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REPORT OF THE 5TH EXTRAORDINARY SESSION OF THE STC
ON JUSTICE AND LEGAL AFFAIRS,
13-14 JUNE 2021

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**Fifth Extra Ordinary Session of the Specialized Technical
Committee on Justice and Legal Affairs (Ministerial Meeting)
13-14 June 2021
Video-conference**

**STC/Legal/Min/Report
Original: English**

REPORT

I. INTRODUCTION

1. Pursuant to the Rules of Procedure of the Specialized Technical Committee on Justice and Legal Affairs (STC-JLA), the Commission in consultation with the Bureau, convened the Fifth Extra Ordinary Ministerial Session of the STC-JLA from 13-14 June 2021 in order to consider various draft legal instruments. The Ministerial Session was preceded and prepared by a meeting of Government Legal Experts from 05 -11 June 2021.
2. The STC-JLA comprises Ministers of Justice and Attorneys General or Keepers of the Seals, Ministers responsible for Human Rights, Constitutionalism and the Rule of Law or such other Ministers or authorities duly accredited by the Governments of Member States.

II. ATTENDANCE

3. The following thirty-nine(39) Member States were in attendance:

Algeria, Angola, Botswana, Burkina Faso, Cameroon, Comoros, Congo, Djibouti , DRC, Egypt, Eritrea, Ethiopia, Equatorial Guinea, Gambia, Ghana, Guinea, Kenya, Lesotho, Libya, Madagascar, Malawi, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger ,Nigeria, Rwanda, SADR, Senegal, Sierra Leone, South Africa, South Sudan, Sudan, Togo, Uganda, Zambia and Zimbabwe.

4. The meeting was also attended by the following AU Organs and Institutions:

ACERWC, AfCHPR, AFCFTA Secretariat, AUABC, AUC, AUDA-NEPAD, and APRM.

III. OPENING OF THE MEETING

Statement by the Legal Counsel of the African Union Commission

5. In her opening remarks, Amb. Namira Negm (Dr.) the Legal Counsel of the African Union welcomed the Hon. Ministers and Attorneys General to the Ministerial Session of the Fifth (5th) Extraordinary Session of the Specialised Technical Committee (STC) on Justice and Legal Affairs (JLA). She cited Rule 12 of the Rules of Procedure of the STC-JLA and Decision **EX.CL/Dec.1107(XXXVIII)** as the legal basis for the convening of the Extra Ordinary Session.
6. She recalled the meeting of the Government Legal Experts that preceded the Ministerial Session from 5 to 11 June 2021 and enumerated the four (4) draft legal instruments that had been considered and recommended for the consideration of the Ministers.

7. The Legal Counsel recalled that two (2) of the draft legal instruments on the Agenda, namely: Draft African Union Staff Regulations and Rules; and Draft African Union Financial Rules and Regulations had been revised in 2010 and 2014 respectively and that the current process was a review of those draft legal instruments, which were currently in force, until amended by the Assembly of the Union.
8. She brought to the attention of the Hon. Ministers / Attorneys General that the SRR were an integral part of the contract of employment of every staff member, which bound both the employer and employee. She therefore reminded the Hon. Ministers and Attorneys General that it was an established legal principle that the amendment of conditions of service of staff must not be retroactive and that the acquired rights of employees must be preserved. She therefore noted that discussions in previous Meetings on the review of the SRR did not focus on the issue of acquired rights of employees and left the issue for consideration of this STC because of its pure legal nature.
9. The Legal Counsel appealed to the wisdom and conscious of the Hon. Ministers against altering the conditions of service of staff in a way that was not favourable to the employees in order to avoid legal suits with huge financial implications to the Union.
10. Amb. Negm also implored the Ministers to uphold the status of AU employees as international civil servants, and not national civil servants as erroneously perceived, by others.
11. Next, she highlighted the mandate and some of the functions of the STC-JLA to consider special legal issues at the request of the Executive Council or the Assembly of the Union and to carry out any other functions assigned to it by the Executive Council or the Assembly.
12. Lastly, she pledged the availability of the Office of the Legal Counsel, to assist in facilitating the work of the STC-JLA and she wished the Hon. Ministers and Attorneys General fruitful deliberations.

Statement by the Chairperson of the of the STC-JLA

13. The meeting was opened by the Chairperson, Hon. Dawda Jallow, Attorney General and Minister of Justice of the Republic of the Gambia. He expressed his gratitude for the attendance of all Hon Ministers / Attorneys General and Keepers of the Seal which attendance signified the importance that Member States attached to the essential issues that would be deliberated upon, which was geared towards the achievement of the objectives of African Union.
14. On behalf of the Government and people of The Gambia, he expressed his heartfelt thanks and appreciation for the support that had been rendered to him since he took over the Chairmanship of the STC-JLA.

15. He regretted the postponement of the 6th Ordinary Session of the STC-JLA in December 2020 due to a lack of quorum but he was hopeful that they would reschedule in order to discuss the submissions done by the Governments 'legal experts on some of the critical legal instruments of the Union.
16. Hon. Jallow thanked the Experts for meeting virtually from 5-11 June under tedious circumstances and for deliberating on issues and preparing the ground for their work.
17. He extended his appreciation to the Secretariat of STC-JLA under the stewardship of the Legal Counsel for adapting to the circumstances of the COVID-19 pandemic and initiating video conferencing opportunities as an alternative to face to face sessions and he hoped that the pandemic would soon be overcome and that they would resume normal lives.
18. He noted the Four (4) Draft Legal Instruments that had been recommended by the Experts for the Ministers 'consideration and acknowledged their enormous task, especially considering their circumstances and work schedules. However he hoped that the deliberations would provide opportunities for greater collaboration between all the different stakeholders and he encouraged all Member States to give serious consideration to the documents before them.
19. The Chairperson stated that the documents before them were vital for the progressive development of the African Union as an Institution and its capacity to effectively spearhead the processes toward the realization of Agenda 2063 aspirations.
20. The Chairperson stressed the importance of the draft legal instruments which would form part of the conditions of appointment or employment contract between the Union and eligible officials and the processes to ensure that there were viable fiduciary measures in the management of the Union's meagre financial resources.
21. He stressed the importance of reviewing the draft legal instruments for the realization of AU Agenda 2063 to ensure the progressive achievement of good conditions of service for the AU staff as well as a good retirement package for retiring outgoing ones.
22. The Chairperson expressed hope that the Ministers, primary overseer of the issues relating to Justice, Constitutionalism and Human Rights, would work with diligence and a single-minded determination in order to accomplish the task before them, considering that the outcome of the meeting would be forwarded to the Summit of AU Heads of States in 2022 through the Executive Council.
23. He concluded by wishing all participants fruitful deliberations and welcomed and congratulated the Deputy Chairperson (DCP) of the AUC for her recent election and appointment by the heads of states and governments in February 2021.

Statement by the Deputy Chairperson of the African Union Commission

24. In her welcoming remarks, Her Excellency, the DCP, Dr. Monique Nsazabaganwa, welcomed the Hon. Ministers and Attorneys General to the Fifth Extraordinary Session of the STC-JLA and expressed her gratitude for taking their time off from their busy schedules and engagements in-order to consider draft legal instruments that were of importance to the functioning and reform process of the Union.
25. She informed the Hon. Ministers and Attorneys General that she had the honour to attend the session of the Government legal experts from 5-11 June, 2021. She congratulated the legal experts for the outstanding and tireless manner in which they conducted and concluded their extensive deliberations including improving the accountability measures, in the draft legal instruments.
26. She recalled Executive Council Decision **EX.CL/Dec.1107 (XXXVIII)** whereby the Executive Council requested the STC to consider the Staff Regulations and Rules taking into account the issue of conditions of service of the staff including promotion and upgrading of staff as well as staff benefit and allowances that is competitive and comparable of other international organisations as stipulated in Article 20 (12) of the Statute of the Commission in order to retain and attract the best African talent across the continent.
27. She informed the Hon. Ministers and Attorneys General that the Commission, in line with the Executive Council Decision, conducted a benchmarking exercise in order to compare the current conditions of service of AU Staff with those in comparable organisations. She said that the outcome of the benchmarking exercise formed the basis of the Commission's proposals relating to: the periodicity of the review of staff salaries, allowances and other related benefits; the age of dependants eligible to benefit from education allowance; the maximum number of accrued leave days; the statutory retirement age; and the composition of the investment committee.

She appealed to the Hon. Ministers and Attorneys General to positively consider their proposals in line with Article 20(1) of the Statute of the Commission, and Executive Council Decision **EX.CL/Dec.1107(XXXVIII)**.

28. On behalf of the Chairperson and the Management of the Commission, the DCP drew the attention of the Hon Ministers and Attorneys General to the fact that the acquired rights of the staff members should be guided by the conditions of service of which the staff were granted when they started their contractual obligation with the Union and should be of paramount consideration. She cautioned that removal of some of the acquired rights, which was a principle that had been affirmed by various international tribunals, might attract legal cases against Management with substantial financial implications. She therefore appealed to the Ministers and Attorneys General to avoid any legal processes that may bring additional financial implication to Member States and derail the reform process.

29. The DCP stated that as the review exercise had tightened performance and accountability measures for employees, it was also imperative for the employer to do their part and invest in human capital and improve the conditions of service.
30. She expressed her belief in a motivated workforce which goes above and beyond to do what is in the best interest of the organisation and she pledged her availability, together with her team, throughout the Session, in order to provide any information required to facilitate the deliberations.
31. She concluded by wishing the Hon. Ministers and Attorneys General fruitful deliberations.

IV. CONSIDERATION AND ADOPTION OF AGENDA

32. The Commission introduced the provisional agenda, and proposed an amendment to the number of draft instruments on the provisional agenda. The proposal was to split the Draft AU Staff Pension Scheme into two draft instruments.
33. The Meeting adopted the agenda as amended as follows:
 1. Opening Ceremony
 2. Consideration and adoption of the provisional agenda
 3. Organization of work
 4. Consideration of the Report of the Meeting of the Government Legal Experts
 5. Consideration of draft legal instruments:
 - i. Draft African Union Staff Pension Fund Scheme Rules;*
 - ii. Draft African Union Staff Pension Trust Deed;*
 - iii. Draft Revised African Union Staff Regulations and Rules;*
 - iv. Draft Revised African Union Financial Rules and Regulations;*
 6. Any Other Business
 7. Adoption of draft legal instruments and draft report
 8. Closing ceremony

V. CONSIDERATION OF THE DRAFT REPORT OF THE MEETING OF GOVERNMENT LEGAL EXPERTS

34. The Chairperson of the meeting of the Government Legal Experts Ms. Kumba Jow, Principal State Counsel of the Republic of the Gambia, presented the Report of the meeting that took place from 05 to 11 June 2021. Were she highlighted the deliberation on each of the four (4) legal instruments, including the Commission proposals presented by H.E the Deputy Chairperson.
35. She ruled to escalate the Commission proposals to the Ministers for their Considerations.
36. The issue of functional immunities of Nationals of any host Country was raised and the OLC was requested to amend the relevant provision in the SRR in line with the Chair of the Experts report.
37. The meeting requested the OLC to align the different legal texts where relevant to avoid any contradiction between different provisions and languages.
38. The meeting agreed that the Report accurately reflected deliberations that transpired during the Experts' Session and it was adopted, with the slight amendment.

VI. CONSIDERATION OF THE DRAFT LEGAL INSTRUMENTS

(a) Consideration of the Draft African Union Staff Pension Fund Scheme Rules

39. The Draft African Union Staff Pension Fund Scheme Rules were adopted without any amendments.

(b) Consideration of the Draft African Union Staff Pension Trust Deed

40. The Draft African Union Staff Pension Trust Deed was adopted without any amendments.

(c) Consideration of the Draft African Union Staff Regulations and Rules

41. The Legal Counsel of the African Union informed the Meeting that there were proposals that had been made by the Commission to the Experts pertaining to the draft revised SRR and draft revised FR, which required the consideration of the Ministers due to the legal issue of acquired rights of AU Staff as well as to adhere and implement Decision **EX.CL/Dec.1107(XXXVIII)** adopted in February, 2021 whereby the Executive Council gave an express mandate and requested the STC-JLA to consider the SRR while taking into account "*the issue of conditions of service of the staff including promotion and upgrading of staff as well as staff benefit and*

allowances that is competitive and comparable to other international organizations as stipulated in Article 20 (12) of the Statute of the Commission, in order to retain and attract the best African talent across the continent,”

42. The Legal Counsel submitted that revision of the SRR in a manner that adversely altered the current conditions of service of staff had the potential of attracting legal suits with huge financial implications to the Union. She therefore invited the Ministers to consider the proposed amendments by H.E the Deputy Chairperson.
43. There was opposition to the consideration of the Commission’s proposals on the basis that these had already been discussed and agreed upon during the Experts Session. Further, the STC-JLA was not well acquainted with financial, administration and human resources issues to delve into substantive matters which had been sufficiently deliberated and discussed by sectorial experts for a very long time. The STC should therefore limit its discussions to legal scrubbing.
44. Although it was noted that there were outstanding matters from the Experts’ Session for the consideration of the Ministers, it was also noted the Report of the Experts Session had in several paragraphs mentioned that the Experts Session concluded that certain matters would be brought to the attention of the Ministers, such as failure by the experts to substantively discuss the Commission’s proposals, in contravention of Decision **EX.CL/Dec.1107 (XXXVIII)**. Further it was noted that there was nothing precluding the Ministers from discussing the proposals made by the Commission as the Experts recommendations were not binding on the Ministers.
45. The Commission, through its Deputy Chairperson (DCP) H.E Dr. Monique Nsazabaganwa, was therefore requested to present their proposed amendments to the SRR and FRR.
46. The Deputy Chairperson presented the following four(4) proposed amendments to the SRR:
 - a) **Review of Salaries, Allowances and other related benefits (Regulation 5(b))**
47. The draft rules provide for the review of salary and benefits every five (5) years, except for Housing Allowance, Post Adjustment Allowance and Non-Residence Allowance which shall be carried out every three (3) years unless determined otherwise.
48. H.E. the Deputy Chairperson proposed an amendment to the provision on the review of salaries and benefits of the AU Staff from five (5) years to three (3) years in line with international standards from comparable international organizations and a review of housing allowance, post adjustment allowance and non-residence allowance from Three (3) years to One (1) year, in line with international best practices. She cited the European Union (EU), where **on annual basis** the European Commission submits a report to the Council of Europe on fixing the rate of allowance for living conditions; similarly the African Development Bank (AfDB)

reviews the level of remuneration of management and professional staff annually; in the Economic Community of West African States (ECOWAS) there is a periodic review of general staff remuneration scale.

b) Maximum Child Age - Education Allowance (Rule 17 ; 23.1(i)(b))

49. The draft rules provide for the education allowance for eligible political appointees, special appointees and regular staff members on the approved and budgeted structure in respect of each eligible unmarried dependant child in full-time attendance in a formal educational institution, provided such child is not more than: **Twenty-one (21) years of age** where the parent staff member was recruited after 1st July 2003.
50. H.E The Deputy Chairperson proposed amending the provision so that the AU should pay education allowance for all eligible staff dependants, until the age of **Twenty- Four (24) years**, in line with international best practices. She cited the United Nations (UN) where a grant shall be payable in respect of the child up to the end of the fourth year of post-secondary studies; in the European Union (EU), allowance shall commence on the until the child finishes his/her education or at the end of the month in which the child reaches the age of twenty-six(**26th**), whatever is the earliest; and in the Economic Community of West African States (ECOWAS) , education grant shall cease at the end of the year in which a dependent child attains his/her twenty- fourth (**24th**) years.

c) Accrued leave days – Accumulated leave days (Rule 47.2(d):

51. The draft rules provide that for eligible elected Officials and all categories of staff members, annual leave carried forward shall not be accumulate beyond forty-five (45) working days at the end of their career. Any balance beyond the stipulated number of leave days shall be forfeited at the separation of the eligible Official, special appointee and staff member.
52. H.E The Deputy Chairperson proposed to revert back to the 2010 SRR positions, whereby a staff member who at the time of his or her separation from service has accrued leave shall be entitled to payment in cash in lieu of leave. The accumulated leave shall not exceed one hundred and ten (110) days for regular staff members and fifty-six (56) days for short-term contracts. In the alternative, the DCP proposed 90 days to be applied for the incoming staff in line with international best practices in ECOWAS. She cited the United Nations (UN) where staff members who hold fixed-term or continuing appointment may accumulate and carry forward up to 60 working days of annual leave; at the African Development Bank (AfDB) the total amount of accumulated annual leave which may be carried, up to an aggregate maximum of sixty (60) days; In the Economic Community of West African States (ECOWAS) it is provided that at the time of separation if the staff member has accrued annual leave, he/she should be paid a sum of money equal to his/her salary or wages for the period of such accrued leave up to a maximum of ninety (90) working days.

d) Statutory Retirement age (Rule 88.1):

53. The draft rules provide that all staff members (regular, fixed term or appointment of limited duration), except for elected officials, political appointees and special appointees, shall not be retained in the service of the Union beyond the age of sixty (60) years following the last day of the month in which he or she celebrates his or her 60th birthday.
54. H.E The Deputy Chairperson proposed to increase the retirement age to 63 years old in line with practice in other comparable international organizations. Alternatively the retirement age should be set at Sixty (60) years of age with an exceptional extension of 12 months, twice in line with the current SRR and international best practices. She cited the United Nations (UN) whereby the Joint Staff Pension Fund Regulations states that retirement age will be Sixty-Five (65) years of age; in the EU the retirement age is also Sixty-Five (65) years, while the pensionable age is Sixty-Six (66) years of age. In the ECOWAS, Staff members shall retire from service at the age of sixty (60), however the Executive Secretary may decide to retain them on a contract which shall not exceed an accumulated maximum of five (5) years.
55. Majority of Member states intervened supported the proposals presented by H.E the deputy Chairperson, the following were some of the arguments in support of the proposed amendments:
- a) The Executive Council, through Decision **EX.CL/Dec.1107(XXXVIII)** gave a clear mandate to the STC-JLA to consider the SRR taking into account the issue of conditions of service of the staff that is competitive and comparable to other international organizations in order to retain and attract the best African talent across the continent
 - b) The STC-JLA would make their recommendations on the proposed amendments accordingly and any financial implications would be considered by the Executive Council, who are deemed to have been well aware of the accompanying financial implications of the competitive conditions of service.
 - c) Although the proposed amendments had been previously discussed in other meetings, there was no binding decision to preclude further discussions on the matter by the Ministers;
 - d) Three years was a reasonable period to undertake salary review in view of inflation considerations. Further, an upward adjustment of salary would be subject to member states' decision;
 - e) To ensure competitive conditions of service, comparable to other international organizations as stipulated in Article 20 (12) of the Statute of the Commission in-order to retain and attract the best African talent across the continent, as part of the reform process of the AU;

- f) To avoid infringing on acquired rights of staff which had the potential of legal suits and financial liabilities on the Union;
 - g) To adjust the years of staff dependants eligible for education allowance in order to harmonize staff conditions of service, irrespective of individual dates of assumption of duty, children should be treated equally and afford same conditions irrespective of the status of their parents;
 - h) To grant the eligibility up to 24 years age to only disable staff and staff that recruited before 2003 would be consider a discriminatory treatment to staff members of the same organization;
 - i) To adjust the retirement age in order to accommodate the African realities and life expectancy, as well as to ensure transfer of knowledge to youths.
 - j) To adjust the retirement age since African youth were sufficiently accommodated within the AU new structures with all P1 and P2 positions reserved for them hence adjustment of retirement age would not affect them.
 - k) Adjustment of retirement age would boost the investment prospects of the AU Pension Fund.
56. However other group of Member States apposed the proposals ,The following were some of the arguments in opposing the proposed amendments:
- a) There was no need to discuss the proposed amendments since they had been tabled before the experts 'session and there had been no outstanding matters;
 - b) The review of the SRR and the FRR had been ongoing since 2019 and there were several meetings and forums, including F15, that had discussed and settled the matters at hand.
 - c) The STC-JLA, is not competent enough to consider financial, administrative and human resources matters without the inputs and opinion of experts.
 - d) Decision **EX.CL/Dec.1107(XXXVIII)** should be considered in line with the Rules of Procedure of the STC – JLA whereby focus should be on legal matters and not financial or administrative matters.
 - e) There would be huge financial implications to Member States, most of whom are in the least developed category and who were already struggling to cope with the covid-19 situation.
 - f) Africa is comprised mostly by youth who need empowerment and job opportunities hence the retirement age should not be adjusted upwards.
 - g) The majority age in Africa is normally 21 years old hence the education allowance should not go beyond that age, except for children with disabilities.

- h) Accumulation of many leave days and converting them to cash should be discouraged and staff should be encouraged to proceed on leave as current trends are towards refreshed staff members.

Conclusion

- 57. Acquired rights should be respected for current staff since its part of contractual obligations of the organization to avoid any possible liability and financial implications on Member States.
- 58. Due to the divergent views expressed in the preceding paragraphs the Ministers decided to refer the four (4) outstanding matters in the Draft Revised AU SRR and the proposed amendments to the Executive Council for consideration.

(d) Consideration of the Draft African Union Financial Rules.

- 59. H.E the Deputy Chairperson proposed to remove the Chairperson of F15 or his/her Representative from the composition of the Investment Committee (Rule 73(g)). The basis was that the F15 was part of Member States' oversight mechanism.
- 60. The Meeting agreed to the proposal subject to mandatory and annually reports by the investment committee, through the Commission, to the PRC.

Conclusion

- 61. The Draft AU Financial Rules were adopted as amended.
- 62. The OLC was requested to align the FR to avoid any inconsistency between the same provisions as well as different languages.

Submission of the AfCFTA Secretariat

- 63. The Secretary General of the AfCFTA Secretariat raised a concern that the ongoing revision process of the SRR and FRR conflicted with the autonomous nature of the AfCFTA Secretariat which had a treaty based mandate to promulgate its own SRR and FRR. He therefore suggested that where the FRR or SRR provisions would have an impact on autonomous organs like the AfCFTA Secretariat, there should be a caveat excluding the application to the autonomous organs. Alternatively, he proposed that they should be allowed to develop their own regulations in order to avoid conflict between the SRR or FRR and the governing legal instrument of the autonomous institutions.
- 64. However the Legal Counsel stated that there was no perceived or actual contradiction between the SRR or FRR provisions and the governing instrument of the AfCFTA. She observed that although the AfCFTA Secretariat was autonomous, it was still within the Union and the AfCFTA Secretariat should ensure that their regulations do not contradict the SRR and FRR which were of general application

to the Union and which are referred to in so many provisions of the Agreement establishing the AfCFTA.

65. The Chairperson, noted that the Secretary General had not specified the perceived or actual contradictions between the SRR or the FR and the Agreement establishing the AfCFTA. He therefore concurred with the observations of the Legal Counsel and there were no discussions on the matter, indicating concurrence by the Member States.
66. The Secretary General informed the meeting that the Council of Ministers of the AfCFTA would refer the matter to the Executive Council.

VII. ANY OTHER BUSINESS

67. Namibia supported by other delegations requested that a report on the financial implications of the four (4) outstanding matters should be presented to the next Executive council to assist Member states to take an informed decision.

VIII. ADOPTION OF THE REPORT OF THE MINISTERIAL MEETING

68. The Ministerial Meeting adopted its Report and recommended the draft legal instruments with the four (4) outstanding matters to the Executive Council for consideration and adoption.
69. The chairperson requested the Office of the Legal counsel to harmonize different Legal texts and cross checking the different references as well as languages to ensure consistency.

IX. CLOSING CEREMONY

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