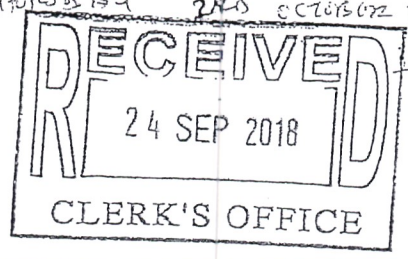


① LDC (1/1/1) 24/9  
02 OCT 2018



PORTY WITA HON. BENJAMIN  
LASHALI CBS, MP ON  
THURSDAY 24 OCT 2018 21:3



2/10/18 OFFICE OF THE ATTORNEY-GENERAL & DEPARTMENT OF JUSTICE

DOJ/CONF/10HR/6/18/VOL II/16

21st September 2018

Mr. Michael Sialai, EBS  
Clerk of the National Assembly  
Parliament Building  
NAIROBI

② DILLIPS  
Please deal  
24/9/18

Hand Table of the  
The minute documents  
may have been submitted

RE: RATIFICATION (ACCESSION) OF THE AGREEMENT FOR THE ESTABLISHMENT OF THE INTERNATIONAL ANTI-CORRUPTION ACADEMY AS AN INTERNATIONAL ORGANIZATION

Reference is made to the above matter and our letter dated the 25th July 2017, referenced DOJ/CONF/10HR/6/18/VOL II/11. A copy is enclosed herewith for ease of reference.

We have received communication from the Kenyan Mission in Vienna inquiring about the status of the ratification process of the Agreement for the Establishment of the International Anti-Corruption Academy (IACA).

Kenya is a signatory to the Agreement for the Establishment of the International Anti-Corruption Academy during the IACA High Level Founders Conference on the 3rd September 2010. The Agreement came into force on the 8th March 2011 consequently, the IACA enjoys observer status with the UN Social and Economic Council, among other bodies. IACA's core purpose is to promote effective and efficient prevention and combating of corruption by:

- a) providing anti-corruption education and professional training;
- b) undertaking and facilitating research into all aspects of corruption;
- c) providing other relevant forms of technical assistance in the fight against corruption; and
- d) fostering cooperation and networking in the fight against corruption.

In view of the emerging nature of corruption, it is necessary for the Country to collaborate with other States in the anti-corruption war as well ensure its officers are at par with their counterparts in terms of capacity. The success of the war against corruption therefore needs, on top of the legislative and institutional framework,

Parliament of Kenya Library  
Let's Table this and  
and  
Cause  
Proceeding  
for the  
Ratification  
of the  
Treaty  
September  
2019

SHERIA HOUSE, HARAMBEE AVENUE  
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995  
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337  
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001:2008 Certified





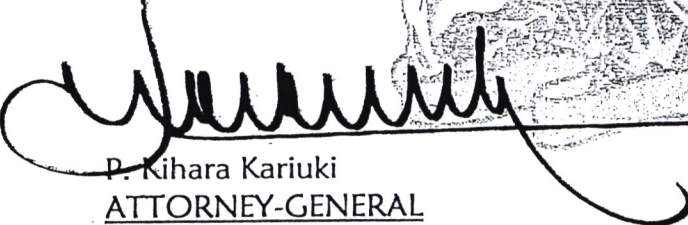
competent officers to develop and implement anti-corruption laws, policies and plans.

IACA serves as a think tank through its research function and has valuable contribution towards development of stronger anti-corruption policies at regional and international levels.

During the Second Cabinet Meeting of 2017 held on the 6<sup>th</sup> April 2017, Cabinet considered and:

- a) approved Kenya's ratification of (accession to) the agreement for the establishment of the International Anti-Corruption Academy as an international organization;
- b) directed the Attorney General to facilitate the submission of a Memorandum to Parliament;
- c) directed the State Law Office and Department of Justice and the Ministry of Foreign Affairs to make necessary arrangements for the preparation and deposit the instruments of ratification (accession) to the *Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization*, with the Depository of the Agreement; and
- d) approved the appointment of the Ambassador of the Republic of Kenya to Austria, to represent Kenya as a member of the Assembly of Parties, in accordance with the provision of Article V (2) of the Agreement.

In light of the above please find enclosed 3 copies of the IACA Agreement and the Memorandum on the implications of the Ratification of the Treaty for consideration and approval by the National Assembly.



P. Kihara Kariuki  
ATTORNEY-GENERAL

Copy to: Mr. Kennedy Ogeto, EBS  
Solicitor General





REPUBLIC OF KENYA  
OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

DOJ/CONF/10HR/6/18/VOL II (11)

25 JULY 2017

Mr. ~~MICHAEL R. SIKATA~~ *EBS*  
Clerk of The National Assembly  
Parliament Building  
P.O. Box 41842-00100  
NAIROBI

RATIFICATION (ACCESSION) OF THE AGREEMENT FOR THE ESTABLISHMENT OF THE INTERNATIONAL ANTI-CORRUPTION ACADEMY AS AN INTERNATIONAL ORGANIZATION

Reference is made to the above matter.

Kenya is a signatory to the Agreement for the Establishment of the International Anti-Corruption Academy during the IACA High Level Founders Conference on 3<sup>rd</sup> September 2010. The Treaty came into force on 8<sup>th</sup> March 2011 and consequently, the IACA enjoys observer status with the UN Social and Economic Council, among other bodies. The IACA core purpose is to promote effective and efficient prevention and combating of corruption by:

- a) Providing anti-corruption education and professional training
- b) Undertaking and facilitating research into all aspects of corruption
- c) Providing other relevant forms of technical assistance in the fight against corruption
- d) Fostering cooperation and networking in the fight against corruption

In view of the emerging nature of corruption, it is necessary for the Country to collaborate with other states in the anti-corruption warfare as well ensure its officers are at par with their counterparts in terms of capacity. The success of the war against anti-corruption therefore needs, on top of the legislative and institutional framework, competent officers to develop and implement anti-corruption laws, policies and plans.

SHERIA HOUSE, HARAMBLE AVENUE  
P.O. Box 40112-00100, NAIROBI, KENYA. TEL.: +254 20 2227461/2251355/07119445555/0732529995  
E-MAIL: [info.sta@law.office@kenya.go.ke](mailto:info.sta@law.office@kenya.go.ke) WEBSITE: [www.attorney-general.go.ke](http://www.attorney-general.go.ke)

DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILLE SELLAIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337  
E-MAIL: [kenya@justice.go.ke](mailto:kenya@justice.go.ke) WEBSITE: [www.justice.go.ke](http://www.justice.go.ke)

ISO 9001:2008 Certified





The IACA serves as a think tank through its research function, and will ensure valuable contribution towards development of stronger anti-corruption policies at regional and international levels.

During the Second Cabinet Meeting of 2017 held on 6<sup>TH</sup> April 2017, Cabinet considered and:

- a) Approved Kenya's ratification of (accession to) the agreement for the establishment of the International Anti-Corruption Academy as an international organization.
- b) Directed the Attorney General to facilitate the submission of a Memorandum to Parliament
- c) Directed the State Law Office and Department of Justice and the Ministry of Foreign Affairs to make necessary arrangements for the preparation and deposit the instruments of ratification (accession) to the *Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization*, with the Depository of the Treaty; and
- d) Approved the appointment of the Ambassador of the Republic of Kenya to Austria, to represent Kenya as a member of the Assembly of Parties, in accordance with the provision of Article V (2) of the Treaty.

By virtue of Section 8 of the Treaty Making and Ratification Act, this Office is required to seek approval of the National Assembly to ratify the Treaty.

In light of the above please find enclosed 3 copies of the IACA Agreement and the Memorandum on the implications of the Ratification of the Treaty for consideration and approval by the National Assembly.



GITHU MUIGAI, EGH, SC  
ATTORNEY-GENERAL



## APPENDIX 1

### MEMORANDUM ON THE IMPLICATIONS OF THE RATIFICATION OF THE AGREEMENT

#### 1. Objectives and subject matter of the Agreement

The subject matter of the Agreement is the establishment of the International Anti-Corruption Academy (IACA) as an international organization to facilitate the provision of anti-corruption training programmes to member states and other interested parties<sup>1</sup>. This would give IACA the necessary immunities, privileges and recognition among state parties and other international organizations.

The objects of the Agreement are set out under Article II(1) of the Agreement, which provides that, the purpose of the Academy shall be to promote effective and efficient prevention and combating of corruption by:-

- a) providing anticorruption education and professional training;
- b) undertaking and facilitating research into all aspects of corruption;
- c) providing all other relevant forms of technical assistance in the fight against corruption; and
- d) fostering international cooperation and networking in the fight against corruption.

#### 2. Constitutional implications

The ratification of the Agreement will not offend any provision or principle of the Constitution of Kenya. Indeed, the Agreement is consistent with the Constitution and promotes its values and objectives, especially with regard to Article 10 (National values and principles of good governance): Article 232 (Values and principles of public service), and Chapter Six (Leadership and Integrity). In effect, the ratification of the Agreement will facilitate the actualization of the integrity provisions provided for under the Constitution and various anti-corruption, ethics and integrity laws and policies.

#### 3. National interests

The ratification of the Agreement will not adversely affect Kenya's national interests as it is in line with the provisions and aspirations of the Constitution of Kenya, and Vision 2030.

---

<sup>1</sup> For a copy of the IACA Agreement and more background information on IACA, see: <https://www.iaca.int>.



#### 4. Obligations imposed on Kenya by the Agreement

- a) **Financing of IACA:** Under Article XI(1)(a) of the Agreement, a party to the Agreement may make voluntary contributions to IACA. This means that it is optional for a party to contribute funds to the Academy.
- b) **Consultations and Exchange of Information:** Article XII(1) of the Agreement provides that, “Parties to this Agreement shall keep each other informed of and consult on matters of interests concerning their cooperation under this Agreement, either at meetings of the Assembly or at other times as appropriate. Article XII (2) of the Agreement provides that, the consultation and exchange of information shall be done in accordance with each Party’s applicable rules concerning disclosure of information and subjects to arrangements which parties may conclude for purposes of safeguarding the confidentiality, restricted character and security of information exchanged. Those arrangements remain binding on a party, even after the termination of the Agreement or withdrawal of a party from the treaty.
- c) **Liability:** Kenya’s membership of IACA will not attract any form of liability. Article XV of the Agreement provides that, “The parties to the Agreement shall not be responsible, individually or collectively, for any debts, liabilities, or other obligations of the Academy”.
- d) **Settlement of dispute:** Any dispute between IACA and a party or between parties under the Agreement shall be resolved through arbitration, as per the provisions of Article XIX of the Agreement.

#### 5. Requirements for the implementation of the Agreement

Regarding the implementation of the Agreement, a party may make voluntary contributions to IACA (Article XI), and shall consult and exchange information with other parties on matters concerning their cooperation under the Agreement, subject to their domestic laws (Article XII). IACA may also conclude Agreements with parties or other states to secure appropriate privileges and immunities (Article XIV).

#### 6. Policy and legislative considerations

The ratification of the Agreement will not contravene any policy or law or necessitate the amendment of existing policies or laws.



## 7. Financial implications

Contributions towards the running of the activities of IACA are optional, as per Article XI of the Agreement. Thus, Kenya may opt to contribute or not, towards such programmes. However, in order for the country to reap maximum benefits out of its membership of the Agreement, Kenya would be encouraged to contribute some funds towards the running of IACA. There may be consequential but minimal funds towards the running of IACA. There may be consequential but minimal financial implications in terms of participation in the Assembly of parties, usually held annually or biennially.

## 8. Ministerial responsibility

Under the current Presidential Circular on the Organization of the Government of the Republic of Kenya, (Executive Order (No. 1 of 2016, May, 2016), the State Law Office and Department of Justice, which has the status, powers and functions of a ministry, has been assigned ministerial responsibility over anti-corruption strategies, integrity and ethics. As such, the Attorney General will oversee the implementation of the Agreement, in accordance with the provisions of Article 132(5) of the Constitution, and in liaison with the Registrar of Treaties as per the provisions of Section 12(4) (b) of the Agreement Making and Ratification of Treaties Act, 2010. Where necessary consultations will be held with the Ministry of Foreign Affairs, and other key stakeholders, such as Parliament.

The State Law Office and Department of Justice, through its Department of Justice (DOJ), will create the necessary awareness on the benefits of the treaty, as required under Section 15(3) of the Act, and facilitate the necessary reporting, through the AG, and the Cabinet Secretary for Foreign Affairs as provided for under Section 16 of the Act.

## 9. Implications on matters relating to counties

The ratification of the Agreement will have no implication on matters relating to counties. The subject matter of the Agreement is corruption, criminal law matter, which under Part 1 of the Fourth Schedule to the Constitution falls within the domain of the National Government. Further, ratification of Agreement is a foreign affairs and policy issue, which falls under the mandate of the National Government. Thus, the ratification of the Agreement will not have any implications on matters relating to counties.

Nonetheless, in line with the Governments' agenda of fighting corruption and promoting good governance and ethical leadership in the two levels of Government (national and county, the State Law Office and Department of Justice will endeavor to create the

necessary awareness, through the council of Governors, about IACA training programmes and opportunities.

#### 10. Summary of the process leading to the adoption of the Agreement

IACA has received recognition within the UN and also Conference of States Parties to UNCAC. For instance, the UN General Assembly (UNGA), through Resolution 2009/22 of 14<sup>th</sup> December, 2009 and the Conference of State Parties (COSP) to the UNCAC held at Doha, Qatar 9-13 November, 2009, through Resolution 3/4, approved the establishment of IACA. IACA's establishment was the result of collaboration between the Government of Austria and the UN Office on Drugs and Crime (UNODC), INTERPOL and the European Anti-Fraud Office. IACA is currently based in Luxembourg, near Vienna, Austria.

Between June and September, 2010, some correspondence was exchanged and consultations held between Austrian/IACA representatives and Kenyan institutions, such as:- the Embassy of Kenya (Vienna); the Ministry of Foreign Affairs; the former Ministry of Justice, National Cohesion and Constitutional Affairs (MOJNCCA); the Kenya Anti-corruption Commission; the Judiciary; State Law Office and Department of Justice. From those consultations, the Government of Kenya noted that there were potential benefits to be gained from the membership of IACA, more so for Kenya which had committed itself to implementation of UNCAC and other anti-corruption instruments. Consequently, Kenya agreed to become a signatory.

To highlight the importance of IACA in the fight against corruption generally and especially UNCAC implementation, the Faculty of IACA, UNODC, the Austrian Government and other stakeholders organized a High Level Founders Conference in Hofburg, Vienna, 2-3 September, 2010. The delegates were also conducted on a tour of the IACA campus in Luxembourg, Austria. The conference was officially opened by the Secretary General of the United Nations, H.E. Bank Ki Moon.

During the High Level Segment of the Conference held on September, 2010, 36 states and organizations (including Kenya), signed the Agreement. The then Minister of Justice National Cohesion and Constitutional Affairs (the late Hon. Mutula Kilonzo, EGH, SC, MP) signed the Agreement on behalf of Kenya, pursuant to the full powers granted to him by the then Minister for Foreign Affairs (Hon. Moses Wetangula, EGH, MP) on 27<sup>th</sup> August, 2010. This made Kenya become one of the Founder Members of IACA.

The Agreement came into force on 8<sup>th</sup> March, 2011. Consequently, IACA is now recognized as and has the status of, an international organization and enjoys observer status with the UN Social and Economic Council (ECOSOC), among other bodies. As of



16<sup>th</sup> March, 2016. the Agreement had 67 parties and 53 signatories. A list of the current parties and signatories can be accessed through: <http://www.iaca.int/constituency/psarties-signatories>.

On 24<sup>th</sup> July, 2012, the Ministry of Foreign Affairs vide their letter Ref. MFA.TCA 12/54 of July, 2012 proposed to the Ministry of Justice to consider initiating a process for Kenya's ratification of the Agreement. In a follow-up letter to the Ministry of Justice, Ref. MFA.TCA 12/54 of 29<sup>th</sup> August, 2012, the Ministry of Foreign Affairs reiterated the need for Kenya to accede to the IACA instrument and also participate in the 1<sup>st</sup> Assembly of IACA states parties, which was to be held in Vienna, Austria on 29<sup>th</sup> -30<sup>th</sup> November, 2012. Subsequently, the Ministry of Foreign Affairs, vide its letter Ref. MFA.TCA 12/54 of 20<sup>th</sup> August, 2013 and Ref. MFA. TCA 12/54 Vol. VI (76) OF 29<sup>th</sup> December 2015 requested the AG to facilitate the ratification of the IACA Agreement.

Between 2013 and 2016, there has been a lot of correspondence the AG's office and MFA over the matter. On 30<sup>th</sup> September, 2013, the AG wrote to MFA, vide his letter Ref. AG/CONF/19/102 Vol.1, forwarding a Cabinet Memo for ratification of the IACA Agreement. Although MFA eventually approved the Cabinet Memo, a need arose for an update Memo in order to take into consideration recent developments on IACA.

During the Second Cabinet Meeting of 2017 held on 6<sup>th</sup> April 2017, Cabinet considered and:

- a) approved Kenya's ratification of (accession to) the Agreement for the establishment of the International Anti-Corruption Academy as an international organization;
- b) directed the Attorney General to facilitate the submission of a Memorandum to Parliament;
- c) directed the State Law Office and Department of Justice and the Ministry of Foreign Affairs to make necessary arrangements for the preparation and deposit the instruments of ratification (accession) to the *Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization*; with the depository of the Agreement; and
- d) approved the appointment of the Ambassador of the Republic of Kenya to Austria to represent Kenya as a member of the Assembly of Parties, in accordance with the provision of Article V(2) of the Agreement.

#### 11. The date of signature

Kenya became a signatory of the Agreement on 2<sup>nd</sup> September 2010, during the IACA High Level Founders Conference, held in Vienna, 2<sup>nd</sup> -3<sup>rd</sup> September, 2010. The then Minister for Justice, National Cohesion and Constitutional Affairs signed the Agreement

on behalf of Kenya. Pursuant to the full powers granted to him by the Minister for Foreign Affairs on 27<sup>th</sup> August, 2010.

#### 12. The number of states that are party to the Agreement

As of 16<sup>th</sup> March, 2016, the Agreement had 67 parties and 53 signatories. A list of the signatories can be accessed through: <https://www.iaca.int/constituncy/parties-signatories.html> (accessed on 25th July, 2016).

#### 13. The views of the public on the ratification of the treaty

The former Minister for Justice, National Cohesion and Constitutional Affairs informed the members of the public about Kenya's signing and intended ratification of the Agreement, through a Press Release issued in Nairobi on 9<sup>th</sup> September, 2010. More information on the Press Release may be obtained from The Standard edition of 9<sup>th</sup> September, 2010 or through: <http://www.standardmedia.co.ke/?articleD=200001794&storytitle=Kenya-signs-deal-to-join-anti-corruption-academy>.

So far, there has been no objection to the ratification of the Agreement. All the key stakeholders in the fight against corruption at the time were consulted over the signing of the Agreement and formed part of the Government delegation to the High Level Founders Conference held in Vienna, 2<sup>nd</sup> – 3<sup>rd</sup> September, 2010. Some of the institutions involved were:- MOJNCCA; the Kenya Anti-corruption Commission (precursor to the Ethics and Anti-Corruption Commission); the Office of the Director of Public Prosecutions; the State Law Office; the Judiciary and the Ministry of Foreign Affairs.

Additionally, the Strategic Plan (2013-2017) of the Office of the Attorney General and Department of Justice (which in May, 2016 became the State Law Office and Department of Justice) had provided for the ratification (accession) of the IACA Agreement. The development of the Strategic Plan involved many stakeholders, who agreed with that proposal, among others.

It is also noteworthy that, the Report of the Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya, which was presented to H. E. the President by the Attorney General on 17<sup>th</sup> November, 2015, has also recommended, among other things, Kenya's accession to the IACA Agreement. The development of the report involved many stakeholders' consultations, including civil society, which endorsed the recommendation that Kenya accedes to the IACA Agreement.



14. Whether the Agreement permits reservations and any recommendations on reservations and declaration

The Agreement does not have any express provisions on reservations. However, in practice parties do enter reservation to the Agreement, in accordance with the provisions of Article 20(3) of the Vienna Convention on the Law of Treaties. For instance, Israel and China have made reservations to the provisions of article XIX of the Agreement (on Settlement of Disputes). There is no justification for Kenya to make such a reservation to the Agreement.

15. The proposed text of any reservation

There are no proposed reservations to the Agreement.

16. Whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible of the expenditure

Unless Kenya chooses to make voluntary contributions to IACA, as envisaged under Article XI of the Agreement, there will be no direct expenditure of public funds on IACA. However, there may be indirect costs relating to participation in the IACA Assembly of Parties and the training of public officers at IACA, if Kenya decides to participate in the same. It is expected that the concerned ministries will budget for such matters.

**AGREEMENT FOR THE ESTABLISHMENT  
OF  
THE INTERNATIONAL ANTI-CORRUPTION ACADEMY  
AS AN INTERNATIONAL ORGANIZATION**



AGREEMENT FOR THE ESTABLISHMENT  
OF  
THE INTERNATIONAL ANTI-CORRUPTION ACADEMY  
AS AN INTERNATIONAL ORGANIZATION

THE PARTIES,

NOTING the important contributions in the fight against corruption of the United Nations Office on Drugs and Crime (UNODC), as the guardian of the United Nations Convention against Corruption (UNCAC);

ACKNOWLEDGING the preparations made at the international level and in particular the substantial efforts of the Republic of Austria in close cooperation with UNODC as well as of the other founding Parties in establishing the International Anti-Corruption Academy, IACA, (hereinafter referred to as "the Academy") and their strong support for the Academy;

NOTING the long-standing efforts and the continued support of the International Criminal Police Organization (INTERPOL) to design and develop initiatives to prevent and fight corruption worldwide;

NOTING the considerable support of the European Anti-Fraud Office (OLAF) and other participants in this common endeavor;

EMPHASIZING the global and inclusive nature of this initiative and the importance of striving for geographical diversity;

RECOGNIZING the importance of collaboration in joint efforts at the global and regional levels in support of UNCAC and other relevant international instruments;

SHARING common goals with regard to the delivery of technical assistance and capacity building as key instruments in the fight against corruption;

NOTING that anti-corruption education, professional training and research are important components of such assistance and capacity building;

WISHING to enhance their common goals by the establishment of the Academy on the basis of a multilateral agreement open to Member States of the United Nations and intergovernmental organizations (hereinafter referred to as "International Organizations") and inviting them to join forces and to become Parties to this Agreement;

RESPONDING to the invitation of the Republic of Austria to host the Academy in Laxenburg near Vienna;

HAVE AGREED as follows:

## ARTICLE I

### Establishment and Status

1. There is hereby established the Academy as an International Organization.
2. The Academy shall possess full international legal personality.
3. The Academy shall *inter alia* have the legal capacity:



- (a) to contract;
  - (b) to acquire and dispose of immovable and movable property;
  - (c) to institute and respond to legal proceedings;
  - (d) to take such other action as may be necessary for the fulfillment of its purpose and activities.
4. The Academy shall operate in accordance with this Agreement.

## ARTICLE II

### Purpose and Activities

1. The purpose of the Academy shall be to promote effective and efficient prevention and combating of corruption by
- (a) providing anti-corruption education and professional training;
  - (b) undertaking and facilitating research into all aspects of corruption;
  - (c) providing other relevant forms of technical assistance in the fight against corruption;
  - (d) fostering international cooperation and networking in the fight against corruption.
2. The activities of the Academy shall observe the principle of academic freedom, meet highest academic and professional standards and address the phenomenon of corruption in a comprehensive and inter-disciplinary way, taking due account of cultural diversity, gender equality and recent developments in the field of corruption at the global and regional levels.

### ARTICLE III

#### Seat

1. The seat of the Academy shall be located in Laxenburg, Austria, under such terms and conditions as agreed between the Academy and the Republic of Austria.
2. The Academy may establish facilities in other locations as required to support its activities.

### ARTICLE IV

#### Organs

The Academy shall have

- (a) an Assembly of Parties, hereinafter referred to as "the Assembly";
- (b) a Board of Governors, hereinafter referred to as "the Board";
- (c) an International Senior Advisory Board;
- (d) an International Academic Advisory Board;
- (e) a Dean.

### ARTICLE V

#### Assembly of Parties

1. The Assembly shall serve as a forum for the Parties to this Agreement to consult on the overall policy of the Academy and on other matters of interest under this Agreement.
2. The Assembly shall consist of representatives of the Parties. Each Party shall appoint a representative to act as a member of the Assembly. Each member of the Assembly shall have one vote.



3. In particular, the Assembly shall:
- (a) Adopt recommendations relating to the Academy's policies and management for consideration by the Board;
  - (b) Adopt the work programme and budget of the Academy as proposed by the Board;
  - (c) Engage in fund-raising activities for the Academy in accordance with Article XI;
  - (d) Elect the members of the Board in accordance with Article VI;
  - (e) Decide on the removal of members of the Board by a two-thirds majority;
  - (f) Review the progress of activities of the Academy on the basis of, *inter alia*, reports by the Board;
  - (g) Approve international agreements;
  - (h) Approve the establishment of facilities in other locations.
4. The Assembly shall meet at least once a year and shall take its decisions by simple majority unless otherwise provided by this Agreement. The Assembly shall adopt its rules of procedure and shall elect its officers, including its President and two Vice-Presidents. The members of the Board and the Dean may participate in the meetings of the Assembly without the right to vote.

## ARTICLE VI

### Board of Governors

1. The Academy shall be governed by a Board consisting of eleven members in total. Nine members shall be elected by the Assembly taking due account of their qualifications and experience as well as the principle of equitable geographical distribution. In addition, UNODC

and the Republic of Austria are each entitled to appoint one member. The members of the Board shall serve in their individual capacity for a term of six years and shall be eligible for re-election/re-appointment for not more than one additional term. At the first election five members shall be elected for a period of only three years.

2. In particular, the Board shall:

- (a) Decide on the strategy, policies and guidelines for the activities of the Academy;
- (b) Adopt the rules governing the operation of the Academy, including financial regulations and staff rules;
- (c) Appoint the Dean for a renewable period of four years, evaluate his or her activities and terminate, if necessary, the appointment of the Dean;
- (d) Establish, where appropriate, advisory boards and elect their members;
- (e) Elect the members of the International Senior Advisory Board and the International Academic Advisory Board, taking due account of their professional qualifications and experience, the principle of equitable geographical distribution as well as gender equality;
- (f) Submit the work programme and budget of the Academy to the Assembly for adoption;
- (g) Appoint the independent external auditor;
- (h) Approve the annual audited statement of the Academy's accounts;
- (i) Report to the Assembly on the progress of the activities of the Academy;
- (j) Consider the recommendations of the Assembly relating to the Academy's policies and management;



- (k) Adopt strategies and guidelines for ensuring the financial resources of the Academy and assist the Dean's efforts to that effect;
  - (l) Determine the conditions of admission of participants in the Academy's academic activities;
  - (m) Approve the establishment of cooperative relationships in accordance with Article XIII;
  - (n) Submit international agreements to the Assembly for approval;
  - (o) Evaluate the activities of the Academy on the basis of reports by the Dean and make recommendations concerning these activities.
3. The Board shall meet at least once a year at the seat of the Academy and shall take its decisions by simple majority unless otherwise provided by this Agreement. Each member shall have one vote. The Board shall adopt its rules of procedure, shall elect its officers, including its Chairperson and Vice-Chairperson, and may establish committees as deemed necessary for the efficient functioning of the Academy.

## **ARTICLE VII**

### **International Senior Advisory Board**

1. The Board shall be advised by an International Senior Advisory Board (ISAB) consisting of up to fifteen members who shall be eminent personalities with outstanding credentials from a wide variety of backgrounds of importance for the activities of the Academy.
2. The function of the International Senior Advisory Board shall be to reflect on the activities of the Academy and to offer observations and advice on how the highest standards with regard to the purpose of the Academy can be met and maintained.

3. The members of the International Senior Advisory Board shall serve in their individual capacity for a term of six years and shall be eligible for re-election. At the first election seven members shall be elected for a period of only three years.

4. The International Senior Advisory Board shall meet at least once a year and shall take its decisions by simple majority. Each member shall have one vote. The International Senior Advisory Board shall adopt its rules of procedure and shall elect its officers, including its Chairperson and Vice-Chairperson.

5. The International Senior Advisory Board may recommend to the Board persons who fulfil the criteria of paragraph 1 for election to the International Senior Advisory Board.

#### ARTICLE VIII

##### International Academic Advisory Board

1. The Board shall be advised in matters related to education, training and research by an International Academic Advisory Board (IAAB) consisting of up to fifteen members who shall be eminent academic personalities or experts of highest qualifications in the fields of anti-corruption practice, training and research and/or criminal justice and law enforcement related to anti-corruption as well as other fields of importance for the activities of the Academy.

2. The members of the International Academic Advisory Board shall serve in their individual capacity for a term of six years and shall be eligible for re-election. At the first election seven members shall be elected for a period of only three years.

3. The International Academic Advisory Board shall meet at least once a year and shall take its decisions by simple majority. Each member shall have one vote. The Academic Advisory



Board shall adopt its rules of procedure and shall elect its officers, including its Chairperson and Vice-Chairperson.

4. The International Academic Advisory Board may recommend to the Board persons who fulfil the criteria of paragraph 1 for election to the International Academic Advisory Board.

## ARTICLE IX

### Dean

1. The Dean shall be responsible for day-to-day management of the Academy and its substantive programme. The Dean shall report to and be accountable to the Board.
2. In particular, the Dean shall:
  - (a) Represent the Academy externally;
  - (b) Ensure the proper administration of the Academy, including human resources and financial management;
  - (c) Prepare the work programme and budget of the Academy for consideration by the Board and adoption by the Assembly. The work programme shall include research priorities, training activities, curricula and tool development;
  - (d) Implement the work programme and budget;
  - (e) Submit to the Board annual and ad hoc reports on the activities of the Academy including an annual audited statement of the Academy's accounts;
  - (f) Propose the establishment of cooperative relationships in accordance with Article XIII for approval by the Board;
  - (g) Coordinate the work of the Academy with the work of the Parties to this Agreement and other international and national institutions, agencies and networks as relevant

taking into account the relevant recommendations and guidelines of the Assembly and the Board as well as advice from the International Senior Advisory Board and the International Academic Advisory Board;

- (h) Enter into contracts and arrangements on behalf of the Academy and negotiate international agreements for consideration by the Board and approval by the Assembly;
- (i) Actively seek appropriate funding for the Academy and accept voluntary contributions on behalf of the Academy in accordance with the relevant Board strategies and guidelines as well as the financial regulations;
- (j) Undertake other assignments or activities as may be determined by the Board.

## ARTICLE X

### Academic and Administrative Staff

1. The Academy shall strive to recruit and retain academic and administrative staff with the highest possible qualifications.
2. In order to maximize efficiency and cost-effectiveness the Academy shall develop a plan and conclude appropriate arrangements for part-time or visiting academic staff and shall encourage States, International Organizations, universities and other relevant institutions to consider supporting the staffing of the Academy, including by secondment of staff.

## ARTICLE XI

### Financing of the Academy

1. Notwithstanding the long-term goal to make the Academy self-sustainable, the resources of the Academy include the following:
  - (a) voluntary contributions by the Parties to this Agreement;
  - (b) voluntary contributions from the private sector and other donors;
  - (c) tuition fees, training workshop and technical assistance fees, publication and other service revenue;
  - (d) income accruing from such contributions, fees, revenue and other income including from trusts and endowments.
2. The fiscal year of the Academy shall be from 1 January to 31 December.
3. The accounts of the Academy shall, in accordance with the financial regulations adopted by the Board in accordance with Article VI paragraph 2 subparagraph b, be subject to an annual independent external audit which shall meet the highest standards of transparency, accountability and legitimacy.
4. The Parties to this Agreement are encouraged to engage in fund-raising activities for the Academy, including through organizing joint donor conferences.

## ARTICLE XII

### Consultation and Exchange of Information

1. The Parties to this Agreement shall keep each other informed of and consult on matters of interest concerning their cooperation under this Agreement, either at meetings of the Assembly or at other times as appropriate.



2. Consultation and exchange of information and documents under this Article shall be done in accordance with each Party's applicable rules concerning disclosure of information and subject to arrangements, which the Parties may decide to conclude for the purposes of safeguarding the confidentiality, restricted character and security of the information exchanged. Any such arrangements shall continue to apply even after the termination of this Agreement and, with regard to a particular Party, even after that Party's withdrawal from this Agreement.

### ARTICLE XIII

#### Cooperative Relationships

The Academy may establish cooperative relationships with States, other International Organizations as well as public or private entities which can contribute to the Academy's work.

### ARTICLE XIV

#### Privileges and Immunities

1. The Academy, the members of the Assembly, the members of the Board, the members of the International Senior Advisory Board and of the International Academic Advisory Board, the Dean, the staff and experts shall enjoy such privileges and immunities as agreed between the Academy and the Republic of Austria.

2. The Academy may conclude agreements with other States in order to secure appropriate privileges and immunities.

## **ARTICLE XV**

### **Liability**

The Parties to this Agreement shall not be responsible, individually or collectively, for any debts, liabilities, or other obligations of the Academy; a statement to this effect shall be included in each of the agreements concluded by the Academy under Article XIV.

## **ARTICLE XVI**

### **Amendments**

This Agreement may be amended only with the consent of all Parties to this Agreement. Notification of such consent shall be made in writing to the Depositary. Any amendment shall come into force upon receipt by the Depositary of the notification of all Parties to this Agreement, or at such other date as the Parties may agree.

## **ARTICLE XVII**

### **Transitional Provisions**

1. The Parties acknowledge the transitional arrangements for the establishment and initial operations of the Academy contained in the Memorandum concerning the Establishment of the International Anti-Corruption Academy in Laxenburg, Austria of 29 January 2010 and agree to respect them until the decision-making organs of the Academy are fully operational.
2. Any decision affecting obligations entered into for the purposes of the establishment and initial operations of the Academy or creating liability for the Partners (UNODC, the Association "Friends of the Academy" or the Republic of Austria) may only be taken unanimously by the Board.

## ARTICLE XVIII

### Entry into Force and Depositary

1. This Agreement shall be open for signature by Member States of the United Nations (hereinafter referred to as "States") and intergovernmental organizations (hereinafter referred to as "International Organizations") until 31 December 2010. It shall be subject to ratification, acceptance or approval.
2. States and International Organizations which have not signed this Agreement may subsequently accede thereto.
3. This Agreement shall enter into force sixty days after the date of deposit of the instruments of ratification, acceptance, approval or accession by three States or International Organizations.
4. For every State or International Organization which ratifies, accepts, approves or accedes to this Agreement after the date of its entry into force, this Agreement shall enter into force sixty days after the date of deposit of its instrument of ratification, acceptance, approval or accession.
5. The Federal Minister for European and International Affairs of the Republic of Austria shall be the Depositary of this Agreement.

## ARTICLE XIX

### Settlement of Disputes

Any dispute arising between the Academy and any Party to this Agreement or between any Parties under this Agreement concerning the interpretation or application of this Agreement or of any supplementary agreement or any question affecting the Academy or the relations of the



Parties which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators: one to be chosen by each party to the dispute, and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should either party to the dispute not have chosen its arbitrator within six months following the appointment by the other party of its arbitrator or should the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, such second or third arbitrator shall be chosen by the President of the International Court of Justice at the request of either party to the dispute.

#### **ARTICLE XX**

##### **Withdrawal**

1. Any of the Parties to this Agreement may withdraw from this Agreement by written notification to the Depository. Such withdrawal shall become effective three months after receipt of such notification by the Depository.
2. Withdrawal from this Agreement by a Party to this Agreement shall not limit, reduce or otherwise affect its contribution, if any that has been made before the effective date of withdrawal.

#### **ARTICLE XXI**

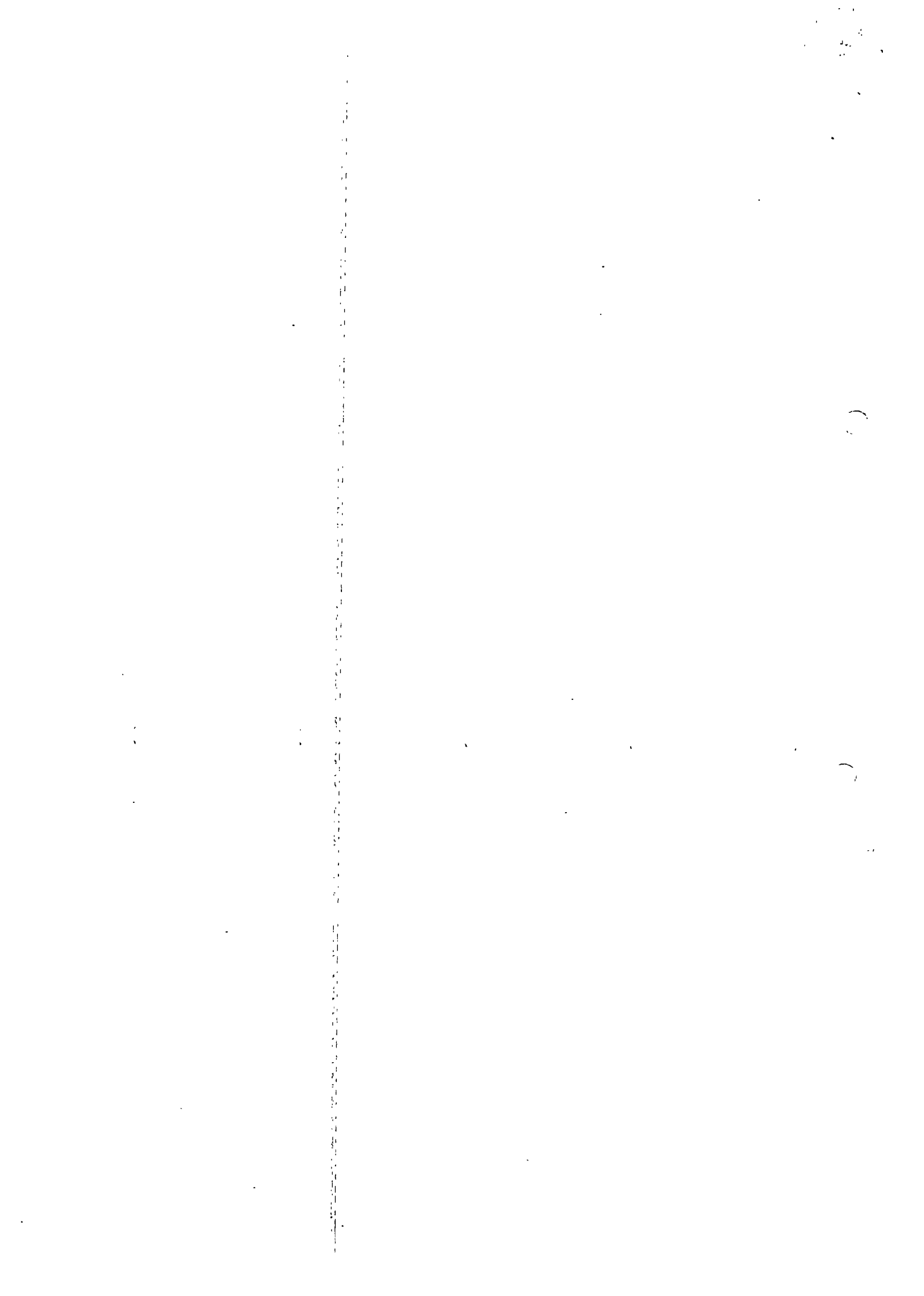
##### **Termination**

1. The Parties to this Agreement, acting unanimously, may terminate this Agreement at any time and wind up the Academy by written notification to the Depository. Any assets of the

Academy remaining after payment of its legal obligations shall be disposed of in accordance with a unanimous decision of the Assembly.

2. The provisions of this Agreement shall continue to be applicable after its termination to the extent necessary to permit an orderly disposal of assets and settlement of accounts.

Done at Vienna on 2 September 2010 in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.





## APPENDIX 1

### MEMORANDUM ON THE IMPLICATIONS OF THE RATIFICATION OF THE AGREEMENT

#### 1. Objectives and subject matter of the Agreement

The subject matter of the Agreement is the establishment of the International Anti-Corruption Academy (IACA) as an international organization to facilitate the provision of anti-corruption training programmes to member states and other interested parties<sup>1</sup>. This would give IACA the necessary immunities, privileges and recognition among state parties and other international organizations.

The objects of the Agreement are set out under Article II(1) of the Agreement, which provides that, the purpose of the Academy shall be to promote effective and efficient prevention and combating of corruption by:-

- a) providing anticorruption education and professional training;
- b) undertaking and facilitating research into all aspects of corruption;
- c) providing all other relevant forms of technical assistance in the fight against corruption; and
- d) fostering international cooperation and networking in the fight against corruption.

#### 2. Constitutional implications

The ratification of the Agreement will not offend any provision or principle of the Constitution of Kenya. Indeed, the Agreement is consistent with the Constitution and promotes its values and objectives, especially with regard to Article 10 (National values and principles of good governance): Article 232 (Values and principles of public service), and Chapter Six (Leadership and Integrity). In effect, the ratification of the Agreement will facilitate the actualization of the integrity provisions provided for under the Constitution and various anti-corruption, ethics and integrity laws and policies.

#### 3. National interests

The ratification of the Agreement will not adversely affect Kenya's national interests as it is in line with the provisions and aspirations of the Constitution of Kenya, and Vision 2030.

---

<sup>1</sup> For a copy of the IACA Agreement and more background information on IACA, see: <https://www.iaca.int>.

#### 4. Obligations imposed on Kenya by the Agreement

- a) **Financing of IACA:** Under Article XI(1)(a) of the Agreement, a party to the Agreement may make voluntary contributions to IACA. This means that it is optional for a party to contribute funds to the Academy.
- b) **Consultations and Exchange of Information:** Article XII(1) of the Agreement provides that, "Parties to this Agreement shall keep each other informed of and consult on matters of interests concerning their cooperation under this Agreement, either at meetings of the Assembly or at other times as appropriate. Article XII (2) of the Agreement provides that, the consultation and exchange of information shall be done in accordance with each Party's applicable rules concerning disclosure of information and subjects to arrangements which parties may conclude for purposes of safeguarding the confidentiality, restricted character and security of information exchanged. Those arrangements remain binding on a party, even after the termination of the Agreement or withdrawal of a party from the treaty.
- c) **Liability:** Kenya's membership of IACA will not attract any form of liability. Article XV of the Agreement provides that, "The parties to the Agreement shall not be responsible, individually or collectively, for any debts, liabilities, or other obligations of the Academy".
- d) **Settlement of dispute:** Any dispute between IACA and a party or between parties under the Agreement shall be resolved through arbitration, as per the provisions of Article XIX of the Agreement.

#### 5. Requirements for the implementation of the Agreement

Regarding the implementation of the Agreement, a party may make voluntary contributions to IACA (Article XI), and shall consult and exchange information with other parties on matters concerning their cooperation under the Agreement, subject to their domestic laws (Article XII). IACA may also conclude Agreements with parties or other states to secure appropriate privileges and immunities (Article XIV).

#### 6. Policy and legislative considerations

The ratification of the Agreement will not contravene any policy or law or necessitate the amendment of existing policies or laws.



## 7. Financial implications

Contributions towards the running of the activities of IACA are optional, as per Article XI of the Agreement. Thus, Kenya may opt to contribute or not, towards such programmes. However, in order for the country to reap maximum benefits out of its membership of the Agreement, Kenya would be encouraged to contribute some funds towards the running of IACA. There may be consequential but minimal funds towards the running of IACA. There may be consequential but minimal financial implications in terms of participation in the Assembly of parties, usually held annually or biennially.

## 8. Ministerial responsibility

Under the current Presidential Circular on the **Organization of the Government of the Republic of Kenya**, (Executive Order (No. 1 of 2016, May, 2016), the State Law Office and Department of Justice, which has the status, powers and functions of a ministry, has been assigned ministerial responsibility over anti-corruption strategies, integrity and ethics. As such, the Attorney General will oversee the implementation of the Agreement, in accordance with the provisions of Article 132(5) of the Constitution, and in liaison with the Registrar of Treaties as per the provisions of Section 12(4) (b) of the Agreement Making and Ratification of Treaties Act, 20102. Where necessary consultations will be held with the Ministry of Foreign Affairs, and other key stakeholders, such as Parliament.

The State Law Office and Department of Justice, through its Department of Justice (DOJ), will create the necessary awareness on the benefits of the treaty, as required under Section 15(3) of the Act, and facilitate the necessary reporting, through the AG, and the Cabinet Secretary for Foreign Affairs as provided for under Section 16 of the Act.

## 9. Implications on matters relating to counties

The ratification of the Agreement will have no implication on matters relating to counties. The subject matter of the Agreement is corruption, criminal law matter, which under Part 1 of the Fourth Schedule to the Constitution falls within the domain of the National Government. Further, ratification of Agreement is a foreign affairs and policy issue, which falls under the mandate of the National Government. Thus, the ratification of the Agreement will not have any implications on matters relating to counties.

Nonetheless, in line with the Governments' agenda of fighting corruption and promoting good governance and ethical leadership in the two levels of Government (national and county, the State Law Office and Department of Justice will endeavor to create the



necessary awareness, through the council of Governors, about IACA training programmes and opportunities.

#### 10. Summary of the process leading to the adoption of the Agreement

IACA has received recognition within the UN and also Conference of States Parties to UNCAC. For instance, the UN General Assembly (UNGA), through Resolution 2009/22 of 14<sup>th</sup> December, 2009 and the Conference of State Parties (COSP) to the UNCAC held at Doha, Qatar 9-13 November, 2009, through Resolution 3/4, approved the establishment of IACA. IACA's establishment was the result of collaboration between the Government of Austria and the UN Office on Drugs and Crime (UNODC), INTERPOL and the European Anti-Fraud Office. IACA is currently based in Luxembourg, near Vienna, Austria.

Between June and September, 2010, some correspondence was exchanged and consultations held between Austrian/IACA representatives and Kenyan institutions, such as:- the Embassy of Kenya (Vienna); the Ministry of Foreign Affairs; the former Ministry of Justice, National Cohesion and Constitutional Affairs (MOJNCCA); the Kenya Anti-corruption Commission; the Judiciary; State Law Office and Department of Justice. From those consultations, the Government of Kenya noted that there were potential benefits to be gained from the membership of IACA, more so for Kenya which had committed itself to implementation of UNCAC and other anti-corruption instruments. Consequently, Kenya agreed to become a signatory.

To highlight the importance of IACA in the fight against corruption generally and especially UNCAC implementation, the Faculty of IACA, UNODC, the Austrian Government and other stakeholders organized a High Level Founders Conference in Hofburg, Vienna, 2-3 September, 2010. The delegates were also conducted on a tour of the IACA campus in Luxembourg, Austria. The conference was officially opened by the Secretary General of the United Nations, H.E. Bank Ki Moon.

During the High Level Segment of the Conference held on September, 2010, 36 states and organizations (including Kenya), signed the Agreement. The then Minister of Justice National Cohesion and Constitutional Affairs (the late Hon. Mutula Kilonzo, EGH, SC, MP) signed the Agreement on behalf of Kenya, pursuant to the full powers granted to him by the then Minister for Foreign Affairs (Hon. Moses Wetangula, EGH, MP) on 27<sup>th</sup> August, 2010. This made Kenya become one of the Founder Members of IACA.

The Agreement came into force on 8<sup>th</sup> March, 2011. Consequently, IACA is now recognized as and has the status of, an international organization and enjoys observer status with the UN Social and Economic Council (ECOSOC), among other bodies. As of

16<sup>th</sup> March, 2016, the Agreement had 67 parties and 53 signatories. A list of the current parties and signatories can be accessed through: <http://www.iaca.int/constituency/psarties-signatories>.

On 24<sup>th</sup> July, 2012, the Ministry of Foreign Affairs vide their letter Ref. MFA.TCA 12/54 of July, 2012 proposed to the Ministry of Justice to consider initiating a process for Kenya's ratification of the Agreement. In a follow-up letter to the Ministry of Justice, Ref. MFA.TCA 12/54 of 29<sup>th</sup> August, 2012, the Ministry of Foreign Affairs reiterated the need for Kenya to accede to the IACA instrument and also participate in the 1<sup>st</sup> Assembly of IACA states parties, which was to be held in Vienna, Austria on 29<sup>th</sup> -30<sup>th</sup> November, 2012. Subsequently, the Ministry of Foreign Affairs, vide its letter Ref. MFA.TCA 12/54 of 20<sup>th</sup> August, 2013 and Ref. MFA. TCA 12/54 Vol. VI (76) OF 29<sup>th</sup> December 2015 requested the AG to facilitate the ratification of the IACA Agreement.

Between 2013 and 2016, there has been a lot of correspondence the AG's office and MFA over the matter. On 30<sup>th</sup> September, 2013, the AG wrote to MFA, vide his letter Ref. AG/CONF/19/102 Vol.1, forwarding a Cabinet Memo for ratification of the IACA Agreement. Although MFA eventually approved the Cabinet Memo, a need arose for an update Memo in order to take into consideration recent developments on IACA.

During the Second Cabinet Meeting of 2017 held on 6<sup>th</sup> April 2017, Cabinet considered and:

- a) approved Kenya's ratification of (accession to) the Agreement for the establishment of the International Anti-Corruption Academy as an international organization;
- b) directed the Attorney General to facilitate the submission of a Memorandum to Parliament;
- c) directed the State Law Office and Department of Justice and the Ministry of Foreign Affairs to make necessary arrangements for the preparation and deposit the instruments of ratification (accession) to the *Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization*; with the depository of the Agreement; and
- d) approved the appointment of the Ambassador of the Republic of Kenya to Austria to represent Kenya as a member of the Assembly of Parties, in accordance with the provision of Article V(2) of the Agreement.

## 11. The date of signature

Kenya became a signatory of the Agreement on 2<sup>nd</sup> September 2010, during the IACA High Level Founders Conference, held in Vienna, 2<sup>nd</sup> -3<sup>rd</sup> September, 2010. The then Minister for Justice, National Cohesion and Constitutional Affairs signed the Agreement



on behalf of Kenya. Pursuant to the full powers granted to him by the Minister for Foreign Affairs on 27<sup>th</sup> August, 2010.

## 12. The number of states that are party to the Agreement

As of 16<sup>th</sup> March, 2016, the Agreement had 67 parties and 53 signatories. A list of the signatories can be accessed through: <https://www.iaca.int/constituncy/parties-signatories.html> (accessed on 25<sup>th</sup> July, 2016).

## 13. The views of the public on the ratification of the treaty

The former Minister for Justice, National Cohesion and Constitutional Affairs informed the members of the public about Kenya's signing and intended ratification of the Agreement, through a Press Release issued in Nairobi on 9<sup>th</sup> September, 2010. More information on the Press Release may be obtained from The Standard edition of 9<sup>th</sup> September, 2010 or through: <http://www.standardmedia.co.ke/?articleD=200001794&storytitle=Kenya-signs-deal-to-join-anti-corruption-academy>.

So far, there has been no objection to the ratification of the Agreement. All the key stakeholders in the fight against corruption at the time were consulted over the signing of the Agreement and formed part of the Government delegation to the High Level Founders Conference held in Vienna, 2<sup>nd</sup> – 3<sup>rd</sup> September, 2010. Some of the institutions involved were:- MOJNCCA; the Kenya Anti-corruption Commission (precursor to the Ethics and Anti-Corruption Commission); the Office of the Director of Public Prosecutions; the State Law Office; the Judiciary and the Ministry of Foreign Affairs.

Additionally, the Strategic Plan (2013-2017) of the Office of the Attorney General and Department of Justice (which in May, 2016 became the State Law Office and Department of Justice) had provided for the ratification (accession) of the IACA Agreement. The development of the Strategic Plan involved many stakeholders, who agreed with that proposal, among others.

It is also noteworthy that, the Report of the Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya, which was presented to H. E. the President by the Attorney General on 17<sup>th</sup> November, 2015, has also recommended, among other things, Kenya's accession to the IACA Agreement. The development of the report involved many stakeholders' consultations, including civil society, which endorsed the recommendation that Kenya accedes to the IACA Agreement.

14. Whether the Agreement permits reservations and any recommendations on reservations and declaration

The Agreement does not have any express provisions on reservations. However, in practice parties do enter reservation to the Agreement, in accordance with the provisions of Article 20(3) of the Vienna Convention on the Law of Treaties. For instance, Israel and China have made reservations to the provisions of article XIX of the Agreement (on Settlement of Disputes). There is no justification for Kenya to make such a reservation to the Agreement.

15. The proposed text of any reservation

There are no proposed reservations to the Agreement.

16. Whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible of the expenditure

Unless Kenya chooses to make voluntary contributions to IACA, as envisaged under Article XI of the Agreement, there will be no direct expenditure of public funds on IACA. However, there may be indirect costs relating to participation in the IACA Assembly of Parties and the training of public officers at IACA, if Kenya decides to participate in the same. It is expected that the concerned ministries will budget for such matters.



**AGREEMENT FOR THE ESTABLISHMENT  
OF  
THE INTERNATIONAL ANTI-CORRUPTION ACADEMY  
AS AN INTERNATIONAL ORGANIZATION**

AGREEMENT FOR THE ESTABLISHMENT  
OF  
THE INTERNATIONAL ANTI-CORRUPTION ACADEMY  
AS AN INTERNATIONAL ORGANIZATION

THE PARTIES,

NOTING the important contributions in the fight against corruption of the United Nations Office on Drugs and Crime (UNODC), as the guardian of the United Nations Convention against Corruption (UNCAC);

ACKNOWLEDGING the preparations made at the international level and in particular the substantial efforts of the Republic of Austria in close cooperation with UNODC as well as of the other founding Parties in establishing the International Anti-Corruption Academy, IACA, (hereinafter referred to as "the Academy") and their strong support for the Academy;

NOTING the long-standing efforts and the continued support of the International Criminal Police Organization (INTERPOL) to design and develop initiatives to prevent and fight corruption worldwide;

NOTING the considerable support of the European Anti-Fraud Office (OLAF) and other participants in this common endeavor;

EMPHASIZING the global and inclusive nature of this initiative and the importance of striving for geographical diversity;

RECOGNIZING the importance of collaboration in joint efforts at the global and regional levels in support of UNCAC and other relevant international instruments;

SHARING common goals with regard to the delivery of technical assistance and capacity building as key instruments in the fight against corruption;

NOTING that anti-corruption education, professional training and research are important components of such assistance and capacity building;

WISHING to enhance their common goals by the establishment of the Academy on the basis of a multilateral agreement open to Member States of the United Nations and intergovernmental organizations (hereinafter referred to as "International Organizations") and inviting them to join forces and to become Parties to this Agreement;

RESPONDING to the invitation of the Republic of Austria to host the Academy in Laxenburg near Vienna;

HAVE AGREED as follows:

## ARTICLE I

### Establishment and Status

1. There is hereby established the Academy as an International Organization.
2. The Academy shall possess full international legal personality.
3. The Academy shall *inter alia* have the legal capacity:

- (a) to contract;
  - (b) to acquire and dispose of immovable and movable property;
  - (c) to institute and respond to legal proceedings;
  - (d) to take such other action as may be necessary for the fulfillment of its purpose and activities.
4. The Academy shall operate in accordance with this Agreement.

## ARTICLE II

### Purpose and Activities

1. The purpose of the Academy shall be to promote effective and efficient prevention and combating of corruption by
- (a) providing anti-corruption education and professional training;
  - (b) undertaking and facilitating research into all aspects of corruption;
  - (c) providing other relevant forms of technical assistance in the fight against corruption;
  - (d) fostering international cooperation and networking in the fight against corruption.
2. The activities of the Academy shall observe the principle of academic freedom, meet highest academic and professional standards and address the phenomenon of corruption in a comprehensive and inter-disciplinary way, taking due account of cultural diversity, gender equality and recent developments in the field of corruption at the global and regional levels.



### ARTICLE III

#### Seat

1. The seat of the Academy shall be located in Laxenburg, Austria, under such terms and conditions as agreed between the Academy and the Republic of Austria.
2. The Academy may establish facilities in other locations as required to support its activities.

### ARTICLE IV

#### Organs

The Academy shall have

- (a) an Assembly of Parties, hereinafter referred to as "the Assembly";
- (b) a Board of Governors, hereinafter referred to as "the Board";
- (c) an International Senior Advisory Board;
- (d) an International Academic Advisory Board;
- (e) a Dean.

### ARTICLE V

#### Assembly of Parties

1. The Assembly shall serve as a forum for the Parties to this Agreement to consult on the overall policy of the Academy and on other matters of interest under this Agreement.
2. The Assembly shall consist of representatives of the Parties. Each Party shall appoint a representative to act as a member of the Assembly. Each member of the Assembly shall have one vote.

3. In particular, the Assembly shall:
- (a) Adopt recommendations relating to the Academy's policies and management for consideration by the Board;
  - (b) Adopt the work programme and budget of the Academy as proposed by the Board;
  - (c) Engage in fund-raising activities for the Academy in accordance with Article XI;
  - (d) Elect the members of the Board in accordance with Article VI;
  - (e) Decide on the removal of members of the Board by a two-thirds majority;
  - (f) Review the progress of activities of the Academy on the basis of, *inter alia*, reports by the Board;
  - (g) Approve international agreements;
  - (h) Approve the establishment of facilities in other locations.
4. The Assembly shall meet at least once a year and shall take its decisions by simple majority unless otherwise provided by this Agreement. The Assembly shall adopt its rules of procedure and shall elect its officers, including its President and two Vice-Presidents. The members of the Board and the Dean may participate in the meetings of the Assembly without the right to vote.

## ARTICLE VI

### Board of Governors

1. The Academy shall be governed by a Board consisting of eleven members in total. Nine members shall be elected by the Assembly taking due account of their qualifications and experience as well as the principle of equitable geographical distribution. In addition, UNODC

- (k) Adopt strategies and guidelines for ensuring the financial resources of the Academy and assist the Dean's efforts to that effect;
- (l) Determine the conditions of admission of participants in the Academy's academic activities;
- (m) Approve the establishment of cooperative relationships in accordance with Article XIII;
- (n) Submit international agreements to the Assembly for approval;
- (o) Evaluate the activities of the Academy on the basis of reports by the Dean and make recommendations concerning these activities.

3. The Board shall meet at least once a year at the seat of the Academy and shall take its decisions by simple majority unless otherwise provided by this Agreement. Each member shall have one vote. The Board shall adopt its rules of procedure, shall elect its officers, including its Chairperson and Vice-Chairperson, and may establish committees as deemed necessary for the efficient functioning of the Academy.

## ARTICLE VII

### International Senior Advisory Board

1. The Board shall be advised by an International Senior Advisory Board (ISAB) consisting of up to fifteen members who shall be eminent personalities with outstanding credentials from a wide variety of backgrounds of importance for the activities of the Academy.
2. The function of the International Senior Advisory Board shall be to reflect on the activities of the Academy and to offer observations and advice on how the highest standards with regard to the purpose of the Academy can be met and maintained.

and the Republic of Austria are each entitled to appoint one member. The members of the Board shall serve in their individual capacity for a term of six years and shall be eligible for re-election/re-appointment for not more than one additional term. At the first election five members shall be elected for a period of only three years.

2. In particular, the Board shall:

- (a) Decide on the strategy, policies and guidelines for the activities of the Academy;
- (b) Adopt the rules governing the operation of the Academy, including financial regulations and staff rules;
- (c) Appoint the Dean for a renewable period of four years, evaluate his or her activities and terminate, if necessary, the appointment of the Dean;
- (d) Establish, where appropriate, advisory boards and elect their members;
- (e) Elect the members of the International Senior Advisory Board and the International Academic Advisory Board, taking due account of their professional qualifications and experience, the principle of equitable geographical distribution as well as gender equality;
- (f) Submit the work programme and budget of the Academy to the Assembly for adoption;
- (g) Appoint the independent external auditor;
- (h) Approve the annual audited statement of the Academy's accounts;
- (i) Report to the Assembly on the progress of the activities of the Academy;
- (j) Consider the recommendations of the Assembly relating to the Academy's policies and management;



3. The members of the International Senior Advisory Board shall serve in their individual capacity for a term of six years and shall be eligible for re-election. At the first election seven members shall be elected for a period of only three years.

4. The International Senior Advisory Board shall meet at least once a year and shall take its decisions by simple majority. Each member shall have one vote. The International Senior Advisory Board shall adopt its rules of procedure and shall elect its officers, including its Chairperson and Vice-Chairperson.

5. The International Senior Advisory Board may recommend to the Board persons who fulfil the criteria of paragraph 1 for election to the International Senior Advisory Board.

## ARTICLE VIII

### International Academic Advisory Board

1. The Board shall be advised in matters related to education, training and research by an International Academic Advisory Board (IAAB) consisting of up to fifteen members who shall be eminent academic personalities or experts of highest qualifications in the fields of anti-corruption practice, training and research and/or criminal justice and law enforcement related to anti-corruption as well as other fields of importance for the activities of the Academy.

2. The members of the International Academic Advisory Board shall serve in their individual capacity for a term of six years and shall be eligible for re-election. At the first election seven members shall be elected for a period of only three years.

3. The International Academic Advisory Board shall meet at least once a year and shall take its decisions by simple majority. Each member shall have one vote. The Academic Advisory

Board shall adopt its rules of procedure and shall elect its officers, including its Chairperson and Vice-Chairperson.

4. The International Academic Advisory Board may recommend to the Board persons who fulfil the criteria of paragraph 1 for election to the International Academic Advisory Board.

## ARTICLE IX

### Dean

1. The Dean shall be responsible for day-to-day management of the Academy and its substantive programme. The Dean shall report to and be accountable to the Board.
2. In particular, the Dean shall:
  - (a) Represent the Academy externally;
  - (b) Ensure the proper administration of the Academy, including human resources and financial management;
  - (c) Prepare the work programme and budget of the Academy for consideration by the Board and adoption by the Assembly. The work programme shall include research priorities, training activities, curricula and tool development;
  - (d) Implement the work programme and budget;
  - (e) Submit to the Board annual and ad hoc reports on the activities of the Academy including an annual audited statement of the Academy's accounts;
  - (f) Propose the establishment of cooperative relationships in accordance with Article XIII for approval by the Board;
  - (g) Coordinate the work of the Academy with the work of the Parties to this Agreement and other international and national institutions, agencies and networks as relevant

taking into account the relevant recommendations and guidelines of the Assembly and the Board as well as advice from the International Senior Advisory Board and the International Academic Advisory Board;

- (h) Enter into contracts and arrangements on behalf of the Academy and negotiate international agreements for consideration by the Board and approval by the Assembly;
- (i) Actively seek appropriate funding for the Academy and accept voluntary contributions on behalf of the Academy in accordance with the relevant Board strategies and guidelines as well as the financial regulations;
- (j) Undertake other assignments or activities as may be determined by the Board.

## ARTICLE X

### Academic and Administrative Staff

1. The Academy shall strive to recruit and retain academic and administrative staff with the highest possible qualifications.
2. In order to maximize efficiency and cost-effectiveness, the Academy shall develop a plan and conclude appropriate arrangements for part-time or visiting academic staff and shall encourage States, International Organizations, universities and other relevant institutions to consider supporting the staffing of the Academy, including by secondment of staff.

## ARTICLE XI

### Financing of the Academy

1. Notwithstanding the long-term goal to make the Academy self-sustainable, the resources of the Academy include the following:
  - (a) voluntary contributions by the Parties to this Agreement;
  - (b) voluntary contributions from the private sector and other donors;
  - (c) tuition fees, training workshop and technical assistance fees, publication and other service revenue;
  - (d) income accruing from such contributions, fees, revenue and other income including from trusts and endowments.
2. The fiscal year of the Academy shall be from 1 January to 31 December.
3. The accounts of the Academy shall, in accordance with the financial regulations adopted by the Board in accordance with Article VI paragraph 2 subparagraph b, be subject to an annual independent external audit which shall meet the highest standards of transparency, accountability and legitimacy.
4. The Parties to this Agreement are encouraged to engage in fund-raising activities for the Academy, including through organizing joint donor conferences.

## ARTICLE XII

### Consultation and Exchange of Information

1. The Parties to this Agreement shall keep each other informed of and consult on matters of interest concerning their cooperation under this Agreement, either at meetings of the Assembly or at other times as appropriate.



2. Consultation and exchange of information and documents under this Article shall be done in accordance with each Party's applicable rules concerning disclosure of information and subject to arrangements, which the Parties may decide to conclude for the purposes of safeguarding the confidentiality, restricted character and security of the information exchanged. Any such arrangements shall continue to apply even after the termination of this Agreement and, with regard to a particular Party, even after that Party's withdrawal from this Agreement.

### ARTICLE XIII

#### Cooperative Relationships

The Academy may establish cooperative relationships with States, other International Organizations as well as public or private entities which can contribute to the Academy's work.

### ARTICLE XIV

#### Privileges and Immunities

1. The Academy, the members of the Assembly, the members of the Board, the members of the International Senior Advisory Board and of the International Academic Advisory Board, the Dean, the staff and experts shall enjoy such privileges and immunities as agreed between the Academy and the Republic of Austria.

2. The Academy may conclude agreements with other States in order to secure appropriate privileges and immunities.

## **ARTICLE XV**

### **Liability**

The Parties to this Agreement shall not be responsible, individually or collectively, for any debts, liabilities, or other obligations of the Academy; a statement to this effect shall be included in each of the agreements concluded by the Academy under Article XIV.

## **ARTICLE XVI**

### **Amendments**

This Agreement may be amended only with the consent of all Parties to this Agreement. Notification of such consent shall be made in writing to the Depository. Any amendment shall come into force upon receipt by the Depository of the notification of all Parties to this Agreement, or at such other date as the Parties may agree.

## **ARTICLE XVII**

### **Transitional Provisions**

1. The Parties acknowledge the transitional arrangements for the establishment and initial operations of the Academy contained in the Memorandum concerning the Establishment of the International Anti-Corruption Academy in Laxenburg, Austria of 29 January 2010 and agree to respect them until the decision-making organs of the Academy are fully operational.
2. Any decision affecting obligations entered into for the purposes of the establishment and initial operations of the Academy or creating liability for the Partners (UNODC, the Association "Friends of the Academy" or the Republic of Austria) may only be taken unanimously by the Board.

## ARTICLE XVIII

### Entry into Force and Depositary

1. This Agreement shall be open for signature by Member States of the United Nations (hereinafter referred to as "States") and intergovernmental organizations (hereinafter referred to as "International Organizations") until 31 December 2010. It shall be subject to ratification, acceptance or approval.
2. States and International Organizations which have not signed this Agreement may subsequently accede thereto.
3. This Agreement shall enter into force sixty days after the date of deposit of the instruments of ratification, acceptance, approval or accession by three States or International Organizations.
4. For every State or International Organization which ratifies, accepts, approves or accedes to this Agreement after the date of its entry into force, this Agreement shall enter into force sixty days after the date of deposit of its instrument of ratification, acceptance, approval or accession.
5. The Federal Minister for European and International Affairs of the Republic of Austria shall be the Depositary of this Agreement.

## ARTICLE XIX

### Settlement of Disputes

Any dispute arising between the Academy and any Party to this Agreement or between any Parties under this Agreement concerning the interpretation or application of this Agreement or of any supplementary agreement or any question affecting the Academy or the relations of the

Parties which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators: one to be chosen by each party to the dispute, and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should either party to the dispute not have chosen its arbitrator within six months following the appointment by the other party of its arbitrator or should the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, such second or third arbitrator shall be chosen by the President of the International Court of Justice at the request of either party to the dispute.

## **ARTICLE XX**

### **Withdrawal**

1. Any of the Parties to this Agreement may withdraw from this Agreement by written notification to the Depository. Such withdrawal shall become effective three months after receipt of such notification by the Depository.
2. Withdrawal from this Agreement by a Party to this Agreement shall not limit, reduce or otherwise affect its contribution, if any that has been made before the effective date of withdrawal.

## **ARTICLE XXI**

### **Termination**

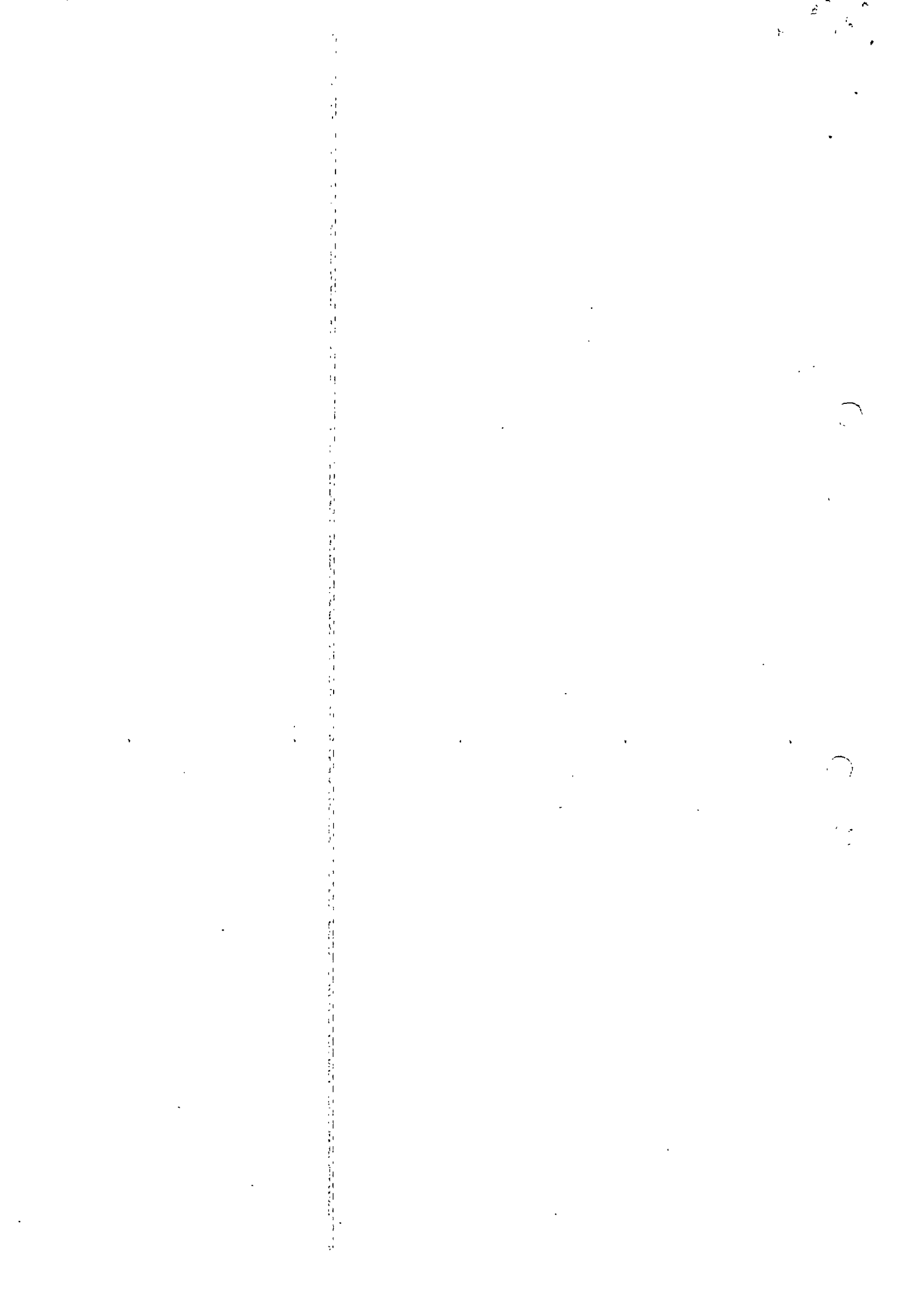
1. The Parties to this Agreement, acting unanimously, may terminate this Agreement at any time and wind up the Academy by written notification to the Depository. Any assets of the



Academy remaining after payment of its legal obligations shall be disposed of in accordance with a unanimous decision of the Assembly.

2. The provisions of this Agreement shall continue to be applicable after its termination to the extent necessary to permit an orderly disposal of assets and settlement of accounts.

Done at Vienna on 2 September 2010 in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.



## APPENDIX 1

### MEMORANDUM ON THE IMPLICATIONS OF THE RATIFICATION OF THE AGREEMENT

#### 1. Objectives and subject matter of the Agreement

The subject matter of the Agreement is the establishment of the International Anti-Corruption Academy (IACA) as an international organization to facilitate the provision of anti-corruption training programmes to member states and other interested parties<sup>1</sup>. This would give IACA the necessary immunities, privileges and recognition among state parties and other international organizations.

The objects of the Agreement are set out under Article II(1) of the Agreement, which provides that, the purpose of the Academy shall be to promote effective and efficient prevention and combating of corruption by:-

- a) providing anticorruption education and professional training;
- b) undertaking and facilitating research into all aspects of corruption;
- c) providing all other relevant forms of technical assistance in the fight against corruption; and
- d) fostering international cooperation and networking in the fight against corruption.

#### 2. Constitutional implications

The ratification of the Agreement will not offend any provision or principle of the Constitution of Kenya. Indeed, the Agreement is consistent with the Constitution and promotes its values and objectives, especially with regard to Article 10 (National values and principles of good governance): Article 232 (Values and principles of public service), and Chapter Six (Leadership and Integrity). In effect, the ratification of the Agreement will facilitate the actualization of the integrity provisions provided for under the Constitution and various anti-corruption, ethics and integrity laws and policies.

#### 3. National interests

The ratification of the Agreement will not adversely affect Kenya's national interests as it is in line with the provisions and aspirations of the Constitution of Kenya, and Vision 2030.

---

<sup>1</sup> For a copy of the IACA Agreement and more background information on IACA, see: <https://www.iaca.int>.

#### 4. Obligations imposed on Kenya by the Agreement

- a) **Financing of IACA:** Under Article XI(1)(a) of the Agreement, a party to the Agreement may make voluntary contributions to IACA. This means that it is optional for a party to contribute funds to the Academy.
- b) **Consultations and Exchange of Information:** Article XII(1) of the Agreement provides that, "Parties to this Agreement shall keep each other informed of and consult on matters of interests concerning their cooperation under this Agreement, either at meetings of the Assembly or at other times as appropriate. Article XII (2) of the Agreement provides that, the consultation and exchange of information shall be done in accordance with each Party's applicable rules concerning disclosure of information and subjects to arrangements which parties may conclude for purposes of safeguarding the confidentiality, restricted character and security of information exchanged. Those arrangements remain binding on a party, even after the termination of the Agreement or withdrawal of a party from the treaty.
- c) **Liability:** Kenya's membership of IACA will not attract any form of liability. Article XV of the Agreement provides that, "The parties to the Agreement shall not be responsible, individually or collectively, for any debts, liabilities, or other obligations of the Academy".
- d) **Settlement of dispute:** Any dispute between IACA and a party or between parties under the Agreement shall be resolved through arbitration, as per the provisions of Article XIX of the Agreement.

#### 5. Requirements for the implementation of the Agreement

Regarding the implementation of the Agreement, a party may make voluntary contributions to IACA (Article XI), and shall consult and exchange information with other parties on matters concerning their cooperation under the Agreement, subject to their domestic laws (Article XII). IACA may also conclude Agreements with parties or other states to secure appropriate privileges and immunities (Article XIV).

#### 6. Policy and legislative considerations

The ratification of the Agreement will not contravene any policy or law or necessitate the amendment of existing policies or laws.



## 7. Financial implications

Contributions towards the running of the activities of IACA are optional, as per Article XI of the Agreement. Thus, Kenya may opt to contribute or not, towards such programmes. However, in order for the country to reap maximum benefits out of its membership of the Agreement, Kenya would be encouraged to contribute some funds towards the running of IACA. There may be consequential but minimal funds towards the running of IACA. There may be consequential but minimal financial implications in terms of participation in the Assembly of parties, usually held annually or biennially.

## 8. Ministerial responsibility

Under the current Presidential Circular on the **Organization of the Government of the Republic of Kenya**, (Executive Order (No. 1 of 2016, May, 2016), the State Law Office and Department of Justice, which has the status, powers and functions of a ministry, has been assigned ministerial responsibility over anti-corruption strategies, integrity and ethics. As such, the Attorney General will oversee the implementation of the Agreement, in accordance with the provisions of Article 132(5) of the Constitution, and in liaison with the Registrar of Treaties as per the provisions of Section 12(4) (b) of the Agreement Making and Ratification of Treaties Act, 20102. Where necessary consultations will be held with the Ministry of Foreign Affairs, and other key stakeholders, such as Parliament.

The State Law Office and Department of Justice, through its Department of Justice (DOJ), will create the necessary awareness on the benefits of the treaty, as required under Section 15(3) of the Act, and facilitate the necessary reporting, through the AG, and the Cabinet Secretary for Foreign Affairs as provided for under Section 16 of the Act.

## 9. Implications on matters relating to counties

The ratification of the Agreement will have no implication on matters relating to counties. The subject matter of the Agreement is corruption, criminal law matter, which under Part 1 of the Fourth Schedule to the Constitution falls within the domain of the National Government. Further, ratification of Agreement is a foreign affairs and policy issue, which falls under the mandate of the National Government. Thus, the ratification of the Agreement will not have any implications on matters relating to counties.

Nonetheless, in line with the Governments' agenda of fighting corruption and promoting good governance and ethical leadership in the two levels of Government (national and county, the State Law Office and Department of Justice will endeavor to create the

necessary awareness, through the council of Governors, about IACA training programmes and opportunities.

#### 10. Summary of the process leading to the adoption of the Agreement

IACA has received recognition within the UN and also Conference of States Parties to UNCAC. For instance, the UN General Assembly (UNGA), through Resolution 2009/22 of 14<sup>th</sup> December, 2009 and the Conference of State Parties (COSP) to the UNCAC held at Doha, Qatar 9-13 November, 2009, through Resolution 3/4, approved the establishment of IACA. IACA's establishment was the result of collaboration between the Government of Austria and the UN Office on Drugs and Crime (UNODC), INTERPOL and the European Anti-Fraud Office. IACA is currently based in Luxembourg, near Vienna, Austria.

Between June and September, 2010, some correspondence was exchanged and consultations held between Austrian/IACA representatives and Kenyan institutions, such as:- the Embassy of Kenya (Vienna); the Ministry of Foreign Affairs; the former Ministry of Justice, National Cohesion and Constitutional Affairs (MOJNCCA); the Kenya Anti-corruption Commission; the Judiciary; State Law Office and Department of Justice. From those consultations, the Government of Kenya noted that there were potential benefits to be gained from the membership of IACA, more so for Kenya which had committed itself to implementation of UNCAC and other anti-corruption instruments. Consequently, Kenya agreed to become a signatory.

To highlight the importance of IACA in the fight against corruption generally and especially UNCAC implementation, the Faculty of IACA, UNODC, the Austrian Government and other stakeholders organized a High Level Founders Conference in Hofburg, Vienna, 2-3 September, 2010. The delegates were also conducted on a tour of the IACA campus in Luxembourg, Austria. The conference was officially opened by the Secretary General of the United Nations, H.E. Bank Ki Moon.

During the High Level Segment of the Conference held on September, 2010, 36 states and organizations (including Kenya), signed the Agreement. The then Minister of Justice National Cohesion and Constitutional Affairs (the late Hon. Mutula Kilonzo, EGH, SC, MP) signed the Agreement on behalf of Kenya, pursuant to the full powers granted to him by the then Minister for Foreign Affairs (Hon. Moses Wetangula, EGH, MP) on 27<sup>th</sup> August, 2010. This made Kenya become one of the Founder Members of IACA.

The Agreement came into force on 8<sup>th</sup> March, 2011. Consequently, IACA is now recognized as and has the status of, an international organization and enjoys observer status with the UN Social and Economic Council (ECOSOC), among other bodies. As of



16<sup>th</sup> March, 2016, the Agreement had 67 parties and 53 signatories. A list of the current parties and signatories can be accessed through: <http://www.iaca.int/constituency/psparties-signatories>.

On 24<sup>th</sup> July, 2012, the Ministry of Foreign Affairs vide their letter Ref. MFA.TCA 12/54 of July, 2012 proposed to the Ministry of Justice to consider initiating a process for Kenya's ratification of the Agreement. In a follow-up letter to the Ministry of Justice, Ref. MFA.TCA 12/54 of 29<sup>th</sup> August, 2012, the Ministry of Foreign Affairs reiterated the need for Kenya to accede to the IACA instrument and also participate in the 1<sup>st</sup> Assembly of IACA states parties, which was to be held in Vienna, Austria on 29<sup>th</sup> -30<sup>th</sup> November, 2012. Subsequently, the Ministry of Foreign Affairs, vide its letter Ref. MFA.TCA 12/54 of 20<sup>th</sup> August, 2013 and Ref. MFA. TCA 12/54 Vol. VI (76) OF 29<sup>th</sup> December 2015 requested the AG to facilitate the ratification of the IACA Agreement.

Between 2013 and 2016, there has been a lot of correspondence the AG's office and MFA over the matter. On 30<sup>th</sup> September, 2013, the AG wrote to MFA, vide his letter Ref. AG/CONF/19/102 Vol.1, forwarding a Cabinet Memo for ratification of the IACA Agreement. Although MFA eventually approved the Cabinet Memo, a need arose for an update Memo in order to take into consideration recent developments on IACA.

During the Second Cabinet Meeting of 2017 held on 6<sup>th</sup> April 2017, Cabinet considered and:

- a) approved Kenya's ratification of (accession to) the Agreement for the establishment of the International Anti-Corruption Academy as an international organization;
- b) directed the Attorney General to facilitate the submission of a Memorandum to Parliament;
- c) directed the State Law Office and Department of Justice and the Ministry of Foreign Affairs to make necessary arrangements for the preparation and deposit the instruments of ratification (accession) to the *Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization*; with the depository of the Agreement; and
- d) approved the appointment of the Ambassador of the Republic of Kenya to Austria to represent Kenya as a member of the Assembly of Parties, in accordance with the provision of Article V(2) of the Agreement.

## 11. The date of signature

Kenya became a signatory of the Agreement on 2<sup>nd</sup> September 2010, during the IACA High Level Founders Conference, held in Vienna, 2<sup>nd</sup> -3<sup>rd</sup> September, 2010. The then Minister for Justice, National Cohesion and Constitutional Affairs signed the Agreement

on behalf of Kenya. Pursuant to the full powers granted to him by the Minister for Foreign Affairs on 27<sup>th</sup> August, 2010.

## 12. The number of states that are party to the Agreement

As of 16<sup>th</sup> March, 2016, the Agreement had 67 parties and 53 signatories. A list of the signatories can be accessed through: <https://www.iaca.int/constitucy/parties-signatories.html> (accessed on 25th July, 2016).

## 13. The views of the public on the ratification of the treaty

The former Minister for Justice, National Cohesion and Constitutional Affairs informed the members of the public about Kenya's signing and intended ratification of the Agreement, through a Press Release issued in Nairobi on 9<sup>th</sup> September, 2010. More information on the Press Release may be obtained from The Standard edition of 9<sup>th</sup> September, 2010 or through: <http://www.standardmedia.co.ke/?articleD=200001794&storytitle=Kenya-signs-deal-to-join-anti-corruption-academy>.

So far, there has been no objection to the ratification of the Agreement. All the key stakeholders in the fight against corruption at the time were consulted over the signing of the Agreement and formed part of the Government delegation to the High Level Founders Conference held in Vienna, 2<sup>nd</sup> – 3<sup>rd</sup> September, 2010. Some of the institutions involved were:- MOJNCCA; the Kenya Anti-corruption Commission (precursor to the Ethics and Anti-Corruption Commission); the Office of the Director of Public Prosecutions; the State Law Office; the Judiciary and the Ministry of Foreign Affairs.

Additionally, the Strategic Plan (2013-2017) of the Office of the Attorney General and Department of Justice (which in May, 2016 became the State Law Office and Department of Justice) had provided for the ratification (accession) of the IACA Agreement. The development of the Strategic Plan involved many stakeholders, who agreed with that proposal, among others.

It is also noteworthy that, the Report of the Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya, which was presented to H. E. the President by the Attorney General on 17<sup>th</sup> November, 2015, has also recommended, among other things, Kenya's accession to the IACA Agreement. The development of the report involved many stakeholders' consultations, including civil society, which endorsed the recommendation that Kenya accedes to the IACA Agreement.



**14. Whether the Agreement permits reservations and any recommendations on reservations and declaration**

The Agreement does not have any express provisions on reservations. However, in practice parties do enter reservation to the Agreement, in accordance with the provisions of Article 20(3) of the Vienna Convention on the Law of Treaties. For instance, Israel and China have made reservations to the provisions of article XIX of the Agreement (on Settlement of Disputes). There is no justification for Kenya to make such a reservation to the Agreement.

**15. The proposed text of any reservation**

There are no proposed reservations to the Agreement.

**16. Whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible of the expenditure**

Unless Kenya chooses to make voluntary contributions to IACA, as envisaged under Article XI of the Agreement, there will be no direct expenditure of public funds on IACA. However, there may be indirect costs relating to participation in the IACA Assembly of Parties and the training of public officers at IACA, if Kenya decides to participate in the same. It is expected that the concerned ministries will budget for such matters.

**AGREEMENT FOR THE ESTABLISHMENT  
OF  
THE INTERNATIONAL ANTI-CORRUPTION ACADEMY  
AS AN INTERNATIONAL ORGANIZATION**

AGREEMENT FOR THE ESTABLISHMENT  
OF  
THE INTERNATIONAL ANTI-CORRUPTION ACADEMY  
AS AN INTERNATIONAL ORGANIZATION

THE PARTIES,

NOTING the important contributions in the fight against corruption of the United Nations Office on Drugs and Crime (UNODC), as the guardian of the United Nations Convention against Corruption (UNCAC);

ACKNOWLEDGING the preparations made at the international level and in particular the substantial efforts of the Republic of Austria in close cooperation with UNODC as well as of the other founding Parties in establishing the International Anti-Corruption Academy, IACA, (hereinafter referred to as "the Academy") and their strong support for the Academy;

NOTING the long-standing efforts and the continued support of the International Criminal Police Organization (INTERPOL) to design and develop initiatives to prevent and fight corruption worldwide;

NOTING the considerable support of the European Anti-Fraud Office (OLAF) and other participants in this common endeavor;

EMPHASIZING the global and inclusive nature of this initiative and the importance of striving for geographical diversity;

RECOGNIZING the importance of collaboration in joint efforts at the global and regional levels in support of UNCAC and other relevant international instruments;

SHARING common goals with regard to the delivery of technical assistance and capacity building as key instruments in the fight against corruption;

NOTING that anti-corruption education, professional training and research are important components of such assistance and capacity building;

WISHING to enhance their common goals by the establishment of the Academy on the basis of a multilateral agreement open to Member States of the United Nations and intergovernmental organizations (hereinafter referred to as "International Organizations") and inviting them to join forces and to become Parties to this Agreement;

RESPONDING to the invitation of the Republic of Austria to host the Academy in Laxenburg near Vienna;

HAVE AGREED as follows:

## ARTICLE I

### Establishment and Status

1. There is hereby established the Academy as an International Organization.
2. The Academy shall possess full international legal personality.
3. The Academy shall *inter alia* have the legal capacity:



- (a) to contract;
  - (b) to acquire and dispose of immovable and movable property;
  - (c) to institute and respond to legal proceedings;
  - (d) to take such other action as may be necessary for the fulfillment of its purpose and activities.
4. The Academy shall operate in accordance with this Agreement.

## ARTICLE II

### Purpose and Activities

1. The purpose of the Academy shall be to promote effective and efficient prevention and combating of corruption by
- (a) providing anti-corruption education and professional training;
  - (b) undertaking and facilitating research into all aspects of corruption;
  - (c) providing other relevant forms of technical assistance in the fight against corruption;
  - (d) fostering international cooperation and networking in the fight against corruption.
2. The activities of the Academy shall observe the principle of academic freedom, meet highest academic and professional standards and address the phenomenon of corruption in a comprehensive and inter-disciplinary way, taking due account of cultural diversity, gender equality and recent developments in the field of corruption at the global and regional levels.

### ARTICLE III

#### Seat

1. The seat of the Academy shall be located in Laxenburg, Austria, under such terms and conditions as agreed between the Academy and the Republic of Austria.
2. The Academy may establish facilities in other locations as required to support its activities.

### ARTICLE IV

#### Organs

The Academy shall have

- (a) an Assembly of Parties, hereinafter referred to as "the Assembly";
- (b) a Board of Governors, hereinafter referred to as "the Board";
- (c) an International Senior Advisory Board;
- (d) an International Academic Advisory Board;
- (e) a Dean.

### ARTICLE V

#### Assembly of Parties

1. The Assembly shall serve as a forum for the Parties to this Agreement to consult on the overall policy of the Academy and on other matters of interest under this Agreement.
2. The Assembly shall consist of representatives of the Parties. Each Party shall appoint a representative to act as a member of the Assembly. Each member of the Assembly shall have one vote.

3. In particular, the Assembly shall:
- (a) Adopt recommendations relating to the Academy's policies and management for consideration by the Board;
  - (b) Adopt the work programme and budget of the Academy as proposed by the Board;
  - (c) Engage in fund-raising activities for the Academy in accordance with Article XI;
  - (d) Elect the members of the Board in accordance with Article VI;
  - (e) Decide on the removal of members of the Board by a two-thirds majority;
  - (f) Review the progress of activities of the Academy on the basis of, *inter alia*, reports by the Board;
  - (g) Approve international agreements;
  - (h) Approve the establishment of facilities in other locations.
4. The Assembly shall meet at least once a year and shall take its decisions by simple majority unless otherwise provided by this Agreement. The Assembly shall adopt its rules of procedure and shall elect its officers, including its President and two Vice-Presidents. The members of the Board and the Dean may participate in the meetings of the Assembly without the right to vote.

## ARTICLE VI

### Board of Governors

1. The Academy shall be governed by a Board consisting of eleven members in total. Nine members shall be elected by the Assembly taking due account of their qualifications and experience as well as the principle of equitable geographical distribution. In addition, UNODC

and the Republic of Austria are each entitled to appoint one member. The members of the Board shall serve in their individual capacity for a term of six years and shall be eligible for re-election/re-appointment for not more than one additional term. At the first election five members shall be elected for a period of only three years.

2. In particular, the Board shall:

- (a) Decide on the strategy, policies and guidelines for the activities of the Academy;
- (b) Adopt the rules governing the operation of the Academy, including financial regulations and staff rules;
- (c) Appoint the Dean for a renewable period of four years, evaluate his or her activities and terminate, if necessary, the appointment of the Dean;
- (d) Establish, where appropriate, advisory boards and elect their members;
- (e) Elect the members of the International Senior Advisory Board and the International Academic Advisory Board, taking due account of their professional qualifications and experience, the principle of equitable geographical distribution as well as gender equality;
- (f) Submit the work programme and budget of the Academy to the Assembly for adoption;
- (g) Appoint the independent external auditor;
- (h) Approve the annual audited statement of the Academy's accounts;
- (i) Report to the Assembly on the progress of the activities of the Academy;
- (j) Consider the recommendations of the Assembly relating to the Academy's policies and management;



- (k) Adopt strategies and guidelines for ensuring the financial resources of the Academy and assist the Dean's efforts to that effect;
  - (l) Determine the conditions of admission of participants in the Academy's academic activities;
  - (m) Approve the establishment of cooperative relationships in accordance with Article XIII;
  - (n) Submit international agreements to the Assembly for approval;
  - (o) Evaluate the activities of the Academy on the basis of reports by the Dean and make recommendations concerning these activities.
3. The Board shall meet at least once a year at the seat of the Academy and shall take its decisions by simple majority unless otherwise provided by this Agreement. Each member shall have one vote. The Board shall adopt its rules of procedure, shall elect its officers, including its Chairperson and Vice-Chairperson, and may establish committees as deemed necessary for the efficient functioning of the Academy.

## ARTICLE VII

### International Senior Advisory Board

1. The Board shall be advised by an International Senior Advisory Board (ISAB) consisting of up to fifteen members who shall be eminent personalities with outstanding credentials from a wide variety of backgrounds of importance for the activities of the Academy.
2. The function of the International Senior Advisory Board shall be to reflect on the activities of the Academy and to offer observations and advice on how the highest standards with regard to the purpose of the Academy can be met and maintained.

3. The members of the International Senior Advisory Board shall serve in their individual capacity for a term of six years and shall be eligible for re-election. At the first election seven members shall be elected for a period of only three years.

4. The International Senior Advisory Board shall meet at least once a year and shall take its decisions by simple majority. Each member shall have one vote. The International Senior Advisory Board shall adopt its rules of procedure and shall elect its officers, including its Chairperson and Vice-Chairperson.

5. The International Senior Advisory Board may recommend to the Board persons who fulfil the criteria of paragraph 1 for election to the International Senior Advisory Board.

#### ARTICLE VIII

##### International Academic Advisory Board

1. The Board shall be advised in matters related to education, training and research by an International Academic Advisory Board (IAAB) consisting of up to fifteen members who shall be eminent academic personalities or experts of highest qualifications in the fields of anti-corruption practice, training and research and/or criminal justice and law enforcement related to anti-corruption as well as other fields of importance for the activities of the Academy.

2. The members of the International Academic Advisory Board shall serve in their individual capacity for a term of six years and shall be eligible for re-election. At the first election seven members shall be elected for a period of only three years.

3. The International Academic Advisory Board shall meet at least once a year and shall take its decisions by simple majority. Each member shall have one vote. The Academic Advisory

Board shall adopt its rules of procedure and shall elect its officers, including its Chairperson and Vice-Chairperson.

4. The International Academic Advisory Board may recommend to the Board persons who fulfil the criteria of paragraph 1 for election to the International Academic Advisory Board.

## ARTICLE IX

### Dean

1. The Dean shall be responsible for day-to-day management of the Academy and its substantive programme. The Dean shall report to and be accountable to the Board.
2. In particular, the Dean shall:
  - (a) Represent the Academy externally;
  - (b) Ensure the proper administration of the Academy, including human resources and financial management;
  - (c) Prepare the work programme and budget of the Academy for consideration by the Board and adoption by the Assembly. The work programme shall include research priorities, training activities, curricula and tool development;
  - (d) Implement the work programme and budget;
  - (e) Submit to the Board annual and ad hoc reports on the activities of the Academy including an annual audited statement of the Academy's accounts;
  - (f) Propose the establishment of cooperative relationships in accordance with Article XIII for approval by the Board;
  - (g) Coordinate the work of the Academy with the work of the Parties to this Agreement and other international and national institutions, agencies and networks as relevant

taking into account the relevant recommendations and guidelines of the Assembly and the Board as well as advice from the International Senior Advisory Board and the International Academic Advisory Board;

- (h) Enter into contracts and arrangements on behalf of the Academy and negotiate international agreements for consideration by the Board and approval by the Assembly;
- (i) Actively seek appropriate funding for the Academy and accept voluntary contributions on behalf of the Academy in accordance with the relevant Board strategies and guidelines as well as the financial regulations;
- (j) Undertake other assignments or activities as may be determined by the Board.

## ARTICLE X

### Academic and Administrative Staff

1. The Academy shall strive to recruit and retain academic and administrative staff with the highest possible qualifications.
2. In order to maximize efficiency and cost-effectiveness, the Academy shall develop a plan and conclude appropriate arrangements for part-time or visiting academic staff and shall encourage States, International Organizations, universities and other relevant institutions to consider supporting the staffing of the Academy, including by secondment of staff.



## **ARTICLE XI**

### **Financing of the Academy**

1. Notwithstanding the long-term goal to make the Academy self-sustainable, the resources of the Academy include the following:
  - (a) voluntary contributions by the Parties to this Agreement;
  - (b) voluntary contributions from the private sector and other donors;
  - (c) tuition fees, training workshop and technical assistance fees, publication and other service revenue;
  - (d) income accruing from such contributions, fees, revenue and other income including from trusts and endowments.
2. The fiscal year of the Academy shall be from 1 January to 31 December.
3. The accounts of the Academy shall, in accordance with the financial regulations adopted by the Board in accordance with Article VI paragraph 2 subparagraph b, be subject to an annual independent external audit which shall meet the highest standards of transparency, accountability and legitimacy.
4. The Parties to this Agreement are encouraged to engage in fund-raising activities for the Academy, including through organizing joint donor conferences.

## **ARTICLE XII**

### **Consultation and Exchange of Information**

1. The Parties to this Agreement shall keep each other informed of and consult on matters of interest concerning their cooperation under this Agreement, either at meetings of the Assembly or at other times as appropriate.

2. Consultation and exchange of information and documents under this Article shall be done in accordance with each Party's applicable rules concerning disclosure of information and subject to arrangements, which the Parties may decide to conclude for the purposes of safeguarding the confidentiality, restricted character and security of the information exchanged. Any such arrangements shall continue to apply even after the termination of this Agreement and, with regard to a particular Party, even after that Party's withdrawal from this Agreement.

### **ARTICLE XIII**

#### **Cooperative Relationships**

The Academy may establish cooperative relationships with States, other International Organizations as well as public or private entities which can contribute to the Academy's work.

### **ARTICLE XIV**

#### **Privileges and Immunities**

1. The Academy, the members of the Assembly, the members of the Board, the members of the International Senior Advisory Board and of the International Academic Advisory Board, the Dean, the staff and experts shall enjoy such privileges and immunities as agreed between the Academy and the Republic of Austria.

2. The Academy may conclude agreements with other States in order to secure appropriate privileges and immunities.

## **ARTICLE XV**

### **Liability**

The Parties to this Agreement shall not be responsible, individually or collectively, for any debts, liabilities, or other obligations of the Academy; a statement to this effect shall be included in each of the agreements concluded by the Academy under Article XIV.

## **ARTICLE XVI**

### **Amendments**

This Agreement may be amended only with the consent of all Parties to this Agreement. Notification of such consent shall be made in writing to the Depositary. Any amendment shall come into force upon receipt by the Depositary of the notification of all Parties to this Agreement, or at such other date as the Parties may agree.

## **ARTICLE XVII**

### **Transitional Provisions**

1. The Parties acknowledge the transitional arrangements for the establishment and initial operations of the Academy contained in the Memorandum concerning the Establishment of the International Anti-Corruption Academy in Laxenburg, Austria of 29 January 2010 and agree to respect them until the decision-making organs of the Academy are fully operational.
2. Any decision affecting obligations entered into for the purposes of the establishment and initial operations of the Academy or creating liability for the Partners (UNODC, the Association "Friends of the Academy" or the Republic of Austria) may only be taken unanimously by the Board.

## ARTICLE XVIII

### Entry into Force and Depositary

1. This Agreement shall be open for signature by Member States of the United Nations (hereinafter referred to as "States") and intergovernmental organizations (hereinafter referred to as "International Organizations") until 31 December 2010. It shall be subject to ratification, acceptance or approval.
2. States and International Organizations which have not signed this Agreement may subsequently accede thereto.
3. This Agreement shall enter into force sixty days after the date of deposit of the instruments of ratification, acceptance, approval or accession by three States or International Organizations.
4. For every State or International Organization which ratifies, accepts, approves or accedes to this Agreement after the date of its entry into force, this Agreement shall enter into force sixty days after the date of deposit of its instrument of ratification, acceptance, approval or accession.
5. The Federal Minister for European and International Affairs of the Republic of Austria shall be the Depositary of this Agreement.

## ARTICLE XIX

### Settlement of Disputes

Any dispute arising between the Academy and any Party to this Agreement or between any Parties under this Agreement concerning the interpretation or application of this Agreement or of any supplementary agreement or any question affecting the Academy or the relations of the



Parties which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators: one to be chosen by each party to the dispute, and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should either party to the dispute not have chosen its arbitrator within six months following the appointment by the other party of its arbitrator or should the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, such second or third arbitrator shall be chosen by the President of the International Court of Justice at the request of either party to the dispute.

## **ARTICLE XX**

### **Withdrawal**

1. Any of the Parties to this Agreement may withdraw from this Agreement by written notification to the Depository. Such withdrawal shall become effective three months after receipt of such notification by the Depository.
2. Withdrawal from this Agreement by a Party to this Agreement shall not limit, reduce or otherwise affect its contribution, if any that has been made before the effective date of withdrawal.

## **ARTICLE XXI**

### **Termination**

1. The Parties to this Agreement, acting unanimously, may terminate this Agreement at any time and wind up the Academy by written notification to the Depository. Any assets of the

Academy remaining after payment of its legal obligations shall be disposed of in accordance with a unanimous decision of the Assembly.

2. The provisions of this Agreement shall continue to be applicable after its termination to the extent necessary to permit an orderly disposal of assets and settlement of accounts.

Done at Vienna on 2 September 2010 in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

100

100

100