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REPORT OF THE PRC SUB-COMMITTEE
ON HEADQUARTERS AND HOST AGREEMENTS

**REPORT OF THE PRC SUB-COMMITTEE
ON HEADQUARTERS AND HOST AGREEMENTS**

I. INTRODUCTION

1. The PRC Sub-Committee on Headquarters and Host Agreements under the chairmanship of H.E. Ambassador Nyolosi Mphale, Permanent Representative of the Kingdom of Lesotho to the African Union held meetings on the 20th of November 2015, 11th December 2015 and 8th January 2016 respectively.

2. These meetings were held pursuant to the Decisions of the Executive Council on Host Agreements, EX.CL/Dec.854(XXVI) of January, 2015 and Decision EX.CL/Dec.877 (XXVII) of July 2015 respectively, which:

- i) Urged the Host Country to continue to ensure the effective discharge of its obligations under the Headquarters Agreement;
- ii) Requested the Commission and its staff members and member states of the African Union to respect the laws of the host country in accordance with the Headquarters Agreement.

REQUESTED:

- i) The Host Country to conduct an investigation into the complaint submitted by the State of Eritrea on the alleged violation of the privileges and immunities of its Permanent Representative and his spouse at the Bole International Airport on 14 May, 2014 and report back to the Sub-Committee before June, 2015 and ALSO REQUESTED the Commission to submit its report on the incident to the Sub-Committee before June, 2015;
- ii) The Host Country to look into the modalities of effecting legal money transfer, foreign exchange and remittances;

INVITED both the Host Country and the Commission to continue to engage to ensure mutual implementation of their respective obligations under the Headquarters Agreement in a predictable manner AND **STRESSED** the need for the Joint Headquarters Implementation Committee to meet regularly in order to continue to follow-up the effective implementation of the Headquarters Agreement as well as resolve, in a timely manner, all outstanding matters:

- i) Requested the Commission to study the Host Agreements with all countries hosting AU Organs, Offices and Institutions and present a comparative analysis of the privileges, facilities and immunities to the Sub-Committee in June 2015;

- ii) The Sub-Committee to consider the implementation of Host Agreements between the AU and Member States hosting other AU Organs, Offices and institutions.

3. And pursuant to the Executive Council Decision on the Sub-Committee on Headquarter and Host Agreements (EX.CL/Dec.877 (XXVII) dated July 2015 in which the Council recalled its Decision, EX.CL/Dec.854(XXVI) and urged:

- i) “The Host Country and the Commission to submit their Reports on the complaint submitted by the State of Eritrea to the Sub-Committee by the end of August 2015;
- ii) The Host Country to continue to ensure the effective discharge of its obligations under the Headquarters Agreement;
- iii) REQUESTED the Host Government to engage the Commission prior to any need for a change of policies, rules and practices that hitherto accorded certain privileges and immunities to the diplomatic personnel accredited to the African Union and Elected Officials and Staff of the African Union;
- iv) STRESSED the need to provide adequate resources within the available means to undertake the study on the Host Agreements with all countries hosting AU Organs, Offices and Institutions.

REQUESTED:

- i) The Host Country to look into modalities of effecting legal money transfer, foreign exchange and remittances;
- ii) The Commission to prepare a comprehensive report on the implementation of this Decision and submit to the Sub-Committee before the end of November 2015.”

II. ATTENDANCE

4. The following members of the PRC Sub-Committee attended the meetings:

- | | | |
|-----------|---------------|-------------|
| 1.Benin | 6.Kenya | 11.Namibia |
| 2.Burundi | 7.Lesotho | 12.Senegal |
| 3.Congo | 8.Liberia | 13.Tanzania |
| 4.Eritrea | 9.Mauritania | 14. Togo |
| 5.Gabon | 10.Mozambique | 15. Libya |

5. Although The Federal Democratic Republic of Ethiopia is not a member of the Sub- Committee, it was invited to all three meetings to respond to issues pertaining to the implementation of the Host Agreement.

5.1 MEETING OF THE SUB- COMMITTEE HELD ON 20th NOVEMBER, 2015

The Chairperson of the sub-committee H.E. Nyolosi Mphale in his opening remarks reminded members of the Sub-Committee of the main issues decided upon by the Executive Council during the January and June 2015 Summits and the obligation to report on the issues raised by the said Decisions by both the African Union Commission and the Host Government of the Federal Democratic Republic of Ethiopia. Following those remarks, the Commission gave a brief summary on the status of implementation of the said decisions.

The Commission on its part informed the Sub-Committee that a meeting between the AUC Headquarters Implementation Committee and the Host Government of the Federal Democratic Republic of Ethiopia was held a report of which is attached herewith and marked as Annex A. The Commission presented the issues raised thereto as follows:

- The need for the Host Government to address issues relating to obtaining conferences visas, visas for AU short term staff, seconded staff, consultants, youth volunteers interns and freelance was emphasized;
- The need to meet quarterly to address pending host issues and to develop Host Agreement Implementation guidelines to establish clarity on the rights, privileges, immunities and obligation of the AU staff members;
- The complaints filed by the Government of the State of Eritrea (a copy of which is attached herewith and marked as Annex B) , staff members and diplomats accredited to the African Union regarding the ill-treatment by Customs and Security personnel at Bole International Airport was brought to the attention of the Host Government;
- Request for the Host Government to facilitate the sensitization of the relevant government entities on the privileges and immunities accorded to the diplomatic community residing in Addis Ababa, Ethiopia;
- The Host Government should provide representatives of Member States, elected Officials of the African Union Commission as well as staff members of the AUC full privileges and immunities as obligated by the Host agreement as well as the OAU General Convention on Privileges and Immunities;

- The Commission reported that In addressing the issues raised hereinabove, the representatives of the Host Governments proposed the review of the issues into two categories: Quick Wins 1 and Quick Wins 2 and thereafter set out implementation modalities.
- The Quick Wins 1 matters are by definition matters requiring mere clarification from the relevant Government Authorities and providing immediate solutions. These issues include, but are not limited, the closure of the airport diplomatic line, preparing in English language the driver license application form and addressing the question of delay at immigration office. These are matters that require only a phone call and a quick review without needing any policy change or authorization from superiors. The Host Government undertook to follow up on these concerns swiftly and revert to the Commission. The Quick Wins 2 matters are matters requiring consultation with other Host Government authorities as well as the drafting of implementation guidelines for the consideration and approval of both parties.
- The Host Government reiterated that it has investigated the complaint filed by the Eritrean government and has sent a report to the Commission on the outcome of the investigation. The Host Government also addressed issues relating to the release of the vehicle of an AU staff member which was seized by the Ethiopian Customs and Revenue Authority.
- On the issue of visas for AU staff members, the Host Government reiterated the need to have guidelines on how to pursue the process of granting visas and residency to staff members who are not covered by the AU Staff Regulations and Rules. In this regard, the AU proposed to develop a policy on visas for its personnel not included in its Staff Regulations and Rules and transmit a request to the Host Government for its consideration.
- On the issue of money transfer, the Host Government informed the Commission that it has increased the dollar amount for travel from USD 5, 000.00 to USD 10,000.00 by way of a circular. The Host Government also informed the meeting that it has no money transfer system in place from Ethiopia but would continue to explore possibilities of creating one and effecting money transfer for AUC staff and Diplomats.
- The Host Government also reiterated the inviolability of AU bank account and that the Ministry of Foreign Affairs has been handling any court proceedings timely communicated to it.
- The Host Government reiterated the need for AUC staff members to respond to requests of mediation by the Protocol Department of the Ministry to settle amicably cases brought against them by third parties.

- With regards to theft, accidents and police investigations, it was proposed to centralize these issues in a particular police station to ensure efficiency and effectiveness. The representative from the Federal Police Commission affirmed the commitment of the police to investigate speedily any reported crime. The Host Government promised to review these issues and develop modalities for implementation.

5.2 RESPONSE BY REPRESENTATIVE OF THE HOST GOVERNMENT

- The representatives of the Host Government responded to the issues raised by the Commission at the meeting. He once again reiterated the unflinching commitment of the Government of Ethiopia to provide both representatives of Member States, elected officials of the AUC as well as staff members' full privileges and immunities as delineated in the Host Agreement as well as in the General Convention. The representatives reiterated further that the Government is coordinating its efforts to ensure the full enjoyment of privileges and immunities.
- He however appealed to the Commission staff to respect the laws and regulations of the host country. He further appealed to the Commission to educate its staff on the privileges and immunities which are only given in the interest of the Union, and not for the personal benefit of the individuals concerned.
- The representatives raised the difficulty the law enforcement agencies are encountering in handling cases of abuses of immunities and privileges by some of AU staff members including but not limited to, refusal to show identification cards when asked by security personal, traffic violations and civil matters.
- The Representative of the Host Government also raised concern about the delay or failure to respond to correspondences from the Host Government addressed to the African Union regarding complaints brought against AUC staff by Ethiopian citizens through the Ministry of Foreign Affairs.

- 5.3** On the complaint filed by the State of Eritrea, the Host Government informed that it carried out investigation to ascertain the validity of the allegations and sent a report to the Commission on the outcome of the investigation, a copy of which is attached herewith and marked as Annex C.

With regard to theft, accidents and police investigation, it was proposed to centralize these issues in a particular police station to ensure efficiency and effectiveness.

RESPONSE BY THE AFRICAN UNION COMMISSION (AUC)

The Director of Protocol of the AUC informed the meeting that an AU Protocol Officer who was assigned to receive the Permanent Representative of Eritrea and his spouse on 14th May 2014 had confirmed the allegations made by the State of Eritrea.

III. DELIBERATIONS

6. The Sub-Committee deliberated on the issues raised and came up with the following recommendations:

- i) On the complaint filed by the State of Eritrea regarding the alleged violation of the Permanent Representative of Eritrea to the African Union, the Sub Committee was not satisfied with the response given by the host government. Ethiopia had submitted a very brief report in the form of a Note Verbale which stated that Ethiopia had investigated the complaint filed by Eritrea and found no substantiated evidence on the allegations. The Sub-Committee requested Ethiopia to submit a comprehensive report on the allegations.
- ii) The Sub Committee also requested the Protocol Division of the African Union Commission to urgently submit a written report on the complaint filed by Eritrea as per the decision of the Executive Council.

6.1 MEETING OF THE SUB-COMMITTEE OF 11TH DECEMBER, 2015.

Following the request to present a written report on the incident involving the Permanent Representative of Eritrea at the Bole International airport and transmit to the members of the Sub-Committee for consideration, the African Union Protocol Office prepared and presented the report at the meeting of the Sub-Committee held on the 11th December, 2015, **a copy of which is attached herewith and marked as Annex "D"**.

When asked to comment on the report the Ethiopian delegation contended that the report was made many months after the incident and that its authenticity in terms of capturing the facts was questionable. Ethiopia reiterated its previous position that there was no evidence of any violation of the rights and privileges of the Permanent Representative of Eritrea.

Eritrea contended on the other hand that the report did capture the facts as represented on their complaint to the Commission.

After deliberations on the report, the meeting requested the Host Government to once again engage in some more investigation and submit a detailed report on the complaint filed by the State of Eritrea.

6.2 MEETING OF THE SUB-COMMITTEE OF 8th JANUARY, 2016.

The Chairperson informed the PRC Sub-Committee that the Commission has received a comprehensive Report from the Host Government on the complaint filed by Eritrea and commended Ethiopia for its cooperation in this matter, a copy of which is attached herewith and marked as Annex E.

After presentation of the Report by the Commission, the Chairperson requested the Deputy Chief of Protocol of the AUC, the representatives of Eritrea and the Host Government to comment:

- i) The Deputy Chief of Protocol of the AUC affirmed the facts stated in her office's previous report.
- ii) The Representative of Eritrea contended that the report was contradictory and distorted the facts of the case alleging that the Permanent Representative of Eritrea was not cooperative during the immigration process and therefore has some responsibility for what may have happened.
- iii) The Representative considered the defense as defamatory of the character of the Permanent Representative of Eritrea, He particularly cited paragraph 20 of the report and contended that being a diplomat as per the relevant provisions of the Vienna Convention and the AU General Convention, the Permanent Representative of Eritrea and his spouse should enjoy certain privileges and immunities that should not warrant their detention at the Airport for more than two hours after arrival.
- iv) The representative of Eritrea contended that the Host Government's attempt to justify the violations with new security measures is not justified as there was also at the same time another Ambassador who processed without any delay and left well before the Permanent Representative.
- v) The Representative of Eritrea further contended that the Host Government was systemic in harassing and infringing upon the rights of Eritrean diplomats accredited to the African Union and that the Permanent Representative was the third victim since 2011 and he urged the Host Government to respect the rights of Eritrean Ambassador and Diplomats.

6.3 In response to the issues raised by the Representative of Eritrea, Representatives of the Host Government reiterated their reliance on the content of the Report and specifically invoked paragraph 19 thereof to say that if anything irregular happened at the time of arrival of the Permanent Representative of the State of Eritrea at the airport, the Federal Democratic

Republic of Ethiopia regrets such incident. They reiterated the continued commitment of the Government of the Federal Democratic Republic of Ethiopia to observe its hosting obligations to all AUC staff and diplomats. They indicated the possibility that sometimes minor incidents may happen at individual level that do not have any political and legal implication to the activities and commitment of the government. Representatives assured all members of the diplomatic community that there is no any systemic problem in this regard. They further assured the Union that the Host Government would work on more sensitization of its personnel to ensure that such incidents will be minimized. The Representative, in a way brought out also the unfortunate condition of the relationship between the State of Eritrea and the Democratic Republic of Ethiopia which sometimes creates misunderstanding between the service providing and receiving parties.

- 6.4** After comments from both the Eritrean and Ethiopian side and deliberations on the report by the committee members, the Sub-Committee noted irregularity in the process of receiving the Permanent Representative of Eritrea. It however applauded the Host Government for stating in paragraph 19 of its Report that if what transpired at the airport was due to their negligence, then the Host Government regrets the incident. The delegations also reiterated the fact the issue should be looked at within the broader issue of the relationship between the two countries.

IV. CONCLUSIONS AND RECOMMENDATIONS

7. Following the deliberations on the report of the Commission dated 11th November, 2015 presented by the representative of the Office of the Legal Counsel, the report of the African Union Commission Protocol Office dated 25th November, 2015 and the revised report of the Host Government dated 25th December, 2015, and submissions made by the delegations and the Host government, the Sub-committee concluded and recommended as follows:

- i) Noted and appreciated that the Host Government was magnanimous to state that it did all that was necessary to ensure that the Permanent Representative of the State of Eritrea and his spouse were accorded the full privileges and immunities on their arrival at the Bole airport and that it regrets any irregularity or incident that may have occurred on their arrival that does not amount to the full enjoyment of privileges and immunities.
- ii) The Host Government in consultation with the Commission should develop better guidelines on receiving diplomats and ensure an expedient immigration processing. The Host Government should liaise with its relevant departments to ensure that immunities and privileges are fully accorded to AU Staff and Diplomats of Member States at the airport.
- iii) The Sub-Committee regrets the problem encountered by the Permanent Representative of the State of Eritrea and his spouse at the Bole International Airport on 14 May 2014, and urges the Host Government to

accord to the Permanent Mission, its Head and diplomatic staff of Eritrea the same privileges and immunities it accords to diplomats from other AU Member States as well as abide by its hosting obligations.

- iv) The Sub-Committee notes the financial constraints and more particularly the late approval of the supplementary budget to undertake the study on the Host Agreements and report to the Sub-Committee at the January, 2016 Summit. The Sub-Committee however, urges the AUC to finalize the study on the Host Agreements and present a report to the Sub-Committee in April 2016.
- v) The Host Government should synchronize the exercise of the duty free privilege in Ethiopia in transactions where dollars are the required mode of payment. The Host Government should also review the rules governing the purchase of tickets and buying of duty free items in Addis Ababa in Dollars while Diplomats and AUC staff members are legally restricted from withdrawing dollars and making the necessary payment.
- vi) The Host Government should expedite the implementation of the Quick Wins and effect the money transfer.
- vii) The AUC and the Host Government should work out a timetable for the drafting and finalization of the relevant guidelines to facilitate the implementation of the Host Agreement.
- viii) The Staff members of the Commission should respect the laws of the Host Government and the Commission should respond in a timely manner to communication from the Federal Democratic Republic of Ethiopia Ministry of Foreign Affairs bringing to its attention alleged infractions by staff members of the Commission.
- ix) The Host Government to advise the Commission before changing any rules that may affect the rights and privileges of Staff members of the Commission and the Permanent Representatives as well as their personnel accredited to the African Union.
- x) The Commission should develop guidelines on the issuance of visas to individuals in the employment of the Commission, not fully covered in the African Union Staff Regulations and Rules and submit to the Host Government for its consideration.
- xi) The Host Government is encouraged to borrow a leaf from other countries which host International Organisations the modalities those countries use to implement the diplomatic privileges and immunities.

V. CLOSING

8. In closing the meeting, the Chairperson of the Sub-Committee thanked all delegates for attending and particularly the Host Government for addressing the issues that were raised.

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