

Research Report

Promoting Free Movement of People in Southern Africa

A Case for Ratification of the Protocol on the Facilitation of Movement of Persons in the SADC Region

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the SADC Region**

ADPC Research Report
No. 2015
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Research Brief

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*Peter Mudungwe
July, 2015*

The opinions expressed in this work belong solely to the author and do not necessarily reflect the opinions of the African Diaspora Policy Centre (ADCP). Comments are welcome, and should be directed to the author

Suggested citation: Promoting Free Movement of People in Southern Africa

For Africa to live, the nation must die...

Graca Machel (New Agenda, Issue 56 – 4th Quarter, 2014)

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SADC Member States



Source: <http://www.sadc.int>

Acronyms

ASEAN:	The Association of Southeast Asian Nations
AU:	African Union
CARICOM:	The Caribbean Community
COMESA:	Common Market of Eastern and Southern Africa
CSOs:	Civil Society Organizations
EAC:	The East African Community
ECOWAS:	Economic Community of West African States
EU:	The European Union
EC:	The European Commission
MIDSA:	Migration Dialogue for Southern Africa
NGO:	Non-governmental Organization
REC:	Regional Economic Community
SADC:	The Southern Africa Development Community
SADCC:	Southern African Development Coordinating Conference
UNDP:	United Nations Development Programme

Acknowledgements

This paper was prepared for the National Association of Non-Governmental Organisations (NANGO) Zimbabwe through financial support from the United Nations Development Programme (UNDP) and Oxfam NOVIB, and was initially published by NANGO Zimbabwe.

The author is indebted to NANGO Zimbabwe, in particular Cephas Zinhumwe, Machinda Marongwe, Taurayi Nyandoro, and Tipei Sibindi for their support and technical input during the research and report writing phases of the study.

Credit is also due to national stakeholders (including Government of Zimbabwe officials and representatives of CSOs and the private sector), who attended a workshop to validate the study report in Harare in April 2015 for their insightful comments.

Abstract

Migration within SADC, and from the rest of the African continent to SADC countries, has increased dramatically over the past two decades, building on a long-established tradition of regional labour migration. Although there is some migration between other countries in the SADC region, South Africa is the primary destination for the majority of intra-SADC migrants. According to IOM in 2013, the Southern African region had over four million migrants, excluding irregular migrants. South Africa is home to more than half (2.4 million) of these migrants, the majority (1.5 million) of whom are from Zimbabwe. The DRC is host to 447,000 migrants, followed by Zimbabwe (361,000),² suggesting that some countries in the region are both migrant sending and host countries. Overall, there are significant levels of intra-regional migration, taking a variety of forms, of which economic migrants are the majority.

Faced with this reality, the SADC region has seen some positive, if slight movement towards coordination and harmonization in migration governance. Disappointingly, there has been little movement towards facilitating free movement and the advancement of migrants' rights. To date, enhanced regional migration governance has taken more technocratic and bureaucratic form, and has been more about cooperation amongst states in collecting migration data and enforcing their separate national migration laws than about establishing a genuinely regional, rights-based migration governance regime. One of the most formidable and intractable obstacles to regional harmonization is negative public attitudes towards immigrants in the main migrant-receiving states. Another obstacle to harmonization is the weakness of SADC as a regional institution. It has limited resources and little political power over national governments, and thus little ability to shape the migration governance agenda. A further challenge is the weak and uneven rights regimes at the national level.

² IOM (2014): Regional Strategy for Southern Africa (2014 – 2016)

There has been some development with regard to the free movement, albeit limited to pronouncements. The first MIDSA ministerial-level conference held in Windhoek, Namibia in November 2010, had as one of its recommendations.... *“Encourage countries to expedite ratification of the SADC Protocol on the Facilitation of Movement of Persons”*.³ Further, South Africa (the biggest economy in the region) shares the view that African states should work towards progressively the freer movement of citizens within regions, and eventually free movement of Africans across the continent. Further, Declaration 6 of the 25th AU Summit held in Johannesburg in June 2015 (Assembly/AU/Decl.6(XXV)) commits to free movement within the Continent by 2018.

While ratification of the SADC Protocol on the Facilitation of Free Movement of Persons would serve to strengthen the legal and policy framework protecting migrants’ rights in the region, and might even contribute to modifying public attitudes towards a more pro-migration, or at least less anti-migrant stance, the protocol is yet to be ratified, ten years after it was adopted (in 2005). This, despite the long established economic benefits of free movement of persons, including labour, which can enhance trade and entrepreneurship, and address skills shortages.

Based on these premises, this paper argues for the freer movement of persons in the SADC region, and argues that Member States and indeed the region would benefit socially and economically from the free movement persons. It provides an advocacy strategy for civil society in Zimbabwe in their quest to urge to the authorities in that country to ratify the SADC Protocol on the Facilitation of Free Movement of Persons.

³ IOM (2010): Report and Recommendations of the MIDSA Conference on Managing Migration through Regional Cooperation, Windhoek, Namibia, 15-17 November 2010

1. BACKGROUND AND RATIONALE

1.1 SADC Background and Context

The Southern African Development Community (SADC) is an inter-governmental organization with 15 member states, namely Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia, and Zimbabwe, and its secretariat is based in Gaborone, Botswana [4]. Established in August 1992 in Windhoek, Namibia the SADC is a successor of the Southern African Development Coordinating Conference (SADCC), which was established in Lusaka, Zambia in April 1980 following the adoption of the Lusaka Declaration (entitled *Southern Africa: Towards Economic Liberation*) by the nine founding member states (Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe). SADCC was formed to advance the cause of national political liberation in Southern Africa, and to reduce dependence particularly on the then apartheid era South Africa; through the coordination and utilization of specific characteristics and strengths of each country and its resources. SADCC objectives went beyond dependence reduction to embrace basic development and regional integration. On its formation, the SADC adopted a treaty (the [SADC Treaty - 1992](#)) which re-defined the basis of cooperation among Member States from a loose association into a legally binding arrangement with a focus on integration of economic development.

1.1.1 Vision, Objectives and Structure of the SADC

The SADC envisions a region with... *“a high degree of harmonisation and rationalisation, to enable the pooling of resources to achieve collective self-reliance in order to improve the living standards of the people of the region.”* This vision would be achieved through the following objectives as enshrined in Article 5 of the SADC Treaty thus: *“to achieve*

⁴ <http://www.sadc.int>

economic development, peace and security, and growth, alleviate poverty, enhance the standard and quality of life of the peoples of Southern Africa.”^[5] The SADC vision and objectives form the basis of the numerous protocols that the regional body has ratified or is in the process of ratifying, all aimed towards promoting regional co-operation and co-ordination. One such protocol is the *Protocol on the Facilitation of Movement of Persons in the Southern African Development Community (SADC)* – the Protocol, which seeks to address one of the objectives of Article 5 of the SADC Treaty thus: to “*Strengthen and consolidate the long standing historical, social and cultural affinities and links among the people of the Region*” and proposes to achieve that through the “*.....progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among Member States*”^[6].

The supreme body of SADC is the Summit, comprising the Heads of State or Heads of Government. This is supported by two Organs, one on Politics, Defence and Security (OPDS) and the other on Trade, Industry, Finance and Investment. Each Organ is supported by Clusters, each with a Committee structure under it. Immigration related matters come under OPDS.

1.2 Progress on Ratifying the Protocol

Regional integration is meaningless, unless the citizens of that region can move freely within the region with their products, and share/exchange their experiences and interests. A salient, yet less recognizable (and perhaps unacknowledged) feature of the unfettered movement of people in the region is the important role that such movement plays in integrating people of the SADC region. While building on the historical and familial ties of the peoples of the region, the social networks that people form in the different countries where they move are a strong complement towards regional integration.

⁵ <http://www.sadc.int>

⁶ <http://www.sadc.int>

Ratification of the Protocol is a two-step process, signature and ratification (though the two processes can happen simultaneously). Firstly, the Head of State signs the text of the Protocol signifying the intent of the Member State to consider ratification. Secondly, the Protocol is submitted to, considered, and adopted by the Member State's Parliament, and subsequently deposited with the SADC Secretariat. This ratification process entails that prior to ratification, Member States should carefully consider the implications of the Protocol.

Despite the centrality of the Protocol in achieving some of the goals of Article 5 of the SADC Treaty, its ratification has been slow. Currently only 6 of the 15 SADC Member States have ratified the Protocol since its adoption in 2005. The Member States that have ratified the Protocol include Botswana, Lesotho, Mozambique, South Africa, Swaziland and Zambia. This falls short of the nine countries required for the Protocol to enter into force.

It is within the context of the above background that the National Association of Non-governmental Organizations (NANGO) commissioned a baseline assessment on the free movement of people in the SADC region in respect of the *SADC Protocol on the Facilitation of Movement of Persons*, the recommendations of which would constitute an advocacy strategy for NANGO and its membership for the ratification of the Protocol by the Government of Zimbabwe.

2. OBJECTIVES, SCOPE AND METHODOLOGY OF THE ASSESSMENT

2.1 Objectives

The overall objective of the assignment is two pronged:

Firstly, it seeks to assess the impact of the provisions of the *SADC Protocol on the Facilitation of the Free Movement of Persons* on Zimbabweans within the context of

regional integration, and its implications on the integration of Africa as envisioned by the Abuja Treaty (1991).

Secondly, it will provide recommendations for follow-up activities to strengthen the capacity of NANGO to advocate for ratification of the *Protocol on the Facilitation of the Free Movement of Persons* by the Zimbabwean authorities.

2.2. Methodology

The study was undertaken between September and December 2014. The methodology of the study included:

- i. A review of the draft *Protocol on the Facilitation of the Free Movement of Persons* and other relevant secondary documents.
- ii. Discussions with representatives of cross-border traders in Zimbabwe. The purpose of these discussions was to ascertain how the *Protocol on the Facilitation of the Free Movement of Persons* would benefit the cross-border traders in Zimbabwe. The discussions took place in November 2014.

Challenges

Several stakeholders in the SADC region (governmental and non-governmental) were identified and targeted for interviews/consultations. However, the response to these requests was poor, which limited the assessment of stakeholders' views on the issue of free movement of persons in the region.

3. THE PROTOCOL ON THE FACILITATION OF MOVEMENT OF PERSONS (1998) IN PERSPECTIVE

In order to have an appreciation of the content and focus of the SADC *Protocol on Facilitation of the Movement of Persons*, it is necessary to contextualize its development historically.

3.1 *The Draft Protocol on the Free Movement of Persons in the Southern African Development Community (SADC)*

In June 1995, a team of consultants commissioned to formulate the protocol submitted the *Draft Protocol on the Free Movement of Persons in the Southern African Development Community (SADC)*. The protocol proposed a phased approach to the eventual free movement of persons among SADC Member States. The four successive phases were (i) a six-month visa entry period, (ii) the right of residence, (iii) the right of establishment, and (iv) the abolition of all controls on the movement of citizens within the SADC.

The movers' "right" to entry, residence and establishment in any Member State attracted negative reactions, particularly from South Africa, Namibia and Botswana, arguably the three countries with the strongest economies in the region (Williams: 2002). Further, Carr and Williams (2006) argue that the reluctance of SADC Member States to adopt the *Draft Protocol on the Free Movement of Persons in the SADC* was perhaps based on the premise that the draft protocol espoused an "open border policy", and failed to take into account the potentially negative consequences of such a strategy. Some Member States argued that given the economic disparities among Member States, the region was not yet ready for the free movement of people. That the Ministerial Committee of the Organ on Defence, Politics and Security was given custodianship of the Protocol could suggest that security (rather than managing migration for development) was an over-riding consideration. This would suggest that the Protocol is not about facilitating movement, but rather about controlling movement, even if the mechanisms of control may make it easier for people to move. Thus, security considerations superseded facilitation of movement of persons. Consequently, the protocol was revised, and the 'contentious' issues were removed. This argument is buttressed by the fact that the successor to the 1995 draft protocol, the *Draft Protocol on the Facilitation of Movement of Persons in SADC* which was adopted by the Member States in 2005 dropped the word 'right', and the four phases were replaced with the introduction of 'machine-readable passports' instead of SADC-wide passports on seeking entry; promotion of entry and establishment gave way to 'facilitation' through 'cooperation'; and removal of controls was replaced with 'progressive minimisation' of controls (Oucho:2007). Further,

the successor draft calls for an increase in infrastructure and personnel to manage the movement of persons.

3.2 *The Protocol on the Facilitation of Movement of Persons and its Provisions*

3.2.1 *Objectives of the Protocol*

The ultimate objective of the Protocol is the progressive elimination of obstacles to the movement of persons of the Region into and within the territories of Member States. This objective would be achieved within twenty years from the date of entry into force of the Protocol.

The Protocol is based on three core immediate objectives, that is:

- a) Visa free entry for SADC nationals to all other SADC Member States;
- b) The right of establishment; and
- c) The right to residence.

The other provisions are mainly concerned with clarification of objectives and the modalities and conditions of implementation. They include appeals to Members for cooperation and mutual assistance, protection of the rights of citizens, and procedural matters. Two of the most important provisions are the requirements for harmonisation of State laws, policies and administrative processes, and the establishment of a Population Register to enable easier identification of citizens and residents.

The Short-term Objectives of the Protocol

Thus, the immediate objectives of the Protocol are to facilitate:

- a) Entry, for a lawful purpose and without a visa, into the territory of another Member State for a period of three months at a time (Phase 1);
- b) Residence in the territory of another Member State in accordance with the legislative and administrative provisions of the Member State concerned to reside in its territory

for purposes of recreation, business or medical treatment; taking up employment; education or other training; or other authorized pursuits. (Phase 2); and

- c) Establishment of oneself and working in the territory of another Member State, that is, permission or authority for: access to economic activities as self-employed persons; establishing and managing a profession, trade or business; practicing one's profession, trade, business or calling and providing the services related thereto; participating in all human activities as citizens of the host State (Phase 3).

The Protocol envisages that the implementation of the immediate objectives (Phases 1 – 3) shall be concurrent and achieved within three years from the date of the Protocol enters into force.

The Long-term Objectives of the Protocol

The long-term objectives of the Protocol (Phase 4) which will come into force within 10 years from a date to be determined by the Summit, entail:

- a) Minimising controls at internal borders: All Member States shall take steps to progressively minimize controls on the movement of citizens of the Member States within the Community. In this regard, citizens of Member States may cross an internal border at any border post and shall not be subjected to checks or controls on the person as a matter of routine, although Member States shall be free within their territory to exercise immigration, police or other security powers in terms of its laws to require persons in its territory to hold, carry and produce permits and documents as may be provided for under its laws.
- b) The transfer of controls to external borders: A Member State may admit into its territory, through an external border, a citizen of a Third State who wishes to enter the Region on a visit provided s/he is a *bona fide* visitor and meets the immigration criteria. Member States shall make rules and regulations to provide the detailed arrangements governing cross-border movement at external borders which shall be uniformly applied by Member States

Prerequisites to the Implementation of the Protocol

In accordance with their constitutional imperatives, the Protocol urges Member States to promote legal, administrative and other measures necessary for cooperation in the implementation and achievement of the objectives of the Protocol. These include the following short-term measures: (a) harmonization of current immigration practices; and medium/long-term measures: (a) harmonization of state laws (b) establishment/maintenance of a population register (c) cooperation and mutual assistance and (d) travel facilities

Short-term Measures

Harmonization of Current Immigration Practices

Member States agree to take immediate steps to achieve each of the following within three years from the entry into force of the Protocol:

- a) Harmonize their laws and administrative practices so that citizens of Member States are able to enter the territory of other Member States for a period of three months at a time;
- b) Standardize migration forms used by travelling citizens of Member States and issuance of simple and uniform migration forms for use by citizens of Third States (from outside the Region) who wish to enter or exit the territory of any Member States;
- c) Establish of a separate “SADC DESK” at each major border crossing post;
- d) By way of bilateral agreements, establish sufficient number of border crossing posts into the territory of another Member State with identical opening hours on each side of the border and ensuring that at least one such post remains open twenty-four hours every day;
- e) By way of bilateral agreements, issuance of a uniform and simple border pass to citizens of Member States who reside in the border areas of the territories of such Member States;
- f) Abolish visa requirements where they still exist, provided that where visas are regarded as necessary, they shall be issued free to any citizen of a Member State who needs one; and

- g) Cooperate with and assist the SADC Secretariat or any such designated body of SADC and other Member States in the provision of training for immigration, customs, police and security officials to facilitate the movement of persons within SADC.

Medium/Long-Term Measures

Harmonization of State Laws

Every Member State makes an undertaking to ensure that all relevant national laws, statutory rules and regulations are in harmony with, and promotive of the objectives of the Protocol. In this regard SADC shall, from time to time, produce model laws for consideration by Member States.

Population Register

For the purposes of identifying persons, each Member State shall establish and maintain a population register from which the status of its citizens can be determined accurately.

Cooperation and Mutual Assistance

Member States undertake to cooperate with and assist each other to facilitate the movement of persons in the Community as a vehicle for achieving economic integration and safeguarding national and regional security by exchanging information among relevant authorities especially on crime, security and intelligence and providing sufficient and adequately equipped border posts.

Travel Facilities

Member States agree to make travel documents readily available to their citizens and to cooperate in harmonizing travel whether by air, land or water and to increase and improve travel facilities especially between their mutual borders. Further, Member States undertake to introduce machine readable passports as soon as possible, and technologically sensitive passports and other related facilities as circumstances allow.

3.2.2 Asylum Seekers and Refugees

With respect to refugees, Member States commit to honour their obligations under international refugee agreements to which they are parties, and undertake establish a Regional Committee on Refugees, harmonize policies, legislation, procedures and assistance pertaining to refugees, build awareness within the general public and the media on human rights and the plight of asylum seekers and refugees, establish a regional database on refugees and in general foster a common understanding towards issues pertaining to refugees.

3.3 Regional Treaties on Free Movement: A Comparative Analysis

It is noteworthy that the SADC *Draft Protocol on the Free Movement of Persons* has much in common with other regional free movement initiatives, that is, the ASEAN, CARICOM, COMESA, EAC, ECOWAS and EU (see Annexes 3 to 8). Many of the provisions of the regional communities' treaties are similar, in particular the provisions concerning the facilitation of the movement of people (or free movement as it is referred to in the other regional communities), the right of establishment and the right to residence:

Further, all the treaties aim for close cooperation among Member States on a range of issues, and in some cases, this includes eventual economic and monetary union. They also aims towards a customs union, harmonisation of laws, policies and procedures, the free movement of people (almost always restricted to visits of up to 90 days, without any work rights).

An IOM report (2008) makes the observation that the interpretation and implementation of the free movement protocols has varied from region to region for a number of reasons, mainly concerns about loss of sovereignty, the possible increase in cross-border crime and an influx of large numbers of workers from Member States with high unemployment to the more affluent economies. As noted above (3.1) these issues have already been a source of concern among some SADC Member States. The IOM report further notes that the EU underwent similar difficulties in the early stages of the European Common Market with some countries apprehensive about the loss of

sovereignty, and that workers from the poorer South would flood the labour markets of the more affluent countries of the North.

Perceptions about the negative impact of the “free” movement of people may be due to a misunderstanding of what it entails. Unless internal borders are abolished, all arriving travellers must meet certain minimum conditions before entry is granted into a Member State, including establishing the true *identity* and *nationality* of the person; possession of a valid travel document (and visa if one is required); establishing traveller’s *purpose* of visit and their *bona fides*; possession of *travel tickets* or other evidence of onward travel arrangements; evidence of *funds* for maintenance and that the person is not a prohibited person, etc.. Further, in most cases the right of establishment and the right to residence, are not “rights” as such; Rather, persons or enterprises have the “right” to apply for residence, and host States consider these applications according to their own laws and labour market situation, in particular the level of unemployment or skill shortages in particular occupations or sectors. Thus residence and establishment are subject to the domestic/national legislation of State Parties. In this regard, even if a member state has ratified the Protocol, it does not mean that its national policies and legislation will be amended to comply with the provisions of the Protocol, although State Parties are ‘encouraged’ to amend their national legislation so as to give effect to the provisions of the Protocol.

The IOM report observes that despite the initial apprehension by some Member States, the EU in the end concluded that, with few exceptions, the benefits of freedom of movement for whatever purpose, including employment, and residence clearly outweighed the negatives. History has shown that both North and South benefited, with the North getting access to the much needed labour for its industrial development, and the South by exporting surplus labour from depressed primary industries (for example agriculture) and from remittances by workers to their families. The fears about loss of sovereignty proved groundless, as EU Member States remain independent sovereign nations, but have pooled their sovereignty in order to gain strength and world influence none of them could have mustered by acting individually.

4. THE CASE FOR RATIFYING THE PROTOCOL ON THE FACILITATION OF MOVEMENT OF PERSONS

The significance of the Protocol on the Facilitation of Movement of Persons should not only be viewed within the context of Zimbabwe and the SADC region, but also as it relates to the vision of the African Union [7]. A NANGO advocacy strategy to persuade the Government of Zimbabwe to ratify the Protocol should be hinged on the potential benefits that will accrue to Zimbabweans in general, and those that are in the NANGO constituency, should the Protocol come into force. Consequently, it is essential to highlight how the relevant provisions would be beneficial to the NANGO constituency when the Protocol comes into force. This chapter, therefore, explores the case for Zimbabwe ratifying the Protocol within the context of Zimbabwe, the SADC region, and Africa as whole.

From the outset it should be noted that economic arguments alone will not influence Member States to adopt and push for a free movement regime. Social and political considerations also play a part, and should be pursued in an effort to persuade the adoption of policies and strategies that favour the free movement of persons in the region.

4.1 *The Case for Advocating for the Facilitation of Movement of Persons in the SADC Region: The Significance for Zimbabwe*

As noted above, the Protocol is based on three core provisions, that is, (a) visa free entry for SADC nationals to all other SADC Member States; (b) the right of establishment; and (c) the right to residence. These will be analysed in turn with regard to their implications on the NANGO constituency.

The Informal Cross-border Trade Sector

Visa Free Entry for SADC Nationals to all other SADC Member States

⁷ In a bid to stimulate trade, investment and economic growth, both SADC and the AU are moving towards the free movement of goods, services, capital and people.

While this provision will benefit the generality of *bona fide* Zimbabwean travellers to enter other territories in the region without hindrance for up to 90 days, the tourism sector is likely to benefit from increased visitors from SADC citizens. Within Zimbabwe, perhaps a group that would benefit most from the removal of visas are informal cross-border traders who traverse the region (and beyond) on business. Activities of cross-border traders not only benefit their immediate families, but also the Zimbabwean economy, and indeed the economies of those countries where they conduct business.

A salient, yet less recognizable (and perhaps unacknowledged) feature of the informal cross-border trade sector is the important role that informal cross-border traders play in integrating people of the SADC region. While building on the historical ties of the peoples of the region, the social networks that informal cross-border traders form in the different countries where they operate are a strong complement towards regional integration [Muzvidziwa, 2001]. In a country where the unemployment rate is over 80%,⁸ the informal cross-border trade sector is important in terms of direct and indirect employment creation, socio-economic up-liftment of women, and the role it plays in food security. Yet informal cross-border traders face a myriad of bureaucratic and other obstacles, even with the region aiming for free trade [Crush *et al*, 2006]. This is corroborated by another study which notes that the SADC Protocol on Trade in its current form does not adequately meet the needs of informal cross-border traders [SARDC, 2008]. Since they do not qualify for business visas, informal cross-border traders currently travel on visitors' visas, and the removal of visas in the SADC region would provide opportunities for informal cross-border traders to conduct business in the whole region, albeit for 90 days in a year.

Although it is not documented, it is common cause that informal cross-border traders are buying Zimbabwean products (especially food and beverages) in Zimbabwe and selling them to Zimbabweans and/or retail shops in neighbouring countries that have significant populations of Zimbabweans. Thus facilitating the movement of Zimbabwean cross-border traders in the region is likely to support and open new markets for some industries in Zimbabwe.

⁸ The Bertelsmann Stiftung's Transformation Index (20140: Zimbabwe Country Report, http://www.bti-project.de/uploads/tx_itao_download/BTI_2014_Zimbabwe.pdf

The Right of Establishment and Residence

Most cross-border traders buy goods in Zimbabwe, sell them in another country, buy goods from that country (or another third country) for sale in Zimbabwe. In some cases they reside in the countries where they conduct their business for long periods before returning to Zimbabwe. However, due to their informal nature, most cross-border traders are harassed and arrested by authorities in countries where they sell their goods because they do not possess appropriate permits to reside in the country and conduct their business. Under this provision, however, informal cross-border traders will be able to reside in other SADC countries for purposes of business as long as they fulfil the legislative and administrative provisions of the host country. This may however require some form of formal registration of informal cross-border traders in Zimbabwe, and the countries they visit, so that they can identify themselves as *bona fide* traders.

4.2 *The Case for Advocating for the Facilitation of Movement of Persons in the SADC Region: The Significance for the SADC Region*

The SADC Free Trade Area came into effect in January 2008, with the target of zero tariffs for goods produced in the region by the end of 2012. SADC sees the FTA as a first step towards the establishment of a customs union in 2010 and a common market in 2015. SADC has five integration milestones, free trade area (2008), customs union (2010), common market (2015), establishment of a SADC central bank by and monetary union (2016) and single currency (2018). Article 15 and 17 of the SADC Protocol on Finance and Investment encourage the free movement of capital within the Region, particularly to the least-developed countries, while Article 18 recognizes the need pursue trade openness and intra-regional industrial policies and to reduce barriers to intra-regional trade [9]. Further, Article 22 of the SADC Trade Protocol urges Member States to adopt policies and implement measures within the Community to promote an open cross-border investment regime [10].

⁹ SADC Protocol on Finance and Investment

¹⁰ SADC Protocol on Trade

In the absence of the free movement of labour, the free movement of capital and goods within the region will invariably result in growth in employment in destination territories for capital and source territories of goods. Thus a regional integration strategy which sanctions the free movement of capital and goods and prohibits the movement of labour is likely to perpetuate economic disparities among Member States. As noted above in the case of the EU, fears of the negative impact of the free movement of people in a regional grouping are unfounded.

Besides driving SADC closer to achieving one of its founding principles, that is, strengthening and consolidating the long standing historical, social and cultural affinities and links among the people of the Region, implementation of the Protocol would contribute toward marshalling one of the factors of production (labour) within the region in line with the movement of capital, and thereby address distortions in the regional labour market. A case in point is the EU, where in recent years Germany hired thousands of engineers and other professionals from Spain and Portugal to stratify the shortfalls in these skill categories. Thus due to the free movement of labour in the EU, the economies of Member States suffer less from problems occasioned by skill shortages [Kitimbo, 2014]. Similarly, increased intra-regional mobility in SADC, specifically for high-skilled workers, can have similar resultant effects. Further, the free movement of labour in region can reduce ‘brain waste’ by enabling skilled migrants to move into industries within the region where they can best employ their skills. It can also reduce the ‘brain drain’ of skills from the SADC region to other destinations overseas.

Further, visa-free movement of its citizens within the region is likely to benefit intra-regional tourism, and facilitate social regional integration. In fact social integration is arguably as important as (if not one of the critical prerequisites for) economic integration.

Although figures are not available, irregular labour migration has been on the increase in the SADC region in the past decade, with the majority of these (about 90%) originating from within the region. South Africa and Botswana are the major destination countries, while Mozambique and Zimbabwe are the major source countries of irregular migrants

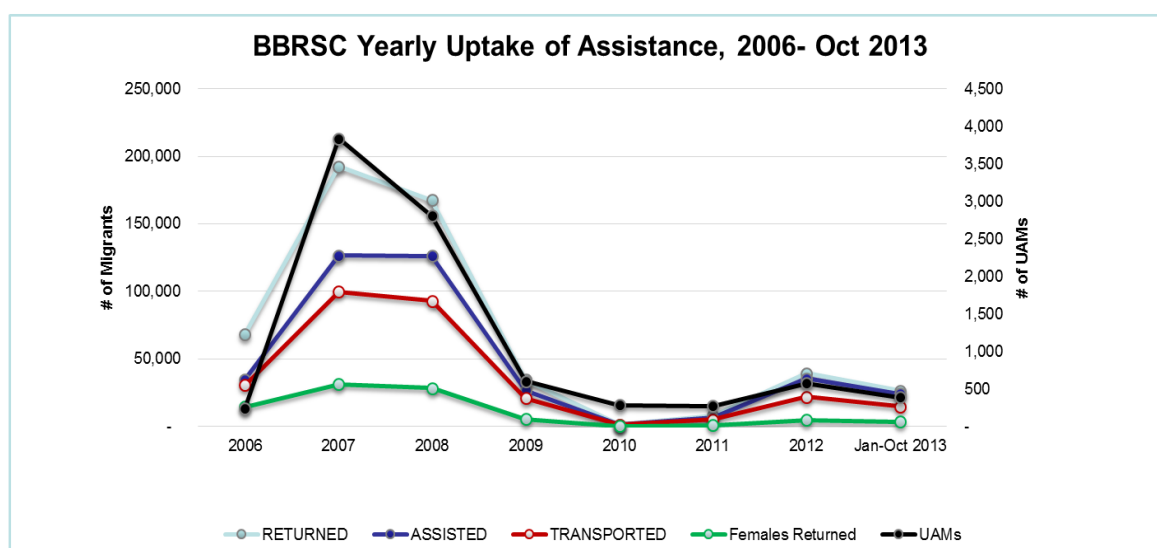
[Mudungwe, 2014]. Arguably, the increase in irregular migration is mainly as a result of the absence of legal avenues to migrate formally. If labour migration was extended and more accessible, if it was better regulated and organised, then irregular migration would reduce, and with it fatalities and criminality (human trafficking and smuggling), corruption among border officials, and the cost of deporting irregular migrants. Countries would also have far better control of migration and labour markets. In such an environment circular migration would be the preferred reason for movement, allowing people to leave in a regular manner, and then return home after a certain period of time [Frouws and Horwood, 2015]. Such a scenario is possible within the framework of a free movement regime in the region.

It is noteworthy that the majority of irregular migrants in the SADC region are from within the region. The majority of irregular migrants in both Botswana and South Africa, are from Zimbabwe. However, it would seem that deportations and tightened border controls have not had the desired effect, that is, preventing and deterring irregular migrants. The presence of migration push/pull factors, the region's shared history and common bonds among the peoples of the region have resulted in the inter-dependence of countries in the region, and have made cross-border movements inevitable, even if it means using clandestine migration channels, including the use of smuggling rings and bribing border officials.

A case in point is the Government of South Africa's Dispensation of Zimbabweans Project (DZP) under which Zimbabwean irregular migrants in South Africa were regularized and issued with work permit in April 2009.¹¹ Arguably it is mainly as a result of this regularization the number of irregular migrants handled by IOM at the Beitbridge Reception and Support Centre (situated on the South Africa/Zimbabwe border) dropped drastically.

Figure 1: Number of Irregular Migrants Returned to Zimbabwe by South African Authorities

¹¹ <https://africacheck.org/factsheets/what-does-the-new-special-dispensation-permit-mean-for-zimbabweans-in-sa/>



Source: International Organization for Migration, Beitbridge Reception and Support Centre

Besides addressing skill shortages in the region, the free movement of labour has the potential to boost regional trade, especially in a region like SADC where intra-regional trade as a percentage of the community's total trade has stagnated at around 15% over the past decade. An increase labour mobility could enhance trade. Studies have shown that migrants can reduce bilateral business costs between the migrant host and sending countries in two ways. This can be achieved firstly through personal business connections between businesses owned by migrants and businesses in their home countries. Secondly, the knowledge that migrants bring about markets in their home countries can facilitate business and lessen the cost of trade between the home and host countries. Furthermore, addressing irregular migration through an increase in the mobility of workers could also reduce 'brain waste' in the region by enabling skilled migrants to move into sectors within the region where they can best employ their skills, instead of losing them to other countries overseas. [Kitimbo, 2014].

4.3 *The Case for Advocating for the Facilitation of Movement of Persons in the SADC Region: The Significance for Africa*

Africa's efforts towards integration date back to the formation of the Organization of African Unity in 1963, which brought together African states with the intention of achieving greater unity and peace within the region. African leaders recognised that

cooperation and integration among African countries in the economic, social and cultural fields were indispensable to the transformation and sustained development of the continent. Since the early 1960s, member states were encouraged to combine their economies into sub-regional markets that would ultimately form one Africa-wide economic union. In 1980, the OAU Extraordinary Summit adopted the Lagos Plan of Action as a major step towards integration. The Plan was concretized in Abuja, Nigeria in June 1991 when the OAU Heads of State and Government signed the Treaty establishing the African Economic Community (AEC). Since May 1994, the OAU has been operating on the basis of the OAU Charter as well as the AEC Treaty, and the organisation is now officially referred to as the AU/AEC.

The aim of the AEC is to promote economic, social and cultural development as well as economic integration. The AEC Treaty came into force in May 1994 and provides for the African Economic Community to be set up through a gradual process, which would be achieved by coordination, harmonisation and progressive integration of existing and future regional economic communities (RECs) in Africa. The RECs are regarded as the building blocks of the AEC. The existing RECs then were:

- AMU (The Arab Maghreb Union);
- ECCAS (Economic Community of Central African States);
- COMESA (Common Market of Eastern and Southern Africa);
- SADC (Southern African Development Community); and
- ECOWAS (Economic Community of West African States).

A Protocol on Relations between the AEC and the RECs was concluded and signed in February 1998. The Protocol serves as an instrument and framework for cooperation, programme harmonisation and coordination, as well as integration among the RECs on the one hand (horizontal) and between the AEC and the RECs on the other (vertical). The Protocol enhances the status and role of the AU Secretariat, which is also the Secretariat of the AEC, in all matters pertaining to the implementation of the Abuja Treaty.

The implementation of the Abuja Treaty would be achieved in 6 stages over 34 years, i.e. by 2028, as follows:

- STAGE 1: Strengthening existing RECs and creating new ones where needed (5 years: to be accomplished by 1999);
- STAGE 2: Stabilisation of tariff and other barriers to regional trade and the strengthening of sectoral integration, particularly in the field of trade, agriculture, finance, transport and communication, industry and energy, as well as coordination and harmonisation of the activities of the RECs (8 years: to be accomplished by 2007);
- STAGE 3: Establishment of a free trade area and a Customs Union at the level of each REC (10 years: to be accomplished by 2017);
- STAGE 4: Coordination and harmonisation of tariff and non-tariff systems among RECs, with a view to establishing a Continental Customs Union (2 years: to be accomplished by 2019);
- STAGE 5: Establishment of an African Common Market and the adoption of common policies through, *inter alia*, application of the principle of free movement of persons as well as the provisions regarding the rights of residence and establishment (4 years: to be accomplished by 2023); and
- STAGE 6: Integration of all sectors, establishment of an African Central Bank and a single African currency, setting up of an African Economic and Monetary Union and creating and electing the first Pan-African Parliament (5 years: to be accomplished by 2028)^[12].

Targets for the Establishment of the African Economic Community

Stage	Period within which Stage should be achieved	Year by which Stage should be achieved [from year of signature of the AEC Treaty (1994)]
Stage 1: Strengthening existing RECs and creating new ones where needed	5	1999
Stage 2: Stabilisation of tariff and other barriers to regional trade and the strengthening of sectoral integration, as well as coordination and harmonisation of the activities of the RECs	8	2007

¹² <http://www.dfa.gov.za/foreign/Multilateral/africa/aec.htm>

Stage 3: Establishment of a free trade area and a Customs Union at the level of each REC	10	2017
Stage 4: Coordination and harmonisation of tariff and non-tariff systems among RECs, with a view to establishing a Continental Customs Union	2	2019
Stage 5: Establishment of African Common Market and adoption of common policies through, <i>inter alia</i> , application of the principle of free movement of persons and provisions regarding the rights of residence and establishment	4	2023
Stage 6: Integration of all sectors, establishment of an African Central Bank and a single African currency, setting up of an African Economic and Monetary Union and creating and electing the first Pan-African Parliament	5	2028

As signatory to the Treaty Establishing the African Economic Community, and being a member of the AU, COMESA and SADC, Zimbabwe is party, and bound to the Abuja Treaty. Within the framework of Article 28 of the Treaty Establishing the African Economic Community, the SADC makes a commitment to implement the Protocol in a manner that promotes the eventual establishment of a protocol on the free movement of persons on the African continent.

4.4 Some Observations

Oucho (2012) provides an apt conclusion to this chapter, thus:

In the era of globalization, the notion of state sovereignty is under immense challenge. Economic liberalization, with its hallmarks of free trade, financial capital mobility and division of labour, is coupled with the spread of democratic ideals across the globe to create inter-dependence between states that was unrivalled in the past. A by-product of this movement has been the creation of regional economic organizations among geographically co-existent states. What begins as cooperation within the framework of economic inter-dependence toward enhanced sustainability for all involved can lead to the establishment of norms and collective practices in other issue areas. No international organization exemplifies this transition better than the European Union. An emphasis on economic cooperation has given way to a collective apparatus, termed the 'European Community', in which we see the harmonizing of various policies among the membership. One such policy relates to the notion of 'freedom of movement'. The founding document of the European Economic Community from which the EU evolved, article 3 of the Treaty of Rome, provides for the abolition, as between Member States, of obstacles to freedom of movement for persons, services and capital. While mutually agreed upon, this notion erodes the ability of sovereign states to regulate their own borders. While ultimately one cog in what is seen as a benevolent force in European progress, the practice of 'freedom of movement' within the EU may have some

unintended consequences with regard to the security of its member states and their populations. This is especially true when considering sovereignty within the Westphalian model, whereby the state strives to protect its physical bounds as well as preserve social order. Given the rise of similar regional organizations globally, perhaps information gleaned from the European experience can provide a better understanding of the whole picture with regard to normalizing the movement of individuals across national bounds. After all, states making up an economic cooperative will at some point likely come face to face with the decision to augment the free movement of goods to include production dynamics, including the labour force.

Thus, though it will have direct, immediate benefits for certain groups within the country, ratifying the Protocol will have immense benefits for Zimbabwe as a member of the SADC region and the AU. In this regard countries in the SADC region and the AU will pool their resources and sovereignty in order to gain strength and world influence that none of them could muster on their own.

In fact as noted by Carr & Williams (2006):

...in terms of content, much of the Protocol merely affirms what is already happening in the region based on either the domestic legislation of SADC member states and/or bilateral and multilateral agreements that have been signed between member states.

In this regard countries in the region have been removing visa requirements on a bilateral basis, and negotiating bilateral migrant labour agreements.¹³ Consequently, Carr & Williams (2006) further observe that:

..... the Protocol does not represent any 'radical departure' from the status quo, but largely elevates to a regional level, what is already a reality in the region. This is not to undermine the importance of having such a Protocol, but to underscore the fact that in policy and legislative terms, we are unlikely to see anything substantially different in the short to medium term. Perhaps the biggest and most visible impact that the Protocol will have once it comes into effect would be in terms of the logistical mechanisms it puts in place.

Logistical mechanisms include increased border infrastructure and personnel, introduction of machine-readable passports and other appropriate technology. Carr & Williams (2006) argue that the delay by some Member States in signing and/or ratifying the Protocol may be due to the cost implications these logistical requirements which should be implemented within stipulated timeframes.

¹³ Zimbabwe, for example, does not have visa requirements for all Member States except Angola [see Annex 1]. In 2010 South Africa introduced the Zimbabwean Special Dispensation Permit which regularized the immigration status of Zimbabweans who had entered South Africa irregularly and had been working in that country. Initially the permit was for four years, and was extended 2014 for three years.

5. CONCLUSIONS AND RECOMMENDATIONS

5.1 Concluding Remarks

From the above discussion, it is prudent that Zimbabwe ratifies the draft *Protocol on Facilitation of the Movement of Persons* for the following reasons:

- a) The facilitation of the movement of persons in the region will contribute towards the social integration of the people of SADC, which will in turn complement and give meaning to regional economic integration.
- b) Being a major source of employment in the country (especially women), the informal cross-border trade sector in Zimbabwe will benefit from the Protocol as it will facilitate the movement and recognition of Zimbabwean cross-border traders in the region.
- c) The tourism sector in Zimbabwe is likely to experience an increase in the arrival of tourists from the region and beyond due to the removal of visas among Member States and the smooth movement of travellers across borders.
- d) In general, the Protocol is a step towards the achievement of the SADC Treaty and the Abuja Treaty, both of which Zimbabwe is signatory to. The former treaty seeks to strengthen and consolidate the long standing historical, social and cultural affinities and links among the people of the SADC Region, while the latter seeks to achieve the free movement of persons (citizens of Africa) as well as the rights of residence and establishment by 2023.

In view of the above conclusions, it would be prudent for NANGO to advocate for the ratification of the draft Protocol. The next section, therefore, discusses and recommends the strategy with which NANGO could advocate for the ratification of the draft *Protocol on Facilitation of the Movement of Persons*.

5.2 The Advocacy Strategy

Buckley (----) defines advocacy as:

The active support of an idea or cause expressed through strategies and methods that influence the opinions and decisions of people and organizations. In the social and economic development

context the aims of advocacy are to create or change policies, laws, regulations.....or other decisions that affect people's lives.....Such advocacy is generally directed at policy makers including politicians, government officials and public servants, but also private sector leaders whose decisions impact upon people's lives, as well as those whose opinions and actions influence policy makers, such as journalists and the media, development agencies and large NGOs.

Further, Buckley (---) adds that:

All effective advocacy strategies (should) aim to affect change at various levels- including increasing community awareness of the issue...

Within the context of the above definition, this paper recommends that NANGO pursues the following step-by-step strategy in an effort to advocate for the ratification of the draft *Protocol on Facilitation of the Movement of Persons* by the Government of Zimbabwe.

5.2.1 Preliminary Steps [¹⁴]

a) Identifying the Issues

The focus of this paper is to assess the draft Protocol and the benefits that would accrue to Zimbabwe should it come into force, and make the case for its ratification. Thus, the issue at stake here is advocating for the ratification of the draft Protocol by the Government of Zimbabwe.

b) Defining the Advocacy Goal

In line with the conclusions drawn in section 6.1, the goal of the NANGO advocacy initiative would be.... *A Zimbabwe that prospers together with other countries on the continent through its integration (socially and economically) with countries in the SADC region and in Africa.* Ratifying the draft Protocol would constitute a step towards achieving this goal.

c) Consulting and Building Relationships

¹⁴ Buckley, S. : Advocacy Strategies and Approaches, Association for Progressive Communication (APC); <http://www.apc.org/en/node/9456>

Building relationships with like-minded organizations, or organizations that stand to benefit from the initiative would be intrinsic to the success of the advocacy. Although Zimbabwe would benefit in general, for advocacy purposes it would be prudent for NANGO to build partnerships with those constituencies that stand to reap benefits in the short-term. In this regard, it recommended that NANGO enlists the support of, or forms a coalition with the following associations in its advocacy campaign: tourism associations, cross-border trade associations, associations of cross-border transport operators. etc. This would entail sensitizing the said associations on the draft Protocol and the case for Zimbabwe ratifying it, the proposed advocacy strategy, what role the other partners could play in its planning and implementation, and what resources (financial, specialist expertise, access to decision makers in government, etc) they can contribute to the partnership/coalition.

Collective ownership is the cornerstone to building an effective partnership/coalition, and this can be achieved through participatory consultations at all the stages of formulating the advocacy campaign, from conception through implementation.

- ***Mapping Power Relations and Decision Making***

It is imperative that NANGO identifies where the decision is taken to ratify the draft Protocol, and the ministries and departments that have an interest on the impact of the Protocol. The advocacy initiative would then target those institutions. In this regard, ratification is the responsibility of the Parliament of Zimbabwe, and the ministries that would have an interest in the impact of the Protocol include the ministries responsible for tourism, small enterprise development, immigration, gender and transport. With regard to the Parliament of Zimbabwe, it would be prudent to target the relevant portfolio committee.

e) Identifying Target Audiences

It is useful to distinguish between primary and secondary audiences of the advocacy. The primary target audiences are the institutions, and the individuals within them, who have authority to ratify the Protocol, that is, parliament. The secondary audiences are those who are best placed to influence the decision makers, or the primary audiences; which in

this case include politicians and public servants in the ministries that have an interest in the impact of the Protocol and the media (see Media Strategy below).

f) Selecting the Advocacy Approach

It will arguably be more effective for NANGO to work through sensitization of the primary target audience, that is, parliamentarians; and sensitization and dialogue with secondary target audiences. Further, it would be prudent to sensitize and dialogue with secondary target audiences with a view to these groups exerting pressure on the primary target audience.

Sensitization would entail making presentations to target audiences on provisions of the draft Protocol, and the benefits that would accrue to Zimbabwe should it come to force. Sensitization could take form of meetings or workshops, and presentations should be complemented with pamphlets containing concise and clear information which the participants can peruse after the meeting/workshop. Dialogue would entail identifying a champion, or champions for the cause (presumably a minister) and persuading them to lobby parliament to take the necessary steps to ratify the Protocol. A champion would be an individual who is supportive and passionate about the issues at stake, and has access to the relevant parliamentary portfolio committee.

5.2.2 Framing the NANGO Advocacy Plan/Road-map

a) Preparing a Plan of Action

Effective advocacy requires good organizational planning. Having defined the preliminary steps, it is important for NANGO to be systematic in mapping out the actions that they will undertake to achieve results, including timelines and milestones. Ideally, this could be brought together in a logical framework, including measurable progress indicators.

b) Budgeting and Identifying Resources

The advocacy initiative (meetings/workshops and media activities) will have cost implications, and NANGO will need to mobilize sufficient resources to sustain the campaign. NANGO will thus need to cost all activities (including administrative costs and

staff time) and ensure that the resources are available prior to embarking on the advocacy campaign.

5.2.3 Implementation

a) Getting the Message Across

Good communication is critical to effective advocacy, and requires attention to the message, the audience and the means of delivery. The message needs to be succinct, self-explanatory and compelling, and should not leave room for interpretation. The means of delivery must ensure it is received and heard; whether it is written or it is a face-to-face presentation. It is seldom that a single advocacy message will be received and acted upon. The message, therefore, needs to be reinforced through repetition and the influence of secondary audiences.

b) Using the Media – Media Strategy¹⁵

The media – radio, television, press and online media – have a critical role to play in public advocacy initiatives, and can bring a mass audience, potentially increasing profile and credibility. However, using the media requires planning and skills, including building contacts, knowing the media audience, writing press releases, placing stories, being interviewed, providing visual imagery and organizing newsworthy events.

Using the media entails making decisions on those aspects that will bring maximum impact and results, thus:

- Identifying media outlets that will best reach the target audiences.
- Preparing press kits and advocacy materials which explain the goal and what needs to be done and achieved.
- Developing and maintaining relationships with journalists at the selected media outlets. The time spent getting to know the needs and interests of reporters will pay off in more comprehensive coverage of the advocacy issue, and greater responsiveness when NANGO has news to share.

¹⁵ Dorfman, L. & Herbert, S. (2007): Communicating for Change: Planning Ahead for Strategic Media Advocacy, The California Endowment

- Identifying champions for the cause among journalists, and maintaining regular dialogue with them.
- Timing – avoiding issuing press releases and using the media at a time when the news environment is crowded, for example during the run up to elections, political party congresses, etc.
- Monitoring selected news sources. This entails electronically monitoring on-line publications covering the issue, and create a list or database of all journalists covering the issue. The list can be used to as a starting point to contacting journalists who may have an interest in the issue, and suggest what and how they to include the NANGO perspective.
- It would be prudent to invite regular bloggers to write an opinion piece. Opinion pieces have particular impact as they can to reveal the pulse of the community on the issue, and policymakers often turn to opinion sections to see what the community is concerned about and what positions people are taking.

5.2.4 *Monitoring and Evaluating the Media Strategy*

It is imperative to monitor the implementation phase, its results and the socio-political context within which the advocacy is being executed. In this regard, NANGO will need to monitor all advocacy activities, and monitor results of the media coverage and gauge public mood on the issue. There is need therefore to collect and maintain data on the target audiences: contact details, positions they have taken, offers of assistance and so on. The implementation and its results should not only be evaluated at the end of the planned implementation phase, but monitored regularly so that strategy and/activities can be adjusted if need be.

Advocacy occurs in a dynamic setting, and the terrain can change for social, political or economic reasons that are independent of the advocacy initiative underway. The ability to react to these changes is based on constant monitoring of the situation, with relevant feedback to implementation.

5.2.5 *Concluding Remarks*

Buckley (----) aptly summarizes the advocacy endeavour thus:

Policy change rarely happens overnight and is often linked to broader change in the political environment. Effective advocacy requires long-term as well as short-term thinking, an understanding of the points of resistance and the means to gain traction, the readiness to form alliances, and the flexibility to seize windows of opportunity....(and)...the ability to react quickly and flexibly, to spot windows of opportunity, and to anticipate new challenges requires close monitoring of the policy context and of broader trends.

-oOo

Annexes

Annexes 3 – 8 are quoted from International Organization for Migration (2008) *ad verbatim*

Annex 1: Visa requirements among SADC Member States

Passport Holder From \ To	AO	BW	DRC	LS	MG	MW	MU	MZ	NA	SC	ZA	SZ	TZ	ZM	ZW
AO	---	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
BW	Yes	---	Yes	No	Yes	No	No	No	No	No	No	No	No	No	No 90 days
DRC	Yes	Yes	---	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No 90 days
LS	Yes	No 30 days		---	Yes	No	No	Yes	Yes	No	No	No	No	No	No 14 days
MG	Yes	Yes 90 days VOA	Yes	Yes	---	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
MW	Yes	No 90 days	Yes	No	No	---	No	No	No	No	No	No	No	No	No 90 days
MU	Yes	Yes	Yes	No	Yes	No	---	No	No	No	No	Yes	No	No	No
MZ	Yes	No 90 days	Yes	Yes	Yes	Yes	Yes	---	Yes	Yes	Yes	Yes	Yes	Yes	No 30 days
NA	No	No, 90 days	Yes	No, 90 days	Yes 90 days VOA	No, 90 days	No, 60 days	No, 30 days	---	Yes 30 days VOA	No 30 days	No 30 days	No 90 days	No 90 days	No 90 days
SC	No	Yes 90 days VOA	No	No	No	No	No	No	No	---	No	No	No	No	No
SA	Yes	No 90 days	Yes	No 30 days	Yes 90 days	No 90 days	No 90 days	No 90 days	No 90 days	Yes 30 days	---	No 30 days	No 90 days	No 90 days	No 90 days

					VOA		s	s	s	VOA					
SZ	Yes	No 30 days	Yes	Yes	Yes	No	No	No	Yes	No	No	---	No	No	No 30 days
TZ	Yes	No 90 days	Yes	No	Yes	No	No	No	No	No	No	No	---	No	No
ZM	Yes	No 90 days	Yes	No	Yes	No	No	No	No	No	No	No	No	---	No 90 days
ZW	Yes	No 90 days	No	No	No	No	No	No	No	No	No	No	No	No	---

Legend: Angola (AO), Botswana (BW), Democratic Republic of Congo (DRC), Lesotho (LS), Madagascar (MG), Malawi (MW), Mauritius (MU), Mozambique (MZ), Namibia (NA), Seychelles (SC), South Africa (ZA), Swaziland (SZ), United Republic of Tanzania (TZ), Zambia ZM), and Zimbabwe (ZW)

Annex 2: Comparison of the Movement Protocols

Proposed Elements	Free Movement Protocol	Facilitation of Movement Protocol
<p>Visa-free entry – citizen of a SADC member state may enter the territory of another member state without the requirement of a visa</p>	<ul style="list-style-type: none"> • Limited to a period not exceeding 6 months, but may be renewed • Entry is sought through an official border post • Visitor must possess a valid travel document Visitor has or can obtain sufficient means of self-support for the duration of the visit, but shall be presumed to have such support • Visitor is not an inadmissible immigrant under the laws of the host country • Member states may apply for an exemption of this provision, but visas shall be issued free of charge at the port of entry Exemptions will be valid for a period not exceeding 12 months but visas shall be issued free 	<ul style="list-style-type: none"> • Limited to a period not exceeding 3 months, a year but may be renewed • Entry is sought through an official border post • Visitor must possess a valid travel document • Visitor must produce evidence of sufficient support for the duration of the visit Visitor is not a prohibited person under the laws of the host country • Member states may enter into bilateral agreements with other member states regarding the reciprocal • handling of travellers arriving without travel documents • Member states may apply for an exemption of this provision but visas shall be issued free of charge at the port of entry • Exemptions will be valid for a period not exceeding 12 months, but a state may apply for an extension thereof
<p>Residence authorisation Granted to a citizen of a SADC member state to temporarily reside in the territory of another state</p>	<ul style="list-style-type: none"> • Issued for a maximum period of 3 years, but can be renewed • Applicant has the right to apply for and accept offers of employment enter freely the territory of a member state for the purpose of seeking employment take up employment subject to the labour laws of the host state reside in the territory of a member state as a student or trainee • Right of residence shall be granted by all member states to citizens of other member states within a period of 3 years from the entry into force of the protocol • Laws and regulations shall be harmonised and a uniform SADC residence 	<ul style="list-style-type: none"> • Issued for a maximum period of 3 years, but can be renewed • Shall be granted for the purposes of <ul style="list-style-type: none"> ○ Recreation, business or medical treatment ○ Taking up employment ○ Education or other training ○ Other authorised pursuits • Member states shall review and where necessary, relax the criteria for granting residence and shall

Proposed Elements		Facilitation of Movement Protocol
	Free Movement Protocol	
	permit shall be established within 2 years of the entry into force of the protocol	ensure that their laws and regulations governing the granting of residence permits are harmonised
Establishment – citizens of SADC member states may establish themselves (take up permanent residence) in the territory of another member state	<ul style="list-style-type: none"> • Establishment shall include the right of access to economic activities as self-employed person to establish and manage a profession, trade or business • to practice one's profession, business or calling and to provide services related thereto to participate in all such human activities as citizens of the host state (subject to a later clause- see below) the right of establishment shall be granted to citizens of other member states and the progressive abolishment of all restrictions shall take place within a period of 5 years from the entry into force of the protocol 	<ul style="list-style-type: none"> • Establishment shall mean permission or authority for access to economic activities as self-employed persons establishing and managing a profession, trade or business practising one's profession, trade, business or calling and providing services related thereto
Controls only at external borders (between SADC member states and non-member states, also referred to as third states).	<ul style="list-style-type: none"> • Within a period of 10 years shall take steps to abolish controls on the movement of citizens of SADC member states within the Community (SADC) • Citizens of member states shall not be subject to the carrying out of any checks or controls • Abolition of checks on citizens shall not affect any rights or obligations of citizens of third states • Member states shall be free to exercise police and other powers and to require persons to hold, carry and produce permits and documents • May be suspended for a period not exceeding one month Shall enter into force on a date to be determined by the Summit 	
Institutional Structure:	<ul style="list-style-type: none"> • Regional Standing Committee composed of the Minister responsible for Immigration and the Minister responsible for Police in each member state • Regional Cross Border Security Committee Regional Committee on Refugees 	<ul style="list-style-type: none"> • Committee of Ministers responsible for Public Security or Committee appointed by the Organ • Refugee matters to be managed through bilateral MOU's.

Source: Carr, L., and Williams, V. (2006)

1. Brief History of the European Union

One of driving forces for the creation of the European Union was the desire to prevent violent conflicts in Europe after the Second World War. The original aim was to tie countries together by forging closer industrial and economic cooperation. Since then, the EU's responsibilities have grown in response to new challenges and many more countries have joined. Membership has grown from the original six to 27 today: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden and the United Kingdom. Three more candidates, Croatia, the Former Yugoslav Republic of Macedonia and Turkey, are waiting to join.

In 1951, six countries, Belgium, France, Germany, Italy, Luxembourg and the Netherlands signed a treaty to run their heavy industries, coal and steel, under a common management. This was designed to prevent any one country making weapons of war that could be turned against the others, as in the past. This resulted in the creation of the European Coal and Steel Community (ECSC) and began the process of uniting European countries economically and politically. In 1957 the Treaties of Rome created the European Economic Community (EEC), or 'Common Market', and the European Atomic Energy Community (EURATOM) with the same six countries as the founding members. At the same time, they began removing trade barriers between them and to move towards creating a 'common market'.

In 1967, the institutions of the EEC, ECSC and EURATOM were merged to form a single set of institutions: the European Commission, the European Council and European Parliament, with members selected initially by national parliaments. Denmark, Ireland and the United Kingdom joined the EEC on 1 January 1973, raising the membership to nine. In the aftermath of the energy crisis of 1973 and the fall of right wing dictatorships in Portugal (1974) and Spain (1975), the EU, as part of its regional policy, began to fund large programs to create jobs and infrastructure in poorer areas.

In 1979 all citizens of Member States could, for the first time, elect their members directly to the European Parliament.

In 1981, Greece became the 10th member of the EU. Spain and Portugal followed five years later.

In 1986, the Single European Act was signed by EU governments, providing for the creation of a single market in which people, goods, capital and services could move freely around the

EC. This treaty formed the basis for a program aimed at resolving the problems associated with the free flow of trade and thus created the 'Single Market'.

In 1992, the Treaty creating the European Union and introducing new forms of cooperation between Member States (eg on defence and justice and home affairs issues) was signed in Maastricht, Holland. EU leaders also agreed to create an Economic and Monetary Union, with a single currency managed by a European Central Bank, within ten years.

By 1993 the Single Market was completed with the 'four freedoms' of movement of: goods, services, people and money.

In 1995, a small village in Luxembourg gave its name to the 'Schengen' agreements that gradually allowed people to travel without having their passports checked at the borders.

The euro became a reality on 1 January 2002, when it replaced national currencies in 12 of the 15 member countries: Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain.

In October 2004, the 25 EU countries signed a *Treaty establishing a European Constitution*. It is designed to streamline democratic decision-making and management in an EU of 25 and more countries. It also creates the post of a European Foreign Minister. It has to be ratified by all 25 countries before it can come into force.

In December 2007, the (by now) 27 EU countries signed the *Treaty of Lisbon*, which amended the previous Treaties. It is designed to make the EU more democratic, efficient and transparent, and thereby able to tackle global challenges such as climate change, security and sustainable development.

Before the Treaty can come into force, which is hoped to be before the next European Parliament elections in June 2009, it has to be ratified by each of the 27 Member States.

2. Institutions of the European Union [¹⁶]

The European Union is not a federation like the United States or Australia. Nor is it simply an organisation for co-operation between governments, like the United Nations. The European Union is unique. The countries that make up the EU (the 'Member States') remain independent sovereign nations but they pool their sovereignty in order to gain a strength and world influence none of them could have on their own [¹⁷].

¹⁶ http://europa.eu/institutions/index_en.htm

¹⁷ It is significant that in the early stages of the EU, there was widespread fear about the loss of sovereignty, just as there is now in some SADC States. As history proves, sovereignty has not been lost, but the combined power and influence of the Union is far greater than they could muster acting individually (an excellent illustration that *the whole is greater than the sum of its parts*).

Pooling sovereignty means, in practice, that the Member States delegate some of their decision making powers to shared institutions they have created, so that decisions on specific matters of joint interest can be made democratically at European level.

The EU's decision-making process in general and the co-decision procedure in particular involve three main institutions:

- i. The *European Parliament* (EP), which represents the EU's citizens and is directly elected by them;
- ii. The *Council of the European Union*, which represents the individual Member States; and
- iii. The *European Commission*, which seeks to uphold the interests of the Union as a whole (see below).

This 'institutional triangle' produces the policies and laws that apply throughout the EU. In principle, it is the Commission that proposes new laws, but it is the Parliament and Council that adopt them.

Two other institutions have a vital part to play: the *Court of Justice* upholds the rule of European law, and the *Court of Auditors* checks the financing of the Union's activities.

The powers and responsibilities of these institutions are laid down in the Treaties which are the foundation of everything the EU does. They also lay down the rules and procedures that the EU institutions must follow. The Treaties are agreed by the Presidents and/or Prime Ministers of all the EU countries, and ratified by their Parliaments.

In addition to its institutions, the EU has a number of other bodies that play specialised roles:

- the European Economic and Social Committee represents civil society, employers and employees;
- the Committee of the Regions represents regional and local authorities;
- the European Investment Bank finances EU investment projects, and helps small businesses via the European Investment Fund;
- the European Central Bank is responsible for European monetary policy;
- the European Ombudsman investigates complaints about maladministration by EU institutions and bodies;
- the European Data Protection Supervisor safeguards the privacy of people's personal data;
- the Office for Official Publications of the European Communities publishes information about the EU;
- the European Personnel Selection Office recruits staff for the EU institutions and other bodies; and
- the European Administrative School provides training in specific areas for EU staff members.

In addition, a number of specialised agencies have been set up to handle certain technical, scientific or management tasks. The more significant of these agencies vis-à-vis the subject matter of this report are:

- European Agency for the Management of Operation at the External Borders (FRONTEX);
- European Aviation Safety Agency (EASA);
- European Centre for the Development of Vocational Training (CEDEFOP);
- European Foundation for the Improvement of Living and Working Conditions (EUROFOUND);
- European Maritime Safety Agency (EMSA);
- European Network and Information Security Agency (ENISA);
- European Training Foundation (ETF);
- European Police College (CEPOL);
- European Police Office (EUROPOL);
- Trans-European Transport Network Executive Agency (TEN-TEA)

3. The European Commission [¹⁸]

This European Commission (EC) (formal title “Commission of the European Union”) was created under the EU’s founding treaties for the express purpose of developing policies, laws and procedures for the integration of the Union. The Commission was set up from the start to act as an independent authority separate from national governments. Its job was and is to represent and uphold the interests of the EU as a whole. It drafts proposals for new European laws, which it presents to the European Parliament and the Council.

The Commission is the EU’s executive arm – in other words, it is responsible for implementing the decisions of the Parliament and the Council. That means managing the day-to-day business of the European Union: implementing its policies, running its programs and spending its funds.

The Commission operates in the manner of a Cabinet Government, with 27 Commissioners, one Commissioner for each Member State. However, Commissioners are bound to represent the EU as a whole rather than their own home State. One of the 27 Commissioners is the *Commission President* appointed for a five year term by the European Council with the approval of the European Parliament.

In summary, the European Commission has four main roles:

- i. to propose legislation to Parliament and the Council;
- ii. to manage and implement EU policies and the budget;
- iii. to enforce European law (jointly with the Court of Justice); and
- iv. to represent the European Union on the international stage, for example by negotiating agreements between the EU and other countries.

¹⁸ http://europa.eu/institutions/inst/comm/index_en.htm

4. Freedom of Movement [¹⁹]

A key provision of the Treaty establishing the European Union concerned the *Free Movement of Persons, Services and Capital*. Essentially, this meant that from the very beginning, any EU citizen could move freely within the whole of the EU, either as a visitor, migrant worker or self-employed person. While visitors were restricted to a stay of 90 days initially, workers and the self-employed had the right of establishment in the host Member State. The right of establishment also applied to family members.

In the 1990s, three directives were adopted, which now guarantee the right of residence to categories of persons other than workers:

- Retired persons,
- Students, and
- Inactive people.

In 1992, the Maastricht Treaty introduced the concept of citizenship of the European Union which confers on every European citizen a fundamental and personal right to move and reside freely without reference to an economic activity. The Amsterdam Treaty, which came into force in 1999, further strengthened the rights linked to European Union citizenship by integrating the Schengen Convention into the Treaty.

In 2004 the European Parliament and the Council adopted a new Directive on the right of citizens of the European Union and their family members to move and reside freely within the territory of the EU. EU citizens no longer need to obtain a residence card and there is now a permanent right of residence anywhere in the Union.

For residence of less than three months, the only requirement is the possession of a valid identity document. For residence longer than three months, the need to hold a residence card has been replaced by registration in the population register of the place of residence. To be able to exercise this right to permanent residence, EU citizens must:

- be workers, or
- self-employed persons, or
- have sufficient resources not to become a burden on the social assistance system of the host Member State and comprehensive sickness insurance.

Members of the family must provide proof of identity and of the family link to an EU citizen. The exercise of freedoms relating to employment, self-employment and the provision of services is greatly assisted by initiatives within the EU for the mutual recognition of qualifications and the development of minimum standards for the education and training sectors.

i. Workers

¹⁹ **Consolidated Version of the Treaty Establishing the European Community.** From the Official Journal of the European Communities 24.12.2002

Every citizen of the EU has the right to work and live in another Member State without being discriminated against on grounds of nationality.

For workers, this freedom has existed since the foundation of the European Community in 1957. It is laid down in Article 39 of the EC Treaty and it includes:

- the right to look for a job as an employee in another Member State;
- the right to work in another Member State;
- the right to reside there for that purpose;
- the right to remain there; and
- the right to equal treatment in respect of access to employment, working conditions and all other advantages which could help to facilitate the worker's integration in the host Member State

Certain rights are extended to family members of the worker, such as the right to live with the worker in the host Member State and the right to equal treatment as regards education and social advantages. Some members of the family also have the right to work there. This freedom does not apply to employment in the public service.

ii. Self Employed Persons

Any EU citizen can take up an economic activity in another Member State either as a self-employed person or to set up and manage undertakings, in particular companies or firms. In earlier times, the person concerned was issued a residence permit by simply presenting an identity document (passport or ID) and proof of employment or self-employment. Under the 2004 Directive, the issuing of a residence card is no longer required.

iii. Service Providers

This right allows a resident in one Member State to provide paid services to persons or entities in other Member States. The person providing the service may, in order to do so, temporarily pursue his/her activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

‘Services’ include:

- Activities of an industrial character;
- Activities of a commercial character;
- Activities of craftsmen; and
- Activities of the professions.

5. Schengen

i. Beginnings

The Schengen scheme originated in the 1980s as a result of a debate about the meaning of “free movement of persons”. Some Member States believed that it should apply only to EU citizens, which meant they would have to continue with border checks so they could

distinguish between citizens of the EU and non-EU nationals. Others argued in favour of free movement for everyone.. Since the Member States could not reach agreement, France, Germany, Belgium, Luxembourg and the Netherlands in 1985 decided to create a territory without internal borders. This became known as the "Schengen area". The name was taken from the town in Luxembourg where the first agreements were signed. This Schengen area was expanded to include 13 Member States in 1997, following the signing of the Treaty of Amsterdam.

ii. Expansion

The Schengen rules apply in most European countries, covering a population of over 400 million and a total area of 4,268,633 km². They include provisions on common policy on the temporary entry of persons (including the Schengen Visa), the harmonisation of external border controls, and cross-border police and judicial co-operation.

A total of 28 States, 25 European Union States and three non-EU members (Iceland, Norway, and Switzerland), are subject to the Schengen rules, and 24 have implemented them so far. Border posts and checks have been removed between the states which form the Schengen area. A common Schengen visa allows tourists or other visitors access to the area. Holders of residence permits to a Schengen state enjoy the freedom of travel to other Schengen states for a period of up to three months.

The effect of the Schengen agreements was thus to abolish checks at the internal borders of the signatory States and to create a single external border where immigration checks for the Schengen area are carried out in accordance with *identical procedures*. Common rules regarding visas, right of asylum and checks at external borders were adopted to allow the free movement of persons within the signatory States without disrupting law and order.

Ireland and the United Kingdom did not sign up to the original Schengen Convention and continue to enforce border controls with other EU Member States. They do, however, take part in some aspects of Schengen cooperation, namely police and judicial cooperation in criminal matters, the fight against drugs and the Schengen Information System (SIS).

iii. Schengen Information System (SIS)

These freedom of movement provisions were accompanied by certain "compensatory" measures. This involved improving cooperation and coordination between the police and the judicial authorities in order to safeguard internal security and to combat organised crime.

The *Schengen Information System (SIS)* was set up for this purpose. SIS is a sophisticated database used by the authorities of the Schengen member countries to exchange data on certain categories of people and goods. The SIS facilitates border controls and other customs and police checks and the coordination of these controls.

Member States supply information to the system through national networks (N-SIS) connected to a central system (C-SIS), and this IT system is supplemented by a network

known as SIRENE (Supplementary Information Request at the National Entry). This network is the human interface of the SIS.

iv. Features of Schengen Cooperation

- Abolition of checks at common borders, replacing them with external border checks;
- A common definition of the conditions for crossing external borders and uniform rules and procedures for checks there;
- Separation in air terminals and ports of people travelling within the Schengen area from those arriving from countries outside the area;
- Harmonisation of the conditions of entry and visas for short stays;
- Coordination between administrations on surveillance of borders (liaison officers and harmonisation of instructions and staff training);
- Introduction of cross-border rights of surveillance and hot pursuit for police forces in the Schengen states;
- Strengthening of judicial cooperation through a faster extradition system and faster distribution of information about the enforcement of criminal judgments; and
- The creation of the Schengen Information System (SIS).

All these measures, together with all relevant decisions, declarations, agreements and protocols have been incorporated into the law of the European Union and constitute the *Schengen Acquis*. All new members must adopt the *Acquis* and undergo a test to demonstrate that they meet all the conditions required for the application of compensatory measures enabling internal border controls to be abolished.

v. The Participation of Denmark

Although Denmark is a member of the EU and has signed the Schengen Agreement, it can choose within the EU framework whether or not to apply any new measures. Denmark is, however, bound by certain measures under the common visa policy.

vi. The Nordic Union

The five Nordic countries Sweden, Finland, Denmark, Iceland and Norway belong to the Nordic Passport Union, which abolished internal border checks. Sweden, Finland and Denmark became members of the Schengen group when they joined the EU. Iceland and Norway are not EU members but have opted to be part of Schengen. They therefore entered into a special agreement with the EU so that the Schengen *Acquis* arrangements would apply to the five countries of the Nordic Passport Union from 2000. In addition, the SIS arrangements were put into effect as from 1 January 2000.

vii. Regulation of External Border Controls

Participating nations to the Schengen Agreement are responsible for coordinating external controls. The requirements of border control, surveillance, and the conditions under which permission to enter into the Schengen area may be granted are detailed in an EU regulation called **Schengen Borders Code**. This provides that all persons crossing external borders — entering or exiting — must undergo a minimum check, including the establishment of

identities, while third-country nationals must be subjected to thorough checks, which also concern all entry requirements (documentation, visa, employment status, means of subsistence, absence of security concerns, etc). The exit controls allow, inter alia, to determine if a person leaving the area is in possession of a document valid for crossing the border, whether that person had extended his or her stay beyond the permitted period, and to check against alerts on persons and objects included in the Schengen Information System and reports in national data files, e.g. if an arrest warrant had been issued by a Schengen State.

Every person crossing the Schengen external borders must carry an accepted means of identification, such as a passport or other travel document, or – in case of EU and Swiss citizens – a national identity card.

All other third-country nationals have to be checked against the SIS, the database containing information about undesired or wanted people, stolen passports, and other items of interest to border officials.

viii. Entry Conditions for Third-Country Nationals

Under Schengen, uniform rules apply to the type of visa which may be issued for a short-term stay, not exceeding 90 days, on the territory of one, several or all of those States. The rules also include common requirements for entry into the Schengen area, and common procedures for refusal of entry.

According to the Schengen Borders Code, the conditions applying to third country nationals for entry include:

- Possession of an acceptable travel document or other documents authorising the person to cross the border;
- Unless the person is exempt, possession of a valid visa or a valid residence permit;
- Bona fides as to the purpose of the intended stay;
- Possession of or access to sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or to their next country of destination;
- The person is not the subject of an alert in the SIS for refusal of entry, and
- He/she is not considered to be a threat to public policy, internal security, public health or the international relations of any of the Schengen States.

In other words, being exempt from the need to have a visa, or mere possession of a Schengen visa, does not confer automatic right of entry. Entry will only be granted if the all other transit or entry conditions laid down by EU legislation have been met.

ix. The Schengen Visa

The EU's visa policy is set out in the EU regulations. Access to the Schengen territory by the nationals of countries exempt from the visa requirement (Annex I list) is restricted to short stays (not involving employment or self-employed activities) for up to 90 days. A Schengen

visa is required for the nationals of all other countries (the Annex I list). The requirement for a visa for short-term stays in the Schengen area which do not involve employment or any self-employed activity are set out in the EU regulations.

All third-country nationals who intend to take up employment or self-employed activity, or wish to stay longer than 90 days may be required by Member States to obtain a visa even if they are listed on the Schengen visa-free list. A short business trip is not considered to be employment.

A *Common Schengen Visa*, in the form of a sticker, is used by all States. It identifies the issuing State and provides for a photograph of the bearer to be inserted. The sticker is affixed to the person's travel document by the visa issuing authority.

There are four categories of visa:

- **Category A** is an airport transit visa. It is required for some nationals passing through the international transit area of airports during a stopover or transfer between two sections of an international flight;
- **Category B** refers to a transit visa required by nationals who are not visa-free and allows the holder to pass through the Schengen area while travelling from one non-Schengen State to another non-Schengen State. The maximum validity of a Category B visa is five days;
- **Category C** refers to a short-term stay visa and is issued for temporary stays only, i.e. not to immigrants. This visa type may entitle the holder to stay a total of three months during a period of six months from the date of first entry, either as one continuous period or over several visits; and
- **Category D** is a national visa, valid for five years, issued by a Schengen State in accordance with its national legislation (however, a uniform sticker is used). This visa allows the holder to transit from a non-Schengen country to the Schengen State which issued the visa.

A combined **Category D+C** visa is sometimes used to allow the holder to enter the issuing Schengen State for long term residence in that State, at the same time allowing the holder to travel within the Schengen area as the holder of a Category C visa.

An application for a Schengen visa should be lodged at the embassy or consulate of the main destination country. If the visit is going to involve several countries, then the country to be entered first should be approached.

Third-country nationals who are holders of residence permits of a Schengen State may freely enter into and stay in any other Schengen State for a period of up to three months. For a longer stay, they need to apply for a residence permit of the host Member State. Long-term residents of Member State, under certain circumstances, may have the right to settle in other Member States.

x. Temporary Re-introduction of Internal Border Controls

Under the Schengen Borders Code it is possible for a State to reinstate border controls for a short period if deemed necessary in the interest of national security, but has to follow a consultation process before such action. This provision has been invoked a number of times, for example:

- By Portugal during the 2004 European Football Championships;
- By France for the ceremonies marking the 60th anniversary of D-Day and again shortly after the London bombings in July 2005;
- By Finland during the 2005 World Championships in Athletics; and
- By Germany for the 2006 FIFA World Cup and again for the 33rd G8 Summit in 2007.

1. Overview

The Treaty for Establishment of the East African Community was signed in November 1999 and entered into force in July 2000 following its ratification by the original three Partner States – Kenya, Uganda and Tanzania. Rwanda and Burundi became joined the Community with effect from 1st July 2007.

The EAC aims at widening and deepening cooperation among the Partner States in, among others, political, economic and social fields for their mutual benefit. To this end the EAC countries established a Customs Union in 2005 and are working towards the establishment of a Common Market by 2010, subsequently a Monetary Union by 2012 and ultimately a Political Federation of the East African States

The main organs of the EAC are the Summit of Heads of State and Government; the Council of Ministers; the Co-ordination Committee; Sectoral Committees; the East African Court of Justice, the East African Legislative Assembly; and the EAC Secretariat which is based in Arusha, Tanzania.

- **The Summit** consists of the Heads of State and Government of the Partner States. Its function is to give general direction and impetus to the achievement of the objectives of the Community.
- **The Council of Ministers** is the policy organ of the Community. It consists of the Ministers responsible for regional co-operation of each Partner State and such other Ministers as each State wants. Among its functions, the Council promotes, monitors and keeps under constant review the implementation of the programs of the Community and ensures the proper functioning of the regional organisation.
- **The Co-ordination Committee** consists of the Permanent Secretaries responsible for regional co-operation in each Partner State. The Committee reports to the Council of Ministers and co-ordinates the activities of the
- Sectoral Committees.
- **Sectoral Committees** report to the Co-ordination Committee. They prepare comprehensive implementation programs, setting out priorities with respect to the various sectors and monitor their implementation.
- **The East African Court of Justice** is the judicial arm of the Community.
- The court has original jurisdiction over the interpretation and application of the 1999 Treaty that re-established the EAC and in the future may have other original, appellate, human rights or other jurisdiction. It is temporarily based in Arusha, Tanzania.
- **The East African Legislative Assembly** is the legislative organ of the EAC. Its membership consists of elected members from each Partner State, plus five ex officio members: the Ministers responsible for regional co-operation, the Secretary General and the Counsel to the Community.
- **The Secretariat** is the executive organ of the Community. It is headed by the Secretary General who is assisted by two Deputy Secretaries General and includes the offices of

Counsel to the Community and other officers appointed by the Council. The core budget of the EAC's Secretariat is funded by equal contributions from the Partner States. Regional Projects and Programs are funded through the mobilisation of resources from both within and outside the region.

- **Autonomous Institutions** of the EAC are the East African Development Bank, Lake Victoria Fisheries Organisation, Inter-University Council for East Africa, East African Civil Aviation Academy, and East African School of Librarianship. The Council can establish other institutions as necessary.

At least two of the Member States, Kenya and Tanzania, have created a Ministry for East African Affairs for the express purpose of leading and coordinating implementation. One of the recent initiatives by this Ministry in Tanzania has been to commission a comprehensive survey of human capital and the labour market with a view to collecting factual data and identifying strengths and weaknesses. This information will guide policy formulation in connection with the free movement of persons within the EAC and the right of establishment. One possible outcome is the identification of market or industry or skills sectors that may be quarantined for local citizens.

2. Monetary Union

Plans were drawn up in 2004 to introduce a monetary union with a common currency, the East African shilling, by 2009. There are also plans for a common market and a political union, the East African Federation, with a common President (initially on a rotation basis) and a common Parliament by 2010.

However, some experts like those based out of the public think tank Kenya Institute of Public Policy Research and Analysis (KIPPRA), have noted that the plans are too ambitious to be met by 2010 because a number of political, social and economic challenges are yet to be addressed.

3. Movement of Persons

Article 104 of the EAC Treaty provides for the Partner States to “agree to adopt measures to achieve the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the Community.” And for this purpose, “the Partner States agree to conclude a Protocol on the Free Movement of Persons, Labour, Services and Right of Establishment and Residence at a time to be determined by the Council.”

Further, the “Partner States shall as may be determined by the Council:

- a) Ease border crossing by citizens of the Partner States;
- b) Maintain common standard travel documents for their citizens;
- c) Effect reciprocal opening of border posts and keep the posts opened and manned for twenty four hours;
- d) Maintain common employment policies;
- e) Harmonise their labour policies, programmes and legislation including those on occupational health and safety;

- f) Establish a regional centre for productivity and employment promotion and exchange information on the availability of employment;
- g) Make their training facilities available to persons from other Partner States; and
- h) Enhance the activities of the employers' and workers' organisations with a view to strengthening them."

At the time of writing, there is no right of establishment or residence in the EAC. Negotiations of "the Protocol on Free Movement of Persons, Labour, Services, Right of Establishment and Residence" are being undertaken jointly with the negotiations of the East African Common Market whose establishment has been prioritized in the Third Development Strategy [²⁰].

i. Visitors

Citizens of the EAC Member States are allowed to enter and stay in each of the other Member States for up to six months while travelling on an East Africa passport. However, they do not have the right to work without valid work permits. Acceptable travel documents for EAC citizens trying to access each other's territory include:

- National passports,
- EAC passports,
- Temporary permits which may be issued by the Department of Immigration in Kenya;
- Temporary Movement Passes issued by Uganda;
- Convention Travel Documents; and
- Emergency Travel Documents issued by Tanzania.

ii. Students

Students from other EAC countries can be issued a student or pupil pass free of charge, on production of satisfactory evidence of citizenship (such as an ID card) and/or an acceptable travel document.

iii. Single Tourist Visa

A proposal to introduce an East African Single Tourist Visa, originally planned for introduction by the end of 2006, has not been implemented yet. If approved, the visa would be valid for all Member States of the EAC. Under the proposal for the visa, any new East African single visa can be issued by any Member State's embassy.

iv. EAC Passports

The East African passport was officially launched on 1 April 1999. It has been introduced as a travel document to ease border crossing for East African citizens. It is valid for travel within the EAC countries only and will entitle the holder to a multi entry stay of renewable six months' validity in any of the countries. Although the passport is only valid within the EAC, the aim is to have a common travel document for all East Africans.

²⁰ News item on the Occasion of EAC Day, 30th November 2007.

Other measures meant to ease border crossing for East Africans include: the issuance of inter-state passes (which commenced on 1st July 2003); a single immigration Departure/Entry card; the finalization of harmonised procedures of work permits and the classification process; and the compilation of studies on the Harmonisation of Labour Laws and Employment Policies.

1. Overview

The Common Market for Eastern and Southern Africa (COMESA), with a combined population of over 389 million and an area of 12 million km², replaced the former Preferential Trade Area (PTA) which had existed since 1981. The COMESA Treaty was signed on 5th November 1993 in Kampala, Uganda and was ratified a year later in Lilongwe, Malawi. Membership has changed somewhat since the signing of the Treaty. The current members are Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe. Two other States, Botswana and South Africa, are eligible to join COMESA if they wish.

COMESA has evolved a comprehensive decision making structure at the top of which are the Heads of State and Government of the 19 member countries. There is then a Council of Ministers responsible for policy making, the Committee of Governors of Central Banks, the Intergovernmental Committee; several Technical Committees and a series of other Advisory Bodies (including specific relations with partner countries and the business community). A Consultative Committee of the Business Community and Other Interest Groups has also been established. In addition, each Member State appoints liaison persons in their appropriate Ministries who form part of the day-to-day communication process. Overall coordination is achieved through the Secretariat, based in Lusaka, Zambia.

Several institutions have been created in COMESA to promote sub-regional co-operation and development. These include:

- The COMESA Trade and Development Bank in Nairobi, Kenya
- The COMESA Clearing House in Harare, Zimbabwe
- The COMESA Association of Commercial Banks in Harare, Zimbabwe
- The COMESA Leather Institute in Ethiopia
- The COMESA Re-Insurance Company (ZEP-RE) in Nairobi, Kenya
- In addition, a Court of Justice was also established under the COMESA Treaty and became formally operational in 1998.

Further initiatives exist to promote cross border relations, form a common industrial policy and introduce a monetary harmonisation programme.

COMESA was established “as an organisation of free independent sovereign states which have agreed to co-operate in developing their natural and human resources for the good of all their people.” The COMESA vision is to be a “fully integrated economic community for prosperity, internationally competitive, ready to merge into the African Union”. It has a wide-ranging series of objectives which include in its priorities the promotion of peace and security in the region. In particular, Member States have agreed on the need to create and maintain:

- i. A full free trade area guaranteeing the free movement of goods and services produced within COMESA and the removal of all tariffs and nontariff barriers;

- ii. A customs union under which goods and services imported from non-COMESA countries will attract an agreed single tariff in all COMESA States;
- iii. Free movement of capital and investment supported by the adoption of a common investment area so as to create a more favourable investment climate for the COMESA region;
- iv. A gradual establishment of a payment union based on the COMESA Clearing House and the eventual establishment of a common monetary union with a common currency; and
- v. The adoption of common visa arrangements, including the right of establishment leading eventually to the free movement of bona fide persons.

2. Monetary Union

COMESA has adopted a phased Monetary Co-operation Program which aims to establish a common monetary area with a greater measure of monetary stability in order to facilitate the economic integration efforts and provide for sustained economic development of the sub-region. In this regard, its ultimate objective is to establish a monetary union, and thus enable the Common Market to attain the status of an Economic Community.

3. Movement of Persons

Article 164 of the COMESA Treaty provides for cooperation among Member States with respect to the movement of persons, in the following terms:

Scope of Co-operation

- 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, Service, Right of Establishment and Residence enters into force.”

The Protocol relating to the *Gradual Relaxation and Eventual Elimination of Visa Requirements* within COMESA (the Visa Protocol) was adopted and signed by the Authority of Heads of State and Government as far back as 1984.

Liberalisation of the movement of persons is intended to facilitate particularly the movement of business people within COMESA. The Visa Protocol was designed on the basis that Member States would allow each other’s citizens visa free entry for periods of up to 90 days.

The Visa Protocol also acknowledges that two or more Member States can maintain existing bilateral or multilateral arrangements (or enter into new ones) among themselves in respect of free movement of persons which provide for more favourable treatment for their

nationals than are provided for in the Visa Protocol. This is already the case for the East African Community and various bilateral agreements.

The COMESA *Protocol on the Free Movement of Persons, Labour, Services, the Right of Establishment and Residence* has been adopted by the Authority of Heads of States and Governments and is in the process of being signed and ratified. Only four States have signed up so far.

It is clear that COMESA as an organisation wants to go ahead with the implementation of the free movement protocol, but it also realizes that there are difficulties in the way and that implementation may take some considerable time yet. For example, the Strategic Plan 2007-2010 states that “Regional integration will be incomplete without free movement of people and labour.

This is of paramount importance for any regional economic community. COMESA has already achieved remarkable progress on free movement of goods. Meanwhile, the Monetary Harmonisation Programme will provide for the free movement of capital. However, as envisaged under the Treaty, these programmes should be complemented with free movement of persons, labour and services.

The attainment of the free movement of people, services and labour is however a long-term objective. The member States have also agreed that the removal of hindrances to the movements of persons would provide a competitive edge to enterprises in the region and attract foreign direct investment. COMESA’s policy on free movement of people and visa relaxation is contained in the Protocol on Free Movement, which is expected to enter into force in the coming years. The Protocol will complement the existing Protocol on the Gradual Removal and Eventual Elimination of Visa Requirements, which has been in place since 1984.”

Implementation of the free movement protocol, when it comes, is envisaged to take place in five stages

Stage Reference Objective Timetable

Stage	Reference	Objective	Timetable
1	Part II – Articles 3 to 8	Gradual removal of visa requirements and co-operation in the prevention and the fight against crime	Now
2	Part III – Article 9	Enhancing movement of skilled labour	2004 – 2008 progressively
3	Part IV – Article 10	Movement of services.	Program to be adopted by Council (projected period 2002–2008)
4	Part V – Article 11	Right of Establishment	2004–2010 (program to be adopted by Council progressively).
5	Part VI – Article 12	Right of Residence	2014 (20 years from date of entry of COMESA Treaty).

The strategies proposed to be used to implement the protocol are these:

- a) Facilitate bilateral consultations with member states to sign and ratify the protocol;
- b) Enhance programme on movement of persons;
- c) Design detailed programme on movement of Labour; and
- d) Develop a programme to build capacity among immigration officials on the implementation of the Protocol on free movement of persons and the detection of trans-national crimes and counter terror

4. COMESA's Goals

The Strategic Plan sets out a comprehensive plan of action for the period 2007-2010, with clear goals and strategies for the implementation of the major provisions of the COMESA Treaty. The table on the next page reproduces the plan as it may be of general interest in the context SADC.

Annex 6: ECOWAS

1. Overview

The Economic Community of West African States (ECOWAS) is a regional organization of 15 West African nations formed in 1975. The original number was 16 until Mauritania withdrew in 2000. The principal goal of ECOWAS is for economic integration and shared development, in order to achieve “collective self-sufficiency” for the Member States by means of economic and monetary union creating a single large trading bloc ECOWAS is regarded as one of the “pillars” of the African Economic Community.

The member countries are Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

The supreme authority of the organisation is the Conference of Heads of State and Heads of Government. There is an annual general meeting of this body, and the Chair of the Conference rotates among the member countries.

The Conference is supported by the Council of Ministers, the Tribunal (acting as judicial body for the settlement of disputes), an Executive Secretariat and five Commissions:

- i. Trade, Customs, Immigration, Monetary and Payments;
- ii. Industry, Agriculture and Natural Resources;
- iii. Transport, Communications and Energy;
- iv. Social and Cultural Affairs; and
- v. Administration and Finance.

The two chief implementing bodies are the Secretariat and the ECOWAS Bank for Investment and Development (originally created as the Fund for Cooperation, Compensation and Development financed by the Islamic Development Bank (IDB) and the African Development Bank (ADB).

2. Economic and Monetary Union

The *West African CFA franc*, created in 1945, is used in seven of the member countries (the six francophone countries and Guinea-Bissau). It is managed by the West African Economic and Monetary Union (UEMOA). The *Eco* is the proposed name for the common currency the West African Monetary Zone (WAMZ) plans to introduce on 1 December 2009. The WAMZ includes the Anglophone countries of Gambia, Ghana, Nigeria, and Sierra Leone, and francophone Guinea. Liberia is also reported to be interested in joining this monetary union. The ultimate goal is to unite the UEMOA and the WAMZ to form a single monetary zone in West Africa (ECOWAS), which Cape Verde would then also join.

3. Movement of Persons

The ECOWAS Treaty makes provision for the right of entry, residence and establishment for the citizens of member countries within the Community. The nationals of ECOWAS States can

enter all other Member States without a visa for a maximum period of 90 days. They need only a valid travel document and an international health certificate.

The revised Treaty, done at Cotonou, capital of Benin, on 24 July 1993, contains the following article:

“ARTICLE 59: IMMIGRATION

- 1) Citizens of the community shall have the right of entry, residence and establishment and Member States undertake to recognise these rights of Community citizens in their territories in accordance with the provisions of the Protocols relating thereto.
- 2) Member States undertake to adopt all appropriate measures to ensure that Community citizens enjoy fully the rights referred to in paragraph 1 of this Article.
- 3) Member ' States undertake to adopt, at national level, all measures necessary for the effective implementation of the provisions of this Article. A Supplementary Protocol done at Banjul, capital of The Gambia, on 30 May 1990 provides amplification with respect to the implementation of the right of establishment of the protocol on free movement of persons, right of residence and establishment.

Article 1 defines right of residence and right of establishment as follows:

- **"Right of Residence"** means the right of a citizen who is a national of one Member State to reside in a Member State other than his State of origin which issues him with a residence card or permit that may or may not allow him to hold employment;
- **"Right of Establishment"** means the right granted to a citizen who is a national of the Member State to settle or establish in another Member State other than his 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.

Article 2 of the same supplementary protocol extends similar rights to enterprises or businesses, as follows:

“The right of establishment as defined in Article 1 above shall include access to non-salaried activities and the exercise of such activities as well as the creation and management of enterprises and companies which comply with the definition contained in Article 3 below are subject to the same conditions stipulated by the laws and regulations of the country of establishment for its own nationals.”

While Article 3 declares:

“For the purpose of implementation of this Protocol, companies which are formed in accordance with the laws and regulations of a Member State with their headquarters, central seat of administration or principal establishment within the Community shall be considered in the same category as individual nationals of Member States. Where, however, only the statutory headquarters of the company are established in a Member State, activities of such a company should have effective and sustained links with the economy of the Member State.”

As regards travel documents, an ECOWAS *Travel Certificate* has entered into circulation in Burkina Faso, Gambia, Ghana, Guinea, Niger, Nigeria and Sierra Leone. An ECOWAS Passport is printed and operational in Benin, Mali, Nigeria and Senegal.

1. Overview

The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967 in Bangkok by the five original Member Countries, Indonesia, Malaysia, Philippines, Singapore, and Thailand. Brunei Darussalam joined in 1984, Vietnam in 1995, Lao PDR and Myanmar in 1997, and Cambodia in 1999.

The ASEAN region has a population of about 500 million and a total area of 4.5 million km², a combined gross domestic product of almost US\$700 billion, and a total trade of about US\$850 billion.

The ASEAN Declaration states that the aims and purposes of the Association are:

- 1) To accelerate economic growth, social progress and cultural development in the region, and
- 2) To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the United Nations Charter.

In 2003, the ASEAN Leaders resolved that an ASEAN Community would be established comprising three pillars, namely, ASEAN Security Community, ASEAN Economic Community and ASEAN Socio-Cultural Community.

The ASEAN Economic Community's goal is to create a stable, prosperous and highly competitive ASEAN economic region in which there is a free flow of goods, services, investment and a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities by the year 2020.

ASEAN would become a single market and production base by:

- Strengthening the implementation of economic initiatives including the ASEAN Free Trade Area (AFTA), the ASEAN Framework Agreement on Services (AFAS) and the ASEAN Investment Area (AIA);
- Accelerating regional integration in several priority sectors by 2010;
- Facilitating movement of business persons, skilled labour and talents; and
- Strengthening the institutional mechanisms of ASEAN.

The highest decision-making organ of ASEAN is the Meeting of the ASEAN Heads of State and Government, which is convened every year. The ASEAN Ministerial Meeting (Foreign Ministers) is also held annually. Supporting these ministerial bodies are committees of senior officials, technical working groups and task forces.

The Secretary-General of ASEAN is mandated to initiate, advise, coordinate, and implement ASEAN activities. ASEAN has several specialised bodies and arrangements promoting

intergovernmental cooperation in various fields and promotes dialogue and consultations with professional and business organisations with related aims affiliated with ASEAN.

In the field of immigration, there is an annual Meeting of ASEAN Directors-General of Immigration Departments and Heads of Consular Divisions of ASEAN Ministries of Foreign Affairs (DGICM).

2. Monetary Union

Other major integration-related economic activities of ASEAN include the following:

- Roadmap for Financial and Monetary Integration of ASEAN in four areas, namely, capital market development, capital account liberalisation, financial services liberalization and currency cooperation;
- Trans-ASEAN transportation network consisting of major inter-state highway and railway networks, principal ports, and sea lanes for maritime traffic, inland waterway transport, and major civil aviation links;
- Roadmap for Integration of the Air Travel Sector;
- Interoperability and interconnectivity of national telecommunications equipment and services.

3. Movement of Persons

i. ASEAN Framework Agreement on Visa Exemption

The ASEAN Framework Agreement on Visa Exemption, agreed in Kuala Lumpur, Malaysia, on 25 July 2006 includes the following provisions relating to travel facilitation and visa exemption:

- Visa exemption for nationals of Member Countries holding valid national passports to enter other ASEAN countries as visitors for stays of up to 14 (fourteen) days. A longer stay requires a visa or pass and employment is prohibited; and
- Individual Member Countries have the right to provide visa-free entry for longer than 14 days, in accordance with their respective laws and regulations and/or bilateral agreements.

Member Countries have the right to temporarily suspend the implementation of the Agreement for reasons of national security, public order and public health by giving other Member Countries immediate notice, through diplomatic channels.

To give effect to the visa exemption provision, Member Countries, where applicable, are required to negotiate and conclude separate bilateral protocols to implement the Agreement.

Note that there is no provision for either the right of establishment or the right to residence.

ii. Plan of Action for Cooperation on Immigration Matters

The Plan of Action is the blue print of a series of plans of action towards the realisation of the goals set out in the ASEAN Vision 2020. The Plan contains a number of measures with relevance to immigration cooperation:

- Accelerate the freer flow of skilled labour and professionals in the region;
- Encourage the establishment of ASEAN Lanes for facilitating intra-

ASEAN Travel;

- Strengthen ASEAN collaboration in combating the trafficking in, and crimes of violence against, women and children;
- Strengthen regional capacity to address transnational crime.

The Immigration authorities in the ASEAN Member Countries also acknowledged the need for closer cooperation to implement region-wide initiatives such as the ASEAN Lanes at international airports of Member Countries; visa-free entry for all ASEAN nationals; use of smart cards as travel documents within the region; harmonisation of ASEAN Immigration embarkation and disembarkation cards; and facilitation of movement of yachts, leisure boats and private aircraft within ASEAN.

The specific objectives of the Plan of Action are:

- To develop a strong network among immigration authorities in ASEAN to promote and facilitate economic cooperation and combat transnational crime, especially trafficking in persons;
- To foster regional cooperation aimed at modernizing immigration systems, operations, facilities and human resource development;
- To strengthen regional capacities and capabilities through effective networking and cooperation to facilitate intra-ASEAN economic cooperation, especially in the areas of intra-ASEAN commerce, tourism and travel;
- To cooperate amongst Member Countries in the movement of labour, both skilled and unskilled;
- To upgrade human resource development capabilities through training for immigration officials towards the evolution of common ASEAN procedures and practices; and
- To collaborate with other immigration authorities, ASEAN Dialogue Partners, the relevant UN agencies, regional and international organizations.

The Plan of Action also contains provisions for the exchange of information and the development of regional training programs for immigration officials.

1. Structure and Aims

The Caribbean Community (**CARICOM**), originally the **Caribbean Community and Common Market**, was established by the Treaty of Chaguaramas (Trinidad) in 1973. CARICOM replaced the Caribbean Free Trade Association (CARIFTA), which had been organised to provide a continued economic linkage between the English-speaking countries of the Caribbean following the dissolution of the West Indies Federation which lasted from 1958 to 1962. The Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy (CSME) was signed on 5 July 2001 in Nassau, The Bahamas.

Currently, CARICOM has 15 full members: Antigua and Barbuda; Bahamas; Barbados; Belize; Dominica; Grenada; Guyana; Haiti; Jamaica; Montserrat (a territory of the United Kingdom.); St. Kitts and Nevis; St. Lucia; St. Vincent and The Grenadines; Suriname; and Trinidad and Tobago.

There are also 5 associate members (Anguilla, Bermuda, British Virgin Islands, Cayman Islands, and Turks and Caicos Islands) and 7 observers (Aruba, Colombia, Dominican Republic, Mexico, Netherlands Antilles, Puerto Rico and Venezuela).

The objectives of the Community, identified in Article 6 of the Revised Treaty, are: “to improve standards of living and work; the full employment of labour and other factors of production; accelerated, coordinated and sustained economic development and convergence; expansion of trade and economic relations with third States; enhanced levels of international competitiveness; organisation for increased production and productivity; achievement of a greater measure of economic leverage and effectiveness of Member States in dealing with third States, groups of States and entities of any description and the enhanced co-ordination of Member States’ foreign and foreign economic policies and enhanced functional cooperation.”

CARICOM has a quasi-government structure which is quite complex and extensive. It is made up of the following branches:

- **The Executive** – comprising a rotating prime ministerial Chairmanship of CARICOM (Head of CARICOM), the CARICOM Secretary General (Chief Executive) and the CARICOM Headquarters Secretariat (Chief Administrative Organ).
- **The Legislative** comprising:
- **The Community Council:** consists of Ministers responsible for

Community Affairs and any other Minister designated by the Member States;

- **Supporting Organs:** Council for Finance and Planning, Council for Trade and Economic Development, Council for Foreign and Community Relations, and Council for Human and Social Development;
- **Supporting Bodies:** Legal Affairs Committee, Budget Committee and Committee of Central Bank Governors.

- **The Judiciary** - The Caribbean Court of Justice
- **Caribbean Community organs and bodies** - CARICOM Heads of Government and Standing Committee of Ministers
- **The Secretariat of the Caribbean Community**, located in Georgetown, Guyana.

In addition, there is an array of **Community Institutions** such as the Caribbean Disaster Emergency Response and the Caribbean Single Market and Economy (CSME), **Associate Institutions** such as the Universities and the Law Institute, **Secondary Organs** such as the Council on Trade and Development, and other bodies such as the Committee of Central Bank Governors.

2. Economic and Monetary Union

The key elements of the Single Market and Economy include:

- **Free movement of goods and services** - through measures such as eliminating all barriers to intra-regional movement and harmonising standards to ensure acceptability of goods and services traded;
- **Right of Establishment** - to permit the establishment of CARICOM owned businesses in any Member State without restrictions;
- **A Common External Tariff** - a rate of duty applied by all Members of the Market to a product imported from a country which is not a member of the market;
- **Free circulation** - free movement of goods imported from extra regional sources which would require collection of taxes at first point of entry into the Region and the provision for sharing of collected customs revenue;
- **Free movement of Capital** - through measures such as eliminating foreign exchange controls, convertibility of currencies (or a common currency) and integrated capital market, such as a regional stock exchange;
- **A Common trade policy** - agreement among the members on matters related to internal and international trade and a coordinated external trade policy negotiated on a joint basis;
- **Free movement of labour** - through measures such as removing all obstacles to intra-regional movement of skills, labour and travel, harmonising social services (education, health, etc.), providing for the transfer of social security benefits and establishing common standards and measures for accreditation and equivalency.

Other measures include harmonisation of laws, such as company, intellectual property and other laws.

There are also a number of economic, fiscal and monetary measures and policies which are also important to support the proper functioning of the CSME. These include

- Economic Policy measures: coordinating and converging macroeconomic policies and performance; harmonising foreign investment policy and adopting measures to acquire, develop and transfer appropriate technology;
- Monetary Policy measures: coordinating exchange rate and interest rate policies as well as the commercial banking market; and
- Fiscal Policy measures: including coordinating indirect taxes and national budget deficits.

The CSME is intended to be fully implemented by 2008.

3. Movement of Persons

Article 45 of the Treaty declares that Member States commit themselves to the goal of free movement of their national within the community. This covers two main categories:

- The Free Movement of Skills/Labour; and
- The Facilitation of Travel.

There is currently no right of residence unless it is work related. Visa requirements have been eliminated for all Caribbean Community nationals travelling to other Member States. Non-Community spouses and dependants of Community nationals would require visas where applicable.

The free movement of skills/labour basically provides a right to seek work or engage in gainful employment in all CARICOM Member States, either as a wage earner or self-employed person, without the need to obtain a work permit.

In 2006 when the Community hosted the Cricket World Cup, Member States ceased to issue their own visas temporarily and instead issued a single CARICOM visa to international visitors. The visa was valid for entry to all Member States for a maximum of 90 days between February and May 2006.

i. Wage Earners

Where wage earners are concerned, this right is restricted to the following categories:

- Graduates from all recognised universities of the world;
- Artistes;
- Musicians;
- Sportspersons;
- Media Workers; and
- Managers, technical and supervisory staff attached to a company or self-employed person.

A graduate, artist, musician, sportsperson or media worker wishing to work in another Member State must first obtain a Certificate of Recognition of CARICOM Skills Qualification (“CARICOM Skills Certificate”) from the designated Minister in his/her own country or host country. The procedure for obtaining such a certificate is laid down in domestic legislation. The process can take up to several months.

It is proposed to implement universal recognition of Skills Certificates, so that a certificate issued in one CARICOM State will be recognised in all other CARICOM States, as opposed to the current practice whereby people have to apply for the issue of a fresh certificate by the host country even though they may already have one issued by their own country.

Persons holding the CARICOM Skills Certificates and their dependants are permitted entry for an indefinite period. However, if the Certificate was issued by a CARICOM State other than the one that the person wishes to enter, entry is generally granted for a period of six (6) months, during which time they should apply for a Certificate issued in the host country.

ii. **Non-Wage Earners**

Non-wage earners have the right to work as self-employed persons in any Member State participating in the CSME. This right can be exercised in two ways:

- The right of establishment, and
- The provision of services.

The self-employed can:

- Engage in non-wage earning activities of a commercial, industrial, agricultural, professional or artisan nature; and
- Create and manage economic enterprises, which can include any type of organisation for the production of, or trade in goods, or the provision of services owned or controlled by a national of a Member State.

The provision of services by self-employed persons can be done from or to any of the Member States.

People establishing a business or providing services are also free to:

- Acquire property for use in the business;
- Acquire property for use as a private residence;
- Access capital in the host country;
- Bring into the host country managerial, supervisory and technical staff; and
- Bring in their own spouses and immediate family members or of the managerial, supervisory and technical staff.

4. CARICOM Passport

Heads of State agreed to the issuance of a CARICOM passport by Member States as a symbol of regionalism. A CARICOM passport is a national passport issued in accordance with an agreed format for intra-regional and extra-regional travel, in much the same way as the European Union passport.

The CARICOM passport creates awareness that CARICOM nationals are nationals of the Community, as well as a specific country. By late 2007, ten of the 15 Member States had introduced CARICOM passports - Antigua and Barbuda, Barbados, Dominica, Grenada, Guyana, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago. The expectation is that all the Member States will have introduced the CARICOM passport by 2008 when the stock of their old passports is depleted.

Annex 9: List of organizations/individuals consulted/interviewed

Name	Designation	Organization
Mr. Ivin Lombardt	Executive Director	National NGO Forum, Namibia
Seabata Motsamai	Executive Director	Lesotho Council of NGOs. Lesotho
Ms. Shupikai Mubvekeri	National Chairperson,	Zimbabwe Women in Trade and Development (ZWITAD), Zimbabwe
Mr. Goodwell Chivinge	Administrator	Zimbabwe Women in Trade and Development (ZWITAD), Zimbabwe
Ms. Karen Chirimba	Member	Zimbabwe Women in Trade and Development (ZWITAD), Zimbabwe
Mr. Misheck Ruvengo	Projects Coordinator	Zimbabwe Cross-border Traders Association, Zimbabwe
Mr. Emmanuel Murwisi	Project Development Officer	International Organization for Migration, Zimbabwe

BIBLIOGRAPHY

Buckley, S.

- : Advocacy Strategies and Approaches, Association for Progressive Communication (APC); <http://www.apc.org/en/node/9456>

Campbell, E., Crush J., Green, T., Pendleton, W., Simelane, H, Tevera, D., & Vletter, F.

- 2006 *Migration, Remittances and Development in Southern Africa*, Migration Policy Series No 44, Southern African Migration Project, Cape Town, ISBN 1-920118-15-2,
<http://www.queensu.ca/samp/sampresources/samppublications/policyseries/Acrobat44.pdf>

Carr, L., & Williams, V.

- 2006: *The Draft Protocol on the Facilitation of Movement of Persons in SADC: Implications for State Parties*, Southern African Migration Project, Migration Policy Brief No. 18.
<http://www.queensu.ca/samp/sampresources/samppublications/policybriefs/brief18.pdf>

Dodson, B. & Crush J.

- 2013: *Migration Governance and Migrant Rights in the Southern African Development Community (SADC): Attempts at Harmonization in a Disharmonious Region*, Draft paper prepared for the United Nations Research Institute for Social Development (UNRISD) Conference Regional Governance of Migration and Socio-Political Rights: Institutions, Actors and Processes, 14-15 January 2013, Geneva, Switzerland

Dorfman, L. & Herbert, S.

- 2007: *Communicating for Change: Planning Ahead for Strategic Media Advocacy*, The California Endowment

Frouws, B. & Horwood, C.

- 2015: *What If? Scenarios of Implemented and Enhanced Migration Legislation and Policies in the Horn of Africa and Yemen*, Regional Mixed Migration Secretariat.

International Organization for Migration

- 2008 *An Assessment of the Implementation of the SADC Protocol on the Facilitation of Movement of Persons*, IOM MRF Pretoria

Kitimbo, A.

- 2014: *Is it Time for Open Borders in Southern Africa? The Case for Free Labour Movement in SADC*, The Brenthurst Foundation, Johannesburg, South Africa

Maruping, M.

- 2005 *Challenges for Regional Integration in Sub-Saharan Africa: Macroeconomic Convergence and Monetary Coordination: From Africa in the World Economy - The National, Regional and International Challenges* Fondad, The Hague, www.fondad.org

Mudungwe, P.

- 2014 *Migration and Development in the SADC Region: The Case for a Coherent Approach*

Muzvidziwa, V.

- 2001 *Zimbabwe's Cross-Border Women Traders: Multiple Identities and Responses to New Challenges*, *Journal of Contemporary African Studies*, 19, 1, 2001. ISSN 0258-9001 print /ISSN 1469-9397 online/ 01/010067-14 © 2001 *Journal of Contemporary African Studies* DOI: 10.1080 / 02589000120028175

Oucho, J.

- 2012 *Freedom of Movement and the Erosion of State Sovereignty; Prospects for free Movement in the East African Community*. Paper for the 'Regional Governance of Migration and Social Policy Comparing European and African Regional Integration Policies and Practices' held at the university of Pretoria, South Africa, 19-2."; 2012. <http://rnosaj.hubpages.com/hub/Freedom-of-Movement-and-the-Erosion-of-State-Sovereignty>
- 2007 *Migration in Southern Africa: Migration Management Initiatives for SADC Member States*, Institute of Security Studies Paper 157, ISS Paper 157.

The Southern Africa Development Community (SADC)

- 1992 *Declaration and Treaty of SADC*, SADC (p 3), <http://www.sadc.int/key-documents/> (Accessed 27 September 2011)

Schachter, J. P.

- 2009 *Data Assessment of Labour Migration Statistics in the SADC Region: South Africa, Zambia, Zimbabwe*, IOM, Pretoria.

Southern African Research and Documentation Centre (SARDC)

- 2008 *Optimising Regional Integration in Southern Africa: Assessing Informal Cross Border Trade in SADC*, Southern Africa Trust

Tekere, M., Nyatanga, P. & Mpofu, S.

- 2000 *Informal Cross-Border Trade: Salient Features and Impact on Welfare: Case Studies of Beitbridge & Chirundu Border Posts and Selected Households in Chitungwiza*, Friedrich-Ebert-Stiftung/Trade & Development Studies Centre, Harare

Tsang, T., & Williams, V.

- 2007 *The Prospects for Migration Data Harmonization in the SADC*, MIDSA Report # 2, Southern African Migration Project, <http://www.queensu.ca/samp/midsa/downloads/midsa2.pdf> (Accessed 14 July 2011).

Williams, V.

- 2002 *An Overview of Migration in the SADC Region*, A paper presented at the SAMP/LHR/HSRC Workshop on Regional Integration, Poverty and South Africa's Proposed Migration Policy, Pretoria, 23 April 2002.

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