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

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

I. INTRODUCTION

1. The members of the PRC Sub-Committee on Headquarters and Host Agreements, met on 17 March 2017 at the AU Headquarters in Addis Ababa, Ethiopia, to discuss issues arising in relation to the implementation of the Agreement between the African Union and the Federal Democratic Republic of Ethiopia, on the Headquarters of the African Union.

2. The meeting was chaired by H. E. Ambassador Nyolosi Mphale, Permanent Representative of the Kingdom of Lesotho to the African Union.

II. ATTENDANCE

3. The meeting had in attendance the following members of the PRC Sub-Committee:

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

4. The Federal Democratic Republic of Ethiopia (the Host Country) was also represented at the meeting.

III. CONSIDERATION AND ADOPTION OF THE DRAFT AGENDA AND REPORT OF THE LAST MEETING OF THE SUBCOMMITTEE

5. The Chairperson, after welcoming the members of the Sub-Committee to the meeting, introduced the Draft Agenda with the following items for consideration:

- i) Adoption of the draft agenda;
- ii) Matters arising from the last meeting of the PRC Sub-committee:
 - a) Development of modalities for reviewing and drafting guidelines.
 - b) Finalization of study on challenges in implementing the respective host agreements of AU Organs and Institutions.
- iii) Briefing on the outcome of the meeting of the Joint Headquarters Implementation Committee;
- iv) Briefing by the Host Government;

- v) Any other business (AOB);
- vi) Closing.

6. The Host Country proposed the following two (2) additional agenda items for consideration under AOB:

- 1) Request for consideration of Ethiopia for full membership of the PRC Subcommittee on Headquarters and Host Agreements.
- 2) Request to establish a liaison office for the Host Country within the AUC.

7. The Chairperson also introduced for consideration and adoption, the report of the last meeting of the Subcommittee held on 17 March 2016. Mozambique brought to the attention of the meeting that it was duly represented at the said meeting and the Commission was requested to make the necessary amendments.

8. The agenda of the meeting was adopted with the additional proposed items and the report of the last meeting was also adopted with the amendments to the attendance list.

IV. DELIBERATIONS

1. Development of a set of guidelines for the implementation of the Headquarters Agreement

9. The Commission, represented by Mr. Adewale Iyanda, Senior Legal Officer within its Office of the Legal Counsel, briefed the Sub-Committee on the key discussions and outcomes of the last Meeting of the Joint Headquarters Implementation Committee (JHIC) which was held on 12 January 2017 between the representatives of the Host Country and the AU Commission. Referring to paragraph 3 of the report of the meeting, THE Commission informed the Subcommittee on the agreement reached at the meeting of the JHIC by the Commission and the Ministry of Foreign Affairs of the Federal Democratic Republic of Ethiopia (MOFA) to jointly constitute a committee tasked with drawing up a set of guidelines for addressing key challenges arising from the interpretation and implementation of the Headquarters Agreement.

10. Encouraged by the initiative of the JHIC, the Chairperson and other members of the Subcommittee requested the Commission and the Host Government to hasten the process of developing the guidelines for their consideration by the end of April 2017.

2. Finalization of the Study on Host Agreements in Member States Hosting AU Organs and Institutions.

11. The Commission briefed on its efforts to gather the necessary information from the respective Organs and Institutions of the AU through numerous written requests for their comments on the implementation of their respective host agreements. However, only one response has been received from the Banjul Commission on Human and Peoples' Rights. In this regard, the AU Commission sought to be guided by the Subcommittee on the way forward with the Study given the on-going Reform of the Union process being headed by President Kagame of Rwanda.

12. The representative of Eritrea proposed that the commission should once again urge the institutions and organs to provide the necessary information and carry on with the studies as planned. The Chairperson of the Subcommittee agreed that the study should carry on as planned and does not foresee it being affected by the reform.

3. Briefing on the outcome of the meeting of the Joint Headquarters Implementation Committee

a) The Commission gave a brief overview on the outcome of the last meeting of the JHIC as detailed in its report (attached), namely on the following issues:

- i) Communication to the AU Commission when rules or processes are changed;
- ii) Issuance of Ethiopian Drivers Licences in the English language;
- iii) Money transfer system;
- iv) Introduction of body search of VIP's at the VIP section of the airport;
- v) Tax imposed on repatriation of vehicle of a deceased staff member;
- vi) Imposition of 2% tax on importation of new vehicles by AUC Staff;
- vii) Federal and Supreme court orders on the matter of Amare Wolde;
- viii) Detention of a staff member without explicit waiver of immunity;
- ix) Limit on foreign exchange withdrawals;
- x) Interpretations and categorization of the privileges and immunities under the Headquarters Agreement.

b) The Subcommittee deliberated on the above-listed issues and made the following observations:

- i) The issue of communication of the changes to the rules to the Commission and the Member States is important so that the affected persons are pre-warned of the changes e.g. the VIP members being searched. The issue has been long standing and implementation is now imminent;
- ii) On the issue of detention of staff members of the AU without express waiver of immunity, the Subcommittee proposed that the Host Government should sensitize its agencies more on the laws of Ethiopia vis-à-vis the Host Agreement. Furthermore, that the Commission should also sensitize its staff members on the importance of abiding with the laws of the Host Country;
- iii) The Host Government, in collaboration with the Commission, should look at other more flexible options of dealing with violations by officials other than detention;
- iv) Embassies are not informed when their nationals are in the detention of the Host Government and so cannot fully play their role as embassies;
- v) Ceasure of money from non-Ethiopian nationals continues to linger despite a committee being set up to address the issue;
- vi) Detention of non-Ethiopians nationals in transit for not holding visas and treatment of officials of embassies;
- vii) On the issue of repatriation of the personal effects of a deceased staff member of the Commission, the Host Country was requested to make all efforts to reduce the distress of the family of the deceased and ensure ease in the administrative processed for the repatriation;
- viii) The Host Government should disseminate the Host Agreement to all embassies and offices of the Member States of the Union;
- ix) The representative of Eritrea expressed disappointment that a pending issue relating to the denial by the Host Government of an entry visa to an Eritrean national looking to resume work at the Commission, had not been included on the agenda of the Subcommittee and sought an explanation:
 - a) The Commission clarified that the issue is being handled by the relevant departments of the Commission and was taken up by the former Chairperson of the Commission and will remain ceased on the issue.

- b) The Chairperson of the Subcommittee proposed that the issue be made a permanent agenda item of the meetings of the Subcommittee until it is resolved.
- c) Urged the Host Government to take more seriously, the Host Agreement, in particular the issues of privileges and immunities, which should be applied in accordance with the provisions of the staff regulations and rules that all staff are welcomed regardless of nationality.
- x) Appreciates the efforts and provisions made by Ethiopia for the continent but calls for greater efforts in the implementation of the Host Agreement;
- xi) Requested the members of the Subcommittee and the Commission consider the possibility of reviewing the Host Agreement which has been in force for a long time and proposed that this should form part of the guidelines to be developed.

c) The Host Government responded to the observations of the Subcommittee as follows:

- i) The issue of the repatriation of personal effects of a deceased staff member is being reviewed by the Government in line with the legal provisions of the Host Country and apologized for the delay;
- ii) Acknowledged the importance of communicating changes to the rules and processes in good time and will make the effort in collaboration with the Commission to identify the local laws that are affected by the Host Agreement;
- iii) Will propose to the relevant authorities, the development of an awareness Programme to be communicated to all authorities of the Government on how to deal with issues relating to the Host Agreement;
- iv) Working on making changes to the driving licenses' system and the process to ensure translation of the licenses in the English language;
- v) Working on training all officials including customs and police personnel, among others, in charges of applying the privileges and immunities of AU Staff;
- vi) Requested immediate communication of specific experiences pertaining to the searches conducted on VIPs;

- vii) The requirement of medical tests for issuance of drivers' licenses has not been implemented and specific cases should be reported to the MOFA for action;
- viii) The issue of 2% tax was already communicated to the Ministry of Finance for the application of a waiver and the Commission subsequently notified;
- ix) Has a different view from the Commission on the issue of privileges and immunities which is hoped to be resolved by the Committee drafting the guidelines;
- x) The case of Amare Wolde will be settled amicably with the Commission;
- xi) On the issue raised by Eritrea – this will be handled by the highest authorities and will communicate outcome to the Commission;
- xii) Apologized for the experiences of Members of the Subcommittee and acknowledged that these treatments are not acceptable and will make all efforts to address same and therefore urged such incidents to be formally tabled with the MOFA;
- xiii) Will communicate with the Commission on the areas that may cause problems under the Host Agreement;
- xiv) Will gather more information and report back to the Commission on the issue relating to the exchange of local currency for US Dollars for diplomats returning to their home countries.

d) Clarifications by the Legal Counsel

- i) The Legal Counsel reiterated the applicability of immunities from personal arrest and detention to Staff Members in accordance with the Host Agreement, the OAU General Convention on Privileges and Immunities and the Vienna Convention as well as the need for the Host Government to make a request to the Chairperson of the Commission for a waiver of that immunity before executing an arrest or detention order;
- ii) Furthermore, that the immunity of Staff Members is in the interest and for the benefit of the Commission rather than the individual;
- iii) The violation of these legal provisions is best exemplified by the continued incarceration of a staff member for over a year without any respect for the role of the Chairperson in making the determination on his immunity;

- iv) In response, the Host Government stated that this was a matter of differing opinions on the interpretation of the law and hoped that this will be addressed in the guidelines;
- v) The Legal Counsel further clarified that the issues relating to non-diplomatic nationals in transit for instance should be dealt with bilaterally as it is not covered under the Host Agreement. However, official attendees of the Permanent Representatives including those attending conferences and staff members are covered.

V. ANY OTHER BUSINESS

a) Request for consideration of Ethiopia for full membership of the PRC Sub-committee on Headquarters and Host Agreements:

13. The representatives of the Host Government, while recognising that the issue of membership of the Subcommittee should be discussed at the regional level, presented a case for their inclusion in the Subcommittee as full members, highlighting that international practice supports the notion that the Host Country be represented at all meetings in order to effectively respond to the issues raised.

14. While the representative of Senegal did not object to Ethiopia's request for membership, the representative of Gabon expressed that the focus should be on addressing the pending issues rather than membership, while the representative of Congo expressed that Ethiopia should not be part of the Subcommittee due to the possible conflicts of interest. The representative of Eritrea added that based on the fact that the Subcommittee is also about Host Country Agreements, not just Headquarters - other Member States hosting AU organs and institutions will also have to be given membership.

15. The Chairperson sought clarification on the issue from the Legal Counsel, who urged the committee to align their considerations along the following issues:

- a) How this will affect other Host Governments.
- b) How will the Committee be composed given that the region has to nominate the permanent members of the Sub-Committee?
- c) Decision-taking is for consideration by the higher level organs.
- d) There are possible conflict of interest implications if Ethiopia has to decide on the issues to which it is also required to answer.

16. The Chairperson requested the Office of the Legal Counsel to provide an elaborate guidance on this issue.

b) Request to establish a liaison office for the Host Country within the AUC

17. The Host Government also made a case for the establishment of a liaison office in order to, among others, be able to better relate with the Commission on issues relating to the implementation of the Headquarters Agreement.

18. The representatives of Eritrea and Senegal were not opposed to the proposal, but requested the Commission and the Host Government to hold such deliberations, taking into consideration the expected added value in line with the mandate of the Subcommittee, as well as possible cost implications.

19. At the request of the Chairperson, the Legal Counsel weighed in on the issue, recognising that the liaison office would help with the facilitation of work. However, also identified the need to look into the cost implications.

20. The Commission in collaboration with the Host Government, were requested to look into this issue and present a detailed report at the next meeting of the Subcommittee.

VI. RECOMMENDATIONS

21. The members took note of the report, and recommended as follows:

- i) the Host Country in consultation with the Commission should address the outstanding concerns listed in the matrix of pending issues;
- ii) the Host Country and the Commission should expedite the development of the Guidelines in order to reduce misunderstandings on the application of the Headquarters Agreement;
- iii) the Commission should bring to the attention of the PRC Subcommittee on Headquarters and Host Agreements other issues relating to implementation of Host Agreements for Organs, Institutions and Offices of the African Union hosted outside the Headquarters.

VII. CLOSING

22. The Subcommittee proposed the convening of a meeting of the PRC with the Host Government to look at the quick wins identified at previous meetings of the Subcommittee and how to implement them.

23. The Chairperson closed the meeting.

DRAFT DECISION ON HEADQUARTERS AND HOST AGREEMENTS
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The Executive Council,

1. **TAKES NOTE** of the Report of the PRC Sub-Committee on Headquarters and Host Agreements for the period 27 June 2016 to 01 July 2017 together with the matrix of pending issues contained therein;
2. **COMMENDS** the spirit of fraternity exerted in addressing matters between the Host Country and the Commission;
3. **ALSO COMMENDS** the Sub-Committee on Headquarters and Host Agreements for its guidance in fulfillment of the Headquarters Agreement;
4. **NOTES WITH CONCERN** the numerous outstanding matters in the matrix of pending issues;
5. **URGES** the Host Country to accelerate the implementation of outstanding matters as listed in the Matrix of pending issues and **FURTHER REQUESTS** the Commission and the PRC Sub-Committee to undertake consultations with the Host Country with the view to reaching consensus that would guarantee the implementation of the Headquarter Agreement;
6. **REQUESTS** the Commission to bring to the attention of the PRC Subcommittee on Headquarters and Host Agreements other implementation issues related to Organs, Institutions and Offices outside the Headquarters of the Union;
7. **REQUESTS** the Commission to report on the implementation of this decision during the AU Summit of July 2018.

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