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THE COMMON AFRICAN PERSPECTIVE FOR VALLETTA SUMMIT ON MIGRATION

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Introduction

At their special meeting held on 23 April 2015, the European Union (EU) leaders announced that they will hold a summit in Malta on migration to which their African counterparts would be invited. Africa and the EU leaders will, therefore, hold a summit on 11-12 November 2015, in Valletta, Malta on Migration and mobility of persons. In their Declaration at the 4th Africa-EU Summit in Brussels in April 2014, African and EU leaders Committed to “further dialogue and deepening of our cooperation in the field of migration and mobility within the framework of the Joint Africa-EU Strategy, through a global and concerted approach to maximise their development impact on both Africa and the EU”. They also committed to “undertaking concrete actions to respond to challenges of migration and mobility at the appropriate level in a spirit of partnership, shared responsibility and cooperation”. The Malta Summit is expected to adopt a comprehensive package of commitments and actions on migration and mobility.

Issues of migration and mobility have pre-occupied the minds of African leaders for quite some time now, given the centrality of human movement within Africa for continental integration. Most recently, the 25th African Union (AU) Assembly Declaration (Assembly/AU/Decl.6(XXV)) on Migration adopted during the recent Summit of the AU Heads of State and Government held in Johannesburg, South Africa on 14-15 June 2015 reaffirmed the commitment of African leaders towards promoting regional integration through mobility while addressing irregular migration. The Declaration mandated the Commission of the African Union to, among others, speed up the development of a Protocol on Free Movement of Persons and the implementation of continent-wide visa free regimes including issuance of visas at ports of entry for Africans; offer all Africans the same opportunities accorded to citizens of countries within our respective Regional Economic Communities by 2018; expedite the operationalization of the African Passport that would facilitate the free movement of persons; establish a harmonized mechanism to ensure compatibility and comparability of higher education in Africa and enable recognition of credentials that will facilitate transferability of knowledge, skills and expertise particularly for the empowerment of African women and youth; and strengthen efforts to combat human trafficking and smuggling of migrants through enhanced international cooperation and capacity building.

The Declaration also endorsed the AU-Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants and the outcomes of the Khartoum Regional Ministerial Conference on Human Trafficking and Smuggling of Migrants in the Horn of Africa on 13-16 October 2015. Further, the Declaration called on the Commission to develop a Common African Position for the Valletta Summit on Migration planned for 11-12 November 2015 in Malta.

Background and Context

Recently, greater attention has been placed on the migration trajectory in Africa and the role it could play in promoting an inclusive balanced development and integration of the continent. This increased attention has been manifested at different levels of decision-making and in different forms, including through the adoption of both the *Migration Policy Framework for Africa* and the **African Common Position on Migration and Development** in 2006 by the 9th Ordinary Executive Council.

Similarly, the African Union has long recognized that comprehensive, collaborative regional approach is needed to protect refugees and internally displaced persons as well as victims of human trafficking within the framework of international protection. The 1969 Convention governing the specific aspects of refugee problems in Africa (the 'OAU Refugee Convention') provides the most comprehensive legal basis for refugee protection worldwide, while the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) is the first legally binding document on internal displacement worldwide. The African Charter on Human and Peoples' Rights formulates and lays down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.

Faced with the daily news on what has come to be referred to as migrant crisis in Europe, we have seen the confusion and the interchangeable use of concept and terminologies such as migrants, refugees, and asylum seekers. Yet, the legal definitions of these terminologies are settled in various instruments that constitute international humanitarian law. **Migrants** are persons who are relocating from one country to another under a legally accepted framework. In reality, most of the world migrant population has been compelled to leave their homelands because of severe political, economic and social conditions, thereby creating a refugee situation for some of them. **Refugees** therefore, are persons who have been forcibly displaced from their usual place of abode or residence across international borders as a result of armed conflict, persecution, political instability and national or human-induced disasters. Furthermore, a refugee that has had his or her status determined or in the process of determination in the first country of refuge is an **asylum seeker**.

The Valletta Summit on Migration in Malta provides another opportunity for both sides to own their commitments to the common challenges, priorities and aspirations and to actively enhance strategies to address the key migration and mobility issues in Africa and Europe as contained in the Action Plan for 2014-2017, especially on labour migration and mobility, regional integration, migration and trade, and protection of migrants human and labour rights. The Malta summit should also advance the international migration and development agenda in a comprehensive

manner, **including the protection of the rights of migrants** and further promoting the role of migrants as agents of innovation and development. As well, the summit should address specific concerns of refugees and displaced persons, human trafficking and smuggling of migrants, as well as diaspora and remittances.

THE COMMON AFRICAN PERSPECTIVE

It is important to underscore the fact that the present Common African Perspective though designed towards the Valletta Summit in Malta, builds largely on the **African Common Position on Migration and Development** of 2006 adopted by the 9th Ordinary Session of the AU Executive Council.

Recalling the 2006 Joint Africa-EU Declaration on Migration and Development (Tripoli Declaration) and the Joint Africa-EU Ouagadougou Action Plan to Combat Trafficking which recognized the importance of joint collaboration on issues of migration.

Desirous of adopting this Common African Perspective for the Valletta Summit on Migration to ensure that Africa's concerns are duly reflected at the Summit, Member States **have agreed as follows:**

1. Labour Migration (Migration, Mobility, Employment including improved regulatory frameworks for cheaper transfer of remittances and portability of social security and benefits)

Labour migration is a key part for our vision of an integrated, prosperous and peaceful Africa whose development is driven by its own people. It is especially critical to ensuring that labour and skills are available where they are needed to support new economic initiatives, investment, enterprise development and increased productivity. This has been recognized at the highest policy level as articulated in the 24th AU Assembly Declaration of January 2015 (Assembly/AU/Decl.6(XXIII)) on Employment, Poverty Eradication, and Inclusive Development in Africa in which the Labour Migration Governance for Integration and Development in Africa (Joint Labour Migration Programme) was endorsed. Intra-African migration is dominant at 52.6 per cent and currently as high as 80% within some RECs. Evidently, labour migration has become a key pillar for economic integration and development within the context of regional integration.

There is therefore the necessity to establish or enhance regular, transparent and comprehensive labour migration policies, legislation and structures at the national, sub-regional and regional levels in concert with REC free movement regimes with concrete financial support for effective implementation of the Joint Labour Migration Programme. Labour migration policies and legislation that are inclusive of appropriate labour standards and people-centered, with social protection and portability of social security rights can have a positive impact on society generally. In addition, the potential economic gains from international movements of labour are believed to be of immense benefit when barriers to labour movements are substantially lowered. Tighter controls on labour migration affect not only the countries of origin but also other potential countries of employment. In many cases, tighter controls can also lead to higher irregular migration, as well as to discriminatory and exploitative treatment of migrant workers.

Labour market information remains scarce within AU Member States and labour force participation, notably in formal employment, varies greatly among countries. Although statistics are inadequate, employment and underemployment are major issues and remain at alarming levels. Given demographic trends where the youth represent more than 200 million¹ of the continent's population, AU Member States face major challenges in sustaining economically and socially their population growth rates.

According to the 2012 African Economic Outlook, the current trend indicates that this figure will double by 2045². While six of the 10 fastest-growing economies in the world are in Africa south of the Sahara, youth unemployment “occurs at a rate more than twice that for adults,” and the youth account for 60% of all African unemployed, according to the World Bank³, although it excludes those in vulnerable employment and those who are underemployed in informal sectors. To ensure that Africa's youth bulge is translated into a demographic dividend, the Commitment to the “African Youth Decade” (2009–18) and the “Five Year Priority Programme (2015-2020) of the AU Plan of Action on Employment, Poverty Eradication and Inclusive Development” should be followed through with the utmost urgency to address both unemployment and underemployment through the creation of safe, decent and accessible employment opportunities, strengthen entrepreneurial skills and capacity, increase access to financial services and credit facilities, and promote participation in decision making processes as well as, worker and employer organizations and cooperatives.

Thus, the signature, ratification and domestication of regional protocols on free movement of persons has a positive impact in enhancing economic growth as well as reducing irregular migration situations. Member States should seize the opportunity to lead the global community in enhancing free movement and mobility for Africans within the continent;

2. Human Trafficking and Smuggling of Migrants:

The Migration Policy Framework for Africa and Ouagadougou Action Plan to Combat Trafficking in Human Beings coupled with initiatives such as the AU-Horn of Africa Initiative (AU-HOAI) on Human Trafficking and Smuggling of Migrants play a key role in setting standards and guidelines to support the formulation/adoption and implementation of appropriate institutional policy and legal frameworks on human trafficking and smuggling of migrants at national and regional level..

Strengthening efforts to combat trafficking in persons and smuggling of migrants: through the full implementation of the provisions of the UN Convention on Transnational Organized Crime and its supplementing Protocols against Trafficking in Persons and Smuggling of Migrants have been underpinned by initiatives such as the AU-Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants underscoring the pressing needs to increase the capacity of national stakeholders in jointly addressing the challenges of combatting human trafficking and smuggling, and the identification as well as mitigation of cases of human trafficking. This can

¹ <http://www.weforum.org/reports/global-enabling-trade-report-2012>

² <http://www.africaneconomicoutlook.org/fileadmin/uploads/PAGES-%20Pocket%20Edition%20AEO2012-EN.pdf>

³ <http://www.theguardian.com/global-development-professionals-network/2014/jul/11/africa-youth-unemployment-population-growth>

include e.g. development or improvement of legislation, provision of victim support, enhanced international cooperation, and training.

3. International Protection

The African Union recognized the need for an international refugee protection regime for refugees and migrants. This is anchored on the fact that the emerging phenomenon as it affects Africans, particularly in Europe, is one that is currently characterized by migrants who find themselves 'stranded'. This situation is inextricably linked to human security, mindful of the fact that many who migrate in an irregular manner do so because their countries are affected by armed conflict, political instability and economic decline.

It is pertinent to point out that the international refugee protection system is based on national responsibility mutually reinforced by international solidarity⁴. This is well articulated in Article II(4) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, which states inter alia: "*Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international cooperation take appropriate measures to lighten the burden of the Member State granting asylum*".

Vital to the protection of migrants and refugees is the right to work as outlined in Article 23(1) of the Universal Declaration of Human Rights, as well as in Article 6 of the International Covenant on Economic, Social and Cultural Rights. Similarly, Articles 17-19 of the 1951 Refugee Convention guarantees favourable treatment to refugees with respect to employment. Furthermore, the cornerstone of the 1951 Convention is the principle of *non-refoulement* in Article 33. According to the principle, a refugee should not be returned to a country where he or she faces serious threats to his or her life.

The African Union therefore, calls for an appropriate, rigorous and pragmatic status determination exercise of the affected migrants and or refugees, with a view of processing asylum cases where such is so determined. In the event that the process of asylum is exhausted and case is refused, it is suggested that an Assisted Voluntary Return, Reintegration and Re-insertion Programme be embarked upon, which is supported by the European Union and the countries of origin.

The details of such a programme, in its entirety, should be agreed upon by both sides, making voluntary return in dignity and safety, the cardinal principle of the programme. Such programme will be anchored on strong advocacy as the platform on which the issue of voluntariness, safety and dignity are rested. This is to further guarantee international protection of persons – both deserving and 'undeserving' of protection by way of asylum.

⁴ See the Preamble to the 1951 Convention relating to the Status of Refugees, 189 UNTS 150

4. Facilitation of Trade in Goods and Services and Integrated and Coordinated Border Management (ICBM)

The movement of factors of production through migration is a key component for addressing Africa's socio-economic transformation and continental integration. Primacy must be given to integration of trade instruments into decisions on migration and mobility in order to have a fully integrated but internally competitive continent within which goods, services, capital and labour are free to move across national borders, while pursuing comprehensive and harmonized regional trade policies as part of their collective development and transformation strategies in the context of regional integration.

Implementation of ICBM methodologies can ensure that border management agencies increase control while providing a more efficient service, and that they can do so while retaining their own organizational mandates and integrity. This can be achieved by ensuring that all agencies share a common vision and ensuring that all stakeholders work together to achieve it. The role of strong political will, commitment, and appropriate incentives and disincentives, are therefore crucial in attaining this.

5. Education and Human Capital Development

Member States must try to harmonize⁵ and achieve excellence in human resources capacity development through improvement in the quality of higher education and technical and vocational education training (TVET) and mutual recognition of certificates, qualifications and relevant experience. This would ensure the consolidation of African systems of education and assures the quality of educational provision against locally, regionally and internationally agreed benchmarks of excellence, ultimately facilitating regional integration. To reinforce African solidarity and the African cultural identity in line with the 1981 Arusha Convention⁶, Member States should facilitate greater mobility of students across the African continent. Similarly, Assembly Declaration (Assembly/AU/ Decl.6 (XXV)) of June 2015 on Migration inter alia committed to: "Establish a harmonized mechanism to ensure that higher education in Africa is compatible, comparable, with acceptability and enable recognition of credentials that will facilitate transferability of knowledge, skills and expertise".

6. Diaspora and Partnerships

Actions to enhance the migration and development nexus was the fundamental reason by AU Heads of State and Government to designate the Diaspora as the Sixth Region of Africa with the objective of engaging the diaspora and migrant communities within and outside Africa in the development of the continent. There is need to effectively implement the continental diaspora engagement policy, setting up a clear structure in member states to address the challenges and opportunities related to the Diaspora in terms of social, cultural and economic integration; and

⁵ Harmonization implies the agreement, synchronization and coordination of education systems to strategically develop and strengthen the capacity of HE institutions to respond simultaneously to the educational and employability needs of populations.

⁶ <http://www.au.int/en/sites/default/files/ArushaConvention%20modified.pdf>

strengthening EU and Africa policy frameworks and institutional capacities for enhancing Diaspora engagement, as well as increase support to the Africa Institute for Remittances (AIR) to reduce the average transaction cost of migrant and diaspora remittances.

Cooperation and collaboration with partners (including ILO, IOM, UNHCR, UNODC and ECA among others), and competent training institutions (including African Capacity Building Centre (ACBC), United Nations Interregional Crime and Justice Research Institute (UNICRI), International Training Center of the International Labour Organisation (ITC-ILO), the United Nations Institute for Economic Development and Planning (UNIDEP), as well as international and local non-governmental organizations and other relevant stakeholders should be enhanced in order to develop more comprehensive strategies to better govern migration, including provision of technical support and assistance to enhance the capacities and competences of governments and RECs and social partner organisations.