

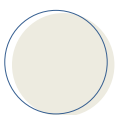


RULES OF PROCEDURE (OPERATING PROCEEDURES) AND MEDIATION GUIDELINES FOR THE COMESA COMMITTEE OF ELDERS

A component of the COMESA Mediation Resource Package



Supported by the EU through the APSA Support Programme



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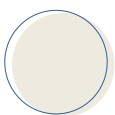
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An Introduction to the COMESA Mediation Resource Package¹

The COMESA Mediation Resource Package is a comprehensive publication that comprises three separate but inter-related documents, which will be useful to guide not only members of the COMESA Committee of Elders but any other mediators that the Office of the Secretary General may choose to deploy. The documents will also be useful for students studying fields of mediation, diplomacy and conflict studies as well as persons at all levels that desire to support or understand any mediation exercise.

The Resource Package includes a Mediation Strategy for COMESA, supported by general guidelines and two handbooks; a Manual on Conflict Analysis and Report Writing and Rules of Procedure (Operating Procedures) and Mediation Guidelines for the COMESA Committee of Elders as following:

- a. The Mediation Strategy for COMESA, which comprises:
 - a. Guidelines on the Mediation Process
 - b. Handbooks on mediation for electoral conflicts and
 - c. Handbook on mediation for natural-resource based conflicts
- b. Manual on Conflict Analysis and Report Writing
- c. Rules of Procedure (Operating Procedures) and mediation Guidelines for the COMESA Committee of Elders.

The COMESA Mediation Strategy

The Mediation Strategy is a general document that situates COMESA mediation within the mandate of COMESA as well as its mission and vision and its operating environment. It reviews the decisions of the Policy Organs relating to mediation and outlines a strategy toward the implementing these decisions.

The Guidelines on the Mediation Strategy

This is a component of the Mediation strategy that provides a detailed and comprehensive outlook on the processes used for mediation. Although this has been developed for the use by COMESA GPS and the Committee of Elders of COMESA, it is a good resource for any other persons keen on understanding or even undertaking mediation related assignments. It is also a good resource for students pursuing studies on peace studies and related fields. The Guidelines recognize the complexities that can accompany mediation processes and it provides examples to illustrate the various sections as covered. It provides

¹ COMESA recognizes with appreciation, Professor Makumi Mwangi of the Catholic University, Kenya for the development of the “Guidelines on the Mediation Process” and the “Handbook on mediation for electoral related conflicts”; and Dr. Martha Mutisi of the International Development Research Center, for the development of the “Handbook on mediation for natural resource based conflicts” and the “Manual on Conflict Analysis and Report Writing”.

in depth analyses on the different components including, inter-alia, analysis on the structure of mediation and the interactions; analysis on the attributes of the mediator and some of the factors that guide the processes applied in mediation as well as some outcomes. The Guidelines conclude with a chapter that draws out and identifies some of the best practices.

Handbook on mediation for elections related conflicts and for natural resource-based conflicts

Out of the Guidelines on the Mediation Process, the resource package has got separate handbooks for specific conflict types. Given that electoral related conflicts and natural resource-based conflicts are the most prominent conflicts in the COMESA Region, the programme started with the development of handbooks for these two types of conflicts with the understanding that handbooks will be developed for other conflict-types as need arises and resources become available. The two handbooks are simple-to-use guidelines provide the user with specific things to consider when preparing for a mediation exercise for these conflict types.

The Manual for Conflict analysis and report writing

The manual is developed for use by any practitioners in the field of conflict prevention and peace building including students of peace studies. In addition, any person involved in mediation or mediation-related roles needs to have a good understanding of conflicts and their dynamics. This manual is therefore a very important resource and reference documents for existing and prospective mediators at the local, national, regional and international levels.

The Rules of Procedure (Operating Procedure) and Mediation Guidelines for the COMESA Committee of Elders

The document is for use by the COMESA Committee of Elders as well as COMESA Secretariat. It includes the Rules of Procedure to guide the operations of the COMESA Committee of Elders. The Rules of Procedures are supported by two annexes, the first is a set of mediation guidelines and the second are Rules of Procedure for the nomination and elections of the Committee of Elders. It serves as a good reference document for the Elders that are deployed to support COMESA Missions. The Rules of Nomination and Election are useful to the Member States in their processes of nomination of eminent persons to join the Committee and in the elections process that is typically done by the COMESA Ministers of Foreign Affairs. The Rules were initially developed by the COMESA Committee of Elders, reviewed by the COMESA Committee on Peace and Security and Ministers of Foreign Affairs before going through the COMESA Sub-Committee of Legal Affairs. The Rules were adopted by the Ministers of Justice and Attorneys General on 6th November 2013.

This introduction therefore serves to introduce the complete mediation package to the reader noting and in view that any component can be used on its own. It provides the reader information on the other components of the Resource Package and thus encourages the reader to consult the other components for a better understanding of COMESA role in mediation.

Elizabeth Mutunga

Head of Governance, Peace and Security

MEDIATION GUIDELINES FOR THE COMESA COMMITTEE OF ELDERS

Preamble

Recalling Article 3 (d) of the COMESA Treaty which provides for cooperation in the promotion of peace, security and stability among Member States, in order to enhance economic development in the region;

Further Recalling the provisions of Article 6 of the Treaty which provides in particular for nonaggression between Member States the maintenance of regional peace and stability through the promotion and strengthening of good neighbourliness and the peaceful settlement of disputes among Member States, the active cooperation between neighbouring countries and the promotion of a peaceful environment as a pre-requisite for their economic development;

Guided by the decision of the First Meeting of the Ministers of Foreign Affairs held in Lusaka, Zambia in 2000 and endorsed by the Fifth Summit of the COMESA Authority, held on 17th to 19th May, 2000, that the COMESA Programme on Peace and Security should be anchored within the framework of the African Union Peace and Security Mechanism;

Further Guided by the decision of the Seventh Meeting of the Ministers of Foreign Affairs of COMESA, held in Djibouti, Djibouti in November 2006, endorsed by the Eleventh Summit of the COMESA Authority, held in Djibouti, Djibouti on 15th to 16th November, 2006, relating to the establishment of the Committee of Elders, the membership of which should be drawn from the COMESA region;

Recalling the decision of the Eighth Meeting of the Ministers of Foreign Affairs of COMESA held in Nairobi, Kenya in May 2007 endorsed by the Twelfth Summit of the COMESA Authority held in Nairobi, Kenya on 22nd May, 2007, on the setting up of a Committee of Elders within the framework of the COMESA Programme on Peace and Security including defining the modalities for its engagement;

Further Recalling the Ninth Meeting of Minister of Foreign Affairs held in Victoria Falls, Zimbabwe on 5th to 6th June 2009 and the Tenth Meeting of the Ministers of Foreign Affairs held in Swaziland on 28th and 29th August 2010 and endorsed by the Thirteenth and the Fourteenth Summit, held in Ezulwini, Swaziland on 31st August to 1st September, 2010; and in Lilongwe, Malawi on 14th to 15th October, 2011 respectively, relating to election of the Members of the Committee of Elders;

The COMESA Council of Ministers Hereby Adopt these Rules and Guidelines for the COMESA Committee of Elders:

Rule 1**Citation**

These Rules shall be cited as the Rules of Procedure (Operating Procedures) of the Committee of Elders.

Rule 2**Definitions**

In these Rules, unless the context otherwise requires-

“Committee” means the Committee of Elders established under the COMESA Programme on Peace and Security;

“Members” means the Members of the COMESA Committee of Elders;

“Non State Actors” means civil society and private sector organizations as defined in the COMESA Rules of Procedure for Accrediting Civil Society and Private Sector Organizations to the COMESA Programme on Peace and Security;

“Programme for Peace and Security” means the programme mandated under Article 3(d) of the COMESA Treaty; and

“Rules” means the Rules of the Committee of Elders.

Rule 3**Mandate of the Committee**

The Committee derives its mandate from the Authority and operates under the general directions of the Secretary General.

PART I: RULES OF PROCEDURE

Rule 4

Aims and Objectives of the COMESA Committee of Elders

1. The aims and objectives of the Committee of Elders are to:
 - (a) establish an institutional structure for conflict prevention, management and resolution through preventative diplomacy;
 - (b) employ dialogue and compromise and completely avoiding any form of coercion and in respect of sovereignty of the Member States; and
 - (c) support the efforts of the COMESA Organs and the Authority in the prevention and management of conflicts that affect or threaten the region.

Rule 5

Functions

1. The functions of the Committee are to:
 - (a) advise COMESA Policy organs responsible for peace and security, through the Secretary General, on matters of conflict prevention, management and resolution in respect to any situation falling within its competence;
 - (b) track progress in the areas of peace and security and conflict management and prevention in the region, and draw the attention of the Secretary General, and where appropriate the COMESA policy Organs responsible for Peace and Security, to critical issues and opportunities;
 - (c) examine annual trends on peace and security, and conflict management processes in the COMESA region and identify key trends, obstacles and potential threats;
 - (d) identify any conflicts in Africa that have adverse effects in the COMESA region and in consultation with the relevant regional economic communities advise COMESA organs on their prevention and management;
 - (e) develop and recommend ideas, measures or programmes that can contribute to the promotion of peace and security in the COMESA region; and
 - (f) promote the activities of the COMESA Programme for Peace and Security.
2. In the exercise of its functions, the Committee may, with the approval of the Secretary General where necessary –
 - (a) act as facilitators and mediators in conflicts in the region;
 - (b) liaise with parties to conflicts, their national policy making organs and other regional bodies with a view to preventing conflicts ;
 - (c) encourage parties in conflict towards negotiation and other peaceful ways of managing and resolving their conflicts;
 - (d) assist and advise mediation teams engaged in formal negotiations;

- (e) mediate disputes related to the implementation of peace agreements;
- (f) carry out fact finding missions and studies; and
- (g) consult with civil society and private sector organisations accredited to COMESA on conflict prevention measures.

3. In the conduct its business, the Committee shall be guided by the provisions of the Annex.

Rule 6

Principles of the Committee of Elders

The Committee of Elders shall be guided by the following fundamental principles:

- (a) equality and inter-dependence of the Member States;
- (b) solidarity and collective self-reliance among the Member States;
- (c) non-aggression between the Member States;
- (d) strengthening preventive diplomacy in the region;
- (e) the maintenance of regional peace and stability through the promotion and strengthening of good neighbourliness, and
- (f) the peaceful settlement of disputes among the Member States and the promotion of a peaceful environment.

PART II: STANDARD OPERATING PROCEDURES

Rule 7

Chairperson and Vice Chairperson of the Committee

1. The Chairperson shall:
 - (a) be elected by a simple majority of the Committee;
 - (b) hold the position on an annual rotational basis; and
 - (c) be **elected** for only one year.
2. A Vice Chairperson shall:
 - (a) be elected by a simple majority of the Committee;
 - (b) act as chair in the absence of the substantive chairperson;
 - (c) hold the position on an annual rotational basis; and
 - (d) be elected for only one year.
3. The duties of the Chairperson shall be to -
 - (a) preside over Committee meetings;
 - (b) liaise with or advise the Secretary General on matters of peace and security;
 - (c) report to the Secretary General on progress about meetings of the Committee; and
 - (d) where requested, report at every annual meeting of the Authority on the work of the Committee.

Rule 8

Reporting Structure of the Committee

1. Subject to Sub-rule 2, the Committee shall report to the Secretary General and shall submit its reports on any of its activities to the Secretary General within such time frame as may be agreed with the Chairperson of the Committee.
2. Where so directed, the Committee shall report to the Council of Ministers of Foreign Affairs responsible for the subject matter of peace and security through the Secretary General.

Rule 9

Secretarial and Technical Services for the Committee

1. The COMESA Secretariat shall provide such secretarial and technical services to the Committee as is necessary, including facilitating any task that the Committee may have to undertake in line with its mandate.
2. Any request by the Committee for assistance or facilitation shall be made to the Secretary General.

Rule 10**Resource Persons and Experts**

1. The Committee may, with the approval of the Secretary General, invite resource persons or experts to provide technical support to them in their roles in accordance with procurement procedures of COMESA.
2. The resource persons and experts shall as far as possible be sourced from the region.

Rule 11**Meetings of the Committee of Elders**

1. The Committee shall endeavour to meet at least once a year, provided that it may meet more often at the request of the Secretary-General.
2. The Committee Members shall maintain regular consultations among themselves to facilitate the effective discharge of their duties and responsibilities.
3. Meetings of the Committee of Elders shall be held in closed sessions, provided that if the Committee considers it necessary it may invite resource persons, experts, institutions or individuals to attend a meeting in order to assist the Committee in its deliberations on specific issues.
4. The Committee shall hold its meetings at the COMESA Headquarters or at such other place that may be agreed upon with the Secretary-General.
5. The provisional agenda of a meeting of the Committee shall be determined by the Secretary-General in consultation with the Chairperson.
6. The provisional agenda for a meeting of the Committee shall be circulated to all members of the Committee by the Secretary-General at least 15 days before the meeting.
7. A Member of the Committee after consultation with the Chairperson of the Committee may with the approval of the Secretary-General, bring to the attention of the Committee any relevant issues for consideration by the Committee.

Rule 12**Quorum and Decision Making**

1. The quorum for a meeting shall be half of the Committee's total membership.
2. Decisions of the Committee shall be made by consensus.

Rule 13**Allowances of the Members of the Committee**

1. Members of the Committee shall be entitled to travel, accommodation and other appropriate incidental allowances for the duration of Committee meetings and missions undertaken by its members in the discharge of their duties.
2. The allowances and other entitlements payable to members of the Committee shall be determined by the Secretary-General in accordance with the financial rules and regulations of COMESA.

Rule 14

Collaboration with Other Institutions

1. The Secretary General shall facilitate close collaboration by the Committee with similar institutions within the following institutions:
 - (a) the United Nations ;
 - (b) the African Union being the African Union Panel of the Wise and similar institutional mechanisms of other Regional Economic Communities;
 - (c) sub-regional organisations with shared memberships;
 - (d) other Regional economic communities and Regional Mechanisms in the region; and
 - (e) non-state institutions in the region and other stake holders that are relevant for the fulfilment of its mandate and roles, with a view to ensuring exchange of experiences, lessons learnt, skills building and where appropriate conduct of joint missions, studies or tasks.
2. The Committee may, in consultation with the Secretary-General, liaise, engage or consult with non-state actors accredited to COMESA and the Inter-Parliamentary Forum for COMESA for the purposes of receiving information on a matter within its consideration.

Rule 15

Public Communications by the Committee of Elders

The Committee may, if it considers it necessary on any matter under its consideration, and subject to the approval of the Secretary General, issue -

- (a) press releases or statements; and
- (b) communication in any other appropriate form.

PART III: FINAL PROVISIONS

Rule 16

Review and Amendment of the Rules

1. Any Member may submit a proposal in writing for the review and amendment of these rules.
2. Any proposal for review and amendment of these Rules shall be submitted to the Secretary-General, who shall within thirty days of receipt communicate it to the Committee in writing.
3. Members who wish to comment on the proposals for amendment shall do so within thirty days of the dispatch of the proposals by the Secretary-General.
4. After the expiry of the period prescribed under paragraph 3 of this Rule, the Secretary-General shall submit the proposals and any comments thereon to the Committee on Peace and Security.
5. Any amendment to these Rules shall be adopted in the same manner as provided for in Rule 17.

Rule 17

Adoption

In line with Article 10 of the Treaty, these rules shall be adopted by the COMESA Council of Ministers after their approval by COMESA Ministers of Foreign Affairs.

ANNEX 1

MEDIATION GUIDELINES FOR THE COMMITTEE OF ELDERS

1. Definitions

In this Annex, unless the context otherwise requires -

“**mediation**” includes any other peaceful means of conflict resolution and management;

“**Member**” means a Member of the Committee of Elders

2. Principles of Mediation

- (1) The Committee shall conduct its tasks in a manner that -
 - (a) builds confidence;
 - (b) cultivates good faith;
 - (c) cultivates justice and stability;
 - (d) fairness;
 - (e) secures sustainable peace;
 - (f) promotes consensus; and
 - (g) ensures objectivity and integrity.
- (2) Mediation by the Committee shall be based on the principles of communication, negotiation, facilitation and problem-solving.
- (3) Mediation by the Committee shall be conducted in a way that recognizes:
 - (a) the autonomy of the parties;
 - (b) the needs and interests of the parties;
 - (c) procedural flexibility;
 - (d) confidentiality; and
 - (e) respect for all the parties involved.

3. Role of the Committee as Mediators

The role of the Committee as mediators shall be to -

- (a) reduce obstacles to communication between the relevant parties;
- (b) assist in the identification of issues in the conflict; and
- (c) explore possible alternatives for and facilitate voluntary agreements resolving the conflict; provided that the ultimate decision making shall rest solely with the parties.

4. Conduct of Mediation

- (1) The Committee may meet and engage separately with any of the parties in conflict in order to expeditiously advance the mediation process.
- (2) The Committee shall, in consultation with the parties, endeavour to establish a timetable for the submission by each party to the conflict a statement -
 - (a) summarizing the background of the conflict;
 - (b) stating the parties interests and issues in the conflict;
 - (c) stating the current status of the conflict;
 - (d) proposing measures towards cessation of hostilities or ceasefire where applicable; and
 - (e) providing such other material that each party considers necessary for the purposes of mediation, and for the issues in the conflict to be identified.

5. Conflict of Interest

- (1) A Member shall not mediate in a matter in which he has a direct or indirect conflict of interest and shall immediately disclose the same to the Secretary General.
- (2) A conflict of interest arises where any relationship between a Member and the parties, or the subject matter of the conflict, compromises the ability of a Member to act in accordance with the principles stated in this Annex.
- (3) A Member shall withdraw from a mediation in which circumstances arise which would impair or compromise a member’s ability to act in accordance with the principles set out in Article 21 of these Rules.
- (4) The burden of disclosure of any potential conflict of interests lies with individual Members.

6. Confidentiality

- (1) In its capacity as mediators, the Committee shall maintain the confidentiality of all information revealed during mediation, except where all the parties agree to disclosure.
- (2) All information, records, reports or other documents received by the Committee in the course of mediation shall be confidential.

7. Decision Making by the Parties

The Committee shall:

- (a) assist the parties to make informed and voluntary decisions; and
- (b) protect the rights of the parties to make decisions independently in order to ensure that decisions are taken without any form of coercion.

8. Ethical Standards

Members of the Committee shall not, during a mediation process-

- (a) use any information disclosed during the process for any purposes other than the mediation;

- (b) coerce or improperly influence any party to make a decision concerning the mediation;
- (c) intentionally or knowingly misrepresent any fact or circumstance in the process; or
- (d) do or say anything that compromises a party's right to make a decision.

ANNEX 2

RULES OF PROCEDURE FOR THE NOMINATION AND ELECTION OF THE COMESA COMMITTEE OF ELDERS

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Preamble

Recalling Article 3 (d) of the COMESA Treaty which provides for cooperation in the promotion of peace, security and stability among Member States, in order to enhance economic development in the region;

Further Recalling the provisions of Article 6 of the Treaty which provides in particular for non-aggression between Member States the maintenance of regional peace and stability through the promotion and strengthening of good neighbourliness and the peaceful settlement of disputes among Member States, the active cooperation between neighbouring countries and the promotion of a peaceful environment as a pre-requisite for their economic development;

Guided by the decision of the First Meeting of the Ministers of Foreign Affairs held in Lusaka, Zambia in 2000 and endorsed by the Fifth Summit of the COMESA Authority, held on 17th to 19th May, 2000, that the COMESA Programme on Peace and Security should be anchored within the framework of the African Union Peace and Security Mechanism;

Further Guided by the decision of the Seventh Meeting of the Ministers of Foreign Affairs of COMESA, held in Djibouti in November 2006, endorsed by the Eleventh Summit of the COMESA Authority, held in Djibouti on 15th to 16th November, 2006, relating to the establishment of the Committee of Elders, the membership of which should be drawn from the COMESA region;

Recalling the decision of the Eighth Meeting of the Ministers of Foreign Affairs of COMESA held in Nairobi in May 2007 endorsed by the Twelfth Summit of the COMESA Authority held in Nairobi, Kenya on 22nd May, 2007, on the setting up of a Committee of Elders within the framework of the COMESA Programme on Peace and Security including defining the modalities for its engagement;

Guided by the Ninth Meeting of Minister of Foreign Affairs held in Zimbabwe on 5th to 6th June 2009 and the Tenth Meeting of the Ministers of Foreign Affairs held in Swaziland on 28th and 29th August 2010 and endorsed by the Thirteenth and the Fourteenth Summit, held in Victoria Falls, Zimbabwe on 7th June 2009 and Ezulwini on 2nd September 2010 respectively, relating to election of the Members of the Committee of Elders;

The Committee Hereby Approves these Rules:

Rule 1

Citation

These Rules shall be cited as the Rules of Procedure for the Nomination and Election of the Committee of Elders.

Rule 2

Definitions

In these Rules, unless the context otherwise requires -

“**Committee**” means the Committee of Elders established under the COMESA Programme on Peace and Security;

“**Member**” means a Member of the Committee of Elders;

“**Rules**” means the Rules of the Committee of Elders.

Rule 3

Proposals and Election of Members

1. Candidates for the Committee shall be proposed by Member States.
2. The proposal for the appointment of a candidate shall be -
 - (a) accompanied by a current curriculum vitae (CV); and
 - (b) supported by a statement indicating that the candidate is eligible in accordance with Rule4 (7) and -
 - (i) is knowledgeable and experienced in developmental, peace and security challenges facing the region;
 - (ii) is distinguished in the areas of conflict prevention, management and resolution in the region and internationally;
 - (iii) posses knowledge and experience in responding to conflicts in the region through preventive diplomacy; and
 - (iv) has no conflict of interest in the areas of the mandate of the Committee.
3. The election of members of the Committee of Elders shall be by secret ballot during a meeting of the Ministers.
4. The Secretary General shall:

- (a) communicate to the Member States the deadline for the submission of candidatures at least six months before the elections of committee members are due;
- (b) within one month after the receipt of candidatures, circulate the names and CVs of all candidates in their alphabetical order to Member States;
- (c) communicate any objections to a candidature from Member States, based on the criteria specified in Rule4 (7) and paragraph 2 of this Rule, within two months of the despatch of the circulation of names to the Member States; and
- (d) after the expiry of the period prescribed under paragraph (c), the Secretary-General shall submit the candidatures and any comments on them received from Member States to the Ministers through the Committee on Legal Affairs.

Rule 4

Qualification for Election

- 1. A Member shall be a citizen of a COMESA Member State.
- 2. A Member shall be appointed on the basis of his or her personal achievements and not based on their affiliations to a Member State.
- 3. The Committee shall be composed of not more than nine members.
- 4. The requirements of the principle of geographical representation shall govern the appointment of the Members.
- 5. A Member State shall not have more than one Member on the Committee.
- 6. Not more than seven members shall be of one gender.
- 7. A person shall not be entitled to be appointed as a Member where he or she –
 - (a) Where he or she is employed full time by a Member State;
 - (b) holds any administrative functions in a Member State, international, regional or sub regional organisation;
 - (c) has been convicted of any offence of dishonesty or was dismissed from employment or any office for moral, financial or ethical turpitude; and
 - (d) holds an active political office.

Rule 5

Tenure of Office

- 1. Duly appointed members of the Committee shall serve for a period of four years renewable only once subject to nomination and re-election.
- 2. To ensure continuity the original appointment of elders shall be staggered as follows -
 - (a) in the original appointment five members shall be elected for a period of four years; and

- (b) the remaining four Members shall be appointed in the following year for a period of four years.

Rule 6

Termination of the Tenure of Office

1. A Member may resign at any time by addressing a letter of resignation to the Secretary-General.
2. Membership to the Committee shall be terminated if a Member -
 - (a) becomes a full time employee of a Member State; or
 - (b) ceases to be a citizen of a COMESA Member State; or
 - (c) holds an active political office during his or her tenure as a Member; or
 - (d) becomes insolvent or bankrupt;
 - (e) becomes of unsound mind;
 - (f) has been convicted of any offence of dishonesty or was dismissed from employment or any office for moral, financial or ethical turpitude,
3. Where there has been a change of his or her status, the Member shall forthwith write to the Secretary General informing him of the change of status.

Rule 7

Vacancies in the Committee

1. Any vacancies in the Committee shall be filled in the same manner as provided for under Rules 3 and 4.
2. A Member appointed to replace a Member whose term has not expired shall hold office for the remainder of the predecessor's term.

Rule 8

Transitional Provisions

1. A Member elected and appointed into office during the 13th and 14th Summit of the COMESA Authority shall hold office for the remainder of the term of his or her appointment.
2. A Member referred to in sub-rule (1) shall be deprived of his or her membership if he or she has changed status in the manner as set out in Rule 6 (3).
3. If for any other reason no appointment has been done at the expiry of term of the Elders, the elders currently in office shall continue until new appointment have been made.

