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**First Extra Ordinary Ministerial Session of the Specialized Technical  
Committee on Justice and Legal Affairs  
12 and 13 November 2015  
Addis Ababa, Ethiopia**

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

**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 Executive Council of the Africa Union held in Addis Ababa, Ethiopia, in July 2012, the African Union Commission convened the First Extra Ordinary Ministerial Session of the Specialized Technical Committee (STC) on Justice and Legal Affairs (STC) 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 or such other Ministers or authorities duly accredited by the Governments of Member States.

## **II. ATTENDANCE**

2. The following Member States were in attendance:

**Algeria; Benin; Botswana; Burkina Faso; Burundi; Cameroon; Chad; Comoros; Congo; Democratic Republic of Congo; Egypt; Equatorial Guinea; Eritrea; Ethiopia; Gabon; Ghana; Guinea, Kenya; Lesotho; Liberia; Libya; Malawi; Mali; Mauritania; Mozambique; Namibia; Nigeria; Rwanda; SADR; Senegal; Seychelles; Sierra Leone; South Africa; South Sudan, Sudan, Tanzania; The Gambia; Togo; Tunisia; Uganda; Zambia; Zimbabwe.**

3. The meeting was also attended by the following: The NEPAD Agency, Pan African Parliament and the African Court on Human Rights and Peoples' Rights.

## **III. OPENING SESSION**

### ***Statement by Minister of State, Minister of Justice and Keeper of the Seals of the Republic of Cameroon***

4. In his remarks, the Chairperson of the meeting, H.E Laurent Easo, Minister of State, Minister of Justice and Keeper of the Seals of the Republic of Cameroon thanked all delegations for coming to the meeting. He thanked the Government Legal Experts for their hard work and dedication in preparing for the Ministerial session of the STC.
5. He recalled that the first meeting of the STC was convened in May 2014 whereby it was agreed that the STC should hold its First Extra Ordinary Session in 2015. He pointed out that the STC on Justice and Legal Affairs has an enormous responsibility in ensuring coherence of legal texts of the African Union. He informed the meeting that the STC should always bear in mind the vision of the African Union as well as African Union Agenda 2063 in order to build an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in global arena.

6. He stated that the African Union needs a solid legal architecture that addresses the concerns of the African population. He concluded by highlighting the importance of each of the legal instruments being considered during the meeting.

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

7. 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 to the second session of the STC on Justice and Legal Affairs. He thanked them for the efforts made to be in attendance as this was a testimony to the importance that Member States attached to the issues that were scheduled to be discussed during this meeting essential for the achievement of the objectives of the African Union.
8. The Deputy Chairperson reminded the delegates that this second meeting was taking place as a continuation within the framework of the operationalization of the Specialized Technical Committees (STCs) of the African Union in accordance with various decisions of the Policy Organs of the Union. He noted that the STCs, which constitute the important technical organs of the Union, are expected to work in close collaboration with the various departments of the Commission so as to provide well-informed inputs to the work of the Executive Council in their areas of specialization. He further noted that STCs will be involved in monitoring the programme development and their implementation by the AU and Regional Economic Communities (RECs) on behalf of the Executive Council.
9. The Deputy Chairperson recalled that the seven (7) STCs as provided in the Abuja Treaty and the Constitutive Act were reconfigured in February 2009 by the Assembly of Heads of State and Government through Decision Assembly/AU/Dec.227 (XII). The main consequence of the reconfiguration of the STCs pursuant to Decision Assembly/AU/Dec.227(XII) was an increase in the number of STCs from seven (7) to fourteen (14) including the STC on Justice and Legal Affairs which replaced the former Conference of Ministers of Justice and Attorneys General from Member States but now includes Ministers and Experts responsible for issues such as human rights, constitutionalism and rule of law.
10. He stated that the importance of STCs in the work of our Union cannot be overemphasized. In June 2015 in Johannesburg, the Assembly in its decision on the streamlining of AU Summits and working methods (Assembly/AU/Dec.582(XXV)) decided to “empower the STCs ... to take decisions on issues falling under their competence, except where there are attendant financial and structural implications. In this regard, he indicated that the STC should come up with measures on how best to manage the integration process.

11. The Deputy Chairperson took note of the large number of instruments to be considered during the meeting. He urged the Ministerial Session to consider making a recommendation of the policy organs of the Union to permit the STC on Justice and Legal Affairs to meet every year in ordinary sessions to examine legal instruments requiring the attention of the STC and which cannot wait for two years before being considered.
12. In his concluding remarks, the Deputy Chairperson reaffirmed the commitment of the Commission to support and aid the discussions during the Ministerial session.

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

13. After some deliberations, the meeting adopted the Agenda as follows:
  1. Opening Session;
  2. Consideration and Adoption of the Draft Agenda of the Ministerial Meeting;
  3. Organization of Work;
  4. Presentation of the Report of the Second Meeting of Experts of the Specialized Technical Committee on Justice and Legal Affairs;
  5. Consideration of the Conclusions and Recommendations of the Report of the Second Meeting of Experts;
  6. Declaration on the International Criminal Court;
  7. Consideration and Adoption of the Draft Legal Instruments;
  8. Adoption of the Report of the Second Meeting of the Specialized Technical Committee on Justice and Legal Affairs;
  9. Any Other Business
  10. Closing Ceremony
14. The meeting agreed to include the item on the Declaration on the International Criminal Court on an exceptional basis taking into account the provisions of Rules 10 and 11 of the Rules of Procedure of the STC on Justice and Legal Affairs. The meeting reached this conclusion after considering the request made by the delegation of Kenya to include this item both at the meeting of the Government Experts and the Ministerial Session. The meeting requested the Office of the Legal Counsel to review Rules 10 and 11 of the Rules of Procedure of the STC on Justice and Legal Affairs in light of what had transpired.

**V. ORGANISATION OF WORK**

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

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

**VI. PRESENTATION OF THE REPORT OF THE SECOND MEETING OF EXPERTS OF THE SPECIALIZED TECHNICAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

16. The Chairperson of the meeting of Government Experts, Mr. Charles Tchatchouang presented the Report of the meeting that took place from 2 to 11 November 2015. He informed the Ministerial session that the Experts agreed to recommend to the Ministerial session that the draft Transitional Justice Framework and the draft Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty should not be considered by the Ministerial session. He also highlighted one of the major recommendation, on the need for the STC on Justice and Legal Affairs to meet annually and to strengthen the capacity of the Office of the Legal Counsel.

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

- i) How the draft Transitional Justice Framework and the draft Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty was included on the agenda;
- ii) Whether the decision of the Assembly/AU/Dec.582 (XXV) empowering the STCs to take decisions on issues falling under their competence, except where there are attendant financial and structural implications, was taken into account during the consideration of the Rules of Procedure of the various STCs;
- iii) The delegation of Egypt reiterated its reservation on the definition of intellectual property and the harmonization and norm setting by the PAIPO provided for in Article 4 (1), 4 (2) and 4 (12);
- iv) Regarding the PAIPO Statute, there was lack of clarity on whether ARIPO and OAPI would continue to exist after the establishment of the PAIPO and that the two organizations were not consulted as indicated in the Report of the Government Experts;
- v) It was not clear if the composition of the Board of the Africa Centre for Disease Control would be maintained at ten or whether it was going to be reduced to five.

- vi) In view of the fact that the African continent was not against the abolition of the death penalty, paragraph 84 of the Report of Government Experts should be deleted.

18. The Legal Counsel clarified as follows:

- i) The draft Transitional Justice Framework was proposed by the Department of Political Affairs after the instrument underwent various validation processes. However, the Government Experts were not convinced of its validation process and decided to set up a working group to review the Framework. On the other hand, the draft Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty was proposed by the African Commission on Human and Peoples' Rights, the African Union organ charged with the mandate of protecting and promoting human and peoples' rights. The Government Experts agreed not to consider the matter in view of the fact that there was no common position on the matter;
- ii) The STC should review the extent to which the decision of the Assembly/AU/Dec.582 should be taken into account considering that the various STCs have different responsibilities;
- iii) Specific questions on the draft Protocol would be considered during the adoption of the draft legal instruments;
- iv) The HRST Department gave out a litany of the consultations that were undertaken with all the relevant stakeholders. In addition, the PAIPO Statute was adopted after compromises were made by delegations. In this regard, an article on entry into force after the deposit of 15 instruments of ratification was introduced to give a choice to Member States to decide on whether to join the PAIPO or not;

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

## **VII. CONSIDERATION OF THE CONCLUSIONS AND RECOMMENDATIONS OF THE REPORT OF THE SECOND MEETING OF EXPERTS**

20. The meeting considered the main conclusions and recommendations of the Report of Government Experts and agreed as follows:

### **a) The composition of the Board of the Africa Centre for Disease Control**

21. Taking into account the financial constraints facing the African Union and the need for robust regional representation, the meeting agreed to maintain the composition of the Board at ten (10) and to remain silent on the funding mechanism as it is in the draft Statute.

**b) Strengthening the Office of the Legal Counsel**

22. After being briefed by the Legal Counsel on the responsibilities of the Office of the Legal Counsel as well as the huge capacity deficit of the Office, the meeting requested for the diligent implementation of the previous decision by the Executive Council that the Office of the Legal Counsel should be enhanced in order for it to effectively respond to the increase in the workload of the Office and effective servicing of the STC on Justice and Legal Affairs.

**c) Invitation of the Chairperson of the STC on Justice and Legal Affairs to the sessions of the Executive Council**

23. The meeting took note of Rule 17 (4) of the Rules of Procedure of the STC on Justice and Legal Affairs as well as the spirit behind decision Assembly/AU/Dec.365 (XVII) on the need for the Chairperson of the STC (as well the Chairpersons of other STCs) to attend the sessions of the Executive Council. In this regard, the Office of the Legal Counsel was requested to implement this decision.
24. The Legal Counsel informed the meeting that the STC Coordination Mechanism made up of all Bureaus of all STCs was also very essential as all the Chairperson of the STCs would meet to know and evaluate what is happening in the areas of competence of the other STCs.

**d) Annual Meetings of the STC on Justice and Legal Affairs**

25. After considering the increasing volume of work for the STC on Justice and Legal Affairs as evidenced by the increasing number of instruments, the meeting agreed to recommend to the Executive Council that the STC on Justice and legal Affairs should be allowed to meet annually in ordinary sessions just like the STCs on Finance, Monetary Affairs, Economic Planning and Integration; Gender and Women Empowerment; and Defence, safety and Security.
26. Some delegations expressed the view that the STC should consider the option of extraordinary sessions and also take into account of the review process on STCs considering that similar requests by other STCs had been rejected by the Executive Council. However, it was noted that extraordinary sessions cannot be planned and that it would therefore be difficult to include make budgetary provisions for such meetings.

**VIII. CONSIDERATION AND ADOPTION OF THE DRAFT LEGAL INSTRUMENTS**

27. During the adoption of the draft Legal Instruments, the following observations were made:
- i) Regarding the draft Pan African Intellectual Property Organization (PAIPO) Statute, there was need to ensure that all the observations by the delegations were incorporated in the Statute particularly on the link

between PAIPO and African Regional Intellectual Property Organization (ARIPO) and the African Intellectual Property Organization (OAPI), the definition of intellectual property, and the functions of the PAIPO, amongst other observations;

- ii) Draft Legal instruments should be circulated on time to ensure their thorough review;
- iii) Clarification was sought as to why under Article 20 (1) of the draft PAIPO Statute, the Assembly of the Union may dissolve the PAIPO when the Conference of the State Parties of the PAIPO was the highest decision making organ of the PAIPO;
- iv) That in the Rules of Procedure of all the STCs, a new provision should be inserted incorporating the decision of the Assembly (Assembly/AU/Dec.582 (XXV)) adopted during the June 2015 Summit in Johannesburg, South Africa, empowering the STCs to take decisions on issues falling under their competence, except where there are attendant financial and structural implications.

28. The Legal Counsel clarified as follows:

- i) During the consideration of the PAIPO Statute, compromise was reached on all the issues and this led to the adoption of the draft Statute. In this regard, while taking cognizance of the WIPO definition on intellectual property, the Experts took into account that the WIPO definition does not take into account some of the African concerns. In addition, in the draft, ARIPO and OAPI would continue to exist after the establishment of the PAIPO. Lastly, the entry into force will now be subject to signature and ratification and not by adoption of the Assembly as was originally the case. Member States will therefore have a choice to choose on whether to join PAIPO or not;
- ii) The Conference of the State Parties should be responsible for dissolving the PAIPO and that Article 20 (1) of the draft PAIPO Statute would be amended accordingly;
- iii) Decision Assembly/AU/Dec.582 (XXV) will be reflected in the Rules of the Procedure of the STCs within its proper context.

29. The following legal instruments were adopted and recommended for adoption by the Executive Council and the Assembly:

- i) Draft Road Safety Charter;
- ii) Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons;



- iii) Draft Model Law on Medicine Regulation;
- iv) Draft Statute of the Africa Sports Council;
- v) Draft Statute of the African Minerals Development Centre;
- vi) Draft Statute on the Establishment of Legal Aid Fund for the African Union Human Rights Organs;
- vii) Draft Statute of the African CDC and its Framework of Operation;
- viii) Draft Statute of the African Science Research and Innovation Council (ASRIC);
- ix) Draft Statute of the African Observatory in Science Technology and Innovation (AOSTI);
- x) Draft Statute of the Pan African Intellectual Property Organization (PAIPO);
- xi) Draft Rules of Procedure of the Specialized Technical Committee on Health Population and Drug Control;
- xii) Draft Rules of Procedure of the Specialised Technical Committee on Public Service, Local Government, Urban Development and Decentralisation
- xiii) Draft Rules of Procedure of the Economic, Social and Cultural Council of the African Union;
- xiv) Draft Rules of Procedure of the African Governance Platform;
- xv) Draft Rules of Procedure of the Specialized Technical Committee on Social Development, Labour and Employment;
- xvi) Draft Rules of Procedure of the Specialized Technical Committee on Youth Culture and Sport;
- xvii) Draft Rules of Procedure of the Specialized Technical Committee on Education Science and Technology;
- xviii) Draft Rules of Procedure of the Specialized Technical Committee on communication and ICT;
- xix) Draft Rules of Procedure of the African Union Commission on the International Law;
- xx) Draft amended Statute of the Pan African University

## IX. DECLARATION ON THE INTERNATIONAL CRIMINAL COURT

30. The Attorney General of the Republic of Kenya in introducing this item briefed the meeting on the background to the proposed declaration and indicated that it does not purport to introduce anything new.. He stated that the proposal to introduce this agenda item to the STC as the legal advisory organ of the African Union was to allow Ministers re-affirm the decisions of the Assembly on this matter.
31. The Legal Counsel in providing some background reminded the Ministers of the Extraordinary Session of the Assembly that debated Africa's relationship with the ICC and that basis was a matter of importance to the Union and should be considered by the STC. In particular, he highlighted the following issues that emanated from the various decisions of the Assembly and actions taken by the Commission:
- i) Non-cooperation with the ICC due to the non-consideration of the deferral of the proceedings against the President of Sudan, H.E Omar Al Bashir and the Deputy President of Kenya. H.E William Ruto;
  - ii) Establishment of a Working Group and subsequently an Open ended Ministerial Committee to engage with the African Groups in New York and The Hague to advance the various AU positions on the ICC;
  - iii) The Open ended Committee is also due to engage UN Security Council and UN Secretary General on the withdrawal requests;
  - iv) The Commission attends the Assembly of State Parties to the ICC (ASP) and will use the next session as an opportunity to convey some of the concerns of the AU in addition to regular engagement with the ICC Prosecutor to see how some of the issues can be dealt with from a purely professional and legal perspective
  - v) The Assembly requested the Commission to enter an amicus curiae application (Rule 68 application) on behalf of the Union, in order to provide the Court with relevant information regarding the amendment of the ICC Rules of Procedure and Evidence on the retroactive application of prior recorded testimonies of witnesses. The application of the Commission was favourably considered by the Appeals Chamber and a final decision on the matter is being awaited;
  - vi) One of the issues of concern to the AU was institution of prosecutions against some sitting Heads of State in spite of the customary international law on the issue of Immunities, which is yet to be settled in law.
32. He concluded by indicating that the STC was competent to consider the draft declaration, which is premised on the issues highlighted above and the various decisions of the Assembly.

33. Following the briefing the following comments and observations were made:
- i) The request of the AU for amendment of article 27 and 16 of the Rome Statute of the ICC should be considered in the forthcoming session of the ASP;
  - ii) That in accordance with customary international law, the immunity of Head of States and Government should be reaffirmed;
  - iii) That the meeting in pronouncing itself on these issues should take cognisance of the fact that some of the issues are already before the Court;
  - iv) Need to emphasize the complementary role of the ICC in the exercise of its jurisdiction;
  - v) The ICC is purported to be biased against African States as evidenced by the cases before it;
  - vi) There was a clear and unambiguous understanding during the adoption of amendments to the ICC Rules of Procedure and Evidence - as a compromise the application of the use of prior recorded testimonies of witnesses, was subject to the fact that it will not apply to on-going cases before the Court and that the ASP will be briefed on its application. However, it is clear that the Prosecutor has reneged on this understanding by State Parties;
34. After extensive deliberations by the delegates, a number of amendments to the drafted Declaration was presented and adopted by the meeting.

## **X. RECOMMENDATIONS**

35. The Ministers adopted the following recommendations:
- i) Adoption of the Legal Instruments by the Executive Council and the Assembly;
  - ii) Amendment of the Rules of Procedure of the STC on Justice and Legal Affairs in order to make provisions for this Organ to meet annually and for an appropriate budget allocation;
  - iii) Support by the Commission for one delegate per State to attend the meetings of the STC on Justice and Legal Affairs subject to availability of resources;
  - iv) The strengthening of the Office of the Legal Counsel to enable it to effectively respond to the increase in the workload and effective servicing of the STC;

- v) The invitation to the Chairperson of the STC to the Ordinary Sessions of the Executive Council, pursuant to Article 17 of the Rules of procedure.

**XI. ANY OTHER BUSINESS**

36. No item was considered.

**XII. ADOPTION OF THE REPORT OF THE SECOND MEETING OF THE SPECIALIZED TECHNICAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS;**

37. The Report was adopted by Ministers with amendments.

**XII. CLOSING CEREMONY**

- 38. In his Closing Remarks the Chairperson of the meeting, H.E Laurent Ezzo, Minister of State, Minister of Justice and Keeper of the Seals 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.