute
- “Assembly”** means the Assembly of Heads of State and Government of the African Union;
- “Board of Directors”** means the Board of Directors of the Fund;
- “Board of Governors”** means the Board of Governors of the Fund;
- “Commission”** means the Commission of the African Union;
- “Continent”** means the Continent of Africa;
- “Court”** means the African Court of Justice and Human and Peoples’ Rights;
- “Executive Council”** means the Council of Ministers of the African Union;
- “First Round Share Purchasing”** means the opportunity for State Parties to purchase allocated shares in accordance with Article 5 and Annex 2;
- “Fund”** means the African Monetary Fund;
- “General Convention”** means the General Convention on Privileges and Immunities of the Organization of African Unity;
- “Member”** means a State Party that has subscribed to the Fund;
- “Member State”** means a Member State of the African Union;
- “Managing Director”** means the Chief Executive of the African Monetary Fund;



- “Ordinary operations”** means the operations relating to the core mandate of the Fund;
- “Obligation”** means States Parties’ commitments to the Fund;
- “Partners”** means any external entities or organizations that will cooperate with the Fund on issues of mutual interest;
- “Protocol”** means the Protocol on the Establishment of the African Monetary Fund, the Statute and annexes to it;
- “Second Round Share Purchasing”** means the opportunity to State Parties to purchase unsubscribed shares during the First round Shares Purchasing;
- “Senior Officials”** the category of staff other than executives as defined by the African Monetary Fund;
- "Shareholders"** means States Parties who subscribed to the capital of the Fund;
- “Special Operations”** means any other operation that is different from ordinary operations;
- “Special or Voluntary Contribution”** means contribution from State Parties over and above subscriptions that do not accrue any voting rights;
- “State Party”** means a Member State which has ratified or acceded to the Protocol of the Fund;
- “Statute”** means the present Statute of the Fund;
- "Subscription"** means the amount of shares held by a member;
- “Supervisory Bodies”** means the Board of Governors and Board of Directors which oversees the activities of the Fund;
- “Union”** means the African Union established by the Constitutive Act;
- “Voting Rights”** means the rights accruing to State Parties from paid-up share capital subscription as per Annex-2.

## **Article 2 Objectives of the Fund**

The objectives of the Fund shall be to:

- a. correct disequilibria in the balances of payments of States Parties;
- b. ensure stability of exchange rates among currencies and their mutual convertibility;
- c. promote African monetary cooperation so as to achieve African economic integration and speed up the process of economic development in State Parties;
- d. reinforce capacity building in the design and the implementation of debt management policies in States Parties as a means to achieving sustainable debt levels;
- e. promote the development of African financial markets;
- f. work towards the facilitation of settlement of commercial debts and the establishment of a clearing system for trade transactions amongst States Parties in order to promote intra African trade.

## **Article 3 Functions and Activities of the Fund**

1. For the realization of its objectives, the Fund shall function in accordance with the provisions of this Statute and its annexes.
2. The functions and activities of the Fund shall be to:
  - a. promote and facilitate trade, the settlement of commercial payment and encourage capital flow between State Parties;
  - b. provide short-term and medium-term credit facilities to sustain balance of payment in conformity with the credit policy as defined by the Board of Directors and provide technical assistance and policy advice, to States Parties with a view to assisting in financing their overall balance of payments deficits;
  - c. assist State Parties under programme with the Fund in accessing other financial sources for the purpose of financing the overall deficits in their balance of payments;

- d. cooperate with African and international financial institutions to achieve its objectives.
- e. conduct periodic consultations in State Parties on their economic policies in support of the realization of the goals of the Fund and the State Parties.
- f. conduct research and capacity building training required to achieve the objectives of the Fund;
- g. ensure the collection, analysis and dissemination of qualitative and quantitative statistical data and methods and dissemination of results for a better understanding of the economies of States Parties;
- h. carry - out any other functions or activities as may be required by the Board of Governors.

## **CHAPTER II**

### **MEMBERSHIP**

#### **Article 4 Membership**

Membership of the Fund shall be open to all Member States of the African Union that have become States Parties to the Protocol.

## **CHAPTER III**

### **CAPITAL AND RESOURCES OF THE FUND**

#### **Article 5 Capital, subscriptions of shares, voting rights and payment of subscriptions**

##### **Section 1: Capital**

1. The authorized share capital of the Fund shall be Twenty Two Billion, Six Hundred and Forty Million United States Dollars (US\$22.640 billion). The authorized share capital shall be denominated in shares of One Hundred United States Dollars (US\$100) per share.
2. The callable share capital of the Fund shall be at least of fifty per cent of the authorized share capital - Eleven Billion Three Hundred and Twenty Million United States Dollars (US\$11.320 billion).

3. The paid-up share capital of the Fund shall be at least fifty per cent of the callable share capital – Five Billion Six Hundred and Sixty Million United States Dollars (US\$5.660 billion) denominated in shares of One Hundred United States Dollars (US\$100) per share.
4. Every five years, the Board of Governors shall review, by a qualified majority as defined in the Rules and Procedures of the Fund, the allocation of the various capital shares of the Fund. The Fund's capital structure may be reviewed, if necessary and in the manner and conditions agreed by the Board of Governors.
5. On proposal of the Board of Directors, the Board of Governors determines the deadline upon which State Parties are required to make payment of their paid-up share capital.

**Section 2: Subscription of shares**

1. The subscription by States Parties to the Fund shares shall be determined by the provisions under Annex 2 attached to this Statute.
2. A State Party may subscribe to the shares of the authorized capital of the Fund based on its capital subscription allocation specified in Annex-2 attached to this Statute.
3. On the date fixed by the Board of Governors for the end of the first round of subscription of shares, unsubscribed shares may be subscribed by any State Party in a second round of offer for subscription, in accordance with a proportion of allocation approved by the Board of Governors.
4. In case of an increase in the authorized capital of the Fund, the increase shall be shared among the States Parties according to the existing capital subscription formula in Annex-2, unless otherwise stated by the Board of Governors.
5. The shares may not be pledged or encumbered in any manner whatsoever.
6. Each State Party shall subscribe for shares in conformity with the provisions of Article 5 Section 2 (1), (2) and (3), from the date of deposit of its instrument of ratification or accession.

**Section 3: Voting rights**

1. Voting rights shall be proportionate to the shares subscribed and paid up by each State Party as specified in Annex-2 attached to this Statute.

2. The application of the voting rights to the decisions of the Board of Governors and Board of Directors shall be according to the provisions of Article 10 and Annex-2 attached to this Statute.

**Section 4: Payment of subscriptions**

1. All payment obligations of a State Party concerning the subscription of shares in the initial capital of the Fund shall be denominated in United States dollars (US\$) or any other convertible currency.
2. The Board of Governors may, upon the recommendation of the Board of Directors, adjust the currency denomination or proportion of subscription in any currency, by States Parties.
3. Payment of paid-up capital initially subscribed by a State Party, as provided for in Section 2 of this Article, shall be paid in whole or in four (4) separate annual instalments of, not less than, twenty-five (25) per cent in each instalment. However, the Board of Governors may, in very limited circumstances, in the first round of share offering, permit an extended purchasing period of four (4) years with the total payment period not exceeding eight (8) years as per annex 2.
4. The first payment shall be made by each State Party within the first sixty (60) days following the date of entry into force of the Protocol and the Statute, or date of deposit of instrument of ratification or accession in accordance with Article 9 of the Protocol, where such date precedes the date of entry into force. The next instalments shall be due annually as outlined in section 4 (3).
5. On each payment made pursuant to paragraph 4 of this section or on each payment made by a newly admitted State Party, fifty (50) per cent may be in the form of bonds issued by the Government of the State Party and issued in United States dollars or any other convertible currency. The bonds shall be non-negotiable, non-interest bearing and payable to the Fund at their par value on redemption.

**Article 6  
Resources of the Fund**

The Fund's resources shall include two categories of assets: ordinary resources and other resources.

**Article 7  
Ordinary resources**

For purposes of this Statute, the term "ordinary resources" of the Fund shall mean:

- a) the subscribed and the paid-up shares;
- b) the resources derived from borrowing by the Fund;
- c) reserves;
- d) net income from loans and portfolio investments made with the resources referred to in paragraphs a) and b).

**Article 8**  
**Other resources**

Other resources of the Fund shall include notably:

- a) special or voluntary contributions from State Parties;
- b) contributions in the form of grants, donations and similar assistance from other countries or institutions which are not State Parties, in conformity with the Constitutive Act, the Protocol and the Statute;
- c) grants;
- d) net income derived from operations of items a) and b);

**CHAPTER IV**

**OPERATIONS**

**Article 9**  
**Fund operations**

**Section 1: General provisions**

1. The Fund shall provide loans, technical assistance and policy advice to State Parties in situations of balance of payments and other macroeconomic problems in accordance with the Rules of Procedures adopted by the Board of Directors;
2. The Fund may grant financial assistance to State Parties upon approval of the Board of Governors;
3. In conformity with the policies and rules approved by the Board of Governors, the Fund shall be authorized to borrow and invest funds not immediately required for its operations in international financial markets and institutions.

4. The Fund shall, at all times, maintain a sound credit rating, be financially independent and operate largely on a self-financing basis.
5. The Fund shall ensure strict compliance with principles of good governance, including principles of integrity and transparency in its financial arrangements and those of its partners. These shall apply to the origins and destinations of capital for all financial transactions of the Fund. The supervisory bodies of the Fund shall ensure effective implementation of this provision.

### **Section 2: Types of operations**

The Fund's operations shall consist of ordinary operations and special operations.

- a. Ordinary operations shall be financed through ordinary resources of the Fund.
- b. Special operations shall be funded from other resources of the Fund.

### **Section 3: Limits on ordinary operations**

1. Loans issued to a State Party over a period of twelve (12) months, shall not exceed twice the amount of its paid-up subscription. Outstanding Short, Medium and Long Term loans to a State Party shall at no time exceed three times the amount of its paid-up subscription. The Board of Governors may decide to raise that limit. to four times the amount of the paid-up subscription.
2. The maximum amount of indebtedness of the Fund shall not exceed 200% (two hundred per cent) of the total of the authorized share capital of the Fund. Borrowing shall be effected in conformity with the terms and conditions prescribed by the Board of Directors.

### **Section 4: Currencies**

1. The transaction currencies of the Fund shall be the United States Dollars, Euro, and any other convertible currency that may be recommended by the Board of Directors and approved by the Board of Governors.
2. Pending the adoption of an African unit of account, the Fund's unit of account shall be the Special Drawing Rights of the IMF (SDR).

### **Section 5: Areas of cooperation**

1. In achieving its objectives and exercising its activities, the Fund shall earmark resources to building regional and international partnerships and synergies aimed at improving the efficiency of its operations.

2. Within the African continent, the Fund shall maintain working relationships with shareholders and other organs of the Union in achieving its objectives. It shall coordinate its activities with regional and continental institutions, while safeguarding its autonomy and decision-making procedures.

## **CHAPTER V**

### **GOVERNANCE AND MANAGEMENT**

#### **Article 10**

#### **Governance structure of the Fund**

The governance structure of the Fund shall be composed of the Board of Governors, the Board of Directors and the Managing Director.

#### **Section 1: The Board of Governors**

1. The Board of Governors shall be made up of Governors or alternate Governors representing each State Party.
2. The members of the Board of Governors shall be Ministers in charge of Finance or Governors of Central Banks of State Parties;
3. The Board of Governors shall oversee the management of the Fund and shall hold the highest executive powers;
4. The Board of Governors shall meet at least once a year in ordinary session in accordance with its rules of procedures and shall also be convened upon request, by one half of its members, or by members holding one half of the total voting power, or upon the request of the Board of Directors;
5. The Board shall elect annually from among its members, one of the Governors as its Chairperson, on a regional rotational basis;
6. The Board of Governors shall, among others:
  - a) approve and confirm the nomination of the members of the Board of Directors;
  - b) appoint the Managing Director of the Fund from among the State Parties, other than the Governors or the members of the Board of Directors;



- c) determine the remuneration to be paid to the members of the Board of Directors and their alternates, and also the salary and terms of the contract of service of the Managing Director;
  - d) adopt its own rules of procedure and the rules of procedure of the Board of Directors;
  - e) recommend amendments to the Protocol and Statute of the Fund;
  - f) admit new members and determine the conditions of their admission in conformity with Article 4 of this Statute;
  - g) increase or reduce the authorized share capital of the Fund;
  - h) appoint external auditors and decide on their mandate and remuneration;
  - i) consider the solvency position of the Fund and propose to the Assembly, if necessary, the liquidation of the Fund.
7. Decisions of the Board of Governors shall be taken based on the provisions in the Rules and Regulations of the Fund. In case of a tie, the Chairperson of the Board shall have the casting vote. The Rules of Procedures of the Board of Governors shall lay down the conditions for applying this provision.
8. The members of the Board of Governors shall not be remunerated. However, the members of the Board of Governors shall be reimbursed for any costs incurred as a result of attending Board meetings.

## **Section 2: The Board of Directors**

1. The Board of Directors shall be composed of:
  - i. The Managing Director;
  - ii. Permanent Members;
  - iii. Five (5) Substantive Directors (one per Region), and
  - iv. Five (5) Alternate Directors (one per Region).
2. The members of the Board of Directors shall be non-resident except the Managing Director. However, where Fund's operations so require, the Board of Governors may decide to review this Statute as appropriate.
3. Any State Party with at least 4% voting rights shall be allowed to hold a Permanent seat.
4. The Alternate Directors will be allowed to participate at Board Meetings but will not have voting rights except in the absence of the Substantive Director.

5. All members of the Board of Directors must have proven skills and experiences in economic, financial and monetary matters. They shall not be members of the Board of Governors.
6. The Board of Directors shall meet at least once every quarter and when required upon request by Substantive Directors representing a majority of voting rights.
7. The substantive Directors in a Region shall be elected by the Governors of that Region on a rotational basis for a fixed term period of three (3) years, renewable once. However the governors of each Region may, at their discretion, consider extending the term of office of any substantive Director.
8. The Managing Director of the Fund shall also be the Chairperson of the Board of Directors of the Fund.
9. The Board of Directors shall, among others:
  - a) prepare the meetings of the Board of Governors;
  - b) review and approve the administrative structure of the Fund;
  - c) select and appoint the Deputy Managing Director of the Fund in conformity with the staff rules and regulations of the Fund;
  - d) develop staff rules and regulations for the Fund;
  - e) approve the appointments, suspensions and dismissals of the Senior Officials and other staff of the Fund, in accordance with the staff rules and regulations of the Fund;
  - f) determine the remuneration to be paid to the Deputy Managing Director of the Fund and the terms of his contract of service;
  - g) adopt the Code of Conduct of the Fund;
  - h) take decisions concerning lending conditions and borrowing terms of the Fund;
  - i) consider and approve the annual report and statement of accounts of the Fund;
  - j) approve the conclusion of general cooperation agreements between the Fund and other African or international institutions;
  - k) consider and approve the annual operating budget of the Fund.

10. The Board of Directors shall establish an internal audit committee, and any other committee as appropriate, for the purpose of internal control and compliance in the activities of the Fund.
11. The Board of Directors shall exercise the powers vested in it by the Board of Governors and may delegate all or part of such powers to the Managing Director of the Fund, where necessary, with the exception of those referred to in paragraph 4 of this section.
12. Decisions of the Board of Directors shall be made in conformity with the provisions in the Rules and Regulations of the Fund. Voting rights for the Substantive Directors shall be determined by the total paid-up capital subscription of that region, excluding that of State Parties with permanent seats. The voting rights for State Parties with permanent seats shall be determined by their paid-up capital subscription. In the case of a tie, the Managing Director shall have the casting vote. The Rules of Procedure of the Board of Directors shall determine the procedures for implementing this provision.

**Section 3: The Managing Director of the Fund**

1. The Fund shall be managed and administered by a Managing Director who shall be assisted in his/her duties by Deputy Managing Directors. He/she shall be the Chief Executive and legal representative of the Fund.
2. The Managing Director shall attend the meetings of the Board of Governors and participate in the deliberations but shall not have the right to vote.
3. Under the supervision of the Board of Governors and in collaboration with the Board of Directors, the Managing Director shall be responsible for, inter alia:
  - a) Recruitment, appointment and discipline of the executives and other staff of the Fund, in accordance with the rules and regulations of the Fund;
  - b) Ensure implementation of the Statute of the Fund, as well as, other conventions and decisions of the Board of Governors and Directors of the Fund;
  - c) Prepare the annual budget of the Fund;
  - d) Set up special committees to assist her/him in carrying out the day-to-day administration of the Fund;
  - e) Sign Agreements and Conventions on behalf of the Fund;
  - f) Any other duties that may be assigned by the Board of Governors.

4. The Managing Director shall be appointed for a fixed term of four (4) years, renewable once upon approval by the Board of Governors. He/she shall be a national of a State Party to the Protocol and this Statute and shall have proven integrity, relevant competences and experience.
5. The Managing Director may delegate, all or part of his/her duties to the Deputy Managing Director, in accordance with the rules and regulations.

**Section 4: The provisional administrative structure of the Fund**

Pending the commencement of the Fund's operations a provisional administrative structure approved by the Executive Council shall commence with immediate effect.

**Article 11  
Code of Conduct**

1. In the performance of their duties, the Managing Director of the Fund and any other Fund staff shall not accept nor receive instructions from any government or any authority other than the Fund.
2. Each State Party shall undertake to respect the exclusive nature of the responsibilities of the Managing Director and any other staff member of the Fund and shall not influence or seek to influence them in the performance of their duties.
3. The Managing Director and the other staff of the Fund shall not, in the discharge of their duties, engage in any activity or conduct incompatible with the proper discharge of their duties. They are required to avoid conflict between professional and personal interests or obligations sufficient to influence the impartial exercise of their official duties or responsibilities.
4. Where the Managing Director of the Fund fails to comply with his/her obligations, an *ad hoc* Committee approved by the Board of Governors shall provide an appropriate report and recommendations for its consideration and decision.
5. Where a Deputy Managing Director of the Fund fails to comply with his/her obligations, the Board of Directors shall take disciplinary action against him/her and provide appropriate justification to the Board of Governors.
6. Where a staff member fails to comply with his/her obligations, the internal procedures referred to in the Statute and Staff Rules and Regulations shall be applied. The staff member concerned shall have the right to appeal in accordance with the Staff Rules and Regulations.

## CHAPTER VI

### WITHDRAWAL AND SUSPENSION OF MEMBERS, TEMPORARY SUSPENSION AND TERMINATION OF FUND OPERATIONS

#### Article 12 Withdrawal

1. Any State Party may withdraw from the Fund by giving the Chairperson of the Board of Directors six months written notice for consideration by the Board of Governors.
2. The withdrawal of a State Party shall become effective, and its participation cease, on the date approved by the Fund. However, before the withdrawal becomes effective, the State Party concerned may at any time notify the Fund in writing that its notice of intention to withdraw is annulled.
3. A withdrawing State Party shall settle with the Fund, all its outstanding obligations and financial commitments. If the withdrawal becomes effective, the State Party shall not be liable for the obligations arising from transactions by the Fund subsequent to the receipt of the notification of withdrawal in accordance with paragraphs 1 and 2 above.

#### Article 13 Suspension of a State Party

1. Where a State Party fails to fulfil any of its obligations towards the Fund the Board of Governors may suspend its voting and borrowing rights.
2. The Board of Governors shall determine the conditions for suspension of a State Party.

#### Article 14 Settlement of accounts

1. As of the date of suspension, the State Party shall remain liable for its obligations and other commitments to the Fund, as long as loans contracted before that date remain outstanding.
2. When a State Party ceases to be member, its shares and voting rights shall be sold and redistributed to the other States Parties in proportion to the shares subscribed by each of those States Parties. To this end, the redemption price of those shares shall be the value shown by the books of the Fund at the date on

which the shareholder ceased to be a member, the original purchase price of each share representing its maximum value. That shareholder shall also be charged with penalty to be determined by the Board of Governors.

3. Where the Fund terminates its operations pursuant to Article 16 of this Statute, within three (3) months from the date on which a State Party has ceased to be a member, all the rights of the State Party concerned shall be determined in conformity with Articles 17 and 18 of this Statute. The State Party concerned shall be considered as still being a member of the Fund under such articles, but its voting rights shall be withdrawn.

### **Article 15 Temporary Suspension of Facilities**

Under exceptional circumstances, the Board of Directors may temporarily suspend the extension or release of new or existing credit facility to any State Party until outstanding issues are resolved and approved by the Board of Governors.

### **Article 16 Termination of operations**

1. The Fund may terminate its operations following a resolution of the Board of Governors duly adopted by the Assembly of the Union.
2. Upon such termination, the Fund shall cease all activities with the exception of those relating to the orderly realization, conservation and safeguarding of its assets and the settlement of its obligations.
3. There shall be an independent liquidator appointed by the Court to administer the termination of the Fund. Pending its establishment, such appointment shall be decided by the Board of Governors.

### **Article 17 Liability of members and settlement of claims**

1. In the event of termination of operations of the Fund, the liabilities of all State Parties, including outstanding subscriptions and loans, shall be recovered.
2. All creditors holding direct claims shall first be paid out of the assets of the Fund and then out of payments to the Fund of unpaid or callable subscriptions. Before making any payments to creditors holding direct claims, the Board of Directors shall make such arrangements as are necessary, in its judgment, to ensure a *pro rata* distribution among holders of direct and contingent claims

**Article 18**  
**Distribution of assets**

1. In the event of termination of the operations of the Fund, the distribution of assets among States Parties for their subscriptions to the capital of the Fund shall not be made until all liabilities to creditors have been settled or have been subject to appropriate measures. In addition, such distribution must be approved by a majority vote of the Board of Governors in conformity with its Rules of Procedure.
2. After a decision has been taken to distribute the assets of the Fund, as provided for in paragraph (1) above, the Board of Directors may decide subsequently to proceed with the distribution of such assets. Such distribution shall be subject to the prior settlement of all claims not yet paid by the Fund to States Parties.

**CHAPTER VII**

**STATUS, IMMUNITIES, EXEMPTIONS AND PRIVILEGES**

**Article 19**  
**Status**

To enable it to fulfil its purpose and the functions with which it is entrusted, the Fund shall possess full international personality. To this end, it may enter into agreements with members, non-members and other international organisations. Thus, the status, immunities, exemptions and privileges set forth in this chapter shall be accorded to the Fund in the territory of each State Party

**Article 20**  
**Status in States Parties**

On the territory of each State Party, the Fund shall enjoy international personality and, in particular, have full capacity to:

- a) contract;
- b) acquire and dispose of movable and immovable property;
- c) institute legal proceedings.

## **Article 21**

### **Privileges and immunities of the Fund**

The headquarters and other offices of the Fund shall enjoy such privileges and immunities as stipulated in the General Convention on Privileges and Immunities of the Organization of African Unity, the Vienna Convention on Diplomatic Relations and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations

#### **Section 1: Property, funds, assets and transactions of the Fund**

1. The Fund, its property and assets, as well as its offices and buildings, shall enjoy immunity from legal process except to the extent that the Fund has expressly waived in special cases, in accordance with the General Convention. It shall however be understood that the waiver cannot extend to any measure of execution.
2. The property and assets of the Fund, shall be immune from search, requisition, confiscation, expropriation or any other form of executive, judicial or legislative action.
3. The archives of the Fund and, in general, all documents belonging to or held by it, shall be inviolable, wherever located.
4. Without being restricted by any financial control, regulation or moratorium:
  - a) The Fund may hold assets, gold or currency of any kind and have bank accounts in any currency;
  - b) The Fund may freely transfer its assets, gold or currency from one country to another or within any country and convert any currency held by it into any other currency.

#### **Section 2: Tax exemptions**

1. The Fund, its assets, income and other assets shall be exempted from:
  - i. all direct taxes, except taxes or charges that reflect payment for public utilities;
  - ii. all customs duties, prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Fund for its official use;
  - iii. restrictions on rights to import and export its publications.
2. Even if the Fund does not, in principle, claim exemption from duties and sales taxes included in the price of movable and immovable property, yet when it



makes, for its official use, substantial purchases of property whose price includes taxes of this nature, States Parties shall take appropriate administrative measures for the remission or refund of the amount of such duties or taxes.

### **Section 3: Communications**

1. For its official communications and the transfer of all its documents, the Fund shall enjoy in the territory of States Parties, treatment not less favourable than that accorded by States Parties to international organizations and other governments, including diplomatic missions for cables, remote files, telephone, telegraph, telex, fax and other electronic communications, as well as the tariffs charged the media for information through the press or broadcast. The Fund shall also enjoy the same benefits as those granted to international organizations and governments, including diplomatic missions in terms of priority, pricing and taxation of mail. The communications and correspondence of the Fund may not be censored.
2. The Fund shall have the right to use codes and to dispatch and receive correspondence and other documents either by mail or in sealed bags which shall enjoy the same privileges and immunities as diplomatic couriers and bags.

### **Article 22**

#### **Immunities and privileges of Fund staff**

1. The Officials of the Fund who are not citizens of the host country or nationals to whom diplomatic status have been accorded on the discretion of the host country as per Articles 8 (2) and 38 (2) of the Vienna Convention on Diplomatic Relations, 18 April 1961;
  - a) shall enjoy immunity from criminal prosecution in respect of words spoken or written and all acts accomplished by them in the performance of their duties;
  - b) shall be exempt from taxation on salaries and emoluments paid to them by the Fund;
  - c) shall be free of any obligation under the national service;
  - d) shall, together with their spouses and dependant relatives, be immune from immigration restrictions as well as aliens registration formalities and finger printing;
  - e) shall enjoy, in respect of exchange facilities, the same privileges as officials of comparable rank of diplomatic missions accredited to the State Party concerned;

- f) shall enjoy, together with their spouses and dependents, the same repatriation facilities as diplomatic agents in times of international crisis;
  - g) shall have the right to import duty-free their furniture and personal effects at the time of first taking up employment in the State Party concerned.
2. Personnel and other employees of the Fund who are nationals or permanent residents of the host country shall enjoy:
    - a) immunities and exemptions with respect to words spoken and actions carried out in their official capacity.
    - b) Exemption from direct taxes on salaries and emoluments received for their employment.
  3. The privileges and immunities shall be granted to officials of the Fund in the interest of the Fund. Such privileges and immunities shall not be granted in the personal interest of those concerned. The Managing Director of the Fund shall have the right and duty to waive the immunity of any official in any case where he considers that such immunity would prevent justice from taking its course and can be waived without prejudice to the interests of the Fund. In the case of the Managing Director and senior officials of the Fund, the waiver of immunity shall be incumbent on the Board of Directors upon approval of Board of Governors.
  4. The Fund shall cooperate at all times with the competent authorities of the State Party concerned to facilitate the proper administration of justice, secure the observance of police regulations and prevent any abuse of the privileges, immunities and facilities specified in this article.

### **Article 23**

#### **Privileges and immunities of representatives of States Parties, members of the Board of Governors and of the Board of Directors**

Representatives of States Parties, members of the Board of Governors and the Board of Directors attending meetings, assemblies and conferences organized by the Fund shall enjoy such privileges and immunities as specified in Article V of the General Convention, in the performance of their functions and during their journeys to and from the venues of such meetings.

### **Article 24**

#### **Privileges and immunities of experts on mission for the Fund**

Experts, other than the officials mentioned in Article 22, carrying out a mission for the Fund shall, for the duration of the mission, including travel imposed by the mission, enjoy the privileges and immunities as are necessary to exercise their duties

independently in accordance with the provisions of Article VII of the General Convention.

## **CHAPTER VIII**

### **MISCELLANEOUS PROVISIONS**

#### **Article 25**

##### **Mode of communication with member countries and depositories**

1. Each State Party shall indicate an appropriate official entity with which the Fund can communicate on any matter concerning the Fund.
2. The Fund shall have a comprehensive communication strategy for its activities.
3. The Fund may keep its holdings with depositories determined by the Board of Directors.

#### **Article 26**

##### **Publication of the Protocol and the Statute, dissemination of information and reports**

1. The Fund shall make the text of the Protocol and the Statute and all important documents available in all working languages of the Union.
2. States Parties shall provide the Fund with any information it may request from them to facilitate the conduct of its operations.
3. The Fund shall publish and communicate to its members an annual report containing an expert's appraisal of the situation of its accounts, and forward, at maximum intervals of three months, a summary statement of its financial position and a profit and loss statement showing the results of its operations.
4. The Fund may publish any report as it deems desirable for the accomplishment of its mission and forward it to its members.
5. The Fund shall prepare and submit an annual report on its activities to the Assembly through the Executive Council.

#### **Article 27**

##### **Commencement of operations of the Fund**

1. Upon entry into force of the Protocol, each State Party shall appoint a representative, and the Chairperson of the Commission shall convene the inaugural meeting of the Board of Governors.

2. The Fund shall commence operations upon payment of at least 25 per cent of the paid-up capital.
3. The Fund shall notify States Parties of the date of commencement of its operations.
4. The Provisional Administrative Structure referred to in Article 10, Section 4 shall cease to exist on commencement of the Fund's operations.

**Article 28**  
**Settlement of disputes**

Any dispute arising from the interpretation or application of the Statute shall be resolved amicably within a time limit of one (1) year. Failing which, the dispute may be referred to the Court. Pending its establishment, such matters shall be submitted to the Assembly of the Union, which shall decide by a two-thirds majority

**CHAPTER IX**

**TRANSITIONAL PROVISIONS AND ANNEXES**

**Article 29**  
**Temporary domicile of the resources of the Fund**

The resources of the Fund shall be domiciled at the African Development Bank or any other credible Continental financial institution approved by the Board of Governors pending the commencement of operations of the African Central Bank

**Article 30**  
**Annexes to the statute of the Fund**

The Annexes to this Statute shall include:

1. List of African Union Member States;
2. Capital subscriptions and voting rights.

**Annex 1****List of African Union Member States**

Algeria	Ghana	Seychelles
Angola	Guinea Bissau	Sierra Leone
Benin	Guinea	Somalia
Botswana	Kenya	South Africa
Burkina Faso	Lesotho	South Sudan
Burundi	Liberia	The Sudan
Cameroun	Libya	Swaziland
Cape Verde	Madagascar	Tanzania
Central African Republic	Malawi	Chad
Comoros	Mali	Togo
Congo	Mauritania	Tunisia
Congo DR	Mauritius	Uganda
Cote d'Ivoire	Mozambique	Zambia
Djibouti	Namibia	Zimbabwe
Egypt	Niger	
Eq. Guinea	Nigeria	
Eritrea	Rwanda	
Ethiopia	Sahraouian Arab Democ. Rep.	
Gabon	Sao Tome & Principe	
Gambia	Senegal	

## **Annex 2**

### **Capital Subscription Calculation for the African Monetary Fund**

#### **A. Definitions of Capital**

##### **1.1. Authorized Share Capital**

The authorized capital is the maximum amount of share capital that the Fund shall be authorized by its statutory documents to issue to shareholders (State Parties). It is the highest limit of the amount that could be issued as shares to State Parties throughout the existence of the Fund, except when amended by the approval of the Board of Governors. The Fund would not operate its business with the amount as high as the authorized capital because it is above its current requirement but it represents a future limit to the amount that can be subscribed by State Parties. Therefore the Fund shall not issue the whole of its authorized capital during the life of its operation.

##### **1.2. Subscribed Share Capital**

The subscribed capital of the Fund shall be the amount of capital agreed by the State Party to contribute in response to the call of the Fund. This shall not be the amount that is required to be paid by the State Party to the Fund but represents the commitment of the State Party to avail the Fund of any proportion of such amount as at when requested.

##### **1.3. Callable Share Capital**

The callable capital is that portion of subscribed capital subject to call by the Fund only as and when required to meet its obligation. In the event of a call, payment shall be made by the State Party to the Fund to enable it discharge the obligation for which the call is made.

##### **1.4. Paid-up Share Capital**

The paid-up capital of the Fund shall be the amount that is required to be paid by State Parties to be shareholders of the Fund and to enable the Fund carry out its activities.

#### **B. Definition of Variables**

##### **1.5. Total External Debt**

Total external debt is debt owed to non-residents repayable in foreign currency, goods, or services. Total external debt is the sum of public, publicly guaranteed, and private nonguaranteed long-term debt, use of IMF credit, and short-term debt. Short-term debt includes all debt having an original maturity of one year or less and interest in arrears on long-term debt. Data are in current U.S. dollars.

**1.6. Total External Reserves (includes gold, current US\$)**

Total reserves comprise holdings of monetary gold, special drawing rights, reserves of IMF members held by the IMF, and holdings of foreign exchange under the control of monetary authorities. The gold component of these reserves is valued at year-end (December 31) London prices. Data are in current U.S. dollars.

**1.7. GDP**

GDP at purchaser's prices is the sum of gross value added by all resident producers in the economy plus any product taxes and minus any subsidies not included in the value of the products. It is calculated without making deductions for depreciation of fabricated assets or for depletion and degradation of natural resources. Data are in current U.S. dollars. Dollar figures for GDP are converted from domestic currencies using single year official exchange rates. For a few countries where the official exchange rate does not reflect the rate effectively applied to actual foreign exchange transactions, an alternative conversion factor is used.

**1.8. Balance of Payment**

Current account balance is the sum of net exports of goods, services, net income, and net current transfers. Data are in current U.S. dollars.

**1.9. Population**

Total population is based on the de facto definition of population, which counts all residents regardless of legal status or citizenship--except for refugees not permanently settled in the country of asylum, who are generally considered part of the population of their country of origin. The values shown are midyear estimates.

All series are averaged (annually) over the considered period.

**C. Capital Subscription Calculation**

The shares of Capital subscriptions for the AMF are determined using the following procedures:

1. For each State Party, the **share of capital subscription ( $Scs_i$ )** is determined taking into account the GDP and Population of the State Party using the following formula:

$$Scs_i = 100 * \left[ 0.5 * GDP_i / \sum_{j=1}^n GDP_j + 0.5 * Pop_i / \sum_{j=1}^n Pop_j \right]$$

considering that the weight allocated to each variable is summed-up to 100 per cent.

2. The Capital Subscription (CS) of the Fund is determined as a percentage ( $p_1$ ) of the Authorized Capital (AC) as followed:  $CS = p_1 * AC$   
This percentage ( $p_1$ ) is assumed varying from 75% - Low hypothesis – to 100% - High hypothesis.
3. For each State Party, the Capital Subscription is determined as followed:  
 $CS_i = SCS_i * p * AC$
4. The **Authorized Capital (AC)** is determined as a percentage of an estimate of the annual average of BOP deficit balances over a period – in current prices US\$ of all member states of the African Union. This percentage is assumed varying from 75% - Low hypothesis – to 100% - High hypothesis.
5. The **Callable Capital(CC)** is determined as a percentage ( $p_2$ ) of the Capital Subscription. This percentage ( $p_2$ ) is assumed varying from 50% - Low hypothesis – to 75% - High hypothesis.  
For each State party, the Callable Capital is determined using the following formula:  
 $CC_i = p_2 * CS_i$
6. The **Paid-up Capital (PC)** is then determined as a percentage ( $p_3$ ) of an estimate of the Callable Capital. This percentage ( $p_3$ ) is assumed varying from 50% - Low hypothesis – to 75% - High hypothesis.  
For each State party, the Paid-up Capital is determined using the following formula:  
 $PC_i = p_3 * CC_i$

The above procedure is followed in order to reduce the degree of skewedness of distribution to the minimum amongst the member states of the Fund and also to minimize the direct financial effect on member states. In this regards, each member state contribution is less than 0.625 per cent of its 9 years average annual GDP. The burden of payment is further reduced by the annual installment where each member state pays about 25 per cent of its required paid-up capital annually.

Authorized Share Capital is determined taking into account the annual balance of payment average deficit/surplus during 2000 and 2008 period, evaluated to US\$30.19bn. Required Callable Share Capital and paid-up capital are determined as in the Table below.



Average BOP (a)	30.19
Authorized Capital (75% of (a)) (b)	22.64
Callable Capital (50% of b) '(c)	11.32
Total Required Paid-up Capital (50% of c) '(d)	5.66
Number of voting rights	500,000.00

Country	Capital Subscription	Callable Capital (Total)	Paid-up Capital (Total)	Voting Rights	Voting Rights (Total)
	%	US\$ BN	US\$ BN	(%)	Number
1 Algeria	4.59	0.520	0.260	4.59	22,949.06
2 Angola	2.31	0.261	0.131	2.31	11,549.06
3 Benin	1.28	0.145	0.072	1.28	6,399.06
4 Botswana	1.26	0.143	0.071	1.26	6,299.06
5 Burkina	1.47	0.166	0.083	1.47	7,349.06
6 Burundi	1.17	0.132	0.066	1.17	5,849.06
7 Cameroon	1.89	0.214	0.107	1.89	9,449.06
8 Cape Verde	0.99	0.112	0.056	0.99	4,949.06
9 Central Africa Rep.	1.10	0.124	0.062	1.10	5,499.06
10 Comores	0.97	0.110	0.055	0.97	4,849.06
11 Congo	1.20	0.136	0.068	1.20	5,999.06
12 DRC	2.79	0.316	0.158	2.79	13,949.06
13 Cote d'Ivoire	1.90	0.215	0.108	1.90	9,499.06
14 Djibouti	0.99	0.112	0.056	0.99	4,949.06
15 Egypt	6.12	0.693	0.346	6.12	30,599.06
16 Equatorial Guinea	1.31	0.148	0.074	1.31	6,549.06
17 Eritrea	1.10	0.124	0.062	1.10	5,499.06
18 Ethiopia	3.41	0.386	0.193	3.41	17,049.06
19 Gabon	1.21	0.137	0.068	1.21	6,049.06
20 Gambia	1.00	0.113	0.057	1.00	4,999.06
21 Ghana	1.84	0.208	0.104	1.84	9,199.06
22 Guinea-Bissau	0.99	0.112	0.056	0.99	4,949.06
23 Guinea	1.31	0.148	0.074	1.31	6,549.06
24 Kenya	2.50	0.283	0.141	2.50	12,499.06
25 Lesotho	1.03	0.117	0.058	1.03	5,149.06
26 Liberia	1.05	0.119	0.059	1.05	5,249.06
27 Libya	2.35	0.266	0.133	2.35	11,749.06
28 Madagascar	1.60	0.181	0.091	1.60	7,999.06
29 Malawi	1.40	0.158	0.079	1.40	6,999.06
30 Mali	1.41	0.160	0.080	1.41	7,049.06
31 Mauritania	1.08	0.122	0.061	1.08	5,399.06
32 Maritus	1.15	0.130	0.065	1.15	5,749.06

Country	Capital Subscription	Callable Capital (Total)	Paid-up Capital (Total)	VotingRights	Voting Rights (Total)
	%	US\$ BN	US\$ BN	(%)	Number
33 Mozambique	1.69	0.191	0.096	1.69	8,449.06
34 Namibia	1.18	0.134	0.067	1.18	5,899.06
35 Niger	1.40	0.158	0.079	1.40	6,999.06
36 Nigeria	7.94	0.899	0.449	7.94	39,699.06
37 Rwanda	1.27	0.144	0.072	1.27	6,349.06
38 Sao-Tome	0.95	0.108	0.054	0.95	4,749.06
39 Senegal	1.49	0.169	0.084	1.49	7,449.06
40 Seychelles	0.97	0.110	0.055	0.97	4,849.06
41 Sierra Leone	1.12	0.127	0.063	1.12	5,599.06
42 Somalia	1.35	0.153	0.076	1.35	6,749.06
43 South Africa	8.05	0.911	0.456	8.05	40,249.06
44 South Sudan	0.57	0.064	0.032	0.57	2,829.81
45 Sudan	2.26	0.256	0.128	2.26	11,319.25
46 Swaziland	1.04	0.118	0.059	1.04	5,199.06
47 Tanzania	2.41	0.273	0.136	2.41	12,049.06
48 Chad	1.35	0.153	0.076	1.35	6,749.06
49 Togo	1.17	0.132	0.066	1.17	5,849.06
50 Tunisia	2.03	0.230	0.115	2.03	10,149.06
51 Uganda	2.00	0.226	0.113	2.00	9,999.06
52 Zambia	1.48	0.168	0.084	1.48	7,399.06
53 Zimbabwe	1.57	0.178	0.089	1.57	7,849.06
54 Sahrawi Arab Rep.	0.95	0.108	0.054	0.95	4,749.06
<b>Total</b>	<b>100,00</b>	<b>11,320</b>	<b>5,660</b>	<b>100,00</b>	<b>500 000,00</b>

**EX.CL/846(XXV)Rev.1**  
**Annex 2**

**DRAFT**  
**AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION**  
**(NIAMEY CONVENTION)**

AFRICAN UNION  
الاتحاد الأفريقي



UNION AFRICAINE  
UNIÃO AFRICANA

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**First Meeting of the Specialized Technical Committee  
On Justice and Legal Experts  
15-16 May 2014  
Addis Ababa, Ethiopia**

**STC/Legal/Min/4(I)**

**DRAFT  
AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION  
(NIAMEY CONVENTION)**

## PREAMBLE

**We, Member States of the African Union,**

**Inspired** by the objectives and principles enshrined in the Constitutive Act of the African Union, adopted in Lomé, Togo, on 11 July 2000, and the Treaty establishing the African Economic Community adopted in Abuja, Nigeria, on 3 June 1991;

**Reaffirming our commitment to** Resolution AHG/Res. 16(1) on the principle of the respect of borders existing at the time of accession to national independence, adopted by the 1<sup>st</sup> Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity, held in Cairo, Egypt, from 17 to 21 July 1964;

**Mindful of** Resolution CM/Res.1069 (CXLIV) on Peace and Security in Africa through Negotiated Settlement of Border Conflicts, adopted by the 44<sup>th</sup> Ordinary Session of the Council of Ministers of the Organization of African Unity held in Addis Ababa, Ethiopia, from 21 to 26 July 1986 ;

**Recalling** the relevant provisions of the Memorandum of Understanding on the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA), adopted by the 38<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the Organisation of African Unity, held in Durban, South Africa, on 8 July 2002;

**Recalling further** the Declarations on the African Union Border Programme, adopted by the Conferences of African Ministers in charge of Border Issues, held respectively in Addis Ababa, on 7 June 2007 and 25 March 2010, and in Niamey, Niger, on 17 May 2012;

**Determined** to give effect to the African Union decisions related to border issues, including Decisions EX.CL/370 (XI) and EX.CL/Dec.461 (XIV), adopted by the 11<sup>th</sup> and 14<sup>th</sup> Ordinary Sessions of the Executive Council of the African Union, held respectively in Accra, Ghana, from 25 to 29 June 2007, and in Addis Ababa, from 29 to 30 January 2009 ;

**Recalling** the international initiatives on the delimitation and delineation of maritime borders and the provisions of the United Nations Convention on the Law of the Sea;

**Convinced** that a legal framework for cross-border cooperation would accelerate integration in Africa and enhance prospects for the peaceful resolution of border disputes between Member States;

**Desirous** to implement effective cross-border cooperation, necessary for the transformation of border areas into zones of trade and cooperation;

**Have agreed as follows:**

## Article 1 Definitions

For the purposes of this Convention:

**“Border Area”** means a geographical area straddling the border of two or more neighbouring States;

**“Border Programme”** means the African Union Border Programme, as defined in the Declarations adopted by the Conferences of African Ministers in charge of Border Issues, held in Addis Ababa, on 7 June 2007 and 25 March 2010, and in Niamey, on 17 May 2012, and subsequently endorsed by the Executive Council of the African Union;

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

**“Continental Border Consultative Committee”** means the Committee set up by the African Union Commission and comprising representatives of the Regional Economic Communities, as the implementation mechanism for cross-border cooperation at continental level;

**“Convention”** means the African Union Convention on Cross-Border Cooperation;

**“Cross-Border Cooperation”** means any act or policy aimed at promoting and strengthening good-neighbourly relations between border populations, territorial communities and administrations or other stakeholders within the jurisdiction of two or more States, including the conclusion of agreements and arrangements useful for this purpose;

**“Local Border Consultative Committee”** means a local border territorial administration or authority recognized as such under the domestic law of State Parties;

**“Reaffirmation of Borders”** means the reconstruction of degraded beacons into their original locations, in conformity with international norms;

**“Regional Border Consultative Committee”** means the body that facilitates dialogue and consultation between regional, bilateral and local border territorial administrations or authorities across borders;

**“Regional Economic Communities”** mean the regional integration blocs of the African Union;

**“State Party”** or **“State Parties”** means any Member State of the African Union which has ratified, or acceded to, this Convention and deposited the instruments of ratification or accession with the Chairperson of the African Union Commission;

**“Territorial Communities or Authorities”** means communities, authorities, or bodies exercising local territorial functions and regarded as such under the domestic law of States Parties;

**“Union”** means the African Union.

## **Article 2 Objectives**

The objectives of the present Convention are to:

1. promote cross-border cooperation, at local, sub-regional and regional levels;
2. seize the opportunities arising from shared borders and address the related challenges;
3. facilitate the delimitation, demarcation and reaffirmation of interstate borders, in conformity with mechanisms agreed upon by the parties concerned;
4. facilitate the peaceful resolution of border disputes;
5. ensure efficient and effective integrated border management;
6. transform border areas into catalysts for growth, socio-economic and political integration of the continent; and
7. promote peace and stability through the prevention of conflicts, the integration of the continent and the deepening of its unity.

## **Article 3 Areas of Cooperation**

State Parties shall commit themselves to promote cross-border cooperation in the following areas:

1. mapping and geographical information, including survey;
2. socio-economic development, including transportation, communication, trade, agro pastoral activities, handicrafts, energy resources, industry, health, sanitation, drinking water, education and environmental protection;
3. cultural activities and sports;
4. security, especially combating cross-border crime, terrorism, piracy and other forms of crime;
5. de-mining of border areas;

6. institutional development in all areas covered by the present Convention, including identification, formulation and execution of projects and programmes;
7. any other areas agreed upon by the State Parties.

#### **Article 4**

#### **Facilitation of Cross-Border Cooperation**

1. The State Parties shall endeavour to solve any legal, administrative, security, cultural or technical impediment likely to hamper the strengthening and smooth functioning of cross-border cooperation. In this respect, State Parties shall regularly consult with each other or with other interested parties.
2. State Parties shall, in accordance with the provisions of the present Convention, cooperate fully in the implementation of the Border Programme.

#### **Article 5**

#### **Sharing of Information and Intelligence**

1. Each State Party shall, as much as possible, provide information requested by another State Party, with a view to facilitating the performance by the requesting State of its obligations under this Convention.
2. Each State Party shall take the necessary steps to encourage, promote and facilitate information and intelligence sharing, as may be requested by another State Party on matters relating to the protection and security of border areas.

#### **Article 6**

#### **Competent Authorities or Bodies responsible for Border Matters**

Each State Party shall, either at the time of ratification of, or accession to, this Convention, or as soon as possible, thereafter, communicate to the Commission the list of competent authorities or bodies responsible for border issues under its domestic law, which shall then serve as focal points.

#### **Article 7**

#### **Harmonisation of domestic law pertaining to Border Issues**

States Parties are encouraged to harmonize their domestic law with this Convention and ensure that the local territorial administrations or authorities in border areas are duly informed of the opportunities available to them and their obligations under this Convention.



### **Article 8**

#### **Mechanisms for implementation of Cross-Border Cooperation at the level of State Parties**

1. State Parties shall commit themselves to apply the provisions of the present Convention and to endeavour to attain its objectives, particularly by:
  - (a) establishing cooperation mechanisms, including legal frameworks;
  - (b) taking into account domestication of the provisions of the Convention in the development of their national policies and strategies;
  - (c) submitting, every two years, a report on the measures taken for the implementation of the present Convention.
2. Activities pertaining to cross-border cooperation shall be undertaken by local territorial communities or authorities as defined by the domestic law of State Parties.
3. The decentralized border territorial administrations or authorities established under the domestic law of State Parties shall exercise their powers, including the conclusion of cooperation agreements with decentralized border territorial administrations or authorities of neighbouring State Parties, in conformity with the domestic law of their respective States.
4. State Parties may establish Border Consultative Committees comprising representatives of competent bodies to assist, in an advisory capacity, the border communities and authorities in the consideration of cross-border cooperation matters.

### **Article 9**

#### **Mechanisms for implementation of Cross-Border Cooperation at the level of the Regional Economic Communities**

1. The Commission shall establish a framework for cooperation with the Regional Economic Communities on the implementation of the Border Programme, in conformity with the objectives of this Convention. In this regard, the Commission shall request the Regional Economic Communities to:
  - (a) encourage Member States to sign, ratify, or accede to, this Convention;
  - (b) designate focal points for coordination, evaluation and monitoring of the implementation of the commitments enshrined in this Convention.
2. The Commission shall encourage each Regional Economic Community to establish a Regional Border Consultative Committee.

3. The Regional Border Consultative Committees, composed of nominees of Member States of the Regional Economic Communities, shall assist the latter, in an advisory capacity, in the consideration of cross-border cooperation matters.
4. The Regional Border Consultative Committee shall:
  - (a) assist in the formulation of policies and activities for the promotion of cross-border cooperation in administrative, cultural, socio-economic and security areas in their respective regions;
  - (b) prepare road-maps outlining the actions necessary for enhancing cross-border cooperation;
  - (c) coordinate all the activities, as well as the mobilization of the required means for the attainment of the objectives stipulated in this Convention;
  - (d) facilitate dialogue and consultation between regional and local authorities located on either side of border areas, when requested by the State Parties concerned;
  - (e) recommend the adoption of best practices for the effective management and administration of border areas;
  - (f) examine the problems faced by border populations and suggest solutions thereto, when requested by the State Parties concerned;
  - (g) make recommendations on ways and means of promoting cross-border activities undertaken by the different entities located within border areas, when requested by the State Parties concerned.

**Article 10**  
**Mechanism for implementation of Cross-Border**  
**Cooperation at the continental level**

1. The Commission shall coordinate and facilitate the implementation of this Convention through the Border Programme. Accordingly, the Commission shall:
  - (a) act as the central coordinating structure for the implementation of this Convention;
  - (b) support State Parties in implementing this Convention;
  - (c) coordinate the evaluation of the implementation of the Convention with other appropriate organs of the Union, the Regional Economic Communities and competent national bodies;
  - (d) establish the Continental Border Consultative Committee;

- (e) support the efforts of the State Parties for an effective sharing of information and intelligence.
2. The Continental Border Consultative Committee shall be composed of the representatives of the Regional Economic Communities and shall operate under the auspices of the Commission.
3. The Continental Border Consultative Committee shall be charged with the following tasks:
- a) advise the Commission on cross-border cooperation matters;
  - b) consider and propose general guidelines to promote cross-border cooperation in administrative, security, socio-economic, cultural and other areas identified in this Convention;
  - c) identify priority actions and resources needed for the implementation of these guidelines;
  - d) promote best practices relating to the development of border regions;
  - e) examine problems faced by border populations and propose recommendations, in coordination with, and approval of, the State Parties concerned.

#### **Article 11: Border Programme Fund**

1. A Border Programme Fund shall be established and managed in accordance with the AU Financial Rules and Regulations.
2. The resources of the Border Programme Fund shall be provided through:
- a) voluntary contributions of Member States; and
  - b) miscellaneous income, including donations and grants, in conformity with the principles and objectives of the Union.

#### **Article 12: Safeguard provisions**

1. The provisions of this Convention shall not be interpreted in a manner that is inconsistent with the relevant principles of international law, including international customary law.

2. None of the provisions of this Convention shall affect more favourable provisions relating to cross-border cooperation contained in the domestic law of State Parties or in any other regional, continental or international agreement applicable in these State Parties.

3. In the implementation of this Convention, the specificities and special needs of island states shall be taken into account.

### **Article 13 Settlement of Disputes**

1. Any dispute relating to this Convention shall be amicably resolved through direct negotiations between the State Parties concerned.

2. Where the dispute is not resolved through direct negotiation, the State Parties shall endeavour to resolve the dispute through other peaceful means, including good offices, mediation and conciliation, or any other peaceful means agreed upon by the State Parties. In this regard, the State Parties shall be encouraged to make use of the procedures and mechanisms for resolution of disputes established within the framework of the Union.

### **Article 14 Signature, Ratification or Accession**

This Convention shall be open to all Member States of the Union, for signature, ratification or accession, in conformity with their respective constitutional procedures.

### **Article 15: Entry into Force**

This Convention shall enter into force thirty (30) days after the date of the receipt by the Chairperson of the Commission of the African Union of the fifteenth (15<sup>th</sup>) instrument of ratification.

### **Article 16: Amendment**

1. Any State Party may submit proposals for the amendment or revision of this Convention.

2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission of the African Union, who shall transmit the same to State Parties within thirty (30) days of receipt thereof.

3. The Assembly of the Union, upon recommendation of the Executive Council of the Union, shall examine these proposals at its next session, provided all State Parties have been notified at least three (3) months before the beginning of the session.

4. The Assembly of the Union shall adopt the amendments in accordance with its Rules of Procedure.

5. The amendments or revisions shall enter into force in accordance with the provisions of Article 15 above.

**Article 17:  
Depository**

1. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the African Union.

2. Any State Party may withdraw from this Convention by giving a written notice of one (1) year in advance to the Chairperson of the Commission of the African Union.

3. The Chairperson of the Commission of the African Union shall notify the Member States of any signature of this Convention, any deposit of an instrument of ratification or accession, as well as its entry into force.

4. The Chairperson of the Commission shall also notify the State Parties of the requests for amendments or withdrawal from the Convention, as well as reservations thereon.

5. Upon entry into force of this Convention, the Chairperson of the Commission shall register it with the Secretary-General of the United Nations, in accordance with Article 102 of the Charter of the United Nations.

6. This Convention, drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic, shall be deposited with the Chairperson of the Commission who shall transmit a certified true copy of the Convention to each Member State of the African Union in its official language.

**IN WITNESS WHEREOF, WE, Member States of the African Union have adopted this Convention (Niamey Convention) during the....Ordinary Session of our Assembly held in.....**

**Done at....., this .....day of.....20.....**

LC12490

EX.CL/846(XXV)Rev.1  
Annex 3

**DRAFT AFRICAN UNION CONVENTION ON CYBER SECURITY  
AND PERSONAL DATA PROTECTION**

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

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**DRAFT AFRICAN UNION CONVENTION ON CYBER SECURITY  
AND PERSONAL DATA PROTECTION**

VERSION 2014-05-12

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## DRAFT AFRICAN UNION CONVENTION ON CYBER-SECURITY AND PERSONAL DATA PROTECTION

### PREAMBLE

#### **The Member States of the African Union:**

**Guided** by the Constitutive Act of the African Union adopted in 2000;

**Considering** that this Convention on the Establishment of a Legal Framework for **Cyber-security and Personal Data Protection** embodies the existing commitments of African Union Member States at sub-regional, regional and international levels to build the Information Society,

**Recalling** that it aims at defining the objectives and broad orientations of the Information Society in Africa and strengthening existing legislations on Information and Communication Technologies (ICTs) of Member States and the Regional Economic Communities (RECs);

**Reaffirming** the commitment of Member States to fundamental freedoms and human and peoples' rights contained in the declarations, conventions and other instruments adopted within the framework of the African Union and the United Nations;

**Considering** that the establishment of a regulatory framework on cyber-security and personal data protection takes into account the requirements of respect for the rights of citizens, guaranteed under the fundamental texts of domestic law and protected by international human rights Conventions and Treaties, particularly the African Charter on Human and Peoples' Rights;

**Mindful of the need** to mobilize all public and private actors (States, local communities, private sector enterprises, civil society organizations, the media, training and research institutions, etc.) for the promotion of cyber security;

**Reiterating** the principles of the African Information Society Initiative (AISI) and the Regional Action Plan on the Knowledge Economy (ARAPKE);

**Aware** that it is meant to regulate a particularly evolving technological domain, and with a view to meeting the high expectations of many actors with often divergent interests, **this convention** sets forth the security rules essential for establishing a credible digital space for electronic transactions, personal data protection and combating cybercrime;

**Bearing in mind** that the major **obstacles** to the development of electronic commerce in Africa are linked to security issues, particularly:

- The gaps affecting the regulation of legal recognition of data communications and electronic signature;



- The absence of specific legal rules that protect consumers, intellectual property rights, personal data and information systems;
- The absence of e-services and telecommuting legislations;
- The application of electronic techniques to commercial and administrative acts;
- The probative elements introduced by digital techniques (time stamping, certification, etc.);
- The rules applicable to cryptology devices and services;
- The oversight of on-line advertising;
- The absence of appropriate fiscal and customs legislations for electronic commerce;

**Convinced** that the afore-listed observations justify the call for the establishment of an appropriate normative framework consistent with the African legal, cultural, economic and social environment; and that the objective of this Convention is therefore to provide the necessary security and legal framework for the emergence of the knowledge economy in Africa;

**Stressing** that at another level, the protection of personal data and private life constitutes a major challenge to the Information Society for governments as well as other stakeholders; and that such protection requires a balance between the use of information and communication technologies and the protection of the privacy of citizens in their daily or professional lives, while guaranteeing the free flow of information;

**Concerned** by the urgent need to establish a mechanism to address the dangers and risks deriving from the use of electronic data and individual records, with a view to respecting privacy and freedoms while enhancing the promotion and development of ICTs in Member States of the African Union;

**Considering** that the goal of this Convention is to address the need for harmonized legislation in the area of cyber security in Member States of the African Union, and to establish in each State party a mechanism capable of combating violations of privacy that may be generated by personal data collection, processing, transmission, storage and use; that by proposing a type of institutional basis, the Convention guarantees that whatever form of processing is used shall respect the basic freedoms and rights of individuals while also taking into account the prerogatives of States, the rights of local communities and the interests of businesses; and take on board internationally recognized best practices;

**Considering** that the protection under criminal law of the system of values of the information society is a necessity prompted by security considerations; that is reflected primarily by the need for appropriate criminal legislation in the fight against cybercrime in general, and money laundering in particular;

**Aware** of the need, given the current state of cybercrime which constitutes a real threat to the security of computer networks and the development of the Information Society in Africa, to define broad guidelines of the strategy for the repression of cybercrime in

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Member States of the African Union, taking into account their existing commitments at sub-regional, regional and international levels;

**Considering** that this Convention seeks, in terms of substantive criminal law, to modernize instruments for the repression of cybercrime by formulating a policy for the adoption of new offences specific to ICTs, and aligning certain offences, sanctions and criminal liability systems in force in Member States with the ICT environment;

**Considering further** that in terms of criminal procedural law, the Convention defines the framework for the adaptation of standard proceedings concerning information and telecommunication technologies and spells out the conditions for instituting proceedings specific to cybercrime;

**Recalling Decision Assembly/AU/Decl.1(XIV)** of the Fourteenth Ordinary Session of the Assembly of Heads of State and Government of the African Union on Information and Communication Technologies in Africa: Challenges and Prospects for Development, held in Addis Ababa, Ethiopia from 31 January to 2 February 2010;

**Taking into account** the Oliver Tambo Declaration adopted by the Conference of African Ministers in charge of Information and Communication Technologies held in Johannesburg, South Africa on 5 November 2009;

**Recalling** the provisions of the Abidjan Declaration adopted on 22 February 2012 and the Addis Ababa Declaration adopted on 22 June 2012 on the Harmonization of Cyber Legislation in Africa.

**HAVE AGREED AS FOLLOWS:**

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**Article 1: Definitions**

For the purposes of this Convention:

**AU** means the African Union;

**Child pornography** means any visual depiction, including any photograph, film, video, image, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

- a) the production of such visual depiction involves a minor;
- b) such visual depiction is a digital image, computer image, or computer-generated image where a minor is engaging in sexually explicit conduct or when images of their sexual organs are produced or used for primarily sexual purposes and exploited with or without the child's knowledge;
- c) such visual depiction has been created, adapted, or modified to appear that a minor is engaging in sexually explicit conduct.

**Code of conduct** means set of rules formulated by the processing official with a view to establishing the correct use of computer resources, networks and the electronic communication of the structure concerned, and approved by the protection authority;

**Commission** means the African Union Commission;

**Communication with the public by electronic means** refers to any provision to the public or segments of the public, of signs, signals, written material, image, audio or any messages of any type, through an electronic or magnetic communication process;

**Computer system** means an electronic, magnetic, optical, electrochemical, or other high speed data processing device or a group of interconnected or related devices performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device or devices;

**Computerized data** means any representation of facts, information or concepts in a form suitable for processing in a computer system;

**Consent of data subject** means any manifestation of express, unequivocal, free, specific and informed will by which the data subject or his/her legal, judicial or treaty representative accepts that his/her personal data be subjected to manual or electronic processing;

**The (or this) Convention** means the African Union Convention on Cyber-security and Personal Data Protection;

**Critical Cyber/ICT Infrastructure** means the cyber infrastructure that is essential to vital services for public safety, economic stability, national security, international stability and for the sustainability and restoration of critical cyberspace;

**Cryptology activity** means all such activity that seeks to produce, use, import, export or market cryptology tools;

**Cryptology** means the science of protecting and securing information particularly for the purpose of ensuring confidentiality, authentication, integrity and non-repudiation;

**Cryptology tools** means the range of scientific and technical tools (equipment or software) which allows for enciphering and/or deciphering;

**Cryptology service** refers to any operation that seeks to implement cryptology facilities on behalf of oneself or another person;

**Cryptology services provider** means any natural or legal person who provides cryptology services;

**Damage** any impairment to the integrity or availability of data, a program, a system, or information;

**Data controller** means any natural or legal person, public or private, any other organization or association which alone or jointly with others, decides to collect and process personal data and determines the purposes;

**Data subject** means any natural person that is the subject of personal data processing;

**Direct marketing** means the dispatch of any message that seeks to directly or indirectly promote the goods and services or the image of a person selling such goods or providing such services; it also refers to any solicitation carried out through message dispatch, regardless of the message base or nature, especially messages of a commercial, political or charitable nature, designed to promote, directly or indirectly, goods and services or the image of a person selling the goods or providing the services;

**Double criminality (dual criminality)** means a crime punished in both the country where a suspect is being held and the country asking for the suspect to be handed over or transferred to;

**Electronic communication** means any transmission of signs, signals, written material, pictures, sounds or messages of whatsoever nature, to the public or a section of the public by electronic or magnetic means of communication;

**Electronic Commerce (e-commerce):** means the act of offering, buying, or providing goods and services via computer systems and telecommunications networks such as the Internet or any other network using electronic, optical or similar media for distance information exchange;

**Electronic mail** means any message in the form of text, voice, sound or image sent by a public communication network, and stored in a server of the network or in a terminal facility belonging to the addressee until it is retrieved;

**Electronic signature** means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication;

**Electronic signature verification device** means a set of software or hardware components allowing the verification of electronic signature;

**Electronic signature creation device** means a set of software or hardware elements allowing for the creation of an electronic signature (s);

**Encryption** means all techniques consisting in the processing of digital data in an unintelligible format using cryptology tools;

**Exceeds authorized access** means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter;

**Health data** means all information relating to the physical or mental state of the data subject, including the aforementioned genetic data;

**Indirect electronic communication** means any text, voice, sound or image message sent over an electronic communications network which is stored in the network or in the recipient's terminal equipment until it is collected by the recipient;

**Information** means any element of knowledge likely to be represented with the aid of devices and to be used, conserved, processed or communicated. Information may be expressed in written, visual, audio, digital and other forms;

**Interconnection of personal data** means any connection mechanism that harmonizes processed data designed for a set goal with other data processed for goals that are identical or otherwise, or interlinked by one or several processing official(s);

**Means of electronic payment** refers to means by which the holder is able to make electronic payment transactions online;

**Member State or Member States** means Member State(s) of the African Union;

**Child or Minor** means every human being below the age of eighteen (18) years in terms of the African Charter on the Rights and Welfare of the Child and the United Nations Convention on the Rights of the Child respectively;

**Personal data** means any information relating to an identified or identifiable natural person by which this person can be identified, directly or indirectly in particular by

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reference to an identification number or to one or more factors specific to his/her physical, physiological, mental, economic, cultural or social identity;

**Personal data file** means all structured package of data accessible in accordance with set criteria, regardless of whether or not such data are centralized, decentralized or distributed functionally or geographically;

**Processing of Personal Data** means any operation or set of operations which is performed upon personal data, whether or not by automatic means such as the collection, recording, organization, storage, adaptation, alteration, retrieval, backup, copy, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination and locking, encryption, erasure or destruction of personal data;

**Racism and xenophobia in information and telecommunication technologies** means any written material, picture or any other representation of ideas or theories which advocates or encourages or incites hatred, discrimination or violence against any person or group of persons for reasons based on race, colour, ancestry, national or ethnic origin or religion;

**Recipient of processed personal data** means any person entitled to receive communication of such data other than the data subject, the data controller, the sub-contractor and persons who, for reasons of their functions, have the responsibility to process the data;

**Secret conventions** means unpublished codes required to implement a cryptology facility or service for the purpose of enciphering or deciphering operations;

**Sensitive data** means all personal data relating to religious, philosophical, political and trade-union opinions and activities, as well as to sex life or race, health, social measures, legal proceedings and penal or administrative sanctions;

**State Party or State Parties** means Member State(s), which has (have) ratified or acceded to the present Convention;

**Sub-contractor means** any natural or legal person, public or private, any other organization or association that processes data on behalf of the data controller;

**Third Party** means a natural or legal person, public authority, agency or body, other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor are authorized to process the data.

**CHAPTER I: ELECTRONIC TRANSACTIONS****Section I: Electronic Commerce****Article 2: Scope of application of electronic commerce**

1. Member States shall ensure that e-commerce activities shall be exercised freely in *all State Parties ratifying or acceding to this Convention except* :
  - a) Gambling, even in the form of legally authorized betting and lotteries;
  - b) Legal representation and assistance activities;
  - c) Activities exercised by notaries or equivalent authorities in application of extant texts.
  
2. Without prejudice to other information obligations defined by extant legislative and regulatory texts in African Union Member States, State Parties shall ensure that any person exercising e-commerce activities shall provide to those for whom the goods and services are meant, easy, direct and uninterrupted access using non-proprietary standards with regard to the following information:
  - a) Where a physical person is involved, the provider shall indicate his/her name and where it is a legal person, its corporate name; its capital, its registration number in the register of companies or associations;
  - b) Full address of the place of establishment, electronic mail address and telephone number;
  - c) Where the person is subject to business registration formalities or registration in the national directory of businesses and associations, the registration number, the share capital and corporate headquarters;
  - d) Where the person is subject to taxes, the tax identification number;
  - e) Where his/her activity is subject to a licensing regime, the name and address of the issuing authority, and the reference of the authorization;

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- f) Where the person is member of a regulated profession, the applicable professional rules, his/her professional title, the African Union State Party in which he/she was granted such authorization, as well as the name of the order or professional body with which he/she is registered.
3. Any natural or legal person involved in e-commerce activities, even in the absence of contractual offers, provided the person has posted a price for the said activities, shall clearly and unambiguously indicate such a price, particularly where it includes taxes, delivery and other charges.

**Article 3: Contractual liability of the provider of goods and services by electronic means**

E-commerce activities are subject to the law of the State Party in whose territory the person exercising such activity is established, subject to the intention expressed in common by the said person and the recipient of the goods or services.

**Article 4: Advertising by electronic means**

1. Without prejudice to Article 3 any advertising action, irrespective of its form, accessible through an online communication service, shall be clearly identified as such. It shall clearly identify the individual or corporate body on behalf of whom it is undertaken.
2. The conditions governing the possibility of promotional offers as well as the conditions for participating in promotional competitions or games where such offers, competitions or games are electronically disseminated, shall be clearly spelt out and easily accessible.
3. State Parties of the African Union shall prohibit direct marketing through any kind of indirect communication using, in any form, the particulars of an individual who has not given prior consent to receiving the said direct marketing through such means.
4. The provisions of Article 4.2. above notwithstanding, direct marketing by electronic mail shall be permissible where:
  - a) The particulars of the addressee have been obtained directly from him/her;
  - b) The recipient has given consent to be contacted by the marketing partners;
  - c) The direct marketing concerns similar products or services provided by the same individual or corporate body



5. State Parties shall prohibit the transmission, for the purposes of direct marketing, of messages by means of any form of indirect electronic communication without indicating valid particulars to which the addressee may send a request to stop such communications without incurring charges other than those arising from the transmission of such a request.
6. State Parties undertake to prohibit concealment of the identity of the person on whose behalf the advertisement accessed by an online communication service is issued.

## **Section II: Contractual Obligations in Electronic Form**

### **Article 5: Electronic contracts**

1. The information requested for the purpose of concluding a contract or information available during contract execution may be transmitted by electronic means if the recipients have agreed to the use of that means. The use of electronic communications is presumed to be acceptable unless the recipient has previously expressly stated a preference for an alternative means of communication.
2. A service provider or supplier, who offers goods and services in a professional capacity by electronic means, shall make available the applicable contractual conditions directly or indirectly, in a way that facilitates the conservation and reproduction of such conditions according to national legislations.
3. For the contract to be validly concluded, the offeree shall have had the opportunity to verify details of his/her order, particularly the price thereof, prior to confirming the said order and signifying his/her acceptance.
4. The person offering his/her goods and services shall acknowledge receipt of the order so addressed to him/her without unjustified delay and by electronic means.

The order, the confirmation of acceptance of an offer and the acknowledgment of receipt are deemed to be received when the parties to whom they are addressed are able to access to them.

5. Exemptions may be made to the provisions of Articles 5.3 and 5.4 of this Convention for agreements concluded between businesses or professionals (B2B).
6. a. Any natural or legal person engaged in the activity defined in the first paragraph of Article 2.1 of this Convention shall, *ipso facto*, be accountable to his/her contractual partner for the proper performance of the obligations arising from the contract, irrespective of whether such obligations are to be carried out by himself/herself or by other service providers, without prejudice to his/her right to claim against the said service providers.

b. However, the natural or legal person may be released from all or part of the liability by proving that the non-fulfilment or poor performance of the contract is due either to the contractual partner or a case of *force majeure*.

#### Article 6: Writing in electronic form

1. Without prejudice to existing domestic legislative provisions in the State Party, no person shall be compelled to take legal action by electronic means.
2.
  - a. Where a written document shall be required for the validity of a legal act each State Party shall establish the legal conditions for functional equivalence between electronic communications and paper-based documents, when the internal regulations require a written document for the validity of a legal act.
  - b. Where a paper document has been subject to specific conditions as to legibility or presentation, the written document in electronic form shall be subject to the same conditions.
  - c. The requirement to transmit several copies of a written document shall be deemed to have been met in electronic form, where the said written document can be reproduced in material form by the addressee.
3. The provisions of Article 6.2 of this Convention do not apply to the following:
  - a) Signed private deeds relating to family law and law of succession; and
  - b) Acts under private signature relating to personal or real guarantees in accordance with domestic legislations, whether made under civil or commercial law, unless they are entered into by a person for the purposes of his/her profession.
4. The delivery of a written document in electronic form shall be effective when the addressee takes due note and acknowledges receipt thereof.
5. Given their tax functions, invoices must be in writing to ensure the readability, integrity and **sustainability** of the content. The authenticity of the origin must also be guaranteed.

Among the methods that may be implemented to fulfil the tax purposes of the invoice and to ensure that its functions have been met is the establishment of management controls which create a reliable audit trail between an invoice and a supply of goods or services.

In addition to the type of controls described in § 1, the following methods are examples of technologies that ensure the authenticity of origin and integrity of content of an electronic invoice:

- a) a qualified electronic signature as defined in Article 1;
  - b) electronic data interchange (EDI), understood as the electronic transfer, from computer to computer, of commercial and administrative data in the form of an EDI message structured according to an agreed standard, provided that the agreement to the exchange provides for the use of procedures guaranteeing the authenticity of the origin and data integrity.
6. A written document in electronic form is admissible in evidence in the same way as a paper-based document, and shall have the same force of law, provided that the person from whom it originates can be duly identified and that it has been made out and retained in a manner that guarantees its integrity.

### **Section III: Security of Electronic Transactions**

#### **Article 7: Ensuring the Security of Electronic Transactions**

1.
  - a) The supplier of goods shall allow his/her clients to make payments using electronic payment methods approved by the State according to the regulations in force in each State Party.
  - b) The supplier of goods or provider of services by electronic means who claims the discharge of an obligation must prove its existence or otherwise prove that the obligation was discharged or did not exist.
2. Where the legislative provisions of State Parties have not laid down other principles, and where there is no valid agreement between the parties, the judge shall resolve proof related conflicts by determining by all possible means the most plausible claim regardless of the message base employed.
3.
  - a) A copy or any other reproduction of contracts signed by electronic means shall have the same probative value as the contract itself, where the said copy has been certified as a true copy of the said act by bodies duly accredited by an authority of the State Party.
  - b) Certification will result in the issuance, where necessary, of a certificate of conformity.

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4. a) An electronic signature created by a secure device which the signatory is able to keep under his exclusive control and is appended to a digital certificate shall be admissible as signature on the same terms as a handwritten signature.
- b) The reliability of the procedure is presumed, unless otherwise proven, if the electronic signature is generated by a secure signature creation device, the integrity of the act is guaranteed and the identification of the signatory is ensured.

**CHAPTER II: PERSONAL DATA PROTECTION****Section I: Personal data protection****Article 8: Objective of this Convention with respect to personal data**

1. Each State Party shall commit itself to establishing a legal framework aimed at strengthening fundamental rights and public freedoms, particularly the protection of physical data, and punish any violation of privacy without prejudice to the principle of free flow of personal data.
2. The mechanism so established shall ensure that any form of data processing respects the fundamental freedoms and rights of natural persons while recognizing the prerogatives of the State, the rights of local communities and the purposes for which the businesses were established.

**Article 9: Scope of application of the Convention**

1. The following actions shall be subject to this Convention:
  - a) Any collection, processing, transmission, storage or use of personal data by a natural person, the State, local communities, and public or private corporate bodies;
  - b) Any automated or non-automated processing of data contained in or meant to be part of a file, with the exception of the processing defined in Article 9.2 of this Convention;
  - c) Any processing of data undertaken in the territory of a State Party of the African Union;
  - d) Any processing of data relating to public security, defence, research, criminal prosecution or State security, subject to the exceptions defined by specific provisions of other extant laws.
2. This Convention shall not be applicable to:
  - a) Data processing undertaken by a natural person within the exclusive context of his/her personal or household activities, provided however that such data are not for systematic communication to third parties or for dissemination;
  - b) Temporary copies produced within the context of technical activities for transmission and access to a digital network with a view to automatic, intermediate and temporary storage of data and for the sole purpose of

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offering other beneficiaries of the service the best possible access to the information so transmitted.

#### **Article 10: Preliminary personal data processing formalities**

1. The following actions shall be exempted from the preliminary formalities:
  - a) The processing mentioned in Article 9.2 of this Convention;
  - b) Processing undertaken with the sole objective of maintaining a register meant exclusively for private use;
  - c) Processing undertaken by a non-profit making association or body, with a religious, philosophical, political or trade union aim, provided that the data are consistent with the objective of the said association or body structure, and relate solely to its members, and that the data are not disclosed to a third party.
2. With the exception of the cases defined in Article 10.1 above and in Article 10.4 and 10.5 of this Convention, personal data processing shall be subject to a declaration before the protection authority.
3. With regard to the most common categories of personal data processing which are not likely to constitute a breach of privacy or individual freedoms, the protection authority may establish and publish standards with a view to simplifying or introducing exemptions from the obligation to make a declaration.
4. The following actions shall be undertaken after authorization by the national protection authority:
  - a) Processing of personal data involving genetic information and health research;
  - b) Processing of personal data involving information on offenses, convictions or security measures;
  - c) Processing of personal data for the purpose of interconnection of files as defined in Article 15 of this Convention, data processing involving national identification number or any other identifier of the same type;
  - d) Processing of personal data involving biometric data;
  - e) Processing of personal data of public interest, particularly for historical, statistical or scientific purposes.

5. Personal data processing undertaken on behalf of the Government, a public institution, a local community, a private corporate body operating a public service, shall be in accordance with a legislative or regulatory act enacted after an informed advice of the protection authority.

Such data processing is related to:

- a) State security, defence or public security;
  - b) Prevention, investigation, detection or prosecution of criminal offences, or execution of criminal convictions or security measures;
  - c) Population survey;
  - d) Personal data directly or indirectly revealing racial, ethnic or regional origin, affiliation, political, philosophical or religious beliefs or trade union membership of persons, or data concerning health or sex life.
6. Requests for opinion, declarations and applications for authorization shall indicate:
- a) The identity and address of the data controller or, where he/she is not established in the territory of a State Party of the African Union, the identity and address of his/her duly mandated representative;
  - b) The purpose(s) of the processing and a general description of its functions;
  - c) The interconnections envisaged or all other forms of harmonization with other processing activities;
  - d) The personal data processed, their origin and the category of persons involved in the processing;
  - e) Period of conservation of the processed data;
  - f) The service or services responsible for carrying out the processing as well as the category of persons who, due to their functions or service requirements, have direct access to registered data;
  - g) The recipients authorized to receive data communication;
  - h) The function of the person or the service before which the right of access is to be exercised;
  - i) Measures taken to ensure the security of processing actions and of data;
  - j) Indication regarding use of a sub-contractor;

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- k) Envisaged transfer of personal data to a third country that is not a member of the African Union, subject to reciprocity.
7. The national protection authority shall take a decision within a set timeframe starting from the date of receipt of the request for opinion or authorization. Such timeframe may however be extended or not on the basis of an informed decision of the national protection authority.
  8. The notification, the declaration or request for authorization may be addressed to the national protection authority by electronic means or by post.
  9. The national protection authority may be approached by any person acting on his/her own, or through a lawyer or any other duly mandated natural or legal person.

## **Section II: Institutional framework for the protection of personal data**

### **Article 11: Status, composition and organization of National Personal Data Protection Authorities**

1.
  - a. Each State Party shall establish an authority in charge of protecting personal data.
  - b. The national protection authority shall be an independent administrative authority with the task of ensuring that the processing of personal data is conducted in accordance with the provisions of this Convention.
2. The national protection authority shall inform the concerned persons and the processing officials of their rights and obligations.
3. Without prejudice to Article 11.6, each State Party shall determine the composition of the national personal data protection authority.
4. Sworn officials may be invited to participate in audit missions in accordance with extant provisions in States Parties.
5.
  - a. **Members** of the national protection authority shall be subject to the obligation of professional secrecy in accordance with the extant texts of each State Party.



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- b. Each national protection authority shall formulate rules of procedure containing, *inter alia*, rules governing deliberations, processing and presentation of cases.
6. Membership of the national protection authority shall be incompatible with membership of Government, carrying out the functions of business executive and ownership of shares in businesses in the information and communication technologies sector.
7. a. Without prejudice to national legislations, members of the national protection authority shall enjoy full immunity for opinions expressed in the pursuit, or in connection with the pursuit of their duties.
- b. Members of the national protection authority shall not receive instructions from any other authority in the performance of their duties.
8. State Parties shall undertake to provide the national protection authority with the human, technical and financial resources necessary to accomplish their mission.

#### **Article 12: Duties and Powers of National Protection Authorities**

1. The national protection authority shall ensure that the processing of personal data is consistent with the provisions of this Convention within State Parties of the African Union.
2. The national protection authorities shall ensure that Information and Communication Technologies do not constitute a threat to public freedoms and the private life of citizens. To this end, they are responsible for:
- a) Responding to every request for an opinion regarding personal data processing;
  - b) Informing the persons concerned and data controllers of their rights and obligations;
  - c) In a number of cases, authorize the processing of data files, particularly sensitive files;
  - d) Receiving the preliminary formalities for personal data processing;
  - e) Entertaining claims, petitions and complaints regarding the processing of personal data and informing the authors of the results thereof;

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- f) Speedily informing the judicial authority of certain types of offences that have come to their attention;
  - g) Undertaking the audit of all processed personal data, through its officials or sworn officials;
  - h) Imposing administrative and monetary sanctions on data controllers;
  - i) Updating a processed personal data directory that is accessible to the public;
  - j) Advising persons and bodies engaged in personal data processing or in carrying out tests and experiments likely to result in data processing;
  - k) Authorizing trans-border transfer of personal data;
  - l) Making suggestions that could simplify and improve legislative and regulatory frameworks for data processing;
  - m) Establishing mechanisms for cooperation with the personal data protection authorities of third countries;
  - n) Participating in international negotiations on personal data protection;
  - o) Preparing an activity report in accordance with a well-defined periodicity, for submission to the appropriate authorities of the State Party.
- 3.** The national protection authorities may decide on the following measures:
- a) Issuance of warning to any data controller that fails to comply with the obligations resulting from this Convention;
  - b) An official warning letter to stop such breaches within a timeframe set by the authority.
- 4.** Where the data controller fails to comply with the official warning letter addressed to him/her, the national protection authority may impose the following sanctions after adversary proceedings:
- a) Temporary withdrawal of the authorization granted;
  - b) Permanent withdrawal of the authorization;
  - c) Monetary fine.

5. In cases of emergency, where the processing or use of personal data results in violation of fundamental rights and freedoms, the national protection authority may, after adversary proceedings, decide as follows:
  - a) Discontinuation of data processing;
  - b) Blocking of some of the personal data processed;
  - c) Temporary or permanent prohibition of any processing at variance with the provisions of this Convention.
6. The sanctions imposed and decisions taken by national protection authorities are subject to appeal.

### **Section III: Obligations relating to conditions governing personal data processing**

#### **Article 13: Basic principles governing the processing of personal data**

##### ***Principle 1: Principle of consent and legitimacy of personal data processing***

Processing of personal data shall be deemed to be legitimate where the data subject has given his/her consent. This requirement of consent may however be waived where the processing is necessary for:

- a) Compliance with a legal obligation to which the controller is subject;
- b) Performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed;
- c) Performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- d) Protect the vital interests or fundamental rights and freedoms of the data subject.

##### ***Principle 2: Principle of lawfulness and fairness of personal data processing***

The collection, recording, processing, storage and transmission of personal data shall be undertaken lawfully, fairly and non-fraudulently.

##### ***Principle 3: Principle of purpose, relevance and storage of processed personal data***

- a) Data collection shall be undertaken for specific, explicit and legitimate purposes, and not further processed in a way incompatible with those purposes;

- b) Data collection shall be adequate, relevant and not excessive in relation to the purposes for which they are collected and further processed;
- c) Data shall be kept for no longer than is necessary for the purposes for which the data were collected or further processed;
- d) Beyond the required period, data may be stored only for the specific needs of data processing undertaken for historical, statistical or research purposes under the law.

***Principle 4: Principle of accuracy of personal data***

Data collected shall be accurate and, where necessary, kept up to date. Every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified

***Principle 5: Principle of transparency of personal data processing***

The principle of transparency requires mandatory disclosure of information on personal data by the data controller.

***Principle 6: Principle of confidentiality and security of personal data processing***

- a) Personal data shall be processed confidentially and protected, in particular where the processing involves transmission of the data over a network;
- b) Where processing is undertaken on behalf of a controller, the latter shall choose a processor providing sufficient guarantees. It is incumbent on the controller and processor to ensure compliance with the security measures defined in this Convention.

**Article 14: Specific principles for the processing of sensitive data**

1. State Parties shall undertake to prohibit any data collection and processing revealing racial, ethnic and regional origin, parental filiation, political opinions, religious or philosophical beliefs, trade union membership, sex life and genetic information or, more generally, data on the state of health of the data subject.
2. The prohibitions set forth in Article 14.1 shall not apply to the following categories where:
  - a) Processing relates to data which are manifestly made public by the data subject;
  - b) The data subject has given his/her written consent, by any means, to the processing and in conformity with extant texts;

- c) Processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his/her consent;
  - d) Processing, particularly of genetic data, is required for the establishment, exercise or defence of legal claims;
  - e) A judicial procedure or criminal investigation has been instituted;
  - f) Processing is necessary in the public interest, especially for historical, statistical or scientific purposes;
  - g) Processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
  - h) Processing is necessary for compliance with a legal or regulatory obligation to which the controller is subject;
  - i) Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority or assigned by a public authority vested in the controller or in a third party to whom data are disclosed;
  - j) Processing is carried out in the course of the legitimate activities of a foundation, association or any other non-profit making body with a political, philosophical, religious, cooperative or trade union aim, and on condition that the processing relates solely to the members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of the data subjects.
- 3.** Personal data processing for journalistic purposes or for the purpose of research or artistic or literary expression shall be acceptable where the processing is solely for literary and artistic expression or for professional exercise of journalistic or research activity, in accordance with the code of conduct of these professions.
- 4.** The provisions of this Convention shall not preclude the application of national legislations with regard to the print media or the audio-visual sector, as well as the provisions of the criminal code which provide for the conditions for exercise of the right of reply, and which prevent, limit, compensate for and, where necessary, repress breaches of privacy and damage to personal reputation.
- 5.** A person shall not be subject to a decision which produces legal effects concerning him/her or significantly affects him/her to a substantial degree, and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him/her.

6. a) The data controller shall not transfer personal data to a non-Member State of the African Union unless such a State ensures an adequate level of protection of the privacy, freedoms and fundamental rights of persons whose data are being or are likely to be processed.
- b) The previous prohibition is not applicable where, before any personal data is transferred to the third country, the data controller shall request authorization for such transfer from the national protection authority.

#### **Article 15: Interconnection of personal data files**

The interconnection of files laid down in Article 10.4 of this Convention should help to achieve the legal or statutory objectives which are of legitimate interest to data controllers. This should not lead to discrimination or limit data subjects' rights, freedoms and guarantees, should be subject to appropriate security measures, and also take into account the principle of relevance of the data which are to be interconnected.

#### **Section IV: The Data Subjects' Rights**

##### **Article 16: Right to information**

The data controller shall provide the natural person whose data are to be processed with the following information, no later than the time when the data are collected, and regardless of the means and facilities used, with the following information:

- a) His/her identity and of his/her representative, if any;
- b) The purposes of the processing for which the data are intended;
- c) Categories of data involved;
- d) Recipient(s) to which the data might be disclosed;
- e) The capacity to request to be removed from the file;
- f) Existence of the right of access to and the right to rectify the data concerning him/her;
- g) Period for which data are stored;
- h) Proposed transfers of data to third countries.

##### **Article 17: Right of access**

Any natural person whose personal data are to be processed may request from the controller, in the form of questions, the following:

- a) Such information as would enable him/her to evaluate and object to the processing;
- b) Confirmation as to whether or not data relating to him/her are being processed;

- c) Communication to him/her of the personal data undergoing processing and any available information as to their source;
- d) Information as to the purpose of the processing, the categories of personal data concerned, and the recipients or categories of recipients to whom the data are disclosed.

#### **Article 18: Right to object**

Any natural person has the right to object, on legitimate grounds, to the processing of the data relating to him/her.

He/she shall have the right to be informed before personal data relating to him/her are disclosed for the first time to third parties or used on their behalf for the purposes of marketing, and to be expressly offered the right to object, free of charge, to such disclosures or uses.

#### **Article 19: Right of rectification or erasure**

Any natural person may demand that the data controller rectify, complete, update, block or erase, as the case may be, the personal data concerning him/her where such data are inaccurate, incomplete, equivocal or out of date, or whose collection, use, disclosure or storage are prohibited.

### **Section V: Obligations of the Personal Data Controller**

#### **Article 20: Confidentiality obligations**

Processing of personal data shall be confidential. Such processing shall be undertaken solely by persons operating under the authority of a data controller and only on instructions from the controller.

#### **Article 21: Security obligations**

The data controller must take all appropriate precautions, according to the nature of the data, and in particular, to prevent such data from being altered or destroyed, or accessed by unauthorized third parties.

#### **Article 22: Storage obligations**

Personal data shall be kept for no longer than is necessary for the purposes for which the data were collected or processed.

#### **Article 23: Sustainability obligations**

- a) The data controller shall take all appropriate measures to ensure that processed personal data can be utilized regardless of the technical device employed in the process.

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- b) The processing official shall, in particular, ensure that technological changes do not constitute an obstacle to the said utilization.



**CHAPTER III – PROMOTING CYBER SECURITY AND COMBATING CYBERCRIME****Section I: Cyber Security Measures to be taken at National Level****Article 24: National cyber security framework****1. National policy**

Each State Party shall undertake to develop, in collaboration with stakeholders, a national cyber security policy which recognizes the importance of Critical Information Infrastructure (CII) for the nation identifies the risks facing the nation in using the all-hazards approach and outlines how the objectives of such policy are to be achieved.

**2. National strategy**

State Parties shall adopt the strategies they deem appropriate and adequate to implement the national cyber security policy, particularly in the area of legislative reform and development, sensitization and capacity-building, public-private partnership, and international cooperation, among other things. Such strategies shall define organizational structures, set objectives and timeframes for successful implementation of the cyber security policy and lay the foundation for effective management of cyber security incidents and international cooperation.

**Article 25: Legal measures****1. Legislation against cybercrime**

Each State Party shall adopt such legislative and/or regulatory measures as it deems effective by considering as substantive criminal offences acts which affect the confidentiality, integrity, availability and survival of information and communication technology systems, the data they process and the underlying network infrastructure, as well as effective procedural measures to pursue and prosecute offenders. State Parties shall take into consideration the choice of language that is used in international best practices.

**2. National Regulatory Authorities**

Each State Party shall adopt such legislative and/or regulatory measures as it deems necessary to confer specific responsibility on institutions, either newly established or pre-existing, as well as on the designated officials of the said institutions, with a view to conferring on them a statutory authority and legal capacity to act in all aspects of cyber security application, including but not limited to response to cyber security incidents, and coordination and cooperation in the field of restorative justice, forensic investigations, prosecution, etc.

### **3. Rights of citizens**

In adopting legal measures in the area of cyber security and establishing the framework for implementation thereof, each State Party shall ensure that the measures so adopted will not infringe on the rights of citizens guaranteed under the national constitution and internal laws, and protected by international conventions, particularly the African Charter on Human and Peoples' Rights, and other basic rights such as freedom of expression, the right to privacy and the right to a fair hearing, among others.

### **4. Protection of critical infrastructure**

Each State Party shall adopt such legislative and/or regulatory measures as they deem necessary to identify the sectors regarded as sensitive for their national security and well-being of the economy, as well as the information and communication technologies systems designed to function in these sectors as elements of critical information infrastructure; and, in this regard, proposing more severe sanctions for criminal activities on ICT systems in these sectors, as well as measures to improve vigilance, security and management.

## **Article 26: National cyber security system**

### **1. Culture of Cyber Security**

- a) Each State Party undertakes to promote the culture of cyber security among all stakeholders, namely, governments, enterprises and the civil society, which develop, own, manage, operationalize and use information systems and networks. The culture of cyber security should lay emphasis on security in the development of information systems and networks, and on the adoption of new ways of thinking and behaving when using information systems as well as during communication or transactions across networks.
- b) As part of the promotion of the culture of cyber security, State Parties may adopt the following measures: establish a cyber-security plan for the systems run by their governments; elaborate and implement programmes and initiatives for sensitization on security for systems and networks users; encourage the development of a cyber-security culture in enterprises; foster the involvement of the civil society; launch a comprehensive and detailed national sensitization programme for Internet users, small business, schools and children.

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## **2. Role of Governments**

Each State Party shall undertake to provide leadership for the development of the cyber security culture within its borders. Member States undertake to sensitize, provide education and training, and disseminate information to the public.

## **3. Public-Private Partnership**

Each State Party shall develop public-private partnership as a model to engage industry, the civil society, and academia in the promotion and enhancement of a culture of cyber security.

## **4. Education and training**

Each State Party shall adopt measures to develop capacity building with a view to offering training which covers all areas of cyber security to different stakeholders, and setting standards for the private sector.

State Parties undertake to promote technical education for information and communication technology professionals, within and outside government bodies, through certification and standardization of training; categorization of professional qualifications as well as development and needs-based distribution of educational material.

## **Article 27: National cyber security monitoring structures**

### **1. Cyber security governance**

- a) Each State Party shall adopt the necessary measures to establish an appropriate institutional mechanism responsible for cyber security governance;
- b) The measures adopted as per paragraph 1 of this Article shall establish strong leadership and commitment in the different aspects of cyber security institutions and relevant professional bodies of the State Party. To this end, State Parties shall take the necessary measures to:
  - i) Establish clear accountability in matters of cyber security at all levels of Government by defining the roles and responsibilities in precise terms;
  - ii) Express a clear, public and transparent commitment to cyber security;

- iii) Encourage the private sector and solicit its commitment and participation in government-led initiatives to promote cyber security.
- c) Cyber security governance should be established within a national framework that can respond to the perceived challenges and to all issues relating to information security at national level in as many areas of cyber security as possible.

## **2. Institutional framework**

Each State Party shall adopt such measures as it deems necessary in order to establish appropriate institutions to combat cyber-crime, ensure monitoring and a response to incidents and alerts, national and cross-border coordination of cyber security problems, as well as global cooperation.

### **Article 28: International cooperation**

#### **1. Harmonization**

State Parties shall ensure that the legislative measures and/or regulations adopted to fight against cyber-crime will strengthen the possibility of regional harmonization of these measures and respect the principle of double criminal liability.

#### **2. Mutual legal assistance**

State Parties that do not have agreements on mutual assistance in cyber-crime shall undertake to encourage the signing of agreements on mutual legal assistance in conformity with the principle of double criminal liability, while promoting the exchange of information as well as the efficient sharing of data between the organizations of State Parties on a bilateral and multilateral basis.

#### **3. Exchange of information**

State Parties shall encourage the establishment of institutions that exchange information on cyber threats and vulnerability assessment such as the Computer Emergency Response Team (CERT) or the Computer Security Incident Response Teams (CSIRTs).

#### **4. Means of cooperation**

State Parties shall make use of existing means for international cooperation with a view to responding to cyber threats, improving cyber security and stimulating dialogue between stakeholders. These means may be international, intergovernmental or regional, or based on private and public partnerships.

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## Section II: Criminal Provisions

### Article 29: Offences specific to Information and Communication Technologies

#### 1. Attacks on computer systems

State Parties shall take the necessary legislative and/or regulatory measures to make it a criminal offence to:

- a) Gain or attempt to gain unauthorized access to part or all of a computer system or exceed authorized access;
- b) Gain or attempt to gain unauthorized access to part or all of a computer system or exceed authorized access with intent to commit another offence or facilitate the commission of such an offence;
- c) Remain or attempt to remain fraudulently in part or all of a computer system;
- d) Hinder, distort or attempt to hinder or distort the functioning of a computer system;
- e) Enter or attempt to enter data fraudulently in a computer system;
- f) Damage or attempt to damage, delete or attempt to delete, deteriorate or attempt to deteriorate, alter or attempt to alter, change or attempt to change computer data fraudulently.

State Parties further undertake to:

- g) Adopt regulations compelling vendors of information and communication technology products to have vulnerability and safety guarantee assessments carried out on their products by independent experts and researchers, and disclose any vulnerabilities detected and the solutions recommended to correct them to consumers;
- h) Take the necessary legislative and/or regulatory measures to make it a criminal offence to unlawfully produce, sell, import, possess, disseminate, offer, cede or make available computer equipment, program, or any device or data designed or specially adapted to commit offences, or unlawfully generate or produce a password, an access code or similar computerized data allowing access to part or all of a computer system.

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## **2. Computerized Data Breaches**

State Parties shall take the necessary legislative and/or regulatory measures to make it a criminal offence to:

- a) Intercept or attempt to intercept computerized data fraudulently by technical means during non-public transmission to, from or within a computer system;
- b) Intentionally input, alter, delete, or suppress computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless of whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches;
- c) Knowingly use data obtained fraudulently from a computer system;
- d) Fraudulently procure, for oneself or for another person, any benefit by inputting, altering, deleting or suppressing computerized data or any other form of interference with the functioning of a computer system;
- e) Even through negligence, process or have personal data processed without complying with the preliminary formalities for the processing;
- f) Participate in an association formed or in an agreement established with a view to preparing or committing one or several of the offences provided for under this Convention.

## **3. Content related offences**

1. State Parties shall take the necessary legislative and/or regulatory measures to make it a criminal offence to:

- a) Produce, register, offer, manufacture, make available, disseminate and transmit an image or a representation of child pornography through a computer system;
- b) Procure for oneself or for another person, import or have imported, and export or have exported an image or representation of child pornography through a computer system;
- c) Possess an image or representation of child pornography in a computer system or on a computer data storage medium;

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- d) Facilitate or provide access to images, documents, sound or representation of a pornographic nature to a minor;
  - e) Create, download, disseminate or make available in any form writings, messages, photographs, drawings or any other presentation of ideas or theories of racist or xenophobic nature through a computer system;
  - f) Threaten, through a computer system, to commit a criminal offence against a person for the reason that they belong to a group distinguished by race, colour, descent, national or ethnic origin or religion where such membership serves as a pretext for any of these factors, or against a group of persons which is distinguished by any of these characteristics;
  - g) Insult, through a computer system, persons for the reason that they belong to a group distinguished by race, colour, descent, national or ethnic origin, or religion or political opinion, if used as a pretext for any of these factors, or against a group of persons distinguished by any of these characteristics;
  - h) Deliberately deny, approve or justify acts constituting genocide or crimes against humanity through a computer system.
- 2.** State Parties shall take the necessary legislative and/or regulatory measures to make the offences provided for under this Convention criminal offences.
- When such offences are committed under the aegis of a criminal organization, they will be punishable by the maximum penalty prescribed for the offense.
- 3.** State Parties shall take the necessary legislative and/or regulatory measures to ensure that, in case of conviction, national courts will give a ruling for confiscation of the materials, equipment, instruments, computer program, and all other devices or data belonging to the convicted person and used to commit any of the offences mentioned in this Convention.
- 4. Offences relating to electronic message security measures**

State Parties shall take the necessary legislative and/or regulatory measures to ensure that digital evidence in criminal cases is admissible to establish offenses under national criminal law, provided such evidence has been presented during proceedings and discussed before the judge, that the person from whom it originates can be duly identified, and that it has been made out and retained in a manner capable of assuring its integrity.

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**Article 30: Adapting certain offences to Information and Communication Technologies****1. Property Offences**

- a) State Parties shall take the necessary legislative and/or regulatory measures to criminalize the violation of property such as theft, fraud, handling of stolen property, abuse of trust, extortion of funds and blackmail involving computer data;
- b) State Parties shall take the necessary legislative and/or regulatory measures to consider as aggravating circumstances the use of information and communication technologies to commit offences such as theft, fraud, handling of stolen property, abuse of trust, extortion of funds, terrorism and money laundering;
- c) State Parties shall take the necessary legislative and/or regulatory measures to specifically include “by means of digital electronic communication” such as the Internet in listing the means of public dissemination provided for under the criminal law of State Parties;
- d) State Parties shall take the necessary criminal legislative measures to restrict access to protected systems which have been classified as critical national defence infrastructure due to the critical national security data they contain.

**2. Criminal liability for legal persons**

State Parties shall take the necessary legislative measures to ensure that legal persons other than the State, local communities and public institutions can be held responsible for the offences provided for by this Convention, committed on their behalf by their organs or representatives. The liability of legal persons does not exclude that of the natural persons who are the perpetrators of or accomplices in the same offences.

**Article 31: Adapting certain sanctions to Information and Communication Technologies****1. Criminal Sanctions**

- a) State Parties shall take the necessary legislative measures to ensure that the offences provided for under this Convention are punishable by effective, proportionate and dissuasive criminal penalties;
- b) State Parties shall take the necessary legislative measures to ensure that the offences provided for under this Convention are punishable by appropriate penalties under their national legislations;



- c) State Parties shall take the necessary legislative measures to ensure that a legal person held liable pursuant to the terms of this Convention is punishable by effective, proportionate and dissuasive sanctions, including criminal fines.

## **2. Other criminal sanctions**

- a) State Parties shall take the necessary legislative measures to ensure that in the case of conviction for an offense committed through a digital communication medium, the competent court may hand down additional sanctions;
- b) State Parties shall take the necessary legislative measures to ensure that in the case of conviction for an offence committed through a digital communication medium, the judge may in addition order the mandatory dissemination, at the expense of the convicted person, of an extract of the decision, through the same medium, and according to modalities prescribed by the law of Member States;
- c) State Parties shall take the necessary legislative measures to ensure that a breach of the confidentiality of data stored in a computer system is punishable by the same penalties as those applicable for breaches of professional secrecy.

## **3. Procedural law**

- a) State Parties shall take the necessary legislative measures to ensure that where the data stored in a computer system or in medium where computerized data can be stored in the territory of a State Party, are useful in establishing the truth, the court applied to may carry out a search to access all or part of a computer system through another computer system, where the said data are accessible from or available to the initial system;
- b) State Parties shall take the necessary legislative measures to ensure that where the judicial authority in charge of investigation discovers data stored in a computer system that are useful for establishing the truth, but the seizure of the support does not seem to be appropriate, the data as well as all such data as are required to understand them, shall be copied into a computer storage medium that can be seized and sealed, in accordance with the modalities provided for under the legislations of State Parties;
- c) State Parties shall take the necessary legislative measures to ensure that judicial authorities can, for the purposes of investigation or execution of a judicial delegation, carry out the operations provided for under this Convention;

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- d) State Parties shall take the necessary legislative measures to ensure that if information needs so require, particularly where there are reasons to believe that the information stored in a computer system are particularly likely to be lost or modified, the investigating judge may impose an injunction on any person to preserve and protect the integrity of the data in his/her possession or under his/her control, for a maximum period of two years, in order to ensure the smooth conduct of the investigation. The custodian of the data or any other person responsible for preserving the data shall be expected to maintain secrecy with regard to the data;
  
  - e) State Parties shall take the necessary legislative measures to ensure that where information needs so require, the investigating judge can use appropriate technical means to collect or record in real time, data in respect of the contents of specific communications in its territory, transmitted by means of a computer system or compel a service provider, within the framework of his/her technical capacities, to collect and record, using the existing technical facilities in its territory or that of State Parties, or provide support and assistance to the competent authorities towards the collection and recording of the said computerized data.

**CHAPTER IV: FINAL PROVISIONS****Article 32: Measures to be taken at the level of the African Union**

The Chairperson of the Commission shall report to the Assembly on the establishment and monitoring of the operational mechanism for this Convention.

The monitoring mechanism to be established shall ensure the following:

- a) Promote and encourage the Continent to adopt and implement measures to strengthen cyber security in electronic services and in combatting cybercrime and human rights violations in cyberspace;
- b) Gather documents and information on cyber security needs as well as on the nature and magnitude of cybercrime and human rights violations in cyberspace;
- c) Work out methods for analysing cyber security needs, as well as the nature and magnitude of cybercrime and human rights violations in cyberspace, disseminate information and sensitize the public on the negative effects of these phenomena;
- d) Advise African governments on the way to promote cyber security and combat the scourge of cybercrime and human rights violations in cyberspace at national level;
- e) Garner information and carry out analyses of the criminal behaviour of the users of information networks and computer systems operating in Africa, and transmit such information to competent national authorities;
- f) Formulate and promote the adoption of harmonized codes of conduct for the use of public officials in the area of cyber security;
- g) Establish partnerships with the Commission and the African Court on Human and Peoples' Rights, the African civil society, and governmental, intergovernmental and non-governmental organizations with a view to facilitating dialogue on combating cybercrime and human rights violations in cyberspace;
- h) Submit regular reports to the Executive Council of the African Union on the progress made by each State Party in the implementation of the provisions of this Convention;
- i) Carry out any other tasks relating to cybercrime and breaches of the rights of individuals in cyberspace as may be assigned to it by the policy organs of the African Union.

**Article 33: Safeguard Provisions**

The provisions of this Convention shall not be interpreted in a manner that is inconsistent with the relevant principles of international law, including international customary law.

**Article 34: Settlement of Disputes**

1. Any dispute arising from this Convention shall be settled amicably through direct negotiations between the State Parties concerned.
2. Where the dispute cannot be resolved through direct negotiation, the State Parties shall endeavour to resolve the dispute through other peaceful means, including good offices, mediation and conciliation, or any other peaceful means agreed upon by the State Parties. In this regard, the State Parties shall be encouraged to make use of the procedures and mechanisms for resolution of disputes established within the framework of the Union.

**Article 35: Signature, Ratification or Accession**

This Convention shall be open to all Member States of the Union, for signature, ratification or accession, in conformity with their respective constitutional procedures.

**Article 36: Entry into Force**

This Convention shall enter into force thirty (30) days after the date of the receipt by the Chairperson of the Commission of the African Union of the fifteenth (15th) instrument of ratification.

**Article 37: Amendment**

1. Any State Party may submit proposals for the amendment or revision of this Convention;
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission of the African Union, who shall transmit same to State Parties within thirty (30) days of receipt thereof;
3. The Assembly of the Union, upon recommendation of the Executive Council of the Union, shall consider these proposals at its next session, provided all State Parties have been notified at least three (3) months before the beginning of the session;
4. The Assembly of the Union shall adopt the amendments in accordance with its Rules of Procedure;

5. The amendments or revisions shall enter into force in accordance with the provisions of Article 36 above.

**Article 38: Depository**

1. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the African Union;
2. Any State Party may withdraw from this Convention by giving a written notice one (1) year in advance to the Chairperson of the Commission of the African Union;
3. The Chairperson of the Commission of the African Union shall inform all Member States of any signature, depositing of instrument of ratification or accession to this Convention, as well as its entry into force;
4. The Chairperson of the Commission shall also inform the State Parties of requests for amendments or withdrawal from the Convention, as well as reservations thereon.
5. Upon entry into force of this Convention, the Chairperson of the Commission shall register it with the Secretary General of the United Nations, in accordance with Article 102 of the Charter of the United Nations.
6. This Convention, drawn up in four (4) original texts in Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic, shall be deposited with the Chairperson of the Commission who shall transmit certified true copies of the same to all Member States of the African Union in its official language.

**IN WITNESS WHEREOF, We the Heads of State and Government of the African Union or our duly mandated Representatives have adopted this Convention.**

**Adopted by the ..... Ordinary Session of the Assembly of the Union**

**EX.CL/846(XXV)Rev.1**  
**Annex 4**

**DRAFT**

**AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF  
DECENTRALISATION, LOCAL GOVERNANCE  
AND LOCAL DEVELOPMENT**

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



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

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**First Meeting of the Specialized Technical Committee  
on Justice and Legal Affairs  
15-16 May 2014  
Addis Ababa, Ethiopia**

**STC/Legal/Min/6(I)Rev.1**

**DRAFT**  
**AFRICAN CHARTER ON THE VALUES AND PRINCIPLES  
OF DECENTRALISATION, LOCAL GOVERNANCE  
AND LOCAL DEVELOPMENT**

## PREAMBLE

We, Member States of the African Union (AU):

**Guided** by the objectives and principles enshrined in the Constitutive Act of the African Union, particularly Articles 3 and 4, which emphasise the significance of good governance, popular participation, the rule of law and human rights;

**Inspired** by the Yaoundé Declaration adopted by African Ministers in charge of Decentralisation and Local Development on the 29<sup>th</sup> October 2005;

**Recalling** the AU Executive Council Decision EX.CL./Dec.677 (XX) adopted in Addis Ababa, Ethiopia on 28<sup>th</sup> January 2012 as endorsed by the Assembly of Heads of State and Government relating to the development of an African Charter on the Values, Principles and Standards of Decentralisation and Local Governance;

**Inspired** by the vision of the African Union of an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena;

**Recalling** the African Charter on Human and Peoples Rights (1981), the AU Convention on Preventing and Combating Corruption (2003), the African Charter on Democracy, Elections and Governance (2007), the African Charter on the Values and the Principles of Public Service and Administration (2011);

**Recognising** the contribution of regional organisations, Member States, local authorities associations, civil society organisations and traditional leaders in promoting, protecting, strengthening and consolidating decentralisation, local governance and local development;

**Determined** to promote the values and principles of decentralisation, local governance and local development in Africa as a means for improving the livelihood of all peoples on the continent;

**Convinced** that local governments or local authorities are key cornerstones of any democratic governance system;

**Reaffirming** our collective will to deepen participatory democracy, citizens and community empowerment; to promote accountability and transparency of public institutions, promote and protect cultural diversity, and promote gender and trans-generational equity at the local or sub-national level;

**Committed** to ensure access to basic services for all people on the continent;

**Cognisant** of the various forms of decentralisation, including devolution, deconcentration and delegation in the political, administrative and financial spheres;

Have agreed as follows:



**CHAPTER I**  
**DEFINITIONS, OBJECTIVES, SCOPE AND VALUES**  
**Article I**  
**Definitions**

In this Charter, unless otherwise stated, the expressions below shall have the following meaning.

**AU** means the African Union

**Assembly** means the Assembly of Heads of State and Government of the African Union

**Charter** means the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development

**Commission** means the African Union Commission

**Constitutive Act** means the Constitutive Act of the African Union

**Decentralisation** means the transfer of power, responsibilities, capacities and resources from national to all sub-national levels of government with the aim of strengthening the ability of the latter to both foster people's participation and delivery of quality services.

**Local development** means the mobilisation of local, national and global human, economic, socio-cultural, and political and natural resources for the improvement and transformation of livelihood, communities and territories at the local level.

**Local economic development** means an element of local development which emphasises the mobilisation of endogenous resources and local knowledge and skills in a manner that attracts investments to generate inclusive economic activities and growth and promotes the equitable redistribution of resources.

**Local Governance** means governance processes and institutions at the sub-national level, which includes governance by and with local governments or local authorities, civil society, and other relevant actors at the local level.

**Local Public Official** means a locally elected representative of a local government or local authority.

**Member States** means Member States of the African Union

**Ministers** means Ministers of the central government or any authority of the central government responsible for decentralisation, local governance and local development

**Regional Economic Communities** means regional integration blocks of the African Union

**State Party** means any Member State that has ratified or acceded to the Charter and deposited the instruments of ratification or accession with the Chairperson of the African Union Commission

**STCs** means the Specialised Technical Committees of the African Union

**Sub-national level** means all levels of government below the national level

## Article 2 Objectives

1. The objectives of the Charter are to:
  - a) Promote, protect and act as a catalyst for decentralisation, local governance and local development in Africa;
  - b) Promote and champion local governance and local democracy as one of the cornerstones of decentralisation in Africa;
  - c) Promote resource mobilisation and local economic development with the view to eradicating poverty in Africa;
  - d) Promote a shared understanding and a common vision of Member States on matters relating to decentralisation, local governance and local development;
  - e) Promote the core values and principles of decentralisation, local governance and local development;
  - f) Guide policy formulation, implementation, monitoring and evaluation at the continental, regional, state and sub-national levels on decentralisation, local governance and local development;
  - g) Encourage effective coordination, harmonisation and knowledge sharing within Member States and among regional economic communities on decentralisation, local governance and local development;
  - h) Promote the association and cooperation of local governments or local authorities at the local, national, regional and continental levels;
  - i) Promote civil society, private sector and people participation in decentralisation, local governance and local development initiatives; and

**Article 3**  
**Scope**

This Charter covers:

- a) Decentralisation
- b) Local governance
- c) Local development

**Article 4**  
**Core Values**

This Charter shall be informed by the following values:

- a) Community – based participation and inclusiveness
- b) Solidarity
- c) Respect for human and peoples' rights
- d) Diversity and tolerance
- e) Justice, equality and equity
- f) Integrity
- g) Civic responsibility and citizenship
- h) Transparency and accountability
- i) Responsiveness

## **CHAPTER II PRINCIPLES**

The following principles shall underpin the approach to decentralisation, local governance and local development in Africa:

### **Article 5 Local Governance**

1. State parties shall enact domestic laws/regulations, recognising different levels of government with the mandate to exercise their competencies through clearly defined regulatory mechanisms.
2. Local governments or local authorities shall in accordance with national law, have the powers, to in an accountable and transparent manner, manage their administration and finances through democratically elected, deliberative assemblies and executive organs.
3. Geographical boundaries of areas falling within the jurisdiction of local governments or local authorities shall be modified in accordance with the provisions of the law.
4. Local governments or local authorities shall be consulted through clearly defined regulations on national or sub-national legal instruments, sectoral policies, programmes, or projects that directly or indirectly affect their competencies to impact on the lives of local populations.

### **Article 6 Subsidiarity**

1. Central government shall create enabling conditions for decision-making, policy and programme initiation, adoption and implementation to take place at lower levels of government where local governments or local authorities offer a better guarantee of pertinence and efficacy.
2. Central governments shall create enabling conditions for cooperation and coordination between national and all sub-national levels of government and shall empower local governments or local authorities to discharge their duties and responsibilities.
3. Local governments or local authorities shall cooperate with central governments and other local actors to achieve increased efficiency and effectiveness in public action for the delivery of public services.

**Article 7**  
**Resource Mobilisation and Local Economic Development**

1. Central governments shall adopt legislation, measures and establish relevant mechanisms to give local governments the authority to mobilise and disburse resources at the local level for local economic development.
2. Central governments shall adopt legislation and create the necessary oversight and evaluation mechanisms to ensure that the percentage of revenue raised at the national and local levels are effectively transferred to local governments or local authorities for local economic development.
3. Central governments shall work in close collaboration with local governments or local authorities to promote private sector and community development investments or initiatives through legislative, financial and institutional frameworks.
4. Local governments or local authorities shall, in accordance with the law, and in an accountable and transparent manner, raise, manage and administer local resources in consultation with central government, civil society and the private sector through legislative, institutional and clearly defined and regulated participatory mechanisms.
5. Local governments or local authorities shall encourage and ensure that civil society, private sector, communities, national and sub-national entities pay local taxes and user fees through clearly established, transparent and efficient mechanisms.

**Article 8**  
**Diversity and Differentiation**

**Without prejudice to observance of this Charter:**

1. Local governments or local authorities shall exercise their powers having regard to local realities, values, and customs as well as national principles, norms and standards.
2. In accordance with the law local programmes, projects or initiatives shall be implemented in consultation with stakeholders and carried out in such a manner as to recognise the cultural, religious and gender diversity of the people within its territory in urban and rural areas.
3. Central and Local Governments or Local Authorities may establish consultative mechanisms, informed by local conditions to make proposals or give opinions concerning guidelines or decisions on local development. However, the role of local elected authorities shall remain primary.

**Article 9  
Legality**

1. Local governments shall adopt by-laws, develop and implement local programmes, projects or initiatives in a manner consistent with national laws and regulations.
2. States which are party to regional, continental and/or global treaties and policy instruments shall support and ensure local governments to comply with such instruments and treaties at the local level.

**Article 10  
Inclusion, Equity and Equality**

1. Local governments or local authorities shall discharge their responsibilities and duties in a manner that it is inclusive, equitable and gives equal treatment to all local residents to ensure that citizens and local residents have equitable access to quality services.
2. Local governments or local authorities shall ensure that historically marginalised groups and poor communities in both rural and urban areas shall be included and given priority in service delivery.
3. Local governments or local authorities shall develop pro-poor initiatives and pay particular attention to women and the youth, as well as vulnerable groups including but not limited to the elderly, persons with disability, HIV/AIDS-affected households, child-headed households, street children, the indigent, the illiterate, slum dwellers, poor rural households, the unemployed and underemployed, refugees, the homeless, the displaced minorities in programme or project development, implementation and service delivery.
4. Local governments or local authorities shall not discriminate on the basis of sex, age, disability, social status, religion, place of origin, ethnic or racial origin, linguistic association and political ideology in exercising their functions, setting policies, planning, implementing, monitoring and evaluating programmes or projects.
5. Local governments or local authorities shall discharge their duties and responsibilities having regard to sustainable development, which includes the development of future generations, inter-generational development and environmental sustainability into account.

**Article 11**  
**Shared Responsibility and Complementarity**

State Parties shall ensure that:

- a) Local governments or local authorities promote and improve the livelihoods and environment of local communities.
- b) Local governments or local authorities, in the spirit of good local and central government relations, involve all relevant national, sub-national, private sector and civil society actors in the development and implementation of local development plans and programmes, and ensure consistency with national, regional or continental development policies.
- c) Local governments or local authorities specify their local development plans and programmes in operational cooperation frameworks, such as a Commitments Charter, which shall be adopted by all relevant actors.
- d) Central and local governments or local authorities are bound by law to establish mechanisms to cooperate and support each other to attain global, continental, regional, national, and local development priorities.
- e) They establish mechanisms of cooperation between national development agencies, public institutions, private sector and civil society on the one hand with local governments or local authorities on the other hand, to support the implementation of local development priorities.
- f) Local governments or local authorities are accountable to local communities regarding local development decisions and policies, the implementation of such decisions and policies and the management of financial resources. Local community and citizen responsibilities in this respect shall be clearly defined to facilitate collaboration with local governments or local authorities.
- g) Local governments or local authorities, in accordance with national legislation and in the spirit of good cooperative governance, are accountable to central governments and communities as regards the discharging of their duties and responsibilities and in the implementation of programmes, projects or policies.

**Article 12**  
**Participation**

- 1. National legislation shall guarantee the rights and outline responsibilities of citizens to participate in public life at the local level.
- 2. Democracy shall be the foundation of local governance and shall take a participatory and representative form.

3. Local governments or local authorities shall promote participation of all segments of society in the planning, implementation, monitoring and evaluation of policies, programmes and projects through structured community platforms and other forms of participation to ensure the delivery of quality services.
4. Local governments or local authorities shall promote the development of innovative democratic and peaceful public expression platforms.
5. Local governments or local authorities shall make provision for the meaningful participation of communities, civil society and other actors in local governance and development.
6. Central governments, in collaboration with local governments or local authorities, shall invite and encourage the full participation of the African diaspora in the promotion of decentralization, local governance and local development through clearly defined policies and mechanisms.
7. National legislation shall be enacted to empower and encourage local governments or local authorities to adopt appropriate forms of popular participation, civic engagement and other forms of expression.

### **Article 13 Representation**

1. Election of local public officials shall be enshrined within the legal framework of State Parties, which shall clearly define the modalities and timeframes for such elections.
2. Central governments shall enact electoral laws that promote regular, democratic, free, fair and transparent local government elections.
3. Central governments shall establish innovative measures and appropriate mechanisms to ensure the full participation of all eligible citizens, including specific measures for the representation of women and marginalised groups in local government elections within the framework of national legislation.
4. Local public officials shall duly represent the interests of local communities and shall consult with their populations on an on-going and regular basis through clearly specified mechanisms and timeframes.
5. Central governments shall adopt legislation and establish administrative and financial mechanisms and use Information and Communication Technology (ICT) to encourage local residents and communities to provide feedback to their locally elected representatives, make their grievances heard, and seek redress.



**Article 14**  
**Transparency, Accountability and Ethical Behaviour**

1. Measures for the promotion of transparency and accountability by local governments or local authorities shall be clearly outlined in national legislation. Such legislation shall clearly define the respective roles and responsibilities of national and sub-national governments, public agencies, service providers, elected and administrative officials, and civil society organizations.
2. Central governments and local governments or local authorities shall make provisions for community participation and establish accountability systems in local governance and local development programmes by publishing annual local government performance reports and disclosing financial statements in full.
3. Central governments and local governments or local authorities shall establish mechanisms to combat all forms of corruption.
4. Central governments and local governments or local authorities shall establish innovative mechanisms in the resolution of grievances to promote and protect whistle-blowing relating to all forms of corrupt behaviour and practice, including bribery, patronage and nepotism, as well as the resolution of grievances.
5. Local public officials shall display ethical behaviour and integrity in discharging their duties.
6. Central governments shall adopt legislation and create mechanisms to monitor standards of ethical behaviour by local governments or local authorities.

**Article 15**  
**Mainstreaming Gender, Youth and Disability**

1. Local governments or local authorities shall integrate gender, youth and disability issues in the overall process of formulating policy, planning for development and providing services, as well as in implementing, monitoring and evaluating development programmes and projects.
2. Local governments or local authorities shall promote and ensure the equal and effective participation of women, youth and people with disability in public life, leadership and management positions on all matters relating to local governance and local development.
3. Local governments or local authorities shall promote and increase participation of women, youth and people with disability in all matters relating to local governance and local development.

## **Article 16 Efficiency**

### **1. Local Governance Administration**

- a) National legislation shall be adopted to empower local governments to determine and manage the organization of local public administration within a common national framework of standards, in order to ensure effective and enhanced delivery of quality and affordable services to local communities.
- b) Local governments or local authorities shall identify and implement innovative service delivery modalities to local populations within a framework of national legislation.

### **2. Resource Mobilisation and Utilisation**

- a) Local governments shall be provided with the required human, financial and technological resources to effectively and efficiently discharge their responsibilities.
- b) Information and Communication Technology (ICT) shall be made accessible and effectively used to make local governance and local development more effective and efficient.

### **3. Capacity Development**

- a) Local governments or local authorities, as well as local government associations, shall undertake comprehensive and continuous capacity development initiatives to enhance the performance of locally elected representatives and officials to effectively and efficiently carry out their duties and functions.
- b) Central governments shall establish civil service institutions, create special programmes and develop special curricula on local government and local public administration
- c) Central governments shall encourage such initiatives to share experiences and best practices at the bilateral, regional and continental level.
- d) Communities, civil society and citizens shall benefit from capacity development in order to effectively contribute to local public administration and local development.
- e) State Parties shall promote voluntary peer review processes within and between countries.

#### **4. Natural Resources**

- a) National legislation shall be adopted, and mechanisms which include local government, civil society and local populations shall be established, to ensure adequate protection and sustainable use of natural resources at the local level.
- b) National legislation shall be adopted, and mechanisms which include local government, civil society, and local populations shall be created, for local communities to benefit from natural resources exploited in their communities.
- c) Central governments shall be responsible to equitably redistribute natural resource benefits acquired from natural resource exploitation in given localities and communities to all sub-national governments and local communities.

#### **5. Local Governance Financing, Financial Management and Local Development**

- a) Central governments shall enact national legislation which strives to entrust local governments with the full responsibility to manage financial resources at the local level.
- b) Central government shall ensure, through appropriate support and oversight, that allocated financial resources are managed effectively and efficiently without undermining the principle of local financial autonomy.
- c) National legislation shall be adopted to ensure the financial sustainability of local governments.
- d) Central governments shall define local resources as well as conditional and unconditional financial transfers.
- e) Conditional and unconditional financial transfers from central government to local governments or local authorities shall be transparent and predictable.
- f) Conditions under which local governments shall gain access to loans, financial markets, and development assistance shall be defined by law.
- g) Local governments shall implement accounting, auditing and management systems for the effective, efficient and transparent management of financial resources in strict compliance with national financial and accounting laws, norms and standards.

- h) Local governments or local authorities shall identify and establish mechanisms and processes for the efficient or optimal use of financial resources in the delivery of quality services as defined by law.

### **Article 17**

#### **Solidarity, Cooperation and Partnership**

1. National laws shall be adopted to regulate conditions under which local governments or local authorities may form partnerships or cooperate with local governments of other African countries to achieve common local, national and regional development and continental integration objectives.
2. Local governments or local authorities may enter into appropriate partnerships with non-African local governments to promote cooperation, especially South–South cooperation.
3. National legislation shall be adopted to recognize the right of local governments or local authorities to form a national association to co-operate and collaborate.
4. Such national association shall be governed by public law and shall be integrated into the decentralisation management institutional mechanism.
5. Local governments or local government associations at the national level shall be free to join regional, continental and global local government associations.
6. Central governments shall encourage, support and ensure the full participation of local government associations as the collective voice of local governments in national, regional and continental development matters or decisions.
7. Central governments shall encourage and support the independent and effective functioning of local government associations.
8. Regional integration initiatives shall promote local government or local authority cooperation among Member States; the framework for cross-border cooperation shall be established by Member States and Regional Economic Communities.
9. Central governments shall support local governments to fully participate in processes, mechanisms and programmes at the regional and continental levels .

**CHAPTER III**  
**MECHANISMS FOR IMPLEMENTATION**  
**Article 18**  
**Follow-up Mechanisms**

To give effect to the commitments contained in this Charter, the actions listed below shall be taken at the following levels:

**1. Implementation at Individual State Party Level**

**a) Local government or local authority level**

Local governments or local authorities shall:

- i) Equally be responsible and accountable to their local populations for the implementation of the objectives of this Charter, and the adherence to its values and principles;
- ii) Cooperate with central government and other sub-national levels of governments to realise shared development priorities;
- iii) Participate in national Local Government Associations and collaborate with civil society and the private sector to achieve the objectives of the Charter;
- iv) Demonstrate the political will to advocate for and ensure the implementation of the objectives, values and principles of this Charter, together with the central government;
- v) Commit to create favourable conditions for the dissemination and implementation of this Charter; and
- vi) Commit to participate in the monitoring, evaluation and reporting of the implementation of this Charter.

**b) Central government level**

To ensure and facilitate the implementation of this Charter, State Parties shall:

- i) Adopt appropriate legislative, executive and administrative measures to align their national laws and regulations to the objectives of this Charter and adhere to the values and principles contained therein;
- ii) Integrate commitments, objectives, values and principles of this Charter in national policies and strategies;
- iii) Take all necessary measures to ensure the broader dissemination of this Charter;
- iv) Undertake a coordinated effort to place decentralisation and local development at the centre of governance and development;

- v) Demonstrate the political will, through inter alia, the allocation of appropriate resources, for the realisation of the objectives, values and principles of this Charter in a concrete manner; and
- vi) Take the necessary steps to develop cooperation and share experiences in the areas of decentralisation, local governance and local development in accordance with the objectives, values and principles of this Charter.

## **2. Implementation at Commission Level**

### **a) Regional level**

In accordance with their constitutive instruments, Regional Economic Communities shall:

- i) Encourage Member States to ratify, accede, implement and monitor this Charter;
- ii) Integrate and take into account the objectives, principles and values of this Charter in drafting and adopting regional policy and legal instruments; and
- iii) Support and facilitate the establishment of an appropriate advisory regional platform or forum for the collective voice and action of local governments.

### **a) Continental level**

To ensure and facilitate the implementation of this Charter, the Commission shall:

- i) Develop guidelines for the implementation of this Charter;
- ii) Facilitate the creation of favourable conditions for good local governance and development for the delivery of quality public services on the continent at the local level through the harmonisation of policies and laws of State Parties;
- iii) Support and facilitate the establishment of an appropriate advisory continental platform or forum for the collective voice and action of local governments within the AU framework;
- iv) Assist State Parties to implement this Charter and coordinate its evaluation;
- v) Mobilise the necessary resources to support State Parties to build their capacity to implement this Charter; and
- vi) Undertake periodic review of the Charter and make recommendations to the Policy Organs of the African Union.

## **Article 19 Reporting**

1. State Parties shall, from the date the Charter comes into force, submit to the Commission, every three years, a Report to the Commission on the legislative or other measures taken with a view to giving effect to the principles and commitments of this Charter.

2. The Commission shall prepare and submit to the Assembly, through the Executive Council, a synthesised Report on the implementation of this Charter, for consideration.

#### **Article 20**

#### **Recognition, Award System and Commemoration**

1. State Parties shall institutionalize a transparent and an impartial system for recognizing outstanding performance, creativity and innovation in decentralisation, local governance and local development.
2. State Parties shall promote a continental recognition and award system to acknowledge and emulate excellence in decentralisation, local governance and local development.
3. The Commission shall promote innovative experiences and institute a system of awards for innovation in decentralisation, local governance and local development.
4. State parties shall commemorate the “Africa Day on Decentralisation and Local Development”, on the 10<sup>th</sup> of August of each year as a means to promote the values and principles of this Charter.

#### **CHAPTER IV**

#### **FINAL CLAUSES**

#### **Article 21**

#### **Safeguard provisions**

1. The provisions of this Charter shall not be interpreted in a manner that is inconsistent with the relevant principles of international law, including international customary law.
2. None of the provisions of this Charter shall affect more favourable provisions relating to cross-border cooperation contained in the domestic law of State Parties or in any other regional, continental or international agreement applicable in these State Parties.
3. In the implementation of this Charter, the specificities and special needs of island states shall be taken into account.

#### **Article 22**

#### **Settlement of Disputes**

1. Any dispute relating to this Charter shall be amicably resolved through direct negotiations between the State Parties concerned.

2. Where the dispute is not resolved through direct negotiation, the State Parties shall endeavour to resolve the dispute through other peaceful means, including good offices, mediation and conciliation, or any other peaceful means agreed upon by the State Parties. In this regard, the State Parties shall be encouraged to make use of the procedures and mechanisms for resolution of disputes established within the framework of the Union.

**Article 23**  
**Signature, Ratification or Accession**

This Charter shall be open to all Member States of the Union, for signature, ratification or accession, in conformity with their respective constitutional procedures.

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

This Charter shall enter into force thirty (30) days after the date of the receipt by the Chairperson of the Commission of the African Union of the fifteenth (15<sup>th</sup>) instrument of ratification.

**Article 25**  
**Amendment**

1. Any State Party may submit proposals for the amendment or revision of this Charter.
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission of the African Union, who shall transmit the same to State Parties within thirty (30) days of receipt thereof.
3. The Assembly of the Union, upon recommendation of the Executive Council of the Union, shall examine these proposals at its next session, provided all State Parties have been notified at least three (3) months before the beginning of the session.
4. The Assembly of the Union shall adopt the amendments in accordance with its Rules of Procedure.
5. The amendments or revisions shall enter into force in accordance with the provisions of Article 24 above.

**Article 26**  
**Depository**

1. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the African Union.



2. Any State Party may withdraw from this Charter by giving a written notice of one (1) year in advance to the Chairperson of the Commission of the African Union.
3. The Chairperson of the Commission of the African Union shall notify the Member States of any signature of this Charter, any deposit of an instrument of ratification or accession, as well as its entry into force.
4. The Chairperson of the Commission shall also notify the State Parties of the requests for amendments or withdrawal from the Charter, as well as reservations thereon.
5. Upon entry into force of this Charter, the Chairperson of the Commission shall register it with the Secretary-General of the United Nations, in accordance with Article 102 of the Charter of the United Nations.
6. This Charter, drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic, shall be deposited with the Chairperson of the Commission who shall transmit a certified true copy of the Charter to each Member State of the African Union in its official language.

**IN WITNESS WHEREOF, WE, Member States of the African Union have adopted this Charter during the....Ordinary Session of our Assembly held in.....**

**Done at....., this .....day of.....20.....**

**EX.CL/846(XXV)Rev.1**  
**Annex 5**

**DRAFT PROTOCOL ON AMENDMENTS TO THE PROTOCOL  
ON THE STATUTE OF THE AFRICAN COURT OF  
JUSTICE AND HUMAN RIGHTS**

**AFRICAN UNION**

**الاتحاد الأفريقي**



**UNION AFRICAINE**

**UNIÃO AFRICANA**

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**First Meeting of the Specialized Technical Committee  
on Justice and Legal Affairs  
15-16 May 2014  
Addis Ababa, Ethiopia**

**STC/Legal/Min/7(I) Rev. 1**

**Original: English**

**DRAFT PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE  
STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS**

**AS AT THURSDAY 15 MAY 2014**

**DRAFT PROTOCOL ON AMENDMENTS TO THE PROTOCOL ON THE STATUTE  
OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS**

**The Member States** of the African Union parties to the Constitutive Act of the African Union;

**RECALLING** the objectives and principles enunciated in the Constitutive Act of the African Union, adopted on 11 July 2000 in Lome, Togo, in particular the commitment to settle their disputes through peaceful means;

**FURTHER RECALLING** the provisions of the Protocol on the Statute of the African Court of Justice and Human Rights and the Statute annexed to it adopted on 1 July 2008 in Sharm-El-Sheikh, Egypt;

**RECOGNIZING** that the Protocol on the Statute of the African Court of Justice and Human Rights had merged the African Court on Human and Peoples Rights and the Court of Justice of the African Union into a single Court;

**BEARING IN MIND** their commitment to promote peace, security and stability on the continent, and to protect human and people's rights in accordance with the African Charter on Human and Peoples Rights and other relevant instruments;

**FURTHER RECOGNIZING** the efforts and contribution of the African Commission on Human and Peoples Rights in the promotion and protection of human and peoples rights since its inception in 1987;

**NOTING** the steady growth of the African Court on Human and Peoples Rights and the contribution it has made in protecting human and people's rights on the African continent as well as the progress towards the establishment of the African Court of Justice and Human and Peoples Rights;

**FURTHER BEARING IN MIND** the complementary relationship between the African Commission on Human and Peoples Rights and the African Court on Human and Peoples Rights, as well as its successor, the African Court of Justice and Human and Peoples Rights;

**FURTHER RECALLING** their commitment to the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity as well as a serious threat to legitimate order to restore peace and stability to the Member State of the Union upon the recommendation of the Peace and Security Council;

**REITERATING** their respect for democratic principles, human and people's rights, the rule of law and good governance;

**FURTHER REITERATING** their respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities, unconstitutional changes of governments and acts of aggression;

**FURTHER REITERATING** their commitment to fighting impunity in conformity with the provisions of Article 4(o) of the Constitutive Act of the African Union;

**ACKNOWLEDGING** the pivotal role that the African Court of Justice and Human and Peoples Rights can play in strengthening the commitment of the African Union to promote sustained peace, security and stability on the Continent and to promote justice and human and peoples rights as an aspect of their efforts to promote the objectives of the political and socio-economic integration and development of the Continent with a view to realizing the ultimate objective of a United States of Africa;

**FURTHER RECALLING** Assembly Decision Assembly/AU/Dec.213 (XII) adopted by the Twelfth Ordinary Session of the Assembly in Addis Ababa, Federal Democratic Republic of Ethiopia, on 3 February 2009 on the implementation of the Assembly's Decision on the Abuse of the Principle of Universal Jurisdiction;

**FURTHER RECALLING** Assembly Decision Assembly/AU/Dec.263 (XIII) adopted by the Thirteenth Ordinary Session of the Assembly in Sirte, Libya, on 3 July 2009 on the transformation of the African Union Commission to the African Union Authority;

**FURTHER RECOGNIZING** the need to take the necessary measures to amend the legal instruments of the principal organs of the African Union in the light of the aforementioned Assembly Decisions;

**CONVINCED** that the present Protocol will complement national, regional and continental bodies and institutions in preventing serious and massive violations of human and peoples rights in keeping with Article 58 of the Charter and ensuring accountability for them wherever they occur;

**HAVE AGREED** to adopt the present amendments to the Protocol on the Statute of the African Court of Justice and Human Rights and the Statute annexed thereto as follows: -

## CHAPTER I

In CHAPTER 1 of the Protocol (MERGER OF THE AFRICAN COURT ON HUMAN AND PEOPLES RIGHTS AND THE COURT OF JUSTICE OF THE AFRICAN UNION) the deletion of the existing title, Articles and their provisions in their entirety and the insertion in their place of the following:

### “CHAPTER I

#### GENERAL PROVISIONS

##### Article 1 Definitions

In this Protocol:

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

“Chairperson” means the Chairperson of the Assembly;

“Charter” means the African Charter on Human and Peoples Rights;

“Commission” means the Commission of the African Union;

“Court” means the African Court of Justice and Human and Peoples Rights;

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

“President” means the President of the Court;

“Protocol” means the Protocol on the Statute of the African Court of Justice and Human Rights;

“Single Court” has the same meaning as the Court;

“Statute” means the present Statute;

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

“Vice President” means the Vice President of the Court.

**Article 2**  
**Organs of the Court**

The Court shall be composed of the following organs:

1. The Presidency;
2. The Office of the Prosecutor;
3. The Registry;
4. The Defence Office.

**Article 3**  
**Jurisdiction of the Court**

1. The Court is vested with an original and appellate jurisdiction, including international criminal jurisdiction, which it shall exercise in accordance with the provisions of the Statute annexed hereto.
2. The Court has jurisdiction to hear such other matters or appeals as may be referred to it in any other agreements that the Member States or the Regional Economic Communities or other international organizations recognized by the African Union may conclude among themselves, or with the Union.

**Article 4**  
**Relationship between the Court and the African Commission on Human and Peoples Rights**

The Court shall, in accordance with the Charter and this Protocol, complement the protective mandate of the African Commission on Human and Peoples Rights.

**CHAPTER II**

**TRANSITIONAL PROVISIONS**

**Article 5**  
**Term of Office of the Judges of the African Court on Human and Peoples Rights**

**In Article 4 (Term of Office of the Judges of the African Court on Human and Peoples Rights), replace the existing provision including its title, with:**

**“Article 4**  
**Term of Office of the Judges of the African Court**  
**on Human and Peoples Rights**

1. Upon the coming into force of the Protocol on the Statute of the African Court of Justice and Human Rights, the terms and appointment of the Judges of the African Court on Human and Peoples Rights shall terminate.
2. Without prejudice to paragraph 1, the Judges of the African Court on Human and Peoples Rights shall remain in office until the judges of the African Court of Justice and Human and Peoples Rights are sworn in.

**Article 6**  
**Pending Cases**

At the entry into force of this Protocol, where any matter affecting any State had already been commenced before either the African Court on Human and Peoples’ Rights or the African Court of Justice and Human Rights, if in force, such a matter shall be continued before the relevant Section of the African Court of Justice and Human and Peoples’ Rights, pursuant to such Rules as may be made by the Court.

**Article 6bis**  
**Temporary Jurisdiction**

At the entry into force of this Protocol, until a Member State ratifies it, any jurisdiction which has hitherto been accepted by such Member State with respect to either the African Court on Human and Peoples’ Rights or the African Court of Justice and Human Rights shall be exercisable by this Court.

**Article 7**  
**Registry of the Court**

1. The Registrar of the African Court on Human and Peoples Rights shall remain in office until the appointment of a new Registrar for the African Court of Justice and Human and Peoples Rights.
2. The staff of the African Court on Human and Peoples Rights shall be absorbed into the Registry of the African Court of Justice and Human and Peoples Rights, for the remainder of their subsisting contracts of employment.



## CHAPTER III

### Final Provisions

#### **Article 8** **Nomenclature**

In the Protocol and the Statute wherever it occurs “African Court of Justice and Human Rights” is deleted and replaced with “African Court of Justice and Human and Peoples Rights.”

#### **Article 9** **Signature, Ratification and Accession**

1. This Protocol and the Statute annexed to it shall be open for signature, ratification or accession by Member States, in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession to this Protocol and the Statute annexed to it shall be deposited with the Chairperson of the Commission.
3. Any Member State may, at the time of signature or when depositing its instrument of ratification or accession, or at any time thereafter, make a declaration accepting the competence of the Court to receive cases under Article 30 (f).

#### **Article 10** **Depository Authority**

1. This Protocol and the Statute annexed to it, drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic, shall be deposited with the Chairperson of the Commission, who shall transmit a certified true copy to the Government of each Member State.
2. The Chairperson of the Commission, shall notify all Member States of the dates of deposit of the instruments of ratification or accession, and shall, upon the entry into force of this Protocol, register the same with the Secretariat of the United Nations.

#### **Article 11** **Entry into force**

1. This Protocol and the Statute annexed to it shall enter into force thirty (30) days after the deposit of instruments of ratification by fifteen (15) Member States.

2. For each Member State which shall accede to it subsequently, this Protocol and Annexed Statute shall enter into force on the date on which the instruments of ratification or accession are deposited.
3. The Chairperson of the Commission shall notify all Member States of the entry into force of this Protocol.

**Article 12**  
**Amendments**

1. This Protocol and the Statute annexed to it may be amended if a State Party to the Protocol makes a written request to that effect to the Chairperson of the Commission. The Assembly may adopt, by simple majority, the draft amendment after all the States parties to the present Protocol have been duly informed of it and the Court has given its opinion on the amendment.
2. The Court shall also be entitled to propose such amendments to the present Protocol or the Statute annexed to it as it may deem necessary, through the Chairperson of the Commission.
3. The amendments shall come into force for each State Party which has accepted it thirty (30) days after the Chairperson of the Commission has received notice of the acceptance.

**Adopted by the .....Session of the Assembly of the African Union held in .....,  
....., on ....., 20.....**

**Annex**  
**Statute of the African Court of Justice and Human and Peoples Rights**

**Article 1**  
**Definitions**

1. In Article 1 of the Statute (Definitions), the deletion from the chapeau of the words “except otherwise indicated, the following shall mean”

3. The insertion of the following words and the definitions ascribed to them

“Chairperson” means the Chairperson of the Commission;

“Child” means any person under eighteen years of age;

“Court” means the African Court of Justice and Human and Peoples Rights;

“Full Court” means the three Sections of the Court sitting together in plenary;

“Person” means a natural or legal person;

“President” means the President of the Court unless otherwise specified;

“Section” means the General Affairs or Human and Peoples’ Rights or International Criminal Law Section of the Court;

“Statute” means the Statute of the African Court of Justice and Human and Peoples Rights;

“Vice President” means the Vice President of the Court.

**Article 2**  
**Composition**

In Article 3 of the Statute (Composition), add the following paragraph 4:

“  
4. The Assembly shall ensure that there is equitable gender representation in the Court.  
”

**Article 3**  
**Qualifications of Judges**

Article 4 of the Statute (Qualifications of Judges) is replaced with the following:

“The Court shall be composed of impartial and independent Judges elected from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are juris-consults of recognized competence and experience in international law, international human rights law, international humanitarian law or international criminal law.”

**Article 4**  
**List of Candidates**

Article 6 of the Statute (List of Candidates) is replaced with the following: -

“

1. For the purpose of election, the Chairperson of the Commission shall establish three (3) alphabetical lists of candidates presented as follows:
  - i. List A containing the names of candidates having recognized competence and experience in International law;
  - ii. List B containing the names of candidates having recognized competence and experience in international human rights law and international humanitarian law; and
  - iii. List C containing the names of candidates having recognized competence and experience in international criminal law.
2. States Parties that nominate candidates possessing the competences required on the three (3) lists shall choose the list on which their candidates may be placed.
3. At the first election, five (5) judges each shall be elected from amongst the candidates on lists A and B, and six (6) judges shall be elected from amongst the candidates of list C respectively.
4. The Chairperson of the Commission shall communicate the three lists to Member States, at least thirty (30) days before the Ordinary Session of the Assembly or of the Council during which the elections shall take place.”

**Article 5**  
**Term of Office**

Article 8 of the Statute (Term of Office) is replaced with the following: -

“

1. The Judges shall be elected for a single, non-renewable term of nine (9) years. The terms of office of five (5) of the judges elected at the first election shall end after three (3) years, and the terms of another five (5) of the judges shall end after six (6) years.
2. The Judges whose term of office shall end after the initial periods of three (3) and six (6) years shall be determined by lot drawn by the Chairperson of the Assembly or the Executive Council, immediately after the first election.
3. A Judge elected to replace another whose term of office has not expired shall complete the term of office of his or her predecessor.
4. All the Judges, except the President and the Vice President, shall perform their functions on a part-time basis.
5. The Assembly shall, on the recommendation of the Court, decide the time when all the Judges of the Court shall perform their functions on a full time basis.”

**Article 6  
Structure of the Court**

Article 16 of the Statute (Sections of the Court) is replaced with the following: -

**“Article 16  
Structure of the Court**

1. The Court shall have three (3) Sections: a General Affairs Section, a Human and Peoples Rights Section and an International Criminal Law Section.
2. The International Criminal Law Section of the Court shall have three (3) Chambers: a Pre-Trial Chamber, a Trial Chamber and an Appellate Chamber.
3. The allocation of Judges to the respective Sections and Chambers shall be determined by the Court in its Rules. ”

**Article 7  
Assignment of matters to Sections of the Court**

Article 17 of the Statute (Assignment of matters to Sections) is replaced with the following:

**“Article 17  
Assignment of matters to Sections of the Court**

1. The General Affairs Section shall be competent to hear all cases submitted under Article 28 of the Statute except those assigned to the Human and Peoples Rights Section and the International Criminal Law Section as specified in this Article.
2. The Human and Peoples Rights Section shall be competent to hear all cases relating to human and peoples rights.
3. The International Criminal Law Section shall be competent to hear all cases relating to the crimes specified in this Statute.”

**Article 8  
Revision and Appeal**

Article 18 (Referral of matters to the Full Court) is replaced with the following:

**“Article 18  
Revision and Appeals**

1. In the case of the General Affairs Section and the Human and People’s Rights Section, a revision of a judgement shall be made in terms of the provisions of Article 48.
2. In the case of the International Criminal Law Section, a decision of the Pre-Trial Chamber or the Trial Chamber may be appealed against by the Prosecutor or the accused, on the following grounds:
  - (a) A procedural error;
  - (b) An error of law;
  - (c) An error of fact.
3. An appeal may be made against a decision on jurisdiction or admissibility of a case, an acquittal or a conviction.
4. The Appellate Chamber may affirm, reverse or revise the decision appealed against. The decision of the Appellate Chamber shall be final.”

**Article 9  
Chambers of the Court**

Article 19 of the Statute (Chambers) is replaced with the following: -

**“Chambers of the Court**

1. The General Affairs Section, Human and Peoples Rights Section or International Criminal Law Section may, at any time, constitute one or more Chambers in accordance with the Rules of Court.
2. A Judgment given by any Chamber shall be considered as rendered by the Court.”

**Article 9 Bis**

**Powers and Functions of the Chambers of the International Criminal Law Section**

After Article 19 of the Statute (Chambers) add the following as Article 19 *Bis*:

**“Article 19 *Bis***

**Powers and Functions of the Chambers of the International Criminal Law Section**

1. The Pre-Trial Chamber shall exercise the functions provided for in Article 46F of this Statute.
2. In addition, the Pre-Trial Chamber may also at the request of the Prosecutor issue such orders and warrants as may be required for an investigation or prosecution.
3. The Pre-Trial Chamber may issue such orders as may be required to provide for the protection and privacy of witnesses and victims, the presentation of evidence and the protection of arrested persons.
4. The Trial Chamber shall conduct trials of accused persons in accordance with this Statute and the Rules of Court.
5. The Trial Chamber shall receive and conduct appeals from the Pre-Trial Chamber in accordance with Article 18 of this Statute.
6. The Appeals Chamber shall receive and conduct appeals from the Trial Chamber in accordance with Article 18 of this Statute.

**Article 10  
Quorum**

Article 21 of the Statute (Quorum) is replaced with the following:

1. The General Affairs Section of the Court shall be duly constituted by three (3) judges.
2. The Human and Peoples Rights Section of the Court shall be duly constituted by three (3) judges.
3. The Pre-Trial Chamber of the International Criminal Law Section of the Court shall be duly constituted by one (1) judge.

4. The Trial Chamber of the International Criminal Law Section of the Court shall be duly constituted by three (3) judges.
5. The Appellate Chamber of the International Criminal Law Section of the Court shall be duly constituted by five (5) judges.

**Article 11**  
**Presidency and Vice Presidency**

Article 22 (Presidency, Vice-Presidency and Registry) is replaced with the following: -

**“Article 22**  
**Presidency and Vice Presidency**

1. At its first ordinary session after the election of the Judges, the Full Court shall elect a President and a Vice President of the Court.
2. The President and Vice President shall serve for a period of two (2) years, and may be re-elected once.
3. The President and Vice President shall, in consultation with the Members of the Court and as provided for in the Rules of Court, assign Judges to the Sections.
4. The President shall preside over all sessions of the Full Court. In the event of the President being unable to sit during a session, the session shall be presided over by the Vice President.
5. The President and Vice President shall reside at the seat of the Court.”

**Article 12**  
**Presidency and Vice Presidency**

After Article 22 (Presidency and Vice-Presidency) add the following as Articles 22A and 22B:

**“Article 22A**  
**The Office of the Prosecutor**

1. The Office of the Prosecutor shall comprise a Prosecutor and two Deputy Prosecutors.
2. The Prosecutor and Deputy Prosecutors shall be elected by the Assembly from amongst candidates who shall be nationals of States Parties nominated by States Parties.
3. The Prosecutor shall serve for a single, non-renewable term of seven (7) years.



4. The Deputy Prosecutors shall serve for a term of four (4) years, renewable once.
5. The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the conduct of investigations, trial and prosecution of criminal cases.
6. The Office of the Prosecutor shall be responsible for the investigation and prosecution of the crimes specified in this Statute and shall act independently as a separate organ of the Court and shall not seek or receive instructions from any State Party or any other source.
7. The Office of the Prosecutor shall have the power to question suspects, victims and witnesses and collect evidence, including the power to conduct on-site investigations.
8. The Prosecutor shall be assisted by such other staff as may be required to perform the functions of the Office of the Prosecutor effectively and efficiently.
9. The staff of the Office of the Prosecutor shall be appointed by the Prosecutor in accordance with the Staff Rules and Regulations of the African Union.
10. The remuneration and conditions of service of the Prosecutor and Deputy Prosecutors shall be determined by the Assembly on the recommendation of the Court made through the Executive Council.

**Article 22B**  
**The Registry**

1. The Registry shall comprise of a Registrar and three Assistant Registrars.
2. The Court shall appoint the Registrar and Assistant Registrars, in accordance with the Staff Rules and Regulations of the African Union.
3. The Registrar shall serve for a single, non-renewable term of seven years.
4. The Assistant Registrars shall serve for a term of four (4) years, renewable once.
5. The Registry shall be headed by a Registrar who, under the direction of the President, shall be responsible for the non-judicial aspects and servicing of the Court. The Registrar shall be the principal administrative and accounting officer of the Court, and shall ensure that proper books of accounts are kept in accordance with the financial rules and regulations of the African Union.
6. The Registrar and Assistant Registrars shall be persons of high moral character, be highly competent in and have extensive practical managerial experience.

7. The Registrar shall be assisted by such other staff as may be necessary for the effective and efficient performance of the functions of the Registry.
8. The staff of the Registry shall be appointed by the Court in accordance with the Staff Rules and Regulations of the African Union.
9. The Registrar shall set up, within the Registry:
  - a. A Victims and Witnesses Unit, which shall provide, in consultation with the Court and the Office of the Prosecutor, as appropriate, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. The Unit personnel shall include experts in the management of trauma.
  - b. A Detention Management Unit, which shall manage the conditions of detention of suspects and accused persons.
10. The salaries and conditions of service of the Registrar, Assistant Registrars and other staff of the Registry shall be determined by the Assembly on the proposal of the Court, through the Executive Council.

**Article 22C**  
**The Defence Office**

1. The Court shall establish, maintain and develop a Defence Office for the purpose of ensuring the rights of suspects and accused and any other person entitled to legal assistance.
2. The Defence Office, which may also include one or more public defenders, shall act independently as a separate organ of the Court. It shall be responsible for protecting the rights of the defence, providing support and assistance to defence counsel and to the persons entitled to legal assistance, including, where appropriate, legal research, collection of evidence and advice, and appearing before the Chamber in respect of specific issues.
3. The Defence Office shall ensure that there are adequate facilities to defence counsel and persons entitled to legal assistance in the preparation of a case, and shall provide any additional assistance ordered by a Judge or Chamber.
4. The Defence Office shall be headed by a Principal Defender, who shall be appointed by the Assembly, and shall be a person of high moral character and possess the highest level of professional competence and extensive experience in the defence of criminal cases. He shall be admitted to the practice of law in a recognised jurisdiction and shall have practised criminal law before a national or international criminal court for a minimum of ten years.

5. The Principal Defender shall, in order to ensure that the fair trial rights of suspects and accused are protected, adopt such regulations and practice directions as may be necessary to effectively carry out the functions of the Defence Office.
6. The Principal Defender shall be assisted by such other staff as maybe required to perform the functions of the Defence Office effectively and efficiently. The staff of the Defence Office shall be appointed by the Principal Defender in accordance with the Staff Rules and Regulations of the African Union..
7. The Principal Defender shall, for all purposes connected with pre-trial, trial and appellate proceedings, enjoy equal status with the Prosecutor in respect of rights of audience and negotiations *inter partes*.
8. At the request of a Judge or Chamber, the Registry, Defence or where the interests of justice so require, *proprio motu*, the Principal Defender or a person designated by him shall have rights of audience in relation to matters of general interest to defence teams, the fairness of the proceedings or the rights of a suspect or accused.

#### Article 12Bis

#### Conditions of Service of the Registrar and Members of the Registry

Article 24 of the Statute (Conditions of Service of the Registrar and Members of the Registry) is deleted.

#### Article 13

**Under Chapter III (Competence of the Court)** In Article 28 of the Statute (Jurisdiction of the Court), the insertion of a new sub-paragraph (d) as follows, with consequential renumbering of the existing paragraphs (d) to (h).

“ ...

(d) The crimes contained in this Statute, subject to a right of appeal.

...”

#### Article 14

#### International Criminal Jurisdiction of the Court

Immediately after Article 28 (Jurisdiction of the Court), the insertion of new Articles 28A, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28I, 28I *Bis*, 28J, 28K, 28L, 28L *Bis*, 28M and 28N **as follows:**

**“Article 28A  
International Criminal Jurisdiction of the Court**

1. Subject to the right of appeal, the International Criminal Law Section of the Court shall have power to try persons for the crimes provided hereunder:
  - 1) Genocide
  - 2) Crimes Against Humanity
  - 3) War Crimes
  - 4) The Crime of Unconstitutional Change of Government;
  - 5) Piracy
  - 6) Terrorism
  - 7) Mercenarism
  - 8) Corruption
  - 9) Money Laundering
  - 10) Trafficking in Persons
  - 11) Trafficking in Drugs
  - 12) Trafficking in Hazardous Wastes
  - 13) Illicit Exploitation of Natural Resources
  - 14) The Crime of Aggression
2. The Assembly may extend upon the consensus of States Parties the jurisdiction of the Court to incorporate additional crimes to reflect developments in international law.
3. The crimes within the Jurisdiction of the Court shall not be subject to any statute of limitations.

**Article 28 B  
Genocide**

For the purposes of this Statute, ‘genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group;
- f) Acts of rape or any other form of sexual violence.

**Article 28 C**  
**Crimes Against Humanity**

1. For the purposes of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack or enterprise directed against any civilian population, with knowledge of the attack or enterprise:
  - a) Murder;
  - b) Extermination;
  - c) Enslavement;
  - b) Deportation or forcible transfer of population;
  - c) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
  - d) Torture, cruel, inhuman and degrading treatment or punishment;
  - e) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
  - f) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
  - g) Enforced disappearance of persons;
  - h) The crime of apartheid;
  - i) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health.
  
2. For the purpose of paragraph 1:
  - a) 'Attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
  
  - b) 'Extermination' includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
  
  - c) 'Enslavement' means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
  
  - d) 'Deportation or forcible transfer of population' means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

- e) 'Torture' means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- f) 'Forced pregnancy' means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- g) 'Persecution' means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- h) 'The crime of apartheid' means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- i) 'Enforced disappearance of persons' means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

**Article 28 D**  
**War Crimes**

For the purposes of this Statute, 'war crimes' means any of the offences listed , in particular when committed as part of a plan or policy or as part of a large scale commission of such crimes.

- a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
  - i) Wilful killing;
  - ii) Torture or inhuman treatment, including biological experiments;
  - iii) Wilfully causing great suffering, or serious injury to body or health;
  - iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

- v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
  - vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
  - vii) Unlawful deportation or transfer or unlawful confinement;
  - viii) Taking of hostages.
- b) Grave breaches of the First Additional Protocol to the Geneva Conventions of 8 June 1977 and other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
  - iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
  - v) Intentionally launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects which will be excessive in relation to the concrete and direct overall military advantage anticipated;
  - vi) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
  - vii) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
  - viii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
  - ix) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or

transfer of all or parts of the population of the occupied territory within or outside this territory;

- x) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- xi) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- xii) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- xiii) Declaring that no quarter will be given;
- xiv) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- xv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- xvi) Compelling the nationals of the hostile party to take part in the operations of war directed against their own State, even if they were in the belligerent's service before the commencement of the war;
- xvii) Pillaging a town or place, even when taken by assault;
- xviii) Employing poison or poisoned weapons;
- xix) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- xx) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- xxi) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict
- xxii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- xxiii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- xxiv) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;



- xxv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  - xxvi) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
  - xxvii) Conscripting or enlisting children under the age of eighteen years into the national armed forces or using them to participate actively in hostilities;
  - xxviii) Unjustifiably delaying the repatriation of prisoners of war or civilians;
  - xxix) Wilfully committing practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination.
  - xxx) Making non-defended localities and demilitarised zones the object of attack;
  - xxxi) Slavery and deportation to slave labour;
  - xxxii) Collective punishments;
  - xxxiii) Despoliation of the wounded, sick, shipwrecked or dead;
- c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
  - iii) Taking of hostages;
  - iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- d) Paragraph 1 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

- i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- v) Pillaging a town or place, even when taken by assault;
- vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
- vii) Conscripting or enlisting children under the age of eighteen years into armed forces or groups or using them to participate actively in hostilities;
- viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- ix) Killing or wounding treacherously a combatant adversary;
- x) Declaring that no quarter will be given;
- xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- xiii) Employing poison or poisoned weapons;
- xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

- xvi) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies;
  - xvii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
  - xviii) Launching an indiscriminate attack resulting in death or injury to civilians, or an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage;
  - xix) Making non-defended localities and demilitarised zones the object of attack;
  - xx) Slavery;
  - xxi) Collective punishments;
  - xxii) Despoliation of the wounded, sick, shipwrecked or dead.
- f) Paragraph 1 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.
- g) Using nuclear weapons or other weapons of mass destruction

#### **Article 28E**

#### **The Crime of Unconstitutional Change of Government**

1. For the purposes of this Statute, 'unconstitutional change of government' means committing or ordering to be committed the following acts, with the aim of illegally accessing or maintaining power:
  - a) A putsch or coup d'état against a democratically elected government;
  - b) An intervention by mercenaries to replace a democratically elected government;
  - c) Any replacement of a democratically elected government by the use of armed dissidents or rebels or through political assassination;
  - d) Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections;
  - e) Any amendment or revision of the Constitution or legal instruments, which is an infringement on the principles of democratic change of government or is inconsistent with the Constitution;

- f) Any substantial modification to the electoral laws in the last six (6) months before the elections without the consent of the majority of the political actors.
2. For purposes of this Statute, “democratically elected government” has the same meaning as contained in AU instruments.

**Article 28F**  
**Piracy**

Piracy consists of any of the following acts:

- a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private boat, ship or a private aircraft, and directed:
  - i. on the high seas, against another boat, ship or aircraft, or against persons or property on board such boat, ship or aircraft;
  - ii. against a boat, ship, aircraft, persons or property in a place outside the jurisdiction of any State
- b) any act of voluntary participation in the operation of a boat, ship or of an aircraft with knowledge of facts making it a pirate boat, ship or aircraft;
- c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

**Article 28 G**  
**Terrorism**

For the purposes of this Statute, ‘terrorism’ means any of the following acts:

- A. Any act which is a violation of the criminal laws of a State Party, the laws of the African Union or a regional economic community recognized by the African Union, or by international law, and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:
  - 1. intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or

2. disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
  3. create general insurrection in a State.
- B. Any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in sub-paragraph (a) (1) to(3).
- C. Notwithstanding the provisions of paragraphs A and B, the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts.
- D. The acts covered by international Humanitarian Law, committed in the course of an international or non-international armed conflict by government forces or members of organized armed groups, shall not be considered as terrorist acts.
- E. Political, philosophical, ideological, racial, ethnic, religious or other motives shall not be a justifiable defence against a terrorist act.

**Article 28H**  
**Mercenarism**

1. For the purposes of this Statute:
  - a) A mercenary is any person who:
    - i. Is specially recruited locally or abroad in order to fight in an armed conflict;
    - ii. Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation;
    - iii. Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
    - iv. Is not a member of the armed forces of a party to the conflict; and
    - v. Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.
  - b) A mercenary is also any person who, in any other situation:
    - i. Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:

1. Overthrowing a legitimate Government or otherwise undermining the constitutional order of a State;
    2. Assisting a government to maintain power;
    3. Assisting a group of persons to obtain power; or
    4. Undermining the territorial integrity of a State;
  - ii. Is motivated to take part therein essentially by the desire for private gain and is prompted by the promise or payment of material compensation;
  - iii. Is neither a national nor a resident of the State against which such an act is directed;
  - iv. Has not been sent by a State on official duty; and
  - v. Is not a member of the armed forces of the State on whose territory the act is undertaken.
2. Any person who recruits, uses, finances or trains mercenaries, as defined in paragraph (1) (a) or (b) above commits an offence.
  3. A mercenary, as defined in paragraph (1) (a) or (b) above, who participates directly in hostilities or in a concerted act of violence, as the case may be, commits an offence.

### **Article 28I Corruption**

1. For the purposes of this Statute, the following shall be deemed to be acts of corruption if they are of a serious nature affecting the stability of a state, region or the Union:
  - a) The solicitation or acceptance, directly or indirectly, by a public official, his/her family member or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
  - b) The offering or granting, directly or indirectly, to a public official, his/family member or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
  - c) Any act or omission in the discharge of his or her duties by a public official, his/her family member or any other person for the purpose of illicitly obtaining benefits for himself or herself or for a third party;
  - d) The diversion by a public official, his/her family member or any other person, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any property belonging to the State or

its agencies, to an independent agency, or to an individual, that such official has received by virtue of his or her position;

- e) The offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties;
  - f) The offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result;
  - g) Illicit enrichment;
  - h) The use or concealment of proceeds derived from any of the acts referred to in this Article.
2. For the purposes of this Statute "Illicit enrichment" means the significant increase in the assets of a public official or any other person which he or she cannot reasonably explain in relation to his or her income.

### **Article 28I *Bis* Money Laundering**

1. For the purposes of this Statute, 'Money Laundering' means: any act of –
- i. Conversion, transfer or disposal of property, knowing that such property is the proceeds of corruption or related offences for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the offence to evade the legal consequences of his or her action.
  - ii. Concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property which is the proceeds of corruption or related offences;
  - iii. Acquisition, possession or use of property with the knowledge at the time of receipt, that such property is the proceeds of corruption or related offences
  - iv. Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. Nothing in this article shall be interpreted as prejudicing the power of the Court to make a determination as to the seriousness of any act or offence.

**Article 28J**  
**Trafficking in persons**

For the purposes of this Statute:

1. "Trafficking in persons" means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
2. Exploitation shall include the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
3. The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (1) of this article shall be irrelevant where any of the means set forth in subparagraph (1) have been used;
4. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (1) of this article;

**Article 28K**  
**Trafficking in drugs**

1. For the purposes of this Statute, trafficking in drugs means:
  - a) The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of drugs;
  - b) The cultivation of opium poppy, coca bush or cannabis plant;
  - c) The possession or purchase of drugs with a view to conducting one of the activities listed in (a);
  - d) The manufacture, transport or distribution of precursors knowing that they are to be used in or for the illicit production or manufacture of drugs.
2. The conduct described in paragraph 1 shall not be included in the scope of this Statute when it is committed by perpetrators for their own personal consumption as defined by national law.



3. For the purposes of this Article:
  - a) "Drugs" shall mean any of the substances covered by the following United Nations Conventions:
    - a) the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961;
    - b) The 1971 Vienna Convention on Psychotropic Substances.
  - b) "Precursors" shall mean any substance scheduled pursuant to Article 12 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988.

**Article 28L**  
**Trafficking in Hazardous Wastes**

1. For the purposes of this Statute, any import or failure to re-import, transboundary movement, or export of hazardous wastes proscribed by the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, adopted in Bamako, Mali, in January 1991 shall constitute the offence of trafficking in hazardous waste.
2. The following substances shall be "hazardous wastes" for the purpose of this statute:
  - a) Wastes that belong to any category contained in Annex I of the Bamako Convention;
  - b) Wastes that are not covered under paragraph (a) above but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the State of export, import or transit;
  - c) Wastes which possess any of the characteristics contained in Annex II of the Bamako Convention;
  - d) Hazardous substances which have been banned, cancelled or refused registration by government regulatory action, or voluntarily withdrawn from registration in the State of manufacture, for human health or environmental reasons.
4. Wastes which, as a result of being radioactive, are subject to any international control systems, including international instruments, applying specifically to radioactive materials are included in the scope of this Convention.

5. Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, shall not fall within the scope of this Convention.
6. For the purposes of this Article, “failure to re-import” shall have the same meaning assigned to it in the Bamako Convention.
7. The export of hazardous waste into a Member State for the purpose of rendering it safe shall not constitute an offence under this Article.

**Article 28L *Bis***  
**Illicit Exploitation of Natural Resources**

For the purpose of this Statute, “Illicit exploitation of natural resources” means any of the following acts if they are of a serious nature affecting the stability of a state, region or the Union:

- a) Concluding an agreement to exploit resources, in violation of the principle of peoples’ sovereignty over their natural resources;
- b) Concluding with state authorities an agreement to exploit natural resources, in violation of the legal and regulatory procedures of the State concerned;
- c) Concluding an agreement to exploit natural resources through corrupt practices;
- d) Concluding an agreement to exploit natural resources that is clearly one-sided;
- e) Exploiting natural resources without any agreement with the State concerned;
- f) Exploiting natural resources without complying with norms relating to the protection of the environment and the security of the people and the staff; and
- g) Violating the norms and standards established by the relevant natural resource certification mechanism.

**Article 28M**  
**Crime of Aggression**

- A. For the purpose of this Statute, “Crime of Aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a state or organization, whether connected to the state or not of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations or the Constitutive Act of the African Union and with regard to the territorial integrity and human security of the population of a State Party.”
- B. The following shall constitute acts of aggression, regardless of a declaration of war by a State, group of States, organizations of States, or non-State actor(s) or by any foreign entity:

1. The use of armed forces against the sovereignty, territorial integrity and political independence of any state, or any other act inconsistent with the provisions of the Constitutive Act of the African Union and the Charter of the United Nations.
  2. The invasion or attack by armed forces against the territory of a State, or military occupation however temporary, resulting from such an invasion or attack, or any annexation by the use of force of the territory of a State or part thereof.
  3. The bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State.
  4. The blockade of the ports, coasts or airspace of a State by the armed forces of another State.
  5. The attack by the armed forces of a State on the land, sea or air forces, or marine and fleets of another State.
  6. The use of the armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the African Union Non-Aggression and Common Defence Pact or any extension of their presence in such territory beyond the termination of the agreement.
  7. The action of a State in allowing its territory, which it has placed at the disposal of another State to be used by another State for perpetrating an act of aggression against a third State.
8. The sending or materially supporting by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

**Article 28N**  
**Modes of Responsibility**

An offence is committed by any person who, in relation to any of the crimes or offences provided for in this Statute:

- i. Incites, instigates, organizes, directs, facilitates, finances, counsels or participates as a principal, co-principal, agent or accomplice in any of the offences set forth in the present Statute;
- ii. Aids or abets the commission of any of the offences set forth in the present Statute;
- iii. Is an accessory before or after the fact or in any other manner participates in a collaboration or conspiracy to commit any of the offences set forth in the present Statute;
- iv. Attempts to commit any of the offences set forth in the present Statute.

**Article 15**  
**Entities Eligible to Submit Cases to the Court**

In paragraph 1(b) of Article 29 of the Statute (Entities Eligible to Submit Cases to the Court), immediately after the words “The Assembly” insert:

“the Peace and Security Council”

Add a new paragraph (d)

(d) “The Office of the Prosecutor”

**Article 16**  
**Other Entities Eligible to Submit Cases to the Court**

The deletion of paragraph (f) of Article 30 of the Statute (Other Entities Eligible to Submit Cases to the Court), and the insertion of the following new paragraph:

“(f) African individuals or African Non-Governmental Organizations with Observer Status with the African Union or its organs or institutions, but only with regard to a State that has made a Declaration accepting the competence of the Court to receive cases or applications submitted to it directly. The Court shall not receive any case or application involving a State Party which has not made a Declaration in accordance with Article 9(3) of this Protocol.”

**Article 17**  
**Institution of Proceedings before the International Criminal Law Section**

***UNDER CHAPTER FOUR (PROCEDURE), immediately after Article 34 of the Statute (Institution of Proceedings before the Human Rights Section, the insertion of new Articles 34A and 34B as follows:***

**“Article 34A**  
**Institution of Proceedings before the International Criminal Law Section**

1. Subject to the provisions of Articles 22A and 29, cases brought before the International Criminal Law Section of the Court shall be brought by or in the name of the Prosecutor.
2. The Registrar shall forthwith give notice of the case to all parties concerned, as well as the Chairperson of the Commission.

**Article 34B**  
**Institution of Proceedings before the Appellate Chamber**

The Court shall define the procedures for appeals in its Rules.”

**Article 18**  
**Representation of Parties**

In Article 36 of the Statute (Representation of the Parties), the insertion of a new paragraph (6) as follows, with consequential renumbering of the existing paragraph 6:

“ .....

6. A person accused under the international criminal jurisdiction of this Court shall have the right to represent himself or herself in person or through an agent.

.....”

**Article 19**  
**Sentences and Penalties**

Immediately after Article 43 of the Statute (Judgments and Decisions) the insertion of a new Article 43A as follows:

**“Article 43A**  
**Sentences and Penalties under the International Criminal Jurisdiction of the Court**

1. Without prejudice to the provisions of Article 43, the Court shall pronounce judgment and impose sentences and/ or penalties, other than the death penalty, for persons convicted of international crimes under this Statute.
2. For the avoidance of doubt, the penalties imposed by the Court shall be limited to prison sentences and/ or pecuniary fines.
3. The sentences and/ or penalties shall be pronounced in public and, wherever possible, in the presence of the accused.
4. In imposing the sentences and/ or penalties, the Court should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
5. In addition to the sentences and/ or penalties, the Court may order the forfeiture of any property, proceeds or any asset acquired unlawfully or by criminal conduct, and their return to their rightful owner or to an appropriate Member State.”

**Article 20**  
**Compensation and Reparations to Victims**

Article 45 of the Statute (Compensation), including its title, is deleted in its entirety and substituted with the following:

**“Article 45  
Compensation and Reparations to Victims**

1. Without prejudice to the provisions of paragraph (i) of Article 28, the Court shall establish in the Rules of Court principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss or injury to, or in respect of, victims and will state the principles on which it is acting.
2. With respect to its international criminal jurisdiction, the Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.
3. Before making an order the Court may invite and take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.
4. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.”

**Article 21  
Binding Force and Execution of Judgments**

Paragraph 2 of Article 46 of the Statute (Binding Force and Execution of Judgments) is deleted and substituted with the following: -

“ .....

2. Subject to the provisions of Article 18 (as amended) and paragraph 3 of Article 41 of the Statute, the judgment of the Court is final.
3. ....”

**Article 22  
Provisions Specific to the International Criminal Jurisdiction of the Court**

**Under Chapter IV (PROCEDURE), immediately at the end of Article 46 (Binding Force and Execution of Judgments), the insertion of a new CHAPTER IVA and new Articles 46A to 46L as follows:**

**“CHAPTER IVA: PROVISIONS SPECIFIC TO THE INTERNATIONAL CRIMINAL  
JURISDICTION OF THE COURT**

**Article 46A**  
**Rights of Accused**

1. All accused shall be equal before the Court.
2. The accused shall be entitled to a fair and public hearing, subject to measures ordered by the Court for the protection of victims and witnesses.
3. The accused shall be presumed innocent until proven guilty according to the provisions of this Statute.
4. In the determination of any charge against the accused pursuant to this Statute, he or she shall be entitled to the following minimum guarantees, in full equality:
  - a) To be informed promptly and in detail in a language that he or she understands of the nature and cause of the charge against him or her;
  - b) To have adequate time and facilities for the preparation of his or her defence and to communicate freely with counsel of his or her own choosing;
  - c) To be tried without undue delay;
  - d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
  - e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
  - f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Court;
  - g) Not to be compelled to testify against himself or herself or to confess guilt.
  - h) To have the judgment pronounced publicly
  - i) To be informed of his /her right to appeal.

**Article 46A bis**  
**Immunities**

No charges shall be commenced or continued before the Court against any serving AU Head of State or Government, or anybody acting or entitled to act in such capacity, or other senior state officials based on their functions, during their tenure of office.

**Article 46B**  
**Individual Criminal Responsibility**

1. A person who commits an offence under this Statute shall be held individually responsible for the crime.
2. Subject to the provisions of Article 46A*bis* of this Statute, the official position of any accused person shall not relieve such person of criminal responsibility nor mitigate punishment.
3. The fact that any of the acts referred to in article 28A of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
4. The fact that an accused person acted pursuant to the order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Court determines that justice so requires.

**Article 46C**  
**Corporate Criminal Liability**

1. For the purpose of this Statute, the Court shall have jurisdiction over legal persons, with the exception of States.
2. Corporate intention to commit an offence may be established by proof that it was the policy of the corporation to do the act which constituted the offence.
3. A policy may be attributed to a corporation where it provides the most reasonable explanation of the conduct of that corporation.
4. Corporate knowledge of the commission of an offence may be established by proof that the actual or constructive knowledge of the relevant information was possessed within the corporation.
5. Knowledge may be possessed within a corporation even though the relevant information is divided between corporate personnel.
6. The criminal responsibility of legal persons shall not exclude the criminal responsibility of natural persons who are perpetrators or accomplices in the same crimes.

**Article 46D**  
**Exclusion of Jurisdiction over Persons under the age of eighteen**



The Court shall have no jurisdiction over any person who was under the age of eighteen (18) years at the time of the alleged commission of a crime.

**Article 46E**  
**Temporal Jurisdiction**

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Protocol and Statute.
2. If a State becomes a Party to this Protocol and Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Protocol and Statute for that State.

**Article 46E bis**  
**Preconditions to the exercise of Jurisdiction**

1. A State which becomes a Party to this Protocol and Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in Article 28A.
2. The Court may exercise its jurisdiction if one or more of the following conditions apply:
  - (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft.
  - (b) The State of which the person accused of the crime is a national.
  - (c) When the victim of the crime is a national of that State.
  - (d) Extraterritorial acts by non-nationals which threaten a vital interest of that State.
3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise

**Article 46F**  
**Exercise of Jurisdiction**

The Court may exercise its jurisdiction with respect to a crime referred to in article 28A in accordance with the provisions of this Statute if: -

1. A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party;
2. A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Assembly of Heads of State and Government of the African Union or the Peace and Security Council of the African Union.

3. The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 46G.

#### **Article 46G The Prosecutor**

1. The Office of the Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court.
2. The Office of the Prosecutor shall analyze the seriousness of information received. For this purpose, he or she may seek additional information from States, organs of the African Union or United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony.
3. If the Office of the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, it shall submit to a Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of the Court.
4. If the Pre-Trial Chamber, upon examination of the request and supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.
5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Office of the Prosecutor based on new facts or evidence regarding the same situation.
6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Office of the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, it shall inform those who provided the information. This shall not preclude the Office of the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.

#### **Article 46H Complementary Jurisdiction**

1. The jurisdiction of the Court shall be complementary to that of the National Courts, and to the Courts of the Regional Economic Communities where specifically provided for by the Communities.

2. The Court shall determine that a case is inadmissible where:
  - a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable to carry out the investigation or prosecution;
  - b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State to prosecute;
  - c) The person concerned has already been tried for conduct which is the subject of the complaint;
  - d) The case is not of sufficient gravity to justify further action by the Court.
  
3. In order to determine that a State is unwilling to investigate or prosecute in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:
  - a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court;
  - b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
  - c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.
  
4. In order to determine that a State is unable to investigate or prosecute in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

**Article 46I**  
***Non bis in idem***

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.
2. Except in exceptional circumstances, no person who has been tried by another court for conduct proscribed under Article 28A of this Statute shall be tried by the Court with respect to the same conduct unless the proceedings in the other Court:
  - a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court;
  - b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.
3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the Court shall take into account the extent to which any penalty imposed by another Court on the same person for the same act has already been served.

**Article 46J**  
**Enforcement of Sentences**

1. A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons.
2. Such imprisonment shall be as provided for in a prior agreement between the Court and a receiving State and in accordance with the criteria as set out in the Rules of Court.

**Article 46Jbis**  
**Enforcement of fines and forfeiture measures**

1. States Parties shall give effect to fines or forfeitures ordered by the Court without prejudice to the rights of bona fide third parties, and in accordance with the procedure provided for in their national law.
2. If a State Party is unable to give effect to an order for forfeiture, it shall take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited, without prejudice to the rights of bona fide third parties.
3. The Court shall determine in its Rules how real or movable property obtained by a State as a result of its enforcement of a judgment or order may be dealt with.

**Article 46K**  
**Pardon or Commutation of Sentences**

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Court accordingly. There shall only be pardon or commutation of sentence if the Court so decides on the basis of the interests of justice and the general principles of law.

**Article 46L**  
**Co-operation and Judicial Assistance**

1. States Parties shall co-operate with the Court in the investigation and prosecution of persons accused of committing the crimes defined by this Statute.
2. States Parties shall comply without undue delay with any request for assistance or an order issued by the Court, including but not limited to:
  - a) The identification and location of persons;
  - b) The taking of testimony and the production of evidence;
  - c) The service of documents;
  - d) The arrest, detention or extradition of persons;
  - e) The surrender or the transfer of the accused to the Court.”
  - f) The identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties.
  - g) Any other type of assistance which is not prohibited by the law of the requested State, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the court.
3. The Court shall be entitled to seek the co-operation or assistance of regional or international courts, non-States Parties or co-operating partners of the African Union and may conclude Agreements for that purpose.

**Article 46M**  
**Trust Fund**

1. The Assembly shall, by a Decision, establish, within the jurisdiction of the Court, a Trust Fund for legal aid and assistance and for the benefit of victims of crimes or human rights violations and their families.
2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.

3. The Trust Fund shall be managed according to criteria to be determined by the Assembly.

**Article 23**  
**Annual Activity Report**

Article 57 of the Statute (Annual Activity Report) is deleted and substituted with the following:

“The Court shall submit to the Assembly an annual report on its work during the previous year. The report shall specify, in particular, the pending and concluded investigations, prosecutions and decisions and the cases in which a party has not complied with the judgment, sentence, order or penalty of the Court.”

**EX.CL/846(XXV)Rev.1**  
**Annex 6**

**DRAFT**

**PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION  
RELATING TO THE PAN-AFRICAN PARLIAMENT**

**AFRICAN UNION**

**الاتحاد الأفريقي**



**UNION AFRICAINE**

**UNIÃO AFRICANA**

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**First Meeting of the Specialized Technical Committee  
on Justice and Legal Affairs  
15-16 May 2014  
Addis Ababa, Ethiopia**

**STC/Legal/Min/8(I)  
Original: English**

**DRAFT**

**PROTOCOL TO THE CONSTITUTIVE ACT OF THE AFRICAN UNION  
RELATING TO THE PAN-AFRICAN PARLIAMENT**



**PREAMBLE**

**The Member States** of the African Union, States Parties to the Constitutive Act of the African Union:

**Bearing in mind** the Sirte Declaration adopted at the Fourth Extraordinary Session of the Assembly of Heads of State and Government held in Sirte, Libya on 9.9.99 establishing the African Union and calling for the speedy establishment of the institutions provided for in the Treaty Establishing the African Economic Community signed in Abuja, Nigeria, on 3 June 1991, and the establishment of the Pan-African Parliament by the year 2000;

**Noting**, in particular, the adoption by the Assembly of Heads of State and Government meeting at its 36<sup>th</sup> Ordinary Session in Lome, Togo, from 10 to 12 July 2000, of the Constitutive Act of the African Union, thereby giving concrete expression to the common vision of a united, integrated and strong Africa;

**Considering** the principles and objectives stated in the Constitutive Act of the African Union;

**Further considering that** Articles 5 and 17 of the Constitutive Act of the African Union provide for a Pan-African Parliament as an organ of the African Union, whose composition, functions, powers and organization are to be defined in a Protocol;

**Further noting that** the establishment of the Pan African Parliament is informed by a vision to provide a common platform for African peoples in the continent and the diaspora and their grassroots organizations to be more involved in discussions and decision-making on the problems and challenges facing the continent;

**Conscious** of the imperative and urgent need to further consolidate the aspiration of the African peoples for greater unity, solidarity and cohesion in a larger community transcending cultural, ideological, ethnic, religious and national differences;

**Recalling** the Cairo Agenda for Action which was endorsed by the Thirty-first Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, from 26 to 28 June 1995 (AHG/Res. 236 (XXXI)), and which recommended the speeding up of the rationalization of the institutional framework in order to achieve economic integration at the regional level;

**Further Recalling** the Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World, which was adopted by the Twenty-sixth Ordinary Session of the Assembly in Addis Ababa, Ethiopia, on 11 July 1990;

**Considering** that by the Algiers Declaration (AHG/Decl. 1 (XXXV)) of 14 July 1999, the Assembly reaffirmed its faith in the African Economic Community;

**Determined** to promote democratic principles and popular participation, to consolidate democratic institutions and culture and to ensure good governance;

**Further determined** to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;

**Conscious** of the obligations and legal implications for Member States of the need to establish the Pan African Parliament;

**Taking into account** the decision of the Assembly adopted at its Twelfth Ordinary Session held in Addis Ababa, Ethiopia in February 2009 [Assembly/AU/Dec. 223 (XII)] requesting the Commission to initiate a review process of the Protocol in consultation with the Permanent Representatives Committee taking into account the views of the Pan African Parliament;

**Noting** that Articles 25 of the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament provided for a review of the operation and effectiveness of the Protocol and the system of representation in the Pan African Parliament after five years and also for further Conferences of the Members at intervals of ten (10) years or such shorter time as may be decided by the Pan-African Parliament;

**Firmly convinced** that the strengthening of the Pan-African Parliament will ensure effectively the full participation of the African peoples in the economic development and integration of the continent;

**HEREBY AGREE AS FOLLOWS:**

#### **ARTICLE 1** **Definitions**

In this Protocol,

**“AU”** means the African Union;

**“African Diaspora”** means peoples of African origin living outside the Continent irrespective of their citizenship and nationality and who are willing to contribute to the development of the Continent and the building of the African Union;

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

**“Bureau”** means the Bureau of the Pan-African Parliament and it is composed by the President and Vice-Presidents of the Pan-African Parliament;

**“Chairperson of the Commission”** refers to the Chairperson of the African Union Commission;

**“Secretary-General”** means the Secretary-General of the Pan African Parliament;

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

**“Community”** means the African Economic Community;

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

**“Court”** means the African Court of Justice and Human and Peoples’ Rights of the African Union;

**“Deputy Secretary-General”** means the Deputy Secretary-General of the Pan African Parliament;

**“Inaugural Session”** means the first meeting of the Pan African Parliament after the election of the Members;

**“Member of Pan African Parliament”** or **“Pan African Parliamentarian”** or **“Member”** means a person elected to the Pan African Parliament in accordance with Article 5 of this Protocol;

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

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

**“Other deliberative body”** means the institution in a Member State which performs the legislative functions of the State.

**“Parliament”** means the Pan African Parliament.

**“Plenary”** means a meeting of the whole or full Parliament;

**“President”** unless otherwise specified means the Member of the Pan African Parliament elected to preside over the business of Parliament in accordance with Article 13 of this Protocol;

**“Protocol”** means the Protocol to the Constitutive Act of the African Union relating to the Pan-African Parliament;

**“Region of Africa”** shall have the meaning assigned to it in the relevant decisions of the Assembly;

**“State Party”** means a Member State who has ratified or acceded to this Protocol.

**“Treaty”** means the Treaty Establishing the African Economic Community.

**ARTICLE 2**  
**The Pan African Parliament**

1. The Pan African Parliament established by the Protocol to the Treaty establishing the African Economic Community Relating to the Establishment of the Pan African Parliament is hereby continued in existence and shall have the functions and powers provided for in the present Protocol.
2. The organs of the Pan African Parliament shall be the Plenary, the Bureau, the Secretariat, Committees and regional groups.
3. The Pan African Parliamentarians shall represent all the peoples of Africa and the interests of the African diaspora.

**ARTICLE 3**  
**Objectives of the Pan African Parliament**

The objectives of the Pan African Parliament shall be to:

- a) give a voice to the African peoples and the Diaspora;
- b) facilitate the effective implementation of the policies and objectives of the AU;
- c) promote the principles of human and peoples' rights and democracy in Africa;
- d) encourage good governance, respect for the rule of law, transparency and accountability in Member States;
- e) familiarize the peoples of Africa and the African Diaspora with the objectives and policies aimed at integrating the African Continent within the framework of the African Union;
- f) promote peace, security and stability;
- g) contribute to a more prosperous future for the peoples of Africa by promoting collective self-reliance and economic recovery;
- h) facilitate cooperation and development in Africa;
- i) strengthen continental solidarity, co-operation and development and build a sense of common destiny;
- j) facilitate cooperation among Regional Economic Communities in Africa and their Parliamentary fora;
- k) to encourage National and Regional Parliaments to ratify and integrate treaties adopted by the AU into their legal systems';
- l) co-operate with National and Regional Parliaments and similar bodies within and outside Africa as well as civil societies, community based organizations and grassroots organizations;
- m) invite and encourage the full participation of African Diaspora as an important part of the African peoples in the building of the African Union in accordance with modalities approved by the Assembly.

**ARTICLE 4**  
**Membership**

1. Until the Assembly decides otherwise, each State Party shall be represented in the Pan African Parliament by an equal number of parliamentarians.
2. The membership of the Pan African Parliament shall comprise five (5) members elected by each State Party.
3. At least two (2) of the elected members, shall be women. A Delegation which does not satisfy this requirement shall not have the right to be accredited for representation in the Parliament.

**ARTICLE 5**  
**Elections**

1.
  - (a) The National Parliament or other deliberative body shall elect from outside its membership, five (5) members of the Pan African Parliament.
  - (b) The representation of each State Party must reflect the diversity of political opinions in each National Parliament or other deliberative body taking into account the number of members from each political party represented in the national Parliament.
  - (c) The elections of Members of the Pan African Parliament by the National Parliaments or other deliberative body shall be conducted as far as possible in the same month throughout the Member States as maybe decided by the Assembly.
  - d) The election of the President of the Pan African Parliament shall be presided over by the Chairperson of the Assembly
2.
  - (a) Qualifications for election to the Pan African Parliament shall be the same as for a National Parliament or other deliberative body.
  - (b) Notwithstanding paragraph 2(a) of this Article, membership of the Pan African Parliament shall not be compatible with the exercise of executive or judicial functions in a State Party or a permanent office in the AU, a Regional Economic Community or other international organization.
3. Until a code is developed for election to the Pan African Parliament by direct universal suffrage, the procedure for election to the Pan African Parliament shall be determined by the National Parliament or other deliberative body of each Member State.
4.
  - (a) The institution of a Member State which determines disputes about elections to the National Assembly or other deliberative body shall be responsible for determining any question that may arise as to whether a

person has been duly elected a Member of the Pan African Parliament or whether a vacancy has occurred in the representation at the Pan African Parliament of a Member State.

- (b) Where the institution decides that a vacancy has occurred a bye-election shall be conducted to elect another person to fill the vacancy.

5. The Speaker/President of the National Parliament or other deliberative body shall notify the President of the Pan African Parliament of every election under paragraph one (1) of this Article and every determination under paragraph four (4) of this Article.

6. For the avoidance of doubt, a Member of a National Parliament or other deliberative body is eligible to contest an election to the Pan African Parliament. However, if elected, he or she shall resign from the National Parliament or other deliberative body.

## **ARTICLE 6**

### **Tenure of Office of a Member and Vacancies**

1. The term of a Member of the Pan African Parliament shall be five (5) years. He or she shall be eligible for re-election for one (1) further term only.

2. The term of a Member of the Pan African Parliament shall commence from the date on which he or she is sworn into office and shall end on the last day of the term of the Parliament.

3. The seat of a Member of the Pan African Parliament shall become vacant if the holder:

- a) dies;
- b) ceases to satisfy the eligibility criteria stipulated in this Protocol for Members of the Pan African Parliament;
- c) is unable to perform his or her functions because of physical or mental incapacity;
- d) resigns in writing to the President ;
- e) is removed on grounds of misconduct by the Pan African Parliament in accordance with its Rules of Procedure;
- f) is absent from the Pan African Parliament meetings for such period and in such circumstances as are prescribed by the Rules of Procedure of the Pan African Parliament;
- g) is convicted by a court of competent jurisdiction of an offence involving fraud, dishonesty or moral integrity and sentenced to a term of imprisonment exceeding six (6) months
- h) Represents a State Party which is suspended from participating in the activities of the AU;
- i) When his or her term expires.

4. Removal on the grounds stipulated in paragraph 6(c) or 6 (e) above shall be by a resolution on a motion to be decided on by secret ballot and supported at the end of a debate by two-thirds majority of all the Members of the Pan African Parliament. In the case of a removal on the grounds stipulated in paragraph 6(c), the motion shall, in addition, be supported by a medical report in accordance with rules provided for in the Rules of Procedure.

5. Where a vacancy occurs in the office of a member of the Pan African Parliament a bye-election shall be conducted to fill his or her place subject to Article 4(3). The person elected shall serve for the remainder of the term of the member and shall be eligible for re-election for a full term.

### **ARTICLE 7**

#### **Voting in the Pan African Parliament**

The Pan African Parliamentarian shall vote in person and in his or her personal and independent capacity except when he or she is on an official mission of the Parliament in which case he or she may vote through a proxy. A Parliamentarian cannot act as a proxy for more than one (1) Member at a time.

### **ARTICLE 8**

#### **Functions and Powers**

1. The Pan African Parliament shall be the legislative organ of the African Union. In this regard,
  - a) The Assembly shall determine the subjects/areas on which the Pan African Parliament may propose draft model laws;
  - b) The Pan African Parliament may on its own make proposals on the subjects/areas on which it may submit or recommend draft Model Laws to the Assembly for its consideration and approval.
2. The Pan African Parliament shall also:
  - a) Receive and consider reports of other organs of the African Union as may be referred to it by the Council or the Assembly, including audit and other reports and make recommendations thereon;
  - b) Debate and discuss its own budget and the budget of the Union and make recommendations thereon to the relevant policy organs;
  - c) Establish any Parliamentary Committee and determine its functions, mandate, composition and term of office;
  - d) Discuss any matter relevant to the African Union and make recommendations to the Council or the Assembly as it may deem appropriate;

- e) Make proposals to the Council on the structure of the Secretariat of the Parliament taking into account its needs;
- f) Request the attendance of officials of the other organs of the African Union at its sessions to offer assistance to the Parliament in the discharge of its duties;
- g) Promote the programmes and objectives of African Union in Member States;
- h) Receive, consider and submit opinions on draft legal instruments, treaties and other international agreements as may be referred to it by the Council or Assembly;
- i) Liaise with National Parliaments or other deliberative bodies and the Parliaments of the Regional Economic Communities on all matters relating to the African Union and regional integration in Africa;
- j) Carry out such other activities as it deems appropriate to achieve the objectives set out in Article 3 of this Protocol.

3. Without prejudice to the preceding paragraphs and in so far as it is not in conflict with the mandate of any other organ of the AU, the powers and functions of the Parliament may also be exercised through:

- a) Fact-finding or inquiry missions;
- b) Observer missions;

4 a) The Pan African Parliament shall have the power in accordance with the Financial Rules and Regulations of the African Union, to engage in fund raising activities.

b) The Pan African Parliament shall not have the power to raise a loan.

5. For the avoidance of doubt, paragraph 2 shall not apply to the Assembly, Council or Court.

## **ARTICLE 9**

### **Privileges and Immunities of the Pan-African Parliamentarians**

1. The Pan African Parliamentarians, while exercising their functions, shall enjoy in the territory of each Member State the immunities and privileges extended to representatives of Member States under the General Convention on the Privileges and Immunities of the OAU and the Vienna Convention on Diplomatic Relations.

2. The Pan African Parliamentarians shall enjoy parliamentary immunity in each Member State. Accordingly, a member of the Pan African Parliament shall not be liable to civil or criminal proceedings, arrest, imprisonment or damages for what is said or done by him or her, within or outside the Pan African Parliament in his or her capacity as a Pan African Parliamentarian in the discharge of his or her duties.



3. Without prejudice to paragraph 2 of this Article, the Pan African Parliament shall have the power to waive the immunity of a member in accordance with its Rules of Procedure.

#### **ARTICLE 10**

##### **Allowances**

1. The Pan-African Parliamentarians shall be paid allowances by their respective State Parties.
2. The allowances for the President, Vice Presidents and other officials of Committees shall be the responsibility of the respective States Parties.

#### **ARTICLE 11**

##### **Rules of Procedure**

1. The Parliament may adopt and amend its own Rules of Procedure including the procedures for giving effect to its mandate under Article 8 of this Protocol, by a two-thirds majority of all its members.
2. In developing its Rules of Procedure, the Parliament shall ensure consistency of these Rules with AU rules and regulations.

#### **ARTICLE 12**

##### **The Bureau of the Pan African Parliament**

1. There shall be a Bureau of the Pan African Parliament which shall be elected on a rotational basis among the five (5) regions of the AU.
2. The Pan African Parliament shall elect, at its first sitting, by secret ballot, from among its members and in accordance with its Rules of Procedure, a President and four (4) Vice-Presidents representing the five (5) regions of the AU. The election shall, in each case, be by simple majority of the members present and voting. At least two (2) of the Bureau Members shall be women.
3. The Bureau shall, in line with the relevant AU rules and regulations, be responsible for the development of policies for the management and administration of the affairs and property of the Pan African Parliament, which shall be submitted to the Plenary for approval.
4. The functions of the President and the Vice-Presidents shall be defined in the Rules of Procedure.
5. The term of office of the President and the Vice-Presidents of the Bureau shall be two (2) and a half years renewable once.

6. The President shall preside over all parliamentary proceedings except those held in committees and, in his or her absence, the Vice-Presidents shall act in rotation, in accordance with the Rules of Procedure.
7. The Vice-Presidents shall be ranked in the order of First, Second, Third and Fourth Vice-President, in accordance with the result of the vote. In the absence of the President, each Vice President shall stand in for the President in rotation.
8. The offices of the President and Vice-President shall become vacant if the holder:
  - a) dies;
  - b) resigns in writing to the Bureau;
  - c) is unable to perform his or her functions for reasons of physical or mental incapacity;
  - d) is removed on grounds of misconduct;
  - e) loses his/her membership of the Pan African Parliament or when his or her term of office expires.
9. Removal on the grounds stipulated in paragraph 8 (c) or 8 (d) above shall be by a resolution on a motion to be decided on by secret ballot and supported at the end of debate by two-thirds majority of all the Members of the Pan African Parliament. In the case of removal on the grounds stipulated in 8(c), the motion shall, in addition, be supported by a medical report.
10. In case of a vacancy in the Bureau, a Member of the Pan African Parliament shall be elected in his/her place to complete his/her term, through an election at the sitting of the Pan African Parliament immediately following its occurrence.
11. The President may, with the approval of the Bureau, invite any person to a session of the Pan African Parliament, if in the opinion of the Bureau the business to be transacted at that session renders the presence of that person desirable.

### **ARTICLE 13**

#### **The Secretary-General of the Pan African Parliament**

1. The Pan African Parliament shall, on the recommendation of the Bureau, appoint a Secretary General and two Deputy Secretaries General in accordance with the AU Staff Rules and Regulations.
2. The Secretary General shall appoint, after consultation with the Bureau, such other staff as may be necessary for the proper functioning of the Pan African Parliament, in accordance with the AU Staff Rules and Regulations.
3. The Secretary General and a Deputy Secretary General shall be a person of proven experience or expertise in parliamentary practice, management and financial administration, and a demonstrated interest and understanding of the process of integration in Africa.

4. The Secretary General shall be the head of the Secretariat, and shall be responsible for the day to day management and administration of the affairs and property of the Pan African Parliament. He/ she shall be accountable to the Parliament through the Bureau.
5. The Secretary General shall be the Accounting Officer of the Parliament.
6. The Secretary General shall, as soon as practicable, cause to be transmitted to the Secretaries General/Clerks of the National Parliaments or other deliberative body and the Parliaments of the Regional Economic Communities copies of the records of all the relevant debates at the sessions and committee hearings of the Pan African Parliament for information.
7. The Deputy Secretaries General shall assist the Secretary General in the discharge of his/her duties.
8. The Secretary General shall ensure that proper books of account are kept for the Pan African Parliament; the Secretary General shall submit annually a report on the utilization of the funds available to the Pan African Parliament including its budgetary allocation through the Bureau to the Council in accordance with the AU Financial Rules and Regulations.
9. The Secretary General and the Deputy Secretaries General shall before assuming office take an Oath or make a Solemn Declaration before the Pan African Parliament.

**ARTICLE 14**  
**Oath of Office**

At its sitting following the election and before transacting any other business, the Parliamentarians shall take an Oath or make a Solemn Declaration. The text of the Oath or Declaration shall be set out as an addendum to the Rules of Procedure.

**ARTICLE 15**  
**Sessions and Quorum**

1. The inaugural session of the Pan African Parliament shall be convened by the Secretary General;
2. The Pan African Parliament shall meet in ordinary session at least twice a year, within a period to be determined in the Rules of Procedure. Each ordinary session may last up to one (1) month.
3. The Bureau, the Assembly, the Council or at least two-thirds of the Pan-African Parliamentarians may, by written notification addressed to the President, request an extraordinary session, subject to the following: -

- a) The request shall provide the reasons for and details of the matters to be discussed at the proposed extraordinary session.
  - b) The President shall convene such a session within such time as provided for in the Rules of Procedure.
  - c) The session shall discuss only those matters stipulated in the request.
  - d) The session shall end upon exhaustion of the agenda.
  - e) In any case, the duration of an extraordinary session shall not exceed ten (10) days.
4. The proceedings of the Pan African Parliament shall be open to the public, unless otherwise directed by the Bureau.
  5.
    - (a) The quorum for a meeting of the Pan African Parliament shall be determined by the Rules of Procedure.
    - (b) The Rules of Procedure may differentiate between the quorum necessary for the conducting ordinary business by the Pan African Parliament and the quorum needed for making valid decisions.

#### **ARTICLE 16**

#### **Budget of the Pan African Parliament**

1. The annual budget of the Pan African Parliament shall constitute an integral part of the regular budget of the AU.
2. The budget shall be drawn up by the Pan African Parliament and submitted to the relevant AU policy organs for approval, in accordance with the AU Financial Rules and Regulations.
3. The financial year of the Pan African Parliament shall be the same as that of the AU.

#### **ARTICLE 17**

#### **Seat of the Pan-African Parliament**

1. The seat of the Pan African Parliament shall be located in the Republic of South Africa.
2. The Pan African Parliament may convene in the territory of any Member State at the invitation of that Member State.

#### **ARTICLE 18**

#### **Official and Working Languages**

The official and working languages of the Pan African Parliament shall be those of the AU.

**ARTICLE 19****Relations between the Pan African Parliament, the Parliaments of Regional Economic Communities and National Parliaments or other Deliberative Bodies**

1. The Pan African Parliament shall work in close co-operation with the Parliaments of the Regional Economic Communities and the National Parliaments or other deliberative body. To this effect, the Pan African Parliament may, in accordance with its Rules of Procedure, convene annual consultative fora with the Parliaments of the Regional Economic Communities and the National Parliaments or other deliberative body to discuss matters of common interest.
2. The Pan African Parliament shall periodically submit a report in writing on its work to the National Parliaments or other deliberative bodies for information. Copies of such reports shall also be submitted to the Ministers with responsibility for foreign affairs, African Union affairs and/ or regional integration.

**ARTICLE 20****Relations between the Pan African Parliament and other organs of the AU**

1. The Chairperson of the Assembly shall deliver a speech on the state of the AU at each inaugural Session of a new term of the Pan African Parliament.
2. The Chairperson of the Commission shall, at least once during the term of each Parliament, present the Activity Report of the Commission to the Pan African Parliament.
3. The other organs of the AU, except the Assembly, the Council and the Court, shall forward their activity reports annually to the Pan African Parliament by the third month of each succeeding year.
4. The Pan African Parliament shall forward its annual Activity Report to the different organs of the AU, at the latest, by the third month of each succeeding year.

**ARTICLE 21****Interpretation**

The Court shall have jurisdiction on all questions of interpretation of this Protocol.

**ARTICLE 22****Signature and Ratification**

1. This Protocol shall be signed and ratified by Member States in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission.

**ARTICLE 23**  
**Entry into Force**

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification with the Chairperson of the Commission by a simple majority of the Member States.

**ARTICLE 24**  
**Accession**

1. A Member State shall accede to this Protocol, after its entry into force, by depositing its instrument of accession with the Chairperson of the Commission. The Chairperson of the Commission shall, upon receipt of such instrument of accession, notify all Member States.
2. For any Member State acceding to this Protocol, the Protocol shall come into force on the date of the deposit of its instrument of accession.

**ARTICLE 25**  
**Amendment or Revision of the Protocol**

1. This Protocol may be amended or revised by a decision of a two-thirds majority of the Assembly.
2. A Member State party to this Protocol or the Pan African Parliament may propose, in writing to the Chairperson of the Commission any amendment or revision of the Protocol.
3. The Chairperson of the Commission shall notify the proposal to all Member States at least thirty (30) days before the meeting of the Assembly, which is to consider the proposal.
4. Save where the proposal originates from the Pan African Parliament, the Chairperson of the Commission shall request the opinion of the Pan African Parliament on the proposal and shall transmit the opinion, if any, to the Assembly, which may approve the proposal, taking into account the opinion of the Pan African Parliament.
5. The amendment or revision shall enter into force thirty (30) days after the deposit of the instruments of ratification with the Chairperson by a simple majority of Member States.

**ARTICLE 26**  
**Review of the Protocol**

Conferences to review the operation and effectiveness of the Protocol, the legislative mandate and the system of representation to the Pan African Parliament, may be organized by the States Parties at intervals of ten (10) years, or within such shorter time as the Pan African Parliament may decide with a view to ensuring that the objectives and purposes of this Protocol, as well as the vision underlying the Protocol, are being realized and that the Protocol meets with the evolving needs of African States.

**ARTICLE 27**  
**Transitional Provision**

1. The present Protocol shall upon entry into force replace the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan African Parliament.
2. The term of office of Member of the Parliament shall terminate within a period not exceeding one year of the entry into force of this Protocol.

Adopted this ..... Day of ..... 2014 in Malabo, Equatorial Guinea

**EX.CL/846(XXV)Rev.1**  
**Annex 7**

**DRAFT**  
**RULES OF PROCEDURE OF THE SPECIALIZED TECHNICAL**  
**COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**



**AFRICAN UNION**

**الاتحاد الأفريقي**



**UNION AFRICAINE**

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**First Meeting of the Specialized Technical Committee  
on Justice and Legal Affairs  
15-16 May 2014  
Addis Ababa, Ethiopia**

**STC/Legal/Min/9(I)**

**DRAFT**  
**RULES OF PROCEDURE OF THE SPECIALIZED TECHNICAL  
COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

## **GENERAL PROVISION**

The Executive Council,

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

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

### **HAS ADOPTED THESE RULES OF PROCEDURE:**

#### **RULE 1 Definitions**

In these Rules:

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

**“Chairperson”** means the Chairperson of the Specialized Technical Committee on Justice and Legal Affairs;

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

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

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

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

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

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

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

**“Vice-Chairpersons”** unless specified otherwise, means the Vice-Chairpersons of the STC on Justice and Legal Affairs.

#### **RULE 2 Status**

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

#### **RULE 3 Composition**

1. The STC on Justice and Legal Affairs shall be composed of the Ministers of Justice and Attorneys General, Ministers in charge of Human Rights, Constitutional Affairs and the Rule of Law or such other Ministers or authorities duly accredited by the Governments of Member States.

2. The STC on Justice and Legal Affairs includes Experts from Member States responsible for sectors falling within the areas of competence of the STC on Justice and Legal Affairs, whose meetings shall precede the Meetings at Ministerial level. Unless specified otherwise, meetings of Experts shall be governed, *mutatis mutandis*, by relevant provisions of these Rules.

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

Delegations of Member States to sessions of the STC on Justice and Legal Affairs shall be duly accredited and designated representatives of Member States.

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

1. In addition to the functions provided for in Article 15 of the Constitutive Act of the Union, the STC on Justice and Legal Affairs shall, inter-alia:
  - a) **consider AU draft Treaties and submit them to the Executive Council and the Assembly for their consideration;**
  - b) **survey the field of international law with a view to selecting topics for codification within African Union legal framework and submit its recommendations to the Executive Council;**
  - c) **consider and report on special legal issues at the request of the Executive Council or the Assembly of the Union;**
  - d) **consider studies and draft legal instruments developed by the African Union Commission on International Law (AUCIL) before submission to the Executive Council;**
  - e) **carry out studies on African legal systems and submit recommendations to the Executive Council on how to harmonise them and to develop cooperation between Member States in the areas of justice and legal affairs;**
  - f) **consider and follow up on legal issues concerning human rights, constitutionalism and the Rule of Law on the continent;**
  - g) **follow up on issues concerning the signature, ratification/accession, domestication and implementation of the OAU/AU Treaties by AU Member States;**
  - h) **carry out any other functions assigned to it by the Executive Council or the Assembly.**

2. The STC on Justice and Legal Affairs may set up such Sub-committees or *ad hoc* working groups, as it deems necessary and shall determine their mandate, composition and functioning.

**RULE 6**  
**Venue**

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

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

The Commission shall be responsible for convening and servicing all the meetings of the STC on Justice and Legal Affairs.

**RULE 8**  
**Quorum**

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

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

The STC on Justice and Legal Affairs shall meet in ordinary session once every two (2) years.

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

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

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

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

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

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

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

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

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

All the sessions of the STC on Justice and Legal Affairs shall be closed. The STC on Justice and Legal Affairs may, however, decide by simple majority whether any of its sessions shall be open.

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

The working languages of the STC on Justice and Legal Affairs shall be those of the Union.

**RULE 16**  
**Bureau**

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

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

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

**RULE 18**  
**Attendance and Participation**

1. In accordance with Rule 4, the Ministers of Justice and Attorneys General, Ministers in charge of Human Rights, Constitutional Affairs and the Rule of Law from Member States shall attend and participate personally in the sessions. In the event that they are not in a position to attend personally, duly accredited representatives shall represent them.
2. The Representatives of the Organs of the Union and of Regional Economic Communities (RECs) shall be invited to attend the sessions of the STC on Justice and Legal Affairs.
3. The STC on Justice and Legal Affairs may invite, as Observer, any person or Institution to attend its sessions. Such Observer may be invited to make written or oral interventions but shall not be entitled to vote.

**RULE 19**  
**Majority Required for decisions**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

**RULE 29  
Methods of Voting**

The Methods of Voting shall be determined by the STC on Justice and Legal Affairs.

**RULE 30  
Reports and Recommendations**

The STC on Justice and Legal affairs shall submit reports and recommendations arising from its deliberations to the Executive Council for consideration.

**RULE 31  
Implementation**

The STC on Justice and Legal Affairs may lay down guidelines and supplementary measures to give effect to these Rules.

**RULE 32  
Amendments**

The STC on Justice and Legal Affairs may propose amendments to these Rules to the Executive Council for consideration.

**RULE 33  
Entry into Force**

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

**Adopted by the.....Ordinary Session of the Executive Council held in Malabo,  
Equatorial Guinea on ..... June 2014**

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# The Report, the Draft Legal Instruments and Recommendations of the Specialized Technical Committee on Justice and Legal Affairs Malabo, Equatorial Guinea

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