

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

**Seventh Extra-Ordinary Session of the Specialized Technical Committee on
Justice and Legal Affairs (Experts Meeting)
16- 21 January 2023
Accra, Ghana**

**STC/Legal/Exp
Original: English**

**PROTOCOL TO THE
AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE
TRADE AREA
ON INTELLECTUAL PROPERTY RIGHTS**

Draft



**PROTOCOL TO THE
AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE
TRADE AREA
ON INTELLECTUAL PROPERTY RIGHTS**

Draft

PREAMBLE

We, Member States of the African Union,

RECALLING Decision Ext/Assembly/AU/Dec.1(X) of the Assembly of Heads of State and Government during its 10th Extraordinary Session held in Kigali, Rwanda, on 21 March 2018 adopting the Agreement Establishing the African Continental Free Trade Area;

REAFFIRMING the aspirations of Agenda 2063 for an integrated, prosperous, and peaceful Africa based on inclusive growth and sustainable development within a continental market that fosters the free movement of persons, capital, goods, and services, which are crucial for deepening economic integration;

RECOGNISING that Article 7(1) (a) of the Agreement Establishing the African Continental Free Trade Area requires State Parties to the Agreement Establishing the African Continental Free Trade Area to enter into negotiations on intellectual property rights;

DESIRING to establish harmonized rules and principles on intellectual property rights to boost intra-African trade in line with the objectives of the Agreement Establishing the African Continental Free Trade Area and promoting economic growth and development within the continent;

COMMITTED to introduce an inclusive, balanced, and development-oriented Protocol on Intellectual Property Rights that centers African interests and prioritizes African-driven innovation and creativity;

MINDFUL of the central role of intellectual property rights systems in the promotion of access to knowledge, innovation and creativity, and the transfer and diffusion of technology;

RECOGNISING the need to ensure that measures to protect and enforce intellectual property rights do not constitute barriers to trade;

ACKNOWLEDGING the vital role of cooperation in intellectual property rights towards the realisation of the objectives of the Agreement Establishing the African Continental Free Trade Area;

UNDERSCORING the need for State Parties to take advantage of the flexibilities provided in the existing international intellectual property rights regimes;

EMPHASISING the need to promote intellectual property policy coherence in the intellectual property rights instruments and institutions in the Continent;

RECOGNISING the achievements of national intellectual property systems, the regional economic communities and the regional intellectual property institutions in Africa in fostering the development, administration, protection and promotion of intellectual property across the Continent;

NOTING the relevant African Union instruments related to intellectual property rights; and

SEEKING to ensure that the implementation of multilateral and bilateral treaties or agreements relating to intellectual property rights prioritize African interests and the protection of African innovation and creativity, and deepen intellectual property culture in Africa.

HAVE AGREED AS FOLLOWS:

PART 1
DEFINITIONS, OBJECTIVES, AND SCOPE

Article 1
Definitions

For the purposes of this Protocol:

- a. **AfCFTA Agreement**” means, the Agreement establishing the African Continental “
;Free Trade Area
- b. **“Intellectual Property Rights”** means all categories of intellectual property rights as covered in this Protocol;
- c. **“Protocol”** means the AfCFTA Protocol on Intellectual Property Rights;
- d. **State Party**” means a Member State that has ratified or acceded to the Protocol and “
.for which the Protocol is in force

Article 2
Objectives

- 1. The general objective of this Protocol is to support the realization of the objectives of the AfCFTA as set out in Article 3 of the AfCFTA Agreement by seeking to establish harmonized rules and principles for the promotion, protection, cooperation, and enforcement of intellectual property rights.
- 2. The specific objectives of this Protocol are to:
 - a. support intra-Africa trade;
 - b. promote African innovation and creativity and deepen intellectual property culture in Africa;
 - c. promote coherent intellectual property rights policy in Africa;
 - d. contribute to the promotion of science, industrialisation, services, investment, digital trade, technology, and technology transfer, and regional value chains; and
 - e. promote a harmonized system of intellectual property protection throughout the continent;
 - f. encourage African negotiating positions on intellectual property rights;

- g. support and promote creative and cultural industries by setting up a legal framework while securing and giving incentives that would help in their development;
- h. contribute to access to knowledge; and
- i. support public health needs and priorities of State Parties.

Article 3

Scope

This Protocol applies to all categories of intellectual property including plant variety protection, geographical indications, marks, patents, utility models, industrial designs, undisclosed information including trade secrets, layout designs (topographies) of integrated circuits, copyright and related rights, traditional knowledge, traditional cultural expressions, and genetic resources, and emerging technologies and other emerging issues.

PART II: PRINCIPLES

Article 4

General Guiding Principles

In the protection and enforcement of intellectual property rights, State Parties shall be guided by the following general principles:

- a. Promotion of intra-African trade;
- b. Promotion of coherence between intellectual property policies and other policies for socio-economic development;
- c. Creation of a balance between public and private interests;
- d. Promotion of the public interest in sectors of vital importance to socio-economic and technological development including but not limited to education, public health, agriculture, food security, and nutrition;
- e. Facilitation of access to medicines, vaccines, diagnostics, therapeutics, and other healthcare essential tools consistent with the relevant treaties on intellectual property rights;
- f. Facilitation of access to clean and efficient energy as well as promote just and fair energy transition and environmental sustainability;

- g. Promotion of digital trade along with new and emerging technologies to foster Africa's digital transformation; and
- h. Prevention of the abuse of intellectual property rights or the resort to practices that unreasonably restrain trade or adversely affect the transfer of technology by right holders.

Article 5

Most-Favoured Nation Treatment

Any advantage, favor, privilege, or immunity that a State Party grants to nationals of another State Party or Third Party with respect to the protection of intellectual property rights, shall be accorded, immediately and unconditionally, to the nationals of the State Parties, subject to the exceptions provided under international treaties applicable to the State Parties.

Article 6

National Treatment

Every State Party shall accord, to nationals of the other State Parties treatment no less favourable than it accords to its nationals with respect to the protection of intellectual property rights, subject to the exceptions provided under international treaties applicable to the State Party.

Article 7

Exhaustion of Intellectual Property Rights

1. For the purpose of this Protocol, the rights conferred by intellectual property shall be exhausted when a product covered by or incorporating an intellectual property right, has been introduced on the AfCFTA market by the right holder or with the right holder's consent.
2. Conditions for the applicability of exhaustion of a specific intellectual property right may be included in the relevant Annex to this Protocol to be developed in accordance with Article 42.

PART III
STANDARDS ON INTELLECTUAL PROPERTY RIGHTS

Article 8
Protection of New Plant Varieties

1. State Parties shall provide protection for new plant varieties through a *sui generis* system that includes farmers' rights, plant breeders' rights, and rules on access and benefit sharing, as appropriate.
2. State Parties shall comply with additional obligations set out in an Annex to this Protocol on Plant Varieties, to be developed in accordance with Article 42.
3. State Parties agree that the Annex to this Protocol on Plant Variety Protection may draw from relevant African and related international instruments that meet their developmental priorities and interests.

Article 9
Geographical Indications

1. State Parties shall provide for the protection of geographical indications through *sui generis* systems. State Parties may provide additional legal means of protection for geographical indications including certification marks, collective marks, or unfair competition laws.
2. The AfCFTA Secretariat shall establish a database and information portal of registered geographical indications.
3. State Parties shall comply with additional obligations set out in an Annex to this Protocol on Geographical Indications, to be developed in accordance with Article 42.

Article 10
Marks

1. State Parties shall:
 - a. provide for the protection of all categories of marks;
 - b. encourage the protection of marks promoting sustainable industrial development through diversification and regional value chain development; and

- c. encourage the registration of Marks for environmentally friendly goods and services.
2. State Parties may make registrability of marks dependent on use, without setting actual use of a mark as being a condition for filing an application for registration.
3. The provisions of Paragraph 2 of this Article shall in no way prejudice the right of a State Party to provide exceptions and limitations to the rights conferred by a mark consistent with intellectual property rights treaties to which they are party, considering their developmental priorities and interests.
4. State Parties shall comply with additional obligations set out in an Annex to this Protocol on Marks, to be developed in accordance with Article 42.

Article 11

Copyright and Related Rights

1. State Parties shall provide protection for copyright and related rights.
2. State Parties shall provide for balanced copyright and related rights frameworks that encourage and facilitate the protection, access to, and use of works for education, research, scientific inquiry, and the preservation of cultural materials for the advancement of public welfare and sustainable development. In particular, such frameworks shall:
 - a. take into account rapid technological developments that have disrupted and transformed traditional models of production, dissemination, and use of copyrighted works;
 - b. promote fair and adequate remuneration for authors and performers which is equitably collected and distributed; and
 - c. facilitate cross-border flows of educational and cultural materials.
3. The provisions of this Article shall in no way prejudice the right of a State Party to provide exceptions and limitations to the rights conferred by copyright and related rights consistent with intellectual property rights treaties to which they are party, considering their developmental interests and priorities.
4. State Parties shall provide exceptions and limitations for educational and research purposes in national contexts, online cross-border contexts, and multi-country research collaborations. For purposes of this Article educational purposes shall be understood to include distance, online, and emergency remote teaching and learning.

5. State Parties shall provide for exceptions that support the preservation of cultural heritage and for the reproduction of a reasonable portion of any published work in their collection upon request for use for research purposes or private study of the requesting party.
6. State Parties agree to comply with their international obligations relating to the provision of access to published works for visually impaired persons.
7. State Parties shall comply with additional obligations set out in an Annex to this Protocol on Copyright and Related Rights, to be developed in accordance with Article 42.

Article 12

Patents

1. State Parties shall grant patents for inventions, whether products or processes, in all areas of technology, that are new, involve an inventive step, and are industrially applicable.
2. The provisions of Paragraph 1 of this Article shall in no way prejudice the right of a State Party to provide exceptions and limitations to the rights conferred by a patent consistent with intellectual property treaties to which they are party.
3. State Parties shall, in particular:
 - a. ensure that their patent law does not hinder access to medicines, vaccines, diagnostics, therapeutics, and other healthcare essential inputs, ingredients and processes and other essential tools consistent with intellectual property treaties to which they are party;
 - b. within three years from the coming into force of this Protocol, ratify the 2005 Protocol Amending the World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights in relation to public health and provide for procedures that enable the export of pharmaceutical products produced under the compulsory license for the benefit of State Parties that have limited or no domestic pharmaceutical manufacturing capacity;
 - c. in case of State Parties that are not members of the WTO, within three years from the coming into force of this Protocol, provide for procedures that enable the export of pharmaceutical products produced under the compulsory license for the benefit of State Parties that have limited or no domestic pharmaceutical manufacturing capacity in accordance with the 2005 Protocol Amending the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights in relation to public health;

- d. provide exceptions to the rights conferred by patents to permit research, experimentation, and testing for obtaining information about the subject matter of a patented invention;
 - e. provide an exception to the rights conferred by patents to permit acts done on a subject matter of patent solely for uses related to the development and submission of information for regulatory review purposes required under any law of the State Party or any other country that regulates the making, use, sale or import of the product; and
 - f. encourage the protection of environmentally friendly innovations.
4. State Parties shall comply with additional obligations set out in an Annex to this Protocol on Patents, to be developed in accordance with Article 42.

Article 13

Utility Models

1. State Parties shall provide protection for utility models.
2. The provisions of Paragraph 1 of this Article shall in no way prejudice the right of a State Party to provide exceptions and limitations to the rights conferred by a utility model consistent with intellectual property treaties to which they are party.
3. State Parties may, subject to their capabilities, make available technical assistance to micro, small and medium enterprises or individual entrepreneurs, with special consideration to women, youth and persons with disabilities, in various manufacturing fields, to effectively utilise utility models.
4. State Parties shall comply with additional obligations set out in an Annex to this Protocol on Utility Models, to be developed in accordance with Article 42.

Article 14

Industrial Designs

1. State Parties shall:
 - a. provide for the protection of industrial designs that are new or original as provided for in this Protocol;
 - b. encourage the protection of designs that contribute to the development of key industries and value chains; and

- c. encourage the registration of environmentally friendly industrial designs.
2. Nothing in this Article shall exclude State Parties from providing protection of industrial designs through copyright or patents.
3. Nothing in this Article shall prejudice the right of a State Party to provide exceptions and limitations to the rights conferred by an industrial design consistent with intellectual property treaties to which they are party to, in line with their developmental interests and priorities.
4. State Parties shall comply with additional obligations set out in an Annex to this Protocol on Industrial Designs, to be developed in accordance with Article 42.

Article 15

Protection of Undisclosed Information

1. State Parties shall provide for the protection of undisclosed information so long as such information:
 - a. is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
 - b. has commercial value because it is secret; and
 - c. has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.
2. The provisions of Paragraph 1 of this Article shall in no way prejudice the right of a State Party to provide exceptions and limitations to the protection of undisclosed information and related rights including those that secure access to test data for scientific and research purposes consistent with intellectual property treaties to which they are party to, in line with their developmental interests and priorities.

Article 16

Layout Designs (Topographies) of Integrated Circuits

1. State Parties shall provide for the protection of layout designs (topographies) of integrated circuits that:

- a. are original in the sense that they are the result of their creators' own intellectual effort, and
 - b. not commonplace among creators of layout designs, and manufacturers of integrated circuits at the time of their creation.
2. The provisions of Paragraph 1 of this Article shall in no way prejudice the right of a State Party to provide exceptions and limitations to the protection of layout designs (topographies) of integrated circuits consistent with intellectual property treaties to which they are party to, in line with considering their developmental interests and priorities.

Article 17

Emerging Technologies

1. State Parties may:
 - a. adopt measures to protect emerging technologies through existing categories of intellectual property rights or sui generis systems to facilitate trade under the AfCFTA;
 - b. adopt measures to promote access and use of new and emerging technologies;
 - c. to support and encourage the use of emerging technologies to facilitate industrialisation and the development of value chains; and
 - d. promote environmentally friendly use of emerging technologies.
2. State Parties may consider negotiating an Annex on emerging technologies.

Article 18

Traditional Knowledge

1. State Parties shall provide for the protection of traditional knowledge.
2. State Parties shall require that applicants for all relevant categories of intellectual property rights relating to traditional knowledge provide the following information:
 - a. the source of the traditional knowledge utilised in the invention or creation;
 - b. proof of free prior and informed consent from the competent authorities under the relevant national regime; and
 - c. proof of fair and equitable benefit sharing under the relevant national regime.

3. State parties shall take measures to prevent and prohibit the unauthorised utilisation of traditional knowledge in all categories of intellectual property rights.
4. In developing rules on prior informed consent, disclosure of source, and access and benefit-sharing principles, State Parties can draw from relevant African and international instruments on the subject that prioritise development-oriented interests of State Parties.
5. State Parties shall foster transboundary cooperation and share best practices on traditional knowledge where the same traditional knowledge is found within more than one State Party.
6. State Parties may cooperate, as appropriate, on granting prior informed consent of the right holder, access, and benefit sharing based on mutually agreed terms as well as the disclosure of the source of the traditional knowledge.
7. State Parties may establish databases on traditional knowledge at national levels and notify the AfCFTA Secretariat accordingly.
8. State Parties may cooperate to exchange information on traditional knowledge, contained in the national databases.
9. The AfCFTA Secretariat shall establish a database on traditional knowledge based on information received from State Parties.
10. State Parties shall comply with additional obligations set out in an Annex to this Protocol on Traditional Knowledge, Traditional Cultural Expression, Folklore and Genetic Resources, to be developed in accordance with Article 42.

Article 19

Traditional Cultural Expressions and Folklore

1. State Parties shall provide for the protection of traditional cultural expressions and expressions of folklore.
2. State Parties shall require that applicants for all relevant categories of intellectual property rights relating to traditional cultural expressions and expressions of folklore provide the following information:
 - a. the source of the traditional cultural expressions and expressions of folklore ;utilised in the inventions or creations

- b. proof of prior informed consent from the competent authorities under the relevant national regime; and
 - c. .proof of fair and equitable benefit sharing under the relevant national regime
3. State parties shall take measures to prevent and prohibit the unauthorised utilisation of traditional cultural expressions and expressions of folklore in all categories of intellectual property rights.
4. In developing rules on prior informed consent, disclosure of source, and access and benefit-sharing principles, State Parties can draw from relevant African and international instruments on the subject that prioritise development-oriented interests of State Parties.
5. State Parties shall foster transboundary cooperation and share best practices on traditional cultural expressions and expressions of folklore where the same traditional cultural expressions and expressions of folklore are found within more than one State Party.
6. State Parties may cooperate, as appropriate, on granting prior informed consent of the right holder, access, and benefit sharing based on mutually agreed terms as well as the disclosure of the source of the traditional cultural expressions and expressions of folklore.
7. State Parties may cooperate to exchange information on traditional cultural expressions and expressions of folklore contained in the national databases.
8. State Parties may establish databases on traditional cultural expressions and expressions of folklore at national levels and notify the AfCFTA Secretariat accordingly.
9. State Parties shall comply with additional obligations set out in an Annex to this Protocol on Traditional Knowledge, Traditional Cultural Expression, Folklore and Genetic Resources, to be developed in accordance with Article 42.

Article 20

Genetic Resources

1. State Parties shall provide for the protection of genetic resources.
- State Parties shall require that an applicant for any category of intellectual property right drawn from on or developed using genetic resources provide the following information:
- a. the source of the genetic resources utilised in the inventions or creations;
 - b. proof of prior informed consent from the competent authorities under the relevant national regime; and
 - c. proof of fair and equitable benefit sharing under the relevant national regime.

3. State Parties shall take measures to prevent and prohibit the unauthorised utilisation of genetic resources in all categories of intellectual property rights.
4. In developing rules on prior informed consent, disclosure of source, and access and benefit-sharing principles, State Parties can draw from relevant African and international instruments on the subject that prioritise development-oriented interests of State Parties.
5. State Parties shall foster transboundary cooperation and share best practices on genetic resources where the same genetic resources are found within more than one State Party.
6. State Parties shall cooperate, as appropriate, on granting prior informed consent of the right holder, access, and benefit sharing based on mutually agreed terms as well as the disclosure of the source of the genetic resources.
7. State Parties may cooperate to exchange information on genetic resources contained in the national databases.
8. State Parties may establish databases on agreements related to genetic resources and intellectual property rights, and notify the AfCFTA Secretariat accordingly.
9. State Parties shall comply with additional obligations set out in an Annex to this Protocol on Traditional Knowledge, Traditional Cultural Expression, Folklore and Genetic Resources, to be developed in accordance with Article 42.

Article 21

Public Health Emergencies and Local Production of Pharmaceuticals

1. State Parties may take any action which it considers necessary for the protection of its essential public health interests during any emergency, including epidemics, pandemics.
2. State Parties shall ensure coherence among national policies on intellectual property rights, innovation, trade, industry and health to promote local production of pharmaceutical products, and vaccines, diagnostics, therapeutics and other healthcare essential tools.
3. State Parties shall ensure regional cooperation to provide for greater economies of scale and to develop regional value chains critical for the competitiveness and sustainability of pharmaceutical and vaccines sector development in Africa.
4. State Parties shall provide an annual report on the implementation of the provisions of Paragraphs 2 and 3 in accordance with a template that the Committee on Intellectual Property shall prepare starting one year from the entry into force of this Protocol.

5. The Committee on Intellectual Property Rights shall review the reports under Paragraph 4 of this Article and make recommendations, as necessary.

PART IV

COOPERATION ON INTELLECTUAL PROPERTY RIGHTS

Article 22

General Obligation

State Parties shall cooperate in the field of intellectual property rights to support intra-African trade, regional value chain, industrialisation, and economic growth.

Article 23

Areas of Cooperation

State Parties shall cooperate in the following areas:

- a. sharing information and experiences on national and regional intellectual property policies, laws, and institutions;
- b. identifying future intellectual property issues that necessitate common rule or harmonisation at the continental level;
- c. enhancing the use of open-source licensing, research cooperation, and other collaborative models to stimulate innovation, incentivise university-industry linkages, and facilitate the transfer and diffusion of technology;
- d. strengthening the means for copyright holders and related rights to secure a fair share of the proceeds from adaptation, distribution, rental, communication to the public, and other commercial use of their work;
- e. enhancing the use of geographical indications, collective marks, and certification marks, traditional knowledge and genetic resources to add value to the commercialisation of natural, agricultural, craft, or industrial products, and other traditional cultural expressions;
- f. facilitating the use of flexibilities under international instruments for the protection of public health, food security, agriculture, and nutrition;

- g. creating mechanisms for collaboration among customs officials, judicial authorities, and other law enforcement agencies to address infringement of intellectual property rights and provision of technical assistance in the investigation of infringement of rights;
- h. initiating and undertaking studies on issues related to intellectual property protection and enforcement;
- i. promoting public awareness of intellectual property rights issues, and
- j. facilitating registration of intellectual property rights on the continent under this Protocol.

Article 24

Cooperation in the Administration of Intellectual Property Rights

State Parties shall, in particular, cooperate in the administration of intellectual property rights through:

- a. The automation and streamlining of intra-agency communications through the use of information and communication technologies for efficient intellectual property rights registration and administration processes;
- b. Exchange of experience on examination of registrable intellectual property rights;
- c. Building the capacity of intellectual property offices to support technology transfer; and
- d. Assisting in human resources development on intellectual property.

PART V

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Article 25

General provisions

1. State Parties shall ensure that intellectual property rights holders have access to the legal mechanisms to enforce their intellectual property rights.
2. State Parties recognise the importance of procedures for enforcement of intellectual property rights in striking the balance between the interest of right holders and consumers.

3. State Parties recognise that the procedures for enforcement of intellectual property rights under this Protocol take into account their administrative, technological and financial capacity.

Article 26

Responsibilities of State Parties

State Parties shall:

1. Enforce intellectual property rights in accordance with the provisions of this Protocol, national laws, and other treaties to which they are party;
2. Build the capacity of organisations representing rights holders with limited capacity to enforce their rights including farmers, traditional communities, and small and medium-sized enterprises;
3. Provide the legal framework to facilitate the resolution of disputes through negotiations, mediation, arbitration, or other alternative dispute resolution mechanisms;
4. Investigate and prosecute criminal offences involving wilful trademark counterfeiting, copyright piracy at a commercial scale, and, where provided by law, unlawful disclosure or acquisition of trade secrets, including in the digital sphere; and
5. Develop and maintain an up-to-date and accessible database of registered intellectual property rights and procedures to provide information on the status, ownership, and transfer of intellectual property rights respecting the confidentiality of information under national law.

Article 27

Injunction

State Parties shall ensure that they have laws granting judicial authorities the power to issue injunctions on cases of disputes concerning the infringement of intellectual property rights.

Article 28

Transit Trade

1. State Parties agree that border measures on the enforcement of intellectual property rights shall not affect the transit trade of other State Parties in accordance with the relevant provisions of the AfCFTA Protocol on Trade in Goods related to transit.

2. Transit countries may implement measures to prevent the diversion of goods in transit that are suspected of infringing intellectual property rights registered in their country into their marketing channels.
3. The measures to be undertaken under this Article shall not apply to intellectual property rights that are already exhausted under this Protocol.

Article 29

Border Measures

1. State Parties shall adopt enforcement procedures to enable a right holder who has valid grounds for suspecting that the importation of counterfeit trademark, pirated copyright goods, misappropriated traditional knowledge, traditional cultural expression and genetic resources may take place, to lodge a complaint in writing to the competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods.
2. The conditions for the application of border measures shall be spelt out in the Annex on Marks, the Annex on traditional knowledge, traditional cultural expression and genetic resources, and the Annex on Copyright and related rights.

PART VI

INSTITUTIONAL ARRANGEMENTS

Article 30

Committee on Intellectual Property Rights

1. The Committee on Intellectual Property Rights, as established by the Council of Ministers in accordance with Article 11 of the AfCFTA Agreement, shall carry out such functions as may be assigned to it by the Council of Ministers to facilitate the implementation of this Protocol and to further its objectives.
2. The Committee may establish such sub-committees and working groups as it considers necessary for the effective discharge of its functions.

Article 31

Establishment of the AfCFTA Intellectual Property Office

1. The AfCFTA Intellectual Property Office (“The Office”) shall be established, subject to a Decision of the Assembly of Heads of State and Government of the African Union .
2. The Council of Ministers shall recommend to the Assembly of Heads of State and Government of the African Union the appropriate governance and administrative structures, composition, functions, and legal status of the Office, which shall be elaborated in an Annex, to be developed in accordance with Article 42 of this Protocol.
3. The Office shall recognise and cooperate with existing and emerging national, regional and international Intellectual Property Offices and the modalities of cooperation shall be set out in the Annex referred to in Paragraph 2.
4. The Annex, upon adoption by the Assembly of Heads of State and Government of the African Union, shall form an integral part of this Protocol.

Article 32

Transparency and Notification

1. Each State Party shall inform the AfCFTA Secretariat of the identity of its National Intellectual Property Focal Point.
2. Each State Party shall notify the AfCFTA Secretariat their intellectual property laws and any international, regional and bilateral agreements pertaining to or affecting intellectual property with other State Parties and third parties to which they are signatory promptly after the entry into force of this Protocol.
3. The Secretariat shall promptly circulate the information received under Paragraph 2 above to all State Parties for their comments and feedback.
4. The Secretariat shall promptly transmit the feedback and comments received from the State Parties to the State Party concerned.
5. The Committee on Intellectual Property Rights shall develop procedures for notification and comments.

6. Each State Party shall notify the AfCFTA Secretariat of the introduction of any new, or any amendments to existing laws or regulations which pertain to this Protocol.

Article 33

Technical Assistance and Capacity Building

1. State Parties recognise the importance of technical assistance and capacity building to the implementation of this Protocol.
2. The AfCFTA Secretariat shall work with, State Parties, Regional Economic Communities, regional intellectual property organizations, and relevant stakeholders to coordinate the provision of technical assistance, undertake activities to enhance capacity building, and facilitate the implementation of this Protocol.

PART VII

FINAL PROVISIONS

Article 34

Entry into Force

1. This Protocol shall be open for signature, ratification and accession by State Parties to the AfCFTA Agreement, in accordance with their respective constitutional procedures.
2. The Protocol shall enter into force in accordance with the provisions of Articles 23 (2) and 23 (4) of the AfCFTA Agreement.

Article 35

Application

1. Each State Party shall implement the provisions of this Protocol upon its entry into force.
2. A State Party that is recognised as a least developed country by the United Nations, shall implement the provisions of this Protocol within three years from its entry into force.
3. Least developed countries are not required to provide protection of pharmaceutical patents and pharmaceutical test and other data for a period of time provided for in the relevant international treaties.

4. A State Party shall not take any measure that is inconsistent with the provisions and objectives of this Protocol.

Article 36

Conflict and inconsistency with other Agreements

Any conflict and inconsistency between the provisions of this Protocol and a regional intellectual property agreement shall be resolved in accordance with Article 19 of the AfCFTA Agreement.

Article 37

Dispute Settlement

Any dispute arising from this Protocol shall be settled in accordance with the AfCFTA Protocol on the Rules and Procedure on the Settlement of Disputes.

Article 38

Review

The Protocol shall be subject to review by State Parties in accordance with Article 28 of the AfCFTA Agreement.

Article 39

Amendment

The amendment of this Protocol shall be undertaken in accordance with Article 29 of the AfCFTA Agreement.

Article 40

Negotiations on Annexes to this Protocol

Member States shall start the negotiation of the Annexes to this Protocol immediately upon the adoption of this Protocol.

Article 41

Annexes to this Protocol

1. The following shall be the Annexes to this Protocol:

- (a) Annex on Plant Variety Protection

- (b) Annex on Geographical Indications
 - (c) Annex on Marks
 - (d) Annex on Copyright and Related Rights
 - (e) Annex on Patents
 - (f) Annex on Utility Models
 - (g) Annex on Industrial Designs and Models
 - (h) Annex on Traditional Knowledge, Traditional Cultural Expression and Genetic Resources
2. Notwithstanding the provisions of Paragraph 1, State Parties may develop additional annexes on any intellectual property matter such as emerging technologies.
 3. Upon adoption, these Annexes shall form an integral part of this Protocol.

Article 42
Authentic Texts

This Protocol is drawn up in five (5) original texts in the Arabic, English, French, Portuguese and Spanish languages, all of which are equally authentic.