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Hon. ~~Aden Di~~
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THE NATIONAL ASSEMBLY

REPORT OF
THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS
ON
THE CONSIDERATION AND RATIFICATION OF THE AFRICAN CONTINENTAL
FREE TRADE AREA (AFCFTA) AND COMESA-EAC-SADC TRIPARTITE FREE
TRADE AREA (TFTA) AGREEMENTS

Directorate of Committee Services,
Clerk's Chambers,
Parliament Buildings,
NAIROBI, APRIL, 2018

25TH APRIL, 2018

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LIST OF ABBREVIATIONS

AU	African Union
EC	Executive Council
UNSC	United Nations Security Council
WTO	World Trade Organization
SP	State Parties
MFA	Ministries of Foreign Affairs
BIAT	Boosting Intra-African Trade
REC's	Regional Economic Communities
HSAG	Head of State & Government
AMOT	African Minister of Trade
CBI	Cross Boarder Investment
COMESA	Common Market for Eastern & Southern Africa
EAC	East African Community
TB	Tariff Barrier
NTB	Non-Tariff Barrier
GDP	Gross Domestic Product
USD	United State Dollar

CHAIR'S FOREWORD

On 29th March, 2018 the Leader of the Majority Party in the National Assembly tabled on the floor of the House a Cabinet Memoranda on The Ratification of the following agreements

1. African Continental Free Trade Area (AfCFTA) Agreement pursuant to section 8 of the Treaty Making and Ratification Act, 2012;
2. Tripartite Free Trade Area (TFTA) Agreement pursuant to section 8 of the Treaty Making and Ratification Act, 2012

The Agreements concerning intra-regional trade and intra-African trade through the establishment of a larger market, with a single economic space and to address the challenges of multiple memberships within trade blocs were subsequently committed to the Departmental Committee on Defence and Foreign Relations for consideration and report to the House.

Once ratified, the Agreements shall become part of our Kenyan laws as provided for in Article 2(6) of the Constitution which provides that *“any treaty or convention ratified by Kenya shall form part of the Law of Kenya under this Constitution”*.

The Committee appreciates the assistance of the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings.

On behalf of the Committee, it is therefore my pleasant duty and privilege, to lay this report on The Ratification of the African Continental Free Trade Area (AfCFTA) and the Tripartite Free Trade Area (TFTA) Agreements for consideration and approval by the House Pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199.

EXECUTIVE SUMMARY

The purpose of this report is to consider the ratification of the following Agreements pursuant to Section 8 of the Treaty Making and Ratification Act, 2012:-

1. African Continental Free Trade Area (AfCFTA); and
2. Tripartite Free Trade Area (TFTA)

In considering the Agreements, the Committee held a total of two (2) sittings. The Committee received comprehensive briefs on the Agreements from the Ministry of Foreign Affairs and International Trade.

Pursuant to Article 118 (1)(b) of the Constitution on Public Participation and section 8(3) of the Treaty Making and Ratification Act of 2012, the Committee placed advertisements in two local dailies, on the 19th of March 2018, (see Annex) requesting for submissions of memoranda on the subject matter. There was no response.

However, as part of Public Participation, the Committee held sittings with representatives from the Ministry of Foreign Affairs and International Trade as a key stakeholder in this matter.

The report concludes that the National Assembly approves the ratification of the AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA) and the TRIPARTITE FREE TRADE AREA (TFTA) Agreements as they are in Kenya's national interest.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

The Departmental Committee on Defence and Foreign Relations is established under Standing Order No. 216. Its mandate pursuant to SO 216 (5) with the following terms of reference: -

- i) investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments;*
- ii) study the programme and policy objectives of the Ministries and Departments and the effectiveness of the implementation;*
- iii) study and review all legislation after First Reading subject to the exemptions under Standing Order 101 A (4);*
- iv) study and review all legislation referred to it;*
- v) study, assess and analyse the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;*
- vi) investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister; and*
- vii) make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.*

The Committee is mandated to consider the following subjects: -

- i. Defence
- ii. intelligence,
- iii. foreign relations
- iv. diplomatic and consular services,
- v. international boundaries,
- vi. international relations,
- vii. agreements,
- viii. treaties and
- ix. conventions.

1.2 Oversight

In executing its mandate, the Committee oversees the following government Ministries, departments and or agencies, namely:

- i. Ministry of Defence
- ii. Ministry of Foreign Affairs
- iii. The National Intelligence Service
- iv. The State Department for East African Community Integration.

1.3 Committee Membership


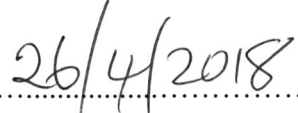
- Chairperson** 1. **The Hon. Katoo Ole Metito, M.P.**
- Vice Chairperson** 2. **The Hon. Richard Tongi, M.P.**
3. The Hon. Yusuf Hassan Abdi, MP
 4. The Hon. Charles Kilonzo, MP
 5. The Hon. Patrick Makau, MP
 6. The Hon. Dido Ali Raso, MP
 7. The Hon. Peter Mungai Mwathi, MP
 8. The Hon. Beatrice Nkatha Nyagah, HSC, MP
 9. The Hon. Martha Wangari Wanjira, MP
 10. The Hon. Memusi Ole Kanchory, MP
 11. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
 12. The Hon. (Dr.) Lillian Gogo, MP
 13. The Hon. Nelson Koech, MP
 14. The Hon. Moses Nguchine Kirima, MP
 15. Hon. Vincent Kipkurui Tuwei, MP
 16. The Hon. John Lodepe Nakara, MP
 17. The Hon. Silvanus Osoro, MP
 18. The Hon. Ernest Ogesi Kivai, MP
 19. The Hon. Caleb Amisi, MP

1.4 Committee Secretariat

First Clerk Assistant	Mr. Samuel Kalama
Third Clerk Assistant	Mr. Abdiaziz Shobay
Legal Counsel	Ms. Brigitta Mati
Research & Policy Analyst	Ms. Grace Wahu
Fiscal Analyst	Mr. Edison Odhiambo
Audio Officer	Rodgers Kilungya
Senior Sergeant-At-Arms	Andrew Shangarai

1.5 RECOMMENDATION

The Committee recommends **THAT**, Pursuant to the Section 8 of the Treaty Making and Ratification Act, the House approves the ratification of the **AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA)** and **COMESA-EAC-SADC TRIPARTITE FREE TRADE AREA (TFTA) Agreements** as they are in Kenya's national interest.

Signed..........Date..........

THE HON. KATOO OLE METITO, EGH, MGH, M.P.
**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON DEFENCE AND
FOREIGN RELATIONS**

I. THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA)

2.0 INTRODUCTION

2.1 The African Continental Free Trade Area (AfCFTA) Agreement

In January 2012, the Assembly Heads of State and the Government of the African Union during its Eighteenth Ordinary Session held in Addis Ababa, Ethiopia, took a decision to enhance intra-african trade by endorsing an Action plan for Boosting Intra-African Trade (BIAT) and agreed on a road map to establish a Continental Free Trade Area.

This initiative is in line with the objectives and principles enunciated in the Abuja Treaty which is to promote the economic and social development and integration of African economies and to establish national, regional and sub-regional institutions (RECs) leading to a dynamic and interdependent African economy, thus paving the way for the eventual establishment of the African Economic Community. The action plan is also a project of the African Union under its Vision 2063 which is a strategic framework for the socio-economic transformation of the continent in the next forty-five (45) years.

Subsequent to the 2012 decision, the African Union held several negotiations which culminated with the signing of the Agreement establishing the AfCFTA, Protocol on Trade in Goods, Protocol on Trade in Services and Protocol on Rules and Procedures on the Settlement of Disputes and their respective annexes in Kigali, Rwanda on 21st March, 2018.

The main objective of the Agreement is to create an expanded and secure market for the goods and services of State Parties through adequate infrastructure and the reduction and progressive elimination of tariffs and non-tariff barriers.

2.1 Elements of the Continental Free Trade Area

Critical elements to achieve the Continental Free Trade area are-

- (a) The progressive elimination of tariffs on trade between State Parties;
- (b) Removal of non-tariff barriers and transparent application of necessary sanitary and phytosanitary measures and technical barriers to trade so that originating goods can be granted market access without barriers; and

- (c) Undertaking trade facilitation measures to establish a transparent and predictable environment for cross-border activities based on simple, standardised customs procedures and practice

2.2 Outline of the Agreement

Article 1 Definitions	The Article contains definition of terms as used in the Agreement.
Article 2 Establishment of the African Continental Free Trade Area	Provides for the establishment of the African Continental Free Trade Area.
Article 3 General Objectives	<p>This article provides for the objectives of the agreement which are to, inter alia-</p> <ul style="list-style-type: none"> (a) create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent; (b) create a liberalised market for goods and services through successive rounds of negotiations; (c) contribute to the movement of capital and natural persons and facilitate investments; (d) lay foundation for the establishment of a Continental Customs union ; (e) enhance competitiveness of the economies of state parties within the continent and the global market; (f) resolve challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.
Article 4 Specific Objectives	<ul style="list-style-type: none"> (a) This article provides for the specific objectives of the agreement in which Partner States are to, among others,— (b) Progressively eliminate tariffs and non-tariff barriers to trade in goods; (c) Progressively liberalise trade in service; (d) Cooperate on investment, intellectual property
12	<p><i>Report of the Departmental Committee on Defence and Foreign Relations on the Consideration and Ratification of the African Continental Free Trade Area (AFCFTA) and Tripartite Free Trade Area (TFTA) Agreements</i></p>

	(e) Cooperate on all trade related areas.
Article 5 Principles	The agreement is to be governed by the following principles— (a) to be driven by member states of the African Union; (b) RECs Free Trade Area(FTAS) as building blocks for the AfCFTA; (c) variable geometry; (d) flexibility and special and differential treatment; (e) most favoured nation treatment; (f) reciprocity, among others
Article 6 Scope	The agreement covers the following areas- (a) trade in goods; (b) trade in services; (c) investment; (d) intellectual property rights and (e) competition policy.
Article 7 Phase II Negotiations	Negotiations under this Article shall be commence after the adoption of agreement. The areas include- (a) intellectual property rights; (b) investment; and (c) competition policy.
Article 8 Status of the Protocols, Annexes and Appendices	The Article provides for the status of any protocol, annexes and appendices to the agreement to form an integral part of the same.
Article 9 Institutional	Provides for the institutions that are tasked with the implementation of the Agreement. They include-

Framework for the Implementation of the AfCFTA	(a) the Assembly; (b) the Council of Ministers; (c) the Committee of Senior Trade Officials; and (d) the Secretariat.
Article 10 The Assembly	Provides for the Assembly which constitutes of the Assembly of the heads of State and Government of the African Union, as the highest decision making of the AU and shall provide strategic guidance on the Agreement
Article 11 The Composition and Functions of the Council of Ministers	Provides for the establishment of the Council of Ministers and shall consist of Ministers responsible for Trade or such other ministers. The Council is to report to the Executive Council. The article also sets out the functions of the Council of Ministers.
Article 12 Committee of Senior Trade Officials	Provides for the Committee of Senior Trade officials. The Committee shall consist of permanent or principal Secretaries or other officials designated by each party.
Article 13 The Secretariat	Provides for the establishment of the Secretariat. The nature, location and approval of its structure and budget.
Article 14 Decision Making	Provides for the structure of decision making by institutions (i.e the assembly, council of Ministers and Committee of senior trade officials) by consensus. Decision making for state parties on whether a question is of procedure or a decision on a question of procedure to be by consensus.
Article 15 Waiver of	Provides for a waiver of an obligation under the agreement for a state party in exceptional circumstances. It also provides for the procedure to be undertaken once a

obligations	state party requests for a waiver.
Article 16 Publication	Obligates each state party to publish or make publicly available laws, regulations, procedures and administrative rulings of general application. Confidential Information not to be disclosed especially if it is contrary to public interest.
Article 17 Notification	Provides for State Parties to notify other State Parties on any laws, regulations, procedures and other rulings relating to any trade aspect covered by this agreement adopted after the entry into force of this Agreement.
Article 18 Continental Preferences	Provides that States Parties are to afford each other treatment no less favourable than those given to third parties.
Article 19 Conflict and inconsistency with Regional Agreements	The article provides that the agreement shall prevail where there exists inconsistencies with other regional agreements.
Article 20 Dispute Settlement	Provides for a dispute resolution mechanism which is administered in accordance with the protocol on Rules and Procedures on settlement of Disputes.
Article 21 Exceptions	Provides for exceptions to the application of the agreement.
Article 22 Adoption, Signature, Ratification and	Provides for the ratification of the agreement.

Accession	
Article 23 Entry into force	Provides that the agreement and other subsequent instruments shall enter into force thirty days after the 22 nd instrument of ratification.
Article 24 Depositary	Provides that the lodging of the Agreement to be the Chairperson of the Commission.
Article 25 Reservation	Provides that State Parties are not to make any reservations.
Article 26 Registration and Notification	Provides that the Chairperson shall register the agreement with the United Nations Secretary General in conformity with Article 102 of the Charter of the United Nations. State Parties to also notify the agreement to the WTO.
Article 27 Withdrawal	Provides that a State Party may withdraw from the Agreement after five years from the date of entry into force of the Agreement by giving a written notification to State Parties.
Article 28 Review	Provides that the agreement shall be subject to review after every five years.
Article 29 Amendments	Provides for the procedure for amendment of the Agreement
Article 30 Authentic texts	Provides that the Agreement is drawn in four languages, namely Arabic, English, French and Portuguese.

2.3 Overview of the Protocols

The Agreement is annexed with three Protocols namely: -

- a) Protocol on trade in goods;
- b) Protocol on trade in services; and
- c) Protocol on rules and procedures on the settlement of disputes

The following is a brief overview of the Protocols annexed to the agreement.

2.3.1 Protocol on Trade in Goods

The Agreement has annexed a protocol on Trade in Goods. The objective of the protocol is to create a liberalized market for trade in goods across the continent. The Protocol consists of ten parts and thirty-two Articles. The liberalization of the market will be through progressive elimination of tariffs and non-tariff barriers.

The agreed modalities provide for liberalization of up to 90% of tariff lines of each State Party, within a period of five years and ten years for non-LDCs and LDC respectively but up to ten years for non-LDCs and thirteen years for LDCs for sensitive product.

2.3.2 Protocol on Trade in Services

The objective of the protocol is to create a single liberalized market for trade in services across the Continent through enhanced market access, fostering domestic and foreign investment and progressive liberalization of trade in Services.

2.3.3 Protocol on Rules and Procedures on the Settlement of Disputes

The protocol provides for a mechanism for settlement of disputes between State Parties. The dispute mechanism process is structured on a three-tier process. Dispute resolution begins with consultations among State Parties with a view to finding an amicable resolution to the dispute. Where an amicable resolution is not achieved, a State Party shall refer the matter to the Dispute Resolution Body and request for a Dispute Settlement Panel. Appeals from the Panel shall lie with the Standing Appellate Body. A State Party may, where it is expedient, have recourse to arbitration as the first dispute settlement avenue.

2.4 Observations under Section 7&8 of the Treaty Making & Ratification Act, 2012

The Committee made the following observations on the agreements under section 7 & 8 of the treaty making and ratification act, 2012:-

2.4.1 Object and subject matter of the Agreement

To create an expanded and secure market for the goods and services of State Parties through adequate infrastructure and the reduction and progressive elimination of tariffs and non-tariff barriers.

2.4.2 Constitutional Implications

In accordance with Article 2(6) of the Constitution of Kenya and Section 8 of the Treaty Making and Ratification Act, 2012, once the Agreement is signed and ratified it shall form part of the Laws of Kenya.

2.4.3 National Interest (advancement of economic prosperity of Kenya and her people)

The agreement will lead to the creation of a wider and expanded African market. Thorough this intra-African trade is projected to double by the year 2022 which in return will provide substantial economic and social gains to the country;

The Agreement will promote cross-border investment leading to increased Kenya's entrepreneurs to invest across Africa. Kenya has a vibrant manufacturing system which will not benefit from this opportunity but its people will benefit from creation of new employment opportunities for all.

Under the Big Four Agenda Kenya, the share of manufacturing to gross domestic product is to be raised from the current 9% to 15% by 2022. The Agreement will be important for the realisation of this objective since majority of Kenya's exports to Africa are manufactured goods.

2.4.4 Obligations imposed by the Agreement

Progressive elimination of tariffs, removal of non-tariff barriers and transparent application necessary Sanitary and Phytosanitary measures for Kenya once she becomes a member.

The modalities for trade liberalisation negotiated provides for liberalisation of up to 90% of total tariff lines, for each member state, including sensitive products within a period of thirteen (13) years for least developed countries (LDCs) and ten (10) years for non-LDCs.

2.4.5 Policy and legislative considerations

The Agreement will be implemented in accordance with the existing domestic legislation. Kenya has enacted the Trade Remedies Law and is currently setting up the requisite (investigation) institutions to operationalize trade defense instruments/measures. These measures are contained in the Agreement and they include anti-dumping and safeguards to protect infant and strategic sectors from unfair competition.

2.4.6 Financial Implications

The Ministry responsible for Trade will need resources for implementation of the Agreement pay the annual subscriptions and costs of sensitization of various stakeholders.

2.4.7 Implications on matters relating to Counties

The Agreement relates to matters under Part 1 Section 1 of the Constitution, 2010 that provides for international Trade therefore it's not a matter concerning counties.

2.4.8 The Summary of the process leading to the Adoption of the Agreement & the date of Signature

The Agreement is being fulfilled pursuant to the Abuja Treaty, 1991, the Constitutive Act of the African Union of 2000 and the Africa Vision 2063. The Assembly of Heads of State and Government of the African Union (AU) held in January 2012, in Addis Ababa, and adopted a decision to establish a Continental Free Trade Area (AfCFTA) by 2017.

The Agreement was thereafter signed at an Extraordinary Summit of the AU Assembly on 21st March, 2018 in Kigali, Rwanda.

2.4.9 Proposed text of any reservation

Article 25 of the Agreement provides that no reservations are contemplated.

3.0 MEETING BETWEEN THE DEPARTMENTAL COMMITTEE OF DEFENCE AND FOREIGN RELATIONS AND THE MINISTRY OF FOREIGN AFFAIRS

3.1 Introduction

On Tuesday, 17th April, 2018, the Departmental Committee held a meeting with the Secretary of Trade, International Trade, Ms. Joyce Ogundo, and the Assistant Director, International Trade, Mr. Joseah Rotich, as representatives from the Ministry of Foreign Affairs and International Trade to consider the Draft Agreement Establishing the African Continental Free Trade Area (AfCFTA) Agreement.

The meeting was interactive with the Committee members having a better understanding of the Agreement and its benefit toward the country.

3.2 Presentation by the Ministry of Foreign Affairs and International Trade

The 18th Ordinary Session of the Assembly of Heads of State and Government of the African Union (AU), held in January 2012, in Addis Abbaba, adopted a decision to establish a Continental Free Trade Area (AfCFTA) by 2017.

The Summit also endorsed an Action Plan for Boosting Intra-African Trade (BIAT) which identifies seven priority action clusters, namely; Trade policy, trade facilitation, productive capacity, trade related infrastructure, trade finance, trade information, and factor market integration. The initiative is a flagship project of the AU Agenda 2063, which is a strategic framework for the socioeconomic transformation of the continent in the next 45 years.

Subsequently the African Union Assembly launched the AfCFTA negotiations at the 25th Ordinary Summit of Heads of State and Government, held on 15th June 2015, Johannesburg, South Africa. The underlying principle of the roadmap is to build upon the current levels of tariff liberalization among the Regional

Economic Communities (RECs), as well as the existing achievements of the RECs.

The Agreement establishing the AfCFTA and Declaration launching it was signed at an Extraordinary Summit of the AU Assembly on 21st March, 2018 in Kigali, Rwanda. The AfCFTA will bring together 55 African Countries with a combined population of over 1.2 billion people, including a growing middle class, and combined gross domestic product of more than US\$3.4 Trillion.

3.3 Main Objectives of the AfCFTA

- a) Create a single continental market for Goods, Services, with free movement of business Persons and investments in order to deepen the economic integration of the African Continent.
- b) Expand intra-African trade through better harmonization and coordination of trade liberalisation and facilitation, across the regional economic communities and continent in general;
- c) Enhance competitiveness at the enterprise and industry level, and support economic transformation, through exploitation of economies of scale, continental market access and better reallocation of resources.
- d) Lay the foundations for the establishment, at a later stage, a Continental Customs Union; and
- e) Promote industrial development through diversification and regional value chain development, Agricultural Development and Food Security;
- f) Resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.

3.4 Institutional Structure of the AfCFTA

a) The Assembly of Heads of States and Government (HATC)

It is the highest decision-making organ and provides oversight and guidance on the AfCFTA.

b) The Council of African Ministers for Trade (AMOT)

It takes decision on all matters under the AfCFTA Agreement and works in collaboration with the relevant AU organs and institutions.

c) The Committee of Senior Officials (Principal/Permanent Secretaries) (CSO)

It is responsible for the development of programmes and action plans for the implementation of the AfCFTA Agreement.

d) **The Continental Free Trade Area- Negotiating Forum (CFTA-NF)**

It is responsibility of conducting trade negotiations at the technical level.

e) **AfCFTA Secretariat-**

It is the administrative organ to facilitate the implementation of the AfCFTA. Several other Committees are established by the AfCFTA for implementation purpose.

3.5 Benefits and Opportunities for Kenya from the AfCFTA

- a) The AfCFTA will lead to the creation of a wider and expanded African market, with a combined population of over 1.2 billion people and a growing middle class, as well as a combined gross domestic product of more than US\$3.4 trillion. Intra-African trade is projected to double by 2022, while the population could reach 2 billion by 2050. All this will provide substantial economic and social gains to Kenya;
- b) The large investment area created by the AfCFTA will increase Kenya's investment competitiveness as it will enhance determinants for attracting FDI, since Kenya is a strategic investment hub in Africa;
- c) The AfCFTA will also promote Cross-Border Investment (CBI) leading to increased Kenya's entrepreneurs' potential to invest across Africa, subsequently increasing business and investment opportunities, including creation of employment for women and youth, in addition to enhanced backward and forward linkages;
- d) The doubling of intra-African trade by 2022 as envisaged under BIAT through substantial tariff reduction will promote manufacturing. Currently Kenya's exports are mainly destined to EAC and COMESA while the West African and North African markets remain unexploited. For example in 2016, Africa was the leading destination of Kenya's exports, accounting for 40.6% of the total exports valued at KSh 234.7 billion. Exports to the EAC accounted for 52% of total exports to Africa. Outside EAC and COMESA, the only significant market destination for Kenya's exports is South Africa which accounts for only 2% of total exports to Africa.

- e) It is expected that challenges of multiple memberships to different RECs will be addressed through harmonisation of the trade regimes by the AfCFTA. This will further boost intra-African trade;
- f) Simplification of customs procedures and rules of origin; trade facilitation and transit trade; and elimination of non-tariff barriers will facilitate and ease the movement of goods across the continent hence boosting intra-African trade. Kenya's exports to the continent has hitherto been affected by Non-Tariff Barriers (NTBs)

3.6 Kenya's Priority Areas: Ministry of Foreign Affairs

- a) Kenya's priority should be to enhance exports of goods and services to the potential markets created under the AfCFTA;
- b) West African and North African markets remain unexploited, currently Kenya's exports to Africa are mainly destined to EAC and COMESA;
- c) For example, in 2016, Africa was the leading destination of Kenya's exports, accounting for 40.6% of the total exports valued at KSh 234.7 billion. Exports to the EAC accounted for 52% of total exports to Africa. Outside EAC and COMESA, the only significant market destination for Kenya's exports is South Africa which accounts for only 2% of total exports to Africa;
- d) The main potential export markets/destinations for Kenya outside EAC and COMESA are mainly Nigeria, Cameroon, Morocco, Ghana, Senegal, Algeria, Niger, and Cote D' Ivoire, Ethiopia (Non-COMESA FTA) and South Africa
- e) These countries import huge volumes of products from outside Africa, a number of these products Kenya has potential to export, for instance iron and steel products, dairy products, tea, coffee, vegetable fats and edible, articles of plastics, and a number of other manufactured products; (refer to import – export data attached);
- f) With the elimination of tariffs on 90% of the tariff lines, currently averages at over 6%, and mechanism to deal with NTBs, there is need to expand the volumes and value of current exports and venture into new potential ones.

- g) Furthermore, with the Summit pronouncement to open up the Air Transport, Kenya Airways should target to enter in to the West African market which has high potential.
- h) Need to target other areas in trade in services that has high potentials such as telecommunication, Banking and insurance, Healthcare, professional, among others.
- i) Kenya is positioning itself to exploit these export opportunities. The Ministry recently finalised the National Trade Policy and is now finalizing the National Export Development Strategy which seeks identify potentials, opportunities and challenges in each sector and address to be able to benefit from market openings such as the AfCFTA.
- j) The Ministry is also doing more analytical work in order to firm up the highly potential export sectors that needs to be targeted.

3.7 Trade Defence Measures

- a) The AfCFTA is aimed at creating a liberalised market through reduction of customs duties.
- b) However, the Agreement contains trade defence and safeguard against any unforeseen influx of imports as a result of reduction of customs tariffs. Safeguards measures safeguards infant and strategic sectors from unfair competitions; Countervailing measures and Antidumping provisions deals with cases of subsidised imports and dumping causing unfair competition in the Kenyan market.
- c) In addition, the modalities for liberalisation provides room to designate sensitive products for longer liberalisation period and exclusion, particularly for highly sensitive products, infant industries and strategic sectors.
- d) Kenya has recently enacted Trade Remedies Law, and currently setting up the requisite (Investigation) institutions to operationalize the trade defence instruments.

- e) In addition, Kenya has enacted Anti-Counterfeit Institutions to deal with counterfeit to counter unfair competition and consumer protection.
- f) The Ministry recently finalized the National Trade Policy and was now finalizing the National Export Development Strategy which seeks to identify potentials, opportunities and challenges in each sector and address to be able to benefit from market openings such as the AfCFTA.

As regard to whether there was compliance with the procedure for approval of a treaty as stipulated under the Treaty Making and Ratification Act, 2012 the Committee noted that-

1. The procedure for approval of Treaties is outlined in section 8 of the Treaty Making and Ratification Act, 2012 (hereinafter referred to as “the Act”).
2. Section 8 (1) provides that where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.
3. Subsection (3) provides that the relevant committee shall ensure public participation in the ratification process in accordance with laid down parliamentary procedures.

4.0 COMMITTEE OBSERVATIONS

The Committee observed the following: -

- a) The Constitution in Article 2 (6) provides for the entrenchment of this Agreement into the laws of Kenya;
- b) The Agreement is in line with the Abuja Treaty, 1991 aimed at integrating Africa’s markets by establishing a Free Trade Area with optimal goal of establishing an African Economic Community;
- c) The Agreement is aligned to Article 3 (c) *accelerate the political and socio-economic integration of the continent* and (l) *coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union of the Constitutive Act of The African Union;*

- d) The Agreement is aligned to the aspirations of Agenda 2063 for a continental market with free movement of persons, capital, goods and services which are crucial for deepening economic integration;
- e) The Article 15 (*Waiver of Obligations*) and Protocol on Trade in Goods Article 17 (Anti-dumping and Countervailing Measures) is in tandem with provisions under Trade Remedies Act which provide for antidumping and countervailing measures;

II. COMESA-EAC-SADC TRIPARTITE FREE TRADE AREA (TFTA)
AGREEMENT

5.0 INTRODUCTION

5.1 The Tripartite Free Trade Area (TFTA) Agreement

The Agreement establishing a Tripartite Free Trade Area among the Common Market for Eastern and Southern Africa, the East African Community and the Southern African Development Community (herein after referred to as “the Agreement”) begun when the Tripartite Heads of States held a meeting on 22nd October 2008 in Kampala, Uganda. They decided on the expeditious move towards establishment of the Tripartite Free Trade Area (TFTA) among the three Regional Economic Communities.

The official launch of the Agreement took place during the second Tripartite Summit held on 12th June 2011 in Johannesburg. The conclusion of the same was done after the adoption of the main outstanding annexes which was held in July 2017, Kampala, Uganda.

The Agreement is in line with the resolution of the African Union Summit held in Banjul, Gambia in July, 2006 which directed the African Union Commission and the Regional Economic Communities to harmonize and coordinate policies and programs of regional economic communities as important strategies for rationalization and to put in place mechanisms to facilitate the process of harmonization and coordination within and among the Regional Economic Communities.

5.2 Outline of the Agreement

Article 1 Interpretation	provides for interpretation of various terms used in the agreement
Article 2 Establishment of the Tripartite Free Trade Area	Establishes a free trade area between the member states of COMESA, EAC and SADC.
Article 3 Scope and	Provides for the scope and coverage of the agreement. It comprises of –

Coverage	(a) trade in goods; (b) trade in services; and (c) other related matters.
Article 4-5 General Objectives & Specific Objectives	Provides for the general and specific objectives of the tripartite free trade area. ❖ The general objectives include the promotion of economic and social development of the region, among others. ❖ The specific objectives are for the purposes of fulfilling and realising the general objectives and the include the progressive elimination of tariffs and non-tariffs barriers to trade in goods
Article 6 Principles	Provides for the principles governing the agreement. They include- (a) REC and/ or Tripartite Member/Partner States driven; (b) variable geometry; (c) flexibility and special and differential treatment; (d) transparency; among others
Article 7 Most-Favoured- Nation Treatment	A Tripartite Member/Partner State shall accord to one another the Most-Favoured- Nation Treatment.
Article 8 National Treatment	Provides that a Tripartite Member/Partner State shall accord to products imported from other Tripartite Member/Partner States treatment no less favourable than that accorded to like domestic products, after the imported products have passed customs. The measures shall be in accordance to the GATT.
Article 9 Elimination of Import Duties	Provides for Partner States not to impose new import duties or charges of equivalent effect except as provided for under the Agreement.
Article 10 Non-Tariff- Barriers	Provides for the members states to eliminate all existing non-tariff-barriers to trade and not to impose any new ones.

Article 11 Elimination of Quantitative Restrictions	Provides that a Tripartite Member shall not impose quantitative restrictions on imports or exports in trade with other Partner States except as otherwise provided for in Article XI.2 of GATT1994, the WTO Agreement on Safeguards and Articles 17 and 18 and Annex II on Trade Remedies of this Agreement.
Article 12 Rules of Origin	Provides for preferential treatment afforded to goods originating in any of the tripartite Member/ Partner States.
Article 13 Customs Cooperation	Partner states to take appropriate measures to ensure provisions of the Agreement are effectively applied in accordance with Annex V on Customs Cooperation and Mutual Administrative Assistance.
Article 14 Trade Facilitation	Provides for Partner States to standardise their trade and customs documentation and information in accordance with internationally accepted standards. Partner States are to initiate trade facilitation programmes in accordance with Annex VI on Trade Facilitation.
Article 15 Transit	Partner States to facilitate the movement of goods and means of transport in accordance with Annex VII on Transit Trade and Transit Facilitation.
Article 16 Transitional Arrangements	Provides for Partner States in the interim to apply anti-dumping, countervailing or safeguard measures where there is evidence of dumping, subsidisation or surge in imports.
Article 17 Anti-dumping and Countervailing Measures	The Article allows a Partner State to adopt anti-dumping and countervailing measures in accordance to the relevant WTO Agreements and Annex II on Trade Remedies. Partner States shall be guided by the WTO and GATT in applying this Article.
Article 18 Safeguard Measures	Partner State may apply a safeguard measure to a product only after determining that such product being imported into its territory- a) in such increased quantities, absolute or relative to domestic production; and

	b) under such conditions will to cause or threaten to cause serious injury to the domestic industry.
Article 19 Preferential Safeguards	Provides for preferential safeguard measures to be applied by a Partner State under provisions in Annex II on Trade remedies if the goods imported to the Partner State cause or threaten to cause injury to the domestic industry.
Article 20 Cooperation on Trade Remedies	Provides for member states to cooperate in the detection and investigation of dumping or subsidisation or import surges and the imposition of appropriate measures to curb such practices.
Article 21 Technical Barriers to Trade	Partner States reaffirming their rights and obligations in respect of the WTO Agreement on Technical Barriers to Trade.
Article 22 Sanitary and Phytosanitary Measures	Partner States reaffirming their rights and obligations in respect of the WTO Agreement on the application of Sanitary and Phytosanitary measures and undertake to facilitate safe trade in animals and animal products, plants and plant products
Article 23 Special Economic Zones	Provides that Partner States may support the establishment and operation of special economic zones for the purpose of accelerating development.
Article 24 Infant industries	Provides that Partner States may adopt appropriate measures applied in a non- discriminatory manner on similar goods originating from other Partner States for the protection of an infant industry.
Article 25 Balance of Payments	A Partner State facing severe balance of payments and external financial difficulties, may adopt appropriate measures in accordance with guidelines to be determined by the Tripartite Council of Ministers.
Articles 26 -28 Other areas of co- operation	provides for areas of cooperation between Partner States, including cooperation in financial areas, in trade policies and negotiations and cooperation in research and statistics

<p>Article 29 Organs for the Implementation of the Tripartite Free Trade Area</p>	<p>Tripartite Summit consisting of the Heads of State- to give general direction and impetus for the Tripartite arrangement; Tripartite Council of Ministers consisting of ministers as designated by Partner States; Tripartite Sectoral Ministerial Committee on Trade, Finance, Customs and Economic Matters and Home Internal Affairs; and the Tripartite Sectoral Ministerial Committee on Legal Affairs- to each be responsible for policy direction and implementation in their respective sectors; Tripartite Task Force of the Secretariats of the three RECs- to coordinate the implementation of the Tripartite work programme and provide secretariat services to the Tripartite arrangement; Tripartite Committee of Senior Officials-responsible for overseeing and guiding technical work; Tripartite Committee of Experts- to carry out the technical work and report to the Tripartite Committee of Senior Officials</p>
<p>Article 30 Dispute Settlement</p>	<p>Establishes a Dispute Settlement Body to provide for dispute settlement under this Agreement.</p>
<p>Article 31 General Exceptions</p>	<p>Provides for general exceptions to the provisions of the agreement in instances where it is necessary to protect public morals or maintain public order, among others.</p>
<p>Article 32 Security Exceptions'</p>	<p>Provides for exceptions which relate to furnishing of information that may be contrary to security interests of the Partner State</p>
<p>Article 33 Notification of Prohibited and Restricted Goods</p>	<p>Provides for a Partner State taking measures pursuant to Articles 31 and 32 to notify the Tripartite Sectoral Ministerial Committee on Trade, Finance, Customs and Economic Matters and Home/Internal Affairs of such measures adopted.</p>

Article 34 Funding	Partner States to institute appropriate mechanisms to fund their commitments in the implementation of the Agreement
Article 35 Working Languages	The working languages under the Agreement are Arabic, English, French and Portuguese.
Article 36 Protocols and Annexes	Provides for Partner States to conclude on protocols or annexes where necessary and such shall form part of the agreement.
Article 37 Amendment	Provides for the agreement to be amended through consensus which shall be through a proposal submitted to the Chairperson of the Tripartite Task Force in writing. An amendment shall be in force once adopted by Tripartite Summit by consensus.
Article 38 Sanctions	Provides for sanctions on a Partner State where that Partner State does not meet its obligations under this Agreement.
Article 39 Signature, ratification and entry into Force	The agreement shall be signed by Partner States and shall enter into force on the thirteenth day after the deposit of the Fourteenth Instrument of ratification.
Article 40 Obligation not to Defeat the Object and Purpose of this Agreement Prior to its Entry into Force	Partner States are under obligation to refrain from actions that would defeat the objects of the agreement if that partner State has signed the agreement or exchanged instruments of ratification or expressed its consent to be bound by the Agreement.
Article 41 Accession	The agreement remains open to Partner States and other member states of the AU for accession.
Article 42 Withdrawal	Partner States wishing to withdraw to notify the Tripartite Council of Ministers giving 12 months' notice.
Article 43	The agreement and instruments of ratification, accession

Depository and Registration		and notification of entry into force or withdrawal shall be deposited with the Tripartite task force.
Article 44 Negotiations on Outstanding Issues on Phase I		Partner States are required to conclude negotiations on outstanding issues set out in Annex I on elimination of Custom Duties and Annex II on Trade Remedies and Annex IV on rules of origin after launch of the FTA
Article 45 Phase II Negotiations		Partner States to conclude Phase II Negotiations within 24 months upon entry into force on protocol on trade in services and other protocols related to trade-related matters.

5.3 Observations under Section 7&8 of the Treaty Making & Ratification Act, 2012
The Committee made the following observations on the agreements under section 7 & 8 of the treaty making and ratification act, 2012:-

5.3.1 Object and subject matter of the Agreement

The main objectives of the Agreement are to increase intra-regional trade through the establishment of a larger market with a single economic space and to address the challenges of multiple memberships by harmonizing rules and policies such as health and technical standards, rules of origin and customs, trade facilitation and transit issues with the long-term goals of moving to other deeper levels of integration.

5.3.2 Constitutional Implications

In accordance with Article 2(6) of the Constitution of Kenya and Section 8 of the Treaty Making and Ratification Act, 2012, once the Agreement is signed and ratified it shall form part of the Laws of Kenya.

5.3.3 National Interest (advancement of economic prosperity of Kenya and her people)

Kenya has been trading with Africa as much as it has been trading with the rest of the world. Kenya's exports to Africa range between 41% to 45% in the last decade which have been mostly to EAC and COMESA markets. With the implementation of the Agreement, Kenya will be able to access the Southern

Africa (SADC) in turn boosting Kenya's exports hence a wider and expanded market for both manufactured and primary products and services.

Policies such as the rules of origin, customs cooperation and technical and healthy standards have been harmonised and this will facilitate ease of movement of goods and business persons. Consequently, this will boost intra-regional trade since lack of harmonised rules has been a major hindrance to intra-Africa trade through existing non-tariff barriers.

Under the Big Four Agenda, the share of manufacturing to gross domestic product is to be raised from the current 9% to 15% by the year 2022. The Agreement will be important for the realisation of this objective since majority of Kenya's exports to Africa are manufactured goods.

5.3.4 Obligations imposed by the Agreement

Liberalization of tariffs will be done immediately upon entry into force of the Agreement between 60%-85% of the total tariff lines.

EAC has negotiated as a bloc and has finalized tariff offers for liberalization for the countries that are not in the FTA; namely Angola, Eritrea, Ethiopia, Mozambique and the SACU group (Botswana, Namibia, Lesotho, South Africa and Swaziland)

During the Tripartite Summit held on 10th June 2015, in Sharm el Sheikh, Egypt, His Excellency the Deputy President Hon. William S. Ruto, and Head of Kenyan Delegation expressed Kenya's interest to host the secretariat for the Tripartite FTA.

5.3.5 Policy and legislative considerations

The Agreement will be implemented in accordance with the existing domestic legislation. Kenya has enacted the Trade Remedies Law and is currently setting up the requisite (investigation) institutions to operationalize trade defense instruments/measures. These measures are contained in the Agreement and they include anti-dumping and safeguards to protect infant and strategic sectors from unfair competition.

5.3.6 Financial Implications

The Ministry responsible for Trade will need resources for implementation of the Agreement to pay the annual subscriptions and costs of sensitization of various stakeholders.

5.3.7 Implications on matters relating to Counties

The Agreement relates to matters under Part 1 Section 1 of the Constitution, 2010 that provides for International Trade therefore it's not a matter concerning counties.

5.3.8 The Summary of the process leading to the Adoption of the Agreement & the date of Signature

Negotiations to the Agreement began when the tripartite Heads of State held a meeting on 22nd October 2008 in Kampala, Uganda. The official launch of the Agreement took place during the second Tripartite Summit held on 12th June 2011 in Johannesburg. The conclusion of the same was done after the adoption of the main outstanding annexes which was held in July 2017, Kampala, Uganda.

The concluded Tripartite Free Trade Area Agreement (TFTA) was signed on 10th June 2015, but there are various Protocols and Annexures that had to be negotiated and adopted.

5.3.9 Number of states that are party to the Agreement & Proposed text of any reservation

To date, the Agreement has been signed by twenty-two out of twenty-seven Partner States and shall enter into force once the fourteenth Partner State has ratified the Agreement and deposited instruments of ratification.

The Republic of Uganda and Arab Republic of Egypt have ratified the Agreement.

Reservations are not contemplated in this Agreement.

6.0 MEETING BETWEEN THE DEPARTMENTAL COMMITTEE OF DEFENCE AND FOREIGN RELATIONS AND THE MINISTRY OF FOREIGN AFFAIRS

6.1 Introduction

On Tuesday, 17th April, 2018, the Departmental Committee held a meeting with the Secretary of Trade, International Trade, Ms. Joyce Ogundo, and the Assistant Director, International Trade, Mr. Joseah Rotich, as representatives from the Ministry of Foreign Affairs and International Trade to consider the Agreement establishing a tripartite Free Trade Area among the Common Market for Eastern & Southern Africa, the East African Community & the Southern African Development Community.

The meeting was interactive with the Committee members having a better understanding of the Agreement and their benefit toward the country.

6.2 Presentation by the Ministry of Foreign Affairs and International Trade

The 1st COMESA-EAC-SADC Tripartite Summit held on 22nd October 2008 in Kampala, Uganda decided expeditious move towards establishment of Tripartite Free Trade Area (TFTA) among the three Regional Economic Communities (RECs);

The TFTA comprises twenty-six (26) countries of the three RECs, 22 of which are already participating in their respective FTAs, therefore forming a critical mass necessary to establish Tripartite FTA. The establishment of the Tripartite FTA will build upon and consolidate the RECs acquis (their level on integration).

TFTA forms large extended market: Combined population of over 625 million people (57% of total population of the African Union); combined GDP of over USD 1 trillion (over 58% of GDP of AU) and GDP per capita averaging US\$1,184.

The Agreement's main objectives are:

- a) Promote trade in the region through creation of wider market
- b) Increase intra-REC and extra- REC investment flows
- c) Improve efficiency and value addition
- d) Enhance competitiveness of the region in the globalized environment due to improved production
- e) Develop cross regional infrastructure
- f) Strengthen the region's negotiating position in bilateral and multilateral trade arrangements
- g) Rationalize the problem of multiple membership through inter alia harmonizing rules and policies such as health and technical standards, rules of origin and customs issues, with a long-term goal of moving to other deeper levels of integration.

6.3 The Negotiation Process

The Tripartite process is anchored on three pillars, negotiated concurrently, namely;

- a) **Market Integration** (Tariffs, RoO, SPS, TBT, NTBs etc)
- b) **Infrastructure Development** (Transit corridors, Energy, Railway and Air Transport)
- c) **Industrial development** (Competitiveness)

6.4 Scope of the Negotiations

A roadmap to establish the TFTA is being implemented in two phases:

Phase I – Covering trade in goods.

Negotiations were agreed to last 36 months starting from June 2011 to June 2014. This phase covers Tariff liberalization (Tariff Offer); Rules of Origin; Tariff and Non-Tariff Barriers (NTB); Customs Procedures and Simplification, Customs Documentation, and Transit Procedures; Technical Barriers to Trade; Sanitary and Phytosanitary (SPS) measures; and Trade Remedies and Dispute Settlement and movement of business persons.

Phase II

This phase covers trade in services and trade related issues such as Intellectual Property Rights, Competition policy, and Trade development and competitiveness, among others.

6.5 Negotiating Modalities on Tariff Liberalization

Negotiation modalities on tariff liberalization were agreed by member/partner states in September 2013 as follows:

- a) 60% to 85% of tariff lines will be liberalized upon entry into force of the TFTA Agreement based on offers. The remaining 15% tariff lines will be the subject of negotiation for liberalization
- b) Negotiations will be finalized by 2014 and liberalization implemented within five (5) to eight (8) years
- c) Member/Partner states are to exchange tariff offers within six months from adoption of tariff negotiating modalities by September 2013

6.6 Status of the Tripartite Negotiations

The TFTA was launched during the 3rd third Tripartite Summit, held on 9-10 June, 2015, in Sharma El Sheikh, Egypt. The summit directed that the then outstanding issues of negotiations be finalized within 6-12 months. The Negotiations have since been completed in all annexes and adopted during the last Tripartite Ministerial meeting held in July, 2017 in Kampala.

6.7 Outstanding Issues on the Agreement

- a) Tariff (offers) Liberalization
- b) Product specific rules of origin, and special dispensation for the Island Countries with respect to fisheries products; and Operation manual for the rules of origin.
- c) Movement of Business Persons has two outstanding matters relating to visa issuance, in particular issuance of visas on arrival; and application of principles of reciprocity and variable geometry
- d) Infrastructure Pillar: Discussions are still on going

6.8 Status of Tariff Offer Negotiations

The EAC is negotiating as a bloc. It is meant to negotiate with non-FTA Member States/RECs, namely Angola, Eritrea, Ethiopia, Mozambique and the SACU group (Botswana, Lesotho, Namibia, South Africa and Swaziland). It has also

developed offers to all the partners it will negotiate with on the basis of the adopted modalities that is, immediate liberalization of 60% to 85% to be implemented within 5 to 8 years

Kenya's position in the preparation of EAC tariff offers to SACU, Non-FTA and FTA countries was informed by an Impact Study that was conducted by a Consultancy lead by Dr. Margaret Chemengich in collaboration with KIPPRA. The study identified and proposed sectors to be liberalized.

EAC and SACU have held several rounds of negotiations at Technical, Senior Officials/PSs-12 of which at the technical level. As per the last meeting held in September, 2017, SACU offered for immediate liberalization, 66.58 %, which is 4795 tariff lines out of total 7204 tariff lines while the EAC offered for immediate liberalization, 65.9%, which is 3583 tariff lines out of total 5440 tariff lines

SACU has offered to liberalize a number of products of EAC's exports interest to SACU such as tea, coffee, fruits, vegetable and flowers, fruit juices and a host of manufactured products where EAC also has competitive advantage over SACU. However, SACU has not accommodated all the products requested by the EAC for immediate liberalization- some of them have been offered for liberalization over 5 years phase down, or designated sensitive to be negotiated later;

SACU have continued pushing hard to have some products key to them for immediate liberalization, especially Motor vehicles, meat and milk/dairy products, and salt among others. Given the current level of liberalization offered to each other by the two Parties as indicated above, both sides have complied with the agreed modalities that is liberalization of 60% to 85% within 5-8 years. The negotiations therefore could be concluded and continue to engage on any outstanding issues as build-in-agenda as implementation of the agreement goes on.

6.9 Benefits of the TFTA Agreement to Kenya

- a) Expanded market for Kenya manufactured products and services.
- b) Inflow of investment into the country and increased potential for

- c) Kenya's investment in the region;
- d) Enhance Kenya's exports into the region through harmonization of policies including the rules of origin, health and safety standards;
- e) Enhance trade facilitation which will substantially reduce the cost of doing business;
- f) Create momentum for regional infrastructure projects;
- g) Enhance production and competitiveness of Kenyan companies.
- h) Enhance industrial and infrastructure development;
- i) Create employment to the women and youth through increased trade and other economic;
- j) Enhance cooperation in customs and combating of unfair trade practices.

7.0 COMMITTEE OBSERVATIONS

The Committee observed the following: -

- a) The Constitution in Article 2 (6) provides for the entrenchment of this Agreement into the laws of Kenya;
- b) The Agreement is aligned to Article 3 (c) *accelerate the political and socio-economic integration of the continent* and (l) *coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union of the Constitutive Act Of The African Union*;
- c) The Article 15 (*Waiver of Obligations*) and Protocol on Trade in Goods Article 17 (*Anti-dumping and Countervailing Measures*) is in tandem with provisions under Trade Remedies Act which provide for antidumping and countervailing measures;
- d) The Agreement provides for an expanded market for both manufactured and primary goods for Kenyan products within a single economic space with a population of over 625 million people;
- e) The implementation of the Agreement will resolve the challenges faced with multiple memberships to RECs; and
- f) Kenya's exports will be enhanced due to harmonization of policies and rules such as customs cooperation, transit facilitations and health standards which will facilitate the ease of movement of goods and business persons.

8.0 COMMITTEE RECOMMENDATION

The Committee recommends **THAT**, Pursuant to the Section 8 of the Treaty Making and Ratification Act, the House approves the ratification of the **AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA)** and **COMESA-EAC-SADC TRIPARTITE FREE TRADE AREA (TFTA) Agreements** as they are in Kenya's national interest.

Signed..........Date..........

THE HON. KATOO OLE METITO, EGH, MGH, M.P.

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON DEFENCE AND
FOREIGN RELATIONS**

ANNEXURE 1

MINUTES

MINUTES OF THE 28TH SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS & COMMITTEE ON TRADE, INDUSTRY & COOPERATIVES HELD ON TUESDAY, 17TH APRIL, 2018 IN SMALL DINING, NEW WING, PARLIAMENT BUILDINGS AT 10.00AM

PRESENT

1. The Hon. Katoo Ole Metito, EGH, MGH, MP(**Chairperson**)
2. The Hon. Richard Tongi, MP (**Chairing**)
3. The Hon. Yusuf Hassan Abdi, MP
4. The Hon. Charles Kilonzo, MP
5. The Hon. Dido Ali Raso, MP
6. The Hon. Patrick Makau King'ola, MP
7. The Hon. Beatrice Nkatha Nyagah, HSC, MP
8. The Hon. Martha Wangari Wanjira, MP
9. The Hon. Memusi Ole Kanchory, MP
10. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
11. The Hon. Moses Nguchine Kirima, MP
12. The Hon. Nelson Koech, MP
13. The Hon. Caleb Amisi, MP
14. The Hon. John Lodepe Nakara, MP
15. The Hon. Ernest Ogesi Kivai, MP

APOLOGY

1. The Hon. Peter Mungai Mwathi, MP
2. The Hon. (Dr.) Lilian Gogo, MP
3. The Hon. Vincent Kipkurui Tuwei, MP
4. The Hon. Silvanus Osoro, MP

IN ATTENDANCE – DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY & COOPERATIVES

1. The Hon. Andrew Mwadime, MP
2. The Hon. Raymond Moi, MP

IN ATTENDANCE

1. Ms. Joyce Kigane - Secretary, International Trade
2. Mr. Josiah Rotich - Assistant Director, International Trade

National Assembly Secretariat

1. Mr. Abdiaziz Shobay - Third Clerk Assistant

- | | | |
|-----------------------|---|-----------------------------|
| 2. Ms. Brigitta Matti | - | Legal Officer |
| 3. Ms. Grace Karanja | - | Research Officer III |
| 4. Mr. Yaqub Ahmed | - | Media Relations Officer III |

AGENDA

1. Preliminaries
 - (i) Prayers
 - (ii) Introductions
 - (iii) Communication from the Chair
 - (iv) Adoption of the Agenda
 - (v) Confirmation of Minutes from the previous sittings
 - (vi) Matters Arising
2. **Consideration of Trade Agreements**
 - i. Draft Agreement Establishing the African Continental Free Trade Area
 - ii. Agreement Establishing A tripartite Free Trade Area among the common market for Eastern & Southern Africa, the East African Community & the Southern African Development Community
3. Any Other Business

MIN.NO.DC.DFR/141/2018: PRELIMINARIES

The Chairperson called the meeting to order at 10:25am. Prayer was read by Hon Caleb Amisi, MP. This was followed by a round of introduction by those who were intendance.

MIN.NO.DC.DFR/142/2018:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Hon. Moses Nguchine Kirima, MP, and seconded by the Hon. John Lodepe Nakara, M.P respectively.

MIN.NO.DC.DFR/143/2018:

CONFIRMATION OF THE MINUTES FROM THE PREVIOUS SITTINGS

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

MIN.NO.DC.DFR/144/2018: CONSIDERATION OF TRADE AGREEMENTS

The Chairperson invited Mr. Josiah Rotich to make his presentation to the Committee. He informed the Committee that: -

1. The 18th Ordinary Session of the Assembly of Heads of State and Government of the African Union (AU), held in January 2012, in Addis Abbaba, adopted a decision to establish a Continental Free Trade Area (AfCFTA) by 2017.

2. The Summit also endorsed an Action Plan for Boosting Intra-African Trade (BIAT) which identifies seven priority action clusters, namely; Trade policy, trade facilitation, productive capacity, trade related infrastructure, trade finance, trade information, and factor market integration.
3. The initiative is a flagship project of the AU Agenda 2063, which is a strategic framework for the socioeconomic transformation of the continent in the next 45 years
4. Subsequently the African Union Assembly launched the AfCFTA negotiations at the 25th Ordinary Summit of Heads of State and Government, held on 15th June 2015, Johannesburg, South Africa.
5. The Agreement establishing the AfCFTA and Declaration launching its, was signed at an Extraordinary Summit of the AU Assembly on 21st March, 2018 in Kigali, Rwanda
6. The AfCFTA will bring together 55 African Countries with a combined population of over 1.2 billion people, including a growing middle class, and combined gross domestic product of more than US\$3.4 Trillion.

Mr. Rotich highlighted the Main Objectives of the AfCFTA as follows:-

7. Create a single continental market for Goods, Services, with free movement of business Persons and investments in order to deepen the economic integration of the African Continent.
8. Expand intra-African trade through better harmonization and coordination of trade liberalisation and facilitation, across the regional economic communities and continent in general;
9. Enhance competitiveness at the enterprise and industry level, and support economic transformation, through exploitation of economies of scale, continental market access and better reallocation of resources.
10. Lay the foundations for the establishment, at a later stage, a Continental Customs Union; and
11. Promote industrial development through diversification and regional value chain development, Agricultural Development and Food Security;
12. Resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.

He further outlined the Benefits and Opportunities for Kenya from the AfCFTA as follows-

13. The AfCFTA will lead to the creation of a wider and expanded African market, with a combined population of over 1.2 billion people and a growing middle class, as well as a combined gross domestic product of more than US\$3.4 trillion. Intra-African trade is projected to double by 2022,
14. The large investment area created by the AfCFTA will increase Kenya's investment competitiveness as it will enhance determinants for attracting FDI, since Kenya is a strategic investment hub in Africa;

15. The AfCFTA will also promote Cross-Border Investment (CBI) leading to increased Kenya's entrepreneurs' potential to invest across Africa,
16. The doubling of intra-African trade by 2022 as envisaged under BIAT through substantial tariff reduction will promote manufacturing.
17. It is expected that challenges of multiple memberships to different RECs will be addressed through harmonisation of the trade regimes by the AfCFTA. This will further boost intra-African trade;
18. Simplification of customs procedures and rules of origin; trade facilitation and transit trade; and elimination of non-tariff barriers will facilitate and ease the movement of goods across the continent hence boosting intra-African trade. Kenya's exports to the continent has hitherto been affected by Non-Tariff Barriers (NTBs)

The officer highlighted the Kenya's Priority Areas by the Ministry of Foreign Affairs as follows-

19. Kenya's priority should be to enhance exports of goods and services to the potential markets created under the AfCFTA;
20. West African and North African markets remain unexploited, currently Kenya's exports to Africa are mainly destined to EAC and COMESA;
21. The main potential export markets/destinations for Kenya outside EAC and COMESA are mainly Nigeria, Cameroon, Morocco, Ghana, Senegal, Algeria, Niger, and Cote D'ivoire, Ethiopia (Non-COMESA FTA) and South Africa
22. With the elimination of tariffs on 90% of the tariff lines, currently averages at over 6%, and mechanism to deal with NTBs, there is need to expand the volumes and value of current exports and venture into new potential ones.
23. With the Summit pronouncement to open up the Air Transport, Kenya Airways should target to enter in to the West African market which has high potential.
24. There was need to target other areas in trade in services that has high potentials such as telecommunication, Banking and insurance, Healthcare, professional, among others.
25. The Ministry recently finalized the National Trade Policy and was now finalizing the National Export Development Strategy which seeks to identify potentials, opportunities and challenges in each sector and address to be able to benefit from market openings such as the AfCFTA.

As regard to whether there was compliance with the procedure for approval of a treaty as stipulated under the Treaty Making and Ratification Act, 2012 the Committee noted that-

1. The procedure for approval of Treaties is outlined in section 8 of the Treaty Making and Ratification Act, 2012 (hereinafter referred to as “the Act”).
2. Section 8 (1) provides that where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.
3. Subsection (3) provides that the relevant committee shall ensure public participation in the ratification process in accordance with laid down parliamentary procedures.

Committee Observations

1. The Committee noted that the agreement was accompanied with a Cabinet Memorandum as required in section 8(1) of the Act.
2. The Cabinet approved the Agreement on 27th March, 2018 for ratification.
3. On 21st March, 2018, the AU Assembly during its Extraordinary Summit held in Kigali, Rwanda, considered and signed the Agreement establishing the AfCFTA.

Committee Resolutions

The Committee resolved that an advert inviting interested members of the public to submit any representations they may have on the said agreement on or before Wednesday 25th April, 2018.

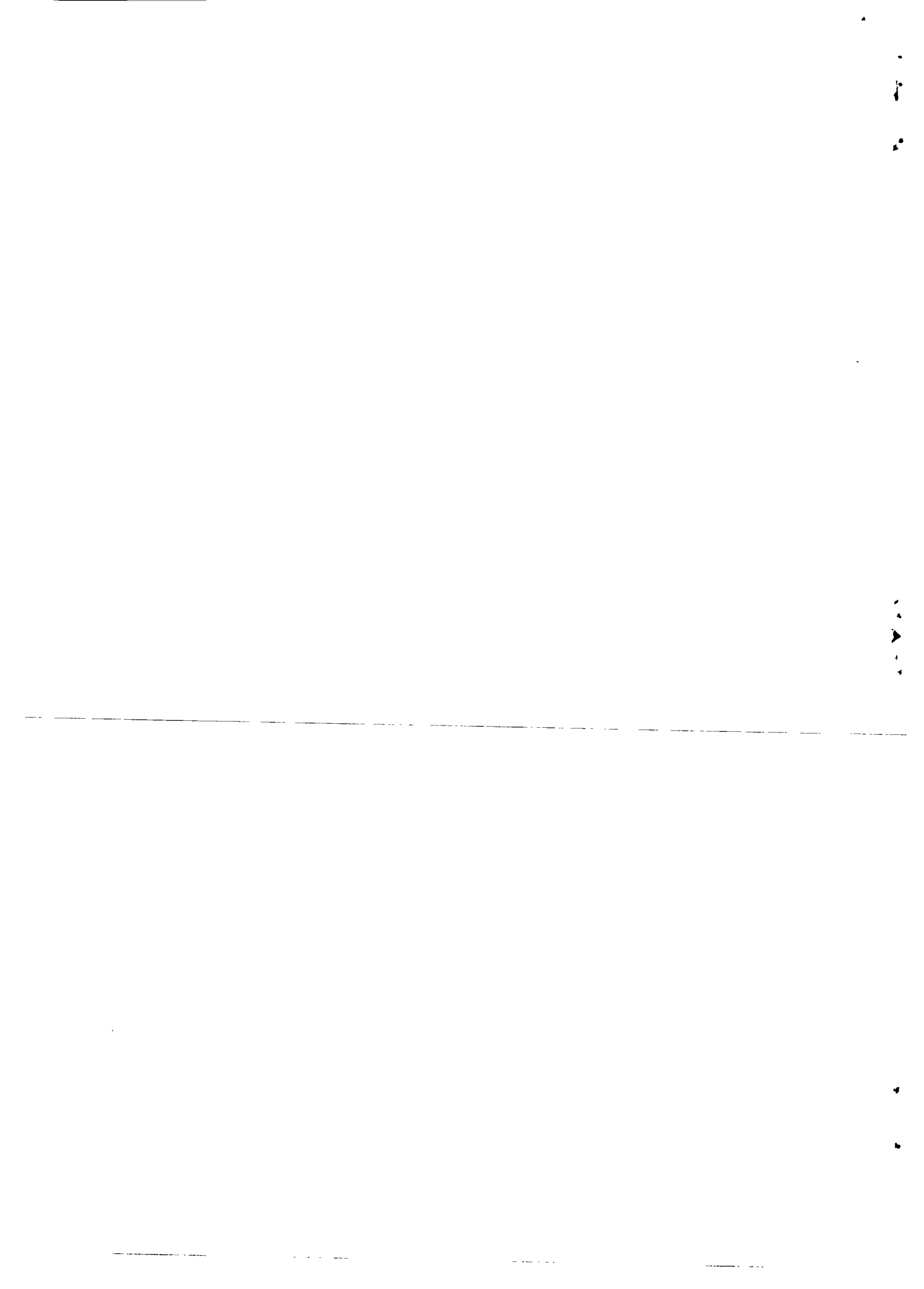
MIN.NO.DC.DFR/146/2018: ADJOURNMENT

And the time being 12.10pm the Chairperson adjourned the meeting.

Signed.....

Hon. Katoo Ole Metito, EGH, MGH, M.P
(CHAIRPERSON)

Date.....19/4/2018



**MINUTES OF THE 30TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
DEFENCE & FOREIGN RELATIONS HELD ON WEDNESDAY, 25TH APRIL, 2018 IN
COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3.30PM**

PRESENT

1. The Hon. Katoo Ole Metito, EGH, MGH, MP (**Chairperson**)
2. The Hon. Charles Kilonzo, MP
3. The Hon. Dido Ali Raso, MP
4. The Hon. Martha Wangari Wanjira, MP
5. The Hon. Memusi Ole Kanchory, MP
6. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
7. The Hon. Moses Nguchine Kirima, MP
8. The Hon. Nelson Koech, MP
9. The Hon. Caleb Amisi, MP
10. The Hon. Silvanus Osoro, MP
11. The Hon. Vincent Kipkurui Tuwei, MP

APOLOGY

1. The Hon. Richard Tongi, MP (**V/Chairperson**)
2. The Hon. Yusuf Hassan Abdi, MP
3. The Hon. Peter Mungai Mwathi, MP
4. The Hon. Patrick Makau King'ola, MP
5. The Hon. Beatrice Nkatha Nyagah, HSC, MP
6. The Hon. John Lodepe Nakara, MP
7. The Hon. (Dr.) Lilian Gogo, MP
8. The Hon. Ernest Ogesi Kivai, MP

National Assembly Secretariat

- | | | |
|-------------------------|---|-----------------------|
| 1. Mr. Abdiaziz Shobay | - | Third Clerk Assistant |
| 2. Ms. Brigitta Matti | - | Legal Officer |
| 3. Ms. Grace Karanja | - | Research Officer |
| 4. Mr. Rodgers Kilungya | - | Audio Officer |

AGENDA

1. Preliminaries
 - (i) Prayers
 - (ii) Introductions
 - (iii) Communication from the Chair
 - (iv) Adoption of the Agenda
 - (v) Confirmation of Minutes from the previous sittings
 - (vi) Matters Arising

2. **Consideration and Adoption of the Report on the Ratification of the African Continental Free Trade Area (ACFTA) and Tripartite Free Trade Area (TFTA)**
3. Any Other Business

MIN.NO.DC.DFR/152/2018: PRELIMINARIES

The Chairperson called the meeting to order at 3:40pm. Prayer was read by Hon Charles Kilonzo, MP.

MIN.NO.DC.DFR/153/2018: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Hon. Dido Ali Raso, MP, and seconded by the Hon. Major (Rtd.) Bashir Sheikh Abdullahi, M.P respectively.

MIN.NO.DC.DFR/154/2018: CONFIRMATION OF THE MINUTES FROM THE PREVIOUS SITTINGS

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

MIN.NO.DC.DFR/155/2018: CONSIDERATION AND ADOPTION OF THE REPORT ON THE RATIFICATION OF THE AFRICAN CONTINENTAL FREE TRADE AREA (ACFTA) AND TRIPARTITE FREE TRADE AREA (TFTA)

The Committee considered and adopted the report with the following observations and recommendations:

I. COMMITTEE OBSERVATIONS ON THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA)

The Committee observed the following: -

- a) The Constitution in Article 2 (6) provides for the entrenchment of this Agreement into the laws of Kenya;
- b) The Agreement is in line with the Abuja Treaty, 1991 aimed at integrating Africa's markets by establishing a Free Trade Area with optimal goal of establishing an African Economic Community;
- c) The Agreement is aligned to Article 3 (c) *accelerate the political and socio-economic integration of the continent* and (l) *coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union of the Constitutive Act of The African Union*;
- d) The Agreement is aligned to the aspirations of Agenda 2063 for a continental market with free movement of persons, capital, goods and services which are crucial for deepening economic integration;
- e) The Article 15 (*Waiver of Obligations*) and Protocol on Trade in Goods Article 17 (Anti-dumping and Countervailing Measures) is in tandem with provisions under Trade Remedies Act which provide for antidumping and countervailing measures;

II. COMMITTEE OBSERVATIONS ON THE TRIPARTITE FREE TRADE AREA (TFTA) AGREEMENT

The Committee observed the following: -

- a) The Constitution in Article 2 (6) provides for the entrenchment of this Agreement into the laws of Kenya;
- b) The Agreement is aligned to Article 3 (c) *accelerate the political and socio-economic integration of the continent* and (l) *coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union of the Constitutive Act Of The African Union*;
- c) The Article 15 (*Waiver of Obligations*) and Protocol on Trade in Goods Article 17 (Anti-dumping and Countervailing Measures) is in tandem with provisions under Trade Remedies Act which provide for antidumping and countervailing measures;
- d) The Agreement provides for an expanded market for both manufactured and primary goods for Kenyan products within a single economic space with a population of over 625 million people;
- e) The implementation of the Agreement will resolve the challenges faced with multiple memberships to RECs; and
- f) Kenya's exports will be enhanced due to harmonization of policies and rules such as customs cooperation, transit facilitations and health standards which will facilitate the ease of movement of goods and business persons.

COMMITTEE RECOMMENDATION

The Committee recommends **THAT**, Pursuant to the Section 8 of the Treaty Making and Ratification Act, the House approves the ratification of the **AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA)** and **TRIPARTITE FREE TRADE AREA (TFTA) Agreements** as they are in Kenya's national interest.

MIN.NO.DC.DFR/156/2018: ADJOURNMENT

And the time being 4.50pm the Chairperson adjourned the meeting.

Signed.....

HON. KATOO OLE METITO, EGH, MGH, M.P
(CHAIRPERSON)

Date.....

ANNEXURE 2

TREATY MAKING AND RATIFICATION ACT



LAWS OF KENYA

TREATY MAKING AND RATIFICATION ACT

NO. 45 OF 2012

Revised Edition 2014 [2012]

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

NO. 45 OF 2012

TREATY MAKING AND RATIFICATION ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

1. Short title.
2. Interpretation.
3. Application.

PART II – INITIATION AND NEGOTIATION OF TREATIES

4. General responsibility for treaty initiation.
5. Initiation of treaty making process.
6. Values and principles in negotiating treaties.

PART III – RATIFICATION OF TREATIES

7. Approval by Cabinet.
8. Consideration by the National Assembly.
9. Approval for ratification.
10. Ratification of treaty.
11. Grant of full powers.
12. Offence to ratify without approval.

PART IV – REGISTRY OF TREATIES

13. Registry of Treaties.
14. Registrar.

PART V – GENERAL PROVISIONS

15. Public awareness.
16. Reporting in compliance with terms of treaties.
17. Denunciation of certain treaties.
18. Rules.

NO. 45 OF 2012

TREATY MAKING AND RATIFICATION ACT

[Date of assent: 13th December, 2012.]

[Date of commencement: 14th December, 2012.]

An Act of Parliament to give effect to the provisions of Article 2(6) of the Constitution and to provide the procedure for the making and ratification of treaties and connected purposes

[Act No. 45 of 2012, Act No. 18 of 2014.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Treaty Making and Ratification Act, 2012.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**bilateral treaty**” means an agreement concluded between Kenya and any other State or between Kenya and an international organisation;

“**Cabinet Secretary**” means the Cabinet Secretary responsible for the time being responsible for matters relating to foreign affairs;

“**full powers**” means all those powers conferred, by way of a legal document, to a person or persons designated by a competent state authority, to represent the State for negotiating, adopting, or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect of a treaty;

“**international organisation**” means an intergovernmental organization;

“**ratification**” means the international act by which the State signifies its consent to be bound by a treaty and includes acceptance, approval and accession where the treaty so provides;

“**Registrar**” means the Registrar of Treaties appointed under section 14;

“**Registry**” means the Registry of Treaties established by section 10;

“**relevant Cabinet Secretary**” means the Cabinet Secretary for the time being responsible the subject matter of the treaty;

“**relevant State department**” means the State department responsible for the subject matter of the treaty to be approved for ratification;

“**reservation**” means a unilateral statement made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to the State;

“signature” means an act whereby the State expresses its willingness to consent to the text of a treaty and has the effect of obligating the said State, even though it may not be a party to the treaty, to refrain, in good faith, from acts that would defeat the object and purpose of the treaty;

“treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation and includes a convention.

(2) Despite subsection (1), until after the first elections under the Constitution, references in this Act to the expression “**Cabinet Secretary**” and “**State Department**” shall be construed to mean “**Minister**” and “**Ministry**” respectively.

[Act No. 18 of 2014, Sch.]

3. Application

(1) This Act applies to treaties which are concluded by Kenya after the commencement of this Act.

(2) This Act shall apply to—

- (a) multilateral treaties;
- (b) bilateral treaties which deal with—
 - (i) the security of Kenya, its sovereignty, independence, unity or territorial integrity;
 - (ii) the rights and duties of citizens of Kenya;
 - (iii) the status of Kenya under international law and the maintenance or support of such status;
 - (iv) the relationship between Kenya and any international organisation or similar body; and
 - (v) the environment and natural resources.

(3) A treaty relating to the adjustment, alteration or variation of the present position of Kenya on matters of sovereignty, independence and territorial integrity shall be approved in a referendum in accordance with Article 255 of the Constitution.

(4) Notwithstanding subsection (2)(b), the Government may enter into bilateral agreements—

- (a) necessary for matters relating to government business; or
- (b) relating to technical, administrative or executive matters.

PART II – INITIATION AND NEGOTIATION OF TREATIES

4. General responsibility for treaty initiation

(1) Subject to the provisions of this Act, the national executive shall be responsible for initiating the treaty making process, negotiating and ratifying treaties.

(2) The responsibility provided for in subsection (1) may be delegated to a relevant State department.

5. Initiation of treaty making process

(1) Subject to the provisions of this section, the relevant national executive or the relevant State department shall initiate the treaty making process in such manner as may be prescribed by the Cabinet Secretary.

(2) When deciding whether to initiate the treaty-making process or not, the national executive or the relevant State department shall consider the following—

- (a) the need that the new treaty is to meet;
- (b) the existing legal regime, including the extent of its applicability to the perceived problem;
- (c) the probability of reaching the required measure of agreement on the solution aimed for;
- (d) any relevant legislative efforts related to the perceived problem;
- (e) the optimal form for the proposed treaty;
- (f) the likelihood that the proposed treaty shall be accepted by a sufficient number of states, where the treaty is multilateral;
- (g) the anticipated time schedule for completing the treaty-making process;
- (h) the expected costs of formulating and adopting the treaty to Kenya;
- (i) in formulating treaties relating to technical or scientific problems; whether extensive scientific studies or research have been carried out to determine the parameters of the problem and the lines of potential solutions.

(3) The national executive or the relevant State department shall record whether the conditions in subsection (2) are met, and shall present a proposal to commence treaty-making for approval by the Cabinet.

(4) The Cabinet shall consider and approve or disapprove a proposal for treaty making presented in accordance with subsection (3) within a reasonable time.

6. Values and principles in negotiating treaties

(1) In negotiating treaties, the national executive or the relevant State department shall be bound by the values and principles of the Constitution; and shall take into account the regulatory impact of any proposed treaty.

(2) When appointing persons to negotiate a treaty, the national executive or the relevant State department shall appoint persons who are competent to undertake such negotiations in the interest of the people of Kenya.

PART III – RATIFICATION OF TREATIES**7. Approval by Cabinet**

Where the Government intends to ratify a treaty, the Cabinet Secretary of the relevant State department shall, in consultation with the Attorney-General, submit to the Cabinet the treaty, together with a memorandum outlining—

- (a) the objects and subject matter of the treaty;

- (b) any constitutional implications including—
 - (i) any proposed amendment to the Constitution; and
 - (ii) that the treaty is consistent with the Constitution and promotes constitutional values and objectives;
- (c) the national interests which may be affected by the ratification of the treaty;
- (d) obligations imposed on Kenya by the treaty;
- (e) requirements for implementation of the treaty;
- (f) policy and legislative considerations;
- (g) financial implications;
- (h) ministerial responsibility;
- (i) implications on matters relating to counties;
- (j) the summary of the process leading to the adoption of the treaty;
- (k) the date of signature;
- (l) the number of states that are party to the treaty;
- (m) the views of the public on the ratification of the treaty;
- (n) whether the treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;
- (o) the proposed text of any reservations that should be entered when ratifying the treaty in order to protect or advance national interests or ensure conformity with the Constitution; and
- (p) whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible, of the expenditure.

8. Consideration by the National Assembly

(1) Where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.

(2) *Deleted by Act No. 18 of 2014, Sch.*

(3) The relevant parliamentary committee shall, during its consideration of the Treaty, ensure public participation in the ratification process in accordance with laid down parliamentary procedures.

(4) The National Assembly may approve the ratification of a treaty with or without reservations to specific provisions of the treaty.

(5) A proposed reservation shall be introduced as a provision into the treaty in accordance with the procedure set out in the Standing Orders.

(6) *Deleted by Act No. 18 of 2014, Sch.*

(7) Where the National Assembly refuses to approve the ratification of a treaty, the Clerk of the National Assembly shall submit the resolution of the House to the relevant Cabinet Secretary within fourteen days of the resolution.

(8) *Deleted by Act No. 18 of 2014, Sch.*

(9) The National Assembly shall not approve the ratification of a treaty or part of it if its provisions are contrary to Constitution, nor shall the House approve a reservation to a treaty or part of it if that reservation negates any of the provisions of the Constitution even if the reservation is permitted under the relevant treaty.

[Act No. 18 of 2014, Sch.]

9. Approval for ratification

(1) Where the ratification of a treaty referred to in section 7 is approved by the National Assembly without any reservations to the treaty, the relevant Cabinet Secretary shall, within thirty days from the date of the approval of the ratification of treaty request the Cabinet Secretary to prepare the instrument of ratification of the treaty.

(2) Where a treaty referred to in section 7 is approved for ratification with reservations to some provisions of the treaty, the treaty shall be ratified with those reservations to the corresponding article in the treaty.

(3) Where the National Assembly refuses to approve the ratification of the treaty referred to in section 7, the Government shall not ratify the treaty.

[Act No. 18 of 2014, Sch.]

10. Ratification of Treaty

(1) All instruments of ratification of a treaty shall be signed, sealed and deposited by the Cabinet Secretary at the requisite international body and a copy thereof shall be filed with the Registrar.

(2) Where a treaty ratified under this Act is subsequently amended or modified, the amendment or modification shall be ratified only after compliance with the procedure set out in this Part.

(3) The provisions of subsection (2) shall apply similarly to protocols signed under a treaty.

11. Granting of full powers

The Cabinet Secretary may grant full powers to such persons as may be appropriate for the purposes of ratification of any treaty in accordance with this Act.

12. Offence to ratify without approval

(1) A person shall not ratify any treaty on behalf of the Government of Kenya unless the treaty has been considered and approved by the Cabinet and Parliament in accordance with this Part.

(2) A person who contravenes subsection (1) commits an offence and shall be liable to imprisonment for a term not exceeding fifteen years or to a fine not exceeding twenty million shillings or to both such fine or imprisonment.

PART IV – REGISTRY OF TREATIES

13. Registry of Treaties

(1) There shall be a Registry of Treaties which shall be a department within the State Department responsible for matters relating to foreign affairs.

(2) The Registry shall—

- (a) be the depository of all treaties to which Kenya is a party;
- (b) contain a record of all treaties in such manner as may be prescribed;
- (c) contain the status of all treaties pending ratification or domestication and the timelines for such ratification or domestication;
- (d) perform such other function as may be assigned to it by the Cabinet Secretary.

[Act No. 18 of 2014, Sch.]

14. Registrar

(1) The Registry shall be headed by the Registrar of Treaties who shall be appointed by the Cabinet Secretary through an open and competitive process, with the approval of the Public Service Commission.

(2) The office of the Registrar shall be an office in the public service.

(3) A person shall be qualified to be appointed as Registrar if such person has—

- (a) at least a degree in law from a university recognised in Kenya; and
- (b) at least seven years experience in the practice of law or international relations;

(4) The Registrar shall—

- (a) maintain a record of—
 - (i) the treaties to which Kenya is a signatory;
 - (ii) the treaties proposed for ratification by Kenya;
 - (iii) the treaties that Kenya has ratified;
 - (iv) Kenya's reports to any treaty body;
 - (v) the recommendations and concluding observations from any treaty body on Kenya's reports;
- (b) monitor the implementation of the treaties ratified by Kenya;
- (c) inform lead State departments to observe and uphold the obligations of the respective lead state department under the respective treaties;
- (d) advise any citizen of Kenya on the rights and obligations of Kenya under a treaty;
- (e) maintain a website of the treaties to which Kenya is a signatory;
- (f) keep copies of the published reports of proceedings of the negotiations that led to the adoption of the treaties ratified by Kenya;
- (g) facilitate public access to treaties which Kenya has ratified;

- (h) respond to public inquiries on any treaty ratified by Kenya; and
- (i) perform such other functions as may be prescribed by the Cabinet Secretary.

PART V – GENERAL PROVISIONS

15. Public awareness

(1) The Cabinet Secretary shall cause to be laid before the National Assembly, at least once every financial year, a report containing records of all treaties which Kenya has ratified and which may in any way bind Kenya to specific actions.

(2) The Cabinet Secretary shall, through publication in at least two newspapers of nationwide circulation, notify the public of every treaty, which may in any way bind, or to which Kenya is a party.

(3) The relevant State Department in respect of each treaty shall take measures to inform and create awareness to the public about the effects and benefits of the treaty.

16. Reporting in compliance with terms of treaties

Where a treaty provides for the submission of periodic reports as part of its monitoring mechanisms the Cabinet Secretary shall, in conjunction with the Attorney-General and the relevant State Department facilitate the preparation and submission of such report within the prescribed period.

17. Denunciation of certain treaties

(1) Where Kenya wishes withdraw from a treaty, the relevant Cabinet Secretary shall prepare a cabinet memorandum indicating the reasons for such an intention.

(2) The provisions of sections 4, 5 and 6 shall apply with necessary modifications, to withdrawal from a treaty.

18. Rules

(1) The Cabinet Secretary may make Rules for giving effect to this Act.

(2) Without limiting the generality of subsection (1) the Cabinet Secretary may make Rules—

- (a) prescribing anything that needs to be prescribed under this Act;
 - (b) for the granting of full powers in other areas in addition to the one specified under section 8;
 - (c) providing for the administrative steps to be taken prior to the preparation of the cabinet memorandum for cabinet approval of a treaty under this Act;
 - (d) the dissemination of information under this Act.
-

ANNEXURE 3

**DRAFT AGREEMENT ESTABLISHING THE
AFRICAN CONTINENTAL FREE TRADE AREA**

Kalanga

AFRICAN UNION

الاتحاد الأفريقي



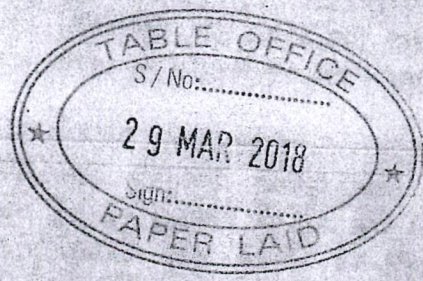
UNION AFRICAINE

UNIÃO AFRICANA

Addis Ababa, ETHIOPIA P.O. Box 3243 Telephone: +251-115-517 700 Fax: +251-115517844
Website: www.au.int

Second Extra-Ordinary Session of the Specialised Technical Committee on
Justice and Legal Affairs (Ministerial Meeting)
14- 15 March 2018

Kigali, Rwanda



STC/Legal/Min
Original: English

DRAFT

AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA
MARCH 2018

M.M



Creating One African Market

DECLARATION

We, Member States of the African Union, 10

DESIROUS to implement the Decision of the Assembly of Heads of State and Government during its Eighteenth Ordinary Session held in Addis Ababa, Ethiopia from 29th-30th January, 2012 (Assembly/AU/Dec. 394(XVIII) of the Framework, Road Map and Architecture for Fast Tracking the establishment of the African Continental Free Trade Area and the Action Plan for Boosting Intra-African Trade; 10

COGNISANT of the launch of negotiations for the establishment of the Continental Free Trade Area aimed at integrating Africa's markets in line with the objectives and principles enunciated in the *Abuja Treaty* during the Twenty-Fifth Ordinary Session of the Assembly of Heads of State and Government of the African Union held in Johannesburg, South Africa from 14-15 June 2015 (Assembly/AU/Dec. 569(XXV); 10

DETERMINED to strengthen our economic relationship and build upon our respective rights and obligations under the *Constitutive Act of the African Union of 2000*, the *Abuja Treaty* and, where applicable, the *Marrakesh Agreement Establishing the World Trade Organization of 1994*; 10

HAVING REGARD to the aspirations of Agenda 2063 for a continental market with the free movement of persons, capital, goods and services, which are crucial for deepening economic integration, and promoting agricultural development, food security, industrialisation and structural economic transformation; 10

CONSCIOUS of the need to create an expanded and secure market for the goods and services of State Parties through adequate infrastructure and the reduction or progressive elimination of tariffs and elimination of non-tariff barriers to trade and investment; 10

ALSO CONSCIOUS of the need to establish clear, transparent, predictable and mutually-advantageous rules to govern Trade in Goods and Services, Competition Policy, Investment and Intellectual Property among State Parties, by resolving the challenges of multiple and overlapping trade regimes to achieve policy coherence, including relations with third parties; 10

RECOGNISING the importance of international security, democracy, human rights, gender equality and the rule of law, for the development of international trade and economic cooperation; 10

M. M.

10

M. M.

REAFFIRMING the right of State Parties to regulate within their territories and the State Parties' flexibility to achieve legitimate policy objectives in areas including public health, safety, environment, public morals and the promotion and protection of cultural diversity; *NP*

FURTHER REAFFIRMING our existing rights and obligations with respect to each other under other agreements to which we are parties; and *NP*

ACKNOWLEDGING the Regional Economic Communities (RECs) Free Trade Areas as building blocs towards the establishment of the African Continental Free Trade Area (AfCFTA); *NP*

HAVE AGREED AS FOLLOWS: *NP*

PART I DEFINITIONS

Article 1 Definitions

For the purpose of this Agreement, *NP*

- (a) "Abuja Treaty" means the *Treaty Establishing the African Economic Community of 1991*; *NP*
- (b) "Agreement" means this Agreement Establishing the African Continental Free Trade Area and its Protocols, Annexes and Appendices which shall form an integral part thereof; *NP*
- (c) "Annex" means an instrument attached to a Protocol, which forms an integral part of this Agreement; *NP*
- (d) "Appendix" means an instrument attached to an Annex which forms an integral part of this Agreement; *NP*
- (e) "Assembly" means the Assembly of Heads of State and Government of the African Union; *NP*
- (f) "AU" means the African Union; *NP*
- (g) "AfCFTA" means the African Continental Free Trade Area; *NP*
- (h) "Commission" means the African Union Commission; *NP*
- (i) "Constitutive Act" means the Constitutive Act of the African Union of 2000; *NP MM*

NP

MM

- (j) "Customs Union" means the Customs Union at the continental level by means of adopting a common external tariff, as provided by the Treaty Establishing the African Economic Community of 1991; ✓
- (k) "Council of Ministers" means the Council of African Ministers of State Parties responsible for Trade; ✓
- (l) "Dispute Settlement Body" means the body established to administer the provisions of the Protocol on Rules and Procedures on the Settlement of Disputes except as otherwise provided in this Agreement; ✓
- (m) "Executive Council" means the Executive Council of Ministers of the Union; ✓
- (n) "GATS" means the WTO General Agreement on Trade in Services of 1994; ✓
- (o) "GATT" means the WTO General Agreement on Tariffs and Trade of 1994; ✓
- (p) "Instrument" unless otherwise specified in this Agreement refers to Protocol, Annex or Appendix; ✓
- (q) "Member States" means the Member States of the African Union; ✓
- (r) "Non-Tariff Barriers" means barriers that impede trade through mechanisms other than the imposition of tariffs; ✓
- (s) "Protocol" means an instrument attached to this Agreement, which forms an integral part of the Agreement; ✓
- (t) "RECs" means the Regional Economic Communities recognised by the African Union, namely, the Arab Maghreb Union (UMA); the Common Market for Eastern and Southern Africa (COMESA); the Community of Sahel-Saharan States (CEN-SAD); the East African Community (EAC); the Economic Community of Central African States (ECCAS); the Economic Community of West African States (ECOWAS); the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC); ✓
- (u) "Secretariat" means the Secretariat established pursuant to Article 13 of this Agreement; ✓
- (v) "State Party" means a Member State that has ratified or acceded to this Agreement and for which the Agreement is in force; ✓
- (w) "Third Party" means a State(s) that is not a party to this Agreement except as otherwise defined in this Agreement; and ✓ M.M

NO

M.M

(x) "WTO" means the World Trade Organization, as established in terms of the Marrakesh Agreement Establishing the World Trade Organization of 1994. N

PART II
ESTABLISHMENT, OBJECTIVES, PRINCIPLES AND SCOPE N

Article 2
Establishment of the African Continental Free Trade Area N

The African Continental Free Trade Area (hereinafter referred to as "the AfCFTA") is hereby established. N

Article 3
General Objectives

The general objectives of the AfCFTA are to: N

- (a) create a single market for goods, services, and movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan African Vision of "An integrated, prosperous and peaceful Africa" enshrined in Agenda 2063; N
- (b) create a liberalised market for goods and services through successive rounds of negotiations; N
- (c) contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the State Parties and RECs; N
- (d) lay the foundation for the establishment of a Continental Customs Union at a later stage; N
- (e) promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties; N
- (f) enhance the competitiveness of the economies of State Parties within the continent and the global market; N
- (g) promote industrial development through diversification and regional value chain development, agricultural development and food security; and N
- (h) resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes. N M-M

N

Article 4

Specific Objectives

For purposes of fulfilling and realizing the objectives set out in Article 3, State Parties shall:

- (a) progressively eliminate tariffs and non-tariff barriers to trade in goods; ✓
- (b) progressively liberalise trade in services; ✓
- (c) cooperate on investment, intellectual property rights and competition policy; ✓
- (d) cooperate on all trade-related areas; ✓
- (e) cooperate on customs matters and the implementation of trade facilitation measures; ✓
- (f) establish a mechanism for the settlement of disputes concerning their rights and obligations; and ✓
- (g) establish and maintain an institutional framework for the implementation and administration of the AfCFTA. ✓

Article 5
Principles

The AfCFTA shall be governed by the following principles: ✓

- (a) driven by Member States of the African Union; ✓
- (b) RECs' Free Trade Areas (FTAs) as building blocs for the AfCFTA; ✓
- (c) variable geometry; ✓
- (d) flexibility and special and differential treatment; ✓
- (e) transparency and disclosure of information; ✓
- (f) preservation of the acquis; ✓
- (g) Most-Favoured-Nation (MFN) Treatment; ✓
- (h) National Treatment; ✓
- (i) reciprocity; ✓ M.M

✓

M.M⁵

- (j) substantial liberalisation; and
- (k) consensus in decision-making; and
- (l) best practices in the RECs, in the State Parties and International Conventions binding the African Union.

Article 6 Scope

This Agreement shall cover trade in goods, trade in services, investment, intellectual property rights and competition policy.

Article 7 Phase II Negotiations

1. In pursuance of the objectives of this Agreement, Member States shall enter into Phase II negotiations in the following areas:
 - (a) intellectual property rights;
 - (b) investment; and
 - (c) competition policy.
2. The negotiations referred to in paragraph 1 of this Article shall commence after the adoption of this Agreement by the Assembly and shall be undertaken in successive rounds.

Article 8 Status of the Protocols, Annexes and Appendices

1. The Protocols on Trade in Goods, Trade in Services, Investment, Intellectual Property Rights, Competition Policy, Rules and Procedures on the Settlement of Disputes and their associated Annexes and Appendices shall, upon adoption, form an integral part of this Agreement.
2. The Protocols on Trade in Goods, Trade in Services, Investment, Intellectual Property Rights, Competition Policy, Rules and Procedures on the Settlement of Disputes and their associated Annexes and Appendices shall form part of the single undertaking, subject to entry into force.
3. Any additional instruments, within the scope of this Agreement, deemed necessary, shall be concluded in furtherance of the objectives of the AfCFTA and shall, upon adoption, form an integral part of this Agreement.

Article 9
Institutional Framework for the Implementation of the AfCFTA

The institutional framework for the implementation, administration, facilitation, monitoring and evaluation of the AfCFTA shall consist of the following:

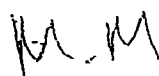
- (a) the Assembly;
- (b) the Council of Ministers;
- (c) the Committee of Senior Trade Officials; and
- (d) the Secretariat.

Article 10
The Assembly

1. The Assembly, as the highest decision-making organ of the AU, shall provide oversight and strategic guidance on the AfCFTA, including the Action Plan for Boosting Intra-African Trade (BIAT).
2. The Assembly shall have the exclusive authority to adopt interpretations of this Agreement on the recommendation of the Council of Ministers. The decision to adopt an interpretation shall be taken by consensus.

Article 11
The Composition and Functions of the Council of Ministers

1. The Council of Ministers is hereby established and shall consist of the Ministers responsible for Trade or such other ministers, authorities, or officials duly designated by the State Parties.
2. The Council of Ministers shall report to the Assembly through the Executive Council.
3. The Council of Ministers shall within its mandate:
 - (a) take decisions in accordance with this Agreement;
 - (b) ensure effective implementation and enforcement of the Agreement;
 - (c) take measures necessary for the promotion of the objectives of this Agreement and other instruments relevant to the AfCFTA;
 - (d) work in collaboration with the relevant organs and institutions of the African Union;



- (e) promote the harmonisation of appropriate policies, strategies and measures for the effective implementation of this Agreement; ✓
- (f) establish and delegate responsibilities to ad hoc or standing committees, working groups or expert groups; ✓
- (g) prepare its rules of procedure and those of its subsidiary bodies created for the implementation of the AfCFTA and submit them to the Executive Council for approval; ✓
- (h) supervise the work of all committees and working groups it may establish pursuant to this Agreement; ✓
- (i) consider reports and activities of the Secretariat and take appropriate actions; ✓
- (j) make regulations, issue directives and make recommendations in accordance with the provisions of this Agreement; ✓
- (k) consider and propose for adoption by the Assembly, the staff and financial regulations of the Secretariat; ✓
- (l) consider the organisational structure of the Secretariat and submit for adoption by the Assembly through the Executive Council; ✓
- (m) approve the work programs of the AfCFTA and its institutions; ✓
- (n) consider the budgets of the AfCFTA and its institutions and submit them to the Assembly through the Executive Council; ✓
- (o) make recommendations to the Assembly for the adoption of authoritative interpretation of this Agreement; and ✓
- (p) perform any other function consistent with this Agreement or as may be requested by the Assembly. ✓

4. The Council of Ministers shall meet twice a year in ordinary session and may meet as and when necessary in extraordinary sessions. ✓

5. Decisions taken by the Council of Ministers, while acting within its mandate, shall be binding on State Parties. Decisions that have legal, structural or financial implications shall be binding on State Parties upon their adoption by the Assembly. ✓

The State Parties shall take such measures as are necessary to implement the decisions of the Council of Ministers. ✓ M.M.

✓

M.M.

Committee of Senior Trade Officials

1. The Committee of Senior Trade Officials shall consist of Permanent or Principal Secretaries or other officials designated by each State Party. *N*
2. The Committee of Senior Trade Officials shall: *N*
 - (a) implement the decisions of the Council of Ministers as may be directed; *N*
 - (b) be responsible for the development of programmes and action plans for the implementation of the Agreement; *N*
 - (c) monitor and keep under constant review and ensure proper functioning and development of the AfCFTA in accordance with the provisions of this Agreement; *N*
 - (d) establish committees or other working groups as may be required; *N*
 - (e) oversee the implementation of the provisions of this Agreement and for that purpose, may request a Technical Committee to investigate any particular matter; *N*
 - (f) direct the Secretariat to undertake specific assignments; and *N*
 - (g) perform any other function consistent with this Agreement or as may be requested by the Council of Ministers. *N*
3. Subject to directions given by the Council of Ministers, the Committee of Senior Trade Officials shall meet at least twice a year and shall operate in accordance with the rules of procedures as adopted by the Council of Ministers. *N*
4. The Committee shall submit its report, which may include recommendations, to the Council of Ministers following its meetings. *N*
5. The RECs shall be represented in the Committee of Senior Trade Officials, in an advisory capacity. *N M. M*

N

M. M

Article 13
The Secretariat

1. The Assembly shall establish the Secretariat, decide on the headquarters and approve its structure and budget. *NP*
2. The Secretariat shall be a functionally autonomous institutional body within the AU system with legal personality. *NP*
3. The Secretariat shall be autonomous of the Commission and its departments with which it shall work closely. *NP*
4. The roles and responsibilities of the Secretariat shall be determined by the Council of Ministers. *NP*
5. The Commission shall provide the necessary transitional support until the Secretariat is fully operational. *NP*
6. The Secretariat shall work in close and continuing coordination with the RECs. *NP*
7. The funds of the Secretariat shall come from the overall budget of the AU. *NP*
8. For purposes of attaining, its objectives, the Secretariat shall have its own operational and programme budget. *NP*
9. The Secretariat may mobilise resources from extra-budgetary sources in accordance with the AU Financial Rules and Regulation. *NP*

Article 14
Decision-Making

1. Decisions of the AfCFTA institutions¹ on substantive issues shall be taken by consensus. *NP*
2. Notwithstanding paragraph 1, the Committee of Senior Trade Officials shall refer, for consideration by the Council of Ministers, matters on which it has failed to reach consensus. The Council of Ministers shall refer the matters to the Assembly where consensus could not be reached. *NP*
3. Decisions on questions of procedure shall be taken by a simple majority of State Parties, eligible to vote. *NP M.M*

¹ The Assembly, the Council of Ministers and and the Committee of Senior Trade Officials. *NP*

1. Decisions on whether or not a question is one of process shall also be decided by a simple majority of State Parties eligible to vote.

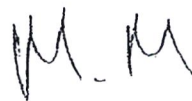
5. Absenteeism by a State Party eligible to vote shall not prevent the adoption of decisions.

Article 16 Waiver of Obligations

1. In exceptional circumstances, the Council of Ministers may waive an obligation imposed on a State Party to this Agreement, upon request by a State Party, provided that any such decision shall be taken by three fourths² of the States Parties, in the absence of consensus.

2. A request for a waiver from a State Party concerning this Agreement shall be submitted to the Council of Ministers for consideration pursuant to the practice of decision-making by consensus. The Council of Ministers shall establish a time period, which shall not exceed ninety (90) days, to consider the request. If consensus is not reached during the time period, any decision to grant a waiver shall be taken by three fourths of the State Parties.

3. A decision by the Council of Ministers granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate. Any waiver granted for a period of more than one (1) year shall be reviewed by the Council of Ministers not later than one (1) year after it is granted, and thereafter annually until the waiver terminates. In each review, the Council of Ministers shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The Council of Ministers, on the basis of the annual review, may extend, modify or terminate the waiver.



² A decision to grant a waiver in respect of any obligation subject to a transition period or a period for staged implementation that the requesting State Party has not performed by the end of the relevant period shall be taken only by consensus.

PART IV
TRANSPARENCY

Article 16
Publication

1. Each State Party shall promptly publish or make publicly available through accessible mediums³ its laws, regulations, procedures and administrative rulings of general application as well as any other commitments under an international agreement relating to any trade matter covered by this Agreement. *Q*
2. The provisions of this Agreement shall not require any State Party to disclose confidential information which would impede law enforcement or otherwise be contrary to public interest or will prejudice the legitimate commercial interest of particular enterprises, public or private. *Q*

Article 17
Notification

1. Laws, regulations, procedures and administrative rulings of general application as well as any other commitments under an international agreement relating to any trade matter covered by this Agreement adopted after the entry into force of this Agreement shall be notified by State Parties in one (1) of the African Union working languages to other State Parties through the Secretariat. *Q*
2. Each State Party shall notify, through the Secretariat, in accordance with this Agreement, the other State Parties of any actual or proposed measure that the State Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other State Party's interests under this Agreement. *Q*
3. At the request of another State Party, a State Party, through the Secretariat, shall promptly provide information and respond to questions pertaining to an actual or proposed measure, irrespective of whether or not the other State Party was previously notified of that measure. *Q*
4. Any notification or information provided pursuant to this Article is without prejudice to whether the measure is consistent with this Agreement. *Q M.M*

Q

M.M

³ "For example through Gazette, newsletter, Hansard, or websites in one of the African Union languages." *Q M.M.*

PART V
CONTINENTAL PREFERENCES

Article 18
Continental Preferences

1. Following the entry into force of this Agreement, State Parties shall, when implementing this Agreement, accord each other, on a reciprocal basis, preferences that are no less favourable than those given to Third Parties. *Q*
2. A State Party shall afford opportunity to other State Parties to negotiate preferences granted to Third Parties prior to entry into force of this Agreement and such preferences shall be on a reciprocal basis. In the case where a State Party is interested in the preferences in this paragraph, the State Party shall afford opportunity to other State Parties to negotiate on a reciprocal basis, taking into account levels of development of State Parties. *Q*
3. This Agreement shall not nullify, modify or revoke rights and obligations under pre-existing trade agreements that State Parties have with Third Parties. *Q*

Article 19
Conflict and Inconsistency with Regional Agreements

1. In the event of any conflict and inconsistency between this Agreement and any regional agreement, this Agreement shall prevail to the extent of the specific inconsistency, except as otherwise provided in this Agreement. *Q*
2. Notwithstanding the provisions of Paragraph 1 of this Article, State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves. *Q*

PART VI
DISPUTE SETTLEMENT

Article 20
Dispute Settlement

1. A Dispute Settlement Mechanism is hereby established and shall apply to the settlement of disputes arising between State Parties. *Q M.M*

2. The Dispute Settlement Mechanism shall be administered in accordance with the Protocol on Rules and Procedures on the Settlement of Disputes. *MQ*
3. The Protocol on Rules and Procedures on the Settlement of Disputes shall establish, *inter alia*, a Dispute Settlement Body. *MQ*

PART VII FINAL PROVISIONS

Article 21 Exceptions

No provision of this Agreement shall be interpreted as derogating from the principles and values contained in other relevant instruments for the establishment and sustainability of the AfCFTA, except as otherwise provided for in the Protocols to this Agreement. *MQ*

Article 22 Adoption, Signature, Ratification and Accession

1. This Agreement shall be adopted by the Assembly. *MQ*
2. This Agreement shall be open for signature and ratification or accession by the Member States, in accordance with their respective constitutional procedures. *MQ*

Article 23 Entry into Force

1. This Agreement and the Protocols on Trade in Goods, Trade in Services, and Protocol on Rules and Procedures on the Settlement of Disputes shall enter into force thirty (30) days after the deposit of the twenty second (22nd) instrument of ratification. *MQ*
2. The Protocols on Investment, Intellectual Property Rights, Competition Policy and any other Instrument within the scope of this Agreement deemed necessary, shall enter into force thirty (30) days after the deposit of the twenty second (22nd) instrument of ratification. *MQ*
3. For any Member State acceding to this Agreement, the Protocols on Trade in Goods, Trade in Services, and the Protocol on Rules and Procedures on the Settlement of Disputes shall enter into force in respect of that State Party on the date of the deposit of its instrument of accession. *MQ*
4. For Member States acceding to the Protocols on Investment, Intellectual Property Rights, Competition Policy, and any other Instrument within the scope of this *MQ M.N*

~~Agreement deemed necessary, shall enter into force on the date of its deposit of a
instrument of accession.~~

5. The Depository shall inform all Member States of the entry into force of this Agreement and its Annexes. *MQ*

Article 24
Depository

1. The Depository of this Agreement shall be the Chairperson of the Commission. *MQ*
2. This Agreement shall be deposited with the Depository, who shall transmit a certified true copy of the Agreement to each Member State. *MQ*
3. A Member State shall deposit an instrument of ratification or accession with the Depository. *MQ*
4. The Depository shall notify Member States of the deposit of the instrument of ratification or accession. *MQ*

Article 25
Reservation

No reservations shall be made to this Agreement. *MQ*

Article 26
Registration and Notification

1. The Depository shall upon the entry into force of this Agreement, register it with the United Nations Secretary General in conformity with Article 102 of the Charter of the United Nations. *MQ*
2. State Parties shall, where applicable notify this Agreement to the WTO individually or collectively. *MQ*

Article 27
Withdrawal

1. After five (5) years from the date of entry into force in respect of a State Party, a State Party may withdraw from this Agreement by giving written notification to State Parties through the Depository. *MQ*
2. Withdrawal shall be effective two (2) years after receipt of notification by the Depository, or on such later date as may be specified in the notification. *MQ M-M*

3. Withdrawal shall not affect any pending rights and obligations of the withdrawing State Party prior to the withdrawal. *Q*

Article 28 Review

1. This Agreement shall be subject to review every five (5) years after its entry into force, by State Parties, to ensure effectiveness, achieve deeper integration, and adapt to evolving regional and international developments. *Q*
2. Following the process of review, State Parties may make recommendations for amendments, in accordance with Article 29 taking into account experience acquired and progress achieved during the implementation of this Agreement. *Q*

Article 29 Amendments


1. Any State Party may submit proposal(s) for amendment to this Agreement to the Depository. *Q*
2. The Depository shall within thirty (30) days of receipt of the proposal, circulate the proposal to State Parties and the Secretariat. *Q*
3. A State Party that wishes to comment on the proposal may do so within sixty (60) days from the date of circulation and submit the comments to the Depository and the Secretariat. *Q*
4. The Secretariat shall circulate the proposal and comments received to members of the appropriate AfCFTA committees and sub-committees for consideration. *Q*
5. The relevant committees and sub-committees shall present, through the Secretariat, recommendations to the Council of Ministers, for consideration, following which a recommendation may be made to the Assembly through the Executive Council. *Q*
6. Amendments to the Agreement shall be adopted by the Assembly. *Q*
7. The amendments to this Agreement shall enter into force in accordance with Article 23 of this Agreement. *Q*


Article 30 Authentic Texts


This Agreement is drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all of which are equally authentic. *Q M. M*


PROTOCOL ON TRADE IN GOODS


PREAMBLE


We, Member States of the African Union, 


DESIROUS to implement the Decision of the Assembly of Heads of State and Government during its Eighteenth Ordinary Session held in Addis Ababa, Ethiopia from 29th-30th January, 2012 (Assembly/AU/Dec. 394(XVIII)) of the Framework, Road Map and Architecture for Fast Tracking the establishment of the African Continental Free Trade Area and the Action Plan for Boosting Intra-African Trade; 


COGNISANT of the launch of negotiations for the establishment of the Continental Free Trade Area aimed at integrating Africa's markets in line with the objectives and principles enunciated in the *Abuja Treaty* during the Twenty-Fifth Ordinary Session of the Assembly of Heads of State and Government of the African Union held in Johannesburg, South Africa from 14-15 June 2015 (Assembly/AU/Dec. 559(XXV)); 


DETERMINED to take the necessary measures for reducing the cost of doing business and creating a conducive environment for private sector development and thereby boosting intra-African trade; 

RESOLVED to enhance competitiveness at the industry and enterprise level through exploiting opportunities for economies of scale, continental market access and an efficient allocation of resources; 

CONFIDENT that a comprehensive Protocol on Trade in Goods will deepen economic efficiency and linkages, improve social welfare, progressively eliminate trade barriers, increase trade and investment with greater opportunities for economies of scale for the businesses of State Parties; 

COMMITTED to expanding intra-African trade through the harmonisation, coordination of trade liberalisation and implementation of trade facilitation instruments across Africa, and cooperation in the area of quality infrastructure, science and technology, the development and implementation of trade related measures; and 


RECOGNISING the different levels of development among the State Parties and the need to provide flexibilities, special and differential treatment and technical assistance to State Parties with special needs, 












HAVE AGREED AS FOLLOWS:  M.M. |



PART I
DEFINITIONS, OBJECTIVES AND SCOPE

Article 1
Definitions

For purposes of this Protocol, the following definitions shall apply: 

- (a) "Anti-dumping Agreement" means the WTO Agreement on the implementation of Article VI of the GATT 1994; 
- (b) "Committee" means the Committee for Trade in Goods established in Article 31 of this Protocol; 
- (c) "Customs duty" means a duty or charge of any kind imposed on or in connection with the importation or exportation of a good, including any form of surtax or surcharge imposed on or in connection with such importation or exportation; 
- (d) "Harmonised System" means the Harmonised Commodity Description and Coding System established by the International Convention on the Harmonised Commodity Description and Coding System; 
- (e) "Non-Tariff Barriers" means barriers that impede trade through mechanisms other than the imposition of tariffs; 
- (f) "Originating products" means goods that qualify as originating products under the rules of origin set out in Annex 2 on Rules of Origin; 
- (g) "Preferential Trade Arrangements" means any trade arrangement by which a State Party grants preferences to imports from another State Party or a Third Party and includes non-reciprocal preferential scheme granted by way of waiver; 
- (h) "Safeguards Agreement" means the WTO Agreement on Safeguards; 
- (i) "Schedule of tariff concessions" means a list of negotiated specific tariff concessions and commitments by each State Party. It sets out, transparently, the terms, conditions and qualifications under which goods may be imported under the AfCFTA; 
- (j) "TBT" means Technical Barriers to Trade; and 
- (k) "TBT Agreement" means the WTO Agreement on Technical Barriers to Trade.  M.M.



M.M.

Article 2
Objectives

1. The principal objective of this Protocol is to create a liberalised market for trade in goods in accordance with Article 3 of the Agreement.
2. The specific objective of this Protocol is to boost intra-African trade in goods through:
 - (a) progressive elimination of tariffs;
 - (b) progressive elimination of non-tariff barriers;
 - (c) enhanced efficiency of customs procedures, trade facilitation and transit;
 - (d) enhanced cooperation in the areas of technical barriers to trade and sanitary and phytosanitary measures;
 - (e) development and promotion of regional and continental value chains; and
 - (f) enhanced socio-economic development, diversification and industrialisation across Africa.

Article 3
Scope

1. The provisions of this Protocol shall apply to trade in goods between the State Parties.
2. Annex 1 on Schedules of Tariff Concessions, Annex 2 on Rules of Origin, Annex 3 on Customs Cooperation and Mutual Administrative Assistance, Annex 4 on Trade Facilitation, Annex 5 on Non-Tariff Barriers, Annex 6 on Technical Barriers to Trade, Annex 7 Sanitary and Phytosanitary Measures, Annex 8 on Transit and Annex 9 on Trade Remedies shall, upon adoption form an integral part of this Protocol.

PART II
NON-DISCRIMINATION

Article 4
Most-Favoured-Nation Treatment

1. State Parties shall accord Most-Favoured-Nation Treatment to one another in accordance with Article 18 of the Agreement.

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2. Nothing in this Protocol shall prevent a State Party from concluding or maintaining preferential trade arrangements with Third Parties, provided that such trade arrangements do not impede or frustrate the objectives of this Protocol, and that any advantage, concession or privilege granted to a Third Party under such arrangements is extended to other State Parties on a reciprocal basis. *Q*
3. Nothing in this Protocol shall prevent two or more State Parties from extending to one another preferences which aim at achieving the objectives of this Protocol among themselves, provided that such preferences are extended to the other State Parties on a reciprocal basis. *Q*
4. Notwithstanding the provisions of paragraphs 2 and 3 of this Article, a State Party shall not be obliged to extend to another State Party, trade preferences extended to other State Parties or Third Parties before the entry into force of the Agreement. A State Party shall afford opportunity to the other State Parties to negotiate the preferences granted therein on a reciprocal basis, taking into account levels of development of State Parties. *Q*

**Article 5
National Treatment**

A State Party shall accord to products imported from other State Parties treatment no less favourable than that accorded to like domestic products of national origin, after the imported products have been cleared by customs. This treatment covers all measures affecting the sale and conditions for sale of such products in accordance with Article III of GATT 1994. *Q*

**Article 6
Special and Differential Treatment**

In conformity with the objective of the AfCFTA in ensuring comprehensive and mutually beneficial trade in goods, State Parties shall, provide flexibilities to other State Parties at different levels of economic development or that have individual specificities as recognised by other State Parties. These flexibilities shall include, among others, special consideration and an additional transition period in the implementation of this Agreement, on a case by case basis. *Q*

**PART III
LIBERALISATION OF TRADE**

**Article 7
Import Duties**

1. State Parties shall progressively eliminate import duties or charges having equivalent effect on goods originating from the territory of any other State Party in *Q M.M*

in accordance with its Schedules of Tariff Concessions contained in Annex 1 to this Protocol. Q

2. For products subject to liberalisation, State Parties shall not impose any new import duties or charges having equivalent effect on goods originating from the territory of any other State Party, except as provided for under this Protocol. Q
3. An import duty shall include any duty or charge of any kind imposed on or in connection with the importation of goods consigned from any State Party to a consignee in another State Party, including any form of surtax or surcharge, but shall not include any: Q
 - (a) charges equivalent to internal taxes imposed consistently with Article III(2) of GATT 1994 and its interpretative notes in respect of like or directly competitive or substitutable goods of the State Party or in respect of goods from which imported goods have been manufactured or produced in whole or in part; Q
 - (b) antidumping or countervailing duties imposed in accordance with Articles VI, and XVI of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures and Article 17 of this Protocol; Q
 - (c) duties or levies imposed in relation to safeguards, in accordance with Articles XIX of GATT 1994, the WTO Agreement on Safeguards and Articles 18 and 19 of this Protocol; and Q
 - (d) other fees or charges imposed consistently with Article VIII of GATT 1994. Q

Article 8 Schedules of Tariff Concessions

1. Each State Party shall apply preferential tariffs to imports from other State Parties in accordance with its Schedule of Tariff Concessions contained in Annex 1 to this Protocol and in conformity with the adopted tariff modalities. The Schedules of Tariff Concessions, the adopted tariff modalities and outstanding work on tariff modalities to be negotiated and adopted, shall be an integral part of this Protocol. Q
2. Notwithstanding the provisions of this Protocol, State Parties that are members of other RECs, which have attained among themselves higher levels of elimination of customs duties and trade barriers than those provided for in this Protocol, shall maintain, and where possible improve upon, those higher levels of trade liberalisation among themselves. Q M.M

Article 9
General Elimination of Quantitative Restrictions

The State Parties shall not impose quantitative restrictions on imports from or exports to other State Parties except as otherwise provided for in this Protocol, its Annexes and Article XI of GATT 1994 and other relevant WTO Agreements. *N*

Article 10
Export Duties

1. State Parties may regulate export duties or charges having equivalent effect on goods originating from their territories. *N*
2. Any export duties or taxes, imposed on or in connection with, the exportation of goods, applied pursuant to this Article shall be applied to goods exported to all destinations on a non-discriminatory basis. *N*
3. A State Party that introduces export duties or taxes on, or in connection with, the exportation of goods in accordance with paragraph 2 of this Article, shall notify the Secretariat ninety (90) days from the introduction of the said export duties or taxes. *N*

Article 11
Modification of Schedules of Tariff Concessions

1. In exceptional circumstances, a State Party may request for modification of its Schedules of Tariff Concessions. *N*
2. In such exceptional circumstances, a State Party (hereinafter referred to as the "modifying State Party") shall submit to the Secretariat, a written request, together with evidence of the exceptional circumstances for such a request. *N*
3. Upon receipt of the request, the Secretariat shall immediately circulate the request to all State Parties. *N*
4. Where a State Party considers that it has a substantial interest (hereinafter referred to as the "State Party with substantial interest") in the tariff schedule of the modifying State Party, it should communicate in writing, with supporting evidence, to the modifying State Party through the Secretariat within thirty (30) days. The Secretariat shall immediately circulate all such requests to all State Parties. *N*
5. The modifying State Party and any State Party with substantial interest, as determined under paragraph 3, shall enter into negotiations to be coordinated by the Secretariat with a view to reaching an agreement on any necessary compensatory adjustment. In such negotiations and agreement, the State Parties shall maintain a general level of commitments not less favourable than the initial commitments. *N M.M*

6. The substance of the negotiations and the subsequent modification of the schedules and any compensation thereof, shall only be effected upon approval by State Parties with substantial interest and notification to the Secretariat which shall transmit to other State Parties. The compensatory adjustment shall be made in accordance with Article 4 of this Protocol. *N*

7. The modifying State Party shall not modify its commitment until it has made compensatory adjustments as provided for in paragraph 6 and endorsed by the Council of Ministers. The outcome of the compensatory adjustment shall be notified to State Parties. *N*

Article 12 Elimination of Non-Tariff Barriers

Except as may be provided for in this Protocol, the identification, categorisation, monitoring and elimination of Non-Tariff Barriers by State Parties shall be in accordance with the provisions of Annex 5 on Non-Tariff Barriers. *N*

Article 13 Rules of Origin

Goods shall be eligible for preferential treatment under this Protocol, if they are originating in any of the State Parties in accordance with the criteria and conditions set out in Annex 2 on Rules of Origin, and in accordance with the Appendix to be developed on General and Product Specific Rules. *N*

PART IV CUSTOMS COOPERATION, TRADE FACILITATION AND TRANSIT

Article 14 Customs Cooperation and Mutual Administrative Assistance

State Parties shall take appropriate measures including arrangements regarding customs cooperation and mutual administrative assistance in accordance with the provisions of Annex 3 on Customs Cooperation and Mutual Administrative Assistance. *N*

Article 15 Trade Facilitation

State Parties shall take appropriate measures including arrangements regarding trade facilitation in accordance with the provisions of Annex 4 on Trade Facilitation. *N M M*

N

M-M

Article 16
Transit

State Parties shall take appropriate measures including arrangements regarding transit in accordance with the provisions of Annex 8 on Transit. *Q*

PART V
TRADE REMEDIES

Article 17
Anti-dumping and Countervailing Measures

1. Subject to the provisions of this Protocol, nothing in this Protocol shall prevent State Parties from applying anti-dumping and countervailing measures. *Q*
2. In applying this Article, State Parties shall be guided by the provisions of Annex 9 on Trade Remedies and the AfCFTA Guidelines on Implementation of Trade Remedies in accordance with relevant WTO Agreements. *Q*

Article 18
Global Safeguard Measures

The implementation of this Article shall be in accordance with Annex 9 on Trade Remedies and Guidelines on Implementation of Trade Remedies, Article XIX of GATT 1994 and the WTO Agreement on Safeguards. *Q*

Article 19
Preferential Safeguards

1. State Parties may apply safeguard measures to situations where there is a sudden surge of a product imported into a State Party, under conditions which cause or threaten to cause serious injury to domestic producers of like or directly competing products within the territory. *Q*
2. The implementation of this Article shall be in accordance with the provisions of Annex 9 on Trade Remedies and AfCFTA Guidelines on Implementation of Trade Remedies. *Q*

Article 20
Cooperation relating to Anti-dumping, Countervailing and Safeguards
Investigations

State Parties shall cooperate in the area of trade remedies in accordance with the provisions of Annex 9 on Trade Remedies and AfCFTA Guidelines on Implementation of Trade Remedies. *M. M.*

Q

PART VI

Article 21
Technical Barriers to Trade

The implementation of this Article shall be in accordance with the provisions of Annex 6 on Technical Barriers to Trade. *Q*

Article 22
Sanitary and Phytosanitary Measures

The implementation of this Article shall be in accordance with the provisions of Annex 7 on Sanitary and Phytosanitary Measures. *Q*

PART VII
COMPLEMENTARY POLICIES

Article 23
Special Economic Arrangements/Zones

1. State Parties may support the establishment and operation of special economic arrangements or zones for the purpose of accelerating development. *Q*
2. Products benefiting from special economic arrangements or zones shall be subject to any regulations that shall be developed by the Council of Ministers. Regulations under this paragraph shall be in support of the continental industrialisation programmes. *Q*
3. The trade of products manufactured in special economic arrangements or zones within the AfCFTA shall be subject to the provisions of Annex 2 on Rules of Origin. *Q*

Article 24
Infant Industries

1. For the purposes of protecting an infant industry having strategic importance at the national level, a State Party may, provided that it has taken reasonable steps to overcome the difficulties related to such infant industry, impose measures for protecting such an industry. Such measures shall be applied on a non-discriminatory basis and for a specified period of time. *Q*
2. Council of Ministers shall adopt guidelines for implementation of this Article as an integral part of this Protocol. *Q M.M.*

Q

M.M.

Article 25
Transparency and Notification requirements for State Trading Enterprises

1. In order to ensure the transparency of the activities of State Trading Enterprises (STE), State Parties shall notify such enterprises to the Secretariat for transmission to other State Parties. N
2. For the purpose of this Article, STE refers to governmental, non-governmental enterprises, including Marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports with reference to provisions of Article XVII of GATT 1994. N

PART VIII
EXCEPTIONS

Article 26
General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between State Parties where the same conditions prevail, or a disguised restriction on international trade, nothing in this Protocol shall be construed as preventing the adoption or enforcement of measures by any State Party that are: N

- (a) necessary to protect public morals or to maintain public order; N
- (b) necessary to protect human, animal or plant life or health; N
- (c) relating to the importations and exportations of gold or silver; N
- (d) relating to the products of prison labour; N
- (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Protocol, including those relating to customs enforcement, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices; N
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value; N
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption; N M.M

(h) ~~involvement in pursuance of obligations under any intergovernmental commodity agreement approved by the State Parties;~~

(i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan, provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Protocol relating to non-discrimination; and

(j) essential to the acquisition or distribution of foodstuffs or any other products in general or local short supply, provided that any such measures shall be consistent with the principle that all State Parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Protocol shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

Article 27 Security Exceptions

Nothing in this Protocol shall be construed to:

(a) require any State Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) prevent any State Party from taking any action which it considers necessary for the protection of its essential security interests:

i. relating to fissionable materials or the materials from which they are derived;

ii. relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials taking place either directly or indirectly for the purpose of supplying a military establishment; and

iii. taken in time of war or other emergency in international relations; or

(c) prevent any State Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Q

M. M

Article 28
Balance of Payments

1. Where a State Party is in critical balance of payments difficulties, or under imminent threat thereof, or has the need to safeguard its external financial position difficulties and that has taken all reasonable steps to overcome the difficulties, may adopt appropriate restrictive measures in accordance with international rights and obligations of the State Party concerned, including those under the WTO Agreement, the Articles of Agreement of the International Monetary Fund and the African Development Bank respectively. Such measures shall be equitable, non-discriminatory, in good faith, of limited duration and may not go beyond what is necessary to remedy the balance of payments situation. *N*
2. The State Party concerned, having adopted or maintained such measures shall inform the other State Parties forthwith and submit, as soon as possible, a time schedule for their removal. *N*

PART IX
TECHNICAL ASSISTANCE, CAPACITY BUILDING AND COOPERATION

Article 29
Technical Assistance, Capacity Building and Cooperation

1. The Secretariat, working with State Parties, RECs and partners, shall coordinate and provide technical assistance and capacity building in trade and trade related issues for the implementation of this Protocol. *N*
2. State Parties agree to enhance cooperation for the implementation of this Protocol. *N*
3. The Secretariat shall explore avenues to secure resources required for these programmes. *N*

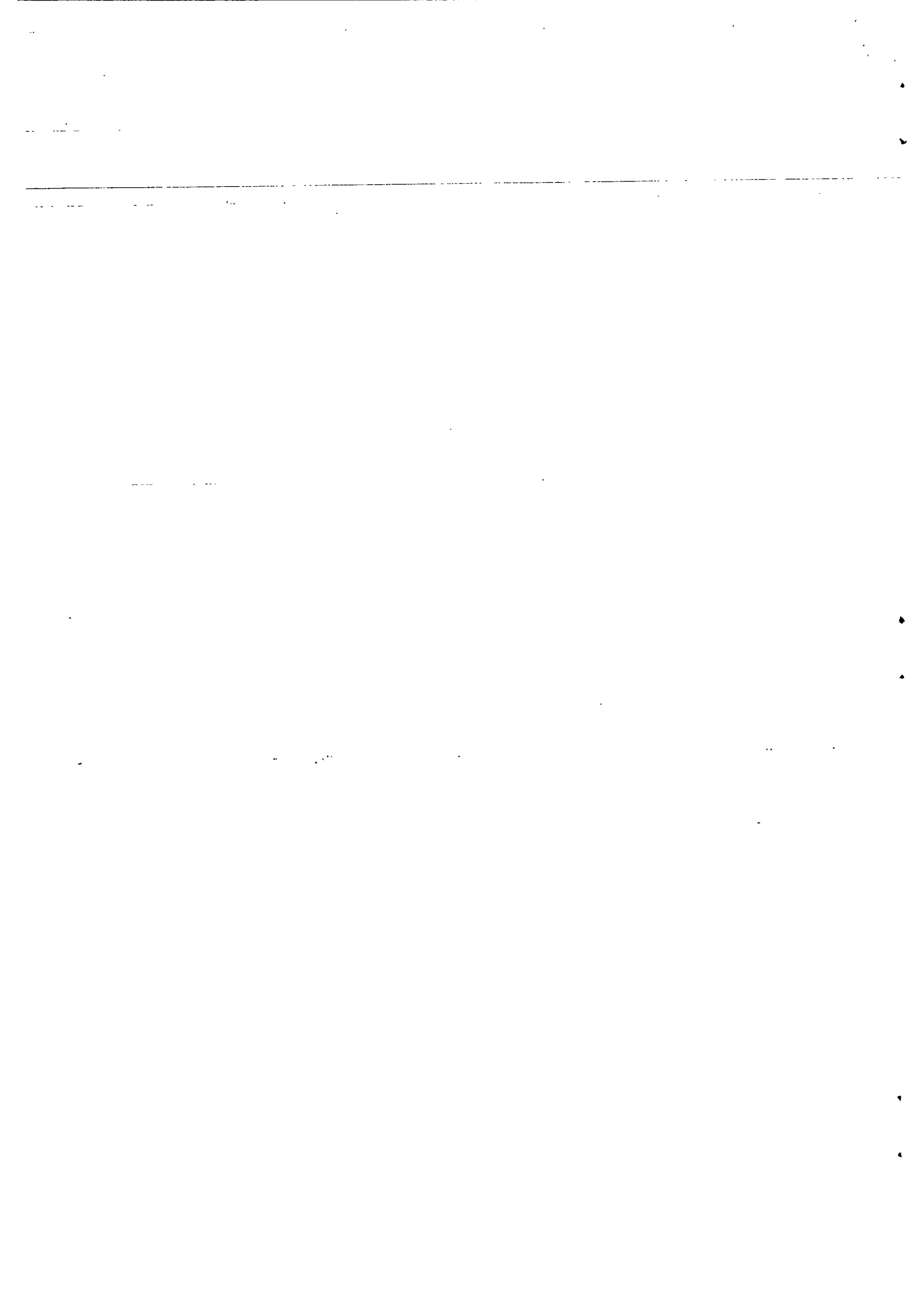
PART X
INSTITUTIONAL PROVISIONS

Article 30
Consultation and Dispute Settlement

Except as otherwise provided in this Protocol, the relevant provisions of the Protocol on Rules and Procedures on the Settlement of Disputes shall apply to consultations and the settlement of disputes under this Protocol. *N M-M*

N

M-M



Article 31
Implementation, Monitoring and Evaluation

1. The Council of Ministers in accordance with Article 11 of the Agreement shall establish the Committee on Trade in Goods, which shall carry out such functions as may be assigned to it by the Council of Ministers to facilitate the operation of this Protocol and further its objectives. The Committee may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions. *NP*
2. This Committee and its subsidiary bodies, shall be open to participation by representatives of all State Parties unless otherwise decided. *NP*
3. The Chairperson of the Committee shall be elected by the State Parties. *NP*
4. In accordance with Article 13(5) of the Agreement, the Secretariat shall, in consultation with State Parties, prepare annual factual reports to facilitate the process of implementation, monitoring and evaluation of this Protocol. *NP*
5. These reports should be considered and adopted by the Council of Ministers. *NP*

Article 32

Amendment

Amendment to this Protocol shall be in accordance with Article 29 of the Agreement. *NP*

PROTOCOL ON TRADE IN SERVICES

PREAMBLE

WE, Member States of the African Union, *NP*

DETERMINED to establish a continental framework of principles and rules for trade in services with a view to boosting intra-African trade in line with the objectives of the African Continental Free Trade Area (AfCFTA) and promoting economic growth and development within the continent; *NP*

DESIROUS to create, on the basis of progressive liberalisation of trade in services, an open, rules based, transparent, inclusive and integrated single services market which provides economic, social and welfare-enhancing opportunities across all sectors for the African people; *NP*

MINDFUL of the urgent need to consolidate and build on achievements in services liberalisation and regulatory harmonisation at the Regional Economic Community (REC) and continental levels; *NP*

DESIRING to harness the potential and capacities of African services suppliers, in particular at the micro, small and medium levels, to engage in regional and global value chains; *NP M, M*

2.307 **RESOLVING** the right of State Parties to regulate in pursuit of national policy objectives, and to introduce new regulations, on the supply of services, within their territories, in order to meet legitimate national policy objectives, including competitiveness, consumer protection and overall sustainable development with respect to the degree of the development of services regulations in different countries, the particular need for State Parties to exercise this right, without compromising consumer protection, environmental protection and overall sustainable development; *Q*

COGNISANT of the serious difficulty of the least developed, land locked, island states and vulnerable economies in view of their special economic situation and their development, trade and financial needs; *Q*

ACKNOWLEDGING the African Union Assembly Decision Assembly/AU/666 (XXX) adopted at the 30th Ordinary Session of the Assembly of Heads of State and Government of the AU, in Addis Ababa, Ethiopia on 28 January 2018 on the Establishment of a Single African Air Transport Market through the Implementation of the Yamoussoukro Decision; *Q*

FURTHER RECOGNISING the potentially significant contribution of air transport services and, in particular, the Single African Air Transport Market to boost intra-African trade and fast track the African Continental Free Trade Area (AfCFTA); *Q*

HAVE AGREED AS FOLLOWS: *Q*

PART I

DEFINITIONS

Article 1

Definitions

For the purposes of this Protocol: *Q*

- (a) "Commercial presence" means any type of business or professional establishment, including through:
 - i. the constitution, acquisition or maintenance of a juridical person, or *Q*
 - ii. the creation or maintenance of a branch or a representative office, within the territory of a State Party for the purpose of supplying a service; *Q*
- (b) "Direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation; *Q*
- (c) "Juridical person" means any legal entity duly constituted or otherwise organised under applicable law of State Parties, whether for profit or otherwise; *Q*

and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(d) A juridical person is:

- i. "Affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- ii. "Controlled" by persons of a State Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; and
- iii. "Owned" by persons of a State Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that State Party;

(e) "Juridical person of another State Party" means a juridical person which is either:

- i. constituted or otherwise organised under the law of that other State Party, and is engaged in substantive business operations in the territory of that State Party or any other State Party; or
- ii. in the case of the supply of a service through commercial presence, owned or controlled by:
 1. natural persons of that State Party; or
 2. juridical persons of that other State Party identified under subparagraph (i);

(f) "Measure" means any measure by a State Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

(g) "Measures by State Parties affecting trade in services" include measures in respect of:

- i. the purchase, payment or use of a service;
- ii. the access to and use of, in connection with the supply of a service, services which are required by those State Parties to be offered to the public generally;
- iii. the presence, including commercial presence, of persons of a State Party for the supply of a service in the territory of another State Party;

(h) "Monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a State Party operates as or is authorised or established formally or in effect by that State Party as the sole supplier of that service;

(i) "Substantial portion of another State Party" means a natural person who resides in the territory of that other State Party or any other State Party and who under the law of that other State Party:

i. is a national; or

ii. has the right of permanent residence;

(j) "Person" means either a natural person or a juridical person;

(k) "Sector" of a service means:

i. with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a State Party's schedule of specific commitments;

ii. otherwise, the whole of that service sector, including all of its subsectors;

(l) "Service of another State Party" means a service which is supplied:

i. from or in the territory of that other State Party, or in the case of maritime transport, by a vessel registered under the laws of that other State Party, or by a person of that other State Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or

ii. in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other State Party;

(m) "Service consumer" means any person that receives or uses a service;

(n) "Service supplier" means any person that supplies a service⁴;

(o) "Supply of a Service" includes the production, distribution, marketing, sale and delivery of a service;

(p) "Trade in services" means the supply of service:

i. from the territory of one State Party into the territory of any other State Party;

ii. in the territory of one State Party to the service consumer of any other State Party;

iii. by a service supplier of one State Party, through commercial presence in the territory of any other State Party; M.M

⁴ Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside of the territory where the service is supplied.

- iv. by a service supplier of one State Party, through presence of natural persons of a State Party in the territory of any other State Party. *W*

PART II

SCOPE OF APPLICATION

Article 2

Scope of Application

1. This Protocol applies to measures by State Parties affecting trade in services. *W*
2. For the purposes of this Protocol, trade in services is based on the four modes of supply of a service as defined in Article 1(p) of this Protocol. *W*
3. For the purposes of this Protocol: *W*

(a) **"Measures by State Parties"** means measures taken by: *W*

- i. State Parties' central, regional or local governments and authorities; and *W*
- ii. Non-governmental bodies in the exercise of powers delegated by State Parties' central, regional or local governments or authorities. *W*

In fulfilling its obligations, and commitments under the Protocol, each State Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory; *W*

(b) **"Services"** includes any service in any sector except services supplied in the exercise of governmental authority; and *W*

(c) **"A service supplied in the exercise of governmental authority"** means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers. *W*

4. Procurement by governmental agencies purchased for governmental purposes and not with a view to commercial re-sale are excluded from the scope of this Protocol. *W*

5. This Protocol shall not apply to measures affecting: *W*

(a) air traffic rights, however granted; and *W*

(b) services directly related to the exercise of air traffic rights; *W*

6. This Protocol shall apply to measures affecting: *W*

(a) aircraft repair and maintenance services; *W*

(b) the selling and marketing of air transport services; and *W*

(c) computer reservation system (CRS) services. *W M M*

SUBJECTS

Article 3
Objectives

1. The principal objective of this Protocol is to support the objectives of the AfCFTA, as set out in Article 3 of the Agreement particularly to create a single liberalised market for trade in services; *Q*
2. The specific objectives of this Protocol are to: *Q*
 - (a) enhance competitiveness of services through: economies of scale, reduced business costs, enhanced continental market access, and an improved allocation of resources including the development of trade-related infrastructure; *Q*
 - (b) promote sustainable development in accordance with the Sustainable Development Goals (SDGs); *Q*
 - (c) foster domestic and foreign investment; *Q*
 - (d) accelerate efforts on industrial development to promote the development of regional value chains; *Q*
 - (e) progressively liberalise trade in services across the African continent on the basis of equity, balance and mutual benefit, by eliminating barriers to trade in services; *Q*
 - (f) ensure consistency and complementarity between liberalisation of trade in services and the various Annexes in specific services sectors; *Q*
 - (g) pursue services trade liberalisation in line with Article V of the GATS by expanding the depth and scope of liberalisation and increasing, improving and developing the export of services, while fully preserving the right to regulate and to introduce new regulations; *Q*
 - (h) promote and enhance common understanding and cooperation in trade in services amongst State Parties in order to improve the capacity, efficiency and competitiveness of their services markets; and *Q*
 - (i) promote research and technological advancement in the field of services to accelerate economic and social development. *Q* *M.M*

Q

M.M

PART IV

GENERAL OBLIGATIONS AND DISCIPLINES

Article 4

Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Protocol, each State Party shall, upon entry into force, accord immediately and unconditionally to services and service suppliers of any other State Party treatment no less favourable than that it accords to like services and service suppliers of any Third Party. *Q*
2. Nothing in this Protocol shall prevent a State Party from entering into a new preferential agreement with a Third Party, in accordance with Article V of the GATS provided such agreements do not impede or frustrate the objectives of this Protocol. Such preferential treatment shall be extended to all State Parties on a reciprocal and non-discriminatory basis. *Q*
3. Notwithstanding paragraph 1, two (2) or more State Parties may conduct negotiations and agree to liberalise trade in services for specific sectors or sub-sectors in accordance with the objectives in this Protocol. Other State Parties shall be afforded opportunity to negotiate the preferences granted therein on a reciprocal basis. *Q*
4. Notwithstanding the provisions of paragraph 2, a State Party shall not be obliged to extend preferences agreed with any Third Party prior to the entry into force of this Protocol, of which that State Party was a member or a beneficiary. A State Party may afford opportunity to the other State Parties to negotiate the preferences granted therein on a reciprocal basis. *Q*
5. The provisions of this Protocol shall not be so construed as to prevent any State Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed. *Q*
6. A State Party may maintain a measure which is inconsistent with paragraph 1, provided it is listed in the Most Favoured Nation (MFN) exemption list. The agreed list of MFN exemptions shall be annexed to this Protocol. States Parties shall regularly review MFN exemptions, with a view to determining which MFN exemptions can be eliminated. *Q M.M*

Q

M.M

Article 5

Transparency

1. Each State Party shall, in a medium⁵ that is accessible, publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Protocol. International and regional agreements pertaining to or affecting trade in services to which a State Party is a signatory shall also be published. *MP*
2. Each State Party shall notify the Secretariat of any international and regional agreements pertaining to or affecting trade in services with Third Parties to which they are signatory prior to or after entry into force of this Protocol. *MP*
3. Each State Party shall promptly and at least annually notify the Secretariat of the introduction of any new, or any changes to, existing laws, regulations or administrative guidelines which significantly affect trade in services under this Protocol. *MP*
4. Where a State Party submits a notification to the Secretariat, the latter shall promptly circulate the said notification to all State Parties. *MP*
5. Each State Party shall respond promptly to all requests by any other State Party for specific information on any of its measures of general application or international and/or regional agreements within the meaning of paragraph 1. State Parties shall also reply to any question from any other State Party relating to an actual or proposed measure that might substantially affect the operation of this Protocol. *MP*
6. Each State Party shall designate the relevant enquiry points to provide State Parties with specific information, upon request, on all such matters related to trade in services as well as those subject to the notification requirement above. *MP*

Article 6

Disclosure of Confidential Information

Nothing in this Protocol shall require any State Party to disclose confidential information and data, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private. *MP*

Article 7

Special and Differential Treatment

In order to ensure increased and beneficial participation in trade in services by all parties, State Parties shall: *MP M.M*

⁵ For example through Gazette, newsletter, Hansard, or websites in one of the African Union languages. *MP M.M*

- (a) provide special consideration to the progressive liberalisation of service sectors commitments and modes of supply which will promote critical sectors of growth, social and sustainable economic development; *Q*
- (b) take into account the challenges that may be encountered by State Parties and may grant flexibilities such as transitional periods, within the framework of action plans, on a case by case basis, to accommodate special economic situations and development, trade and financial needs in implementing this Protocol for the establishment of an integrated and liberalised single market for trade in services; and *Q*
- (c) accord special consideration to the provision of technical assistance and capacity-building through continental support programmes. *Q*

Article 8

Right to Regulate

Each State Party may regulate and introduce new regulations on services and services suppliers within its territory in order to meet national policy objectives, in so far as such regulations do not impair any rights and obligations arising under this Protocol. *Q*

Article 9

Domestic Regulation

1. In sectors where specific commitments are undertaken, each State Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, transparent and impartial manner. *Q*
2. Each State Party shall maintain or institute, as soon as practicable, judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the State Party shall ensure that the procedures in fact provide for an objective and impartial review. *Q*
3. Where authorisation is required for the supply of a service liberalised under this Protocol, the competent authorities of a State Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the State Party shall provide, without undue delay, information concerning the status of the application. *Q*

M.M.

M.M.

Article 10 Mutual Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of services suppliers, and subject to the requirements of paragraph 3 of this Article, a State Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in another State Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the State Party concerned or may be accorded autonomously. *Q*
2. A State Party that is a party to an agreement or arrangement of the type referred to in paragraph 1 of this Article, whether existing or future, shall afford adequate opportunity for other interested State Parties to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a State Party accords recognition autonomously, it shall afford adequate opportunity for any other State Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other State Party's territory should be recognised. *Q*
3. A State Party shall not accord recognition in a manner which would constitute a means of discrimination between State Parties in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services. *Q*
4. Each State Party shall: *Q*
 - (a) within twelve (12) months from the date on which the Agreement enters into force for it, inform the Secretariat of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1 of this Article; *Q*
 - (b) promptly inform the State Parties through the Secretariat as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 of this Article in order to provide adequate opportunity to any other State Party to indicate their interest in participating in the negotiations before they enter a substantive phase; and *Q*
 - (c) promptly inform the States Parties through the Secretariat when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1 of this Article. *Q*
5. Wherever appropriate, recognition should be based on AfCFTA agreed criteria by State Parties. In appropriate cases, State Parties shall work in cooperation with relevant intergovernmental and non-governmental organisations towards the establishment and adoption of common continental standards and criteria for recognition and common continental standards for the practice of relevant services trades and professions. *Q M.M*

Article 11

Monopolies and Exclusive Service Suppliers

1. Each State Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that State Party's obligations and specific commitments under this Protocol. *Q*
2. Where a State Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that State Party's specific commitments, the State Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments. *Q*
3. A State Party which has a reason to believe that a monopoly supplier of a service of any other State Party is acting in a manner inconsistent with paragraphs 1 and 2 of this Article, may request the State Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations. *Q*
4. If, after the date of entry into force of this Protocol, a State Party grants monopoly rights regarding the supply of a service covered by its specific commitments, that State Party shall notify the Secretariat no later than three (3) months before the intended implementation of the grant of monopoly rights and the provisions concerning modification of specific commitments will apply. *Q*
5. The provisions of this Article shall also apply to cases of exclusive service suppliers where a State Party, formally or in effect: *Q*
 - (a) authorises or establishes a small number of service suppliers; and *Q*
 - (b) substantially prevents competition among those suppliers in its territory. *Q*

Article 12

Anti-competitive Business Practices

1. State Parties recognise that certain business practices of service suppliers, other than those concerning monopolies and exclusive service suppliers, may restrain competition and thereby restrict trade in services. *Q*
2. Each State Party shall, at the request of any other State Party, enter into consultations with a view to eliminating practices referred to in paragraph 1 of this Article. The State Party addressed shall respond to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The State Party addressed shall also provide other information available to the requesting State Party, subject to its domestic law and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting State Party. *Q M.M*

Payments and Transfers

1. Except under the circumstances envisaged in Article 14 of this Protocol, a State Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments. *Q*
2. Nothing in this Protocol shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a State Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except as provided under Article 14 of this Protocol, or at the request of the Fund. *Q*

Article 14

Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a State Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognised that particular pressures on the balance of payments of a State Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition. *Q*
2. The restrictions referred to in paragraph 1 of this Article shall: *Q*
 - (a) not discriminate among State Parties; *Q*
 - (b) be consistent with the Articles of Agreement of the International Monetary Fund; *Q*
 - (c) avoid unnecessary damage to the commercial, economic and financial interests of any other State Party; *Q*
 - (d) not exceed those necessary to deal with the circumstances described in paragraph 1 of this Article; and *Q*
 - (e) be temporary and be phased out progressively as the situation specified in paragraph 1 of this Article improves. *Q*
3. In determining the incidence of such restrictions, State Parties may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector. *Q M.M*

4. Any restrictions adopted or maintained under paragraph 1 of this Article, or any changes therein, shall be promptly notified to the Secretariat. *MQ*
5. State Parties applying the provisions of this Article shall consult promptly within the Committee on Trade in Services on restrictions adopted under this Article. *MQ*
6. The Committee on Trade in Services shall establish procedures for periodic consultations with the objective of enabling such recommendations to be made to the State Party concerned as it may deem appropriate. *MQ*
7. Such consultations shall assess the balance-of-payment situation of the State Party concerned and the restrictions adopted or maintained under this Article, taking into account, inter alia, such factors as: *MQ*
 - (a) the nature and extent of the balance-of-payments and the external financial difficulties; *MQ*
 - (b) the external economic and trading environment of the consulting State Party; and *MQ*
 - (c) alternative corrective measures which may be available. *MQ*
8. The consultations shall address the compliance of any restrictions with paragraph 2 of this Article, in particular the progressive phase-out of restrictions in accordance with paragraph 2(e) of this Article. *MQ*
9. In such consultations, all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting State Party. *MQ*
10. If a State Party which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the Council of Ministers shall establish a review procedure and any other procedures necessary. *MQ*

Article 15

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between State Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Protocol shall be construed to prevent the adoption or enforcement by any State Party of measures: *MQ*

- (a) necessary to protect public morals or to maintain public order⁶; *MQ M.M*

⁶ The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society. *MQ M.M*

- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Protocol including those relating to:
 - i. the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - ii. the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - iii. safety;
- (d) inconsistent with National Treatment, provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other States Parties; and
- (e) inconsistent with the Most Favoured Nation obligation provided that the difference in treatment is the result of an agreement on avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the State Party is bound.

Article 16

Security Exceptions

1. Nothing in this Protocol shall be construed:
- (a) to require any State Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
 - (b) to prevent any State Party from taking any action which it considers necessary for the protection of its essential security interests: M.M.

⁷Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a State Party under its taxation system which:

- a. Apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the State Party's territory; or
- b. Apply to non-residents in order to ensure the imposition or collection of taxes in the State Party's territory; or
- c. Apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- d. Apply to consumers of services supplied in or from the territory of another State Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the State Party's territory; or
- e. Distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- f. Determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the State Party's tax base.

Tax terms or concepts in paragraph (d) of Article 15 and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the State Party taking the measure. M.M.

- i. relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment; *Q*
- ii. relating to fissionable and fusionable materials or the materials from which they are derived; and *Q*
- iii. taken in time of war or other emergency in international relations; or *Q*

(c) to prevent any State Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security. *Q*

2. The Secretariat shall be informed, to the fullest extent possible, of measures taken under paragraphs 1(b) and 1(c) of this Article, and of their termination. *Q*

Article 17

Subsidies

1. Nothing in this Protocol shall be construed to prevent State Parties from using subsidies in relation to their development programmes. *Q*
2. State Parties shall decide on mechanisms for information exchange and review of all subsidies related to trade in services that State Parties provide to their domestic service suppliers. *Q*
3. Any State Party which considers that it is adversely affected by a subsidy of another State Party may request consultations with that State Party on such matters. Such requests shall be accorded sympathetic consideration. *Q*

PART V

PROGRESSIVE LIBERALISATION

Article 18

Progressive Liberalisation

1. State Parties shall undertake successive rounds of negotiations based on the principle of progressive liberalisation accompanied by the development of regulatory cooperation, and sectoral disciplines, taking into account the objectives of the 1991 Abuja Treaty that aim to strengthen integration at the regional and continental levels in all fields of trade, and in line with the general principle of progressivity towards achievement of the ultimate goal of the African Economic Community. *Q*
2. State Parties shall negotiate sector specific obligations through the development of regulatory frameworks for each of the sectors, as necessary, taking account of the best practices and *acquis* from the RECs, as well as the negotiated agreement on sectors for regulatory cooperation. State Parties agree that negotiations for continuing the process shall commence following the establishment of the AfCFTA, based on the work programme to be agreed by the Committee on Trade in Services. *Q M.M*

4. The liberalization process shall focus on the progressive elimination of the adverse effects of measures on trade in services as a means of providing effective market access with a view to boosting intra-African trade in services. ¹⁰
4. The list of Priority Sectors and the Modalities on Trade in Services shall be annexed to this Protocol and shall form an integral part hereof. ¹⁰
5. The Transitional Implementation Work Programme developed by Member States shall guide the finalisation of outstanding Phase I negotiations on this Protocol, before the entry into force of the Agreement. ¹⁰

Article 19

Market Access

1. With respect to market access through the modes of supply identified in Article 1(p) of this Protocol, each State Party shall accord services and service suppliers of any other State Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule. ⁸ ¹⁰
2. In sectors where market-access commitments are undertaken, the measures which a State Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as: ¹⁰
- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test; ¹⁰
 - (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; ¹⁰
 - (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; ⁹ ¹⁰
 - (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; ¹⁰ ¹¹ ¹²

⁸ If a State Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply defined in Article 1(p) and if the cross-border movement of capital is an essential part of the service itself, that State Party is thereby committed to allow such movement of capital. If a State Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 1(p) (iii), it is thereby committed to allow related transfers of capital into its territory. ¹⁰

⁹ Article 1(g) (iii) does not cover measures of a State Party which limit inputs for the supply of services. ¹⁰ ¹¹ ¹²

- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 20

National Treatment

1. In all sectors inscribed in the schedule, and subject to any conditions and qualifications set out therein, each State Party shall accord to services and service suppliers of any other State Party treatment no less favourable than that it accords to its own like services and service suppliers, subject to the conditions and qualifications agreed and specified in its Schedule of Specific Commitments.
2. A State Party may meet the requirement of paragraph 1 of this Article, by according to services and service suppliers of any other State Party either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the State Party compared to like services or service suppliers of any other State Party.

Article 21

Additional Commitments

The State Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 19 or 20 of this Protocol, including but not limited to those regarding qualification, standards or licensing matters. Such commitments shall be inscribed in a State Party's Schedule of Specific Commitments.

Article 22

Schedules of Specific Commitments

1. Each State Party shall set out in a schedule, the specific commitments that it undertakes under Articles 19, 20 and 21 of this Protocol.
2. With respect to sectors where such commitments are undertaken, each Schedule of Specific Commitments shall specify:
 - (a) terms, limitations and conditions on market access;
 - (b) conditions and qualifications on national treatment;
 - (c) undertakings relating to additional commitments; and

- (d) where appropriate the time-frame for implementation of such commitments, including their date of entry into force. *NP*
3. Measures inconsistent with both Articles 19 and 20 of this Protocol shall be inscribed in the column relating to Article 19 of this Protocol. In this case the inscription will be considered to provide a condition or qualification to Article 20 of this Protocol as well. *NP*
 4. The Schedules of Specific Commitments, the Modalities for Trade in Services and the list of Priority Sectors shall, upon adoption, form an integral part of this Protocol. *NP*
 5. The Transitional Implementation Work Programme developed by Member States shall guide the finalisation of outstanding Phase I negotiations on this Protocol, before the entry into force of the Agreement. *NP*

Article 23

Modification of Schedules of Specific Commitments

1. A State Party (referred to in this Article as the "modifying State Party") may modify or withdraw any commitment in its schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article. *NP*
2. A modifying State Party shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Secretariat no later than three (3) months before the intended date of implementation of the modification or withdrawal. The Secretariat shall promptly circulate this information to State Parties. *NP*
3. At the request of any State Party the benefits of which under this Protocol may be affected (referred to in this Article as an "affected State Party"), by a proposed modification or withdrawal notified under paragraph 2 of this Article, the modifying State Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the State Parties concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in commitments prior to such negotiations. *NP*
4. Compensatory adjustments shall be made on a most-favoured-nation basis. *NP*
5. If agreement is not reached between the modifying State Party and any affected State Party before the end of the period provided for negotiations, such affected State Party may refer the matter to dispute settlement. Any affected State Party that wishes to enforce a right that it may have to compensation must participate in the dispute process. *NP*
6. If no affected State Party has requested dispute settlement, the modifying State Party shall be free to implement the proposed modification or withdrawal, within a reasonable period of time. *NP M-M*

7. The modifying State Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the dispute settlement. *Q*
8. If the modifying State Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any affected State Party that participated in the dispute settlement may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding the obligations under Article 4 of this Protocol, such a modification or withdrawal may be implemented solely with respect to the modifying State Party. *Q*
9. The Committee on Trade in Services shall facilitate such negotiations and establish related appropriate procedures. *Q*

Article 24

Denial of Benefits

Subject to prior notification and consultation, a State Party may deny the benefits of this Protocol to service suppliers of another State Party where the service is being supplied by a juridical person of a non-State Party, without real and continuous link with the economy of the State Party or with negligible or no business operations in the territory of the other State Party or any other State Party. *Q*

PART VI

INSTITUTIONAL PROVISIONS

Article 25

Consultation and Dispute Settlement

The provisions of the Protocol on the Rules and Procedures on the Settlement of Disputes shall apply to consultations and the settlement of disputes under this Protocol. *Q*












Article 26

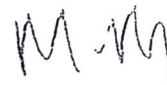
Implementation, Monitoring and Evaluation

1. The Council of Ministers in accordance with Article 11 of the Agreement shall establish the Committee on Trade in Services, which shall carry out such functions as may be assigned to it by the Council of Ministers to facilitate the operation of this Protocol and further its objectives. The Committee may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions. *Q*
2. The Chairman of the Committee shall be elected by the State Parties. *Q*
3. The Committee shall prepare annual reports for State Parties to facilitate the process of implementation, monitoring and evaluation of this Protocol. *Q M.M*

Article 9

Technical Assistance, Capacity Building and Cooperation

1. State Parties recognise the importance of technical assistance, capacity building and cooperation in order to complement the liberalisation of services, to support State Parties' efforts to strengthen their capacity in the supply of services and to facilitate implementation and attainment of the objectives of this Protocol. 
2. State Parties agree, where possible, to mobilise resources, in collaboration with development partners, and implement measures, in support of the domestic efforts of State Parties, with a view to, *inter alia*: 
 - (a) building capacity and training for trade in services; 
 - (b) improving the ability of service suppliers to gather information on and to meet regulations and standards at international, continental, regional and national levels; 
 - (c) supporting the collection and management of statistical data on trade in services; 
 - (d) improving the export capacity of both formal and informal service suppliers, with particular attention to micro, small and medium size; women and youth service suppliers; 
 - (e) supporting the negotiation of mutual recognition agreements; 
 - (f) facilitating interaction and dialogue between service suppliers of State Parties with a view to promotion of information sharing with respect to market access opportunities, peer learning and the sharing of best practices; 
 - (g) addressing quality and standards needs in those sectors where State Parties have undertaken commitments under this Protocol with a view to supporting the development and adoption of standards; and 
 - (h) developing and implementing regulatory regimes for specific services sectors at continental, regional and national levels, in particular in those sectors in which State Parties have undertaken specific commitments. 
3. The Secretariat, working with State Parties, RECs and partners, shall coordinate the provision of technical assistance.  M, M



Article 28
Annexes to this Protocol

1. Member States may develop annexes for the implementation of this Protocol relating, inter alia, to:
 - (a) Schedules of Specific Commitments;
 - (b) MFN Exemption(s);
 - (c) Air Transport Services;
 - (d) List of Priority Sectors; and
 - (e) A framework document on Regulatory Cooperation.
2. Upon adoption by the Assembly, such annexes shall form an integral part of this Protocol.
3. State Parties may develop additional annexes for the implementation of this Protocol for adoption by the Assembly. Upon adoption by the Assembly, such annexes shall form an integral part of this Protocol.

Article 29

Amendment

This Protocol shall be amended in accordance with the provisions of Article 29 of the Agreement.

[Handwritten signature]

M. M.

WE, under the aegis of the African Union,

HAVE AGREED AS FOLLOWS: *MP*

Article 1

Definitions

- (a) "AB" means the Appellate Body established under Article 20 of this Protocol; *MP*
- (b) "Complaining Party" means a State Party that has initiated a dispute settlement procedure under the Agreement; *MP*
- (c) "Consensus" means if no State Party present at the meeting of the DSB when a decision is taken, formally objects to the decision; *MP*
- (d) "Days" means working days save for cases involving perishable goods where Days shall mean calendar days; *MP*
- (e) "Dispute" means a disagreement between State Parties regarding the interpretation and/or application of the Agreement in relation to their rights and obligations; *MP*
- (f) "DSB" means the Dispute Settlement Body established under Article 5 of this Protocol; *MP*
- (g) "Panel" means a Dispute Settlement Panel established under Article 9 of this Protocol; *MP*
- (h) "Party to a dispute or proceedings" means a State Party to a dispute or proceedings; *MP*
- (i) "State Party concerned" is a State Party to which rulings and recommendations of the DSB are directed; and *MP*
- (j) "Third Party" means a State Party with a substantial interest in a dispute, *MP*

Article 2

Objective

This Protocol provides for the administration of the Dispute Settlement Mechanism established in accordance with Article 20 of the Agreement and aims at ensuring that *MP MW*

MP

the dispute settlement process is transparent, accountable, fair, predictable and consistent with the provisions of the Agreement. NQ

Article 3

Scope of Application

1. This Protocol shall apply to disputes arising between State Parties concerning their rights and obligations under the provisions of the Agreement. NQ
2. This Protocol shall apply subject to such special and additional rules and procedures on dispute settlement contained in the Agreement. To the extent that there is a difference between the rules and procedures of this Protocol and the special or additional rules and procedures in the Agreement, the special or additional rules and procedures shall prevail. NQ
3. For the purposes of this Article, a dispute settlement proceeding shall be considered to have been initiated in accordance with this Protocol when the Complaining Party requests consultations pursuant to Article 7 of this Protocol. NQ
4. A State Party which has invoked the rules and procedures of this Protocol with regards to a specific matter, shall not invoke another forum for dispute settlement on the same matter. NQ

Article 4

General Provisions

1. The dispute settlement mechanism of the AfCFTA is a central element in providing security and predictability to the regional trading system. The dispute settlement mechanism shall preserve the rights and obligations of State Parties under the Agreement and clarify the existing provisions of the Agreement in accordance with customary rules of interpretation of public international law. NQ
2. Recommendations or rulings made by the DSB shall be aimed at achieving a satisfactory settlement of a dispute in accordance with rights and obligations under the Agreement. NQ
3. Mutually agreed solutions to matters formally raised in accordance with the consultation and dispute settlement provisions of this Protocol shall be notified to the DSB, where any State Party may raise any point relating thereto. NQ M.M

NQ

M.M

4. All resolutions to matters formally raised in accordance with the consultations and dispute settlement provisions of this Protocol, including arbitration awards, shall be consistent with the Agreement. *W*
5. Requests for conciliation, good offices, mediation and the use of dispute settlement procedures should not be intended or considered as contentious acts. If a dispute arises, State Parties will engage in these procedures in good faith in an effort to resolve the dispute. Further, complaints and counter-complaints in regard to separate matters should not be linked. *W*
6. In their findings and recommendations, the Panel and AB shall not add to or diminish the rights and obligations of State Parties pursuant to the Agreement. *W*

Article 5

Dispute Settlement Body

1. The Dispute Settlement Body is hereby established in accordance with Article 20 of the Agreement to administer the provisions of this Protocol except as otherwise provided for in the Agreement. *W*
2. The DSB shall be composed of representatives of the State Parties. *W*
3. The DSB shall have the authority to: *W*
- (a) establish Dispute Settlement Panels and an Appellate Body; *W*
 - (b) adopt Panel and Appellate Body reports; *W*
 - (c) maintain surveillance of implementation of rulings and recommendations of the Panels and Appellate Body; and *W*
 - (d) authorise the suspension of concessions and other obligations under the Agreement. *W*
4. The DSB shall have its own Chairperson and shall establish such rules of procedure as it deems necessary for the fulfilment of its responsibilities. The DSB Chairperson shall be elected by the State Parties. *W M M*

W

5. The DSB shall meet as often as necessary to discharge its functions as provided for in this Protocol. *Q*
6. Where the rules and procedures of this Protocol provide for the DSB to take a decision, it shall do so by consensus. *Q*
7. The DSB shall inform the Secretariat of any dispute related to the provisions of the Agreement. *Q*

Article 6

Procedures under the Dispute Settlement Mechanism

1. Where a dispute arises between or among the State Parties, in the first instance, recourse shall be had to consultations, with a view to finding an amicable resolution to the dispute. *Q*
2. Where an amicable resolution is not achieved, any party to the dispute shall, after notifying the other parties to the dispute, refer the matter to the DSB, through the Chairperson and request for the establishment of a Dispute Settlement Panel, (hereinafter referred to as the "Panel") for purposes of settling the dispute. *Q*
3. The DSB shall adopt Rules of Procedure for the selection of the Panel, including the issues of conduct, to ensure impartiality. *Q*
4. The Panel shall set in motion the process of a formal resolution of the dispute as provided for in this Protocol and the parties to the dispute shall, in good faith, observe in a timely manner, any directions, rulings and stipulations that may be given to them by the Panel in relation to procedural matters and shall make their submissions, arguments and rebuttals in a format prescribed by the Panel. *Q*
5. The DSB shall make its determination of the matter and its decision shall be final and binding on the parties to a dispute. *Q*
6. Where the parties to a dispute consider it expedient to have recourse to arbitration as the first dispute settlement avenue, the parties to a dispute may proceed with arbitration as provided for in Article 27 of this Protocol. *Q* *M.M*

Q

M.M

Consultations

1. State Parties with a view to encouraging amicable resolution of disputes, affirm their resolve to strengthen and improve the effectiveness of consultation procedures employed by State Parties. *Q*
2. Each State Party undertakes to accord consideration to, and afford adequate opportunity for consultations regarding any representation made by another State Party concerning measures affecting the operation of the Agreement. *Q*
3. Requests for consultations shall be notified to the DSB through the Secretariat in writing, giving the reasons for the request, including identification of the issues and an indication of the legal basis for the complaint. *Q*
4. Where a request for consultations is made pursuant to this Protocol, the State Party to which the request is made shall, unless otherwise mutually agreed, reply to the request within ten (10) days after the date of its receipt and shall enter into consultations in good faith within a period not exceeding thirty (30) days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. *Q*
5. Where a State Party to which the request is made does not respond within ten (10) days after the date of receipt of the request, or does not enter into consultations within a period of thirty (30) days, or a period otherwise mutually agreed, after the date of receipt of the request, the State Party that requested for the consultations may refer the matter to the DSB requesting for the establishment of a Panel. *Q*
6. In the course of consultations and before resorting to further action under this Protocol, State Parties shall attempt to obtain satisfactory settlement of the dispute. *Q*
7. Consultations shall be: *Q*
 - (a) confidential; and *Q*
 - (b) without prejudice to the rights of any State Party in any further proceedings. *Q*
8. Where State Parties to a dispute fail to settle a dispute through consultations within sixty (60) days after the date of receipt of the request for consultations, the complaining party may refer the matter to the DSB, for establishment of a Panel. Consultations may be held in the territory of the party complained against unless the Parties agree otherwise. Unless State Parties to a dispute agree to continue or suspend consultations, consultations shall be deemed concluded within the sixty (60) days. *Q M.M*

9. In cases of urgency, including cases of perishable goods: *Q*

(a) the State Party shall within ten (10) days after the date of receipt of the request enter into consultations; *Q*

(b) where the parties fail to settle the dispute through consultations within twenty (20) days after the date of receipt of the request, the complaining party may refer the matter to the DSB for establishment of a Panel; *Q*

(c) pursuant to the provisions of Annex 5 on Non-Tariff Barriers (Appendix 2: Procedures for Elimination and Cooperation in the Elimination of Non-Tariff Barriers), where a State Party fails to resolve an NTB after a mutually agreed solution was reached and after issuing the factual report, the requesting State Party shall resort to the dispute settlement panel stage. Notwithstanding the provisions herein, the above Parties to a dispute may agree to submit the matter to arbitration in accordance with the provisions of Article 27 of this Protocol; and *Q*

(d) the parties to the dispute, the DSB and the Panel and Appellate Body shall make every effort to expedite the proceedings to the greatest extent possible. *Q*

10. Where a State Party that is not party to a dispute considers that it has substantial trade interest in consultations, that State Party may, within ten (10) days of the circulation of the request for consultations, request the Parties to a dispute to be joined in the consultations. *Q*

11. Where the Parties to the dispute agree that the claim of substantial interest is well founded, the Third Party shall be so joined to the consultations. If the request to join the consultations is not accepted, the disputing State Party shall inform the DSB and in this event the applicant State Party shall be free to request consultation. *Q*

Article 8

Good Offices, Conciliation and Mediation

1. State Parties to a dispute may at any time voluntarily undertake good offices, conciliation, or mediation. Proceedings that involve good offices, conciliation, or *Q M M*

mediation shall be confidential and be without prejudice to the rights of the Parties in any other proceedings. *Q*

2. Good offices, conciliation or mediation may be requested at any time by any State Party to a dispute. They may begin at any time and be terminated at any time by any of the State Parties to the dispute. Once procedures for good offices, conciliation or mediation are terminated, a Complaining Party may then proceed with a request for the establishment of a panel. *Q*
3. When good offices, conciliation or mediation are entered into after the date of receipt of a request for consultations, the Complaining Party must allow for a period of sixty (60) days after the date of receipt of the request for consultations before requesting the establishment of a panel. The Complaining Party may request for the establishment of a Panel during the sixty (60) day period, if the State Parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute. *Q*
4. State Parties participating in proceedings under this Article may suspend or terminate those proceedings, at any time, if they consider that the good offices, conciliation or mediation process has failed to settle the dispute. *Q*
5. If the State Parties to a dispute agree, the procedures for good offices, conciliation or mediation may continue while the Panel process proceeds. *Q*
6. The Head of the Secretariat may be requested by any State Party to a dispute to facilitate the process of good offices, conciliation or mediation, including offering the same. Such a request shall be notified to the DSB and the Secretariat. *Q*

Article 9

Establishment of Panels

1. Where an amicable resolution is not achieved through consultations, the Complaining Party shall, in writing refer the matter to the DSB and request for the establishment of a Panel. Parties to a dispute shall be informed promptly of the composition of the Panel. *Q*
2. The request referred to in paragraph 1 of this Article shall indicate whether consultations were held, identify the specific measures at issue and provide a summary of the legal basis of the complaint sufficient to present the problem clearly. *Q M M*

Q

M M

3. In case the applicant requests the establishment of a Panel with terms of reference other than the standard terms, the written request shall include the proposed text of special terms of reference. *Q*
4. A meeting of the DSB shall be convened within fifteen (15) days of the request to establish a Panel, provided that at least ten (10) days advance notice of the meeting is given to the DSB. *Q*
5. The Panel shall be constituted within ten (10) days of the meeting of the DSB referred to in paragraph 4 of this Article. *Q*

Article 10

Composition of the Panel

1. The Secretariat shall, upon entry into force of the Agreement, establish and maintain an indicative list or roster of individuals who are willing and able to serve as Panellists. *Q*
2. Each State Party may annually nominate two (2) individuals to the Secretariat for the inclusion in the indicative list or roster, indicating their area (s) of expertise related to the Agreement. The indicative list or roster of individuals shall be submitted by the Secretariat for consideration and approval by the DSB. *Q*
3. Individuals listed on the indicative list or roster shall: *Q*
 - (a) have expertise or experience in law, international trade, other matters covered by the Agreement or the resolution of disputes arising under international trade agreements; *Q*
 - (b) be chosen strictly on the basis of objectivity, reliability and sound judgment; *Q*
 - (c) be impartial, independent of, and not be affiliated to or take instructions from, any Party; and *Q*
 - (d) comply with a code of conduct to be developed by the DSB and adopted by Council of Ministers. *Q*
4. The Panellists shall be selected with a view to ensuring their independence and integrity and shall have a sufficiently diverse background and a wide spectrum of experience in the subject matter of the dispute, unless the Parties to the dispute agree otherwise. *Q M.M*

Q

M.M

- in order to ensure and preserve the impartiality and independence of the Panel, its nationals of the disputing State Parties shall not serve on a Panel concerned with that dispute, unless the Parties to the dispute agree otherwise. Q
6. The Secretariat, shall propose nominations for the Panel to the Parties to the dispute. The Parties to the dispute shall not oppose nominations except for compelling reasons. Q
7. If no agreement is reached on the composition of a Panel within thirty (30) days after the date of the establishment of a Panel, at the request of either Party, the Head of the Secretariat, in consultation with the Chairperson of the DSB and with the consent of the disputing State Parties, shall determine the composition of the Panel by appointing the Panellists considered to be most appropriate. Q
8. The Chairperson of the DSB shall inform the State Parties of the composition of the Panel no later than ten (10) days after the date the Chairperson receives such a request. Q
9. Where there are two (2) disputing State Parties, the Panel shall comprise three (3) members. Where there are more than two (2) disputing State Parties, the Panel shall comprise five (5) members. Q
10. Panellists shall serve in their individual capacities and not as Government representatives, nor as representatives of any organisation. Q
11. Panellists shall not receive instructions or be influenced by any State Party when considering matters before them. Q

Article 11

Terms of Reference of the Panel

1. Panellists shall have the following terms of reference unless the Parties to a dispute agree otherwise, within twenty (20) days from the establishment of the Panel: Q
- (a) to examine, in the light of the relevant provisions in the Agreement, cited by the Parties to the dispute, the matter referred to the DSB by the Complaining Party; Q
and Q
- (b) to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the Agreement. Q M.M

2. Panels shall address the relevant provisions in the Agreement cited by the Parties to the dispute. *Q*
3. In establishing a Panel, the DSB may authorise its Chairperson to draw up the terms of reference of the Panel in consultation with the State Parties to the dispute, subject to the provisions of paragraph 1. The terms of reference thus drawn up shall be circulated to all State Parties. If other than standard terms of reference are agreed upon, any State Party may raise any point relating thereto in the DSB. *Q*

Article 12

Functions of a Panel

1. The principal function of a Panel is to assist the DSB in discharging its responsibilities under the Agreement. *Q*
2. In performing this function, a Panel shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant provisions of the Agreement and make findings to assist the DSB in making recommendations and rulings. *Q*
3. The Panel shall consult widely and regularly with the Parties to a dispute and give them an adequate opportunity to develop a mutually satisfactory solution. *Q*

Article 13

Third Parties

1. The interests of all Parties to a dispute including Third Parties shall be taken into account during the Panel process. *Q*
2. A Third Party shall, after notification of its substantial interests to the Panel through the DSB, provided that disputing parties agree that the claim of substantial interest is well founded, have an opportunity to be heard and to make written submissions to the Panel. *Q*
3. Copies of the submissions shall be served on the Parties to the dispute and shall be reflected in the report of the Panel. *Q*
4. If a Third Party considers that a measure already the subject of a Panel proceeding impairs or nullifies benefits accruing to it under the Agreement, that Third Party may *Q* *AM*

with reference to a panel dispute settlement proceedings and if the Panel shall
dispute shall be referred to the original Panel wherever possible.

6. Third Parties shall receive the submissions of the Parties to a dispute at the first meeting of the Panel.

Article 14

Procedures for Multiple Complaints

1. Where more than one (1) State Party requests for the establishment of a Panel related to the same matter, a single Panel may be established to examine these complaints, taking into account the rights of all State Parties concerned. A single Panel shall be established to examine such complaints whenever feasible.
2. The single Panel shall organise its examination and present its findings to the DSB in such a manner that the rights, which the Parties to the dispute would have enjoyed had separate Panels examined the complaints, are in no way impaired. If one of the Parties to the dispute so requests, the Panel shall submit separate reports on the dispute concerned. The written submissions by each of the Complaining Parties shall be made available to the other Complaining Parties, and each Complaining party shall have the right to be present when any one of the other Complaining Party presents its views to the Panel.
3. If more than one Panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as Panellists on each of the separate Panels and the timetable for the Panel process in such disputes shall be harmonised.

Article 15

Procedures for the Panel

1. The procedures of the Panel shall provide sufficient flexibility to ensure an effective and timely resolution of disputes by the Panels.
2. After consulting the Parties to a dispute, the Panellists shall, within seven (7) days after the composition of the Panel and the determination of its terms of reference, fix the timetable for the proceedings of the Panel. The timetable thus drawn up shall be circulated to all State Parties.
3. In determining the timetable for the proceedings of the Panel, the Panel shall, within ten (10) working days, upon the expiry of the seven (7) days referred to in paragraph

NO

M.M

2. set precise time limits for written submissions by the Parties to a dispute. Parties to a dispute shall comply with the set time limits. Q
4. The period in which the Panel shall conduct its business, from the date of establishment of the Panel to the date of issuance of the final report to the Parties to a dispute, shall not exceed five (5) months and in cases of urgency, including cases of perishable goods, the period shall not exceed one and a half (1½) months. Q
5. Where the Parties to the dispute have failed to develop a mutually satisfactory solution, the Panel shall submit its findings in the form of a written report to the DSB. In such cases, the report of the Panel shall set out the findings of the fact, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations that it makes. Q
6. Where a settlement of the matter among the Parties to the dispute has been found, the report of the Panel shall be confined to a brief description of the case and to reporting that a solution has been reached. Q
7. Where a Panel determines that it cannot issue its report within five (5) months, or within one and a half (1½) months in cases of urgency, the Panel shall immediately inform the DSB in writing of the reasons for the delay together with an estimation of the period within which the Panel shall be ready to issue its report. Where a Panel cannot issue a report within the period specified in paragraph 4 of this Article, the Panel shall issue the report within nine (9) months from the date of its composition. Q
8. The reports of the Panel shall be drafted in the absence of the Parties to the dispute and shall be based on information and evidence provided by the parties and any other person, expert or institution in accordance with this Protocol. Q
9. The Panel shall produce a single report reflecting the views of the majority of the Panellists. Q
10. Without prejudice to the provisions of this Article, the Panel shall follow the working procedures specified in the Annex on Working Procedures of the Panel unless the Panel decides otherwise after consulting the Parties to the dispute. Q
11. The Panel shall, at the request of both Parties to a dispute, suspend its work at any time for a period agreed by the Parties not exceeding twelve (12) months and shall resume its work at the end of this agreed period at the request of the Complaining Party. If the Complaining Party does not request the resumption of the Panel's work before the expiry of the agreed suspension period, the procedure shall be terminated. The suspension and termination of the Panel's work are without Q M.H.

... prejudice to the rights of either Party to a dispute by another proceeding in the same matter. Q

Article 16

Right to Seek Information

1. The Panel shall have the right to seek information and technical advice from any source that it deems appropriate, after informing the relevant authorities of State Parties to the dispute. Q
2. The Panel shall have the right to seek information and technical advice from any State Party provided that the State Party is not a Party to the dispute. Q
3. Where a Panel seeks information or technical advice from a State Party, such State Party shall, within the time set by the Panel, respond to the request made for such information. Q
4. Confidential information that is provided shall not be disclosed without formal authorisation from the source providing the information. U
5. Where a Party to a dispute raises a factual issue concerning a scientific or other technical matter, the Panel may request for an advisory report in writing from an expert review group with relevant qualifications and experience on the issue. Q
6. Rules for the establishment of the expert review group and its procedures are set forth in the Annex on Expert Review. Q
7. The Panel may seek information from any relevant source and may consult experts to obtain their opinion on any matter that may be brought before it. Q

Article 17

Confidentiality

1. The deliberations of the Panels shall be confidential. Q
2. A Party to a dispute shall treat as confidential any information submitted to a Panel and designated as such, by another Party to a dispute. Q
3. Nothing in this Protocol shall preclude a Party to a dispute from disclosing statements of its own positions to the public. Q
4. The reports of the Panels shall be drafted without the presence of the parties to the dispute in light of the information provided and the statements made. Q M M

5. Opinions expressed in the Panel report by the individual panellists shall be anonymous. *NQ*

Article 18

Reports of a Panel

1. A Panel shall consider the rebuttal submissions and arguments of the Parties to a dispute and issue a draft report containing descriptive sections of the facts and arguments of the dispute, to the Parties to a dispute. *NQ*
2. The Parties to a dispute shall submit their comments on the draft report in writing to the Panel, within a period set by the Panel. *NQ*
3. Taking into account any comments received under paragraph 2 of this Article, or on the expiration of the time set for the receipt of comments from the Parties to a dispute, the Panel shall issue an interim report to the Parties to a dispute, containing descriptive sections and its findings and conclusions. *NQ*
4. Within a period set by a Panel, any Party to a dispute may submit a written request for review of specific aspects of the interim report prior to the issuance and circulation of the final report to the Parties to a dispute. *NQ*
5. At the request of any Party to a dispute, the Panel shall hold a meeting with the Parties to a dispute on the review of specific aspects of the interim report. *NQ*
6. Where no comments are received by the Panel within the period set for the receipt of comments on the interim report, the interim report shall be deemed to be the Panel's final report and it shall be promptly circulated to the Parties to a dispute and any interested parties and shall be forwarded to the DSB for consideration. *NQ*
7. The final report of the Panel shall include a discussion of the arguments made at the interim review stage. *NQ*

Article 19

Adoption of Report of a Panel *NQ M-M*

1. In order to provide sufficient time for the State Parties to consider the reports of the Panel, the reports shall not be brought up for consideration by the DSB before the expiration of twenty (20) days from the date on which the Panel circulated the report. *Q*
2. State Parties having objections to a Panel report shall give written reasons to the DSB, explaining their objections, which may include discovery of new facts, which by their nature have decisive influence on the decision provided that:
 - (a) such objections must be notified to the DSB within ten (10) days prior to a meeting of the DSB at which the Panel report will be considered; and *Q*
 - (b) the objecting party shall serve a copy of the objection with the other parties to the dispute and to the Panel that made the report. *Q*
3. Parties to a dispute shall have the right to participate fully in the consideration of the Panel reports by the DSB and their views shall be fully recorded. *Q*
4. Within sixty (60) days from the date the final Panel report is circulated to the State Parties, the report shall be considered, adopted and signed at a meeting of the DSB convened for that purpose, unless a Party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. If a Party to a dispute has notified its decision to appeal, the report by the Panel shall not be considered for adoption by the DSB until after completion of the appeal. The decision of the DSB shall be final except as otherwise provided for in this Article. *Q*
5. The Parties to the dispute shall be entitled to a signed copy of the adopted report within seven (7) days of its adoption. *Q*
6. An appeal on the report of the Panel shall be lodged with the DSB within thirty (30) days from the date of communication of the decision to appeal by the State Party to the DSB. *Q*

Article 20

Appellate Body

1. A standing Appellate Body (AB) shall be established by the DSB. The AB shall hear appeals from panel cases. *Q*
2. The AB shall be composed of seven (7) persons, three (3) of whom shall serve on any one case. *Q*
3. Persons serving on the AB shall serve in rotation. Such rotation shall be determined in the working procedures of the AB. *Q M M*

4. The DSB shall appoint persons to serve on the AB for a four-year term, and each person may be reappointed once. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term. *NQ*
5. The DSB shall appoint a person to fill the vacancy within two (2) months from the date the vacancy arose. *NQ*
6. Where the DSB fails to appoint a person to fill the vacancy within two (2) months, the Chairperson of the DSB in consultations with the Secretariat shall within a period of one (1) month fill the vacancy. *NQ*
7. The AB shall comprise of persons of recognised authority, with demonstrated expertise in law, international trade and the subject matter of the Agreement generally. *NQ*
8. Members of the AB shall not be affiliated to any government. The AB shall broadly represent the membership within the AfCFTA. All persons serving on the AB shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of the AfCFTA. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. *NQ*

Article 21

Appeals

1. Only Parties to the dispute, may appeal a Panel report. Third Parties which have notified the DSB of a substantial interest in the matter pursuant to paragraph 2 of Article 13 of this Protocol, may make written submissions to, and be given an opportunity to be heard by, the AB. *NQ*
2. As a general rule, the proceedings shall not exceed sixty (60) days from the date a party to the dispute formally notifies its decision to appeal, to the date the AB circulates its report. In fixing its timetable the AB shall take into account the provisions of paragraph 9 (d) of Article 7 of this Protocol if relevant. Where the AB considers that it cannot provide its report within sixty (60) days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed ninety (90) days. *NQ*
3. An appeal shall be limited to issues of law covered in the Panel report and legal interpretations developed by the Panel. *NQ*

1. The AB shall be composed of persons with appropriate qualifications and shall be subject to the requirements of the AU. *Q*
5. The expenses of persons serving on the AB, including travel and subsistence allowance, shall be met from the AU/FTA budget in accordance with the financial rules and regulations of the AU. *Q*

Article 22

Procedures for Appellate Review

1. Working procedures shall be drawn up by the AB in consultation with the Chairperson of the DSB and communicated to the State Parties for their information. *Q*
2. The proceedings of the AB shall be confidential. *Q*
3. The conduct of an appeal under this Article shall not exceed ninety (90) days. *Q*
4. The reports of the AB shall be drafted without the presence of the Parties to the dispute and in the light of the information provided and the statements made. *Q*
5. Opinions expressed in the AB report by individuals serving on the AB shall be anonymous. *Q*
6. The AB shall address each of the issues raised in accordance with paragraph 3 of Article 21 of this Protocol, during the appellate proceeding. *Q*
7. The AB may uphold, modify or reverse the legal findings and conclusions of the Panel. *Q*
8. The AB shall produce a single report reflecting the views of the majority of its members. *Q*
9. An AB report shall be adopted by the DSB and unconditionally accepted by the Parties to the dispute unless the DSB decides by consensus not to adopt the AB report within thirty (30) days following its circulation to the State Parties. This adoption procedure is without prejudice to the right of State Parties to express their views on an AB report. *Q M-M*

Article 23
Panel and Appellate Body Recommendations

Where the Panel or the AB concludes that a measure is inconsistent with the Agreement, it shall recommend that the State Party concerned bring the measure into conformity with the Agreement. In addition to its recommendations, the Panel or the AB may suggest ways in which the State Party concerned could implement the recommendations. *Q*

Article 24
Surveillance of Implementation of Recommendations and Rulings

1. State Parties shall promptly comply with recommendations and rulings of the DSB. *Q*
2. A State Party concerned shall inform the DSB of its intentions in respect of the implementation of the recommendations and rulings of the DSB, at a meeting of the DSB which shall be held within thirty (30) days after the date of adoption of the report by the Panel or the AB. *Q*
3. Where a State Party concerned finds it impracticable to comply immediately with the recommendations and rulings of the DSB, the State Party concerned shall be granted a reasonable period in which to comply on the following basis: *Q*
 - (a) period of time proposed by the State Party concerned provided that the DSB approves the proposal; or *Q*
 - (b) in the absence of such approval a period mutually agreed by the Parties to a dispute within forty-five (45) days of the date of adoption of the report of the Panel and the AB and recommendations and rulings of the DSB; or *Q*
 - (c) in the absence of such agreement, a period of time determined through binding arbitration within ninety (90) days after the date of adoption of the recommendations and rulings. In such arbitration, a guideline for the arbitrator should be that the reasonable period of time to implement Panel or AB recommendations should not exceed fifteen (15) months from the date of adoption of a Panel or AB report. However, that time may be shorter or longer, depending upon the particular circumstances. *Q*
4. If the parties cannot agree on an arbitrator within ten (10) days after referring the matter to arbitration, the arbitrator shall be appointed by the Secretariat in consultation with the DSB within ten (10) days, after consulting the Parties. *Q M.M*

5. The Secretariat shall keep the DSB informed of the status of the implementation of decisions made under this Protocol. *Q*
6. Except where the Panel or the AB has extended, pursuant to Paragraph 7 of Article 15 or Paragraph 2 of Article 21 of this Protocol, the time of providing its report, the period from the date of establishment of the Panel by the DSB until the date of determination of the reasonable period of time shall not exceed fifteen (15) months unless the Parties to the dispute agree otherwise. Where either the Panel or the AB has extended the time of providing its report, the additional time taken shall be added to the fifteen (15) month period; provided that unless the Parties to the dispute agree that there are exceptional circumstances, the total time shall not exceed eighteen (18) months. *Q*
7. Where there is disagreement as to the existence or consistency with the agreement of measures taken to comply with the recommendations and rulings, such disagreement shall be decided through recourse to these dispute settlement procedures, including wherever possible resort to the original Panel. The Panel shall circulate its report within ninety (90) days after the date of its establishment. Where the Panel considers that it cannot circulate its report within this time frame, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will circulate its report. *Q*
8. The DSB shall keep under surveillance the implementation of adopted recommendations or rulings. The issue of implementation of the recommendations or rulings may be raised at the DSB by any State Party at any time following their adoption. Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six (6) months following the date of establishment of the reasonable period of time pursuant to paragraph 3 of this Article, and shall remain on the DSB's agenda until the issue is resolved. *Q*
9. At least ten (10) days prior to each such DSB meeting, the State Party concerned shall provide the DSB with a detailed status report which shall contain among others: *Q*
- (a) the extent of the implementation of the ruling(s) and recommendation(s); *Q*
 - (b) issues if any, affecting the implementation of the rulings and recommendations; *Q M.M*

- (c) the period of time required by the State Party concerned to fully comply with implementation of the ruling(s) and recommendation (s). *NQ*

Article 25

Compensation and the Suspension of Concessions or any other Obligations

1. It is the duty of the State Parties to fully implement the recommendations and rulings of the DSB. Compensation and the suspension of concessions or other obligations are temporary measures available to the aggrieved Party in the event that the accepted recommendations and rulings of the DSB are not implemented within a reasonable period of time. Provided that neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of the accepted recommendations. However, compensation is voluntary and, if granted, shall be consistent with the Agreement. *NQ*
2. The suspension of concessions or other obligations shall be temporary and shall only be applied in as far as it is consistent with this Agreement and shall subsist until such a time as the inconsistency with the Agreement, or any other determined breach is removed, or that the State Party implements recommendations, or provides a solution to the injury caused, or occasioned by the non-compliance, or that a mutual satisfactory solution is reached. *NQ*
3. In the event that the rulings and recommendations of the DSB are not implemented within a reasonable period of time, the aggrieved Party may request the DSB to impose temporary measures which include compensation and the suspension of concessions. *NQ*
4. If the State Party concerned fails to bring the measure found to be inconsistent with the Agreement into compliance therewith or otherwise comply with the decisions and rulings within the reasonable period of time determined pursuant to Paragraph 3 of Article 24 of this Protocol, such State Party shall, if so requested, enter into negotiations with a Complaining Party, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed upon within twenty (20) days, a Complaining Party may request authorisation from the DSB to suspend the application to the State Party concerned of concessions or other obligations under the Agreement. *NQ*
5. In considering what concessions or other obligations to suspend, the Complaining Party shall apply the following principles and procedures: *NQ*
 - (a) the general principle is that the Complaining Party should first seek to suspend concessions or other obligations with respect to the same sector(s). *NQ*

as that in which the Panel or Appellate Body has found a violation or other nullification or impairment; *NP*

(b) if that Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the Agreement; *NP*

(c) if that Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under this agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under the Agreement; and *NP*

(d) if that Party to a dispute decides to request authorisation to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it shall state the reasons thereof in its request to the DSB. *NP*

6. In applying the above principles that party shall take into account: *NP*

(a) the trade in the sector under which the Panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party; and *NP*

(b) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations. *NP*

7. The level of the suspension of concessions or other obligations authorised by the DSB shall be equivalent to the level of the nullification or impairment. *NP*

8. When the situation described in paragraph 4 of this Article occurs, the DSB, shall grant authorisation to suspend concessions or other obligations within thirty (30) days from the date of request unless the DSB decides by consensus to reject the request. However, if the State Party concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 5 have not been followed where a complaining party has requested authorisation to suspend concessions or other obligations pursuant to paragraph 5(b) or (c) of this Article, the matter shall be referred to arbitration. Such arbitration shall be carried out by the original Panel, if Panellists are available, or by an arbitrator appointed by the chairperson of the DSB and shall be completed within sixty (60) days from the date of appointment of the arbitrator. Concessions or other obligations shall not be suspended during the course of the arbitration. *NP M.M*

NP

9. The arbitrator acting pursuant to paragraph 7 of this Article, shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator may also determine if the proposed suspension of concessions or other obligations is allowed under the Agreement. However, if the matter referred to arbitration includes a claim that the principles and procedures set forth in paragraph 3 of this Article, have not been followed, the arbitrator shall examine that claim. In the event the arbitrator determines that those principles and procedures have not been followed, the complaining party shall apply them consistent with paragraph 5 of this Article. The Parties to a dispute shall accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration. The DSB shall be informed promptly of the decision of the arbitrator and shall upon request, grant authorisation to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request. *N*

Article 26

Costs

1. The DSB shall determine the remuneration and expenses of the Panellists, arbitrators and experts in accordance with the financial rules and regulations of the AU. *N*
2. The remuneration of the Panellists, arbitrators and experts, their travel and lodging expenses, shall be borne in equal parts by the Parties to a dispute, or in proportions determined by the DSB. *N*
3. A Party to a dispute shall bear all other costs of the process as determined by the DSB. *N*
4. Parties to the dispute shall be required to deposit their share of the Panellists' expenses with the Secretariat at the time of establishment, or composition of the Panel. *N*

Article 27

Arbitration

1. Parties to a dispute may resort to arbitration subject to their mutual agreement and shall agree on the procedures to be used in the arbitration proceedings. *N*
2. Parties to a dispute who may have referred a dispute for arbitration pursuant to this Article shall not simultaneously refer the same matter to the DSB. *N M M*

N

~~3. Agreement by the Parties to refer a dispute to arbitration shall be notified to the DSB.~~

4. Third Parties shall be joined to an arbitration proceeding only upon the agreement of the Parties to the arbitration proceedings. *Q*
5. The Parties to an arbitration proceeding shall abide by the arbitration award and the award shall be notified to the DSB for enforcement. *Q*
6. In the event of a Party to a dispute refusing to cooperate, the Complaining Party shall refer the matter to the DSB for determination. *Q*
7. Arbitration awards shall be enforced in accordance with the provisions of Articles 24 and 25 of this Protocol *mutatis mutandis*. *Q*

Article 28

Technical Co-operation

1. Upon request from a State Party, the Secretariat may provide additional legal advice and assistance in respect of dispute settlement, provided that this shall be done in a manner that ensures the continued impartiality of the Secretariat. *Q*
2. The Secretariat may organise special training courses for interested State Parties concerning dispute settlement procedures and practices to enable State Parties to develop expert capacity on the Dispute Settlement Mechanism. *Q*

Article 29

Responsibilities of the Secretariat

1. The Secretariat shall have the responsibility of assisting Panels, especially on legal, historical and procedural aspects of the matter dealt with and of providing secretarial support. *Q*
2. The Secretariat shall facilitate the constitution of Panels in accordance with this Protocol. *Q*
3. In order to accomplish the functions under Article 28 of this Protocol, the Secretariat shall avail experts with extensive experience in international trade law to assist the Panellists. *Q*
4. The Secretariat shall undertake such other functions and duties as may be required under the Agreement and in support of this Protocol. *Q* *M.M*

Q

5. The Secretariat shall be responsible for all relevant notifications to and from the DSB and State Parties. *N*

Article 30

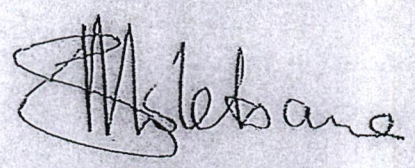
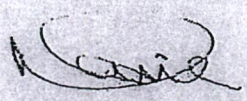
Rules of interpretation


The Panel and the AB shall interpret the provisions of the Agreement in accordance with the customary rules of interpretation of public international law, including the Vienna Convention on the Law of Treaties, 1969. *N*

Article 31

Amendment

This Protocol shall be amended in accordance with Article 29 of the Agreement. *N M A*



IN WITNESS WHEREOF, the Heads of State and Government or duly authorized representatives of the Member States of the African Union have signed and sealed this Agreement in four original texts in Arabic, English, French, and Portuguese languages, all texts being equally authentic. 

SIGNED at Kigali, on this 21st day of March in the year 2018. 



1. People's Democratic Republic of Algeria

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2. Republic of Angola

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3. Republic of Benin

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4. Republic of Botswana

.....

5. Burkina Faso

.....

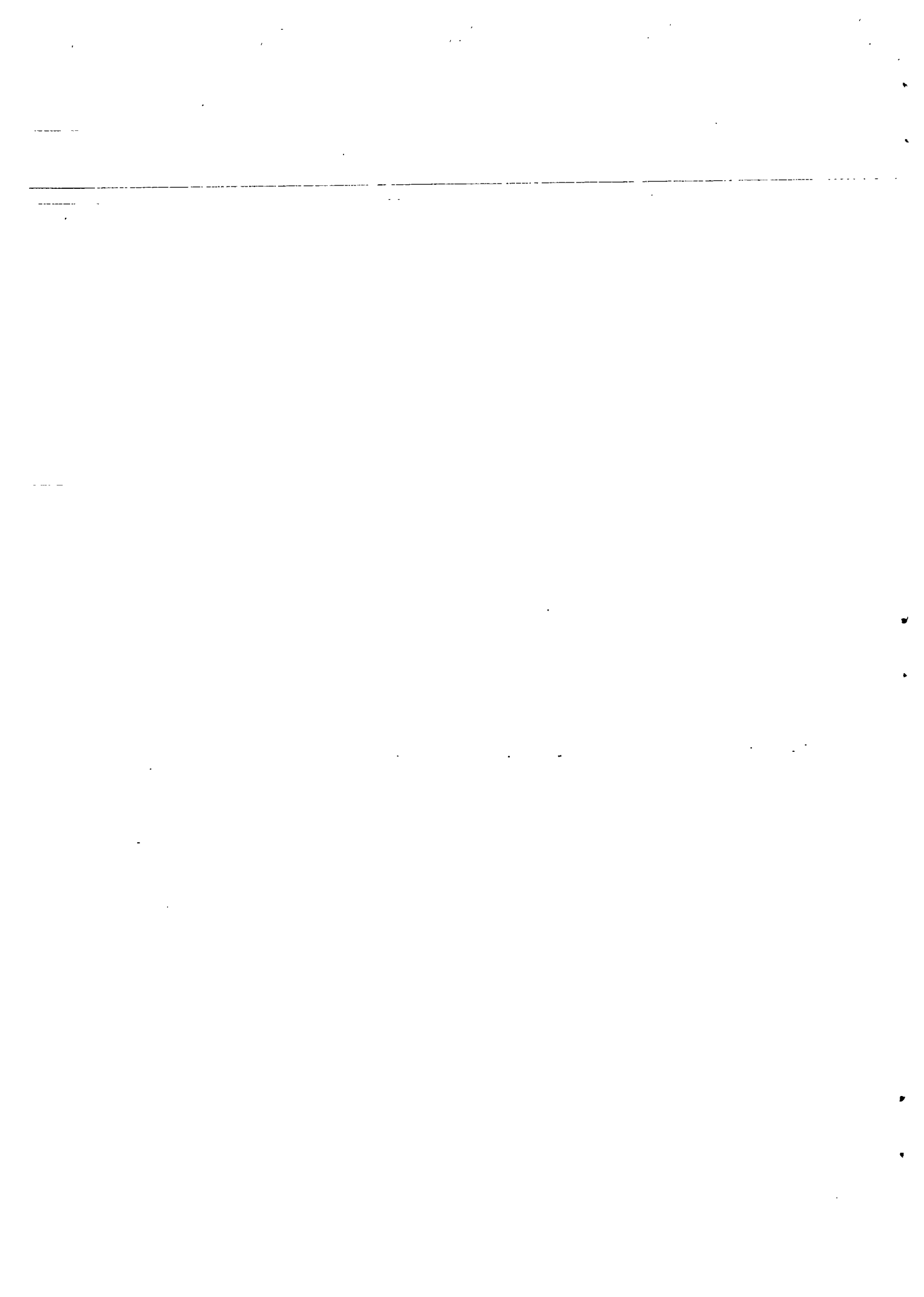
6. Republic of Burundi

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7. Republic of Cameroon

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8. Republic of Cape Verde

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9. Central African Republic

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10. Republic of Chad

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11. Union of the Comoros

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12. Republic of the Congo

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13. Republic of Côte d'Ivoire

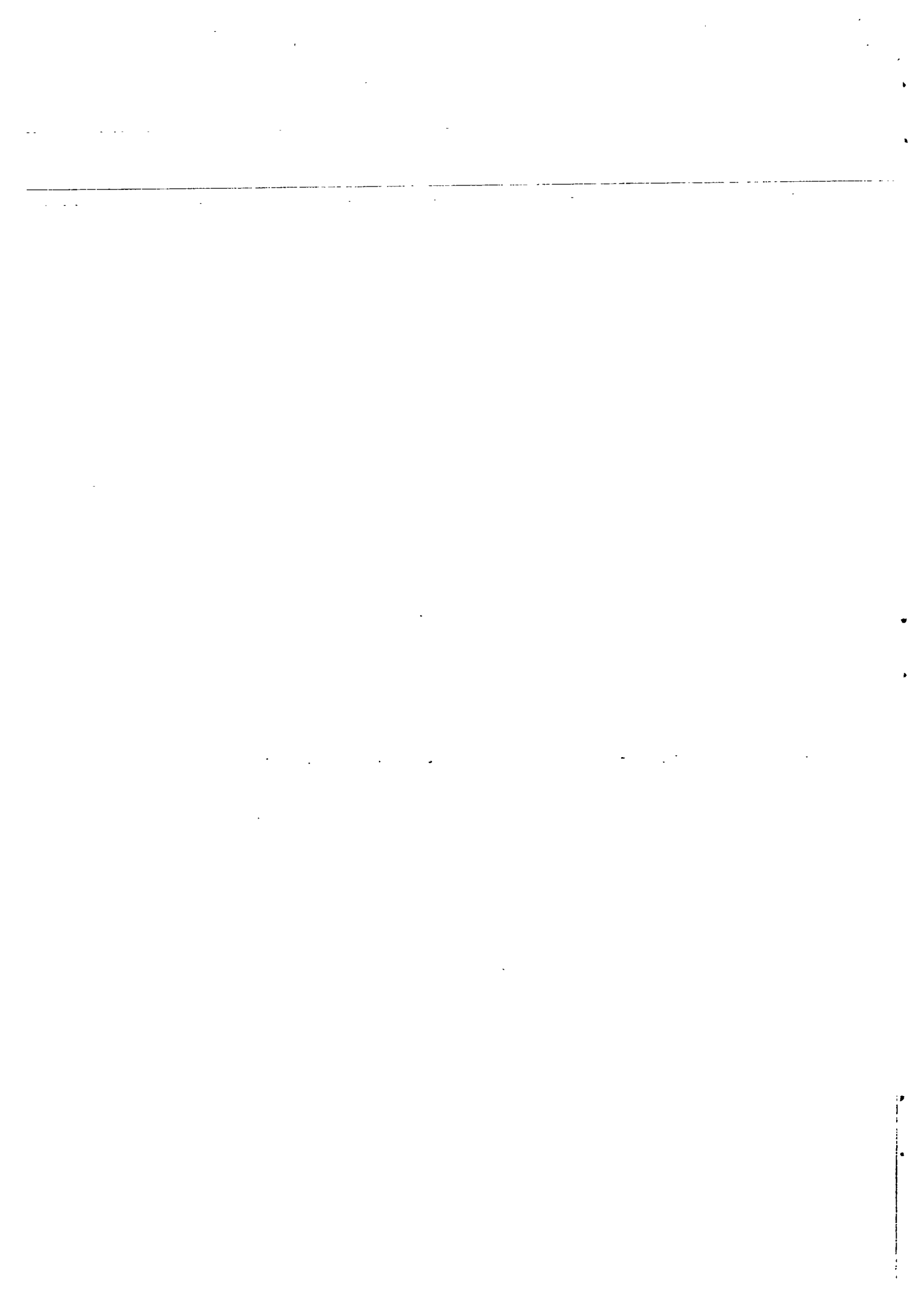
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14. Democratic Republic of Congo

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NO M.M



15. Republic of Djibouti

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16. Arab Republic of Egypt

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17. State of Eritrea

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18. Federal Democratic Republic of Ethiopia

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19. Republic of Equatorial Guinea

.....

20. Gabonese Republic

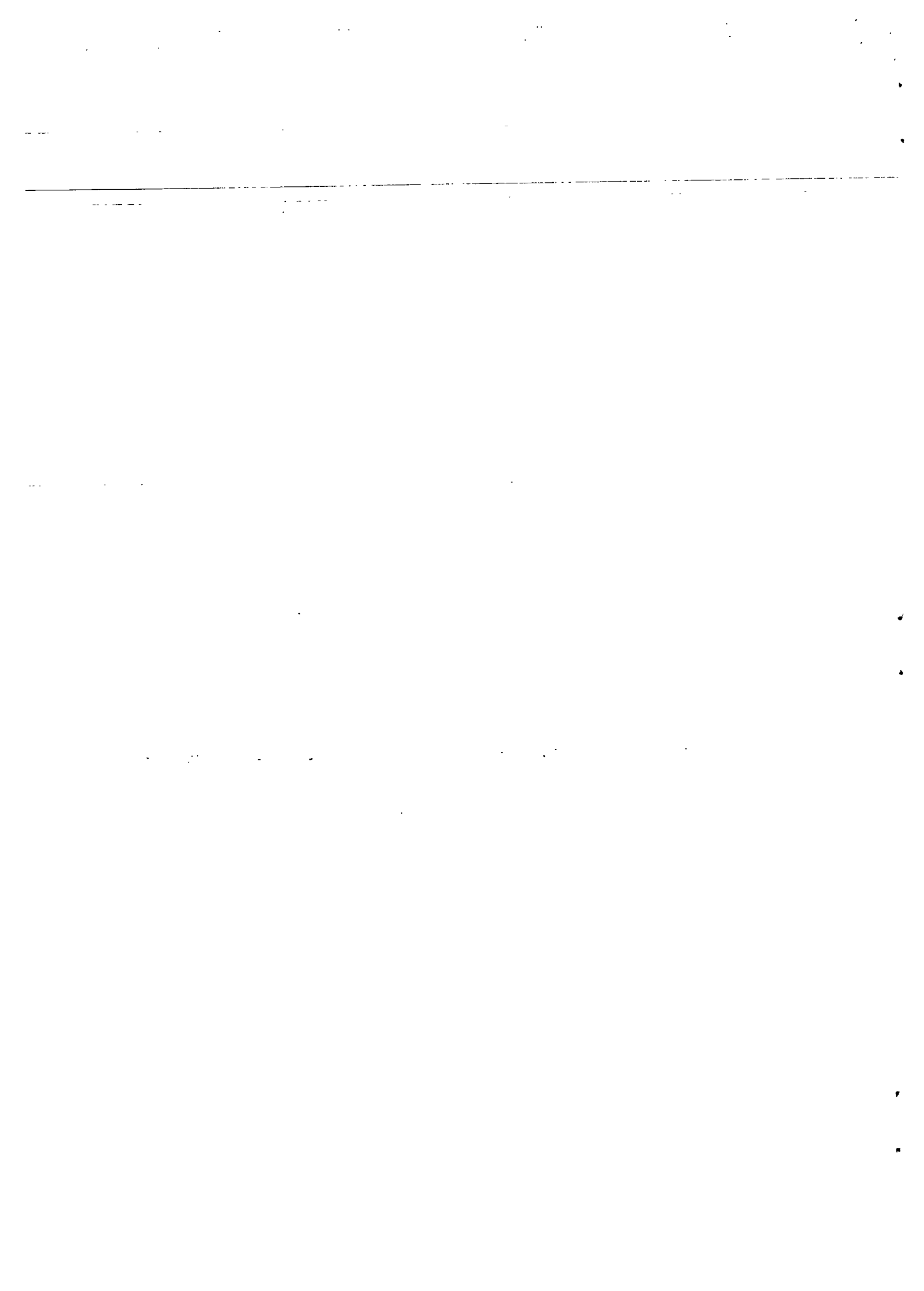
.....

21. Republic of The Gambia



NP

M.M



22. Republic of Ghana

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23. Republic of Guinea

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24. Republic of Guinea Bissau

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25. Republic of Kenya

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26. Kingdom of Lesotho

.....

27. Republic of Liberia

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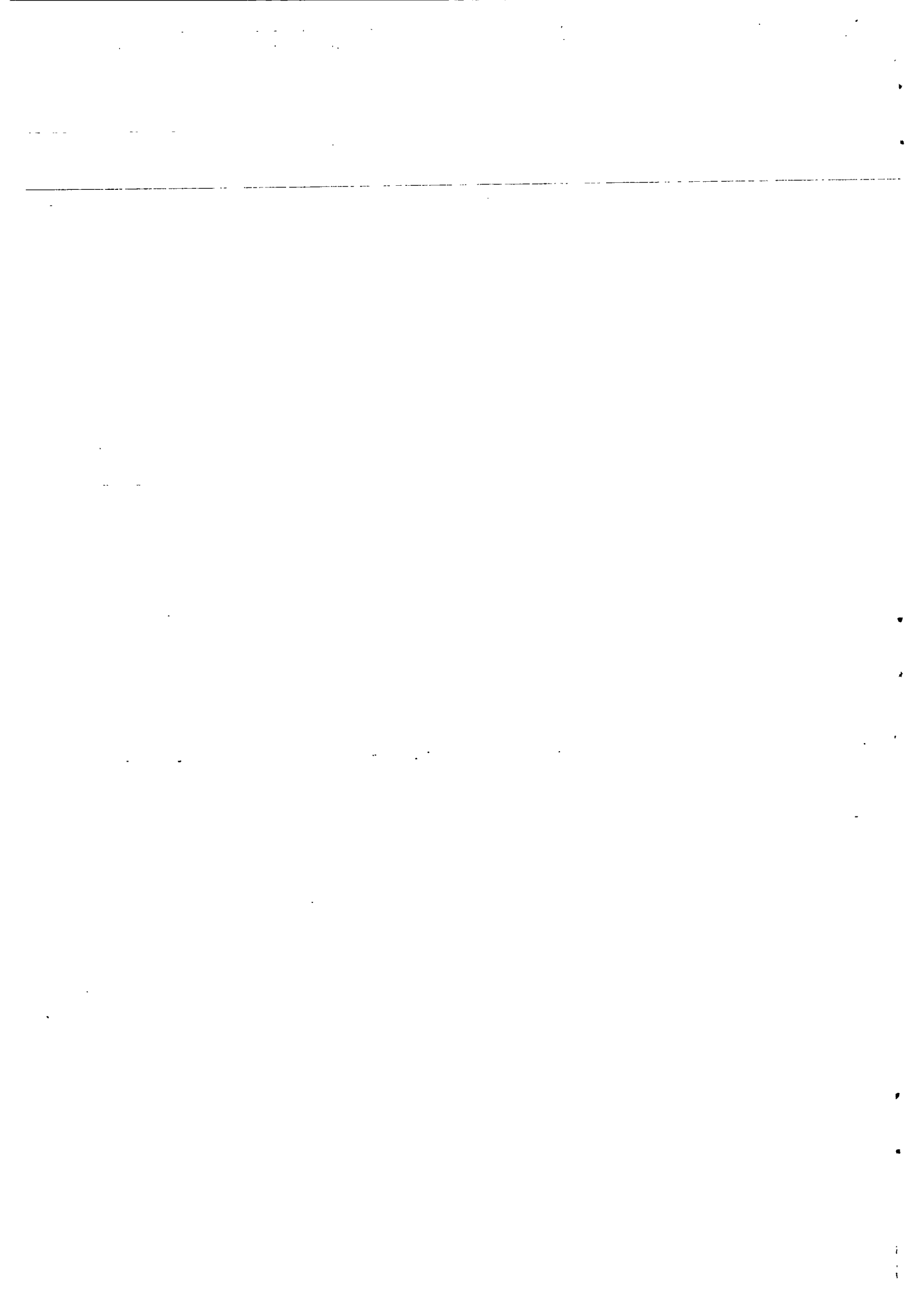
28. State of Libya

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NP

M.M





29. Republic of Madagascar

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30. Republic of Malawi

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31. Republic of Mali

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32. Islamic Republic of Mauritania

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33. Republic of Mauritius

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34. Kingdom of Morocco

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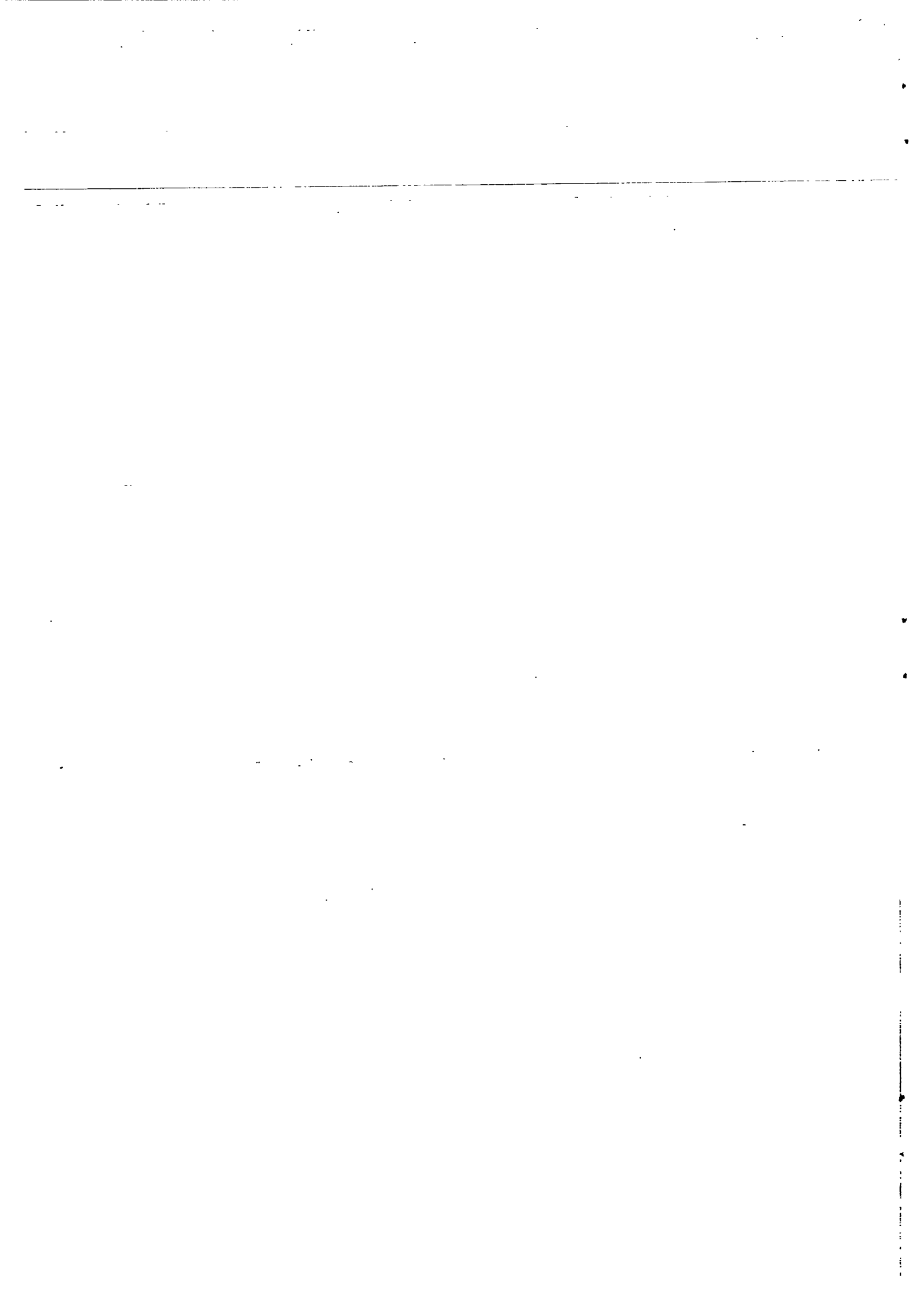
35. Republic of Mozambique

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36. Republic of Namibia

37. Republic of Niger

38. Federal Republic of Nigeria

39. Republic of Rwanda

40. Sahrawi Arab Democratic Republic

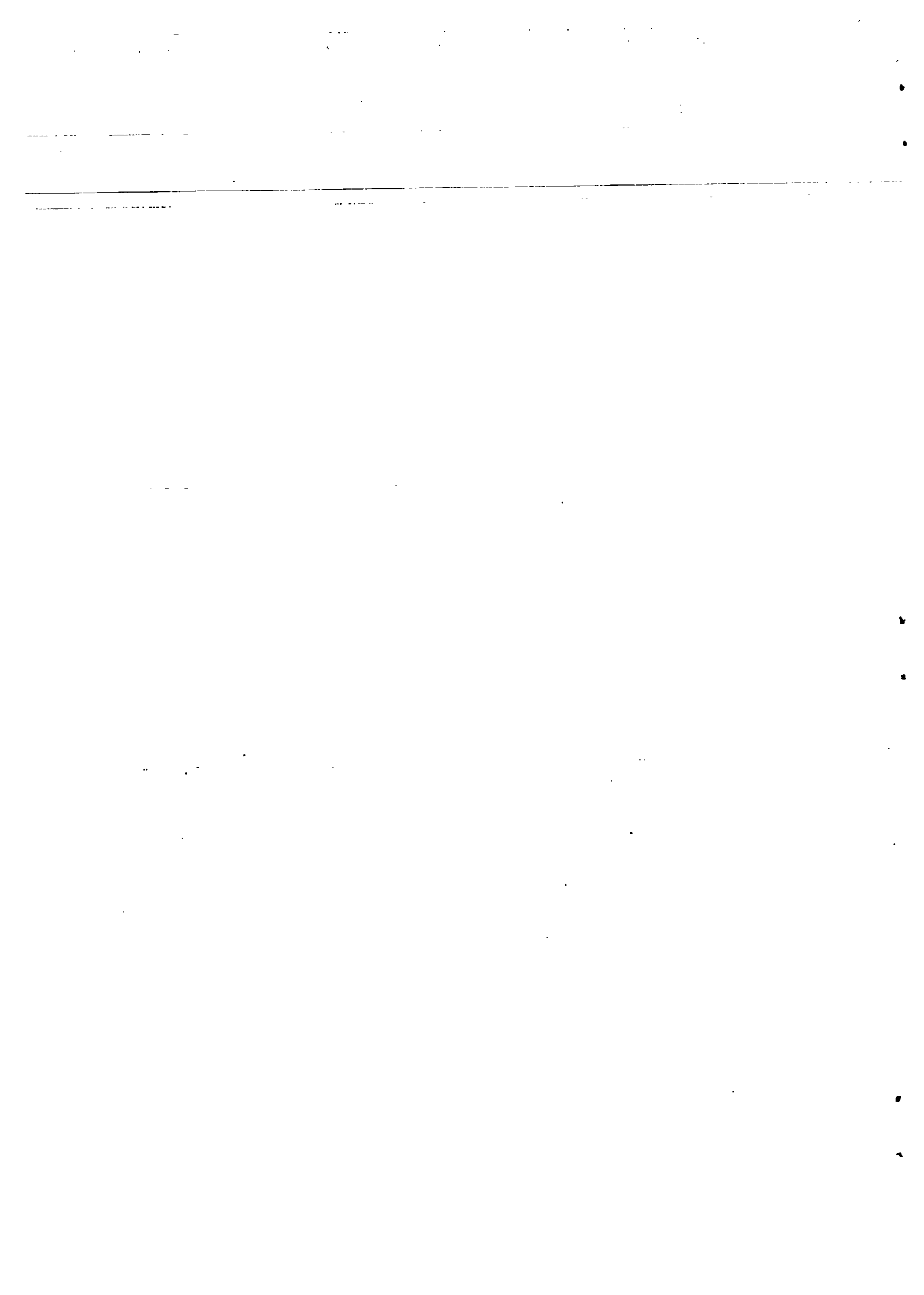
41. Republic of Sao Tome and Principe

42. Republic of Senegal

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43. Republic of Seychelles

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44. Republic of Sierra Leone

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45. Republic of Somalia

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46. Republic of South Africa

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47. Republic of South Sudan

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48. Republic of the Sudan

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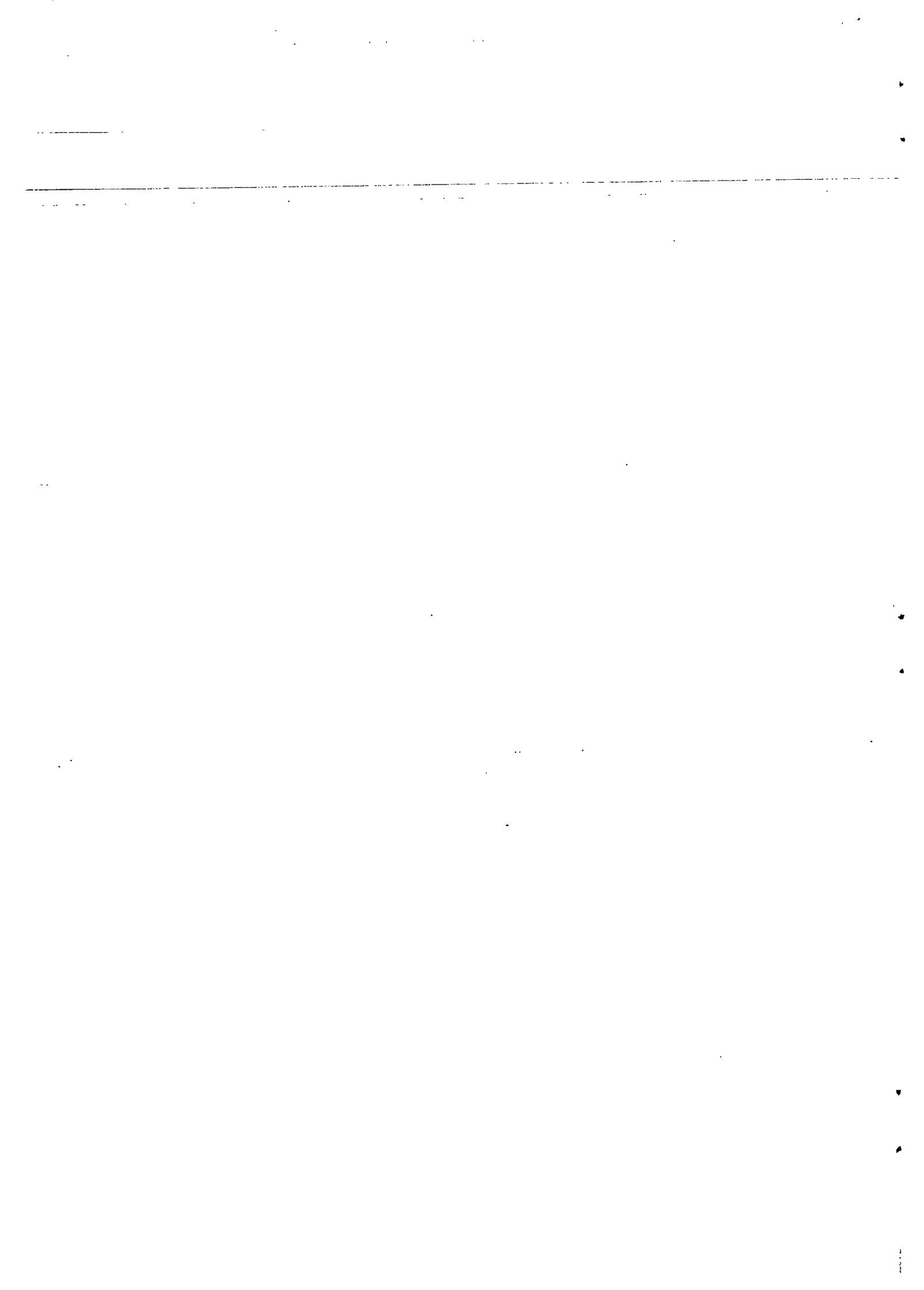
49. Kingdom of Swaziland

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50. United Republic of Tanzania

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51. Republic of Togo

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52. Republic of Tunisia

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53. Republic of Uganda

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54. Republic of Zambia

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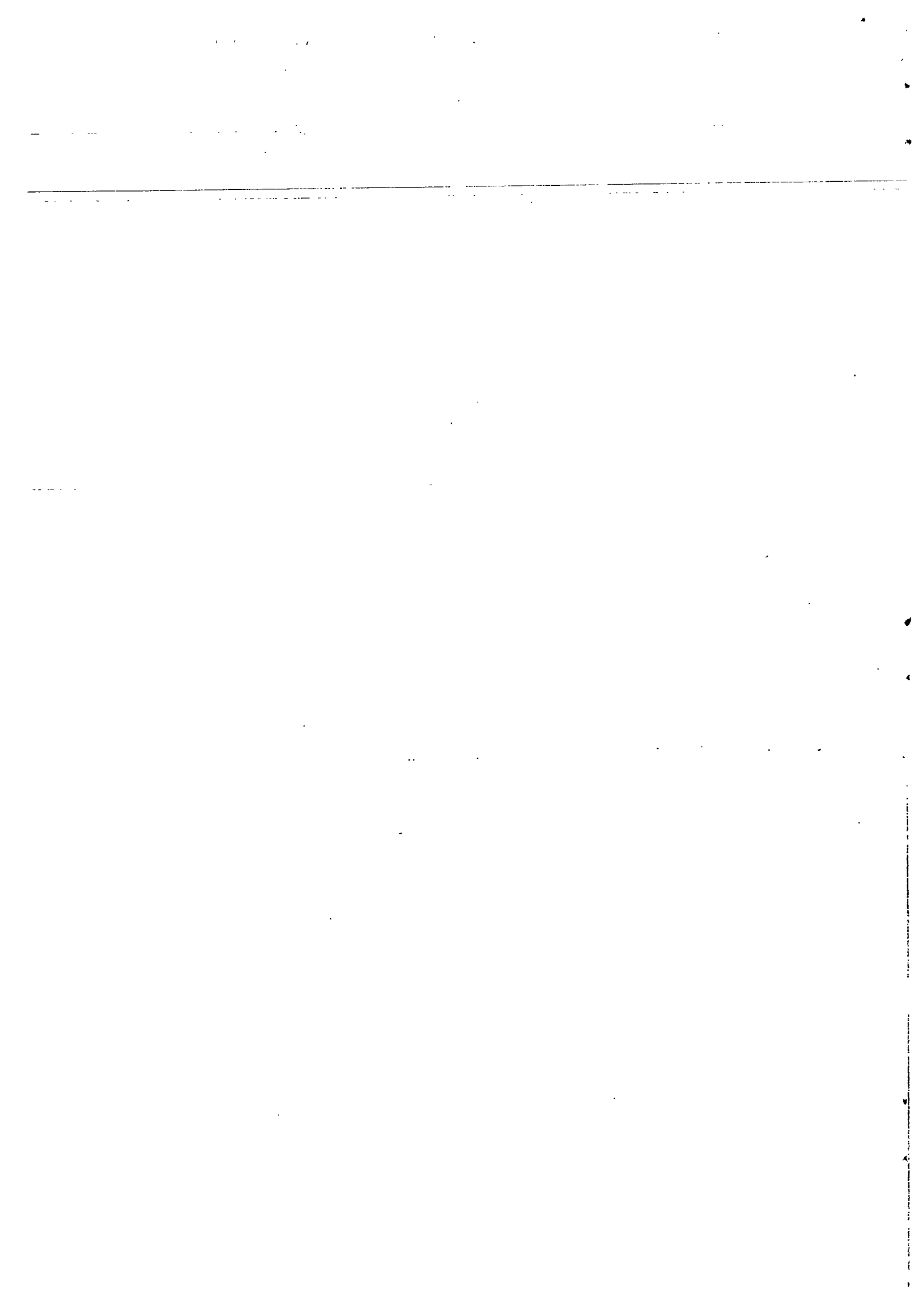
55. Republic of Zimbabwe

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ANNEX II: DETAILS OF AfCFTA PHASE I NEGOTIATIONS

1. The CFTA Negotiating Forum (CFTA-NF) has held ten negotiating sessions since the launch of the negotiations. The 10th CFTA-NF was held in Kigali, Rwanda on 26th February to 6th March 2017. It was followed by the 5th meeting of the African Union Ministers of Trade (AMOT) from 8th - 9th March, 2018.
2. The AMOT approved the Agreement establishing the AfCFTA and the three Protocols on Trade in Goods, Trade in Services and Rules and Procedures on the Settlement of Disputes, all of which had been legally scrubbed.
3. These legal texts were considered by the Specialized Technical Committee (STC) on Justice and Legal Affairs (Ministers of Justice and Attorney Generals) to ensure that they are in conformity with the values and guiding principles of the AU Constitutive Act.
4. The Annexes to the Protocol on Trade in Goods and the Protocol on Rules and Procedures on Settlement of Disputes were legal scrubbed and also approved by AMOT in readiness for signing of the agreement by the Assembly.
5. The concluded Legal Texts were submitted to the Heads of State and Government on 21st March, 2018 which considered, approved and signed the AfCFTA.
6. The content and status of the Legal Texts is as follows:
 - a) **The Framework Agreement Establishing the CFTA**
 - i. The negotiations on the CFTA framework Agreement, as well as the legal scrubbing have been concluded.
 - ii. Institutional framework and functions of each level responsible for the implementation of the CFTA has also been agreed by AMOT. The structure includes; *The Assembly of Heads of State and Government; Council of African Ministers of Trade; Committee of Senior Officials; and the AfCFTA Secretariat.*
 - iii. The Regional Economic Communities will be represented in the Committee of Senior Trade Officials in an advisory capacity” while other working groups may be established as required.
 - iv. For effective and efficient implementation of the Agreement, the Assembly of Heads of State and Government will establish a Secretariat, which will have operational autonomy and independence, but will be part of the African Union System. The Secretariat will be funded from the AU Commission budget. The Council of Ministers will determine the specific roles and responsibilities of the Secretariat.

- v. On Decision Making for purposes of the implementation of the CFTA, it was agreed that the Assembly of Heads of State and Government will have the exclusive authority to adopt interpretations of the Agreement.
- vi. The Agreement Establishing the AfCFTA will enter into force thirty (30) days after the deposit of the twenty second (22nd) instrument of ratification to the Chair of the AU Commission.
- vii. As part of the built-in agenda, after the signing of the Agreement, AU Member States will undertake further negotiations based on a technical note prepared by the AU Secretariat. The negotiations will focus on the proposed institutional arrangement, which will highlight, among others, the relationship of the CFTA Secretariat with the AUC structure and the financial implications. The location of the headquarters of the CFTA Secretariat will be determined by the Assembly of Heads of State and Government.

b) The Protocol on Trade in Goods

- i. This Protocol has been concluded and legally scrubbed.
- ii. The objective of the Protocol is to create a liberalized market for trade in goods across the continent. This will be through progressive elimination of tariffs and non-tariff barriers. The level of ambition for tariff liberalization has been agreed and the Modalities for Trade in Goods for phase one negotiations were adopted in June 2017. The Modalities provide for liberalisation of up to 90% of tariff lines of each State Party, within a period of 5 years and 10 years for non-LDCs and LDCs respectively.
- iii. The Modalities further provide for designation of sensitive products and excluded products, to take care of the sensitive and strategic sectors of each State Party, up to 10% of the tariff lines. Sensitive products will be liberalised within 10 years for non-LDCs and within 13 years for LDCs.
- iv. Member States that are interested and willing to go deeper beyond the above commitments, are allowed to engage at bilateral levels as provided for in the Supplementary modalities.
- v. In addition, with respect to trade in goods a Group of 7 countries¹ has been pushing for 85% level of liberalization, against the agreed liberalization level of 90%. The AU Summit

¹ The Republic of Djibouti, the Federal Democratic Republic of Ethiopia, the Republic of Madagascar, the Republic of Malawi, the Republic of Sudan, the Republic of Zambia and the Republic of Zimbabwe.

mandated the AfCFTA Champion, H.E. Mahamadou Issoufou to engage these countries, with a view to achieving a broad-based consensus. This matter has not been formally discussed by any of the established AfCFTA negotiating institutions.

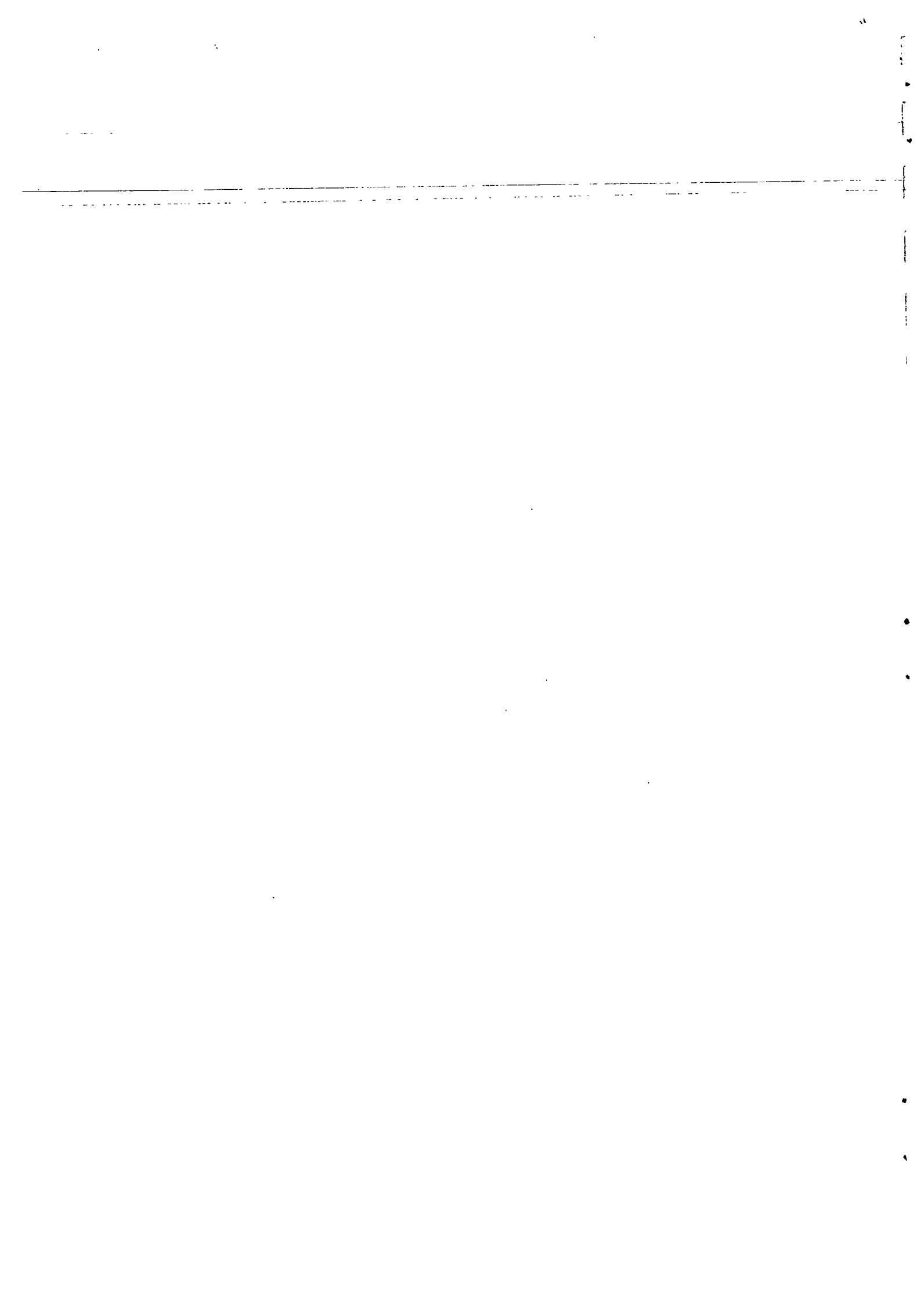
- vi. Under the built in agenda, legal scrubbing of Annexes on: *Rules of Origin; SPS; TBT; Trade Remedies; Customs Cooperation and Mutual Administrative Assistance; Trade Facilitation; and Transit Trade* will be undertaken after the signing of the Agreement.
- vii. In addition further negotiations will be undertaken on product specific Rules of Origin and outstanding issues in the Annex on Rules of Origin, namely: definition of "vessels and factory ships" with respect to conferring origin for marine fish; treatment of products from the Special Economic Zones; and the definition of value addition – as a criterion for conferring origin.

c) The Protocol on Trade in Services

- i. The Protocol on Trade in Services has been concluded and legally scrubbed.
- ii. The objective of the Protocol is to create a single liberalised market for trade in services across the continent, through inter alia, enhanced continental market access; fostering domestic and foreign investment; and progressive liberalization of trade in services.
- iii. Member States have agreed on the Hybrid approach on Modalities for liberalisation of trade in services. Commitments will be undertaken on the services sectors to be liberalised and will be supplemented by improvement of the regulatory framework in Member States.
- iv. As part of inbuilt in Agenda, Member States will need to agree on the priority sectors to be considered for liberalization, as well as the modalities and guidelines for scheduling of specific commitments which will be annexed to the Protocol.

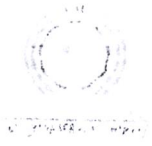
d) Protocol on Rules and Procedures on the Settlement of Disputes

- i. This Protocol has been concluded and legally scrubbed. It provides for a mechanism for settlement of disputes between State Parties, arising from their rights and obligations under the AfCFTA Agreement. It is modelled along the WTO dispute settlement mechanism, with a three-tier dispute settlement process – consultations – panel stage – appellate stage.
- ii. The Protocol has three annexes: Rules and Procedures for selection of Panels; Working Procedures for Panels; and Rules for the establishment of Expert Review.
- iii. The Annexes have also been finalized but have not yet been legally scrubbed. This has been included in the built in agenda and will be undertaken after the signing of the Agreement Establishing the AfCFTA.



ANNEXURE 4

**AGREEMENT ESTABLISHING A TRIPARTITE FREE
TRADE AREA AMONG THE COMMON MARKET FOR
EASTERN & SOUTHERN AFRICA, THE EAST
AFRICAN COMMUNITY & THE SOUTHERN
AFRICAN DEVELOPMENT COMMUNITY**



**AGREEMENT ESTABLISHING A
TRIPARTITE FREE TRADE AREA AMONG
THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA,
THE EAST AFRICAN COMMUNITY AND THE SOUTHERN AFRICAN
DEVELOPMENT COMMUNITY**

Preamble

WE, the Member States of the Common Market for Eastern and Southern Africa, the Partner States of the East African Community, and the Member States of the Southern African Development Community, hereinafter referred to as "Tripartite Member/Partner States":

RECALLING AND AFFIRMING the strong and indissoluble bonds of history, freedom, liberation struggles, friendship, solidarity, commerce, trade, shared natural resources, and culture among the people and Governments of the Member/Partner States of the Common Market for Eastern and Southern Africa, the East African Community, and the Southern African Development Community;

RECOGNISING the Kampala Communiqué of the Tripartite Summit of 22 October 2008 under which the Heads of State and Government representing the three regional economic communities agreed, *inter alia*, to establish a single Customs Union beginning with a Free Trade Area;

FURTHER RECOGNISING the Declaration Launching the Negotiations for the Establishment of the Tripartite Free Trade Area of Johannesburg, South Africa, 12 June 2011;

RECALLING the Tripartite Memorandum of Understanding signed on 19 January, 2011 and its provisions on the establishment of the Tripartite Free Trade Area;

COMMITTED to championing and expediting the continental integration process under the Treaty establishing the African Economic Community and the Constitutive Act of the African Union through regional initiatives;

COGNISANT of the provisions establishing free trade areas in the Common Market of Eastern and Southern Africa Treaty, Treaty for the Establishment of the East African Community and the Southern African Development Community Protocol on Trade;

DETERMINED to build upon the success and best practices achieved in trade liberalisation within the three Regional Economic Communities;

COMMITTED to resolving the challenges of overlapping memberships of the Tripartite Member/Partner States to the three Regional Economic Communities;

CONSIDERING that trade in goods and services, infrastructure, cross-border investment, industrial development and movement of business persons should be major areas of co-operation;

DETERMINED to take the necessary measures for reducing the cost of doing business and creating a conducive environment for private sector development;

MINDFUL of the important role of micro, small and medium enterprises in job creation and income generation for the majority of the people in the Tripartite Member/Partner States;

RECOGNISING the significant contribution of trade in goods and services to national incomes of the Member/Partner States;

DETERMINED to progressively liberalise trade in goods and services, promote industrial development, facilitate movement of business persons, support the strengthening of infrastructure, promote competitiveness, build the capacity of micro, small and medium scale enterprises, and contribute to the deepening of integration in the Tripartite Member/Partner States;

RECOGNISING that the development of trade and investment is essential to the economic integration of the Region and will create new opportunities for a dynamic business sector;

CONVINCED that a framework of trade co-operation among Tripartite Member/Partner States based on equality, fair competition and mutual benefit will contribute to the creation of a viable development community;

MINDFUL of the different levels of economic development and geographic specificities of the Tripartite Member/Partner States and the need to share equitably the benefits of regional economic integration;

COMMITTED to improving the competitiveness of Tripartite Member/Partner States at enterprise, industrial and regional levels so as to fully derive benefits from regional and global trade opportunities;

RECOGNISING the progress achieved in the elimination of import duties and other trade barriers within the three regional economic communities;

RECOGNISING the initiatives undertaken by the regional economic communities in establishing themselves as single investment areas and building on this progress; and

RECOGNISING our international obligations under the existing agreements;

HEREBY AGREE as follows:

PART I

INTERPRETATION, ESTABLISHMENT, OBJECTIVES AND PRINCIPLES

Article 1 Interpretation

In this Agreement, unless the context otherwise requires:

“**Agreement**” means this agreement establishing the Tripartite Free Trade Area;

“**COMESA**” means the Common Market for Eastern and Southern Africa as established by the Treaty Establishing the Common Market for Eastern and Southern Africa which entered into force on 8th December, 1994;

“**Customs duties**” means duties laid down in the customs tariff to which goods are liable on entering or leaving the customs territory of the Member/Partner State;

“**EAC**” means the East African Community established by the Treaty for the Establishment of the East African Community which entered into force on 7th July, 2000;

“**Import duties**” means customs duties or charges of equivalent effect imposed on, or in connection with, the importation of goods consigned from any Tripartite Member/Partner State to a consignee in another Tripartite Member/Partner State, but do not include any;

- a) charges equivalent to internal taxes imposed consistently with Article III(2) of the GATT 1994 and its interpretative notes in respect of like directly competitive or substitutable goods of the party or the signatory party or in respect of goods from which imported goods have been manufactured or produced in whole or in part;
- b) antidumping or countervailing duties imposed in accordance with Articles VI, and XVI of GATT 1994 and the WTO Agreement on Subsidies and countervailing measures and Article 17 of this Agreement;
- c) safeguard duties or levies imposed in accordance with Articles XIX of GATT 1994, the WTO Agreement on Safeguards and Articles 18 and 19 of this Agreement other fees or charges imposed consistently with Article VIII of GATT 1994.

“**Most Favoured Nation treatment**” (MFN) means that advantages that any Tripartite Member/Partner State offers to third countries would be offered to other Tripartite Member/Partner States. The purpose is to ensure that Tripartite

Member/Partner State trade amongst each other on terms as good as or better than that offered to non-FTA partners. These advantages would be extended on reciprocity.

"Non-Tariff Barriers" (NTB) means any laws, regulations, administrative and technical requirements other than tariffs imposed by a partner state whose effect is to impede trade;

"Quantitative restrictions" means prohibitions or restrictions on imports into, or exports from a Tripartite Member/Partner State whether made effective through quotas, import licences, or other measures and requirements restricting imports or exports;

"REC" means Regional Economic Community;

"Region" means the geographical territories of the Tripartite Member/Partner States collectively;

"SADC" means the Southern African Development Community as established by the Treaty of the Southern African Development Community which entered into force on 30th September, 1993;

"Special Economic Zones" means a designated economic area in a Tripartite Member/Partner State with regulations that may be different from other areas in the same Tripartite Member/Partner State for the purpose of attracting foreign and domestic investments, know-how and technology;

"SPS" means Sanitary and Phyto-Sanitary Measures;

"TBT" means Technical Barriers to Trade;

"Transit" refers to Customs transit which means a Customs procedure under which goods are transported under Customs control from one Customs office to another; (Annex A and Specifically Annex E to the Istanbul Convention);

"Tripartite Member/Partner States" means the Member States of Common Market for Eastern and Southern Africa, the Partner States of the East African Community, and the Member States of the Southern African Development Community who are party to this Agreement and any other member of the African Union that would have become party to this Agreement;

"Third country" means a country that is not a party to this Agreement;

"variable geometry" means the principle of flexibility which allows for progression in cooperation amongst members in a larger integration scheme in a variety of areas and at different speeds;

"WTO" means the World Trade Organisation.

Article 2
Establishment of the Tripartite Free Trade Area

A Free Trade Area among the Member/Partner States of COMESA, EAC and SADC is hereby established.

Article 3
Scope and Coverage

This Agreement shall, without derogating from the purpose already outlined herein comprise of:

- a) Trade in goods;
- b) Trade in services; and
- c) Other trade-related matters.

Article 4
General Objectives

The general objectives of the Tripartite Free Trade Area shall be to:

- a) promote economic and social development of the Region;
- b) create a large single market with free movement of goods and services to promote intra-regional trade;
- c) enhance the regional and continental integration processes; and
- d) build a strong Tripartite Free Trade Area for the benefit of the people of the Region.

Article 5
Specific Objectives

For purposes of fulfilling and realising the objectives set out in Article 4 of this Agreement, Tripartite Member/Partner States shall:

- a) progressively eliminate tariffs and Non-Tariff Barriers to trade in goods;
- b) liberalise trade in services;
- c) cooperate on customs matters and implementation of trade facilitation measures;
- d) establish and promote cooperation in all trade-related areas among Tripartite Member/Partner States; and
- e) establish and maintain an institutional framework for implementation and administration of the Tripartite Free Trade Area.

Article 6 Principles

The principles governing this Agreement shall be the following:

- a) REC and/ or Tripartite Member/Partner States driven;
- b) variable geometry;
- c) flexibility and special and differential treatment;
- d) transparency;
- e) building on the *acquis*;
- f) single undertaking with regard to the various phases of the Agreement;
- g) MFN treatment
- h) national treatment;
- i) reciprocity;
- j) substantial liberalisation;
- k) consensus decision making; and
- l) best practices in the regional economic communities, the Tripartite Member/Partner States and international conventions binding Tripartite Member/Partner States.

PART II

NON-DISCRIMINATION

Article 7 Most-Favoured-Nation Treatment

1. Tripartite Member/Partner States shall accord to one another the Most-Favoured- Nation Treatment.
2. Nothing in this Agreement shall prevent a Tripartite Member/Partner State from maintaining or entering into new preferential trade agreements with third countries provided that any advantage, concession, privilege or favour granted to a third country under such agreements are offered to the other Tripartite Member/Partner States on a reciprocal basis.
3. Nothing in this Agreement shall prevent two or more Tripartite Member/Partner States from entering into new preferential agreements which aim at achieving the objectives of this Agreement among themselves, provided that any preferential treatment accorded under such agreements is extended to the other Tripartite Member/Partner States on a reciprocal and non-discriminatory basis.
4. Any agreement entered into under paragraph 2 and 3 shall be notified to the Tripartite Sectoral Ministerial Committee responsible for Trade, Finance, Customs, Economic Matters and Home/Internal Affairs.

Article 8
National Treatment

A Tripartite Member/Partner State shall accord to products imported from other Tripartite Member/Partner States treatment no less favourable than that accorded to like domestic products, after the imported products have passed customs, and that this treatment covers all measures affecting the sale and conditions for sale of such products in accordance with Article III of GATT 1994.

PART III

LIBERALISATION OF TRADE IN GOODS

Article 9
Elimination of Import Duties

1. Tripartite Member/Partner States shall not impose new import duties or charges of equivalent effect except as provided for under this Agreement.
2. The provisions of paragraph 1 shall not apply to goods that are not subject to liberalisation.
3. The Tripartite Member/Partner States shall progressively eliminate import duties in accordance with schedules contained in Annex I on Elimination of Import Duties.

Article 10
Non-Tariff-Barriers

1. Tripartite Member/Partner States shall eliminate all existing Non-Tariff-Barriers to trade with each other and shall not impose any new ones in line with Annex III on Non-Tariff Barriers.
2. Tripartite Member/Partner States recognise the existing reporting, monitoring and elimination mechanisms on Non-Tariff-Barriers established by the three RECs and undertake to harmonise them into a single mechanism as provided for in Annex III.

Article 11
Elimination of Quantitative Restrictions

Tripartite Member/Partner States shall not impose quantitative restrictions on imports or exports in trade with other Tripartite Member/Partner States except as otherwise provided for in Article XI.2 of GATT1994, the WTO Agreement on Safeguards and Articles 17 and 18 and Annex II on Trade Remedies of this Agreement.

Article 12
Rules of Origin

Goods shall be eligible for preferential treatment under this Agreement if they are originating goods in any of the Tripartite Member/Partner States in accordance with the criteria and conditions set out in Annex IV on Rules of Origin.

PART IV
CUSTOMS COOPERATION AND TRADE FACILITATION

Article 13
Customs Cooperation

Tripartite Member/Partner States shall take appropriate measures including arrangements regarding customs cooperation and mutual administrative assistance to ensure that the provisions of this Agreement are effectively applied in accordance with Annex V on Customs Cooperation and Mutual Administrative Assistance.

Article 14
Trade Facilitation

1. Tripartite Member/Partner States agree to design and standardise their trade and customs documentation and information in accordance with internationally accepted standards, taking into account the use of electronic data processing systems.
2. Tripartite Member/Partner States shall ensure an efficient and effective application of this Article in accordance with Annex VI on Trade Facilitation.
3. Tripartite Member/Partner States undertake to initiate trade facilitation programmes in accordance with Annex VI on Trade Facilitation aimed at:
 - a) reducing the cost of processing documents and volume of paper work required in respect of trade among Tripartite Member/Partner States;
 - b) ensuring that the nature and volume of information required in respect of trade within the Tripartite Free Trade Area does not adversely affect the economic development of, or trade among, the Tripartite Member/Partner States;
 - c) adopting common standards of trade procedures within the Tripartite Free Trade Area where international requirements do not suit the conditions prevailing among Tripartite Member/Partner States;
 - d) ensuring adequate coordination between trade and transport facilitation within the Tripartite Free Trade Area;

- e) keeping under review procedures adopted in international trade and transport with a view to simplifying and adopting them;
- f) collecting and disseminating information on international development regarding trade facilitation;
- g) promoting the development and adoption of common solutions to problems in trade facilitation instruments;
- h) initiating and promoting the establishment of joint programmes, for the training of personnel engaged in trade facilitation; and
- i) establishing and promoting one-stop border posts.

Article 15
Transit

Tripartite Member/Partner States agree to facilitate the movement of goods and means of transport in transit to other Tripartite Member/Partner States in accordance with Annex VII on Transit Trade and Transit Facilitation.

PART V

TRADE REMEDIES

Article 16
Transitional Arrangements

1. Where there is evidence of dumping, subsidisation or surge in imports into the territory of a Tripartite Member/Partner State, nothing in this Agreement shall prevent that Tripartite Member/Partner State from applying, in the interim, an anti-dumping, countervailing or safeguard measure governed by:
 - a) REC provisions among the Member/Partner State of the same REC;
 - b) The relevant WTO provisions across the RECs.
2. The Tripartite guidelines on the implementation of trade remedies shall be drafted by a Tripartite Committee of Experts as part of the built in agenda and shall form an integral part of Annex II on Trade Remedies.
3. Articles 17, 18 and 19 shall be suspended until Annex II on Trade Remedies is finalised and operational.

Article 17
Anti-dumping and Countervailing Measures

1. Subject to the provisions of this Agreement, nothing in this Agreement shall prevent Tripartite Member/Partner States from adopting anti-dumping and countervailing measures in accordance with the relevant WTO Agreements and **Annex II** on Trade Remedies.
2. In applying this Article, Tripartite Member/Partner States shall be guided by provisions of the WTO Agreement on the Interpretation of Article VI of the GATT 1994; and the WTO Agreement on Subsidies and Countervailing Measures.

Article 18
Safeguard Measures

1. A Tripartite Member/Partner State may apply a safeguard measure to a product only after determining that such product is being imported into its territory:
 - a) in such increased quantities, absolute or relative to domestic production; and
 - b) under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.
2. In applying this Article, Tripartite Member/Partner States shall be guided by the provisions of Article XIX of GATT 1994 WTO Agreement on Safeguard Measures and **Annex II** on Trade Remedies.

Article 19
Preferential Safeguards

1. Preferential safeguard measures may be applied by a Tripartite Member/Partner States under the provisions in **Annex II** on Trade Remedies, if as a result of the obligations undertaken by that Tripartite Member/Partner State goods are imported into the territory of a Tripartite Member/Partner State under such conditions as to cause or threaten to cause serious injury to the domestic industry.
2. Preferential safeguard measures shall be applied only to the extent necessary to prevent or remedy serious injury.

Article 20
Cooperation on Trade Remedies

Recognising that dumping, subsidisation and import surges, whether originating from the Region or a Third Country, can adversely affect more than one Tripartite Member

Partner State within the Region, Tripartite Member/Partner States shall cooperate in the detection and investigation of dumping or subsidisation or sudden imports (grey area) in the imposition of the appropriate measures to curb such practices.

PART VI

TRADE-RELATED AREAS

Article 21

Technical Barriers to Trade

1. Tripartite Member/Partner States reaffirm their rights and obligations in respect of the WTO Agreement on Technical Barriers to Trade.
2. Tripartite Member/Partner States undertake to facilitate trade through cooperation in the areas of technical regulations, standards, metrology, conformity assessment and accreditation.
3. Tripartite Member/Partner States shall, cooperate to eliminate unnecessary and unjustifiable Technical Barriers to Trade.
4. Cooperation shall include but not be limited to:
 - a) the reinforcement of good regulatory and standards setting practices;
 - b) the implementation of various mechanisms to facilitate the acceptance of conformity assessment results;
 - c) promoting the use of relevant international standards as a basis for technical regulations;
 - d) identifying and assessing instruments for trade facilitation such as the harmonisation, and or equivalence of technical regulations; and
 - e) mutual recognition of conformity assessment results.
5. Tripartite Member/Partner States shall strengthen cooperation and agree on priority areas of mutual interest in matters relating to Technical Barriers to Trade.
6. Tripartite Member/Partner States shall establish and implement a capacity building programme to support the implementation of Annex VIII on Technical Barriers to Trade.
7. Tripartite Member/Partner States shall establish mechanisms and structures to enhance transparency in the development and implementation of standards, technical regulations, and conformity assessment requirements.
8. The implementation of this Article shall be in accordance with the provisions of Annex VIII on Technical Barriers to Trade.

Article 22
Sanitary and Phytosanitary Measures

1. Tripartite Member/Partner States reaffirm their rights and obligations in respect of the WTO Agreement on the application of Sanitary and Phytosanitary measures.
2. Tripartite Member/Partner States shall undertake to facilitate safe trade in animals and animal products, plants and plant products whilst safeguarding human, animal and plant life or health.
3. Tripartite Member/Partner States shall cooperate to eliminate unjustifiable SPS measures in order to facilitate safe trade in sectors of mutual economic interest.
4. Tripartite Member/Partner States shall establish and implement a capacity building programme to support the implementation of Annex IX on Sanitary and Phytosanitary Measures.
5. The implementation of this Article shall be in accordance with Annex IX Sanitary and Phytosanitary Measures.

Article 23
Special Economic Zones

1. Tripartite Member/Partner States may support the establishment and operation of special economic zones for the purpose of accelerating development.
2. Products benefiting from special economic zones shall be subject to any regulations that may be made by the Tripartite Council of Ministers. Regulations under this paragraph shall be subject to paragraph 3 of this Article and in support of the Tripartite industrialisation programmes.
3. The trade of products manufactured in special economic zones within the Tripartite Member/Partner States shall be subject to the provisions of Annex IV on Rules of Origin.

Article 24
Infant industries

1. For purposes of this Article, an infant industry shall be understood to refer to a new industry of national strategic importance that has not been in existence for more than five years, and that is experiencing high start-up costs and difficulties competing with like imports.
2. For the purposes of protecting an infant industry, a Tripartite Member/Partner State may, provided that it has taken all reasonable steps to overcome the difficulties related to such infant industry, adopt appropriate measures on similar

growth originating from other Tripartite Member/Partner States, provided that the measures are applied on a non-discriminatory basis.

3. The Tripartite Council of Ministers shall determine the period and the nature of the measures that may be adopted under this Article.
4. The Tripartite Committee of Experts, established under Article 29 of this Agreement, shall keep under constant review the operation of any restrictions imposed under this Article and regularly report to the Tripartite Council of Ministers with recommendations.

Article 25 Balance of Payments

A Tripartite Member/Partner State facing severe balance of payments and external financial difficulties, and that has taken all reasonable steps to overcome the difficulties, may adopt appropriate measures in accordance with guidelines to be determined by the Tripartite Council of Ministers, provided that such measures shall be reviewed annually.

PART VII OTHER AREAS OF COOPERATION

Article 26 Cooperation in Financial Areas

For the purposes of this Agreement, Tripartite Member/Partner States may cooperate and strengthen coordination in financial and payment systems, development of capital markets and commodity exchanges.

Article 27 Cooperation in Trade Policies and Negotiations

Tripartite Member/Partner States may:

- a) cooperate with respect to their trade policies;
- b) enhance their cooperation with bilateral and multilateral partners; and
- c) enhance cooperation in international and multilateral negotiations.

Article 28 Cooperation in Research and Statistics

1. Tripartite Member/Partner States may cooperate in areas of research and statistics necessary for monitoring the performance and operation of the Tripartite Free Trade Area.
2. For purposes of this Article, cooperation shall include the following:

- a) policy research and trade development;
- b) establishment of a Tripartite statistical database;
- c) joint capacity building including joint training;
- d) harmonisation of statistical systems and data management; and
- e) exchange of information.

PART VIII

IMPLEMENTATION OF THE TRIPARTITE FREE TRADE AREA

Article 29

Organs for the Implementation of the Tripartite Free Trade Area

1. The organs for the implementation of the Free Trade Area shall be:
 - a) the Tripartite Summit consisting of the Heads of State and/or Governments of Tripartite Member/Partner States which shall give general direction and impetus for the Tripartite arrangement;
 - b) the Tripartite Council of Ministers consisting of ministers as designated by Tripartite Member/Partner States for the purposes of the Tripartite Free Trade Area;
 - c) the Tripartite Sectoral Ministerial Committee on Trade, Finance, Customs and Economic Matters and Home/Internal Affairs; and the Tripartite Sectoral Ministerial Committee on Legal Affairs each of which shall be responsible for policy direction and implementation in their respective sectors ;
 - d) the Tripartite Task Force of the Secretariats of the three RECs which shall coordinate the implementation of the Tripartite work programme and shall provide secretariat services to the Tripartite arrangement;
 - e) the Tripartite Committee of Senior Officials which shall be responsible for overseeing and guiding technical work; and
 - f) the Tripartite Committee of Experts which shall carry out the technical work and report to the Tripartite Committee of Senior Officials.
2. The Tripartite Summit shall adopt its own rules of procedure.

2. The Tripartite Council of Ministers shall adopt the rules of procedure.
3. Each Tripartite State shall develop its rules of procedure, which shall be approved by the Tripartite Council of Ministers.

PART II

DISPUTE SETTLEMENT

Article 30

Dispute Settlement

1. A Dispute Settlement Body is hereby established to administer the rules and procedure, as well as the dispute settlement provisions under this Agreement.
2. The Dispute Settlement Body shall have the power to:
 - a) establish panels and an Appellate Body;
 - b) adopt Panel and Appellate Body reports;
 - c) maintain surveillance of implementation of rulings and recommendations of panels and Appellate Body; and
 - d) authorise suspension of concessions under the Agreement.
3. The Dispute Settlement Body shall inform the Tripartite Council of Ministers and relevant Committees of any development in disputes related to provisions of this Agreement.
4. Any dispute arising from the interpretation or application of this Agreement shall be resolved in accordance with the provisions of this Article and Annex X on Dispute Settlement Mechanism.
5. The settlement of any dispute between or among Tripartite Member/Partner States shall, whenever possible, imply removal of a measure not conforming with the provisions of this Agreement or causing nullification or impairment of a benefit under such provision.
6. No Tripartite Member/Partner State shall refer a dispute to the Dispute Settlement Body unless it has in good faith engaged in consultations and negotiations, with a view to resolve the dispute.
7. In the event of inconsistency or a conflict between this Agreement and the treaties and instruments of COMESA, EAC and SADC, this Agreement shall prevail to the extent of the inconsistency or conflict.

PART X
GENERAL AND SECURITY EXCEPTIONS

Article 31
General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed as preventing the adoption or enforcement of measures by any Tripartite Member/Partner State;

- a) necessary to protect public morals or to maintain public order;
- b) necessary to protect human, animal or plant life or health;
- c) relating to the importation or exportation of precious and semi-precious stones, precious and strategic minerals and metals including but not limited to gold, silver, platinum, diamonds, coltan, oil, gas, tanzanite and uranium;
- d) relating to the products of prison labour;
- e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;
- f) imposed for the protection of national treasures of artistic, historic or archaeological value;
- g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- h) undertaken in pursuance of obligations under any intergovernmental commodity agreement approved by the Tripartite Council of Ministers;
- i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan: provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination; and

- d) essential to the availability or distribution of foodstuffs or any other products in general or local food supply, provided that any such measures shall be consistent with the principle that all Tripartite Member/Partner States are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

Article 32 Security Exceptions

Nothing in this Agreement shall be construed to:

- a) require any Tripartite Member/Partner State to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- b) prevent any Tripartite Member/Partner State from taking any action which it considers necessary for the protection of its essential security interests:
- (i) relating to fissionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; and
 - (iii) taken in time of war or other emergency in international relations; or
- c) prevent any Tripartite Member/Partner State from taking any action in pursuance of its obligations under the Charter of the United Nations.

Article 33 Notification of Prohibited and Restricted Goods

A Tripartite Member/Partner State taking measures pursuant to Articles 31 and 32 shall within twenty-one (21) days from the date the Tripartite Member/Partner State implements the measure notify such measures to the Tripartite Sectoral Ministerial Committee on Trade, Finance, Customs and Economic Matters and Home/Internal Affairs.

PART XI

FINANCIAL PROVISIONS

Article 34
Funding

Tripartite Member/Partner States shall institute appropriate modalities to fund their commitments in the implementation of this Agreement.

PART XII

GENERAL AND FINAL PROVISIONS

Article 35
Working Languages

The working languages under this Agreement shall be Arabic, English, French and Portuguese.

Article 36
Protocols and Annexes

1. Tripartite Member/Partner States shall from time to time conclude such Protocols and Annexes as are necessary for the implementation of this Agreement. Such Protocols and Annexes shall be adopted by the Tripartite Council of Ministers.
2. The Protocols and Annexes shall form an integral part of this Agreement.

Article 37
Amendment

1. This Agreement may be amended at any time by consensus.
2. Any Tripartite Member/Partner State may submit proposals for amendment of this Agreement to the Chairperson of the Tripartite Task Force in writing. The Chairperson of the Tripartite Task Force shall, within 30 days, submit the proposals to Tripartite Member/Partner States.
3. A Tripartite Member/Partner State that wishes to comment on the proposals may do so within 90 days from the date of the dispatch of the proposal.
4. After the expiration of the period, the Chairperson of the Tripartite Task Force shall submit proposals and any comments to the Tripartite Council of Ministers for consideration and adoption.

4. Any amendment that enters into force shall be adopted by the Tripartite Council by consensus.

Article 38 Sanctions

A Tripartite Member/Partner State which defaults in meeting its obligations under this Agreement shall be subject to such sanctions as the Tripartite Summit may determine on the recommendation of the Tripartite Council of Ministers.

Article 39 Signature, Ratification and Entry into Force

1. This Agreement shall be signed by the Tripartite Member/Partner States.
2. This Agreement shall be ratified by Tripartite Member/Partner States in accordance with their national laws.
3. This Agreement shall enter into force on the Thirtieth day after the deposit of the fourteenth instrument of ratification by Member/Partner States of COMESA, EAC and SADC.

Article 40 Obligation not to Defeat the Object and Purpose of this Agreement Prior to its Entry into Force

A Tripartite Member/Partner State shall refrain from acts which would defeat the object and purpose of this Agreement when it has:

- a) signed the Agreement or has exchanged instruments constituting the Agreement subject to ratification until it shall have made its intention clear not to become a party to the Agreement; or
- b) expressed its consent to be bound by the Agreement, pending the entry into force of the Agreement, provided that such entry into force is not unduly delayed.

Article 41 Accession

1. This Agreement shall remain open for accession by any Member/Partner State of COMESA, EAC or SADC.
2. The Agreement shall also remain open for accession to other member states of the African Union.
3. The Tripartite Council of Ministers shall adopt accession regulations.

Article 42
Withdrawal

A Tripartite Member/Partner State wishing to withdraw from this Agreement, shall notify the Tripartite Council of Ministers giving twelve (12) months' notice, of its intention to do so. Such a Tripartite Member/Partner State shall discharge its existing obligations before withdrawing from this Agreement.

Article 43
Depositary and Registration

1. This Agreement and all instruments of ratification, accession and notification of entry into force or withdrawal thereof shall be deposited with the Tripartite Task Force.
2. The Tripartite Task Force shall transmit certified copies of the Agreement to the Tripartite Member/Partner States.
3. The Tripartite Task Force shall notify the Tripartite Member/Partner States of the dates of deposit of instruments of ratification and accession.
4. The Tripartite Task Force shall notify this Agreement to the United Nations Secretary General and the WTO.

Article 44
Negotiations on Outstanding Issues on Phase I

Tripartite Member/Partner States undertake to conclude negotiations on outstanding issues under Phase I as set out in **Annex I** on Elimination of Customs Duties, **Annex II** on Trade Remedies and **Annex IV** on Rules of Origin after the launch of the Tripartite Free Trade Area.

Article 45
Phase II Negotiations

1. Recognising the need to conclude Phase II Negotiations, and to provide flexibility in the implementation of the Agreement, the Tripartite Member/Partner States agree to negotiate and endeavour to conclude the following protocols within 24 months upon entry into force of this Agreement:
 - a) A protocol on trade in services; and
 - b) Protocols on trade-related matters, including Competition policy, Cross-Border Investment, Trade and Development, and Intellectual Property Rights.
2. The Tripartite Member/Partner States may conclude protocols in any other trade-related matter agreed to by the Tripartite Member/Partner States.

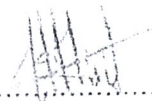
IN WITNESS WHEREOF, WE the Heads of State and Government or duly Authorized Representatives of Tripartite Member/Partner States have signed and sealed this Agreement in four original texts in English, French, Arabic and Portuguese languages, all texts being equally authentic.

DONE at Sharm El Sheikh, in the Arab Republic of Egypt, on this 10th day of June in the year Two Thousand and Fifteen.

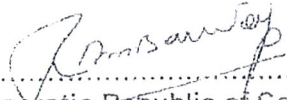
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Republic of Angola



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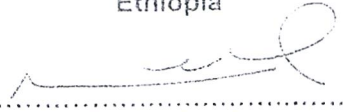
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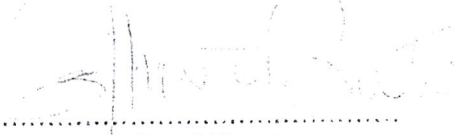
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Federal Democratic Republic of
Ethiopia



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State of Eritrea



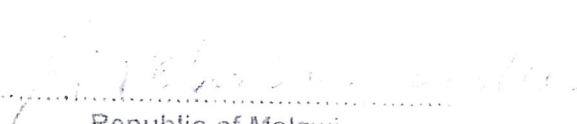
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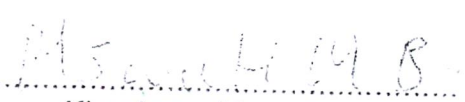
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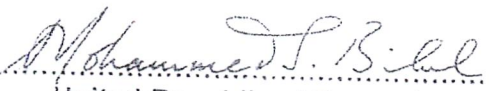

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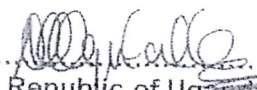

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Republic of Seychelles

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Republic of South Africa



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Kingdom of Swaziland


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Republic of Sudan


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United Republic of Tanzania


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Republic of Uganda

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Republic of Zambia


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Republic of Zimbabwe

ANNEXURE 5

**ADVERT IN PRINT MEDIA INVITING PUBLIC
SUBMISSION OF MEMORANDA**

REPUBLIC OF KENYA



NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – SECOND SESSION

Approved.
J. Sialai
18/4/18

In matters of consideration by the National Assembly of the Ratification of the:-

1. African Continental Free Trade Area (AfCFTA).
2. Agreement Establishing a Tripartite Free Trade Area Among the Common Market For Eastern and Southern Africa, the East African Community and the Southern African Development Community (COMESA-EAC-SADC Tripartite Free Trade Area).

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that *“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”*. Further, Section 8 of the Treaty Making and Ratification Act, 2012 provides for the consideration and Ratification of Treaties by Parliament. Subsection (3) states that, *“the relevant Parliamentary Committee shall, during its consideration of the Treaty, ensure Public Participation in the ratification process in accordance with laid down parliamentary procedures”*.

The above mentioned Agreements have been submitted to the National Assembly and are now committed to the **Departmental Committee on Defence and Foreign Relations** pursuant to Section 8 of the Treaty Making and Ratification Act, 2012.

The Agreements' underlying principle is to build upon the current levels of tariff liberalisation and expand intra-African trade by creating larger markets for goods, services, and free movement of business persons and investments. The Agreements also intend to enhance competitiveness at enterprise and industry level and support economic transformation through exploitation of larger economies of scale, continental market access and better reallocation of resources.

Pursuant to Article 118 (1)(b) of the Constitution and section 8 of the Treaty Making and Ratification Act, 2012, the Committee invites interested members of the public to submit any representations they may have on the said Agreements. The representations may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Building, Nairobi**; or emailed to clerk@parliament.go.ke; to be received on or before **Wednesday 25th April, 2018 at 5.00 pm**.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



**NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - SECOND SESSION**

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**MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY**

**COUNTY GOVERNMENT OF KISUMU
MINISTRY OF HEALTH**



**JARAMOGI OGINGA ODINGA TEACHING AND REFERRAL HOSPITAL (JOTRH)
TENDER NOTICE**

The County Government of Kisumu, Ministry of Health (JOTRH) invites sealed bids from eligible firms for the following prequalification and open Tender for supply/delivery of goods and provision of services for the financial year ending **30th June 2019.**

TENDER NO.	TENDER DESCRIPTION	CATEGORY
KSM/JOTRH/TN/01/2018-2019	Supply and delivery of Human Medicines	Open to all
KSM/JOTRH/TN/02/2018-2019	Supply and delivery of Non-Pharmaceuticals and dressing materials	Open to all
KSM/JOTRH/TN/03/2018-2019	Supply and delivery of X-ray Consumables	Open to all
KSM/JOTRH/TN/04/2018-2019	Supply and delivery of Dental Consumables	Open to all
KSM/JOTRH/TN/05/2018-2019	Supply and delivery of Laboratory Reagents and Glassware	Open to all
KSM/JOTRH/TN/06/2018-2019	Supply and delivery of cleansing materials and detergents, fumigation, Pest control Items and Chemicals	Special group
KSM/JOTRH/TN/07/2018-2019	Supply and delivery of Electrical Items	Open to all
KSM/JOTRH/TN/08/2018-2019	Supply and delivery of Hardware and Building Materials	Open to all
KSM/JOTRH/TN/09/2018-2019	Supply and delivery of office stationery	Special group
KSM/JOTRH/TN/10/2018-2019	Supply and delivery of Medical and Industrial Gas	Open to all
KSM/JOTRH/TN/11/2018-2019	Supply and delivery of Motor Vehicle Batteries, Tyres, and Tubes	Open to all
KSM/JOTRH/TN/12/2018-2019	Supply and delivery of Uniform Materials and linen	Open to all
KSM/JOTRH/TN/13/2018-2019	Supply and delivery of Dry Food Rations	Special group
KSM/JOTRH/TN/14/2018-2019	Supply and delivery of Dairy Products, Vegetables, Fruits and Meat, related Products	Open to all
KSM/JOTRH/TN/15/2018-2019	Supply and delivery of other Fuels (Firewood and Charcoal) and Cooking Gas	Open to all
KSM/JOTRH/TN/16/2018-2019	Prequalification for Supply and delivery of Orthopaedic Implants	Open to all
KSM/JOTRH/TN/17/2018-2019	Provision of Printing Services	Open to all
KSM/JOTRH/TN/18/2018-2019	Prequalification for Supply and delivery of computer hardware, software and accessories	Open to all
KSM/JOTRH/TN/19/2018-2019	Supply of Renal dialysis consumables and Cancer drugs	Open to all
KSM/JOTRH/TN/20/2018-2019	Prequalification for Supply and delivery of plant and medical equipment	Open to all
KSM/JOTRH/TN/21/2018-2019	Prequalification for Servicing and Maintenance of CCTV systems	Open to all
KSM/JOTRH/TN/22/2018-2019	Prequalification for Servicing and Maintenance of JOTRH Website and e-mail services	Open to all

MANDATORY REQUIREMENTS FOR BIDDERS

1. Provide a copy of business Registration certificate or certificate of incorporation/registration.
2. Single business permit
3. Certificate of regulatory authority (where applicable)
4. Provide a copy of Valid Tax compliance certificate
5. Provide a copy of PIN certificate.
6. Audited accounts for the last three years.
7. List of personnel and their qualifications
8. Confidential business information



TENDER NO

The Kenya Red Cross Society (KRCS) was established by an Act of Parliament (Chapter 256 Laws of Kenya) and is an Act of Parliament. The Kenya Red Cross Society, auxiliary to the national and international Red Cross Movement, has a vision to be the most effective, most trusted humanitarian organization in the country. The Kenya Country Coordinating Mechanism (CCM) is the Kenya Country Coordinating Mechanism (PR) to manage the Country's Global Fund HIV Grant implementation Sub Recipients (SRs).

The Society intends to contract qualified consultants/firms to support the Global Fund program implementation. The specification, qualification information and tender documents may be viewed and downloaded from the redcross.or.ke.

Interested and qualified consultants/firms should visit and download the Request for Proposal (RFP) from the Kenya Red Cross Society website redcross.or.ke and request for clarifications should be made on or before **30th April 2018** and the RFP should be posted on the website by **2nd May 2018**.

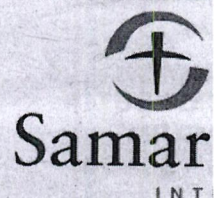
Complete Tender Documents **MUST** be submitted with the number and description "TENDER REF. NO."

TENDER NAME: PROVISION OF CASH PAYMENTS TO TURKANA CENTRAL, TURKANA WEST AND TURKANA SUB COUNTIES and should be addressed to:

**The Secretary General
Kenya Red Cross Society
P.O. Box 40712 - 00100 Nairobi**

And must be deposited in the Tender Box on the Ground Floor of the Kenya Red Cross Society in South C, Red Cross Road, off Popo Road, Nairobi, on **Wednesday 9th May 2018**. Late tenders will not be accepted. Tenders will be opened at 12:00 noon on the same day in the presence of the bidders or their representatives who choose to attend.

**Procurement Manager,
For, Secretary General**



REQUEST FOR

Deadline for submission

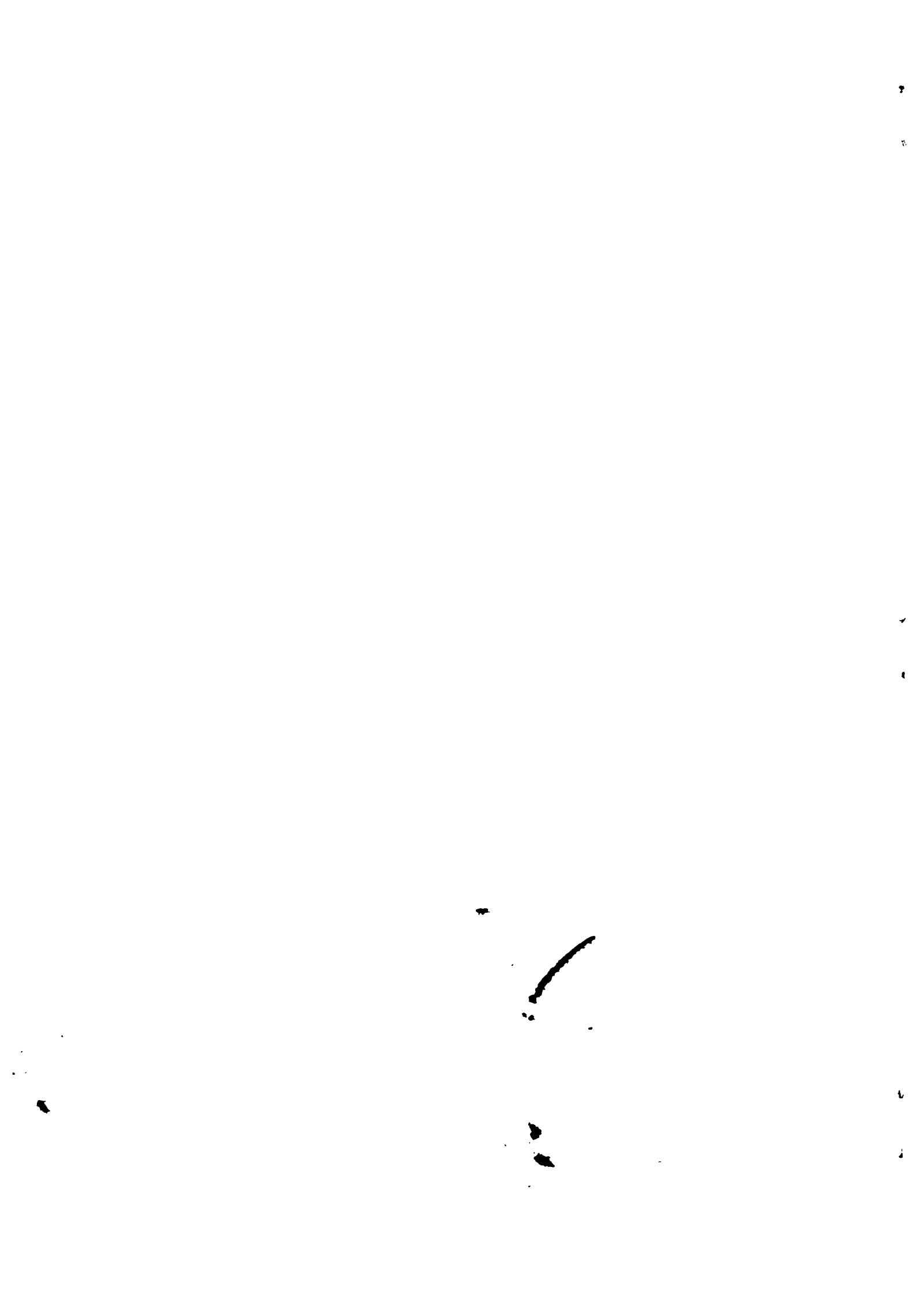
Juba, South Sudan, Hai Cinema

E-mail: SouthSudan@spusa.org

Reference number

Samaritan's Purse wishes to contract a travel agent to provide services Travel Agent as described below:

S/N	Unit	Quantity	DESTINATION/DESCRIPTION
1	Person	1	Travel Agent
2	Person	1	Travel Agent
3	Person	1	Travel Agent
4	Person	1	Travel Agent
5	Person	1	Travel Agent
6	Person	1	Travel Agent



Financials > 2017 was 'challenging period marked by late payments, poor circulation and advertising volumes'

Nation retains dividend at Sh10 a share

Media group weathers a tough trading year marked by long pots period among other hitches

BY BRIAN NGUGI
@bnjoroge@ke.nationmedia.com

Nation Media Group (NMG) maintained its total dividend payout at Sh10 per share for the sixth year in a row, after weathering a tough 2017 that was characterised by weak macroeconomic conditions and a challenging trading environment, to produce a solid outcome.

Mr Wilfred Kiboro, company's chairman, said NMG had shown resilience in a tough environment marked by protracted electioneering, delays in payments, especially from the government, coupled with declining circulation volumes and advertising revenues.

"The past year was definitely a very difficult year for many businesses, not just for the media, but across the board," Mr Kiboro said at an investor briefing in Nairobi yesterday.

"We are happy to maintain that dividend because we think we have a strong cash position and we do think that cash rightfully belongs to the shareholders," he said.

NMG posted Sh1.35 billion profit after tax in the year ended December 31, 2017 compared to Sh1.63 billion in the same period last year, a 17.4 per cent decline.

The company's turnover for the period stood at Sh10.6 billion compared to Sh11.3 billion in 2016, a 6.2 per cent reduction.



Nation Media Group shareholder Alloys Chami (left), acting chief executive Stephen Gitagama (centre) and the group chairman, Mr Wilfred Kiboro, during an investor briefing for the 2017 full-year financial results at The Stanley Hotel in Nairobi yesterday.

NMG's broadcast units, NTV in Kenya and NTV Uganda, separately saw their revenues surge, buoyed by strong programming and production of content that is popular with the audiences.

NTV Kenya posted a 12 per cent revenue growth while NTV Uganda recorded a five per cent increase in revenue. NMG's digital business contribution to the group's

operating income grew from 1.5 per cent in 2015 to four per cent in 2017, as the firm aggressively leveraged on its flagship portal - www.nation.co.ke - and its other digital assets to monetise online audiences.

Lifestyle magazine *Kenya Buzz* - where NMG acquired a 51 per cent stake in 2015, saw its circulation and online audiences more than

1.35 Amount in billions of shillings that NMG posted in profit after tax for the full year

double, lifting the operating profit. The *Daily Nation*, *The East African*, *Business Daily* and *Tanzania's*

Citizen and *Mwananchi* newspapers posted a drop in their revenue and operating income. Mr Kiboro said NMG was not on sale, expressing confidence that the firm would perform even better in the 2018 financial year, on the back of new and diversified revenue streams.

He said NMG would continue to ramp up investments in its digital platforms as it seeks to transform itself into a modern 21st century digital company.

Acting group chief executive Stephen Gitagama said a diversified business strategy would win NMG new advertising and revenue and shore up its growth. Last year, the group launched a number of new innovations such as Kenya Buzz ticketing, Nation News App, a new SMS-based prize competition called *Angukia Chapaa*, a health magazine in the *Daily Nation*, Apple news format and Nation chat bot.

"We will diversify our revenue streams while protecting our legacy income, which is our cash cow," said Mr Gitagama.

Mr Kiboro and Mr Gitagama urged the government to honour its outstanding debt obligations with NMG.

"The amount of money the government owes the media industry is now getting out of hand. I think for Nation Media Group, it has ballooned to Sh700 million," said Mr Kiboro.

REPUBLIC OF KENYA



NATIONAL ASSEMBLY TWELFTH PARLIAMENT - SECOND SESSION

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MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

PRIME PLOT FOR SALE KISII COUNTY

Situated approximately 150 metres to the Northwest of Nyanguru Secondary School and adjacent to the Radio Kisima site, which is approximately 2.5 km off the Kisii-Kilgoris road and 8.5 km from the Kisii town Centre, within Kisii County.



The subject plot



Developments and Communication Mast

Improvements: Comprises of a three (3) single storey blocks with a total built up area of approximately 1,050 square feet. Communication Mast is also on site which is currently unutilized.

Area: 0.2224 acres

User: Commercial

Price: Apply for details

In this regard and for any other pertinent information, please contact.

Procurement Manager
Nation Media Group Plc.
P. O. Box 49010 - 00100, Nairobi
Email: dogolo@ke.nationmedia.com
Tel: 0719038194



Nation Media Group
Media of Africa for Africa

ANNEXURE 6

ADOPTION LIST


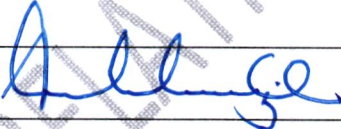

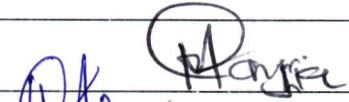
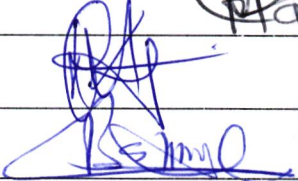
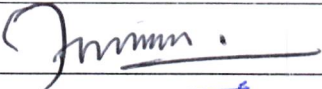
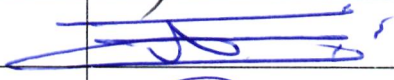

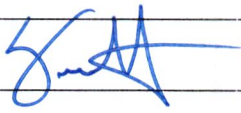
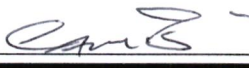
KENYA NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS

Attendance Schedule

Venue: COMMITTEE ROOM 7

Date: 25.4.2018

Agenda: CONSIDERATION & ADOPTION OF REPORTS ON TRADE AGREEMENTS

<u>No.</u>	<u>NAME</u>	<u>SIGNATURE</u>
1.	The Hon. Katoo Ole Metito, EGH, MGH, M.P - Chairperson	
2.	The Hon. Richard Tong'i, M.P - Vice Chairperson	
3.	The Hon. Yusuf Hassan Abdi, M.P	
4.	The Hon. Charles Mutavi Kilonzo, M.P	
5.	The Hon. Patrick Makau, M.P	
6.	The Hon. Dido Ali Raso, M.P	
7.	The Hon. Peter Mungai Mwathi, M.P	
8.	The Hon. Beatrice Nkatha Nyagah, HSC, M.P	
9.	The Hon. Martha Wangari Wanjira, M.P	
10.	The Hon. Memusi Ole Kanchory, M.P	
11.	The Hon. Major (Rtd.) Bashir Sheikh Abdullahi, M.P	
12.	The Hon. (Dr.) Lilian Gogo, M.P	
13.	The Hon. Nelson Koech, M.P	
14.	The Hon. Moses Nguchine Kirima, M.P	
15.	The Hon. Vincent Kipkurui Tuwei, M.P	
16.	The Hon. John Lodepe Nakara, M.P	
17.	The Hon. Silvanus Osoro, M.P	
18.	The Hon. Ernest Ogesi Kivai, M.P	
19.	The Hon. Caleb Amisi, MP	



SAMUEL KALAMA

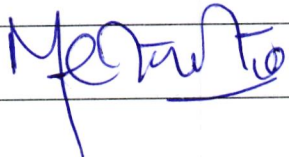
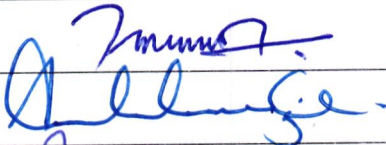

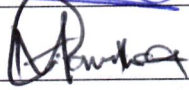
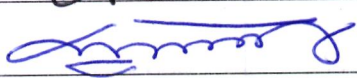

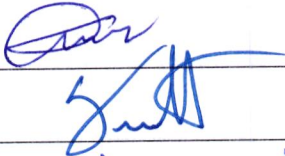

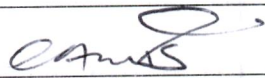
FOR: CLERK OF THE NATIONAL ASSEMBLY

DEFENCE & FOREIGN RELATIONS

DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS.

ADOPTION OF THE REPORT OF THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS ON THE RATIFICATION OF THE AFRICAN CONTINENTAL FREE TRADE AREA AGREEMENT (AfCFTA)

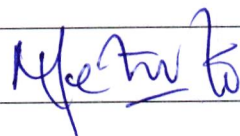
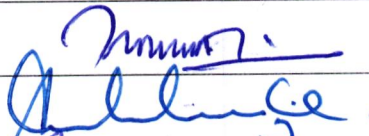
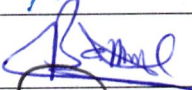




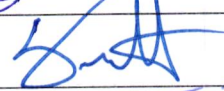

We, the undersigned Hon. Members of the Departmental Committee on Defence & Foreign Relations, today 25th April, 2018 do hereby affix our signatures to this **REPORT ON THE RATIFICATION OF THE AFRICAN CONTINENTAL FREE TRADE AREA AGREEMENT (AfCFTA)** to affirm our approval and confirm its accuracy, validity and authenticity:-

NO.	NAME	SIGNATURE
1.	The Hon. Katoo Ole Metito, EGH, MGH, M.P - Chairperson	
2.	The Hon. Richard Tong'i, M.P - Vice Chairperson	
3.	The Hon. Yusuf Hassan Abdi, M.P	
4.	The Hon. Patrick Makau, M.P	
5.	The Hon. Nelson Koech, M.P	
6.	The Hon. Charles Mutavi Kilonzo, M.P	
7.	The Hon. Major (Rtd.) Bashir Abdullahi, M.P	
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11.	The Hon. Beatrice Nkatha Nyagah, HSC, M.P	
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14.	The Hon. Lilian Gogo, M.P	
15.	The Hon. Vincent Kipkurui Tuwei, M.P	
16.	The Hon. Silvanus Osoro, M.P	
17.	The Hon. Moses Nguchine Kirima, M.P	
18.	The Hon. Ernest Ogesi Kivai, M.P	
19.	The Hon. Caleb Amisi, MP	

DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS.

ADOPTION OF THE REPORT OF THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS ON THE RATIFICATION OF THE TRIPARTITE FREE TRADE AREA AGREEMENT (TFTA)

We, the undersigned Hon. Members of the Departmental Committee on Defence & Foreign Relations, today 25th April, 2018 do hereby affix our signatures to this **REPORT ON THE RATIFICATION OF THE TRIPARTITE FREE TRADE AREA AGREEMENT (TFTA)** to affirm our approval and confirm its accuracy, validity and authenticity:-

NO.	NAME	SIGNATURE
1.	The Hon. Katoo Ole Metito, EGH, MGH, M.P - Chairperson	
2.	The Hon. Richard Tong'i, M.P - Vice Chairperson	
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19.	The Hon. Caleb Amisi, MP	