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Theme: “Building forward Better Well Being and Living Standards in Africa”

DRAFT DECLARATION ON THE PROTECTION AND PROMOTION OF THE RIGHTS OF MIGRANT WORKERS

DATE, 2021
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WE, the Ministers in charge of Social Development, Labour and Employment in the Member States of the African Union, meeting virtually in our [insert session] from… 2021 to deliberate on the social development, labour and employment issues;

RECALLING that the provisions of Article 13 of the Constitutive Act of the African Union mandate the Executive Council to coordinate and take decisions on policies in areas of common interest to the Member States including nationality, residence and immigration matters;

NOTING previous AU decisions, protocols and regulations on the protection and promotion of the rights of migrants, including migrant workers and members of their families, in particular the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment, and firm in our resolve that the full implementation of free movement, together with the realisation of the rights of migrants including migrant workers and members of their families, is essential to realising the vision of ‘The Africa We Want’ as part of AU Agenda 2063, to the fulfilment of the African Charter on Human and Peoples’ Rights, and to the fulfilment of the 1991 Treaty Establishing the African Economic Community

FURTHER NOTING that the African Commission on Human and Peoples’ Rights has stated that although many African States face economic and other challenges, measures taken by States to protect their citizens and economies should not be applied to the detriment of the enjoyment of human rights of non-citizens;

RECALLING the Twenty-Fourth Ordinary Session, held from 30–31 January 2015, in Addis Ababa, Ethiopia, the African Union (AU) Assembly of Heads of State and Government by decision Assembly/AU/Decl.6(XXIV) reaffirmed its determination “to step up our regional cooperation for smooth labour migration in the continent, including through effective implementation of our treaties, charters, protocols and other relevant policy instruments in view of free movement of people and workers while combatting its negative impact on human trafficking”. In addition, the AU Assembly committed to implementing the AU Commission (AUC) Ouagadougou +10 Declaration on Employment, Poverty Eradication and Inclusive Development in Africa, which places labour migration, regional economic integration and social protection amongst its six key priority policy areas;

RECOGNISING that international human rights law as contained in the African Charter on Human and Peoples’ Rights (the Banjul Charter) is founded on the premise that, by virtue of being human, all persons should enjoy all human rights without discrimination, and that distinction between citizens and non-citizens are permitted only when lawfully imposed under the narrow exceptions stated in international human rights law, to serve legitimate State objectives and are proportional to the achievement of those objectives;

ACKNOWLEDGING the progress made towards non-discrimination by the adoption of the Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment (the ‘AU Free

FURTHER ACKNOWLEDGING the progress made towards the ratification and implementation of the AU Free Movement Protocol, the implementation of the Migration Policy Framework for Africa and Plan of Action and other related AU normative frameworks, as well as the challenges faced by the AUC in promoting the implementation of AU Decisions and Declarations pertaining to the rights of migrants, migrant workers and members of their families;

REAFFIRMING the international instruments and frameworks specifically relevant to the rights of migrants, including migrant workers and members of their families, in particular, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990); the Migration for Employment Convention (Revised) (No. 97) and Recommendation (No. 86), 1949; the Migrant Workers (Supplementary Provisions) Convention (No. 143) and Recommendation (No. 151), 1975; as well as the Global Compact on Safe, Orderly and Regular Migration (2018);

TAKING NOTE that safe, orderly and regular migration pathways facilitated by agreements between countries of origin, transit, and destination should provide African migrants with protection, access to welfare and social security on the basis of equality of treatment with citizens;

CONCERNED that a failure to provide legal, safe and regular pathways for migration contributes to trafficking, smuggling, exploitation, physical and mental harm, and loss of life at border and sea crossings;

GRAVELY CONCERNED that universal health care has not been realised for citizens and non-citizens in many African countries, and determined to intensify our efforts to create health policies that respect the right to health and relevant principles enshrined in the Banjul Charter and are inclusive of migrants, migrant workers and their families;

EQUALLY CONCERNED by the prevalence of migrant workers in the informal economy of most countries including Member States of AU, wherein they are wholly or partially excluded from access to social protection and welfare;

FURTHER ACKNOWLEDGING persistent efforts made by the AU and some Member States to ensure the protection of the human rights of migrants, including migrant workers and members of their families, during disasters such as the COVID-19 pandemic, and in particular, efforts to challenge collective expulsion and deportations in Africa and elsewhere, and to promote migrant access to welfare, social services and vaccines;

TAKING NOTE of the many positive benefits of migration, including its role in catalysing economic growth, development and prosperity in both countries of destination and origin, as well as of the importance of remittance flows and skills, as envisaged in the Migration Policy Framework for Africa and Plan of Action, instruments agreed by Regional Economic Communities (RECs) and other related frameworks including the national development plans of AU Member States;
DETERMINED to improve conditions for the promotion and protection of women's rights and the rights of women migrant workers in employment and occupation, and to issue an annual report on gender as stipulated in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the 2004 AU Solemn Declaration on Gender Equality in Africa;

EMPHASISING that there is an urgent need to provide specific and tailored protections to groups at risk or in vulnerable situations, including children, refugees and asylum seekers, stateless persons and migrants in an irregular situation;

FIRMLY CONVINCED that the risks faced by, and the protection needs of, migrants, including migrant workers and members of their families, with respect to labour exploitation, the full enjoyment of fundamental human rights and rights expressed in international labour standards, are not adequately addressed in the regional and continental policy deliberations on labour migration and mobility of African migrants;

DESIROUS of giving effect to the provisions of the various AU, UN and ILO instruments that aim to protect and promote the rights of migrants, including migrant workers and members of their families:

HEREBY agree and endorse the following principles governing the human and labour rights of migrant workers:

PART 1. UNIVERSAL HUMAN RIGHTS

Migrants are rights-holders to whom Member States must fulfil human rights duties and responsibilities

Article 1. WE demonstrate our global leadership by emphatically reaffirming that all people who move across borders are rights-holders regardless of their migration status, including migrants in an irregular situation, trafficked persons, stateless persons, forcibly displaced persons, asylum-seekers, refugees, and persons working in the formal and informal economy.

Article 2. WE also reaffirm that Member States and other actors have an obligation to protect and promote the human rights of migrants, including migrant workers and members of their families, and are accountable for acts and omissions that limit the full enjoyment of such rights as articulated in international, AU and REC legal instruments.

Recommitment to the principles and values of universal human rights

Article 3. WE restate our primary responsibility to respect, protect and fulfil the fundamental human rights of all people in the African continent, including migrants and members of their families, and reiterate that these include:

a) Non-derogable human rights including the right to life; freedom from torture and cruel, inhuman or degrading treatment; freedom of thought, conscience and religion, and freedom from slavery, servitude and forced labour.
b) **Fundamental rights at work**, including freedom of association and collective bargaining; the elimination of all forms of forced or compulsory labour; the abolition of child labour; the right to equal pay for work of equal value; and the elimination of discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, property, birth or other status, including discrimination on these grounds that has the effect of nullifying or impairing equality of opportunity or treatment in seeking, accepting and engaging in employment and occupation.

c) **Civil and political rights** including recognition as a person before the law; the right to liberty and security of person; freedom of opinion and expression; freedom of movement; the right to privacy; and the right to not be arbitrarily deprived of property.

d) **Economic, cultural, and social rights** including the right to social security, the right to education and access to information and information channels, the right to adequate housing, the right to adequate food and water, the right to enjoy just and favourable conditions of work under equitable and satisfactory conditions and especially the right to health and the right of migrant workers and their families to access health services on the basis of equality of treatment with citizens.

e) The right to **gender equality and specific measures to ensure that these and all other human rights of women are protected** by reinforcing legal mechanisms that will protect all women at the national level, by implementing gender-sensitive policies and practices that respond to the lived experiences of women, and by ending impunity for crimes committed against women.

**PART 2. RIGHTS OF MIGRANT WORKERS**

Article 4. WE reaffirm the human rights responsibilities of Member States to all migrants engaged in work and members of their families, and commit to:

a) **Pursuing equality of opportunity and treatment in employment and occupation**, especially with regards to remuneration, working conditions (overtime, hours of work, weekly rest, holidays with pay, safety, health, and termination of the employment), social security, and other conditions or terms of employment, by methods appropriate to national conditions and practice and with a view to eliminating any discrimination in respect thereof.

b) Taking steps to ensure that **migrant workers are not deprived of the rights in 4(a) by reason of any irregularity** in their stay or employment and that the legal or contractual obligations of employers are not limited in any manner by reason of such irregularity. In doing so, WE will ensure that in cases in which these laws and regulations have not been respected, and in which the position of the worker cannot be regularised based on national laws and regulations, the worker is able to claim these rights in respect of past employment.

c) Ensuring that migrant workers in a regular situation do not have their **residence and work permits** automatically withdrawn if they lose their employment. WE recognise that this measure must be taken to protect migrant workers, and in particular women migrant workers, who experience exploitation, abuse, or violence and harassment.
d) Building or strengthening nationally appropriate rights-based social protection systems that are comprehensive, adequate, sustainable and inclusive of all workers, to which end we will conclude bilateral or multilateral social security agreements that facilitate migrant workers and their families' equal access to social protection inclusive of provisions regarding the acquisition, maintenance and portability of social security rights. WE note that migrant workers contribute in multiple ways to the sustainability of social protection schemes and that extending social security coverage to migrant workers facilitates the formalization of the labour market and encourages labour mobility, including safe return and sustainable reintegration.

e) Provide effective redress mechanisms in cases where the rights of migrant workers and members of their families are violated, abused or undermined. Such measures should be publicised, easy to access and require the investigation, prosecution and sanctioning of any implicated persons, groups, organisations or entities.

f) Promoting the best interests of the child by implementing measures to eliminate child labour and protect all children including children on the move and child migrants. WE acknowledge that this requires the realisation of rights regarding registration of birth and the acquisition of citizenship; the right to education; protection against all forms of sexual exploitation and sexual abuse; and action on the labour dimensions of children on the move. WE also affirm that the family is the natural and fundamental unit of society and is entitled to protection by society and the state, and that subsequently Member States must protect the unity of the families of migrant workers.

g) Implementing specific measures to ensure that steps to protect migrant workers do not result in gender bias or restrictions that disproportionately impact equality of migration opportunities for any group, and in particular women, seeking employment abroad.

Article 5. WE are particularly aware of the influence of popular and political sentiment on the treatment of migrants, including migrant workers and the members of their families. To this end WE are determined to:

a) Combat xenophobia, racial discrimination, ethnic hatred and all their ramifications as well as any form of discrimination and persecution on religious or other unjustifiable grounds. WE commit to strengthening national systems to ensure the right to effective remedies against acts of discrimination.

b) Create or implement and raise awareness of legislation aimed at addressing and eliminating human trafficking, abuse, violence and harassment, as well as gender-based violence and harassment in the community and within the world of work.

PART 3. FACILITATION OF LABOUR MOVEMENT IN ACCORDANCE WITH THE RIGHTS OF MIGRANT WORKERS AND THEIR FAMILIES

Article 6. Recognising that the vast majority of African migration occurs within intra-African land borders, WE affirm our deep conviction that economic growth, sustainable development and transformation of our continent requires free movement of workers and respect for human rights contained in AU instruments and international labour standards. In order to accelerate facilitation of the movement of migrant workers in Africa WE shall:
a) Create new and **expanded pathways** among Member States for the regular labour migration of workers of all skill levels accompanied by members of their families.

b) Develop systems for the **uniform recognition of skills and qualifications** as part of bilateral, sub-regional and multilateral labour agreements across the continent. These systems must include mechanisms to recognise skills based on experience in the workplace or in the community as well as formal training.

c) Encourage Member States that have not ratified the **AU Free Movement Protocol to work towards ratification** of this Protocol and the implementation roadmap.

d) Refer to the **Guidelines on Labour Migration** related to the AU Free Movement Protocol, and the **Guidelines on Reintegration of Migrant Workers** in the Labour Market in order to enhance the protection of the rights and welfare of migrant workers.

e) **Protect the fundamental rights of all workers in the informal economy** while facilitating the transition of workers and economic units from the informal to the formal economy (as part of the efforts under subsection (a) above), and ensuring opportunities for social security, income security, livelihoods and entrepreneurship.

f) Develop and enforce **national immigration policies and laws that respect, protect and fulfil international labour standards** for all people who engage in work and members of their families, regardless of migration status or whether they work in the informal economy, and bring national immigration laws into alignment with international human rights principles and standards.

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**PART 4. JOINT RESPONSIBILITIES OF BOTH COUNTRIES OF ORIGIN AND DESTINATION AT ALL STAGES OF MIGRATION**

Article 7. **WE** proclaim our firm commitment to protecting the rights of migrant workers during the migration process from **recruitment to pre-departure, the journey, the immediate post-arrival period, and throughout their stay and employment** in countries of destination as well as **upon return or onward movement** and call on states and regional groupings outside the African continent to do the same. In the management of sub-regional and national systems relating to labour migration **WE** will:

a) Strengthen the capacity of our regional and national systems to provide **free and accurate information** about migration to migrant workers and members of their families that is **gender responsive** and includes information about the general working and living conditions in countries of destination, immigration laws and policies, terms and conditions of work, and access to legal advice and remedies in a manner and language that can be readily understood.

b) **Implement fair and transparent recruitment procedures** and prohibit the charging or shifting of recruitment fees and related costs to migrant workers in order to prevent debt bondage, exploitation and forced labour.

c) **Uphold rights related to contracts of employment** including the right to receive, before departure, a written contract covering all conditions of work and terms of employment, remuneration and contract duration in a language the migrant worker understands. This contract must be communicated verbally to any migrant who is not fully literate and confirmation of understanding of its terms must be obtained. **WE** recognise that upholding these rights requires countries of origin and destination to formally agree to maintain a **system of supervising contracts of employment** that prevents contract substitution.
d) Eliminate any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation for migrant workers, irrespective of their migration status, and will ensure that WE abide by the limitations on differential treatment on the basis of citizenship as stipulated in international instruments.

Article 8. Noting that migration flows are multifaceted and that countries of destination, transit and origin are jointly responsible for upholding the rights of migrant workers regardless of skill level or migration status, WE will:

a) Issue to the citizens of other States residence permits, work permits or other appropriate permits or passes in accordance with applicable immigration procedures in the country of employment and provide the right to appeal against a decision denying citizens of another State a permit or pass.

b) Ensure access to justice where employment laws and regulations have not been respected and provide effective remedies for migrant workers who have not enjoyed equality of treatment with citizens with regard to working conditions and employment terms, through national and regional competent judicial institutions, and at the level of the African Commission on Human and Peoples’ Rights and the African Court on Human and Peoples’ Rights. WE note that regardless of their migration status or reason for their return, migrant workers are entitled to any lawfully acquired property, outstanding remuneration and other employment and social security benefits accrued during the time of their past employment in their country of origin or at the destination country.

c) Ensure strict observance of the prohibition of mass expulsion or deportation of migrants stipulated under Article 12 the Banjul Charter and international law, and only expel, deport or return migrant workers on the basis of a decision taken in accordance with international law and the national laws at the time of the decision. WE affirm that migrant workers and the members of their families have a right to receive adequate notice of expulsion and to appeal against a decision to revoke residency status, during which appeal the execution of the expulsion order should be stayed, and will not be held responsible for administrative or judicial costs of expulsion orders, exit permits and any other consular fees.

d) Strictly observe the human rights of migrants during detention and criminal investigation in accordance with international and national laws, and by cooperating with countries of origin to allow monitoring of immigration detention.

e) Adopt or amend policies and legislation, together with operational procedures, that prevent unnecessary immigration detention by subjecting all detention to legal review and developing non-custodial options that do not pose restrictions on freedom of movement for migrants and members of their families waiting for adjudication of their case.

f) Implement sustainable solutions for returning migrants, including through the provision of assistance upon return to countries of origin and the provision of adequate measures to support reintegration into the labour market.

Article 9. WE recognise the importance of decent work opportunities towards achieving sustainable and inclusive growth and further encourage all African countries to promote productive employment opportunities (in line with the Ouagadougou +10 Declaration). With
the understanding that the drivers and impact of labour migration are linked to economic circumstances in different countries, and with a view to stimulating economic growth and development, WE will actively pursue policies designed to promote full, productive and freely chosen employment, implement measures to facilitate the transfer of remittances by migrant workers, and promote financial education and inclusion of migrant workers and their families.

**PART 5. INTERNATIONAL COOPERATION WITHIN THE AFRICAN UNION**

Article 10. Recognising the importance of dialogue on the rights of migrants, including migrant workers and members of their families, within the continent, WE will:

a) Enhance inter-ministerial and cross-border coordination to harmonize labour laws and applicable policies.

b) Foster alignment, harmonisation and coordination between the AUC and RECs with respect to the facilitation of labour movement on the continent through annual AU-RECs coordination meetings.

c) Promote multilateral intra-regional labour migration cooperation mechanisms.

d) Engage with various stakeholders including the private sector, trade unions and the diaspora to stimulate decent job creation, business development and decent youth employment.

e) Encourage States to review bilateral agreements on labour migration and the movement of people.

**PART 6. INTERNATIONAL COOPERATION WITH REGIONS OUTSIDE AFRICA**

Article 11. Noting that the vast majority of African migration overseas is regular migration, WE will redouble our efforts to ensure the protection and promotion of the rights of migrant workers and their families of African origin in other regions of the world, especially in regions where the exploitation of migrant workers is prevalent, and resolve to:

a) Strengthen the capacity of the African Union Commission to convene regular and politically strategic dialogue concerning the protection of migrant workers, regardless of migration status, between RECs and Member States and countries and regions outside Africa that host African migrants, in particular the Gulf Cooperation Council and the European Union, and to monitor agreed actions and joint activities.

b) Engage with African Champion Countries of the Global Compact on Migration (GCM) and the UN Network on Migration to ensure the protection of migrants’ rights and promotion of the provisions of this Declaration at national, regional, continental and global level including through GCM implementation plans.

c) Explore the possibility of concluding labour mobility agreements with other regions, including global skills partnerships.

d) Encourage countries both within the African continent and around the world to ratify conventions which are relevant for the protection and the promotion of the rights of migrant workers including the Migration for Employment Convention (Revised), 1949 (No. 97); the Migrant Workers (Supplementary Provisions) Convention, 1976 (No. 143); the Private Employment Agencies Convention, 1997 (No. 181), the Domestic Workers Convention, 2011 (No. 189) and the Social Security (Minimum Standards) Convention, 1952 (No. 102).
PART 7. BILATERAL COOPERATION AND SUB-REGIONAL COOPERATION

Article 12. WE are determined to intensify and expand sub-regional and bilateral cooperation in order to protect migrants, including migrant workers and members of their families, to promote labour migration with respect for human rights, and to address other challenges faced by migrants at any stage of the migration process. To this end WE resolve to:

a) Ensure the effective implementation of the Migration Policy Framework for Africa and the AU Free Movement Protocol, upon its entry into force, and its associated roadmap;

b) Promote mutual accountability and learning through peer review of progress in implementation of commitments, and enhance information exchange on trends, priorities, needs and interests of Member States in relation to the protection and the promotion of the rights of migrant workers;

c) Enhance national and sub-regional mechanisms to support and protect migrant workers from pre-departure and throughout all stages of the migration journey by investing in human, institutional, technological and financial capabilities of regional and domestic stakeholders;

d) Organize awareness creation sessions and campaigns for regulatory and enforcement authorities and migrant workers on national, regional and AU regulations and protocols on the protection of the rights of all migrant workers and their families;

e) Promote regional cooperation and joint responsibility of Member States for migrant workers from particular RECs or from Africa in general through arrangements that allow migrants from African Union Member States that do not have a diplomatic presence in their country of destination to access assistance via the diplomatic representatives of other African Union Member States that are present in that country.

PART 8. MONITORING AND REPORTING MECHANISM

Article 13. WE commit to a systematic regular review process of the progress made in implementing the provisions of this Declaration; and to this end WE resolve to:

a) Establish an African Committee of Experts on the Rights of Migrant Workers, with the mandate to promote and protect the rights of migrant workers and members of their families. This Committee will conduct an annual review process that involves monitoring and reporting on the implementation of this Declaration. As part of this review, Member States and RECs will provide reports covering issues identified by the Committee of Experts.

b) Strengthen the capacity of national and regional institutions to generate knowledge and data and to engage in evidence-based planning, implementation, monitoring and evaluation with regard to labour migration. This includes building the capacity of the African Migration Observatory in Rabat, the African Centre for the Study and Research on Migration in Bamako and the Continental Operational Centre in Khartoum and the African Institute for Remittances in Nairobi. Furthermore, WE will use existing regional consultative processes to facilitate regional labour mobility and integration whilst ensuring participation of key stakeholders including civil society organisations, employers’ and workers’ organisations.
c) Identify a ministry of an African Union Member States that is responsible for labour and migration as a biennial AU champion to promote the implementation of the Declaration

d) Engage the African Union Commission to include this Declaration in the follow-up mechanism of the Ouagadougou +10 Declaration and Plan of Action on Employment, Poverty Eradication and Inclusive Development, and in the biennial follow-up report to be submitted to the Ordinary Session of the Specialized Technical Committee on Social Development, Labour and Employment.

PART 9. FINAL PROVISIONS

Article 14. Nothing in this Declaration shall:

a) Affect more favourable provisions for the realisation of the free movement of persons, right of residence, right of establishment and rights of migrant workers and members of their families contained in national legislation, regional, continental and international instruments.

b) Be interpreted as limiting or preventing the implementation of any phase of free movement of persons, right of residence, right of establishment or the rights of migrant workers by a Regional Economic Community, sub-region, or Member State.