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**Fourth Extraordinary Session of
the Specialized Technical Committee on
Justice and Legal Affairs (Ministerial Meeting)
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Cairo, Egypt**

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REPORT

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REPORT

I. INTRODUCTION

1. Pursuant to Decision Assembly/AU/Dec.713(XXXII) adopted at the Thirty-Second Ordinary Session of the Assembly and Decision EX.CL/Dec.1032(XXXIV) adopted at the Thirty-Fourth Ordinary Session of the Executive Council, both held in February 2019 in Addis Ababa, Ethiopia, the Commission was directed to convene an Extraordinary Session of the Specialized Technical Committee on Justice and Legal Affairs (STCJLA) to consider the Draft Statute of African Union Development Agency-New Partnership for Africa's Development (AUDA-NEPAD), Draft Rules of Procedures of AUDA-NEPAD and the Draft Statute of the African Peer Review Mechanism (APRM), prior to submission to the Executive Council for consideration and approval.
2. Vide Decision Assembly/AU/Dec.713(XXXII), the Assembly of the Union "*Delegate[d] to the Executive Council, its authority to consider and approve the Statute and Rules of Procedure of the Governance Structures of the AUDA-NEPAD during its 35th Ordinary Session of the Executive Council in Niamey, Niger, July 2019.*"
3. The Ministerial Session was preceded and prepared for by a Meeting of Government Legal Experts from 02 to 05 May 2019, in Cairo, Egypt. The Annexes were recommended to the Fourth Extraordinary Session of the STCJLA for consideration prior to submission to the Policy Organs.

II. ATTENDANCE

4. The following **forty one (41)** Member States were in attendance:

Algeria, Angola, Benin, Botswana, Burkina Faso, Cameroon, Chad, Comoros, Congo (DRC), Congo Republic, Côte d'Ivoire, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Equatorial Guinea, Gabon, The Gambia, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Sahrawi Republic, Senegal, Seychelles, South Africa, Sudan, Togo, Zambia and Zimbabwe.

III. OPENING OF THE MEETING

5. The following statements were delivered during the opening ceremony:

Statement by the CEO of AUDA-NEPAD

6. H.E. Dr. Ibrahim Assane Mayaki, CEO of the AUDA-NEPAD welcomed the Ministers to the meeting of the STCJLA. He highlighted that, the reform of the union, which lead an innovative developmental body, i.e. AUDA-NEPAD into the AU structure bears witness to the importance Member States have given to the implementation of their shared goals.
7. In highlighting the characteristics of this process, he noted that the organisational, functional and most importantly, the legal instruments under consideration will guide the AUDA-NEPAD in its work. He noted that the AUDA-NEPAD draft instruments

have also benefited from a rigorous process of intensive consultation through the AUDA/NEPAD governance structures and within the African Union (AU) bodies.

8. He thanked the Legal Counsel for the support that has been given to the AUDA-NEPAD in its preparation of the legal Instrument. He also extended his appreciation to the Chair of the Ministerial Committee in steering this important discussion. He noted that the historical dedication of Egypt to developmental agendas precedes that of Greece and other ancient civilizations, and the continued commitment of Egypt has been witnessed in their support to the AUDA-NEPAD.

Statement by the Legal Counsel of the African Union

9. Ambassador Dr. Namira Negm, Legal Counsel of the AU, welcomed the Ministers and delegates to Egypt and conveyed appreciation to the Government for hosting the 4th Extraordinary Session of the STCJLA, which was convened in line with the Executive Council decision EX.CL/Dec.1032(XXXIV) adopted in February 2019.
10. She noted that the Government Experts had, in accordance with Rule 3(2) of the Rules of Procedure of the STCJLA, considered the Draft Statute of AUDA-NEPAD, the Rules of Procedure of the HSGOC and the Steering Committee of the AUDA-NEPAD and the Draft Statute of the APRM, and debated extensively on some contentious Issues, in particular, on the composition of the five (5) initiating members in the governance structure of AUDA-NEPAD, the validation process of the APRM Draft Statute; the voluntary nature of the APRM vis-a-vis the Draft Statute which prescribes a review process, and on whether the APRM Statute would be subject to ratification/accession or enter into force upon adoption.
11. Ambassador Negm wished the STC successful deliberations and remains disposed to supporting the work of this Committee.

Statement by the Chairperson of the STCJLA

12. The Chairperson of the STC, Hon. Mokhele Moletsane, Minister of Justice, Human Rights and Correctional Services from the Kingdom of Lesotho, thanked the Government and people of the Arab Democratic Republic of Egypt for the hospitality and excellent facilities availed to the meeting and expressed appreciation to the Office of the Legal Counsel for facilitating the work of this STCJLA. He noted that it was his honour and privilege to chair the Fourth Extraordinary Session of the STC JLA.
13. Hon. Moletsane expressed concluded by echoing the words of the Legal Counsel that the Meeting of Legal Experts had already considered the Draft Annexes stringently. He reiterated the importance of the meeting in executing the mandate of the STCJLA, as prescribed by the Policy Organs in February 2019 and invited the meeting to ensure timely consideration and recommendation for onward transmission to the Policy Organs.

Statement by the Representative of the Government of the Arab Republic of Egypt

14. Hon. Counselor Hossam Abd Elraheem, Minister of Justice, of the Arab Republic of Egypt, welcomed delegations to Cairo and highlighted that the achievement by the AU, of a comprehensive development, requires the attainment of developmental and good governance goals as illustrated in the Draft Legal Instruments of the AUDA-NEPAD and APRM.
15. Hon. Elraheem reiterated the commitment of Arab Republic of Egypt in supporting the African Common Frameworks to ensure regional integration, and called upon the meeting to exert all efforts, in order to ensure adoption of the Legal Instruments by the Policy Organs. He concluded by commending the Legal Counsel and her team for their contribution towards the attainment of these goals. He thereafter officially declared the 4th Extraordinary Session of the STCJLA , opened.

IV. CONSIDERATION AND ADOPTION OF DRAFT AGENDA AND PROGRAM OF WORK

16. **The Chairperson of the Meeting presented the Draft Agenda for consideration as follows:**
 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 Statute of the African Union Development Agency- New Partnership for Africa's Development (AUDA-NEPAD)
 6. Consideration of the Draft Rules of Procedures of the Governing Structure of the African Union Development Agency- New Partnership for Africa's Development (AUDA-NEPAD)
 7. Consideration of the Draft Statute of the African Peer Review Mechanism (APRM)
 8. Any Other Business
 9. Adoption of the Draft legal instruments and the Draft Report
 10. Closing Ceremony
17. The Meeting adopted the Agenda as presented, without any amendment.

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

18. Mr. Letsie Moshoeshoe, the Chairperson of the Meeting of Government Legal Experts, presented the report of the Session of Government Legal Experts held from place from 2 to 6 May 2019.
19. He reported that the Experts had considered and made the necessary amendments to the three (3) legal Instruments, namely, the AUDA-NEPAD Statute, the Rules of Procedure of the HSGOC and the Steering Committee, and the APRM Statute and have highlighted some contentious issues for resolution by this Ministerial Session.
20. In reviewing the Report of the Government Experts Meeting, delegations made the following comments:
 - a. The AUDA-NEPAD legal instruments had not undergone relevant processes for clearance before being presented to this STCJLA for consideration, which presents a challenge for their endorsement by this Ministerial Session;
 - b. The Report does not reflect the ruling of the Chairperson of the Experts' Meeting that the text of Decision Assembly/AU/Dec. 691 outlines, and that it be reflected in Article 7 of the Draft AUDA-NEPAD Statute;
 - c. The Initiating Members should be specifically identified in the governing document as the founding countries, in the spirit of Decision Assembly/AU/Dec.191(X) adopted in 2008, which recognises the need for inclusivity, but also the peculiar nature of identifying initiating member states;
 - d. States' reservations should be duly reflected in the Report;
 - e. The section of the Report which relates to the Rules of Procedures of the AUDA-NEPAD shall reflect the membership of twenty (25) instead of twenty (20), as the latter implies the permanency of five (5) members;
 - f. T report was adopted with the proposed amendments.

VI. CONSIDERATION OF THE DRAFT LEGAL INSTRUMENTS

1. CONSIDERATION OF THE DRAFT STATUTE OF AUDA-NEPAD

21. Articles 1 of the Draft Statute of AUDA-NEPAD was adopted as is.
22. Article 2 was adopted after adding "Agency" after the word NEPAD in para 1.
23. Article 3 was adopted after a request to align it to the French Language.
24. Article 4 to 6 were adopted with minor amendments.
25. Article 7: Egypt, Algeria and Senegal made a reservation on Article 7(2) stating that the deletion of the names of the five founding countries of NEPAD (Algeria, Egypt, Nigeria, Senegal and South Africa) from the provision is in violation of the Assembly decisions, including decision 691 and decision 191.
26. The Provisions of Article 7 of the Draft Statute regarding the composition of the

Initiating Members of the Heads of States and Governments Orientation Committee (HSGOC), were debated at length and in addressing the impasse, the Republic of South Africa presented the following wording:

Article 7
Heads of State and Government Orientation Committee

1. *The HSGOC shall be the highest governing structure of the AUDA-NEPAD and shall:*

- a. provide political leadership and strategic guidance to AUDA-NEPAD;*
- b. serve as a Sub-Committee of the Assembly; and*
- c. provide supervisory authority over the strategic orientation of AUDA-NEPAD.*

2. *To ensure inclusivity, the Committee shall comprise of thirty-three (33) Member States based on the principle of rotation as follows: (5) Member States per region including the Initiating Members and non-initiating members and eight (8) Heads of State and Government chairing the Regional Economic Communities (RECs).*

3. *The rotation of the Chairperson of the HSGOC after a single term of two (2) years, shall alternate between initiating members and non- initiating members.*

4. *Where the Head of State or Government chairing a REC is already a member of the HSGOC by virtue of its state membership, the Vice-Chair or any other representative designated through consultation shall represent the said REC.*

27. The proposed wording was supported by a number of countries and no objections were raised. In this regard, the Chairperson ruled for adoption of Article 7 as proposed.

28. The reservations previously entered by Morocco and Rwanda were withdrawn, while those entered by Egypt, Senegal and Algeria were retained.

29. Articles 8 and 9 were adopted as is.

30. Article 10 was adopted after adding the following words at the end of para (g) "*within its mandate*".

31. Article 11 was adopted after adding the words "*regional and technical*" in paragraph 3 before the word "*offices*" and the same was added to Article 14.

32. Articles 13 and 15 to 19 were adopted as is.

2. CONSIDERATION OF THE DRAFT RULES OF PROCEDURES OF THE HEADS OF STATES AND GOVERNMENT ORIENTATION COMMITTEE (HSGOC) AND THE STEERING COMMITTEE OF AUDA-NEPAD

Part one: Rules of Procedure of HSGOC

33. During consideration of the Draft Rules of Procedure of the HSGOC, delegations made the following observations on specific sections:
- a. Rule 1 and 2 were adopted as is;
 - b. Rule 3 was adopted after aligning it to the composition and wording proposed under the provisions of Article 7 of the Draft Statute;
 - c. Rule 3: Egypt, Algeria and Senegal made a reservation on Rule 3(2) stating that the deletion of the names of the five founding countries of NEPAD from Article VI (Algeria, Egypt, Nigeria, Senegal and South Africa) in violation to the of the Assembly decisions, including decision 691 and decision 191;
 - d. Rule 4 (Powers and Functions): in order to ensure clarity on the functions of the HSGOC, a new subparagraph (g) should be added to read “*determine the term, function and powers of the Steering Committee*”;
 - e. Rule 6 (Venue): in paragraph 1, the term “*undertake*” should be replaced with the term “*offers*”, given that the invitation to host will be conditional on the fulfilment of specific criteria of the AU;
 - f. Rule 14 (Quorum): to move the issue of Quorum to Rule 7, and refer to the two-third majority required;
 - g. Rule 9 (Attendance and Participation): paragraph 3 should be split to reflect that the opening sessions of the meetings of the HSGOC shall be open to all Partners of AUDA-NEPAD, while invitations to closed sessions should be subject to the agenda items under discussion in sub-paragraphs;
 - h. Rule 11 (Provisional Agenda of Ordinary Sessions) was amended after amending paragraph 2(b), to add “*prior to the session*” to replace “*of receipt*” and paragraph 3, to add the words “*and working documents*” to follow the term “*provisional agenda*”.
34. Other aspects of the Draft Rules of Procedure of the HSGOC, were adopted with minor amendments.

Part two: Rules of Procedure of the Steering Committee

35. During consideration of the Draft Rules of Procedure of the Steering Committee, the meeting agreed to align these Rules, *mutatis mutandis*, with those of the HSGOC. Nevertheless, delegations made the following observations on specific sections:
- a. Rule 3 (Composition): paragraph 2 should be redrafted;
 - b. Rule 4 (Powers and Functions): subparagraph (o) should read “*engage in dialogue with development partners within its mandate, and report back to the HSGOC for its recommendation and adoption*”;
 - c. Rule 5 (Ordinary Sessions): addition of the words “*at least*” before “*twice a year*”;
 - d. Rule 12 (Quorum): reference should be made to the requirement of a two-

thirds majority, and to move the issue of Quorum in Rule 12 to Rule 7;

- e. Rule 8 (Attendance and Participation): subparagraph (b) should be aligned with the provisions of Rule 9(3) of the Rules of Procedure of the HSGOC regarding the invitation of partners and attendance of closed and open sessions;
- f. Rule 20 (Recommendations and Decisions): the words “*and adoption*” should be added to the end of the sentence.

36. Other aspects of the Draft Rules of Procedure of the Steering Committee, were adopted with minor amendments to be incorporated by the Office of the Legal Counsel.

3. DRAFT STATUTE OF THE AFRICAN PEER REVIEW MECHANISM (APRM)

37. During consideration of the Draft APRM Statute, delegations made the following observations on specific sections:

- a. In Article 2(1), clarity was sought on the use of the term “autonomous” in defining the status of the APRM, and as such, the issue should be forwarded to the Executive Council for clarity;
- b. In Article 3(1), a proposal was made to add the term “*African led voluntary platform*” in order to highlight the voluntary nature of the assessment to be conducted by the APRM. Others were of the view that voluntary nature is only limited to the accession process and the use of the term “voluntary” should reflect Decision Assembly/AU/Decl.4(XXX);
- c. Article 4 should be amended to replace the term “*ensure*” with “*encourage*”;
- d. The term “*and culturally*” should be deleted from Article 4bis (1);
- e. In Article 5, paragraph 1(b) should reflect the wording of Decision Assembly/AU/Dec.635(XXVIII). Paragraph 1(g) should read “*to encourage the objectives of APRM into national plans, RECs and regional development bodies, including AUDA-NEPAD and relevant international frameworks for greater coherence*”, and the word “*values*” should be added to paragraph 1(k);
- f. In Article 9(1)(c), insertion of a new subparagraph (ii) on “*APRM National Focal Point*” and alignment in the definition section accordingly;
- g. In Article 10, deletion of paragraph 6 as it is a repetition of paragraph 4;
- h. In Article 22, the word “*process*” should be replaced with “*mechanism*”.

38. The APRM Statute was adopted with amendments to be incorporated by the Office of the Legal Counsel.

39. The Arab Republic of Egypt declared the reservation to the consideration and adoption of the Draft Statute of the African Peer Review Mechanism, for discussing and submitting at the Specialized Technical Committee on Justice and Legal Affairs without following the correct and usual steps and the fulfilment of the relevant rules of the mechanism, including the presentation of the document to the governing internal political structures of the mechanism (the focal points and steering committees), before submitting them to the other organs of the Union, including the specialized technical committee on justice and legal affairs at its extraordinary meeting. Therefore, the Egyptian delegation insists on listing these reservations in the documents and that it be reflected in the report of the meeting.

40. The Office of the Legal Counsel explained the reason why the meeting should consider the Draft Statute and Submit it to the ministers which is the document of the APRM was cleared by its internal procedure and it was submitted by the STC on Justice and Legal Affairs on November 2018. Based on the explanation the meeting of the Ministers agreed to consider the Draft Statute and submit the same for consideration.

VII. ANY OTHER BUSINESS

41. There were no issues raised under any other business

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

42. The meeting adopted its report and recommended the draft legal instruments for consideration and adoption by the Executive Council, bearing in mind Assembly Decision AU/Dec.582 on financial and structural implications of integrating NEPAD and APRM into the structure of the AU.

IX. CLOSING REMARKS

43. The Chairperson of the STC, Hon. Mokhele Moletsane, Minister of Justice, Human Rights and Correctional Services from the Kingdom of Lesotho, thanked the delegates for their participation. He specifically thanked the Legal Counsel and her team for the hard work in facilitating the meeting.
44. He further raised three important issues of concern for the meeting to take note, the first being the lack of discipline and respect for the ruling of the Chairperson by delegates in the meeting, particularly, legal experts attending Ministerial Sessions. Further, that legal experts must not replicate their report into that of the Ministers.
45. Secondly, Member States need to minimize their interventions, particularly on political issues as the mandate of the STCJLA is to review legal instruments. Finally, the importance of participation by Ministers at the Ministerial Sessions of the STCJLA, which for the past few meetings have been dominated by legal experts. He therefore urged Ministers to endeavor to attend the STCJLA Sessions in person.