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CONCEPT NOTE

**MEETING OF THE EXTRAORDINARY SESSION OF THE SPECIALISED
TECHNICAL COMMITTEE (STC) ON MIGRATION, REFUGEES AND
INTERNALLY DISPLACED PERSONS**

**29 October - 3 November 2018
Malabo, Equatorial Guinea**

***Theme: Overcoming the Challenges of Statelessness, Forced Displacement and
the Free Movement of Persons in Africa ”***

1.0. INTRODUCTION

The General Assembly Decision, **Assembly/AU/Dec.227 (XII)**, adopted in Addis Ababa, Ethiopia, February 2009, considered reconfiguration of Specialized Technical Committees (STCs) and further decided that each STC should meet at the level of Ministers and Experts once every two (2) years, with the possibility of organizing an Extraordinary Session if need be. Consistent with the Decision below, the African Union Commission organized the first meeting of the Specialized Technical Committee (STC) on Migration, Refugees and Internally Displaced Persons in November 2015 in Addis Ababa, Ethiopia during which the STC was operationalized and the Common African Position (CAP) on humanitarian effectiveness was considered and adopted. The second meeting of the STC on Migration, Refugees and IDP was convened from 16th October to 24th October 2017 in Kigali, Rwanda and adopted the Protocol to the Treaty Establishing the African Economic Community relating to Free Movement of Persons, Right of Residence and Right of Establishment and its implementation roadmap as well as other relevant policies. During the latest session of the STC in Kigali, it was decided to convene in the course of the year 2018 an Extraordinary Session of the STC to consider the remaining subjects on the agenda including, The draft Protocol to the African Charter on Human and Peoples' Right on the Specific Aspects of the Right to Nationality and the Eradication of Statelessness in Africa and monitor the implementation of previous important decisions for the implementation of the Agenda 2063 and its ten years plan of action. The Extraordinary Session of the STC on migration is therefore scheduled **for 29 October - 3rd November 2018 in Malabo Equatorial Guinea** to consider the following subjects:

- (a) Draft Protocol to the African Charter on Human and People's Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa;
- (b) The Adopted Guideline for the Specification, Design and Production of the African Passport as well as the Features of the Passport;
- (c) The Financial Implication for the Implementation of the African Humanitarian Agency.

The meeting of Ministers will convene from 2nd to 3rd November 2018 and will be preceded by meetings of Experts from 29th October to 1st November 2018.

2.0. BACKGROUND

Specialized Technical Committees are policy organs of the Union in accordance with Article 5 of the Constitutive Act of the African Union. Functions of Specialized Technical Committees are elaborated in Article 15 of the Constitutive Act and are among others, the preparation of projects and programmes of the Union and its submission to the Executive Council; to ensure the supervision, follow-up and evaluation of the implementation of decisions taken by the organs of the Union. Respectively, the meeting of the Extraordinary Session of STC on Migration, Refugees and Internally Displaced persons to be convened from 29 October to 3rd November 2018 in Malabo, Equatorial Guinea will focus on an important legal instrument that will contribute to the eradication of statelessness and loss of citizenship on the African Continent as well as on the realization of Agenda 2063 of the African Union and its first 10 years implementation plan. Indeed, the STC meeting will consider a draft protocol to the African Charter on Human and Peoples' Rights on matter relating to rights to nationality and statelessness and crucial issues around the implementation of previous decisions concerning Free Movement of Persons in Africa as it pertains to the African Passport and the African Humanitarian Agency.

THEMATIC ISSUES FOR CONSIDERATION

The three thematic to be considered during the extraordinary session are as follows:

Thematic I: The Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa

Nationality provides people with a sense of identity and creates a legal bond between a person and the State by enabling them exercise a certain range of rights. Thus, the lack of nationality can be really devastating to the lives of the individuals concerned. Despite the international recognition of the right to a nationality, there are almost 10 million stateless people around the world with hundreds of thousands of them living in Africa who find themselves "non-persons" in the only country they have always known as home.

In fact, statelessness can contribute to political and social tension including exclusion and denial of rights to large populations. The reason why these people are in this situation of deprivation of rights is that they are not recognized as citizens of the country where they live. They cannot register the birth of their children, nor enrol in school or university, many do not have access to public health services and find it difficult to obtain travel documents or work permits. Above all, they cannot vote or run for office or work for state institutions. This lack of recognition is often based on highly arbitrary and discriminatory grounds of race, ethnicity and gender. As a result, arbitrary denial of access to citizenship has become one of the major factors that have led to conflicts and impaired economic and social development in Africa and a threat to the achievement of the 2063 Agenda of the African Union.

In Africa, despite the incompleteness of the African Charter on Human and Peoples' Rights (African Charter) on the issue of statelessness on the continent, the African Commission on Human and Peoples' Rights, by a bold interpretation of the African Charter, has tried to limit the flexibility of States Parties tempted to use their national laws to deprive persons of their nationality. Most African countries do not have legislation that guarantees citizenship to any child born on their territory, which is in violation of their commitments under the African Charter on the Rights and Welfare of the Child.

In light of the above, the African Commission on Human and Peoples' Right jointly with the African Union Commission have subsequently taken the initiative of a Protocol to the African Charter on Human and Peoples' Right on the Specific Aspects of the Right to Nationality and the Eradication of Statelessness in Africa to address the issues of statelessness and denial of nationality on the Continent. The objective of the statelessness segment of the STC will aims of consideration and adoption of the draft Protocol in conformity with the **decision EX.CL/Dec.922 (XXIX) on the Report of the activities of the African Commission on Human and Peoples' Rights (ACHPR)** that requested the Commission to take the required steps to ensure the processing of the draft Protocol in line with the procedures for the development of AU legal instruments.

Thematic II: Guideline for the Specification, Design, Production and Issuance of the African Passport

Africa similar to other continents is at a turning point in its long complex history in managing the notion of migration and free movement of persons in Africa. The African Union has adopted a ***Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment*** in a January 2018 African Union (AU) Summit held in Addis Ababa, Ethiopia following a series of member states negotiations in different platforms.

The Free movement of persons is central to the integration of the Continent and cannot be separated from other regional integration initiatives such as economic integration and common policies on co-operation and security and allows for movement for labour, trade, services and goods. The implementation of the African Integration Agenda on Free Movement of Persons is embedded in the **African Economic Community (AEC) in 1991 (Abuja Treaty)**.

The Free Movement Protocol also *allows for solidarity and integration on movement of people in Africa and reiterates shared values of protection of humans and people's rights to movement as provided by the Universal Declaration of Human Rights of 1948.*

As such, this Protocol recognises the contribution to building achievements of the regional economic communities and free movement of persons, allowing for Pan Africanism and enhancing development in science and technology, education, research, intra-Africa trade and facilitation of settlement of migrants and ultimately allowing for affirmation of an African Identity.

Mindful of this protocol is the notion of welcoming the development of an African Passport, which was launched by the **Assembly in Kigali, Rwanda (Assembly/AU/Dec.607 XXVII)**. Member States were urged to adopt it and work with African Union Commission to facilitate its development, issuance at the citizen level. The adoption of the Guidelines was made through a series of consultative process with key Chiefs of Immigration and Member States through 2 consultative meetings with Chiefs of Immigration and Member States Experts and technical guidance from the International Civil Aviation Organisation (ICAO) and the International Organisation for Migration (IOM) held in May and July 2018 consecutively. The three reflected key outcomes were adopted in the consultative meetings as outlined above: Guidelines for the Design; Production and Issuance of the African Passport, The standard Security Features of the Passport (Annexure 1), and Standard Computer Generated Designs (samples) of the African Passport;

In light of above, the adopted Guidelines are embedded on standardized and inclusive policies of free movement and the adopted passport designs based on a continental design and specifications as outlined in Article 9 of the Protocol, which allows for each Member State the right to issue to its nationals a valid African Passport to facilitate free movement. Article 10 of the Protocol specifically promotes the adoption of the African Passports by member states and encourages close collaborations with the Commission in providing technical support in developing the passport as framed by international specifications.

It is worth noting that the AUC will soon be engaging with Member States in sensitising parliamentarians and RECs (ECOWAS and EAC) on ratifying the Free Movement Protocol. In the same spirit, through support of the IOM, a *study on benefits and challenges of Free Movement of Persons in Africa* has been launched to propel planned popularisation drives on Free Movement issues with Member States.

Thematic III: The Financial Implications for the operationalization of an African Humanitarian Agency

It will be recalled that the January 2016 Ordinary Summit set an Agenda for transformation of Africa's humanitarian action. To achieve this objective, the Assembly in its Decision **Assembly/AU/Dec.604 (XXVI)** of 30 January 2016, in Addis Ababa, Ethiopia adopted a **Common Africa Position on Humanitarian Effectiveness (CAP) an African Humanitarian Policy Framework**, as two main drivers of Africa's humanitarian action.

While adopting the creation of an **African Humanitarian Agency**, the Assembly called on the Commission to first carry out a feasibility study to determine its structural and financial implications of the proposed Agency. The feasibility is underway and will be submitted to the January 2019 AU Summit for consideration and adoption.

3.0. OBJECTIVES

- a) Consider and adopt the Protocol to the African Charter on Human and Peoples' Right on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa;
- b) Consider the adopted Guidelines for the Specification, Design, Production and Issuance of the African Passport, the standardised Features of the Passport as well as Standard Computer Generated Designs (samples) of the African Passport, as deliverables of the implementation of the decision on Protocol to the Treaty Establishing the African Economic Community relating to Free Movement of Persons, Right of residence and Right of establishment;
- c) Consider and decide on the Financial Implication for the African Humanitarian Agency as part of the Implementation of the January 2016 decision referred to above.

4.0. EXPECTED OUTCOMES

The submitted Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects on the Right to a Nationality and the Eradication of Statelessness in Africa contributes to the eradication of statelessness cases on the African Continent. Its adoption will regulate the major problems existing in Africa with regard to nationalities and statelessness.

The Guidelines for the Specification, Design, Production and Issuance of the African Passport, adopted Security Features of the African Passport (Annexure 1) including Standard Computer Generated Designs (samples) of the African Passport were adopted by member states as part of the implementation of the decision on the Protocol to the Treaty Establishing the African Economic Community relating to Free Movement of Persons, Right of residence and Right of establishment. It is therefore imperative for the STC to ensure the supervision and the evaluation of the work done at member States expert's level in the area of African Passport for its submission to the executive council.

Discussions on the modalities for the operationalization of an African Humanitarian Agency will pathway for conclusion of the report to be submitted to the January 2019 Summit. The adoption of a decision on the legal and financial implications of the Agency will enable the Commission to make progress on the implementation of the African Humanitarian Agency project.

5.0. DATE AND VENUE

The Ministerial meeting will be held **on 2nd - 3rd November 2018**, While the meeting of Member State Experts will be held **from 29th October to 1st November 2018 all in Malabo Equatorial Guinea**.

6.0. PARTICIPATION

The STC meeting will be attended by Member State Ministers and Experts in / Charge of Statelessness, Migration, Refugees and Forced Displacement Matters.

7.0. KEY WORKING DOCUMENTS

The following are the main working documents:

Thematic I

- Draft Protocol to the African Charter on Human and Peoples' Right on the Specific Aspects of the Right to Nationality and the Eradication of Statelessness in Africa
- The Decision on the Report of the activities of the African Commission on human and People's Rights (ex.CI/Dec. 922(XXIX)
- African Charter on Human and Peoples' Right
- The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the reduction of Statelessness
- The Universal Declaration of Human Rights (UDHR)
- The International Covenant on Civil and Political Rights (ICCPR),
- The UN Convention on the Rights of the Child (CRC)
- The African Charter on the rights and welfare of the Child
- African Union Convention on Cross-Border Cooperation adopted in in 2007 in Niamey

Thematic II

- Guidelines for the Specification, Design and Production and Issuance of the African Passport, including adopted Security Features of the African Passport (Annexure 1) and Standard Computer Generated Designs (samples) of the African Passport
- Draft Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons in Africa and its implementation roadmap
- Treaty Establish the African Economic Community (Abuja Treaty) 1991
- Agenda 2063 – '*The Africa We Want*'
- Ten-year Implementation for Agenda 2063
- The Report of the Study on Benefits and Challenges of Free Movement of Persons in Africa.

Thematic III

- The Common African Position on Humanitarian Effectiveness in Africa
- The Report on the feasibility Study on the modalities for the operationalization of an African Humanitarian Agency

8.0. FURTHER INFORMATION

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