

TRAINERS MANUAL

Free Movement of Persons in the Common Market for Eastern and Southern Africa (COMESA)



65
YEARS

International Organization for Migration

The UN Migration Agency



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TRAINERS MANUAL

Free Movement of Persons in the Common Market for Eastern and Southern Africa (COMESA)

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ACRONYMS

| | |
|---------|--|
| AEC | African Economic Community |
| AfDB | African Development Bank |
| APEC | Asia-Pacific Economic Cooperation |
| AUC | African Union Commission |
| AUMPF | African Union Migration Policy Framework for Africa |
| BLA | Bilateral labour agreement |
| BSA | Bilateral Social Security Agreement |
| CAADP | Comprehensive Africa Agriculture Development Programme |
| CCAP | Centre for Citizenship Participation in the African Union |
| CEDAW | Convention on the Elimination of All Forms of Discrimination Against Women |
| CEN-SAD | Community of Sahel-Saharan States |
| CIPRES | Conférence Interafricaine de la Prévoyance Sociale |
| COMESA | Common Market for Eastern and Southern Africa |
| CFTA | Continental Free Trade Area |
| EAC | East African Community |
| ECOWAS | Economic Community of West African States |
| FFM | Free Movement of Persons and Migration in West Africa |
| FTA | Free Trade Area |
| IBMS | Integrated Border Management System |
| ICT | Information and communications technology |
| IDF | IOM Development Fund |
| IGAD | Intergovernmental Authority on Development |
| ILO | International Labour Organization |
| IOM | International Organization for Migration |
| LMIS | Labour Market Information System |
| MoU | Memorandum of understanding |
| MRI | Meeting of the Ministers Responsible for Immigration Matters |

| | |
|---------|--|
| MPF | Migration Policy Framework (African Union) |
| NAFTA | North Atlantic Free Trade Agreement |
| NFP | National Focal Point |
| NGO | Non-governmental organization |
| NMC | National Monitoring Committees |
| OAU | Organization of African Unity |
| OSBP | One-Stop Border Post |
| PTA | Preferential Trade Area |
| RECs | Regional Economic Communities |
| SADC | Southern Africa Development Community |
| STR | Simplified Trade Regime |
| TFTA | Tripartite Free Trade Area |
| UN DESA | United Nations Department of Economic and Social Affairs |
| UNECA | United Nations Economic Commission for Africa |
| WTO | World Trade Organization |

GLOSSARY: WORKING DEFINITIONS, TERMINOLOGIES AND KEY CONCEPTS

The terms detailed in the Glossary are presented in alphabetical order and intended to be used for the purpose of this Manual. The main source relied on is the International Organization for Migration's (IOM) *Glossary on Migration* (2nd edition, IOM, Geneva, 2011). Other sources, where relevant, are separately indicated.

Table 1: Working definitions and terminologies

| Type of migration | Main characters |
|------------------------------|---|
| Asylum seekers | Persons seeking to be admitted into a country as refugees and awaiting decision on their application for refugee status under relevant international and national instruments. In case of a negative decision, they must leave the country and may be expelled, as may any alien in an irregular situation, unless permission to stay is provided on humanitarian or other related grounds. |
| Irregular migrant | Someone who, owing to illegal entry or the expiry of his or her visa, lacks legal status in a transit or host country. |
| Labour migration | Movement of persons from one State to another, or within their own country of residence, for the purpose of employment. |
| Migrant flow | The number of migrants counted as moving or being authorized to move, to or from a country to access employment or to establish themselves over a defined period of time. |
| Migrant stock | The number of migrants residing in a country at a particular point in time. |
| Migration | The movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification. |
| Mixed flows | Complex population movements including refugees, asylum seekers, economic migrants and other migrants. |
| Non-refoulement ¹ | The prohibition on a country to expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his/her life or freedom would be threatened on account of one's race, religion, nationality, membership of a particular social group or political opinion. |
| Permanent residence | The right, granted by a host State to a non-national, to live and work therein on a permanent (unlimited) basis. |
| Permanent settlers | Legally admitted immigrants who are accepted to settle in the receiving country, including persons admitted for the purpose of family reunion. |
| Temporary migrant workers | Skilled, semi-skilled or untrained workers who remain in the receiving country for definite periods as determined in a work contract with an individual worker or a service contract concluded with an enterprise. |

¹ See article 33(1) of the 1951 UN Convention Relating to the Status of Refugees.

| Type of migration | Main characters |
|-------------------|---|
| Refugee | A refugee, according to article 1(A)(2), Convention relating to the Status of Refugees article 1A(2), 1951 as modified by the 1967 Protocol, is a person who, “owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”. In addition, the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa defines a refugee as any person compelled to leave his or her country “owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country or origin or nationality”. |

Source: IOM, *Glossary on Migration*. 2nd edition (IOM, Geneva, 2011).

Key concepts associated with free movement regimes

Certain key concepts are closely related to free or liberalized movement regimes, and also appear in the COMESA Free Movement Protocol. These concepts and the essence of their meaning can be summarized as follows – and are applicable to movement in a regional context, on the basis of a regional arrangement (such as the COMESA Free Movement Protocol):

- **Free movement of persons** – normally applies to persons (in particular citizens) generally, and allows at least temporary mobility on the basis of non-discrimination through gradual removal of visa restrictions, but would not, on its own, grant full access to the labour market. A residence permit may be required.
- **Free movement of labour** – this implies access to the labour market of the destination country on an equal basis with citizens of the destination country, but may be restricted to skilled workers only (as is the case with the COMESA Protocol, which requires these skilled workers to have skills that are not available in the destination country). Some regional arrangements allow workers to seek employment in the destination country; others (as is the case with COMESA) only allow movement to accept a job offer actually made. In some regional contexts, family members are allowed to join the worker concerned. This is not provided for in the COMESA Free Movement Protocol.
- **Right of establishment** – to pursue economic activity as a self-employed person or to establish a business, such as a company.
- **Free movement of services** – this allows a provider of service to temporarily pursue his/her activity in the destination country where the service is provided, under the same condition as those applicable to citizens of that country. At times, this is provided for in a separate agreement on trade-in services.
- **Right of residence** – this confers rights same to those applicable to a citizen of the destination country to reside in that country – with the exception of perhaps some political rights – and could potentially pave way to citizenship rights, depending on the exact residence status/visa type. The right of residence may be restricted to certain categories of persons only – e.g., workers who enjoy the freedom of labour.

MODULE

A

**INTERNATIONAL
AND REGIONAL
DEVELOPMENTS
AND RELATED
CONCEPTUAL
FRAMEWORK**

1. BACKGROUND TO THE MANUAL AND KEY CONCEPTS

The International Organization for Migration (IOM), in collaboration with the Common Market for Eastern and Southern Africa (COMESA) Secretariat, is supporting COMESA Member States to move towards the full implementation of the COMESA Protocol on the Gradual Relaxation and Eventual Elimination of Visas (hereinafter referred to as the COMESA Visa Protocol), as well as the mobilization of requisite signatures and ratifications for the entry into force of the Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence (hereinafter referred to as the Free Movement Protocol). As stipulated in the COMESA Free Movement Protocol, “a genuine Common Market shall be achieved only when the citizens of Member States can move freely within the Common Market.” However, little progress has been made on its signature and ratification, and only four of COMESA’s 19 Member States have signed the Free Movement Protocol, including its implementation.

This Manual has therefore been developed to assist with the task of building the capacity of the COMESA Secretariat and COMESA Member States. Its objective is to improve the knowledge and understanding of National Focal Points, National Monitoring Committees – who will lead effective coordination among concerned stakeholders – and other relevant COMESA and government officials on the COMESA Free Movement Agenda, with particular focus on the full implementation of the Visa Protocol and thereafter the entry into force of the COMESA Free Movement Protocol.

The Manual builds on a needs assessment among representatives of the National Monitoring Committees, National Focal Points and the COMESA Secretariat to establish training needs. The assessment was designed to gauge current levels of knowledge, understanding and capacity to administer roles and responsibilities in relation to the COMESA Visa Protocol and the COMESA Free Movement Protocol.

This Manual therefore responds to the demand to provide trainers with a comprehensive, interactive, practical and flexible training guide for effective adoption and implementation of the COMESA Visa Protocol and COMESA Free Movement Protocol respectively. It is targeted at helping policymakers and practitioners to comprehend what adoption and implementation of the Protocols entail, as well as enable them to embark on concrete measures to undertake these tasks.

The Manual focuses on the following key areas:

- Conceptual framework and international and regional developments;
- COMESA Treaty Provisions on Free Movement of Persons, Labour, Services, Right of Establishment and Residence;
- COMESA Protocol on the Gradual Relaxation and Eventual Elimination of Visas;
- Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence (the Free Movement Protocol); and
- Benefits of and challenges associated with implementing the COMESA Free Movement Protocol.

The key sources that pertain to each of the modules, as well as additional reference materials, are indicated at the end of each module.

2. MODULE A: INTERNATIONAL AND REGIONAL DEVELOPMENTS AND CONCEPTUAL FRAMEWORK

2.1. Aims of Module A

- Provide an overview of the course.
- Allow participants to indicate their understanding of free movement and COMESA's envisioning of a Free Movement Protocol.
- Provide an overview of the historical footprint of COMESA.
- Provide an overview of international and regional developments concerning free movement regimes, with reference to the following:
 - Free or liberalized movement of persons' modalities;
 - African (continental) development concerning free movement regimes; and
 - Progress in African Regional Economic Communities (RECs) concerning free movement regimes.
- Reflect on related conceptual frameworks, with an emphasis on regional integration, labour migration, trade facilitation and border management perspectives, with reference to the following:
 - The RECs context;
 - African labour migration trends and characteristics;
 - The African Union labour migration framework;
 - The COMESA migration context; and
 - Trade facilitation and border management perspectives.

2.2. Learning outcomes for Module A

- Understand background information relating to COMESA and the COMESA Free Movement Protocol and developments in this regard.
- Appreciate relevant developments in relation to free and liberalized movement regimes from international and regional (African Union and RECs) perspectives.
- Be familiar with the conceptual framework in relation to the modalities of free and liberalized movement regimes.
- Understand the operation of certain related conceptual frameworks, with an emphasis on regional integration, labour migration, trade facilitation and border management.
- Be able to relate the developments and conceptual frameworks indicated above to the COMESA Free Movement Agenda.

2.3. Key points covered in Module A

- International law does not grant the right to enter a country other than one's own country. Special arrangements to this effect are needed, normally provided for in a regional free/liberalized movement agreement, such as the COMESA Free Movement Protocol.
- Free movement of persons is closely linked to regional integration. This is also true of the African context, given the focus in Africa on supporting the Pan-African objective of an integrated and unified Africa.
- COMESA is one of eight RECs in Africa formally recognized by the African Union as one of its building blocks, and is meant to fulfil this overall objective. The transformation of COMESA from a preferential trade area into a common market and eventually a monetary union must be seen in this light.
- Four levels of integration are usually recognized: (a) free trade area (FTA); (b) customs union; (c) common market; and (d) economic union. Each of these has its particular characteristics. Often, a region would progress from one level of integration to a deeper level of integration – as is also the case with COMESA.
- In COMESA, the Free Movement of Persons Programme is a two-phase approach involving the implementation of the COMESA Visa Protocol, which requires the gradual relaxation and eventual elimination of visas in the first phase, and thereafter the implementation of the COMESA Free Movement Protocol, which provides for the following: (a) visa-free entry of persons; (b) free movement of workers; (c) free movement of services; (d) right of establishment; and (e) right of residence.
- However, the rights in the COMESA Free Movement of Persons Protocol are qualified to a significant extent, and implementation of the Protocol is also through a phased approach in terms of time. In particular, only citizens of COMESA Member States can benefit therefrom; family members are not included, unless they qualify in their own rights; and free movement of labour/workers is restricted to skilled workers who have skills that are not available in the country of destination.
- Important developments regarding free movement have been taking place at the continental (African Union) level. A continental Free Movement Protocol is currently being developed.
- Progress with introducing and implementing free/liberalized free movement regimes in the RECs, including COMESA, has been uneven. Security, economic and labour market concerns are often cited as challenges, and have contributed to the slow pace of ratification of the COMESA Free Movement Protocol. Significant progress, though, has been made in the Economic Community of West African States (ECOWAS) and the East African Community (EAC), and may serve as models.
- There is a close association between free movement and labour migration, trade facilitation and border management, as is evident from, among others, the establishment of one-stop border posts (OSBPs).
- Freedom of movement of labour/workers has been a core focus of the African Union and RECs attention and activity, and must be seen in the light of considerable intraregional mobility of African migrant workers, and the developmental benefits of labour migration for the destination country, the country of origin and the individual concerned – despite challenges.
- Trade facilitation implies the cross-border mobility of at least businesspersons and professionals, and is intended to contribute to and promote free movement.

2.4. SESSION 0: Roles and functions of COMESA: Background information, contemporary issues and challenges²

2.4.1. Session overview

- COMESA has evolved as a common market that promotes regional integration and trade development of its Member States.
- The existence of COMESA is closely linked to the establishment of the African Economic Community (AEC), of which it serves as one of the regional building blocks.
- It has wide-ranging aims and objectives, and is guided by fundamental principles, undertakings given by Member States and several operating structures.
- COMESA fulfils several functions and runs programmes in a range of areas.
- It has seen certain successes, but also faces a number of challenges.

2.4.2. Learning outcomes

- Participants understand COMESA's historical background and its political and economic and trade role.
- Participants are able to reflect on its guiding framework, functions and programmes.
- Participants are enabled to discuss COMESA's successes, as well as its challenges.

2.4.3. Background information

COMESA was established in 1994, replacing the Preferential Trade Area (PTA) for Eastern and Southern Africa States. As one of Africa's eight RECs, established within the context of the AEC.³ It has been indicated that:⁴

The Common Market for Eastern and Southern Africa (COMESA) is a regional grouping of 19 African States, which have agreed to cooperate in the development of their respective economies through regional integration and trade development. Its regional integration strategy focuses on transforming the region into a single market and facilitating the integration of its Member States into the world economy through implementation of regional policies at national level.

Migration holds considerable potential for economic and social growth and development for countries of origin and destination alike, as well as for individual migrants and their families. COMESA recognizes the great importance of migration in the context of free trade, noting that for regional integration to be fully realized, citizens of COMESA Member States must be allowed to move freely in order to provide and enhance services, tourism, labour, cultural activities, among other aspects of the COMESA integration agenda.

² See, among others, H.G. Absieh, The Common Market for Eastern and Southern Africa – Roles and functions of COMESA: Contemporary issues and challenges, Presentation (2016).

³ See the discussion below for a discussion of the formal link between the Common Market for Eastern and Southern Africa (COMESA) and the African Union: COMESA is a constituent REC of the African Union.

⁴ National Monitoring Committee on the COMESA Oversight of the Free Movement Agenda – Terms of Reference.

Salient information about COMESA can be summarized as follows:⁵

- COMESA is a regional grouping of 19 African States that agreed to promote regional integration through trade development and investment promotion.⁶ It forms a major marketplace for both internal and external trading. Its area is impressive on the map of the African continent covering a geographical area of 12 million (square kilometres, km²). Its achievements to date have been significant.

Selected regional indicators for COMESA (2014)

| | |
|-------------------------|----------------------------|
| GDP | USD 657.4 billion |
| GDP per capita | USD 1,335.0 |
| Area (km ²) | 12 million km ² |
| Total population | 492.5 million |
| Total imports | USD 183 billion |
| Total exports | USD 95 billion |

Source: United Nations Conference on Trade and Development statistical database (2016), as quoted in www.uneca.org/oria/pages/comesa-common-market-eastern-and-southern-africa (accessed September 2016).

- COMESA is an international intergovernmental organization of free independent sovereign States that have agreed to cooperate in developing their natural and human resources for the good of all their people. As such, it has a wide-ranging series of objectives that necessarily include in its priorities the promotion of peace and security in the region.
- COMESA was established, and is governed, by a treaty. It has its headquarters in Lusaka, Zambia and uses four official languages: English, French, Portuguese and Arabic. It receives its finances from contributions by Member States and Cooperating Partners.
- COMESA’s vision is to be a fully integrated, internationally competitive regional economic community with high standards of living for all its people ready to merge into AEC.⁷
- Its mission is to endeavour to achieve sustainable economic and social progress in all Member States through increased cooperation and integration in all fields of development particularly in trade, customs and monetary affairs, transport, communication and information, technology, industry and energy, gender, agriculture, environment and natural resources. Its mission therefore is –

COMESA’s mission

To provide excellent technical services to COMESA in order to facilitate the region’s sustained development through economic integration.

⁵ Unless otherwise indicated, this information has been sourced from COMESA’s website, www.comesa.int/ (accessed September 2016).

⁶ I.e. Burundi, (the) Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zimbabwe and Zambia.

⁷ See www.comesa.int/comesa-vision-and-mission/ for COMESA’s vision and mission reproduced here.

- As is explained more fully in session 4 of this Manual, COMESA is recognized as one of the building blocks of the AEC under the Abuja Treaty and the African Union Constitutive Act – through regional integration.⁸ In fact, the case for regional integration has been aggressively made from Nkrumah’s “Africa Must Unite”, through the Lagos Plan to the Declaration of the birth of the African Union.
- This is supported by the drive towards a Continental Free Trade Area (CFTA), increased investment and poverty reduction, and by close linkages with other regional structures (i.e. EAC, the Southern African Development Community (SADC), the Intergovernmental Authority on Development (IGAD) and the Indian Ocean Commission.
- A COMESA-EAC-SADC Free Trade Area was signed on 9 June 2015, which includes an annex on the movement of businesspersons. The main objective of the arrangement is the strengthening and deepening of economic integration of the Southern and Eastern Africa region. This will be achieved through harmonization of policies and programmes across the three RECs in the areas of trade, customs and infrastructure development.
- Together with the time when COMESA was still a preferential free trade area, COMESA has been in existence for 35 years. Its historical trajectory can be indicated as follows:
 - 1981: Establishment of the Preferential Free Trade Area for Eastern and Southern Africa (PTA): Charging lower tariffs for goods coming from a Member Country
 - 1994: PTA transformed into COMESA: To take advantage of deeper integration and a larger market size
 - 2000: Establishment of an FTA: Removal of all tariffs for goods coming from a Member Country

COMESA developments and achievements

A brief overview of some of the key COMESA developments reveals the following:⁹

- The FTA was launched in the year 2000 with the intra-COMESA trade at USD 2.3 million;
- Sixteen (16) Member States are now in the FTA with intra-COMESA Trade at more than 10 times the initial amount, the latest to join being the Democratic Republic of the Congo on the footsteps of Uganda;
- The Customs Union was launched in 2008; and
- Future developments to include monetary union and a full common market.

⁸ The Abuja Treaty came into force after the requisite numbers of ratification in May 1994. It provided for the AEC to be set up through a gradual process, which would be achieved by coordination, harmonization and progressive integration of the activities of existing and future regional economic communities (RECs) in Africa.

⁹ Ibid.

2.4.4. Aims and objectives, fundamental principles, undertakings and operating structures

- Due to COMESA's economic history and background, its main focus is on the formation of a large economic and trading unit that is capable of overcoming some of the barriers that are faced by individual States.

COMESA's aims and objectives

According to article 3 of its founding Treaty, COMESA's aims and objectives are as follows:¹⁰

- Attain sustainable growth and development of the Member States by promoting a more balanced and harmonious development of its production and marketing structures;
 - Promote joint development in all fields of economic activity and the joint adoption of macroeconomic policies and programmes to raise the standard of living of its peoples and foster closer relations among its Member States;
 - Cooperate in the creation of an enabling environment for foreign, cross-border and domestic investment, including the joint promotion of research and adaptation of science and technology for development;
 - Cooperate in the promotion of peace, security and stability among the Member States in order to enhance economic development in the region;
 - Cooperate in strengthening the relations between the common market and the rest of the world and the adoption of common positions in international fora; and
 - Contribute towards the establishment, progress and the realization of the objectives of the AEC.
- The fundamental principles of COMESA to which Member States commit themselves are the following (see article 6):
 - Equality and interdependence of the Member States;
 - Solidarity and collective self-reliance among the Member States;
 - Inter-State cooperation, harmonization of policies and integration of programmes among the Member States;
 - Non-aggression between the Member States;
 - Recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;
 - Accountability, economic justice and popular participation in development;
 - The recognition and observance of the rule of law;
 - The promotion and sustenance of a democratic system of governance in each Member State;
 - The maintenance of regional peace and stability through the promotion and strengthening of good neighbourliness; and

¹⁰ See also B. Chigawa, COMESA Programme on Free Movement of Persons (Powerpoint, 2016).

- The peaceful settlement of disputes among the Member States, the active cooperation between neighbouring countries and the promotion of a peaceful environment as a pre-requisite for their economic development.
- Articles 4 and 5 of the Treaty list general and specific undertakings of the Member States, including the following:
 - In the area of trade liberalization and customs cooperation – to establish a Customs Union, and abolish all non-tariff barriers;
 - In the area of transport and communications – to foster cooperation that facilitates trade in goods and services and the movement of persons;
 - In the area of development policies –
 - To harmonize or approximate their laws to the extent required for the proper functioning of the common market; and
 - Remove obstacles to the free movement of persons, labour and services, right of establishment for investors and right of residence within the common market;
 - In the area of domestication and transposition – to confer upon the legal instruments (i.e. regulations) of the common market the force of law and the necessary legal effect within its territory.
- According to article 7 of the COMESA Treaty, the organs of the common market are the following:
 - (a) Authority, which comprises the Heads of State and Government (the Summit) (chairmanship is rotational annually) – this is the supreme policy organ of COMESA and gives policy direction;
 - (b) Council of Ministers, which comprises of ministers designated by each Member State – it monitors COMESA activities, including supervision of the Secretariat, recommends policy direction and development, reports to the Authority, and meets once a year or as necessary;
 - (c) Court of Justice, which has jurisdiction to adjudicate upon all matters that may be referred to it pursuant to the Treaty;
 - (d) Intergovernmental Committee, which consists of Permanent or Principal Secretaries designated by each Member State – it is responsible for the development of programmes and action plans in all fields of cooperation except in the finance and monetary sector;
 - (e) Committee of Governors of Central Banks – it advises the Authority and the Council of Ministers on monetary and financial matters, and is responsible for the development of programmes and action plans in the field of finance and monetary cooperation;
 - (f) Technical Committees;
 - (g) Consultative Committee of the Business Community and Other Interest Groups; and
 - (h) The Secretariat, which is headed by the Secretary-General, also includes two Assistant Secretary Generals, Directors and Staff – its function is to coordinate and facilitate implementation of all programmes in Member States.

2.4.5. Functions and programmes

- Given its trade orientation, several provisions of the COMESA Treaty highlight and enable the Common Market's trade functions – for example, by indicating the Rules of Origin,¹¹ and the removal of non-tariff barriers,¹² as well as introducing and utilizing trade different facilitation instruments, such as OSBPs, a Simplified Trade Regime (STR) and harmonized road transit charges.
- COMESA is intensely involved in Economic Infrastructure Development – in order to reduce the cost of doing business and enhance competitiveness through fostering physical regional connectivity; this covers, among others, the promotion of the development of transport.
- In addition to the above, the following programmes have been designed and are implemented to support COMESA's Integration Agenda.
 - Concerning immigration, it has been established that without free movement of persons, labour and services, and eventually right of establishment, the aspirations of a fully integrated region cannot be fully realized. This will be realized through facilitating the gradual removal and elimination of visas.
 - As noted later in this Manual, Kenya, Mauritius, Rwanda and Seychelles has reached the highest rate of implementation of the protocol of free movement of persons, labour and services;
 - Concerning agriculture, COMESA is implementing the Comprehensive Africa Agriculture Development Programme (CAADP) to transform agriculture into an engine of sustainable economic growth;
 - Concerning gender and social affairs, COMESA promotes the need for equal opportunity and treatment for women, youth and marginalized groups in COMESA programmes and the region;
 - Concerning climate change, COMESA contributes to the region's vision and efforts to achieve economic prosperity and improved livelihoods through climate protection;
 - Concerning peace and security, COMESA works with Member States to develop and implement effective mechanisms to promote peace and security in the region; and
 - Concerning aid for trade, COMESA focuses on trade-related infrastructure, trade development, facilitation and regulatory measures and access to mechanisms by Member States to address trade and integration-related adjustments.
- COMESA is committed to alignment with the international development agendas, including the achievement of the Sustainable Development Goals and the African Union's guiding document, i.e. Agenda 2063 (see chapter 4 of this report).

¹¹ Rules of Origin are used to distinguish between goods that are produced within Member States and are therefore entitled to preferential tariff treatment and those that are considered to have been produced outside the COMESA region that attract full import duties when traded.

¹² i.e. removal of barriers that prevent smooth flow of goods and services across borders, e.g. roadblocks, taxes, inspections and import licences.

2.4.6. Successes and challenges

- The agenda of COMESA is to deepen and broaden the integration process. The following factors have enabled it to succeed:
 - Commitment of Member States through regular contribution and provision of policy direction.
 - Member States and policy organs are well supported by a vibrant Secretariat.
 - Strategic partnerships (see article 181), in the following areas:
 - Technical support: World Trade Organization (WTO), International Trade Centre, United Nations Industrial Development Organization and United Nations Economic Commission for Africa; and
 - Financial support: European Union, World Bank, USAID and African Development Bank (AfDB)
 - Positive economic growth rates in the Member States has necessitated regional integration.
 - Growing interest from businesses, private sector, civil society, academia (Triple Helix).
 - Political commitment.
- However, there are many challenges too. Regional integration would be faster if not for the following:
 - Signature, ratification and domestication of COMESA policies, protocols, model laws, programmes;
 - Implementation of programmes (such as CAADP, Climate Change);
 - Donor support; and
 - Awareness and sensitization regarding the benefits of regional integration.
- It is, therefore, necessary to continue to build a common vision based on a development integration and regional approach that is inclusive and beneficial to all, large and small countries, landlocked countries and small island economies.

2.4.7. Summary of key points

- COMESA is a common market, promoting regional integration and trade development.
- It pursues certain aims and objectives, informed by a set of fundamental principles, undertakings by Member States and operating structures.
- COMESA fulfils several functions and runs programmes, has experienced certain successes, but also faces a number of challenges.

2.5. SESSION 1: Free movement, regional integration and international law

2.5.1. Session overview

- International law does not grant the right to enter a country, other than one's own country. Special arrangements to this effect are needed, normally provided for in a regional free/liberalized movement agreement, such as the COMESA Free Movement Protocol.
- Free movement of persons is closely linked to regional integration. This is also true of the African context, given the focus in Africa on supporting the Pan-African objective of an integrated and unified Africa.
- Four levels of integration are usually recognized: (a) FTA; (b) customs union; (c) common market; and (d) economic union. Each of these has its particular characteristics. Often, a region would progress from one level of integration to a deeper level of integration, as is also the case with COMESA.
- Free or liberalized movement of persons covers a range of modalities, i.e. free movement of persons, free movement of labour, right of establishment, free movement of services, and right of residence.

2.5.2. Learning outcomes

- Participants understand the concept of free movement and its application in International Law.
- Participants are able to identify the different phases of regional integration.
- Participants have an understanding of the basic concepts or modalities associated with Free Movement.

2.5.3. International perspectives

- International law does not bestow on a person a right to enter or remain in a country of which he or she is not a citizen. From an international law perspective, freedom of movement as a legal entitlement is much narrower in scope:
 - According to article 13(2) of the UN Universal Declaration of Human Rights (1948), a person has the right to leave any country (including his/her own) and to return to his/her country. This is reiterated by the provisions of article 12 of the UN International Covenant on Civil and Political Rights (1966).
 - This international law rule is also reflected in Africa's main human rights instrument. Article 12(2) of the African Charter on Human and Peoples' Rights (1981; entered into force in 1986) stipulates:

Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
- The right to be admitted and remain in another country is therefore subject to the following: (a) laws of that particular country, or a law imposed on that country by a supra-national organization (such as the European Union); and/or (b) any bilateral or multilateral (e.g. regional) agreement that that particular country may have concluded, and which allows for free or liberalized movement (even if restricted), and which covers the person concerned.

- It is for this latter reason that it is necessary to explore the purpose, ambit and content of free and/or liberalized movement regimes – as they provide important opportunities, subject to conditions, for persons to move across borders.

2.5.4. Regional integration models: Some international experiences

- Free or liberalized movement, also of persons and workers, is globally closely linked to regional integration models and processes. As has been noted by the IOM: “As a general rule, the deeper the integration, the greater the likelihood of finding relatively liberal freedom of movement provisions.”¹³
- This is also true of COMESA:
 - In several of its provisions, the COMESA founding treaty emphasizes the overarching objective of economic and market integration of the COMESA region, and the social and economic development of the region.¹⁴
 - The objective of regional integration also provides a mandate to COMESA to conclude cooperation agreements with other regional communities – for example, the recently concluded agreement with the EAC and SAC to establish an FTA (known as the Tripartite Free Trade Area (TFTA)). Section 179(1) of the Treaty stipulates:

In the context of realising its regional integration objectives, the Common Market may enter into co-operation agreements with other regional communities.
 - The COMESA Free Movement Protocol also makes the existence of this link between regional integration and free movement clear, by stipulating in its preamble (emphasis added):

CONVINCED that a genuine Common Market shall be achieved only when the citizens of the member States can move freely within the Common Market; are free to take up offers of employment in any of the member States; are free to render services in any of the member States; are free to pursue activities of self-employment, set up and manage undertakings in any of the member States; in particular, companies and firms under conditions similar to those applicable to citizens of the country of establishment.
- Four levels of integration are generally recognized: (a) FTA; (b) customs union; (c) common market; and (d) economic union.¹⁵
 - An FTA is characterized by the removal of trade barriers. It usually entails the removal of import tariffs, as well as import quotas. Agreements establishing FTAs can be limited to a few sectors or can encompass all aspects of international trade. Importantly, free movement of capital and labour is not necessarily part of a free trade agreement.
 - One of the most prominent global examples of an FTA is the North American Free Trade Agreement (NAFTA).

¹³ IOM, Free Movement of Persons in Regional Integration Processes: Background paper. International Dialogue on Migration – Intersessional Workshop, 18–19 June 2007. Available from www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/microsites/IDM/workshops/free_movement_of_persons_18190607/idm2007_backgroundpaper_en.pdf

¹⁴ See, among others, the Preamble of the Treaty, as well as articles 72, 82, 150(1), 163(1) and 179(1).

¹⁵ Ibid.; see also M. Holden, “Stages of economic integration: From Autarky to Economic Union” (2003), available from <http://publications.gc.ca/Collection-R/LoPBdP/inbrief/prb0249-e.htm>

- Within Africa, mention should be made of two such FTAs, discussed below:
 - The CFTA, under the auspices of the African Union – decided in 2012 for implementation by 2017; and
 - The COMESA-EAC-SADC Tripartite Free Trade Area, launched on 15 June 2015.
- A customs union implies deepened integration by equalization of trade advantages enjoyed by Member States with respect to third-country exports. This requires harmonized external trade policies of the participating countries. It further includes establishing a common external tariff and import quotas on products entering the region from third-party countries. A customs union does not necessarily imply freedom of movement of labour, although there could typically be freedom of movement of goods and capital.
 - An important example of a Customs Union in Africa is the Southern African Customs Union (SACU), established already in 1910 (most recent agreement: 2002) and comprising Botswana, Lesotho, Namibia, South Africa and Swaziland.
- A common market provides for free flow of labour, capital and other resources. It constitutes a major step towards significant economic integration. It eliminates non-tariff barriers to trade and requires policy harmonization in a number of areas. For example, to support integration, agreement on worker qualifications and certifications is needed, as well as access to social security benefits and portability of social security benefits for citizens of participating countries who migrate for work to a country within the common market region. The EAC is an example of a common market in Africa, and is regulated by the Common Market Protocol of 2009.

Overall advantage of establishing a common market

It has been noted that the principal advantage of establishing a common market is “...[t]he expected gains in economic efficiency. With unfettered mobility, labour and capital can more easily respond to economic signals within the common market, resulting in a more efficient allocation of resources.”¹⁶

- An economic union indicates the deepest form of economic integration. It requires formally coordinated monetary and fiscal policies, as well as harmonized labour market, regional development, transportation and industrial policies. It also frequently includes the use of a common currency and a single, unified monetary policy, and implies exchange rate certainty and consistency. A supranational entity would be required to regulate commerce within the Union and ensure uniform application of the rules.
 - The European Union is perhaps the best-known example of an Economic Union. The depth and breadth of the European Union as an economic union is reflected in its integration also in important political fields, such as foreign policy and home affairs.
- Tables 2 and 3 depict in summarized fashion the basic elements of the stages of economic integration and basic features of economic integration.

¹⁶ Holden, 2003.

Table 2: Basic elements of the stages of economic integration

| Basic elements of the stages of economic integration | |
|--|--|
| FTA | Zero tariffs between member countries and reduced non-tariff barriers |
| Customs union | FTA + common external tariff |
| Common market | Customs union + free movement of capital and labour, some policy harmonization |
| Economic union | Common market + common economic policies and institutions |

Source: Holden, 2003.

Table 3: Features of regional integration

| Type of arrangement | Free trade among members | Common commercial policy | Free factor mobility | Common monetary and fiscal policies | One government |
|-------------------------|--------------------------|--------------------------|----------------------|-------------------------------------|----------------|
| Preferential trade area | No | No | No | No | No |
| FTA | Yes | No | No | No | No |
| Customs union | Yes | Yes | No | No | No |
| Common market | Yes | Yes | Yes | No | No |
| Economic union | Yes | Yes | Yes | Yes | No |
| Political union | Yes | Yes | Yes | Yes | Yes |

Source: United Nations Economic Commission for Africa (UNECA), *Assessing Regional Integration in Africa V: Towards an African Continental Free Trade Area* (UNECA, Addis Ababa, 2012), p. 29 (Table 3.1).

- Often progression from a more limited to a more extensive regional form of integration is foreseen. This is also the case with regional integration in Africa, as is evident from Table 4, and foreseen in the Abuja Treaty, discussed later in this Module.

Table 4: Africa's integration process

| Integration stages in the Abuja Treaty | At REC level | | | | | | | Completion date in |
|--|--------------|-----------------|--|--------------|---|--------------|--------------|--------------------|
| | ECOWAS | COMESA | Economic Community of Central African States | IGAD | Community of Sahel-Saharan States (CEN-SAD) | EAC | SADC | |
| First stage (5 years): Strengthen RECs | Achieved | Achieved | Achieved | Achieved | Achieved | Achieved | Achieved | 1999 |
| Second stage (8 years): Coordinate and harmonize activities and progressively eliminate tariff and non-tariff barriers | Achieved | Achieved | Achieved | X | Achieved | Achieved | Achieved | 2007 |
| Third stage (10 years): FTA and customs union in each REC | X (2015) | X (June * 2009) | X (2011) | To be set | X | X | X (2011) | 2017 |
| At continental level | | | | | | | | |
| Fourth stage (2 years): Continental customs union | Not achieved | Not achieved | Not achieved | Not achieved | Not achieved | Not achieved | Not achieved | 2019 |
| Fifth stage (4 years): Continental common market | Not achieved | Not achieved | Not achieved | Not achieved | Not achieved | Not achieved | Not achieved | 2023 |
| Sixth stage (5 years): Continental economic and monetary union | Not achieved | Not achieved | Not achieved | Not achieved | Not achieved | Not achieved | Not achieved | 2028 |

Source: UNECA, 2012, p. 15 (Table 2.1).

Basic concepts:

- **FTA:** This entails the removal of trade barriers, such as import tariffs, as well as import quotas for a few sectors or all aspects of international trade. Free movement of capital and labour is not necessary part of a free trade agreement. Examples: NAFTA, TFTA and CFTA.
- **Customs union:** This implies deepened integration – equalization of trade advantages with respect to third-country exports. It requires harmonized external trade policies and the establishment of a common external tariff and import quotas on products entering the region from third-party countries. It does not necessarily imply freedom of movement of labour, but freedom of movement of goods and capital is typical. Example: SACU.
- **Common market:** A common market foresees free flow of labour, capital and other resources. As a major step towards significant economic integration, it eliminates non-tariff barriers to trade and requires policy harmonization in a number of areas, such as agreement on worker qualifications and certifications, as well as access to social security benefits and portability of social security benefits. Example: EAC Common Market.
- **Economic union:** This indicates the deepest form of economic integration, and requires formally coordinated monetary and fiscal policies, as well as harmonized labour market, regional development, transportation and industrial policies. It makes use of a common currency and a single, unified monetary policy. A supranational entity would be required to regulate commerce within the union and ensure uniform application of the rules. Example: European Union.
- **COMESA being a common market:** Envisaged to become a monetary union, the current Free Movement Protocol foresees the free movement of persons and labour, although it restricts the movement of labour to skilled labour of persons with specialized skills that are not available in a (destination) Member State. Also, the COMESA Council of Ministers is required to adopt measures to be implemented progressively in relation to social security, labour laws, pension and working conditions to provide for the freedom of movement of labour. Provision is also made for the gradual removal of restrictions on the right of establishment – through mutual recognition of certain qualifications, in addition to the coordination of provisions regulating certain specific establishments (e.g., companies) and the categorization of companies or firms.

2.5.5. Free or liberalized movement of persons' modalities*What is understood under "free movement" and "liberalized movement"?*

An important conceptual consideration concerns the meaning of the notion of "free movement". This notion itself may be a misnomer and could create a stumbling block in understanding what a particular movement regime entails, and in accepting and implementing mobility provisions. It is rarely the case that unconditional movement of persons and in particular of labour is foreseen. Therefore, it has been suggested that the term "liberalized movement" is generally a more accurate description of what is intended.¹⁷

- (a) Introduction:** Within the context of regional integration models, there is a considerable variety and even disparity as regards modalities pertaining to the movement of persons and labour.

¹⁷ IOM, *Free movement of persons in regional integration processes: background paper 4*.

- Appendix II provides a global overview of regimes providing for liberalized movement of persons in regional integration processes, while Appendix III gives an overview of provisions on free movement and labour mobility in various RECs in Africa. A further reflection on these matters follows below.

(b) Mobility arrangements can create a right to move or merely support or facilitate movement: A distinction can be drawn between mobility arrangements that create a right or entitlement to move, as opposed to those that merely support or facilitate movement.

- Regarding the latter, some regional frameworks allow for temporary stay of certain categories of people in particular persons engaged in trade and investment activities. The Asia-Pacific Economic Cooperation (APEC), for instance, does not contain any specific provisions allowing labour mobility, but it includes arrangements aimed at facilitating and streamlining temporary entry of business visitors under the APEC Business Travel Card Scheme.¹⁸
- In the SADC, the focus is on the facilitation or support of people who migrate, as the SADC Protocol on the Facilitation of Movement of Persons makes residence and establishment in the SADC Member State of destination subject to the national legal framework.
- On the other hand, both ECOWAS and EAC have guaranteed in their foundational free movement instruments a right to move freely, subject to certain conditions. This appears from the provisions of, respectively, the following:
 - ECOWAS Protocol on Free Movement of Persons, Residence, and Establishment of 1979 (article 2); and
 - EAC Common Market Protocol (CMP) of 2009 (articles 7–11).
- As far as COMESA is concerned, one has to bear in mind certain distinctions:

(1) Visa-free entry: As regards visa-free entry of persons, this appears to be guaranteed in the Free Movement Protocol, but subject to the phased introduction of various stages of visa-free entry, and also subject to the other conditions set in the COMESA Visa Protocol, such as the requirement that the person concerned has a valid travel document, and is not subject to refusal or expulsion under circumstances foreseen in the Protocol (see Module A for a discussion in this regard).

(2) Free movement of labour: Free movement of labour, while constituting a right to move, is subject to several important qualifications, such as:

- As mentioned above, only skilled persons who possesses skills that are not available in the COMESA Member State of destination are entitled to move, unless this arrangement is amended by the Council of Ministers; this constitutes a very narrow category of workers that can benefit from the right to move and simultaneously provides significant protection to citizens of the Member State of destination, as regards access to the labour market of that Member State. In particular, lower-skilled and unskilled workers do not have the right, according to the provisions of the Protocol, to move to another COMESA Member State for purposes of employment.
 - According to article 9(2)(a) and (b), the worker concerned can move in order to “accept offers of employment actually made”, and also move freely within the territory of the Member State of destination for this purpose. This is a fairly narrow description, likely implying that the person concerned cannot move to the country in order to seek employment; apparently, an actual job offer must

¹⁸ Ibid.

have been made. This is much narrower in scope than, for example, the similar provision in the EAC CMP, which allows a worker to move also for purposes of applying for employment.¹⁹

(3) Free movement of services: From the perspective of the free movement of services, the emphasis in article 10 the Free Movement Protocol is giving priority to certain services (production costs, trade in goods), and to allow a person providing services to temporarily pursue his/her activity in the Member State where the service is provided, on an equal basis with the citizens of that Member State.

The temporary movement of service providers, within the context of free movement of services, is aligned with one of the modalities (called modes – in this case, Mode 4) provided for under the General Agreement on Trade in Services being negotiated under the WTO, and is also allowed in certain other regional trading blocks in the world, including Africa (such as under the EAC CMP).

- All of this is subject to a programme to be adopted by the Council of Ministers.
- Moreover, once the Treaty had entered into force, a Member State may not introduce new restrictions on the freedom to provide services.

(4) Right of establishment: The COMESA Free Movement Protocol also foresees the gradual removal of restrictions on the right to establishment – e.g. to work as a self-employed person or establish and manage a company. Restrictions must be removed within two years after the adoption of the Protocol, and should happen in accordance with directives issued by the Council of Ministers.

(5) Right of residence: Regarding the right of residence, little is contained in the Protocol in terms of concrete regulation. It is left to the Member States to endeavour to harmonize their national laws, rules and regulations for purposes of granting the right of residence to COMESA citizens.

(6) Additional restrictions and qualifications: Overall, in relation to all the Free Movement Protocol contexts mentioned above, there are two further restrictions or qualifications:

- Firstly, the entitlements and arrangements above only apply to citizens of COMESA Member States; non-citizens, including permanent residents, remain subject to the laws of the country concerned, which regulate the circumstances under which they would be allowed to move; and
- Secondly, nowhere does the Protocol give an indication that family members or dependants could, on the basis of the Protocol, benefit from these provisions, unless they qualify in their own right to move (e.g. in the case of visa-free entry); the entitlements and benefits only apply to the person concerned, including the worker concerned. The arrangements made under the EAC CMP can be compared; as a rule, family members can also benefit from the similar arrangements existing under that Protocol.

(c) Persons covered by mobility agreements: Mobility arrangements can cover persons generally and/or (certain) worker categories and/or other categories of persons.

¹⁹ East African Community (EAC), *Protocol on the Establishment of the East African Community Common Market* (2009), article 10(3).

2.5.6. Summary of key points

- In international law, the concept of free movement is limited.
- Regional integration implies increased freedom of movement.
- There are different phases of regional integration and various forms of free movement.

2.6. SESSION 2: Free movement in the African context

2.6.1. Session overview

- Pan-Africanism underlies the formation of the African Union, of which the RECs, including COMESA, are the building blocks.
- Embedded in regional integration towards the goal of a united Africa is freedom of movement – integration can only be achieved if it is underpinned by free movement; conversely, regional integration supports (increased) free movement.
- The Abuja Treaty sets out provisions for free movement at the regional level. Agenda 2063 fast tracks free movement.
- The African Union is headed towards a Continental Free Movement Protocol established within greater continental integration.
- Increased intra-African migration calls for explicit responses at the political and policy level; the African Union migration framework and Declaration on Migration set out broad policy considerations, and supported by key instruments, notably the African Union Migration Policy Framework (AUMPF) and the Joint Labour Migration Programme.

2.6.2. Learning outcomes

- Participants have a broad understanding of how free movement is contextualized in the Abuja Treaty and within the context of Agenda 2063.
- Participants are aware of the labour migration and visa context in Africa.
- Participants are able to identify key African Union migration policies that impact on free movement.

2.6.3. Historical developments and the formation of the African Union

- Freedom of movement in Africa is closely linked to the idea and development of Pan-Africanism. From this perspective, freedom of movement serves to enhance regional integration; simultaneously, regional integration stimulates free movement.
- African thinkers and leaders have long expressed the vision of a united Africa.
- Already in 1924, M.M. Garvey, a famous Pan-Africanist leader, had this to say in the incipit of his poem, “Hail, United States of Africa”:

Hail! United States of Africa-free!
 Hail! Motherland most bright, divinely fair!
 State in perfect sisterhood united,
 Born of truth; mighty thou shalt ever be.

- Salient elements of the development of continental approaches to political and economic integration can be summarized as follows:²⁰
 - The Heads of State and Government of 30 of the 32 independent African nations gathered to establish the Organization of African Unity (OAU) at the Conference of Independent African States on 25 May 1963.
 - Apart from the liberalization efforts of colonization and apartheid, the main objectives of OAU were as follows: (a) promote unity and solidarity among African States; (b) organize and strengthen cooperation for development on the continent; (c) protect the sovereignty and territorial integrity of its Member States; and (d) encourage international cooperation as outlined by the United Nations.
 - Regional integration arrangements were either created under the framework of the Lagos Plan of Action, or arrangements that pre-existed it. The Lagos Plan of Action was a critical agreement in the history of regional integration in Africa. It was adopted in 1980 at the OAU Extraordinary Summit in Lagos, Nigeria, where it was launched as a special initiative of the Organization. It was borne out of the necessity for continental and national self-sufficiency and the creation of a self-reliant continental economy.
 - The commitments in the Lagos Plan of Action were translated into a specific agreement in Abuja, Nigeria in June 1991, when the OAU Heads of State and Government signed the Treaty Establishing the African Economic Community (the Abuja Treaty). The then existing RECs were included in the continental integration agenda, while the remaining regional economic communities – IGAD (formed in 1986), Arab Maghreb Union (formed in 1989), CEN-SAD (formed in 1998), and EAC (formed in 1999) – were all recognized as RECs after the Abuja Treaty.

The Abuja Treaty and African regional integration

The Abuja Treaty is arguably the most important agreement as regards economic, social and political collaboration, coordination and convergence in Africa as it lays out the future of the continent with the establishment of an African Economic Community. The integration process is set to cover a period of 34 years from 1994 to 2028.

Source: See UNECA, History of Africa's regional integration efforts (n.d.), available from www.uneca.org/oria/pages/history-africa%E2%80%99s-regional-integration-efforts

- In 1999, the Heads of State and Government called for the establishment of an African Union (the Sirté Declaration) in conformity with the ultimate objectives of the OAU Charter and the provisions of the Abuja Treaty. This gave rise to the Constitutive Act of the African Union, in Lome, Togo on 11 July 2000 and the inaugural launch of the African Union in Durban, South Africa on 9 July 2002.
- However, after a number of years with lagging regional integration initiatives, the fourth Conference of African Ministers of Integration adopted the Minimum Integration Programme in 9 May 2009. The programme contains an action plan to accelerate coordination, convergence and collaboration among the regional economic communities so as to achieve the ultimate objective of the AEC.
- It also identifies financing and structural impediments hindering the implementation of the Abuja Treaty and offers a road map for how to overcome the challenges.

²⁰ See UNECA, n.d.

- In parallel, in 2008 COMESA, EAC and SADC agreed to negotiate a TFTA as a building block of the CFTA.
- In 2012, the Assembly of the African Union endorsed the Action Plan for Boosting Intra-African Trade and the fast-tracking of the CFTA. The CFTA is arguably the most comprehensive regional trade arrangement in the process of negotiation at the moment.
- In 2015, as indicated below, the African Union adopted Agenda 2063. Agenda 2063 provides a framework for comprehensive and accelerated regional integration and development in Africa.
- In 2002, at the launch of the African Union, its first chairperson, President T. Mbeki, proclaimed:²¹

By forming the Union, the peoples of our continent have made the unequivocal statement that Africa must unite! We as Africans have a common and a shared destiny!

- And in 2006, the then African Union chairperson, Professor A.O. Konare, commented as follows: “As we continue to pursue the objective of establishing the United States of Africa in the long run, it is important to find an arrangement that will enable us to improve the co-ordination and harmonization of Africa’s position in some key areas of policy making.”²²
- The foundational instrument for institutionalizing free movement of people and putting in place the African passport is the development of the Protocol on Free Movement of Persons, the Right to Residence and the Right of Establishment. This is provided for in article 43(2) of the 1991 Treaty Establishing the African Economic Community, commonly known as the Abuja Treaty.

The Abuja Treaty, which also provided for the strengthening of existing RECs and the establishment of new RECs in Africa,²³ in article 43(1), enjoins African Member States to adopt measures aimed at freedom of movement also at bilateral and regional levels:

The African Union mandate to establish free movement regimes at RECs and bilateral levels

Member States agree to adopt, individually, at bilateral or regional levels, the necessary measures, in order to achieve progressively the free movement of persons, and to ensure the enjoyment of the right of residence and the right of establishment by their nationals within the Community.

Source: Treaty Establishing the African Economic Community (AEC) (1991), article 43(1).

²¹ Launch of the African Union, 9 July 2002: Address by the chairperson of the African Union, President Thabo Mbeki, ABSA Stadium, Durban, South Africa.

²² Expressed at the University of South Africa, Pretoria, 24 June 2006, par. 23: see D. d’Orsi, “The idea of an African passport and the freedom of movement of persons in the continent: Only wishful thinking?”, AfricLaw, 22 February 2016, available from <https://africlaw.com/2016/02/22/the-idea-of-an-african-passport-and-the-freedom-of-movement-of-persons-in-the-continent-only-wishful-thinking/>

²³ Abuja Treaty, article 28. The Economic Community of West African States (ECOWAS) was established in 1975; it was followed by the Economic Community of Central African States in 1983; the Arab Maghreb Union was founded in 1989; the Southern African Development Community was formed in 1992; COMESA assumed its present form in 1994; the Intergovernmental Authority in Development emerged in 1996; CEN-SAD was formed in 1998; and the present EAC was reconstituted in 2001: J. Oucho, *Free movement of persons from the perspective of African Regional Integration: Gaps, challenges and solutions* (A study prepared for the ILO and the African Union Commission in the quest for Free Movement of Persons in the African Economic Community) (December 2015), pp. 5–6.

- COMESA is one of eight RECs in Africa formally associated with the African Union, and is meant to fulfil this overall objective. The transformation of COMESA from a preferential trade area into a common market and eventually a monetary union must be seen in this light.
- The free movement of people and the rights of residence and establishment comprises the fifth phase of the Abuja Treaty that is projected to be realized by 2023. As has been noted, “[T]o date, businesses are not able to attain, move or retain professionals because of restrictive immigration laws that hamper the mobility of professional services, causing limited regional skills pooling throughout the continent.”²⁴
- It is, therefore, clear that free movement of persons is viewed as a cardinal aspect of African Economic Unity and of regional integration.
- Already in 2001, the Council of the African Union recommended to Member States to:²⁵
 - Work towards the free movement of people and strengthen intraregional and interregional cooperation in matters concerning migration.
- Similarly, the 2006 African Union Migration Policy Framework calls upon RECs and their Member States to consider the adoption and implementation of appropriate protocols in order to progressively achieve the free movement of persons, and to ensure the enjoyment of the right of residence, the right of establishment and access to legal employment in host countries.²⁶
- Some progress towards the development of free/liberalized movement regimes has been made in African regions, as noted by the African Union in 2013:
 - “East, West and Southern Africa have taken bold steps to remove barriers to movement for the citizens within their regions”.²⁷
- Nevertheless, it has also been remarked by the African Union that uneven progress has been made, and that there is need for a continental instrument arranging for free movement:²⁸

Currently, RECs are at different levels of implementing the Abuja Treaty. Whereas, implementation of the African Integration Agenda in the areas of trade, goods and services has since advanced as a result of development of relevant policies; integration through free movement of people in Africa has not made much progress due to lack of requisite policy. The development and adoption of the AU Protocols on Free Movement of Persons in Africa will therefore seek to facilitate free movement of persons on the Continent through harmonization of the different national and regional policies in the area of visa regimes, residence permits, right to establishment, development and issuance of African Passport as well as address issues related to mass deportations etc.

²⁴ See www.uneca.org/oria/pages/free-movement-persons (accessed September 2016).

²⁵ See par. 4 and par. 5 respectively of the Resolution (regulation) on the Establishment of a Strategic Framework for a Policy of Migration in Africa (CM/Dec. 34 (LXXIV) 2001).

²⁶ African Union, The Migration Policy Framework for Africa, EX.CL/276 (IX) (Banjul, the Gambia, 2006), par. 1.3.

²⁷ African Union Commission (AUC), *Status of Integration in Africa (SIA IV)* (Addis Ababa, 2013).

²⁸ African Union, Concept note – Meeting to launch the drafting process of the Africa Union Protocol on Movement of Persons in Africa, Nairobi, Kenya, 27–29 July 2016, par. 2.

- Significant progress towards a continental-wide Free Movement Protocol has also been made, especially recently.
 - Following a study undertaken by the Centre for Citizenship Participation in the African Union,²⁹ and building on earlier pronouncements to this effect (see above), the African Union Executive Council in 2016 reaffirmed its commitment to free movement of people and goods, and the adoption of a Protocol on Free Movement of People.

African Union Executive Council Decision January 2016 of a continental Protocol on Free Movement of Persons

REAFFIRMS its commitment to free movement of people and goods, and of Africans having free access to all AU Member States, as amongst the enduring project of Pan Africanism and African integration, and that its benefits include facilitating tourism, intra-African investments and trade, people to people integration and cooperation, and the circulation and utilization of skills in the continent.

URGES all Member States to adopt [...] the process outlined towards the adoption of a Protocol on Free Movement of People by January 2018, which should come into immediate effect in Member States.

Source: African Union Executive Council, Decision on the Mekele Retreat of the Executive Council, Doc. EX.CL/947 (XXVIII).

- In fact, in June 2015, the African Union Heads of State and Government adopted a Declaration on Migration,³⁰ which reaffirms the African Union’s commitment at accelerating mobility and integration on the continent, as well as migration in development, while addressing regular and irregular migration. The Heads of State and Government commit to undertake, among others, the following actions:
 - Speed up the implementation of continent-wide visa-free regimes.
 - Offer all Africans equality of treatment within RECs by 2018.
 - Expedite the operationalization of the African passport that would initially facilitate free movement of persons.
 - Establish a harmonized higher education mechanism that will facilitate transferability of knowledge, skills and expertise.
- The 2015 Declaration on Migration also urges the consideration by the African Union Executive Council of:
 - Mobility and free movement of people in Africa.
 - The development of a Protocol on Free Movement of Persons.
 - Engagement in the process of developing capacity to manage migration flows in the continent, in collaboration with Member States.
- Finally, the African Union’s foundational guiding document for the next decades, Agenda 2063, is particularly pertinent. Agenda 2063 is both a vision and an action plan. It is a call

²⁹ Centre for Citizenship Participation in the African Union, *Continental Report: Free Movement of People Study* (Aug 2013).

³⁰ African Union, Declaration on Migration, Doc. Assembly/AU/18(XXV). Assembly of the African Union, Twenty-Fifth Ordinary Session, 14–15 June 2015, Johannesburg.

for action to all segments of African society to work together to build a prosperous and united Africa based on shared values and a common destiny.³¹ This document prioritizes the integration of the continent and emphasizes the free movement of people, as well as African citizenship and passport.

The African Union's Agenda 2063: Political unity, seamless borders, free movement of people, and an African citizenship and passport

- Aspiration 2: An integrated continent, politically united and based on the ideals of Pan-Africanism and the vision of Africa's Renaissance.
- The political unity of Africa will be the culmination of the integration process, including the free movement of people, the establishment of continental institutions, and full economic integration.
- The dream of continental unity would be attained.
- Africa shall be a continent of seamless borders.
- There will be an African citizenship and passport.
- Two of the Agenda 2063 flagship programmes meant to be fast-tracked are: (i) the establishment of a CFTA; and (ii) the African passport and free movement of people.

Sources: African Union, Agenda 2063: The Africa We Want (The Vision for 2063); AUC, *Agenda 2063: The Africa We Want (Framework Document)* (2015), chapter 2.

2.6.4. Visa-free movement in Africa?

- While work on the development of the African Free Movement Protocol has already commenced, and the African Union Passport was formally launched during the Twenty-Seventh African Union Summit in July 2016,³² significant concrete measures need to be adopted at a country level to establish visa-free regime. The African Development Bank's Visa Openness Index of 2016 indicates the following:³³
 - Africans don't need a visa to travel to 20 per cent of other African countries.
 - Africans can get visas on arrival in 25 per cent of other African countries.
 - Africans need visas to travel to 55 per cent of other African countries.
 - Over 60 per cent of African countries with low visa openness scores do not offer any visas on arrival.
- Yet, several countries have taken significant steps to relax visa restrictions and in some cases lifting visa requirement altogether. Among these count Ghana, Mauritius, Rwanda and Seychelles. It has been suggested that:³⁴
 - As a result of greater openness, African travellers made up over a quarter of visitors to Mauritius in 2014; and

³¹ See www.au.int/web/en/agenda2063/about

³² Daily Trust, "Nigeria: Single African Passport", AllAfrica, 29 July 2016. Available from <http://allafrica.com/stories/201607290876.html>

³³ African Development Bank (AfDB), *Africa Visa Openness Report 2016* (AfDB, Côte d'Ivoire, 2016).

³⁴ *Ibid.*, in particular at pp. 19–20.

- As a result of Rwanda's open visa policy, African travellers to Rwanda increased by 22 per cent in 2014.

The Rwanda experience

We have unwarranted worries. We have experimented this in Rwanda. When we opened our borders, removed restriction on work permits and visas, everyone benefited. We have benefited. Some Rwandans had worries, but it is about leaders making decisions and involving the people.

– President Paul Kagame of Rwanda, July 2016

Source: E. Mutai, "Kenyatta, Kagame call for EAC member states to open borders", The East African, 16 October 2014. Available from www.theeastafrican.co.ke/news/Kenyatta--Kagame-call-for-EAC-member-states-to-open-borders/2558-2488748-f0y392z/index.html

The Ghana announcement

With effect from July this year, we will be allowing citizens of AU Member States to enter our country and obtain visas on arrival with the option to stay for up to thirty days and experience what our country has to offer. This measure, with time, should stimulate air travel, trade, investment and tourism.

– President John Dramani Mahama of Ghana, February 2016

Source: K. Mwanza, "Ghana to introduce visa-on-arrival for all African nationals from July – Mahama", AFKInsider, 10 March 2016. Available from <http://afkinsider.com/121071/121071/>

2.6.5. African labour migration trends and characteristics

(See African Union, AU/ILO/IOM/ECA *Labour Migration Governance for Development and Integration in Africa: A bold new initiative*, Powerpoint presentation (2014); and World Bank, *Migration and Remittances: Recent Development and Outlook; Special Topic: Financing for Development*, Migration and Development Brief 24 (April 2015))

- The sheer extent and growing magnitude of intraregional mobility of African migrant workers stress the importance of having appropriate responses in place. From a free or liberalized movement and regional integration perspective, these responses should, in principle, be supportive of mobility, while dealing effectively with associated challenges, including irregular forms of migration and security concerns.
- There were 18.6 million migrants in Africa in 2013.
- 31.3 million African people are living in countries other than their birth place.
- Half of African migrants stay in Africa.
- 65 per cent of sub-Saharan Africa migrants remain in sub-Saharan Africa:
 - 71–80 per cent in West Africa;
 - 66 per cent in Southern Africa;

- 52 per cent in East Africa;
- 23 per cent in Central Africa; and
- 6 per cent in North Africa.
- Several drivers inform labour migration within and from Africa:
 - Demographic pressures, in particular ageing and increasing deficits in labour forces: Africa confronts a growing, educated youthful population.
 - Jobless growth and a dearth of decent work opportunities.
 - Growing inequalities between and within countries (rising exclusion).
 - Fragility of States – breakdown of effective governance.
 - Globalized access to information.
 - Global skills shortage, which is set to worsen:
 - In 2006, 4.3 million shortage of health workers (World Health Organization) and will reach 12.9 million in 2035.
 - McKinsey Global Institute study calculated that by 2020, global shortages of high-skilled professionals will reach “38 million to 40 million fewer workers with tertiary education (college or postgraduate degrees) than employers will need”.
- Several factors support an emphasis on labour migration within and from Africa:
 - Resurgence of an endogenous and Pan-African development paradigm (see the African Union’s Agenda 2063).
 - Enhanced focus on regional integration agenda at subregional and regional levels.
 - Regional economic development depends on circulation of people, services and technology.
 - Africa’s youthful population and its potential to help fill the gaps within the context of a global ageing.
 - Recognition that effective labour migration governance is one of the sustainable means for reducing trafficking in persons.
 - Increasing recognition and documentation of the developmental dividends/benefits of labour migration for sending and receiving countries.
 - Benefits for migrant workers, in terms of decent work, self-actualization and professional fulfilment.

Developmental benefits of labour migration for destination countries

- Renders traditional sectors like agriculture and domestic services viable.
- Develops and sustains sectors, such as mining, petroleum, health, education and commerce.
- Meets specific skills gaps in managerial, technical, information and communications technology (ICT), industrial, etc.
- Fosters enterprise growth.

Developmental benefits of labour migration for countries of origins

- Transfer of skills acquired by return migrants.
 - Remittances – both social remittances, including education and gender equality, and financial inflows:
 - Migrants’ remittances to developing countries are estimated to have reached USD 436 billion in 2014.
 - Remittances to sub-Saharan Africa are estimated to have increased to USD 34.5 billion in 2014, with particularly strong growth in Kenya, South Africa and Uganda.
 - Nigeria alone accounts for around two thirds of total remittance inflows to the region.
 - In some countries, remittances constitute a large percentage of GDP: Remittances in the Gambia, Lesotho, Liberia and Comoros equal about 20 per cent of GDP.
 - Remittances financed one third of imports in Nigeria in 2013.
-
- Yet, challenges remain:
 - The security agenda often limits the broader understanding of labour migration as a fundamental issue for development, regional integration and the labour market.
 - Inadequate reliable, accurate and comprehensive data on labour migration.
 - Absence of/lethargic implementation of free movement protocol rights and mechanisms developed by the RECs.
 - Limited political will, capacity gaps and poor institutional coordination at all levels.
 - Lack of comprehensive labour migration strategies and policy frameworks; some countries are moving in this direction.
 - Ineffective talent management strategies; hence, emigration of skilled Africans contributing to total “brain drain” and “brain waste”.
 - Inadequacies concerning the recognition of qualifications and competencies across borders.
 - Lack of or inadequate protection for migrant workers and their families from exploitation and hostility.
 - Limited or non-access to and portability of social security benefits.

Overall findings concerning labour migration in RECs context

A recent African Union consultation (2013) agreed on seven main findings concerning labour migration common across all RECs:³⁵

- Paucity of data on characteristics and conditions of labour migrants, data required for economic, labour, enterprise development, investment, education and social protection policies.
- Lack of implementation of free circulation regimes and generalized absence of coherent national labour migration policy.
- Growing gaps between skills needs versus numbers and types produced in Africa.
- Absence of social protection and social security for many migrants.
- Prevalence for migrants of substandard, abusive employment relations and conditions of work.
- Absence of capacity, coordination and policy involvement on migration by labour institutions.
- Lack of dialogue and coordination on labour migration among labour actors and institutions.

2.6.6. African Union labour migration framework

- A united and integrated Africa is an African Union priority and provides the backdrop against which the African Union treatment of labour migration must be seen. Binding standards, contained in a protocol at the African Union level, have not yet been developed. Nevertheless, the following framework contains important pointers towards the provision for and regulation of labour migration at the level of RECs and Member States.
 - The African Union Commission's Strategic Plan 2014–2017 contains the promotion of labour migration as a specific strategy.
 - The African Union's 2014 Declaration on Employment, Poverty Eradication and Inclusive Development in Africa (also known as the Ouagadougou + 10 Declaration), adopted in 2015, also views labour migration for regional integration as a key priority area, to be supported by free movement.
- The AUMPF of 2006 is an important guiding document, also as regards labour migration. The same applies to the African Union Position on Migration and Development of 2006, which largely reiterates the thematic areas covered by the AUMPF.
- The AUMPF calls for a rights-based approach to labour migration based on the International Labour Organization (ILO) Conventions No 97 and 143, as well as the International Convention on the Rights of All Migrant Workers and Members of their Families.
- The AUMPF, which contains a chapter on labour migration, places the focus, among others, on the following key objectives:
 - Enhance data collection, analysis and exchange on labour needs and supply in States of origin and destination in order to match labour skills with labour demand through comprehensive regional approaches.

³⁵ Held at the African Union, August 2013.

- Maintain open and continued contact and communication between States of origin and destination in order to ensure, for example, adequate work conditions for nationals working abroad.
 - Enhance national and regional labour migration data collection, analysis and exchange to document, among others, the conditions and needs of migrant workers and their families.
 - Incorporate mechanisms that monitor the provision of decent work for migrants, and enable them to access legal provisions for social protection.
 - Provide social protection and social security benefits, particularly unemployment insurance, compensation for employment injury and old-age pension for labour migrants while working abroad and/or upon their return.
 - Ensure that indigent regular migrants who may lose their job should not be returned to their State of origin unless there is an interstate agreement to this effect and s/he shall not have her/his right of residence and work permit withdrawn. They should receive equality of treatment regarding security of employment, alternative employment, relief work and returning.
- The African Union Social Policy Framework of 2008 recommends regional integration and collaboration of social security schemes to ensure benefits of labour circulation.

The African Union Declaration on Migration, June 2015

- In June 2015, the African Union Heads of State and Government adopted a Declaration on Migration, which reaffirms the African Union's commitment at accelerating mobility and integration on the continent, as well as migration in development, while addressing regular and irregular migration. The Heads of State and Government commit to undertake the following actions:
 - Speed up the implementation of continent-wide visa-free regimes.
 - Offer all Africans equality of treatment within RECs by 2018.
 - Expedite the operationalization of the African passport that would initially facilitate free movement of persons.
 - Establish a harmonized higher education mechanism that will facilitate transferability of knowledge, skills and expertise.
 - Strengthen efforts to combat human trafficking and smuggling of migrants through the implementation of the relevant UN instruments – the Declaration endorses the Horn of Africa Initiative on Human Trafficking and Smuggling by the African Union Commission, as well as the Terms of Reference, Declaration, Strategy and Plan of Action adopted by the Regional Conference on Human Trafficking and Smuggling held in Khartoum, Sudan in October 2014.
- The 2015 Declaration on Migration also urges the consideration by the African Union Executive Council of the following:
 - Mobility and free movement of people in Africa.
 - Development of a Protocol on Free Movement of Persons.
 - Engagement in the process of developing capacity to manage migration flows in the continent, in collaboration with Member States.

- Jointly with the RECs and with three international organizations – i.e. the ILO, IOM and UNECA – the African Union developed a programme that is intended to operationalize the AUMPF and strengthen the effective governance and regulation of labour migration and mobility in Africa, under the rule of law, at the RECs and national levels.
 - Known as the AU-ILO-IOM-ECA *Labour Migration Governance for Development and Integration in Africa: A bold new initiative* (also known as the AU/ILO/IOM/ECA Joint Labour Migration Programme (JLMP)), this initial four-year programme with a ten-year vision was adopted by the Twenty-fourth Summit of the African Union in January 2015.
 - The Programme will contribute to obtaining the development potential of labour and skills mobility in Africa by supporting effective governance of labour migration and protection of migrants.
 - At the regional level, the RECs, and at national level, the following key stakeholders will be involved:
 - All relevant government ministries/departments (such as Labour, Employment, Interior and Education);
 - Private employers, workers’ organizations; and
 - Migrants/Diaspora.
 - The programme is organized in two major complementary parts (i.e. specific objectives).
 - Component/specific objective 1 on strengthening effective governance of labour migration in Africa entails the following:
 - Increase domestication of key international standards on labour migration.
 - Achieve wider elaboration, adoption and implementation of harmonized free circulation regimes and coherent national labour migration policy in the RECs.
 - Enable labour institutions and social partners in RECs and national governments to facilitate labour migration governance, policy and administrative responsibilities.
 - Establish regional mechanisms for tripartite policy consultation and coordination on labour migration issues, and consultation and technical cooperation with other regions.
 - Component/specific objective 2 on supporting implementation of labour migration standards and policy implies:
 - Enhance collection of gender and age disaggregated data on migrants’ economic activity, employment, skills, education, working conditions and social protection situations.
 - Initiate/support efforts to resolve skills shortages and skill-education mismatches while increasing recognition of harmonized qualifications across Africa.
 - Promote decent work for migrants with the effective application of labour standards to migrant workers.
 - Facilitate measures to extend social security to migrants through access and portability regimes compatible with international standards and good practice.
 - The Programme intends achieving these objectives through the following:
 - Collection of gender and age disaggregated data on migrants’ economic activity, employment, skills, education, working conditions and social protection.

- Resolution of skills shortages and increased recognition of harmonized qualifications across Africa.
- Strengthened capacity of labour institutions in the African Union Commission, RECs and selected national governments on labour migration.
- Regional tripartite policy coordination and cooperation with other regions.
- Extension of social security to migrants through access and portability regimes.

2.6.7. Summary of key points

- The Abuja Treaty sets out provisions for free movement at the regional level. Agenda 2063 fast tracks free movement.
- The African Union is headed towards a Continental Free Movement Protocol established within greater continental integration.
- The AUMPF and Declaration on Migration set out broad policy considerations.

2.7. SESSION 3: Experiences from the RECs

2.7.1. Session overview

- All RECs have Free Movement Protocols, with the exception of IGAD, which is in the process of developing its own protocol.
- Different RECs are at different stages in terms of ratification and implementation of their Free Movement regimes.
- There is a close association between free/liberalized movement regimes in RECs, on the one hand, and labour migration, trade facilitation and border management, on the other.
- ECOWAS and the EAC serve as examples of RECs that have made significant progress towards freedom of movement.

2.7.2. Learning outcomes

- Participants are aware of other RECs initiatives on free movement.
- Participants have a basic overview of free movement regimes in two RECs: ECOWAS and EAC.
- Participants possess an overview of freedom of movement of labour at the REC level.

2.7.3. Progress in regional economic communities

- Following the direction given by the African Union, all eight official African RECs have made progress with developing and, in some cases, implementing free or liberalized movement regimes, but progress has been uneven.
 - See Appendix III in relation to provisions on free movement and labour mobility in various RECs in Africa.
- As has been noted, “[W]ith the exception of IGAD, each REC has adopted a protocol on free movement of persons that either explicitly or implicitly emphasizes free movement of goods, capital, labour and services; and that espouse the more contentious phase of

the rights of residence and establishment.”³⁶ Security and economic (and labour market) concerns are usually raised in relation to the slow progress made as regards guaranteeing the movement of persons, as opposed to the movement of goods, capital or services.

- Recently, a programme has been developed to assist RECs among others in this area. This is a programme initiated by the African Union, jointly with the RECs and with three international organizations – i.e. the ILO, IOM and UNECA – and intended to operationalize the AUMPF and strengthen the effective governance and regulation of labour migration and mobility in Africa, under the rule of law, at the RECs and national levels.
 - Known as the AU-ILO-IOM-UNECA *Labour Migration Governance for Development and Integration in Africa: A bold new initiative* (also known as the AU/ILO/IOM/ECA Joint Labour Migration Programme (JLMP)), this initial four-year programme with a ten-year vision was adopted by the Twenty-fourth Summit of the African Union in January 2015.
 - One of the components of the Programme concerns the achievement of the wider elaboration, adoption and implementation of harmonized free circulation regimes and coherent national labour migration policy in the RECs.
- Some of the RECs have made significant progress and could be seen as models for other African RECs, including COMESA.

(a) ECOWAS:³⁷ Historically, West Africa was always a region of high human mobility; West African Migration is principally intraregional.

- Article 3(1) of the revised ECOWAS Treaty of 1993 foresees the eventual establishment of an economic union in West Africa.
- Article 59 of the Treaty provides the guarantee for freedom of movement in the REC. It guarantees the right of entry, residence and establishment.
- Freedom of movement of labour is not separately regulated, but appears to be covered under the right of residence, which concerns the right to income-earning employment; to apply for jobs effectively offered, to take up a job according to national provisions, and to remain in the country according to national provisions after the job has come to an end.³⁸
- The right of establishment comprehends access to non-salaried activities, the creation and management of enterprises and companies, and the principle of non-discrimination.³⁹
- The main protocol document is the Protocol relating to Free Movement of Persons, Residence and Establishment of 1979. However, subsequent ECOWAS Protocols and Declarations have added an impressive array of measures and instruments supportive of free movement. These affect the following areas:⁴⁰

³⁶ J. Oucho, *Free movement of persons from the perspective of African Regional Integration*, 6.

³⁷ For the discussion below, see T.L. Elumelu, *Knowing ECOWAS – ECOWAS Revised Treaty, ECOWAS Protocol on Free Movement of Persons, Rights of Residence and Establishment* (July 2016).

³⁸ *Ibid.*, slide 9. See ECOWAS Supplementary Protocol on the Right of Residence (1 July 1986).

³⁹ *Ibid.*, slide 9. See ECOWAS Supplementary Protocol on the Right of Establishment (29 May 1990).

⁴⁰ See *ibid.*, slide 6 for details.

ECOWAS measures and instruments supporting free movement

Protocol instruments:

- Adoption of the definition of community citizen (1982)
- Implementation arrangements/obligations on Member States (1985)
- Right of residence and establishment (1986)
- Implementation of the third phase, the right to establishment (1990)

Decisions, declarations and regulations:

- Establishment of ECOWAS Travel Certificate (1985)
- Establishing a residence card (1990)
- Adoption of an ECOWAS passport (2000)
- Creation of a borderless region (2000)
- Regulation on transhumance (seasonal movement of people with their livestock) (1998 and 2003)

- However, some challenges have been experienced, including the correct understanding of some of the core concepts used (e.g., definition of ECOWAS citizen), limited knowledge on the part of ECOWAS citizens regarding the Protocols, harassments at border posts, incoherent implementation of the Protocol, and lack of domestication of the said instruments.⁴¹ Addressing these challenges is incorporated under the discussion in the next Module, covering the issues of benefits and challenges associated with free/liberalized movement regimes.

(b) EAC: According to article 5(2) of the Treaty for the Establishment of the EAC, the EAC Partner States undertake to establish among themselves and in accordance with the provisions of the Treaty, a customs union, a common market, subsequently a monetary union and ultimately a political federation.

- The Protocol establishing the EAC CMP was signed by the EAC Heads of State in 20 November 2009 and entered into force on 1 July 2010. The Protocol provides for seven components of a free movement agenda:⁴²
 - Free movement of goods;
 - Free movement of persons;
 - Free movement of labour;
 - Right of establishment;
 - Right of residence;
 - Free movement of services; and
 - Free movement of capital.

⁴¹ Ibid., slide 12.

⁴² EAC, *Common Market Protocol*, article 4(4).

- There are seven annexes to the EAC Protocol, which provide for the procedural or operational aspects of the Protocol.⁴³ They are largely related to movement of persons:
 - Annex on free movement of persons;
 - Annex on the free movement of workers;
 - Annex on the right of establishment;
 - Annex on the right of residence;
 - Annex on mutual recognition of professional qualifications;
 - Annex of free movement of capital; and
 - Annex on liberalization of services.
- In order to give effect to the agenda of free and liberalized movement, the CMP indicates a number of areas of cooperation. These areas, as well as the status of implementation of some of these measures, are depicted below:⁴⁴

Areas of cooperation to promote the EAC free movement agenda

- Ensure non-discrimination of citizens of other Partner States when facilitating entry, stay, movement and exit in a Partner State's territory.
- EAC to progressively adopt an integrated border management system (IBMS).
- Reciprocal opening of border posts.
- Movement of refugees is governed by relevant international instruments.
- Remove immigration restrictions to the right of establishment and residence of cross-border movement of persons.
- Facilitate the free movement of labour.
- Share information between the Partner States.
- Notify other Partner States where limitations to the rights and freedoms granted by the Protocol are imposed on grounds of Public Policy, Public Health and Public Security (exceptions to free movement of persons).
- Effect reciprocal opening of border stations and maintain 24-hour border management operations.
- Approximate national laws including immigration laws and policies to bring them in conformity with the EAC CMP.

⁴³ See S. Niyonzima, *Brief highlights on Free Movement of Persons in EAC* (July 2016), slides 11–12.

⁴⁴ *Ibid.*, slides 13–16 and 17–19 respectively.

Status of implementation of free movement agenda in the EAC

- Standard Identification and Travel Documents (articles 8 and 9 of the Protocol): Rwanda and Uganda are issuing their citizens with common standardized identity cards (IDs); the rest of the Partner States will commence issuance by December 2016.
- The Seventeenth Summit of EAC Heads of State launched the New International East African e-Passport. The issuance of the East African e-Passport will start from 1 January 2017 and implementation of the phase-out programme for the current East African and National Passports commences from 1 January 2017 to 31 December 2018.
- Regional Strategic framework for e-Immigration 2014/15 - 2019/20 to embrace ICT in immigration services.
- Removal of fees for student passes for nationals of other Partner States studying in the region and harmonization of higher education fees for students studying in educational institutions in all Partner States.
- Development of the EAC e-Immigration Policy to promote an IBMS.
- Waiver of payment of work permit fees and efforts to harmonize fees for those Partner States that still charge.

- It has been suggested that there are operational challenges that have continued to hamper the implementation of the CMP provisions; these can be broadly categorized as legal; administrative, financial and social:⁴⁵
 - There is need to fast-track the integration process by reviewing the sanctions, institutional review reforms, financing arrangements and harmonization of laws of the Partner States.

2.7.4. Free/liberalized movement of labour: The RECs context

- There is a close association between free/liberalized movement regimes, on the one hand, and labour migration, trade facilitation and border management, on the other. As has been noted:

Labour mobility has assumed a central place in international trade by virtue of the benefits it confers on countries (both destinations and origins), workers or companies. Migrant workers have an opportunity to improve their standards of living by earning income and labour mobility provides companies a broad spectrum of talent, rendering the companies more productive, competitive and profitable in the global market. Free movement of persons and labour mobility often occurs through bilateral agreements that regulate return and that permit recruitment and employment of foreign workers ...

Source: J. Oucho, *Free movement of persons from the perspective of African regional integration: gaps, challenges and solutions* (A study prepared for the ILO and the AUC in the quest for Free Movement of Persons in the African Economic Community, December 2015, p. 6.

⁴⁵ Ibid., slides 20–21.

- Free movement of labour has been a core focus of RECs. Several RECs in Africa provide specifically for the movement of workers and associated matters, such as access to social security benefits, within the framework of free/liberalized movement regimes. In this way, regional integration is enhanced, while such integration, in turn, supports free movement. From the discussion thus far, this is provided for in, among others, the Free Movement Protocols of the following:
 - EAC (Article 10 of the EAC CMP);
 - ECOWAS (Article 3 of the ECOWAS Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, Right of Residence and Establishment); and
 - COMESA (Article 9 of the COMESA Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence)

Movement of workers under the EAC CMP

- Citizens of EAC Partner States who move as workers to other Partner States are entitled to equal treatment as regards citizens of those States.
- They have the right to apply for employment, accept offers of employment actually made and conclude employment contracts, and to stay in and move freely within the Partner State where they work.
- They enjoy equal labour rights and social security rights and benefits, on the same basis applicable to citizens of the destination Partner State.
- The worker may be accompanied by a spouse and a child, who are also entitled to be employed in the destination Partner State.
- The arrangements above do not apply to employment in the public service.

Source: Article 10 of the EAC CMP.

Movement of workers under the ECOWAS Supplementary Protocol on the Right of Residence

- The right of residence includes the right to seek and carry out income-earning employment.
- This includes the right to apply for jobs effectively offered, and to travel for this purpose, freely, within the destination Member State, to reside therein in order to take up employment, and to live in that Member State.
- The arrangements above do not apply to employment in the public service, and to certain other workers, in particular workers who are on official posting.
- Special provision is made for border area, seasonal and itinerant workers.
- A migrant worker is entitled to transfer earnings or savings (e.g., as remittances).

Source: Articles 2–4, 10–12 and 17 of the COMESA Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence.

Movement of workers under the COMESA Free Movement Protocol

- Citizens of COMESA Member States who move as workers to other Member States are entitled to equal treatment as regards citizens of those States, concerning employment, remuneration and other conditions of work.
- They have the right to accept offers of employment actually made, to move freely within and stay in the destination Member State for this purpose.
- However, the above entitlements only apply to skilled persons who have specialized skills that are not available in the destination Member State.
- The arrangements above do not apply to employment in the public service.
- Labour law and social security arrangements applicable to these workers will be made via measures adopted by the Council of Ministers.

Source: Articles 1 and 9 of the COMESA Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence.

2.7.5. Summary of key points

- All RECs have Free Movement Protocols, with the exception of IGAD, which is in the process of developing its own protocol.
- Different RECs are at different stages in terms of ratification and implementation of their free movement regimes.

2.8. SESSION 4: An introduction to COMESA and its Free Movement Agenda

2.8.1. Session overview

- The 1994 COMESA Treaty calls for the removal of obstacles to the free movement of persons, labour and services, right of establishment and right of residence within the Common Market.
- Article 164(1) of the COMESA Treaty provides that Member States agree to adopt, individually, at bilateral or regional levels the necessary measures in order to achieve progressively the free movement of persons, labour and services and ensure the enjoyment of the right of establishment and residence by citizens within the “common market”.
- Article 164(3) of the COMESA Treaty further provides that the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements within the PTA adopted under the PTA Treaty, which is in force, shall remain in force until such time that the Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence enters into force.
- Article 174(5) of the COMESA Treaty on the continuance of institutions and agreements adopted under the PTA Treaty provides that any reference to the PTA should now be substituted by the Common Market.
- The Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence (the Free Movement Protocol) was adopted in 2001. It is still not in force.

- The Free Movement Protocol emphasizes that it is crucial for the operation of the Common Market that citizens of the Member States can move freely.
- The Protocol covers different categories of persons who should, on a gradual basis, benefit from the different stages or components of the free movement agenda, under the free movement of persons, labour (workers), services, the right of establishment and the right of residence respectively.

2.8.2. Learning outcomes

- Participants understand the underlying objectives of COMESA and its regional integration.
- Participants can explain the fundamental elements of free movement in the COMESA context.
- Participants understand the modalities of and gradual introduction of free movement in the COMESA context.

2.8.3. The need for improvement and COMESA developments

- The slow pace of ratification of the COMESA Free Movement Protocol is discussed later in this Manual. However, it is apposite to take note of the following observation made by the General Secretary of COMESA in 2015:

COMESA – the need for improved facilitated movement of persons

While many countries in the organisation had signed and ratified Free Trade Area for free movement of goods, they have not done the same for the movement of business people, who are the owners of these goods.

Immigration departments exist to facilitate movement of persons and not to control them. With the modern technology, some of the concerns raised by States concerning security can easily be addressed especially in identification of persons.

– Secretary-General of COMESA, Sindiso Ngwenya, June 2015

Source: W. Masinga, "COMESA calls for relaxed Visa rules", Swazi Observer, 25 June 2015. Available from www.observer.org.sz/news/73986-comesa-calls-for-relaxed-visa-rules.html

- As indicated before, COMESA was established as a common market in 1994, replacing the Preferential Trade Area for Eastern and Southern Africa States (PTA), which came about in 1991.
- The PTA was established to take advantage of a larger market size, to share the region's common heritage and destiny and to allow greater social and economic cooperation, with the ultimate objective being to create an economic community.
- The PTA Treaty envisaged its transformation into a common market by 2000 and, in conformity with this, the Treaty establishing the Common Market for Eastern and Southern Africa, COMESA, was signed in 1993 and ratified in 1994.⁴⁶

⁴⁶ See www.comesa.int/history-of-comesa/ (accessed September 2016).

The transformation of the PTA into COMESA and African regional integration

It is important to underline the fact that the establishment of PTA, and its transformation into COMESA, was in conformity with the objectives of the Lagos Plan of Action (LPA) and the Final Act of Lagos (FAL) of the Organization of African Unity (OAU). Both the LPA and the FAL envisaged an evolutionary process in the economic integration of the continent in which regional economic communities would constitute building blocks upon which the creation of an African Economic Community (AEC) would ultimately be erected.

Also, Article 3(f) of the COMESA Treaty also makes it clear that one of the aims and objectives of the Common Market is to contribute towards the establishment, progress and the realization of the objectives of the AEC.

Source: See www.comesa.int/history-of-comesa/ (accessed September 2016); article 3(f) of the COMESA Treaty.

- An FTA was launched in 2000, and a (not yet fully operational) customs union in 2008. In 1992, the COMESA Monetary Cooperation Programme envisaged the establishment of a monetary union in the year 2025 (later brought forward to 2018).⁴⁷
- Within this framework of regional cooperation and integration, the COMESA Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence was adopted in 2001 (as well as the earlier Protocol on Gradual Relaxation and Eventual Elimination of Visa Requirements within the Common Market for Eastern and Southern Africa (1984)), discussed in more details in Module B.
- It needs again to be noted that the COMESA Treaty emphasizes that the overall objective is the attainment of economic and market integration.
- The Free Movement Protocol plays an important role in this regard, as free movement is necessary to achieve a genuine common market. Likewise, a common market implies that people and workers should be able to move freely within the region.
- A COMESA-EAC-SADC Free Trade Area was established in 2015, emphasizing the movement of businesspersons.

⁴⁷ See www.uneca.org/oria/pages/comesa-trade-and-market-integration as well as www.uneca.org/oria/pages/comesa-macroeconomic-policy-convergence (accessed September 2016).

2.8.4. COMESA migration context

Migration: The COMESA context

- Little reliable information regarding migration from, to and within COMESA is available.
- It is estimated that the number of international migrants (including refugees) within the COMESA region was at 5.8 million in 2010, representing 1.4 per cent of the total population.⁴⁸ This figure is estimated to have risen to 6.9 million in 2015.⁴⁹
- The region hosts large numbers of refugees and internally displaced persons.
- However, although forced migration is predominant in Eastern Africa, migration driven by economic factors can be observed: “the region is characterised by mixed-migration movements”.⁵⁰

2.8.5. COMESA as a common market

COMESA as a common market: Key characteristics

- The implications of a common market are also reflected in, among others, the COMESA Free Movement Protocol. As discussed in Module B, the Protocol foresees the free movement of persons and labour, although it restricts the movement of labour to skilled labour of persons with specialized skills that are not available in a Member State.
 - Also, as indicated in Module B, the COMESA Council of Ministers is required to adopt measures to be implemented progressively in relation to social security, labour laws, pension and working conditions to provide for the freedom of movement of labour.
 - Furthermore, as indicated in Module B, provision is also made in the COMESA Free Movement Protocol for the gradual removal of restrictions on the right of establishment. In this context, the COMESA Council is required to issue directives for the implementation of a general programme that would also provide for the mutual recognition of certain qualifications, in addition to the coordination of provisions regulating certain specific establishments (e.g., companies) and the categorization of companies or firms.
- As mentioned in session 1 above, mobility arrangements can create a right or merely support/facilitate movement.
 - In the case of COMESA, the following are essentially provided for:
 - Guaranteed visa-free entry and free movement of labour, subject to conditions;
 - Free movement of services; and
 - Right of establishment and of residence – concrete measures required.

⁴⁸ Africa-EU Partnership on Migration, Mobility and Employment (MME) Partnership Support Project, *MME on the Move: A Stocktaking of Migration, Mobility, Employment and Higher Education in Six African Regional Communities* (International Centre for Migration Policy Development (ICMPD), Brussels, 2013), p. 25.

⁴⁹ See ICMPD, “MIEUX Project News: MIEUX organises migration data harmonisation meeting for COMESA”, ICMPD news detail, 2 September 2016. Available from www.icmpd.org/news-centre/news-detail/project-news-mieux-organises-migration-data-harmonisation-meeting-for-comesa/

⁵⁰ MME Partnership Support Project, 2013:25.

- Additional restrictions appearing from the COMESA Free Movement Protocol are as follows:
 - Only COMESA citizens are meant to benefit from the provisions of the Protocol; and
 - Family members are not included under the protective regime created by the Protocol.

Who are entitled to benefit from the provisions of the COMESA Free Movement Protocol?

The Free Movement Protocol gives guidance on who are covered by the different movement modalities included in the Protocol:

- (a) All persons, who are citizens of COMESA Member States, are meant to benefit from visa-free entry.
- (b) As indicated above, at this stage, only skilled workers with specialized skills that are not available in the destination Member State may benefit from the free movement of labour provisions of the Protocol.
- (c) Service providers may benefit from the free movement of services provisions of the Protocol. Priority may be given to certain service providers in the beginning (i.e. those involved in services that directly affect production costs or promote trade in goods).
- (d) Regarding the right of establishment, the extent of this right has to be set out in directives issued by the Council of Ministers, according to the Protocol. Typically however, this right is accorded to persons who want to work as self-employed persons (e.g. professionals) or to establish a company or other business form in the country of destination.
- (e) The Protocol does not prescribe who should benefit from the right of residence. Usually, however, this is granted to persons who are allowed to move across borders under the provisions of the Protocol. These categories could include those who move as workers or service providers or as persons who are allowed to work as self-employed or establish a business.
- (f) From the above, it follows that several categories of persons are not included under the scope of the Protocol (except for the visa-free provisions of the Protocol), and could therefore not rely directly on the provisions of the Protocol. They include students and researchers. Also excluded are, as indicated above, non-citizens in COMESA Member States, as well as the family members of those who move in accordance with the Protocol.

2.8.6. COMESA Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements

- COMESA Member States are currently implementing the COMESA Protocol on the Gradual Relaxation and Eventual Elimination of Visas (the Visa Protocol), which was adopted under the PTA Treaty.
- Article 164(3) of the COMESA Treaty provides that the Visa Protocol shall remain in force until such time that a Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence enters into force.

- COMESA Member States are implementing the Visa Protocol with some Member States, such as Kenya, Mauritius, Rwanda, Seychelles and Uganda reaching the highest levels of implementation.
- Mauritius, Rwanda and Seychelles have even gone further to remove visa requirements for almost all African citizens.
- In line with article 164(1) of the COMESA Treaty, Member States have adopted individually, bilaterally or at the regional levels, the necessary measures in order to achieve progressively the free movement of persons, labour and services.
- The COMESA Visa Protocol has several important key elements that are being implemented by COMESA Member States; these elements are reflected on in section 3.4.4 of this Manual.
- As far as visa relaxation arrangements are concerned, mention should be made of ongoing work to introduce a business visa. In addition, certain COMESA countries have taken specific steps to relax visa requirements:

COMESA countries relaxing visa requirements

Mauritius, Rwanda and Seychelles have since waived visas to all COMESA citizens, while Zambia has issued a circular waiving visas and visa fees for all COMESA nationals on official business, in addition to the waiving of visas for citizens of other COMESA Member States on a reciprocal basis. In order to meet national implementation challenges, the regional economic community set up the COMESA Model Law on Immigration to harmonize national laws and practices of member States, yet domestication is still slow.

Source: UNECA, COMESA – Free Movement of Persons, web page, n.d. Available from www.uneca.org/pages/comesa-free-movement-persons (accessed 10 September 2016).

- As explained more fully in session 5, several Member States have adopted individual measures to remove visa requirements (for example, Zimbabwe in the course of 2016).
- Other Member States have taken bilateral measures to facilitate labour movement of citizens per se, such as Kenya and Rwanda.
- Multilateral or regional measures are aimed at implementing the COMESA Visa Protocol.

2.8.7. The COMESA-EAC-SADC Tripartite

- In October 2008, as part of the broader continental integration agenda and as an explicit inter-RECs arrangement, COMESA, the EAC and SADC agreed to negotiate a TFTA among those three regional economic communities. After lengthy negotiations, the tripartite FTA was officially launched in June 2015. However, the TFTA has not yet entered into force due to outstanding technical work on tariff liberalization, rules of origin, trade remedies, as well as the harmonization of trade-related policies.⁵¹
- TFTA would effectively be the largest FTA in Africa, and it has been estimated that the TFTA could boost intraregional trade by as much as one third. It is therefore important that remaining member States join the FTA, and for COMESA to harmonize and functionalize its FTA to avoid undermining the establishment of the TFTA.⁵²

⁵¹ See www.uneca.org/oria/pages/comesa-trade-and-market-integration (from where the following information was sourced) (accessed September 2016).

⁵² Ibid.

- Only limited provision is made for free or liberalized movement of human beings – the facilitation of movement of businesspersons is foreseen: the preamble of the Agreement establishing a Tripartite Free Trade Area among the Common Market for Eastern and Southern Africa, the East African Community and the Southern African Development Community indicates the determination of Member States to progressively liberalize trade in goods and services, promote industrial development and facilitate movement of businesspersons.⁵³ In this regard, it has been noted:

Movement of people to promote trade facilitation: The Tripartite Free Trade Area

Trade facilitation and infrastructure development are specific objectives of this process, whereas the movement of people, and its links to trade facilitation and trade in services, is recognised and features in the Tripartite regional integration negotiations. The importance of services to complement trade in goods strategies is increasingly acknowledged, and is an area which requires specific commitments among African countries. However, it is also important to emphasise that the movement of people is important to the trade facilitation agenda, such as the movement of people in transporting goods in the region, and to the investment agenda – skills transfer and learning are engendered as experts/workers move to the investment location.

Source: MME Partnership Support Project, 2013:19–20.

2.8.8. Trade facilitation and border management perspectives

- Trade facilitation relies crucially on the freedom to move. It is for this reason that trade in services agreements, also those concluded by African RECs, provide for the cross-border mobility of at least businesspersons and professionals.
- In the case of COMESA, its Free Movement Protocol contains a separate article, i.e. article 10, which deals with free movement of services.
- In terms of this provision, it is foreseen that the person providing services may, in order to do so, temporarily pursue his/her activity in the Member State where the service is provided under the same conditions as are imposed by that Member State on its own citizens.
- Of course, streamlined, coordinated and effective border management arrangements need to be in place to, firstly, support (regular) cross-border mobility and, secondly, to prevent and eradicate irregular cross-border movement.
- The fourth Meeting of the Ministers Responsible for Immigration Matters (MRI) suggested that border regulations and procedures be further harmonized:

⁵³ See also www.uneca.org/pages/comesa-free-movement-persons

Harmonizing border management in COMESA

The Fourth MRI suggested that border regulations and procedures be further harmonised. The meeting suggested that the COMESA Secretariat hold consultations on this issue with key stakeholders at an interregional level, under the umbrella of the African Union. Decisions taken by the Ministers include:

- Develop a Regional Strategic Plan on Border Management Information Systems that includes Regional Standard Operational Procedures on border management;
- Develop harmonized curricula and training modules and undertake training of migration officials across borders;
- Work towards a common and linked border management information system to exchange and evaluate data;
- Work on pilot cross-border projects on border management that involve more than one Member State.

Source: MME Partnership Support Project, 2013:30.

- Several border management initiatives in COMESA are noteworthy, also from the perspective of movement of persons.⁵⁴
 - Under the Regional Aid for Trade Strategy, developed by COMESA, provision is, among others, made for a holistic trade corridor approach that brings together multiple stakeholders (including RECs, national governments, the private sector and multilateral and bilateral donors) for the integrated implementation of different types of programmes and projects (including border management). It is being mainstreamed by COMESA and increasingly accepted at the national level.
 - In 2011, COMESA extended duty-free benefits to informal cross-border traders, also with a view to facilitating their operations, by introducing an STR in response to the exemption of exporters from the normal customs. It has been noted that it is necessary to take into account the reality of mostly informal small-scale cross-border trade, which amounts for a significant share of total intraregional trade (30%, according to some estimates).
 - “Informal cross-border trade is a crucial economic activity in terms of livelihoods and job creation. It also plays a critical role in reducing vulnerability and food insecurity for the populations.”⁵⁵
 - Of particular significance is the strengthening of cooperation on border management between COMESA Member States sharing common borders, through the OSBP.

⁵⁴ Ibid., 34–35, from where much of the information below has been taken.

⁵⁵ Ibid.

Learning from experience: The One Stop Border Post Model

One Stop Border Posts are a key strategic priority under the Medium Term Strategic Plan 2011–2015, and the experience has been particularly praised by the MRI. So far, such a post has been implemented at the Zambia–Zimbabwe border (Chirundu), with the aim to bring together more than 15 government agencies into a single common control area. Such border posts should not be about goods only but also about improving mobility of people.

Source: MME Partnership Support Project, 2013:30.

- It has been noted⁵⁶ that COMESA has been active within the framework of the COMESA-EAC-SADC tripartite initiative, and the implementation of the COMESA OSBP was developed within this framework.
- Also, the COMESA Secretariat is developing model legislation to assist Member States in implementing the OSBP. This decision was made by the Council of Ministers during its Thirty-third Meeting in Lusaka on 9 December 2014.⁵⁷
- According to COMESA, three OSBPs – namely Chirundu (Zambia/Zimbabwe) Malaba (Kenya/Uganda) and Nemba/Gisenyi (Rwanda/Burundi) – are operational. Other border posts whose work has already begun for development of OSBP include Mchinji, Nakonde, Namanga, Akamnyaru Haut, Mpondwe/Kasidi and Rubavu Goma.

2.8.9. Summary of key components of the Free Movement Protocol

- The key components or essential elements of the Free Movement Protocol are discussed in more detail in the next sessions in part B of the module. Here, a summary may suffice.
- A gradual/progressive approach towards introducing free movement is adopted in the Protocol.
 - Important provisions of the Protocol allow two or more Member States to enter into an arrangement by which the implementation of the provisions of the Protocol are accelerated (see also article 2(2) of the Protocol).
- Component or stage 1 foresees the free movement of persons.
 - A three-step approach is involved:
 - Visa-free entry
 - Visa-free entry up to 90 days (after two years)
 - Removal of all restrictions (after six years)
 - Entry may be refused; a person may be expelled if the entry/presence is detrimental to a country's national security or public health.
- Component or stage 2 deals with free movement of labour and entails the following:
 - Progressive removal of all restrictions within six years;
 - Guaranteed equality of treatment;

⁵⁶ Information shared by Ms Elizabeth Warn, Labour Migration Specialist, IOM Regional Office for Southern Africa.

⁵⁷ Reference can be made to The East African Community One Stop Border Posts Act, 2010, which could serve as a model for the COMESA context, given its progressive nature.

- A wide notion of employment, but excluding the public service;
- Only workers with skills needed by country of destination qualify;
- Confined to offers of employment actually made; seeking employment not covered;
- Social security and labour law measures foreseen.
- Component or stage 3 provides for free movement of services.
 - The person providing services may, in order to do so, temporarily pursue his/her activity in the Member State where the service is provided under the same conditions as are imposed by that Member State on its own citizens.
 - The Council of Ministers need to adopt a programme to provide for conditions under which and stages by which each type of service is to be liberalized.
- Component or stage 4 concerns the right of establishment.
 - The gradual abolishment of all restrictions on the freedom of establishment of citizens of a Member State in another Member State is foreseen – in progressive stages, within a period to be determined and in accordance with a programme to be adopted by the Council.
 - Also covered is self-employment, and setting up and managing of undertakings, such as companies and firms, generally foreseen.
- Component or stage 4 envisages the right of residence.
 - According to article 12 of the Free Movement Protocol, “Member States shall, within a period to be determined by Council, grant to Common Market citizens the right of residence in their territories in accordance with conditions to be adopted by Council.”

2.8.10. Summary of key points

- The 1994 COMESA Treaty calls for the removal of obstacles to the free movement of persons, labour and services, right of establishment and right of residence within the common market.
- The Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence (the Free Movement Protocol) was adopted in 2001. It is still not in force.
- The Free Movement Protocol states that a common market can only be achieved when the citizens of the Member States can move freely.

2.9. Summary of Module A

- International law does not grant the right to enter a country, other than one's own country. Special arrangements to this effect are needed, normally provided for in a regional free/liberalized movement agreement, such as the COMESA Free Movement Protocol.
- Free movement of persons is closely linked to regional integration. This is also true of the African context, given the focus in Africa on supporting the Pan-African objective of an integrated and unified Africa.
- COMESA is one of eight RECs in Africa formally associated with the African Union, and is meant to fulfil this overall objective. The transformation of COMESA from a Preferential Trade Area into a common market and eventually a monetary union must be seen in this light.
- Four levels of integration are usually recognized: (a) FTA; (b) customs union; (c) common market; and (d) economic union. Each of these has its particular characteristics. Often, a region would progress from one level of integration to a deeper level of integration, as is also the case with COMESA.
- In COMESA, the Free Movement Protocol provides for visa-free entry of persons, free movement of workers, free movement of services, the right of establishment and the right of residence.
- However, these rights are qualified to a significant extent. In particular, only citizens of COMESA Member States can benefit therefrom; family members are not included, unless they qualify in their own rights; and free movement of labour/workers is restricted to skilled workers who have skills that are not available in the country of destination.
- Important developments regarding free movement have been taking place at the continental (African Union) level. A continental Free Movement Protocol is currently being developed.
- Progress with introducing and implementing free/liberalized free movement regimes in the RECs, including COMESA, has been uneven. Security, economic and labour market concerns are often cited as challenges, and have contributed to the slow pace of ratification of the COMESA Free Movement Protocol. Significant progress, though, has been made in ECOWAS and the EAC, and may serve as models.
- There is a close association between free movement and labour migration, trade facilitation and border management, as is evident from, among others, the establishment of OSBP.
- Freedom of movement of labour/workers has been a core focus of African Union and RECs' attention and activity, and must be seen in the light of considerable intraregional mobility of African migrant workers, and the developmental benefits of labour migration for the destination country, the country of origin and the individual concerned – despite challenges.
- Trade facilitation implies the cross-border mobility of at least businesspersons and professionals, and is intended to contribute to and promote free movement.

KEY RESOURCES FOR FACILITATOR PREPARATION

African Union

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- 2014a AU/ILO/IOM/ECA *Labour Migration Governance for Development and Integration in Africa: A bold new initiative*.
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International Organization for Migration (IOM)

- 2009 Irregular Migration and Mixed Flows: IOM's Approach, MC/INF/297. Available from www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/en/council/98/MC_INF_297.pdf

MODULE

B

**PROTOCOL
ON THE FREE
MOVEMENT
OF PERSONS,
LABOUR,
SERVICES,
RIGHT OF
ESTABLISHMENT
AND RESIDENCE**

3. MODULE B: PROTOCOL ON THE FREE MOVEMENT OF PERSONS, LABOUR, SERVICES, RIGHT OF ESTABLISHMENT AND RESIDENCE

3.1. Aims of Module B

- Provide an overview of the historical footprint of the conclusion of COMESA's Free Movement Protocol.
- Describe developments that have taken place since the Protocol was adopted.
- Provide an overview of the key components of the Protocol.

3.2. Learning outcomes for Module B

- Understanding of background information relating to the COMESA Free Movement Protocol and developments in this regard.
- Appreciating the scope and content of the Protocol and its systematic build-up.

3.3. Key points covered in Module B

- The 1994 COMESA Treaty calls for the removal of obstacles to the free movement of persons, labour and services, right of establishment for investors and right of residence within the Common Market. This prompted the adoption of the Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence (the Free Movement Protocol) (2001).
- The Free Movement Protocol foresees the progressive achievement of a genuine common market; the Protocol itself states that this can only be achieved when the citizens of the Member States can move freely within the Common Market; are as follows: (a) free to take up offers of employment in any of the member States; (b) free to render services in any of the member States; and (c) free to pursue activities of self-employment, set up and manage undertakings in any of the member States, in particular, companies and firms under conditions similar to those applicable to citizens of the country of establishment.
- However, the Protocol has been ratified by only two COMESA Member States and signed by four Member States.
- Several steps and measures have been taken by COMESA and the Member States to support freedom of movement, including (at least in some Member States) the relaxation of visa restrictions.
- The Free Movement Protocol is closely related to the preceding Visa Protocol (1984), which is due to terminate when the Free Movement Protocol enters into force.
- Five different components or stages are systematically provided for in the Protocol, namely: (a) visa-free movement of persons; (b) free movement of labour; (c) free movement of services; (d) right of establishment; and (e) right of residence. The COMESA Council of Ministers play a crucial role in respect of the gradual unfolding of these components.

- These rights and entitlements are not absolute, and are or could be qualified – for example, in exceptional circumstances a person who otherwise qualifies may be refused entry; and only skilled workers with skills required by the destination Member State can benefit from the provisions on free movement of labour.

3.4. SESSION 5: The COMESA Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence (the Free Movement Protocol)

3.4.1. Session overview

This session aims to present a broad overview of the scope and content of COMESA’s Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence (the Free Movement Protocol), with particular emphasis on the following:

- The relationship between the Free Movement Protocol (2001) and the Protocol on Gradual Relaxation and Eventual Elimination of Visa Requirements within the Common Market for Eastern and Southern Africa, adopted in 1984;
- The overall purpose of the Free Movement Protocol, as it appears from the provisions of the Protocol, and the gradual or progressive attainment of this purpose; and
- The measures that Member States have already taken to give effect to COMESA’s Free Movement Agenda.

3.4.2. Learning outcomes

- Participants understand how Freedom of Movement was envisioned in the COMESA Treaty.
- Participants are able to explain the relationship between the Visa Protocol and Free Movement Protocol.
- Participants have knowledge regarding the current status of ratification by Member States.
- Participants appreciate the overall purpose of the Free Movement Protocol and the gradual or progressive attainment of the purpose.

3.4.3. Background

The 1994 COMESA Treaty has some impact on the area of freedom of movement. The Treaty, in broad terms, provides for the harmonization of policies and integration of programmes among the Member States.⁵⁸

- More specifically, as indicated above, article 4(6)(c) calls on Member States to “... remove obstacles to the free movement of persons, labour and services, right of establishment for investors and right of residence within the Common Market”.

⁵⁸ COMESA, Treaty establishing a Common Market for Eastern and Southern Africa (1994): Articles 6(c), read with article 165(1), which reads: “Subject to the provisions of this Treaty, the Member States undertake to consult with one another through appropriate organs of the Common Market for the purpose of harmonizing their respective policies in such fields as they may, from time to time, consider necessary or desirable for the efficient and harmonious functioning and development of the Common Market and the implementation of the provisions of this Treaty.”

- Also, article 164, on the scope of cooperation⁵⁹ makes explicit provision for freedom of movement, and also indicates the relation between the then envisaged Free Movement Protocol and the Visa Protocol. It stipulates the following:
 - “1. The Member States agree to adopt, individually, at bilateral or regional levels the necessary measures in order to achieve progressively the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence by their citizens within the Common Market.
 - “2. The Member States agree to conclude a Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Right of Residence.
 - “3. The Member States agree that the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements within the PTA adopted under the PTA Treaty shall remain in force until such time that a Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence enters into force.”
- According to the 1998 COMESA Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence (adopted in 2001), free movement of persons, including free movement of labour, is said to be achieved progressively; the COMESA Council is enjoined, one year after the entry into force of the Protocol, to adopt such measures to be implemented progressively and in stages in several fields.⁶⁰
- However, the Protocol has been ratified by only two of COMESA’s 19 Member States (Burundi and, most recently, Rwanda),⁶¹ and signed by four Member States (Kenya, Rwanda, Zimbabwe and Burundi); the unwillingness on the part of Member States to support free movement of persons and of labour partly explains the lack of development in this area.
- There are ongoing consultations to determine why Member States are not ratifying the Protocol. Some progress is being made. A study has been undertaken to identify the challenges faced by the adoption of the Free Movement Protocol. These challenges are discussed in Module C of this Manual.⁶²
- An implementation strategy and related plan of action⁶³ have been adopted to operationalize the COMESA Visa Protocol,⁶⁴ which is already in force, and fast track the acquisition of signatures and ratifications of the Free Movement Protocol.
- It has been noted that the Visa Protocol, although in force, is weakly implemented in several COMESA Member States. The status of the implementation of the Visa Protocol and progress made in relation to the Free Movement Protocol is depicted in Annex I.

⁵⁹ Article 164 is the only article of chapter 28, titled “Free Movement of Persons, Labour, Services, Right of Establishment and Residence”.

⁶⁰ Protocol on the Freedom of Movement of Persons, Labour, Services, Right of Establishment and Residence, 1998: Article 9(4).

⁶¹ See COMESA, “Rwanda approves ratification of the Protocol on Free Movement”, 10 June 2016. Available from www.comesa.int/rwanda-approves-ratification-of-the-protocol-on-free-movement/

⁶² See COMESA, *Consultative Mission Report for Eight Selected Countries – COMESA Task Force on Development of a Roadmap for the Implementation of Legal Instruments and Council of Ministers’ Decisions on Visa Protocol and the Free Movement Protocol* (2013). See also F. Rodrigues, *Baseline Assessment Report: Support the Full Implementation of the COMESA Visa Protocol among Member States* (ACP-EU Migration Action, 2015).

⁶³ See COMESA, *Draft Strategy and Related Action Plan for the Implementation of COMESA Protocols* (2015).

⁶⁴ Protocol on Gradual Relaxation and Eventual Elimination of Visa Requirements within the Common Market for Eastern and Southern Africa (1984), which has been ratified by all Member States but not yet been fully implemented.

- Regarding the Free Movement Protocol, due to the absence of ratifications, the initially set target dates could not be met, i.e.:
 - Removal of visa requirements by 2002;
 - Movement of skilled labour and movement of services in place by 2006;
 - Right of establishment by 2010; and
 - Right of residence by 2014.
- Supporting institutional structures – i.e. National Monitoring Committees (NMCs) and focal points – have been established in some of the Member States (in particular, Zambia and Zimbabwe).⁶⁵
- Other supporting interventions have been identified, and include the following: (a) conduct of technical training; (b) development of appropriate information-sharing tools; (c) raising of awareness; (d) domestication of the two protocols in national legal systems; and (e) conclusion of bilateral agreements between Member States to support free movement.
- In addition, a model law, which aimed at harmonizing the Member States' legislation on immigration policy, was adopted by COMESA in 2006.⁶⁶
- A recent IOM⁶⁷ report noted that under an IOM Development Fund (IDF) project,⁶⁸ IOM is providing support to the COMESA Secretariat and the governments of Zambia and Zimbabwe to move towards the signature and ratification of the Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence.
- The report notes that, as stipulated in the COMESA Free Movement Protocol, “a genuine Common Market shall be achieved only when the citizens of Member States can move freely within the Common Market.” However, since 2001, when the COMESA Member States adopted the Free Movement Protocol, little progress has been made on its signature and ratification, as indicated above.

⁶⁵ COMESA, “Zambia, Zimbabwe takes lead in moving the COMESA Free Movement Agenda forward”, 29 July 2016, available from www.comesa.int/zambia-zimbabwe-takes-lead-in-moving-the-comesa-free-movement-agenda-forward/

⁶⁶ COMESA, Model Law on Immigration (2004).

⁶⁷ See IOM, Minutes of the inaugural meetings of the Government of Zambia and Government of Zimbabwe National Monitoring Committees on the COMESA Free Movement Agenda, Internal report prepared by IOM (Lusaka, 2016).

⁶⁸ Titled “Building the Capacity and Raising Awareness among COMESA Member States on the Free Movement Protocol”. The report further notes: “The IDF project assists the COMESA Secretariat and MS with the implementation of these recommendations, with the aim of moving towards greater signature and ratification of the COMESA Free Movement Protocol. This is being achieved through a pilot initiative, focusing on Zambia and Zimbabwe. The project focuses on: promoting enhanced coordination within and between MS, as well as with the COMESA Secretariat; nomination of National Focal Points (NFPs) and formation of National Monitoring Committees (NMCs) on the COMESA Free Movement Protocol; capacity building for NFPs and NMCs; contribute towards increased awareness on the Protocols among key stakeholders, including parliamentarians, attorney generals and justice sector officials, senior and operational government officials, through the development of an awareness raising strategy and the dissemination of awareness raising tools to these stakeholders. The project also seeks to provide a framework for possible scale-up to all COMESA MS beyond the lifetime of the project.”

Measures adopted by COMESA Member States with regards to free movement

- Based on the Treaty mandate, Member States have commenced taking the following measures:⁶⁹
 - Individual measures to facilitate movement of persons – for example, Mauritius, Rwanda and Seychelles have removed visa requirements of all African States except a few. Also, with effect from March 2016, Zimbabwe has introduced a relaxed visa regime:⁷⁰
 - 46 countries whose nationals do not need visas to enter Zimbabwe;
 - 90 countries whose nationals can obtain visas upon arrival, after paying visa fees;
 - 80 countries whose nationals need to apply for visas online and obtain them before travelling to Zimbabwe.
 - Bilateral measures to facilitate labour movement and movement of citizens per se, such as the measures taken by Kenya and Rwanda.⁷¹
 - Multilateral or regional measures aimed at implementing the COMESA Visa Protocol, as well as the EAC Common Market Protocol and arrangements under SADC.
- It has been suggested that COMESA Member States have implemented the Visa Protocol at varying levels with some at almost 100 per cent and others as low as 15 per cent.⁷²
- Also, COMESA Member States have taken measures to enhance the implementation of the Protocol of Member States by establishing two task forces, one being solely responsible for enhanced implementation of the Visa Protocol while the other being for capacity-building needed for the implementation of the Protocol.⁷³

3.4.4. Key elements of the COMESA Visa Protocol

The Protocol on Gradual Relaxation and Eventual Elimination of Visa Requirements within the Common Market for Eastern and Southern Africa (COMESA) (the Visa Protocol) was adopted in 1984, within the framework of the Preferential Trade Area for Eastern and Southern Africa States (PTA).

- The Visa Protocol has as its core premise that the facilitation of greater movement of citizens of the Member States within the Common Market serves the purpose of promoting harmonious economic cooperation and social development of the Member States, and the acceleration of the regional integration process.⁷⁴ It does this by facilitating short-term entry for COMESA citizens within this important economic market.

⁶⁹ Chigawa, 2016.

⁷⁰ eVisa Zimbabwe, Zimbabwe Immigration Department, Revised Visa Regime with effect from 03/03/16. Available from www.zimimmigration.gov.zw/index.php/downloadable-forms/category/6-visa-regime?download=7:visa-regime

⁷¹ These countries have removed visa restrictions and relaxed work permit requirements.

⁷² Chigawa, 2016. See also Annex I.

⁷³ Ibid. The two task forces are operational, and their initial initiative was to consult Member States on challenges they face in the implementation of the Visa Protocol, as well as signing and ratifying the Protocol on Free Movement of Persons. Their findings have been presented to COMESA Ministers Responsible for Immigration, who have taken decisions on addressing them.

⁷⁴ See the Preamble to the Visa Protocol.

- It essentially provides for the gradual relaxation of visa requirements:⁷⁵
 - Firstly, citizens of a Member State with valid travel documents shall not be required to obtain visas before travelling to another Member State, but may be granted visas on arrival.
 - Secondly, within a period not exceeding eight years after the Visa Protocol has entered into force, entry into another Member State without a visa for a stay not exceeding 90 days had to be guaranteed by the Member States; permits for other purposes (e.g., to undertake work or to reside) may still be required by a Member State; and subject thereto that the laws and regulations of the Member State concerning entry, residence, exit and employment of foreigners had to be complied with.
 - Provision is made for refusal of entry and expulsion of individuals, or even the temporary suspension of any of the provisions of the Protocol, should public interest of national security require this.
 - In taking steps to implement the Protocol, Member States undertake to cooperate by exchanging information on matters likely to affect the effective implementation.
 - In order to promote free movement of persons, Member States may maintain or enter into bilateral or multilateral arrangements to provide for more favourable treatment for their citizens than is provided for in the Protocol. Several Member States have in fact concluded such additional bilateral agreements allowing for visa-free travel; this is often the case with neighbouring COMESA Member States. Furthermore, Member States that also belong to the Economic Community for the Countries of the Great Lakes or the EAC have similar visa-free arrangements in place.
- As mentioned above, while all the COMESA Member States have adopted this Protocol, its implementation has been uneven. Appendix I provides a comparative picture of progress with implementation. Several Member States are successfully implementing the Protocol provisions, including Comoros, Kenya, Malawi, Mauritius, Rwanda, Seychelles, Swaziland, Uganda, Zambia and Zimbabwe.
- Three Member States – i.e. Mauritius, Rwanda and Seychelles – have already introduced visa-free regimes, also in relation to citizens from other COMESA Member States. As mentioned later, both Mauritius and Rwanda have benefited from removing visa requirements; African travellers to both these countries increased substantially.⁷⁶ Some other COMESA Member States have extended such an arrangement to citizens of almost all other COMESA Member States – for example, Kenya.
- Some COMESA Member States are experiencing challenges in relation to fully implementing the Protocol. A Task Force on Development of a Road Map for the Implementation of the VISA Protocol and Council Decisions, commissioned by the COMESA Ministers Responsible for Immigration, has been commissioned to establish factors affecting full implementation of the Visa Protocol. Some of the key challenges highlighted by the Task Force⁷⁷ and another independent study⁷⁸ include the following:
 - Security concerns, especially for countries in conflict situations, and fear of organized crime;

⁷⁵ Visa Protocol, articles 2–4.

⁷⁶ See par. 2.6.4 below.

⁷⁷ See the Report of the Sixth Meeting of COMESA Ministers Responsible for Immigration, CS/LEG/MRI/VI/2. (Lusaka, Zambia, 25 June 2015).

⁷⁸ Rodrigues, *Baseline Assessment Report: Support the Full Implementation of the COMESA Visa Protocol among Member States* (ACP-EU Migration Action, 2015).

- Absence or weak interministerial dialogue on the Protocol;
 - Lack of public awareness;
 - Lack of reciprocity (i.e. other Member States would have to reciprocate by extending similar visa-free entry arrangements should the affected Member State makes this available);
 - Legal challenges in terms of understanding/interpreting the Visa Protocol provisions; and
 - Fears of high influx of a high volume of people, linked to increase in competition in the labour market between citizens and foreigners.
- However, the Task Force determined that there is indeed the political will in all Member States to facilitate movement of persons. There are several avenues and measures available to address these challenges.
 - The Ministers Responsible for Immigration decided that the following measures should, among others, be employed to respond to the challenges:
 - The COMESA Secretariat should establish a streamlined mechanism of promoting awareness of the Protocol with key stakeholders of all Member States, and should provide technical assistance to Member States in the understanding and interpretation of the Protocol;
 - Best practices from the RECs where progress has been made (in particular the EAC, ECOWAS and SADC), should be benchmarked;
 - COMESA should actively engage with ministries responsible for Immigration to support implementation of the Protocol and target specifically those countries that have struggled to implement the Protocol; and
 - Capacity-building should be available for those stakeholders in the Member States involved in the implementation of the Protocol.
 - A strategy and plan of action were also adopted by the Ministers, highlighting objectives including the following:
 - Increasing awareness through supporting the meetings and the technical capacity of the NMC, publications and inter-institutional dialogues;
 - Encouraging Member States to implement the Visa Protocol in areas such as the installation of COMESA desks at ports of entry; several Member States have already done so, or are in the process of doing so;
 - Building capacity with the National Focal Points on immigration;
 - Reducing negative perceptions on free movement of persons (again, one would think, with reference to good country experiences, also of other Member States, such as Mauritius, Rwanda and Seychelles); and
 - Creating awareness of the Protocol.
 - It is clear that a differentiated approach is called for. This approach must be sensitive to the context of each of the Member States faced with challenges of implementation. This will have a direct impact on the different action(s) required by each Member States to move towards full implementation of the Protocol. Depending on the needs of the particular Member State, the following may have to be attended to:

- An audit of the national immigration laws of the Member State concerned to determine changes that may be required to align the legal framework to the Protocol provisions – the COMESA Model Law is an ideal point of reference in this regard. Member States may have to be supported to enable them to undertake such an audit.
 - As mentioned above, the installation of COMESA counters at international airports and even land borders. Much can be learned from the good experience of other Member States in this regard.
 - Encouragement of bilateral, or even multilateral, agreements between Member States to ease the free movement of their citizens as per the Council of Ministers decision; again, much is to be gained from the experience of several COMESA Member States in this context.
 - Issuance of day passes for crossing borders, especially for border communities. Here as well, several COMESA Member States have reported that they have such mechanisms in place.
 - Free visa travel for COMESA diplomatic laissez-passer holders.
 - Engagement with and assistance to Member States in relation to raising awareness, and developing a training manual and awareness-raising tools.
- Priority actions steps should therefore include the following:⁷⁹

Priority action steps

- Bilateral discussions with the concerned Member States.
 - Effectively engage with the respective governments and non-State actors.
 - Preparation of national action plans primarily based on desk reviews and consultations with Member States.
 - All proposed country action plans developed in keeping with national specificities and trade opportunities and limitations within the COMESA market.
 - On-site missions to access detailed information on current legislative framework and future plans.
 - Closer engagement and monitoring between the COMESA Secretariat and its Member States.
- Further supporting or facilitating measures, to enable Member States to fully implement the Visa Protocol, include the following (dependent on the needs and context of each of the Member States):
 - Introduce improved border management systems, supported by technical capacity-building workshops, the establishment of joint border committees (as some Member States have already done), and the development and harmonization of national border management databases; information exchange is a key component of border cooperation and dealing with security concerns.

⁷⁹ See COMESA, *Call for Enhanced Implementation of the COMESA Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements*. Policy brief (2016).

- Improve the data environment through the implementation of a COMESA data harmonization framework and formal data exchange mechanism, and a common set of standardized tables to facilitate data sharing, taking into account existing bilateral and multilateral data-sharing structures (e.g., the EAC).
 - Embark on information campaigns and sensitization of key stakeholders, including policymakers and implementers, parliamentarians, advocacy groups and other non-State actors and the media.
 - Solicit partner support to assist with achieving the above results.
 - Since the existing (restrictive) visa regimes undermines the ability to trade, do business and invest in certain Member States, take note of and build on the COMESA Simplified Regime focusing on facilitating small-scale traders; the provisions on the Movement of Business Persons (including the envisaged business visa); and COMESA Common Investment Area Agreement.
- It is important to note that, as indicated in article 164 of the COMESA Treaty, the Visa Protocol shall remain in force until such time that the Free Movement Protocol enters into force. This will be the case once seven COMESA Member States have ratified this latter protocol. Once the Free Movement Protocol enters into force, its particular provisions on visa-free entry will apply.

3.4.5. Overall purpose of the Free Movement Protocol and the gradual or progressive attainment of the purpose

The overall purpose of the Free Movement Protocol is set out in the Preamble of the Protocol and in the provision on the scope of cooperation (article 2).

- The Protocol in no uncertain terms regards freedom of movement in the different stages indicated below, as a prerequisite for the achievement of the common market and regional integration.

Overall purpose of the Protocol

The Preamble of the Free Movement Protocol states that the Member States are convinced: “[t]hat a genuine Common Market shall be achieved only when the citizens of the member States can move freely within the Common Market; are free to take up offers of employment in any of the member States; are free to render services in any of the member States; are free to pursue activities of self-employment, set up and manage undertakings in any of the member States; in particular, companies and firms under conditions similar to those applicable to citizens of the country of establishment.”

- According to article 2, Member States agree:

[t]hat the Common Market shall establish mechanisms within which their citizens can move freely, are free to take up offer of employment in any member State under similar conditions as national workers, pursue activities as self-employed persons in any member State, manage undertakings, in particular, companies and firms on similar conditions as nationals or provide services encompassing the self-employed activities for which only a temporary stay in another member State is necessary, or free to reside in any member State.

- The Protocol appreciates that introducing a free movement regime needs to be realized gradually or progressively:
 - For example, the Preamble stresses the commitment of the Member States to adopt measures that shall gradually and on a step-by-step basis remove restrictions to the free movement of persons, labour, services, right of establishment and residence.⁸⁰
 - The gradual approach is also emphasized in relation to the relaxation and elimination of visa requirements (article 3(1) and article 5), the removal of restrictions to the movement of labour (article 9(1) and (4)), to the free movement of services (article 10(1), and to the freedom of establishment (article 11(1) and (2)).
 - Important in this regard are also those provisions of the Protocol, which allow two or more Member States to enter into an arrangement by which the implementation of the provisions of the Protocol are accelerated.⁸¹

3.4.6. Summary of key points

- The COMESA Treaty provides for the harmonization of policies and integration of programmes among the Member States.
- The Protocol outlines that a free movement regime needs to be realized gradually or progressively.
- The COMESA Treaty indicates that the Visa Protocol shall remain in force until such time that the Free Movement Protocol enters into force.
- The Protocol allows two or more Member States to enter into an arrangement by which the implementation of the provisions of the Protocol are accelerated.

3.5. SESSION 6: Free movement of persons (Component/ Stage 1)

3.5.1. Session overview

- A three-step approach towards the gradual relaxation and eventual elimination of visa requirements within the Common Market:
 - Visa-free entry;
 - Visa-free entry up to 90 days (after two years); and
 - Removal of all restrictions (after six years).⁸²
- A Member State may refuse entry or expel a citizen of another Member State on the basis of the following: (a) detriment to public health; or (b) detriment to national security.
- A Member State may temporarily suspend the provisions in relation to the first two steps on certain grounds.
- Member States agree to cooperate to prevent and fight crime.

⁸⁰ See also, to the same effect, article 2(2) of the Protocol.

⁸¹ See article 13 on “Accelerated Implementation”, as well as article 3(2), which suggests that two or more Member States may agree to grant each other’s citizens one-year multiple entry visas in the process of relaxing visa requirements.

⁸² This, however, has only been achieved by a few Member States.

3.5.2. Learning outcomes

- Participants are able to present the three-step approach on Free Movement of Persons embedded in the Protocol.
- Participants understand the provisions for refusal of entry and expulsion, temporary suspension and combating organized crime.

3.5.3. Free movement of persons

- The Free Movement Protocol foresees a three-step approach towards the gradual relaxation and eventual elimination of visa requirements within the Common Market.
- According to the first step, citizens of Member States holding valid travel documents shall, upon entry into force of this Protocol, not be required to obtain visas before travelling to the territory of other Member States and may be granted visas at arrival, upon the presentation of valid travel documents at official entry points of such Member States.⁸³
- As a second step, entry without the requirement to hold a visa is foreseen for a period up to 90 days; Member States agree that this will take place within two years from the entry into force of the Protocol: "... citizens of a Member State holding valid travel documents shall be free to enter into the territory of another Member State through an official entry point without the requirement of a visa for up to ninety days at a time."⁸⁴
 - As is clear from this provision, citizens who travel to another Member State must hold a valid travel document and will enjoy visa-free stay for a period of 90 days; extending the period requires permission of the appropriate authorities.
 - Also, it is expected that the citizen who has entered another Member State under these circumstances must respect the laws and regulations of that country.
 - However, the laws and regulations of that country may not discriminate against such a citizen of another Member State on the grounds of nationality, gender or religion, nor infringe the rights provided for in the Protocol.
 - In order to facilitate the movement of persons, provision is also made for private vehicles to enter the territory of another Member State for a period of up to 90 days, upon presentation of valid driving licences, ownership cards or logbooks and insurance policies.
- In terms of the third step, Member States agree, within six years from the entry into force of the Protocol, and on the basis of experience gained and progress made in the implementation of the first two steps, to remove all restrictions to the movement of persons and in particular remove the need for visa requirement for their citizens within the Common Market.⁸⁵
- Articles 6 and 7 of the Free Movement Protocol regulate the conditions under which a Member State may refuse entry or expel a citizen of another Member State, and temporarily suspend the provisions relating to the first two steps, respectively.
 - Refusal of entry or expulsion is possible where the Member State deems the entry or presence of a citizen or citizens of another Member State to be detrimental to its national security or public health.⁸⁶

⁸³ Article 3(1).

⁸⁴ Article 4(1). However, the Council of Ministers of COMESA may, upon recommendation of the Intergovernmental Committee of the Common Market, reduce the period of two years. The provisions below are covered by article 4(2)–(6).

⁸⁵ Article 5 and article 4(1). However, the Council of Ministers of COMESA may, upon recommendation of the Intergovernmental Committee of the Common Market, reduce the period of six years.

⁸⁶ See article 7.

- “Detrimental to public health” implies that the person concerned carried a disease that is categorized as contagious in the receiving Member State, and for which the laws of that Member State require that such person be quarantined.
- In the event of expulsion, the citizen(s) concerned is/are entitled to the safeguarding of their property and interests. Should property assets and other interests be confiscated by the appropriate authorities, the citizen(s) shall be entitled to prompt, effective and adequate compensation in accordance with international law.
- Temporary suspension of the provisions in relation to the first two steps may take place on the ground of public security or influx of persons as refugees arising from disturbance in the territory of another Member State.
 - However, Member States undertake to cooperate among themselves and with relevant non-governmental and intergovernmental organizations on assistance and management of refugees in their territories.
 - In this regard, note has to be taken of the principle of non-refoulement in international law. According to this principle, a country is not allowed to expel or return (“refouler”) a refugee, against his or her will, in any manner whatsoever, to a territory where he or she fears that his/her life will be threatened on account of his/her religion, nationality, membership of a particular social group or political opinion.⁸⁷
- Article 8 of the Protocol deals with the issue of cooperation in the prevention of and the fight against crime. Member States agree to cooperate among themselves in the prevention and fight against crime and prevent criminals from abusing the freedom to move freely within the Common Market by taking refuge in any Member State. For this purpose, the COMESA Council of Ministers has to adopt guidelines for information exchange on suspected criminals and for extradition agreements in line with international law.

3.5.4. Summary of key points

- Free movement of persons envisions a three-step approach.
- Entry may be refused/a person expelled if the entry/presence is detrimental to a country’s national security or public health.
- Measures are envisioned to address cooperation in the fight against organized crime.

3.6. SESSION 7: Free movement of labour (Component/ Stage 2)

3.6.1. Session overview

- Progressive removal of all restrictions within a six-year period is foreseen.
- Guaranteed equality of treatment as regards employment, remuneration and other employment conditions is included in the abolition of discrimination.
- The Protocol contains a wide notion of employment, but excludes public service employment.

⁸⁷ See article 33(1) of the 1951 UN Convention Relating to the Status of Refugees. However, article 33(2) states that this protection does not apply if there are reasonable grounds for regarding the refugee as a danger to the security of the country in which he/she is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

- Only workers with skills needed by country of destination qualify for coverage under the free movement of labour provisions of the Protocol.
- Free movement of labour is confined to offers of employment actually made; seeking employment is not covered.
- Social security and labour law measures have to be adopted by the Council of Ministers within one year of the entry into force of the Protocol.

3.6.2. Learning outcomes

- Participants are able to communicate the basic principles regarding the Free Movement of Labour.
- Participants are able to communicate the extent and implications of the Free Movement of Labour and its limitations.

3.6.3. Free movement of labour

- According to article 9(1) of the Protocol, Member States agree to progressively remove, within six years, all restrictions to the movement of labour within the Common Market.
- The removal of the restrictions are meant to entail the abolition of any discrimination based on the nationality between workers of the Member States as regards employment, remuneration and other conditions of work employment. This implies that foreign workers from other COMESA Member States have to receive equal treatment with national workers in the Member State to which they have migrated.
- It is of crucial importance to understand several key concepts that are relevant to the freedom of movement of labour.
 - Firstly, the notion of employment. This is an extensive concept, which includes a business, calling, craft, art, employ, job, line, occupation, profession, pursuit, services, trade, vocation or work.⁸⁸ This means that migrant workers involved in such diverse contexts as professional work, business enterprises, trade-related work or craft work are meant to benefit from the free movement of labour provision.
 - However, secondly, it is not every migrant worker that has the permission to move freely to another COMESA Member State for purposes of employment. The definition of “labour” in article 1 of the Protocol is significant, as it restricts this to skilled labour of persons, whose specialized skills are needed in the Member State where the person concerned is or wants to be employed.

Which categories of migrant workers from COMESA countries could benefit from the freedom of movement of labour provisions of the Free Movement Protocol?

According to the Protocol, only certain categories of workers could benefit from these provisions. This follows from the definition of “labour” in article 1 of the Protocol, which indicates that, until otherwise as amended by the Council of Ministers, “labour” means and includes only skilled labour of persons with specialized skills that are not available in a Member State. (Emphasis added)

⁸⁸ See article 1 of the Protocol.

- Thirdly, the Protocol describes the extent or implications of the freedom of movement of labour principles. These are said to include the following (Article 9(2)):
 - To accept offers of employment actually made;
 - To move freely within a Member State for this purpose; and
 - To stay in a Member State for the purpose of such employment of nationals, in accordance with the provisions governing the employment of nationals of such Member State laid down by law, regulations or administrative action.
- However, the Protocol also contains certain other limitations on and exceptions to the right to free movement of labour:⁸⁹
 - Limitations can be imposed by the relevant Member State on grounds of public policy, public security or public health; and
 - Freedom of movement of labour does not apply to employment in the public service.
- Finally, but importantly, the Protocol enjoins the COMESA Council of Ministers to adopt certain measures in the fields of social security and labour law within one year after the entry into force of the Protocol. According to article 9(4) of the Protocol, these measures:
 - Are required to provide for the freedom of movement of labour;
 - Need to be implemented progressively and in stages; and
 - Cover the fields of social security, labour laws (including laws on collective bargaining), pensions and other working conditions.

3.6.4. Summary of key points

- Progressive removal of all restrictions on the free movement of labour within six years is foreseen.
- Provision is made for the abolition of any discrimination based on nationality between workers of the Member States in the areas of employment, remuneration and conditions of employment.
- Free movement of labour is limited to skilled nationals.
- The Council of Ministers is tasked with adopting measures in the fields of social security and labour law.

3.7. **SESSION 8: Free movement of services (Component/Stage 3); Right of Establishment (Component/Stage 4) and Right of Residence (Component/Stage 5)**

3.7.1. Session overview

- Free movement of services is defined by the Protocol, and foresees that a person providing services may temporarily pursue his/her activity in the Member State where the service is provided, under the same conditions as are imposed on the Member State's own citizens. It requires a programme to set out general conditions under which and the stages by which each type of service is to be liberalized.

⁸⁹ See articles 9(2) and (3) respectively.

- The Protocol does not specifically define the content of the right of establishment, but foresees the gradual abolishment of all restrictions on this right. The Council of Ministers is tasked with issuing directives for implementation.
- The right of residence is the final stage to complete the adoption of the free movement agenda. Its content and scope is not detailed. The Council of Ministers is tasked with deciding applicable conditions.

3.7.2. Learning outcomes

- Participants understand the basic tenants of Free Movement of Services, Right of Establishment and Right of Residence.
- Participants are able to identify the existing provisions that exist in the Protocol to realize these rights.
- Participants can identify where further detail is needed to realize these Protocol rights.

3.7.3. Free movement of services

- Part IV of the Protocol deals with free movement of services.
- The term “services” is defined to include “any services provided for remuneration, in so far as they are governed by the provisions relating to freedom of movement of goods capital and persons”.⁹⁰
- Article 10(3) of the Protocol entails the core of what the free movement of services means.

What does the freedom of services entail?

According to the Protocol, the person providing services may, in order to do so, temporarily pursue his/her activity in the Member State where the service is provided under the same conditions as are imposed by that Member State on its own citizens.

- The Protocol requires the adoption of a programme by the Council of Ministers to remove restrictions on the freedom to provide services by 2004. This time period, which could not be reached due to the insufficient number of ratifications of the Protocol, would have to be revised.⁹¹
- This programme has to set out the general conditions under which and the stages by which each type of service is to liberalized.
 - As regards the programme, priority has to be given to those services that directly affect production costs or the liberalization of which promotes trade in goods.⁹²

⁹⁰ See article 1 of the Protocol.

⁹¹ Article 10(1).

⁹² Article 10(2). According to article 10(4), save as otherwise provided in the Treaty, Member States shall not, from the date of the entry into force of this Protocol, introduce any new restrictions on the freedom to provide services.

3.7.4. Right of establishment

- The Free Movement Protocol foresees the gradual abolishment of all restrictions on the freedom of establishment of citizens of a Member State in another Member State. This has to be achieved in progressive stages, within a period to be determined by the Council of Ministers and in accordance with a programme to be adopted by the Council.⁹³
- The Protocol does not specifically define the content of the right of establishment, and of the term “establishment” itself. Typically, however, this term would refer to “pursuing activities of self-employment and the setting up and managing of undertakings, such as companies and firms”.
- The Council of Ministers is also given the task to issue directives for the implementation of the programme referred to above.
- These directives should in particular include the following:⁹⁴
 - The definition of the extent of the right of establishment;
 - Circumscribing the measures required to ensure the effective implementation of the right;
 - Indicating the activities to be exempted in the grant of the right of establishment by a Member State;
 - Providing for the mutual recognition of certain qualifications and coordination of provisions regulating certain specific establishments and the categorization of companies or firms; and
 - Providing for the treatment of companies or firms formed in accordance with the laws of Member States.

3.7.5. Right of residence

The right to residence is foreseen as the final component or stage of completing the adoption and implementation of the free movement agenda in COMESA. However, the Protocol contains no concrete provision regarding what this right should entail and which exceptions could be allowed, as well as by when this right has to be in place. It allocates the task of deciding the period concerned and the applicable conditions to the Council of Ministers. Decisions of the Council are based on consensus; representations are made by all 19 Member States.

The right of residence

According to article 12 of the Free Movement Protocol, “Member States shall, within a period to be determined by Council, grant to Common Market citizens the right of residence in their territories in accordance with conditions to be adopted by Council.”

3.7.6. Summary of key points

- Free Movement of Services – is defined by the Protocol. It requires a programme to set out general conditions under which and the stages by which each type of service is to be liberalized.

⁹³ Article 11(1). According to article 11(2), this programme has to be drawn up by the Council of Ministers within two years after the adoption of the Protocol. This programme should set out the general conditions under which the right of establishment is to be attained in the case of each type of activity and, in particular, the stages by which it is to be attained.

⁹⁴ Article 11(3).

- Right of Establishment – the Protocol does not specifically define the content of the right of establishment. The Council of Ministers is tasked with issuing directives for implementation.
- Right of Residence – the final stage to complete the adoption of the free movement agenda. Its content and scope is not detailed. The Council of Ministers is tasked with deciding applicable conditions.

3.7.7. Comparative matrix: Free movement of services, right of establishment and right of residence

The matrix that follows provides some insight into how other regional instruments have identified and formulated free movement of services, right of establishment and right of residence.

| | Free Movement of Services | Right of Establishment | Right of Residence |
|--------|---|---|--|
| ECOWAS | | The right granted to a citizen who is a national of the Member State to settle or establish in another Member State other than one’s State of origin, and to have access to economic activities, to carry out these activities, as well as to set up and manage enterprises, and in particular companies, under the same conditions as defined by the legislation of the host Member State for its own nationals. ⁹⁵ | The right of a citizen who is a national of one Member State to reside in a Member State other than one’s State of origin and which issues him/her with a residence card or permit that may or may not allow him/her to hold employment. ⁹⁶ |
| EAC | “Services” include the following: (a) services in any sector except services supplied in the exercise of governmental authority which are not provided on a commercial basis or in competition with one or more service suppliers; and (b) services normally provided for remuneration, in so far as they are not governed by the provisions relating to free movement of goods, capital and persons. ⁹⁷ | The right of establishment shall entitle a national of a Partner State to: (a) take up and pursue economic activities as a self-employed person; and (b) set up and manage economic undertakings, in the territory of another Partner State. ⁹⁸ | |

⁹⁵ Article 1 (definition of the “right of establishment”) of the Supplementary Protocol A/SP.2/5/90 on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment.

⁹⁶ Article 1 (definition of the “right of residence”) of the Supplementary Protocol A/SP.1/7/86 on the Second Phase (right of residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment.

⁹⁷ Article 16(7) of the EAC Common Market Protocol.

⁹⁸ Article 13(3) of the EAC Common Market Protocol.

| | Free Movement of Services | Right of Establishment | Right of Residence |
|---|--|--|---|
| SADC | | Establishment shall mean permission or authority granted by a State Party in terms of its national laws, to a citizen of another State Party, for the following: (a) exercise of economic activity and profession either as an employee or a self-employed person; and (b) establishing and managing a profession, trade, business or calling. ⁹⁹ | Residence shall mean permission or authority to live in the territory of a State Party in accordance with the legislative and administrative provisions of that State Party. ¹⁰⁰ |
| Caribbean Community (CARICOM)/ CARICOM Single Market and Economy (CSME) | “Services” means services provided against remuneration other than wages in any approved sector and “the provision of services” means the supply of services. ¹⁰¹ | The right of establishment within the meaning of this chapter shall include the right to: (a) engage in any non-wage-earning activities of a commercial, industrial, agricultural, professional or artisanal nature; and (b) create and manage economic enterprises referred to in paragraph 5(b) of this article. ¹⁰² | |
| ECCAS | Protocol on Freedom of Movement | Protocol on Freedom of Movement, article 4. | Article 40 |

⁹⁹ Article 1 of the Draft Protocol on the Facilitation of Movement of Persons in the SADC.

¹⁰⁰ Article 16 of the Draft Protocol on the Facilitation of Movement of Persons in the SADC.

¹⁰¹ Article 36(4) of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM single market and economy.

¹⁰² Article 32(3) of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM single market and economy.

3.8. Summary of Module B

- The 1994 COMESA Treaty calls for the removal of obstacles to the free movement of persons, labour and services, right of establishment for investors and right of residence within the Common Market. This prompted the adoption of the Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence (the Free Movement Protocol) (2001).
- The Free Movement Protocol foresees the progressive achievement of a genuine common market; the Protocol itself states that this can only be achieved when the citizens of the Member States: (a) can move freely within the Common Market; (b) are free to take up offers of employment in any of the Member States; (c) are free to render services in any of the Member States; and (d) are free to pursue activities of self-employment, set up and manage undertakings in any of the Member States; in particular, companies and firms under conditions similar to those applicable to citizens of the country of establishment.
- However, the Protocol has been ratified by only two COMESA Member States and signed by four Member States.
- Several steps and measures have been taken by COMESA and the Member States to support freedom of movement, including (at least in some Member States) the relaxation of visa restrictions.
- The Free Movement Protocol is closely related to the preceding Visa Protocol (1984), which is due to terminate when the Free Movement Protocol enters into force.
- Five different components or stages are systematically provided for in the Protocol, namely visa-free movement of persons, free movement of labour, free movement of services, right of establishment and right of residence. The COMESA Council of Ministers plays a crucial role in respect of the gradual unfolding of these components.
- These rights and entitlements are not absolute, and are or could be qualified; for example, in exceptional circumstances, a person who otherwise qualifies may be refused entry; and only skilled workers with skills required by the destination Member State can benefit from the provisions on free movement of labour.

KEY RESOURCES FOR FACILITATOR PREPARATION

- Chigawa, B.
2016 COMESA Programme on Free Movement of Persons. Powerpoint.
- COMESA
1984 COMESA Protocol relating to the Gradual Relaxation and Eventual Elimination of Visa Requirements within the Common Market for Eastern and Southern Africa
1994 Treaty establishing a Common Market for Eastern and Southern Africa (COMESA)
1998 Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence.
n.d. Homepage. Available from www.comesa.int/

Additional resources for facilitator preparation

- COMESA
1984 Protocol on Gradual Relaxation and Eventual Elimination of Visa Requirements.
2015 *Draft Strategy and Related Action Plan for the Implementation of COMESA Protocols.*
2016 Generic Terms of Reference for Member States' National Monitoring Committees on the Free Movement Agenda. COMESA, Lusaka.
- Oucho, J.O.
2015 *Free movement of persons from the perspective of African regional integration: gaps, challenges and solutions* (A study prepared for the ILO and the AUC in the quest for Free Movement of Persons in the African Economic Community).

MODULE

C

**BENEFITS OF AND
CHALLENGES
ASSOCIATED
WITH THE
RATIFICATION AND
IMPLEMENTATION
OF THE COMESA
FREE MOVEMENT
PROTOCOL**

4. MODULE C: BENEFITS OF AND CHALLENGES ASSOCIATED WITH IMPLEMENTING THE COMESA FREE MOVEMENT PROTOCOL

4.1. Aims of Module C

- Indicate the different stages associated with the ratification of the Free Movement Protocol.
- Reflect on the benefits of and challenges associated with ratifying and implementing the COMESA Free Movement Protocol.
- Consider the need to establish an NMC and develop a National Action Plan for each COMESA Member State.

4.2. Learning outcomes for Module C

- Understanding the steps associated with and implications of the ratification of the COMESA Free Movement Protocol.
- Appreciating the benefits of ratifying the Free Movement Protocol.
- Evaluating the challenges associated with ratifying and implementing the Free Movement Protocol, and possible responses to deal with these challenges.

4.3. Key points covered in Module C

- Ratification (usually by parliament) is preceded by signature (by the executive) and implies that, at international law, the country is bound thereby.
- In most countries, the legal system would require domestication of the instrument via legislation. Implementation is the domain of government.
- Benefits of free movement systems must be seen in the light of the rationale for such a system, specifically to strengthen regional economic integration.
- Free movement regimes also contribute to the development of national and regional labour markets, fosters trade and economic development, and ensures individual and household income support.
- However, several challenges are associated with the ratification and implementation of free movement regimes.
- Challenges include revising non-compliant laws and policies, the need to improve border management and collaboration, and appreciate in-built flexibility, such as to implement in phases.
- A lack of political determination may require persuasion on the basis of a cost-benefit analysis.

- Implementation may be hampered by the absence of an implementation strategy and/or plan of action.
- There is a need to appropriately inform the general public, and provide dedicated capacity-building to those meant to implement the Protocol.
- Border management procedures need to be harmonized, and data capturing and data exchange/sharing capacity may have to be strengthened.
- Awareness-raising has to allay negative public perceptions, while there is need to ensure standardized and harmonized cross-border skills and qualifications recognition systems.

4.4. SESSION 9: Ratification of the Free Movement Protocol: Challenges and benefits

4.4.1. Session overview

- Ratification indicates the official acceptance or adoption by a country of an international instrument as a binding instrument for the country concerned, is preceded by signing, and succeeded (usually) by domestication into the legal system, as well as by implementation of the instrument.
- Ratification of the Free Movement Protocol is important as the benefits associated with free movement system strengthen regional economic integration, which in turn contributes to the development of national and regional labour markets, fosters trade and economic development, and ensures individual and household income support.
- Several challenges are associated with the ratification and implementation of free movement regimes, including the following:
 - The need to revise non-compliant laws and policies;
 - Improve border management and collaboration; and
 - Appreciate in-built flexibility, such as to implement in phases.

4.4.2. Learning outcomes

- Participants are able to identify the various stages of the ratification process.
- Participants can identify ratification requirements relevant for their country.
- Participants are able to articulate the main benefits and challenges of ratification.

4.4.3. Ratification requirements

- As is the case elsewhere in Africa, but subject to exception, the pace of ratification of the COMESA Free Movement Protocol has been slow.

Free movement by people is the hallmark of regional economic integration, facilitating trade and economic growth across the continent. Free movement of people impacts considerable economic benefits of both temporary and long term to the economies in the region. In addition to traditional sectors such as tourism, immigrants increase economic efficiency by filling gaps in low- and high-skilled labour markets and increase economic efficiency by reducing labour shortages.

Immigrants also remit considerable amount of money to support livelihoods and investments in their countries.

Despite the benefits and commitment by African Union member countries under the Abuja Treaty regarding the free movement of persons and the rights of residence and of establishment by their nationals within the Community, progress has been slow on this.

Source: AfDB, *Africa Visa Openness Report 2016* (AfDB, Côte d'Ivoire, 2016), p. 4.

- Different stages or steps are associated with ratifying an international or regional instrument, such as the COMESA Free Movement Protocol.
 - Ratification is preceded by the signing of the instrument – a task fulfilled by the executive of the country concerned, i.e. the president or prime minister, or even a line function minister.
 - Ratification itself constitutes the official acceptance or adoption by the country of the instrument, and is usually a task earmarked for parliament. In most countries, parliament does this by way of a resolution.
 - In most legal systems, a further act of incorporating this instrument into the legal system of the country concerned is required, before the instrument can be implemented and enforced. This is referred to as domestication of the instrument, and usually done by the introduction by legislation in parliament.
 - In some legal systems, though, domestication is not required, even though it will in any event be done. In these legal systems, the ratification of the instrument is sufficient for the instrument to have direct and binding effect in the legal system itself.
 - Implementation of the instrument is the task of the government.
- Ratification has important implications also in international law.
- According to international law, ratification implies that, if the instrument is already in force, the ratifying country would be bound thereby.
 - A country that has ratified the instrument is obliged to implement the instrument, and has to report regularly to the monitoring entity indicated in the instrument on steps taken to comply with the instruments.
- Even if a COMESA Member State has not ratified the Free Movement Protocol, due consideration has to be given to a Member State's international obligations under the Vienna Convention on the Law of Treaties.
 - This would arise by virtue of the fact that every Member State has signed and ratified the COMESA Treaty.
- Even if a COMESA Member State has not ratified the Free Movement Protocol, due consideration has to be given to a Member State's international obligations under the Vienna Convention on the Law of Treaties.
- The Free Movement Protocol is an integral part of the COMESA Treaty (as per article 193 of the Treaty); it shall enter into force when it is signed and ratified by at least seven Member States.

- Publishing in COMESA's Official Gazette and on the COMESA website is crucial for raising awareness.
- There may also be a need to sensitize politicians and parliamentarians, for example by holding information sessions.
- This should be supported by sensitization of the general public – for example, by undertaking public information campaigns.

Addressing an attitude of protection and negative public perceptions

An attitude of protectionism could also hinder the adoption of the Protocol. This is often linked to negative public perceptions and xenophobia, fuelled by fears that foreign workers will take away job opportunities from locals.

- It is necessary to provide an informed response (see the remark in Module A by the President of Rwanda in this regard), to explain the benefits of the Protocol and its implementation for the country concerned, and to roll-out awareness campaigns across the country, with live testimonies, to allay these fears and perception.

4.4.4. Benefits of ratification

- The benefits of ratifying the Free Movement Protocol have to be seen in the light of the rationale for the existence of the Protocol. As indicated in the previous modules, the overarching purpose of the Protocol is to strengthen regional economic integration and development.
- In addition, and flowing from the previous point, ratifying the Protocol will advance the cause of Pan-Africanism.
- Ratifying and implementing the Protocol also assists with addressing labour market shortages in the destination country, as workers usually move to take up available positions in that country. Similarly, a free movement regime allows workers who cannot find employment in their country of origin to find this elsewhere.
- In this sense, therefore, the ratification and implementation of the Free Movement Protocol will help with the development of both national labour markets and the regional labour market, in addition to the obvious benefit it has for individual migrant workers.
- One of the core benefits relates to individual and household income support, also via remittances sent back by the migrant worker.
 - Work abroad increases remittance flows to the country of origin; it is estimated that 13 per cent of remittance flows in Africa come from Africa itself.
- Implementing a ratified protocol also fosters trade and economic development.
- Implementation of the Protocol will strengthen regional economic integration.
- Greater regional integration will in turn increase COMESA Member States' global economic standing, increase its trade potential and increase investment.

4.4.5. Challenges associated with ratifying the Protocol

- In 2011, the COMESA Ministers Responsible for Immigration directed the establishment of a task force to address challenges in the signature and ratification of the Free Movement Protocol, as well as challenges with the implementation of the Protocol on the Gradual Relaxation and Eventual Elimination of Visas.
- A recent IOM report noted the following with regards to the outcome of the task force:

Further to assessment missions to Members States, the Task Force highlighted that there were gaps in awareness and understanding among Parliamentarians and operational officers on the Protocols. In order to address this, the Task Force highlighted the need for capacity building of partners on the COMESA Free Movement agenda, including through training programmes. The Task Force also recommended improved coordination and the establishment of a streamlined mechanism of promoting awareness on the Protocol with key stakeholders in COMESA Member States (MSs). These recommendations were endorsed in June 2015 at the sixth meeting of the COMESA Ministers Responsible for Immigration, held in Lusaka, Zambia.

Source: IOM, Minutes of the inaugural meetings of the Government of Zambia and Government of Zimbabwe National Monitoring Committees on the COMESA Free Movement Agenda, Internal report prepared by IOM (Lusaka, 2016), p. 1.

- Some of the challenges impact on the ratification of the Protocol, others on the implementation thereof, yet others may relate to both the ratification and the implementation of the Protocol.
- To the extent that significant changes to the legal framework of a country may be required, this may delay the ratification of the Protocol.
- In fact, it is necessary to consider any non-compliant legal and policy provisions that may be present – for example, restricting the labour rights or social security entitlements of foreigners, in particular foreign workers from other countries in the COMESA region.
 - It is therefore necessary to review national legislation and policies and remove conflicting provisions. Some COMESA countries have gone through this process already, for purposes of their adherence to other RECs (e.g. Kenya and Rwanda, in relation to their membership of the EAC).
 - It is possible and indeed in line with the position in many other regions in the world (such as the European Union, ECOWAS and the EAC) to effectively draw a distinction between foreigners/foreign workers migrating from within the particular region and those migrating from outside the region. For the sake of free movement and regional integration, and in the name of equality of treatment, migrants/migrant workers from within the region would enjoy preferential treatment and protection, in comparison with those from outside the region.
- Implementation costs may serve as a deterrent, and impact on the decision, or the timing of the decision, to ratify the Protocol.
 - It may be necessary to undertake and present to key decision makers (e.g. Cabinet) a cost-benefit analysis.

- It may also be helpful to bring on board the private sector, and enter into public–private partnerships, in order to spread the costs (but also the benefits) of ratifying and implementing the Protocol. The private sector could, for example, assist with improving infrastructure (including border infrastructure) and financing the development and production of single administration documents that replace multiple forms in use for cross-border purposes. Mention is made in the literature of such a successful partnership that supports the (health, safety and security) human resource component of interregional trade, in the form of the Walvis Bay Corridor Group.¹⁰³
- Perceived security threats are also a challenge.
 - This requires improved border management and collaboration. See Module A in respect to border management.
- It may be that the protection available to migrant workers in the country of destination, including labour law and/or social security protection, may be inadequate – for example, discriminatory laws, policies and practices may be in place.
 - It would be necessary to investigate whether this is the case and, if so, to agree with the destination country on remedial steps to address this.

Appreciating the in-built protection and flexibility provided by some Protocol provisions

Often policymakers and implementers do not understand the in-built protection and flexibility provided by some of the Protocol provisions.

- For example, a country is only required to accept skilled workers who have specialized skills required by the country concerned.
 - Also, complying with certain stages/components of the Protocol could be done or achieved progressively, over a period fixed by, in particular, the Council of Ministers (e.g. the right of establishment).
 - Also, a country could consider concluding a bilateral agreement first with another COMESA Member State, before ratifying the Protocol, and to learn from the experience so obtained.
-
- Political determination to ratify and/or implement the Protocol may be lacking, also on the part of politicians and parliamentarians, partly caused by a lack of understanding of the Protocol and what it requires, and fears they may have.
 - Again, there may be a need to provide information on, among others, the outcome of cost-benefit analysis, and indicating the collective objective of regional and continent-wide integration and Pan-Africanism.
 - Being a member of more than one REC may be problematic, as this may cause confusion and duplication of efforts (e.g. in the area of reporting).
 - It is necessary to carefully consider any overlap and deal with this on a case-by-case or issue-by-issue basis.
 - It may also be necessary to conclude agreements between RECs in an attempt to achieve a harmonious approach.

¹⁰³ See M.S. Kimenyi and B. Smith, “Intraregional trade and restrictions on the movement of people”, in: *Accelerating Growth through Improved Intra-African Trade* (Africa Growth Initiative, Brookings, Washington, D.C.), pp. 15–19. Available from www.brookings.edu/wp-content/uploads/2016/07/01_intraregional_trade_kimenyi.pdf

4.4.6. Summary of key points

- The benefits of free movement systems must be seen to strengthen regional economic integration.
- Free movement regimes also contribute to the development of national and regional labour markets, fosters trade and economic development, and ensures individual and household income support.
- Several challenges are associated with the ratification and implementation of free movement regimes, including the following:
 - The need to revise non-compliant laws and policies;
 - Improve border management and collaboration; and
 - Appreciate in-built flexibility, such as to implement in phases.

4.5. **SESSION 10: Requirements for the implementation of the Free Movement Protocol**

4.5.1. Session overview

- Effective measures need to be taken to ensure the efficient implementation of the Free Movement Protocol.
- Such measures may include the following:
 - Revision of non-compliant laws and policies;
 - Strengthening of internal procedures (administrative/operational);
 - Development of plans of action and consideration of phased implementation;
 - Awareness raising;
 - Improvement of border management and cross-border collaboration; and
 - Undertaking of data collection and analysis, research, monitoring and evaluation.

4.5.2. Learning outcomes

- Participants are able to identify the principal implementation requirements related to the Free Movement Protocol.

4.5.3. Challenges and implementation requirements

- The lack of a concrete and realistic implementation strategy or a plan of action may prevent proper implementation.
 - It would be necessary to design and implement an appropriate strategy and/or action plan for the country concerned.
- It would be necessary to put in place measures to enable a flexible or gradual approach adopted by the Protocol, including the following:
 - Explanatory information-sharing; and
 - Encourage the conclusion of bilateral agreements.

- There may be a lack of human and technical capacity to implement the Protocol.
 - Dedicated capacity-building training workshops/sessions would be required to deal with this.
- Insufficient operational systems and administrative infrastructure may be available or in place.
 - The operational systems and/or administrative infrastructure may have to be developed and/or adjusted or strengthened, in order to function optimally.
 - Public–private partnerships may have to be considered to make the above possible, and/or assistance obtained from experienced multilateral agencies.
- Border management procedures may be neither harmonized nor aligned from a cross-border perspective.
 - These procedures may have to be improved and ideally also agreed on with the neighbouring country to smooth and simplify processes involved with cross-border movement.
- Weak data capturing and data exchange/sharing frameworks may be in place. This is a problem shared by many developing countries, as well as COMESA countries.
 - Training may be required and/systems designed for this purpose. Mention should be made of assistance given by the European Union (via the MiEUX programme) to COMESA to establish a regional, harmonized data-sharing mechanism on migration.¹⁰⁴
 - It may also be helpful to introduce implementers of the Protocol to counterparts in countries that have experience in this regard.
- The general public may not have an understanding of the Protocol, in particular its benefits.
 - Raise public awareness via road shows.
- Undertake continuous research to measure the benefits of free movement.
 - This will also require the communication of positive messages around the outcomes of the research.
- Monitoring and evaluation systems and processes may be non-existent or weak.
 - Monitor and evaluate the implementation of the implementation strategy/plan of action.
 - Develop a monitoring and evaluation strategy.
- Standardized and harmonized cross-border skills and qualifications recognition systems may be absent or inadequately developed.
 - A regional approach to this would have to be developed. Good practice examples already exist in Africa (e.g., the EAC) and internationally (e.g. the Commonwealth).
 - The Protocol itself foresees that the Council of Ministers would have to develop a programme and issue directives that would provide for this.¹⁰⁵
 - Arrangements in this regard may also be made bilaterally, between two Member States.

¹⁰⁴ See ICMPD, 2016.

¹⁰⁵ See article 11(3)(d) of the Protocol.

4.5.4. Summary of key points

- Benefits of free movement systems must be seen to strengthen regional economic integration.
- It is necessary to take measures to ensure the efficient implementation of the Free Movement Protocol.
- These measures may include the following:
 - Revise non-compliant laws and policies;
 - Strengthen internal procedures (administrative/operational);
 - Develop plans of action and consider phased implementation;
 - Raise awareness;
 - Improve border management and cross-border collaboration; and
 - Undertake data collection and analysis, research, monitoring and evaluation.

4.6. **SESSION 11: Establishment of a National Monitoring Committee and development of a National Action Plan**

4.6.1. Session overview

- The establishment of an NMC by a COMESA Member State will contribute to the monitoring and improved implementation of all programmes, directives and policies at national level that relate to the COMESA Free Movement Agenda.
- The specific objectives, tasks/functions and composition of an NMC need to be indicated.
- A National Action Plan (NAP) should be developed in order to prioritize interventions and monitor the ratification and implementation of the Free Movement Protocol.
- The NAP should cover pertinent thematic areas (research; capacity-building; legislative and policy changes; operational and administrative measures; awareness-raising; monitoring and evaluation) and should include different activities in relation to each of the thematic areas, including the following:
 - Measure(s) to be adopted;
 - Lead entity;
 - Other stakeholders to be involved;
 - Expected outputs;
 - Indicator(s);
 - Time frame for completion;
 - Resources required and financing mechanism;
 - Sources of financing; and
 - Status.

4.6.2. Learning outcomes

- Participants appreciate the rationale for the establishment of an NMC and are able to identify its objectives, tasks/functions and composition.
- Participants are able to develop a NAP, indicating the relevant thematic areas and associated activities.

4.6.3. Establishing a National Monitoring Committee

- COMESA places impetus on strengthening the capacity of Member States to oversee the implementation of programmes at national level. It is recognized that one of the major limits to the effectiveness of integration is that too often policy directives and regulations emanating from regional integration organizations or institutions do not trickle down into the national policies and national plans of Member States for implementation.
- COMESA therefore places emphasis on the need to strengthen the capacity and institutional support to Member States in order to improve the integration of policies and decisions of COMESA Policy Organs, as well as enhance the implementation at national level.
- It is against this backdrop that COMESA has recommended the formation of an NMC on the COMESA Oversight of the Free Movement Agenda for each COMESA country.
- The formation of NMCs is considered to be an important part of the strategy for realizing the full implementation of the Visa and Free Movement Protocols, for highlighting challenges and identifying possible solutions in this regard.
- The overall objective of the NMC on the COMESA Oversight of the Free Movement Agenda is therefore to contribute to the monitoring and improved implementation of all programmes, directives and policies at national level that relate to the COMESA Free Movement Agenda.
- The specific objectives are as follows:
 - Monitor and report on progress related to the implementation of COMESA Free Movement Agenda at the national level.
 - Provide comprehensive and consolidated input to Country Reports to the COMESA Chiefs of Immigration and Ministerial COMESA Annual Meetings and other relevant fora, including, but not limited to, the COMESA monitoring matrix.
 - Identify challenges and make recommendations for taking the COMESA Free Movement Agenda forward.
- The tasks of functions of an NMC can be summarized as follows:
 - Facilitate the coordination and implementation of COMESA Free Movement programmes, as relevant to the country concerned.
 - Prepare national workplans and a NAP (see below).
 - Ensure that policymakers and other key stakeholders are sensitized on the COMESA Free Movement Agenda, and have a broad-based ownership of it.
 - Conduct periodic and annual monitoring of the implementation of the COMESA Free Movement Agenda, as relevant to the country concerned.
 - Report on progress on the signing, ratification and implementation of the COMESA Free Movement Protocols, as relevant to the country concerned.

- NMCs (through National Focal Points – who typically come from respective departments of immigration) report on progress in implementing the COMESA Free Movement Agenda through annual meetings of Chiefs of Immigration and Ministers Responsible for Immigration.
- Regarding its composition, the NMC may comprise of representatives from the institutions responsible for the signature, ratification and implementation of the COMESA Free Movement Protocols. This may include ministries responsible for Immigration, Labour, Trade and Commerce, Foreign Affairs, as well as Chambers of Commerce and cross-border trade associations, among others.
- Each NMC should adopt its own procedures for meetings, the required quorum and the adoption of minutes and decision-making.

4.6.4. Developing a National Action Plan

- COMESA Member States should develop their own NAPs in order to prioritize interventions and monitor the ratification and implementation of the Free Movement Protocol.
- Measures indicated in the NAP should be prioritized in order of importance.
- The measures should ideally apply to all five stages of the Free Movement Agenda, set out in Module B.
- Where relevant, activities should align to existing national development priorities and frameworks.
- The NAP should cover at least the following thematic areas:
 - Research;
 - Capacity-building (including training);
 - Legislative and policy changes;
 - Operational and administrative measures;
 - Awareness-raising; and
 - Monitoring and evaluation.
- The different activities to be included in the NAP, in relation to each of the thematic areas, should include the following (using the thematic area of research as an example):
 - The measure(s) to be adopted (e.g., undertake research into the country's visa policy with an emphasis on COMESA Member States);
 - The lead entity (e.g., the Department of Immigration);
 - Other stakeholders to be involved (e.g., academic institutions and IOM);
 - Expected outputs (e.g., a comprehensive research report);
 - Indicator(s) (e.g., the research is made available to policymakers responsible for visa policy formulation);
 - Time frame for completion;
 - Resources required and financing mechanism (e.g., research team, questionnaires, report production, printing and distribution, meeting to present the report);

- Sources of financing (e.g., integrated in government budget); and
- Status (e.g., initiated).

4.6.5. Summary of key points

- The establishment of an NMC by a COMESA Member State is necessary to help monitor and improve implementation of the COMESA Free Movement Agenda. Heed should be taken of the need to indicate the specific objectives, tasks/functions and composition of a NMC.
- A NAP should be developed in order to prioritize interventions and monitor the ratification and implementation of the Free Movement Protocol. Its thematic areas and associated activities need to be indicated.

4.7. Summary of Module C

- Ratification (usually by parliament) is preceded by signature (by the executive) and implies that, at international law, the country is bound thereby.
- In most countries, the legal system would require domestication of the instrument via legislation. Implementation is the domain of government.
- Benefits of free movement systems must be seen in the light of the rationale for such a system, specifically to strengthen regional economic integration.
- Free movement regimes also contribute to the development of national and regional labour markets, fosters trade and economic development, and ensures individual and household income support.
- However, several challenges are associated with the ratification and implementation of free movement regimes.
- Challenges include revising non-compliant laws and policies, the need to improve border management and collaboration, and appreciate in-built flexibility, such as to implement in phases.
- A lack of political determination may require persuasion on the basis of a cost-benefit analysis.
- Implementation may be hampered by the absence of an implementation strategy and/or Plan of Action.
- There is a need to appropriately inform the general public, as well as provide dedicated capacity-building to those meant to implement the Protocol.
- Border management procedures need to be harmonized, and data capturing and data exchange/sharing capacity may have to be strengthened.
- Awareness-raising has to allay negative public perceptions, while there is need to ensure standardized and harmonized cross-border skills and qualifications recognition systems.
- There is a need to establish an NMC and develop a NAP for each COMESA Member State.

KEY RESOURCES FOR FACILITATOR PREPARATION

- Chigawa, B.
2016 COMESA Programme on Free Movement of Persons. Powerpoint.
- COMESA
1998 Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence.
2014 *Strategy and Related Action Plan on the Implementation of the Protocols and Council Decisions on Free Movement of Persons.*
n.d. Homepage. Available from www.comesa.int/
- Olivier, M.
2016 *Capacity Needs Assessment Report: Free Movement of Persons in the COMESA (Common Market for Eastern and Southern Africa) Region.* Report submitted to the IOM and the Secretariat of COMESA.

Additional resources for facilitator preparation

- COMESA
1984 Protocol on Gradual Relaxation and Eventual Elimination of Visa Requirements
2015 *Draft Strategy and Related Action Plan for the Implementation of COMESA Protocols.*
2016 Generic Terms of Reference for Member States' National Monitoring Committees on the Free Movement Agenda. COMESA, Lusaka.
- International Organization for Migration (IOM)
2016 Minutes of the inaugural meetings of the Government of Zambia and Government of Zimbabwe National Monitoring Committees on the COMESA Free Movement Agenda. Internal report prepared by IOM.
- Oucho, J.O.
2015 *Free movement of persons from the perspective of African regional integration: gaps, challenges and solutions.* A study prepared for the ILO and the AUC in the quest for Free Movement of Persons in the African Economic Community.



APPENDICES

APPENDIX I

Resources for facilitator preparation

Absieh, H.G.

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African Union

- 2006 The Migration Policy Framework for Africa, EX.CL/276 (IX). Banjul, the Gambia.
 2014a *AU/ILO/IOM/ECA Labour Migration Governance for Development and Integration in Africa: A bold new initiative.*
 2014b Labour Migration Governance for Development and Integration in Africa: A bold new initiative. Powerpoint presentation.
 2014c Labour Migration Governance for Development and Integration in Africa: A bold Initiative, 2014.
 2015 Declaration on Migration, Doc. Assembly/AU/18(XXV). Assembly of the African Union, Twenty-Fifth Ordinary Session, 14–15 June 2015, Johannesburg.

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- 2006 *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination.* Organization for Security and Co-operation in Europe (OSCE), International Organization for Migration (IOM) and International Labour Organization (ILO), Vienna. pp. 27–36, 85–99.

Cholewinski, R.

- 1997 *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment.* Clarendon Press, Oxford.
 2008 The human and labor rights of migrants: Visions of equality. *Georgetown Immigration Law Journal*, 22(177):177–219.

Cholewinski, R., E. Macdonald and R. Perruchoud (eds.)

- 2007 *International Migration Law: Developing Paradigms and Key Challenges.* T.M.C. Asser Press, The Hague.

COMESA

- 1984 COMESA Protocol relating to the Gradual Relaxation and Eventual Elimination of Visa Requirements within the Common Market for Eastern and Southern Africa.
 1994 Treaty establishing a Common Market for Eastern and Southern Africa (COMESA).
 1998 Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence.
 2004 COMESA Model Law on Immigration.
 2015a Zambia, Zimbabwe takes lead in moving the COMESA Free Movement Agenda forward. 29 July. Available from www.comesa.int/zambia-zimbabwe-takes-lead-in-moving-the-comesa-free-movement-agenda-forward/
 2015b *Draft Strategy and Related Action Plan for the Implementation of COMESA Protocols.*
 2016a Generic Terms of Reference for Member States' National Monitoring Committees on the Free Movement Agenda. COMESA, Lusaka.
 2016b Rwanda approves ratification of the Protocol on Free Movement. 10 June. Available from www.comesa.int/rwanda-approves-ratification-of-the-protocol-on-free-movement/

eVisa Zimbabwe

- n.d. Zimbabwe Immigration Department, Revised Visa Regime with effect from 03/03/16. Available from www.zimimmigration.gov.zw/index.php/downloadable-forms/category/6-visa-regime?download=7:visa-regime

Intergovernmental Authority for Development (IGAD)

- 2012 *IGAD Regional Migration Policy Framework*. Addis Ababa.
2013 *IGAD Regional Migration Policy Framework Action Plan*.

International Centre for Migration Policy Development (ICMPD)

- 2016 MIEUX Project News: MIEUX organises migration data harmonisation meeting for COMESA. 2 September. Available from www.icmpd.org/news-centre/news-detail/project-news-mieux-organises-migration-data-harmonisation-meeting-for-comesa/

International Labour Organization (ILO)

- 1997 ILO Convention 181 of 1997 (Private Employment Agencies Convention).
2010 *International Labour Migration: A Rights-Based Approach*. ILO, Geneva.

International Organization for Migration (IOM)

- 2008 *World Migration 2008. Managing Labour Mobility in the Evolving Global Economy*. IOM, Geneva. pp. 355–392. Available from https://publications.iom.int/system/files/pdf/wmr_1.pdf
2011 *Glossary on Migration*. 2nd edition. IOM, Geneva.
n.d. Seminar documents – Free Movement of Persons in Regional Integration Processes (2007). June 18–19, 2007, Geneva. Available from www.iom.int/free-movement-persons-regional-integration-processes-2007

Organization for Security and Co-Operation Europe (OSCE)

- 2009 *Guide on Gender-Sensitive Labour Migration Policies*. OSCE, Vienna, pp. 13–26.

Oucho, J.O.

- 2015 *Free movement of persons from the perspective of African regional integration: gaps, challenges and solutions*. A study prepared for the ILO and the AUC in the quest for Free Movement of Persons in the African Economic Community.

Office of the United Nations High Commissioner for Human Rights

- 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 18 December 1990. Available from www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx

United Nations Economic Commission for Africa

- n.d. COMESA - Free Movement of Persons. Available from www.uneca.org/pages/comesa-free-movement-persons

Wickramasekara, P.

- 2015 *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*. ILO, Geneva.

APPENDIX II

Status of the implementation of the Visa Protocol and progress made in relation to the Free Movement Protocol

| Member States | 1. Protocol on Visa Relaxation to be Implemented COM/V/34 | 2. COMESA Counters at International Airports COM/V/34 | 3. Council Encouraged Bilateral Agreements CM/V/34 | 4. Grant of Visas to COMESA Citizens for up to 90 days on arrival CM/XI/60 | 5. National Consultations on signing Free Movement Protocol CM/XV/239 | 6. Member States carry out audit of National Laws to ensure compliance with COMESA Protocols CM/XIV/231 | 7. Establish National Monitoring Committees to monitor implementation CM/XIV/232 | 8. Day Passes for border crossing | 9. Signature of Protocol on Free Movement | 10. Visa Free Travel for COMESA laissez-passer holders under the COMESA Agreement on Privileges and Immunities | Performance by Member States |
|-------------------------------------|---|---|---|--|---|---|--|-----------------------------------|---|--|------------------------------|
| 1. Burundi | In the process of implementation | Underway | Economic Community for the Countries of the Great Lakes (CEPGL) arrangement | Under consideration | Completed | In the process of establishment | No report | All neighbours | Yes | Yes | 70% |
| 2. Comoros | No report | No report | No report | Yes | No report | No report | No report | No report | No | No | 20% |
| 3. Democratic Republic of the Congo | In the process of implementation | Yes | Zimbabwe, CEPGL | Not being implemented | No report | No report | No report | All neighbours | No | No | 40% |
| 4. Djibouti | No report | No report | Bilateral with Ethiopia and Eritrea | No report | No report | No report | No report | No report | No | Yes | 15% |
| 5. Egypt | Implementing | Under consideration | Sudan | Not implementing | Under consideration | Not completed | No report | No report | No | No | 15% |
| 6. Eritrea | No report | Under consideration | No report | No report | No report | No report | No report | No report | No | Yes | 10% |
| 7. Ethiopia | Not being implemented | Under consideration | Bilaterals with Kenya/Djibouti/Sudan | No | No report | No report | No report | No report | No | Yes | 20% |

| Member States | 1. Protocol on Visa Relaxation to be Implemented CM/V/34 | 2. COMESA Counters at International Airports COM/V/34 | 3. Council Encouraged Bilateral Agreements CM/V/34 | 4. Grant of Visas to COMESA Citizens for up to 90 days on arrival CM/XI/60 | 5. National Consultations on signing Free Movement Protocol CM/XV/239 | 6. Member States carry out audit Laws to ensure compliance with COMESA Protocols CM/XIV/231 | 7. Establish National Monitoring Committees to monitor implementation CM/XIV/232 | 8. Day Passes for border crossing | 9. Signature of Protocol on Free Movement | 10. Visa Free Travel for COMESA laissez-passer holders under the COMESA Agreement on Privileges and Immunities | Performance by Member States |
|----------------|--|---|---|---|---|--|--|--|---|--|------------------------------|
| 8. Kenya | Implementing | Set up | Bilaterals with Ethiopia/Rwanda/Uganda-EAC | Yes | Completed | Enacted a new Immigration Law that is in compliance with COMESA Protocol and the COMESA Model Law on Immigration | Established | Day Passes for Border Crossing given to all neighbouring countries except Ethiopia and Somalia | Yes | Yes | 80% |
| 9. Madagascar | Implementing | Being established | No report | Yes | Ongoing | No report | No report | No report | No | Yes | 30% |
| 10. Malawi | Implementing | Set up | With neighbours | Yes | Ongoing | No report | Yes | All neighbours | Processing | Yes | 60% |
| 11. Mauritius | Implementing | Set up | Yes | Implementing | No report | No report | No report | No report | No | Yes | 80% |
| 12. Libya | Under consideration | Under consideration | No report | Under consideration | Under consideration | Under consideration | Under consideration | Under consideration | Under consideration | No | 0% |
| 13. Rwanda | Implementing | Set up | Bilateral with Kenya, Uganda, Democratic Republic of the Congo and Burundi | Yes | Completed | Implemented | In progress | All neighbours | Yes | Yes | 80% |
| 14. Seychelles | No report | No report | No report | Implementing | No report | No report | No report | No report | No | Yes | 80% |
| 15. Sudan | Not being implemented | Consultation towards the establishment of the counters is at an advanced stage and will be implemented soon | Bilaterals with Ethiopia/Kenya, Eritrea, Egypt; Agreements with South Sudan and Libya are under consideration | Moving towards compliance and has already concluded bilateral agreements with neighbouring COMESA Member States | No report | No report | No report | No report | No | No | 10% |

| Member States | 1. Protocol on Visa Relaxation to be Implemented CM/V/34 | 2. COMESA Counters at International Airports COM/V/34 | 3. Council Encouraged Bilateral Agreements CM/V/34 | 4. Grant of Visas to COMESA Citizens for up to 90 days on arrival CM/XI/60 | 5. National Consultations on signing Free Movement Protocol CM/XV/239 | 6. Member States carry out audit of National Laws to ensure compliance with COMESA Protocols CM/XIV/231 | 7. Establish National Monitoring Committees to monitor implementation CM/XIV/232 | 8. Day Passes for border crossing | 9. Signature of Protocol on Free Movement | 10. Visa Free Travel for COMESA laissez-passer holders under the COMESA Agreement on Privileges and Immunities | Performance by Member States |
|---------------|--|---|--|--|---|--|--|-----------------------------------|---|--|------------------------------|
| 16. Swaziland | Implementing | Under consideration upon completion of new airport | No report | Yes | No report | No report | All neighbours | No | Yes | 35% | |
| 17. Uganda | Fully Implementing | Set up | Advanced arrangement with EAC | Yes | No report | No report | All neighbours | No | Yes | 60% | |
| 18. Zambia | Fully Implementing | Set up | Ongoing | Yes | Not completed | Enacted a new Immigration Law that is in compliance with COMESA Protocol and the COMESA Model Law on Immigration | All neighbours | No | Yes | 80% | |
| 19. Zimbabwe | Implementing | Have facility | Democratic Republic of the Congo, Zambia | Yes | Completed | Awaiting the promulgation of the new Constitution in order to ensure compliance with COMESA Protocols and approximation to the Model Law | All neighbours | Yes | Yes | 75% | |

Source: COMESA Secretariat, Implementation of Protocol on the Gradual Relaxation of Visa Requirements (generated in 2015) – has been updated during the last meeting in 2015 (COMESA Visa Index).

APPENDIX III

Overview: Liberalized movement of persons in regional integration processes

| Background information | Citizens of participating States | | | Non-citizens | | Ancillary policies |
|--|--|---|---|---|---|--------------------|
| | Entry provisions | Residency provisions | Employment provisions | Entry provisions | | |
| <p>European Union, 1958 – European Economic Community (EEC) Treaty; 1993 – Maastricht Treaty</p> <p>Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom</p> <p>European Economic Area (EEA), 1994</p> <p>European Union Member States, Liechtenstein, Norway, Iceland</p> | <p>Right to move freely between Member States. No visa required.</p> | <p>Right to reside in other Member States for three months without any formalities. Right of residence for more than three months if one is a worker, student, self-employed person or has sufficient resources and comprehensive health insurance for one's self and family members.</p> | <p>Self-employed persons, workers, service suppliers. <i>Note:</i> Limitations over a transitional period exist for nationals, particularly with respect to workers, of newly admitted European Union Member States.</p> | <p>Citizens of third countries may enter and travel within the European Union provided that they fulfil entry conditions, among others, to be in possession of a valid travel document or a visa if required. Special rules apply to non-European Union national family members of European Union citizens employed in other Member States.</p> | <p>Member States have coordinated social security policies, as well as a system for the mutual recognition of diplomas.</p> | |
| | <p>Right to move freely between Member States. No visa required.</p> | <p>Right to reside in other Member States.</p> | <p>Self-employed persons, workers, service suppliers. <i>Note:</i> Limitations over a transitional period exist for nationals, particularly with respect to workers, of newly admitted European Union Member States.</p> | <p>Citizens of third countries may enter and travel within the EEA provided that they fulfil entry conditions, among others, to be in possession of a valid travel document or a visa if required. Special rules apply to non-EEA national family members of EEA citizens employed in other Member States.</p> | <p>The European portability scheme coordinates the various national social security systems of Member States and applies to all nationals of the EEA. The EEA Treaty also envisions the mutual recognition of diplomas.</p> | |

| Background information | Citizens of participating States | | | Non-citizens | Ancillary policies |
|--|--|---|---|---|--|
| | Entry provisions | Residency provisions | Employment provisions | | |
| NORDIC Common Labour Market, 1954 Denmark, Finland, Iceland, Norway, Sweden | Right to enter all Member States. No visa or passport is required. | Right to reside in other Member States. No permit required. | All categories. | Provisions differ according to which treaty or treaties (European Commission, EEA or EFTA) each country is party to. For Denmark, Finland and Sweden, the European Commission Treaty regulates entry of third country nationals. For Iceland and Norway, the EEA and EFTA treaties apply. | Based on the Nordic Social Security Convention, a citizen of one Nordic country who is working or living in another Nordic country has the same social security and other social rights, including health care, childcare, social assistance, pension and unemployment benefits, as do the host country's own nationals. |
| European Free Trade Association (EFTA), 2002 Liechtenstein, Norway, Iceland, Switzerland | Right to enter all Member States. No visa required. | Right to reside in other Member States. | Employed persons, self-employed persons, frontier workers, service providers. | Family members of a person who has the right of entry and is a national of a Member State are also entitled to enter, provided that they are in possession of a valid visa. | Coordination of social security systems and mutual recognition of professional qualifications are provisions that Member States are to formulate as per the EFTA agreement (Art. 8, 9 of Annex K). |
| Economic Community of West African States (ECOWAS), 1975 Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo | Right to enter all Member States with a valid travel document and an international health certificate. No visa required for up to 90 days. | Right of residence for the purpose of seeking and carrying out income-earning employment. | Employed persons, self-employed persons (non-salaried activities). | Subject to national laws. | General Convention on Social Security (1993). |
| East African Community (EAC), 2009 Common Market Protocol Kenya, Uganda, United Republic of Tanzania, Rwanda, Burundi and (since 2016) South Sudan | Visa-free entry to and movement within EAC Partner States granted to citizens of EAC Partner States. | Citizens of EAC Partner States (and identified family members) have a right of residency in other EAC Partner States if they have been admitted on the basis of persons who qualify as workers enjoying freedom of movement or persons enjoying freedom of establishment. | Citizens of EAC Partner States have to apply for employment and accept offers of employment actually made, and may be accompanied by identified family members. | Subject to national laws. | Workers who are citizens of EAC Partner States are entitled to non-discriminatory treatment regarding employment rights, including freedom of association and collective bargaining, and enjoy equal social security rights with citizens of the host EAC Partner State. |

| Background information | Citizens of participating States | | | Non-citizens Entry provisions | Ancillary policies |
|---|---|---|--|---|---|
| | Entry provisions | Residency provisions | Employment provisions | | |
| Andean Community of Nations, 1969 Plurinational State of Bolivia, Chile, Colombia, Ecuador, Peru | Right to enter all Member States. No visa required for up to 90 days. | Andean migrant workers shall reside in a country in accordance with community or national legislation. | Workers (individually moving workers, company workers, seasonal workers and border workers); service providers. | Unrestricted entry and departure for spouses of migrant workers, minor children who are not yet emancipated, older disabled children, and workers' parents and dependants in accordance with the national legislation of the destination country. | The Andean Social Security Instrument recognizes that it is of basic importance to preserve the right of migrant workers to receive social security benefits. Andean Community Decision 659 establishes recognition of qualifications as a topic to be addressed. |
| Commonwealth of Independent States (CIS), 1991 Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russian Federation, Tajikistan, Ukraine, Uzbekistan | Right to move freely within the CIS. No visa required. Some exceptions exist and are based on bilateral agreements. | Residency is subject to national laws and regulations, as well as bilateral arrangements. Residency permits are required. | All categories of migrant workers at all skill levels. | Subject to national laws. | Agreement on Cooperation in Labour Migration and Social Protection of Migrant Workers (1994); Agreement on guarantees of rights of citizens of participant States of the CIS in the sphere of pension provisions (1992). |
| Market access for certain groups, largely/partly based on the general agreement on trade in services provisions | | | | | |
| Caribbean Community (CARICOM), 1973 / CARICOM Single Market and Economy (CSME), 1989 Antigua and Barbuda, (the Bahamas (not in CSME), Barbados, Belize, Dominica, Grenada, Guyana, Haiti (not in CSME), Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago | Right to move freely within the community. | No right to reside in other Member States. | Skilled community nationals (university graduates, media workers, sports persons, artists and musicians); non-wage earners (either as service providers and/or to establish businesses); managerial, supervisory and technical staff; service providers of all skill levels. | Spouses and members of the immediate family are free to move within the community. Nationals of countries not party to the agreement must check with the respective host country authorities for specific visa requirements. | The CARICOM Agreement on Social Security came into effect on 1 April 1997, enabling portability of entitlements to long-term benefits for some categories of persons. The revised treaty also includes a provision on the recognition of diplomas and qualifications. |

| Background information | Citizens of participating States | | | Non-citizens Entry provisions | Ancillary policies |
|--|--|---|---|--|--|
| | Entry provisions | Residency provisions | Employment provisions | | |
| North American Free Trade Agreement (NAFTA), 1994 Canada, Mexico, United States | Businesspersons have the right to temporary entry in other State Parties. A NAFTA professional (TN) visa is granted to qualified businesspersons who have proof of employment. | TN visa holders are granted temporary residence in other State Parties. | Business visitors, traders, investors, intra-company transferees and professionals. | Spouses of TN visa holders and their unmarried children under the age of 21 must demonstrate a bona fide relationship to the principal TN visa holder in order to receive a derivative visa. Spouses and children cannot work while in the United States but are permitted to study. | Supplementary provisions regarding recognition of licences are contained in NAFTA Article 1210 and, specifically for professionals, provisions contained in NAFTA Annex 1210.5 have produced Mutual Recognition Agreement in the professions of accountancy, architecture and engineering. |
| Common Market for Eastern and Southern Africa (COMESA), 1994 Angola, Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, Zimbabwe (Note: Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence has not yet entered into force.) | Right to enter all Member States. During initial phase of implementation of the Protocol, visa will be granted upon presentation of valid travel document. | Member States shall endeavour to harmonize their national laws, rules and regulations having regard to the need to grant the right of residence to COMESA citizens. | Skilled labour with specialized skills that are not available in a Member State; service providers. | Subject to national laws. | COMESA Council of Ministers to adopt measures to be implemented progressively in relation to social security, labour laws, pension and working conditions to provide for the freedom of movement of labour. |
| Economic Community of Central African States (ECCAS), 1984 Angola, Burundi, Cameroon, Central African Republic, Chad, (the) Congo, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Sao Tomé and Principe | Right to enter all Member States. Identity card, passport or health document required. Visa is required. | Right to reside freely within the Community. Residence permit is required. | Workers, self-employed persons. | Clear provisions for non-citizens are not found in the ECCAS Treaty, but they can be found in ECCAS Member States bilateral free movement agreements with third countries. | |
| Association of Southeast Asian Nations (ASEAN), 1967 Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam | | | Skilled labour, professionals. | Subject to national laws. | Member States are to recognize the education or experience obtained, requirements met, or licences or certifications granted in another Member State, for the purpose of licensing of service suppliers. |

| Background information | Citizens of participating States | | | Ancillary policies |
|--|---|---|---|---|
| | Entry provisions | Residency provisions | Employment provisions | |
| <p>Southern African Development Community (SADC), 1992 Angola, Botswana, Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, United Republic of Tanzania, Zambia, Zimbabwe (Note: Protocol on the Facilitation of Movement of Persons (2005) has not yet entered into force.) (Note further: The Protocol on Employment and Labour (2014) has not yet entered into force; also, a Social Security Benefits Portability framework was adopted in 2016.)</p> <p>Southern Common Market (MERCOSUR), 1991 Argentina, Brazil, Paraguay, Uruguay, Bolivarian Republic of Venezuela</p> | Right to enter all Member States. No visa required for a visit of up to 90 days. | Right to reside in other State Parties with an application for a residence permit. | Employed persons, self-employed persons. | Member States are to foster an enabling environment so that every worker in the SADC Region shall have a right to adequate social protection and shall, regardless of status and type of employment, enjoy adequate social security benefits. Member States are encouraged to make arrangements for equality of treatment in relation to and portability of social security benefits. |
| | Right to enter all State Parties. Automatic visa granted for entry. | Right to reside in another State Party. Automatic visa granted for stay up to four years. | Workers, service providers. | Subject to national laws. |
| No market access but facilitated entry | | | | |
| <p>South Asian Association for Regional Cooperation (SAARC), 1985 Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka</p> | Specified categories of persons, including businesspeople, are free to travel within the region. Visa requirements are waived for these categories. | | | Recognition of professional degrees awarded in other SAARC Member States is under consideration. |
| | | | SAARC has not yet come to the stage of harmonizing mobility provisions for non-SAARC nationals. | |

| Background information | Citizens of participating States | | Employment provisions | Non-citizens | | Ancillary policies |
|--|--|--|--|---------------------------|--|--------------------|
| | Entry provisions | Residency provisions | | Entry provisions | | |
| Asia-Pacific Economic Cooperation (APEC), 1989 Australia, Brunei Darussalam, Canada (not a participant in the APEC Business Travel Card (ABTC)), Chile, China, Hong Kong Special Administrative Region of China (SAR), Taiwan Province of the People's Republic of China, Indonesia, Japan, Malaysia, Mexico (participate in the ABTC on a partial basis), New Zealand, Papua New Guinea, Peru, Philippines, Russian Federation (not a participant in the ABTC), Singapore, Republic of Korea, Thailand, United States (participate in the ABTC on a partial basis), Viet Nam | Frequent business travellers are free to travel within the region. No separate visa application required if traveller is in possession of an ABTC clearance. | Businesspersons holding passports from ABTC participating economies, or Hong Kong SAR permanent residents, automatically apply for three-year multiple-entry temporary activities to all ABTC participating economies. | Persons who are engaged in the trade of goods, provisions of services or the conduct of investment activities who need to travel frequently on short term visits within the APEC region to fulfil business commitments. Senior government officials are also eligible. Persons who are engaged in paid employment are specifically excluded. | Subject to national laws. | | |
| Community of Sahel-Saharan States (CEN-SAD), 1998 Benin, Burkina Faso, Central African Republic, Chad, Comoros, Côte d'Ivoire, Djibouti, Egypt, Eritrea, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Libya, Mali, Morocco, (the) Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia | Right to move to all Member States. Entry visa required but visa exemption exists for some categories of persons. | | Right of establishment subject to the laws and regulations of individual Member States. | Subject to national laws. | | |
| Intergovernmental Authority on Development (IGAD), 1996 Djibouti, Ethiopia, Kenya, Somalia, Sudan, Uganda (Eritrea temporarily suspended its membership with IGAD in April 2007) | Reciprocal visa-free entry for limited stays is granted bilaterally by some Member States. | | | Subject to national laws. | | |

Source: Adjusted from IOM, Seminar documents – Free Movement of Persons in Regional Integration Processes (2007), June 18–19, 2007, Geneva. Available from www.iom.int/free-movement-persons-regional-integration-processes-2007

APPENDIX IV

Provisions on free movement and labour mobility in various RECs in Africa

| Regional Economic Community (REC) | Member States/Partner States | Protocol on Free Movement of Persons, Right to Residence and Establishment | Provision on Free Movement of Persons, Right to Residence and Establishment |
|--|--|--|---|
| East African Community (EAC) | Kenya, Uganda, United Republic of Tanzania, Rwanda, Burundi and (since 2016) South Sudan | Protocol on the Establishment of the East African Community/Common Market Protocol of 2009. | Article 104 of the Protocol obligates Partner States to ensure free movement of persons, labour and services, as well as the right of establishment and residence of citizens of EAC Partner States within their territories. |
| Economic Community of West African States (ECOWAS) | Nigeria, Ghana, Benin, Cabo Verde, Guinea, Gambia, Burkina Faso, Sierra Leone, Guinea-Bissau, Mali, Senegal, (the) Niger, Côte d'Ivoire, Togo and Liberia | Protocol on the Free Movement of Persons, Residence and Establishment (1979). | Article 2 of the Protocol allows citizens of ECOWAS Member States to enter, reside and establish in the territories of other Member States. |
| Common Market for Southern and Eastern Africa (COMESA) | Djibouti, Zambia, Zimbabwe, Rwanda, Seychelles, Uganda, Egypt, Eritrea, Libya, Kenya, Madagascar, Democratic Republic of the Congo, Sudan, Swaziland, Malawi, Burundi, Mauritius and Comoros | Protocol on the Free Movement of Persons, Labour, Services and Right of Establishment and Residence (2001). | Citizens of COMESA Member States would not need a visa to visit territories of other Member States for up to 90 days, so long as they possess valid travel documents (article 4). Eventual removal of all restrictions on movement of persons, including visa requirements is foreseen (article 5). Provision is further made for free movement of skilled labour (article 9) and services (article 10), as well as for the gradual removal of restrictions on the right of establishment (article 11) and, eventually, the right of residence (article 12). |
| Intergovernmental Authority on Development (IGAD) | Kenya, Ethiopia, Somalia, Uganda, Sudan and Djibouti | Bilateral agreements between Member States in relation to free movement of persons and labour mobility, for example, Kenya–Ethiopia; Djibouti–Ethiopia. IGAD-Regional Migration Policy Framework. | Kenya–Ethiopia bilateral agreement states that nationals of either countries do not need a visa when visiting both countries. IGAD-Regional Migration Policy Framework provides a comprehensive and integrated policy guidelines on various thematic issues on migration, including the following: (a) labour migration; (b) human rights of migrants; (c) inter-State cooperation and partnerships; (d) migration and development; (e) internal migration; (f) migration data; and (h) irregular migration. |

| Regional Economic Community (REC) | Member States/Partner States | Protocol on Free Movement of Persons, Right to Residence and Establishment | Provision on Free Movement of Persons, Right to Residence and Establishment |
|---|---|--|---|
| South Africa Development Community (SADC) | Angola, Democratic Republic of the Congo, Botswana, Lesotho, Malawi, Mozambique, South Africa, United Republic of Tanzania, Zimbabwe, Madagascar, Namibia, Swaziland and Mauritius | Facilitation of Movement of Persons of 2005 | <p>Article 14(1) of the Protocol obliges State Parties to ensure that a citizen of SADC Member States who wish to cross to another SADC Member State(s) be admitted without a visa for a maximum stay of up to 90 days – upon possession of valid travel documents.</p> <p>Article 17(1) states that permission for residence in one of the Member States will be sought by applying for a residence permit.</p> <p>Article 19 states that Member States can grant establishment to citizens of other Member States in accordance with their national laws.</p> |
| Economic Community for Central African States (ECCAS) | Angola, Chad, Cameroon, Burundi, Sao Tome and Principe, Equatorial Guinea, Democratic Republic of the Congo, Gabon, (the) Congo, Central African Republic | Protocol on Freedom of Movement and Rights of Establishment of Nationals of Members States of 1984 | <p>Citizens of ECCAS Member States can cross into territories of Member States upon possession of a passport, identity card, valid visa or international health record.</p> <p>Article 40 of the treaty that establishes ECCAS decrees that citizens of ECCAS Member States will be considered nationals of the community.</p> |
| Community of Sahel-Saharan States (CEN-SAD) | Benin, Burkina Faso, Chad, Central African Republic, Djibouti, Egypt, Ghana, Gambia, Liberia, Mali, Morocco, Senegal, Sierra Leone, Tunisia, Somalia, Togo, Comoros, Sudan, Côte d'Ivoire, Guinea-Bissau, Liberia, Guinea, Eritrea, (the) Niger and Nigeria | Original treaty establishing CEN-SAD | <p>Article 1 of the Treaty advocates for the elimination of all barriers to unity of Member States through adoption of measures to encourage free movement of persons, goods and labour, as well as right to residence and establishment.</p> |

Source: Adjusted from J.O. Ouchou, *Free movement of persons from the perspective of African regional integration: gaps, challenges and solutions*. A study prepared for the ILO and the AUC in the quest for Free Movement of Persons in the African Economic Community, December 2015, pp. 12–13.

