

AFRICAN UNION

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**Third Ordinary Session of the Specialized Technical Committee on Justice
and Legal Affairs (Ministerial Meeting)
14-15 November 2017,
Addis Ababa, Ethiopia**

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

REPORT

I. INTRODUCTION

1. Pursuant to the Rules of Procedure of the Specialized Technical Committee (STC) on Justice and Legal Affairs, the Commission in consultation with the Bureau, convened the Third Ministerial Ordinary Session of the STC on Justice and Legal Affairs from 14-15 November 2017 in Addis Ababa, Ethiopia to consider various draft legal instruments. The Ministerial Session was preceded and prepared by a meeting of Government Experts from 6 -11 November 2017.
2. The STC on Justice and Legal Affairs comprises Ministers of Justice and Attorneys General or Keepers of the Seals, Ministers responsible for Human Rights, Constitutionalism and the Rule of Law or such other Ministers or authorities duly accredited by the Governments of Member States.

II. ATTENDANCE

3. The following forty- three (43) Member States were in attendance:

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

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

III. OPENING OF THE MEETING

Statement by the Legal Counsel of the African Union Commission

5. In her opening remarks, the Legal Counsel, Dr. Namira Negm, on behalf of the Chairperson of the African Union Commission, H.E Mr. Moussa Faki Mahamat, welcomed all the Honourable Ministers of Justice, Attorneys General, Ministers in charge of Human Rights and delegations to the Third Ordinary Session of the STC on Justice and Legal Affairs. She noted that the STC on Justice and Legal Affairs is instrumental in ensuring the harmonization of the norms, guiding principles and shared values of the Union.
6. The Legal Counsel recalled that the First and Second Ordinary Session of the STC have considered and endorsed a total of twenty nine (29) legal instruments setting out the norms and legal obligations over a broad range of issues, including peace and security, health, values and principles of local governance. She noted that the STC has also considered and endorsed

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

7. She informed the meeting of the work done by the Government Legal Experts in preparation for the Ministerial Session. The Legal Counsel highlighted the instruments deliberated by the Government Legal Experts and that are being recommended for endorsement at the Ministerial Session. She also presented the nature and purpose of each instrument as well as the consensus reached by the Government Legal Experts.
8. In concluding her statement, the Legal Counsel highlighted the recommendation by Government Legal Experts on the need to strengthen the capacity of the Office of the Legal Counsel so that it can offer effective support to the STC meetings. She then thanked the Honourable Ministers and delegations for their presence and wished them fruitful and successful deliberations.

Statement by the Outgoing Chairperson

9. The outgoing Chairperson, Honourable Laurent Easo, Minister of State, Minister of Justice, and Keeper of the Seals from the Republic of Cameroon recalled the large number of instruments that have been considered by the STC on Justice and Legal Affairs since its inaugural session in May 2014. He stated that considering the large number of instruments being submitted to the STC for consideration, there was need to improve the STC's working methods in order to ensure coherence and quality of the instruments being adopted.
10. The outgoing Chairperson emphasized the need for proper preparation by delegates as well as implementation of the legal instruments adopted at the national level. He concluded his statement by thanking the Ministers, Government Experts, and the Commission for the support extended to him and the Bureau during his tenure.

IV. ELECTION OF THE BUREAU

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

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

Statement by the Incoming Chairperson

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

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

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

Statement by Algeria

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

V. CONSIDERATION AND ADOPTION OF AGENDA

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

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

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

- 17. The Chairperson of the meeting of the Government Legal Experts presented the Report of the meeting that took place from 6 to 11 November 2017. He highlighted the major conclusions and recommendations, which were being submitted for consideration by the Ministerial Session. He reiterated the recommendation on the need to strengthen the capacity of the Office of the Legal Counsel so that it can offer effective support to the STC meetings.
- 18. Following this presentation, the following comments and observations were made:
 - a) There was need to align the different linguistic texts of the Report of the Government Legal Experts.
 - b) That it was necessary for the Ministerial Session to consider each instrument.
- 19. The meeting adopted the Report of the Governments Experts.

VII. CONSIDERATION OF THE DRAFT LEGAL INSTRUMENTS

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

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

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

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

27. The Representative of the Office of the Legal Counsel clarified that the intention behind allowing the African Committee on the Rights and Welfare of the Child to submit cases before the Court was to reinforce the implementation of its mandate to promote and protect the rights and welfare of the child. She noted that the African Court on Human and Peoples' Rights has jurisdiction only over States Parties.

28. The meeting agreed to defer the consideration of the Draft Amendment to the Protocol to another session of the STC on Justice and Legal Affairs for independent analysis of the legal implication of the amendment.

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

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

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

30. The meeting adopted the Draft Statute without amendment.

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

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

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

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

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

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

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

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

- b) Libya entered a reservation and raised concern on the provisional application of the Draft Protocol and declared that it is not ready for such implementation in view of the increase of illegal migration, lack of strong border control and increase of terrorist activities on the national and continental levels;
- c) There were discussions on the alignment of sub paragraphs of Article 33. The meeting adopted the following order: (a) General principle, (b) exception to the principle.
- d) It was further noted that the Report had also been changed by the Secretariat/Office of the Legal Counsel in paragraph 59. Grave concern was expressed on the changing of the sequencing of paragraphs in Article 33 by the Secretariat/Office of the Legal Counsel. In this regard, it was agreed that the Secretariat should correctly reflect agreements reached by Member States. Other delegations were of the view that the matter should be reported to the Chairperson of the AU Commission for an investigation into what had happened. However, other delegations objected to the investigation and requested that the issue be resolved in the meeting.
- e) Under Article 31 (Settlement of Disputes), any reference to the African Court on Human and Peoples’ Rights should be deleted because the Court is not yet in existence. However, other delegations noted that disputes will only be submitted to the Court when operational and by mutual consent. It was further noted that other AU legal instruments have made reference to the Court;
- f) Article 31 (2) (b) (i) should be redrafted to indicate that the parties to the dispute shall each appoint one arbitrator;

- g) To swap sub-articles 2 (a) and (b) so that arbitration comes before litigation;
- h) To consider inserting 'may' in Article 5 (2) to make the application of the Implementation Roadmap discretionary. However, the meeting noted that this was a consensus provision and that it should not be changed.

33. The meeting adopted the Draft Protocol subject to the amendments.

xi. **Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disability in Africa**

34. During the consideration of the Draft Protocol, the meeting agreed that the definitions should be properly formulated i.e. definition of persons with disabilities.

35. The meeting adopted the Draft Protocol without amendment.

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

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

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

37. The meeting adopted the Draft Statute without amendment.

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

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

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

IX. **ANY OTHER BUSINESS**

40. Rwanda informed the Meeting about its withdrawal of its Declaration made under Article 34 (6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. Rwanda stated that she had been the sixth country to make the Declaration accepting the jurisdiction of the Court to receive cases

submitted by individuals and Non-Governmental Organizations with observer status before the African Commission on Human and Peoples' Rights.

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

X. CLOSING CEREMONY

42. In her Closing Remarks the Chairperson thanked the Ministers and Delegates, the Government Legal Experts, the Representatives of various Departments of the Commission, Interpreters, Translators and Technicians for the robust discussions as well as for their support and cooperation.