



**DRAFT PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC  
COMMUNITY RELATING TO FREE MOVEMENT OF PERSONS, RIGHT OF  
RESIDENCE AND RIGHT OF ESTABLISHMENT**

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**DRAFT**

**DRAFT PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING TO FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT**

**PREAMBLE**

We, the Heads of State and Government of the Member States of the African Union;

**RECALLING** our commitment to conclude a Protocol on the free movement of persons, right of residence and right of establishment, under article 43(2) of the Treaty Establishing the African Economic Community, which was adopted in Abuja, Nigeria on 3<sup>rd</sup> June, 1991 and entered into force on 12<sup>th</sup> May, 1994;

**MINDFUL** of article 3(a) of the Constitutive Act of the African Union which promotes the achievement of greater unity and solidarity between the African countries and the people of Africa; and the Treaty Establishing the African Economic Community which promotes economic, social and cultural development and the integration of African economies;

**REITERATING** our shared values which promote the protection of human and people's rights as provided in the Universal Declaration of Human Rights of 1948 and the African Charter on Human and Peoples Rights which guarantees the right of an individual to freedom of movement and residence;

**GUIDED** by our common vision for an integrated, people-centered and politically united continent and our commitment to free movement of people, goods and services amongst the Member States as an enduring dedication to Pan Africanism and African integration as reflected in Aspiration 2 of the African Union Agenda 2063;

**RECALLING** our commitment under article 4 (2)(i) of the Treaty Establishing the African Economic Community, to gradually remove obstacles to the free movement of persons, goods, services and capital and the right of residence and establishment among Member States;

**BEARING IN MIND** the strategies of the Migration Policy Framework for Africa adopted in Banjul, in The Gambia in 2006 which encourage Regional Economic Communities and their Member States to consider the adoption and implementation of appropriate protocols in order to progressively achieve the free movement of persons and to ensure the enjoyment of the right of residence, establishment and access to gainful employment in the host countries;

**RECOGNIZING** the contribution and building on the achievements of the Regional Economic Communities and other intergovernmental organizations towards progressively achieving the free movement of persons and ensuring the enjoyment of the right of residence and the right of establishment by citizens of Member States;

**AWARE** of the challenges of implementing the free movement of persons in the regional economic communities which are at different levels of implementing the frameworks providing for free movement of persons;

**ENVISAGING** that the free movement of persons, capital, goods and services will promote integration, Pan-Africanism, enhance science, technology, education, research and foster tourism, facilitate intra-Africa trade and investment, increase remittances within Africa, promote mobility of labour, create employment, improve the standards of living of the people of Africa and facilitate the mobilization and utilization of the human and material resources of Africa in order to achieve self-reliance and development;

**AWARE** of the need to ensure that effective measures are put in place in order to prevent situations whereby upholding the freedom of movement of people will not lead to situations whereby the arrival and settlement of migrants in a given host country will create or exacerbate inequalities or will constitute challenges to peace and security;

**NOTING** that the free movement of persons in Africa will facilitate the establishment of the Continental Free Trade Area endorsed by the African Union 18<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government;

**NOTING FURTHER** the decision of the Peace and Security Council adopted at its 661<sup>st</sup> meeting (PSC/PR/COMM.1 (DCLXI) held on 23<sup>rd</sup> February 2017, in Addis Ababa, Ethiopia, where the Council acknowledged that the benefits of free movement of people, goods and services far outweigh the real and potential security and economic challenges that may be perceived or generated;

**RECALLING FURTHER** the decision of the Peace and Security Council adopted at the 661<sup>st</sup> meeting of the Peace and Security Council (PSC/PR/COMM.1 (DCLXI) held on 23<sup>rd</sup> February 2017 in Addis Ababa, Ethiopia, in which the Peace and Security Council underlined the need to ensure a phased approach in implementing AU policy decisions on free movement of people and goods, mindful of the variances in the legitimate security concerns of Member States;

**REAFFIRMING** our belief in our common destiny, shared values and the affirmation of the African identity, the celebration of unity in diversity and the institution of the African citizenship as expressed in the Solemn Declaration of the 50<sup>th</sup> Anniversary adopted by the 21<sup>st</sup> Ordinary Session of the Assembly of Heads of State and Government in Addis Ababa on 23<sup>rd</sup> May, 2013;

**DETERMINED** to enhance the economic development of Member States through a prosperous and integrated continent;

**MINDFUL** of the decision of the Assembly adopted in July, 2016 in Kigali, Rwanda (**Assembly/AU/ Dec.607 (XXVII)**) welcoming the launch of the African Passport and urging Member States to adopt the African Passport and to work closely with the African Union Commission to facilitate the processes towards its issuance at the citizen level based on international, continental and citizen policy provisions and continental design and specifications:

**HAVE AGREED as follows:**

## PART I – DEFINITIONS

## **Article 1**

### **DEFINITIONS**

For the purpose of this Protocol:

**“Assembly”** means the Assembly of Heads of State and Government of the African Union;

**“Commission”** means the Commission of the African Union;

**“dependant”** means a child or other person who is a national of a Member State, is required to support and maintain as defined by the laws of the host Member State;

**“Executive Council”** means the Executive Council of Ministers of the Union;

**“free movement of persons”** means the right of nationals of a Member State to enter and move freely in another Member State in accordance with the laws of the host Member State and to exit the host Member State in accordance with the laws and procedures for exiting that Member State;

**“Member State”** means a Member State of the African Union;

**“regional arrangement”** means agreements, measures or mechanisms on free movement of persons developed and implemented by regional economic communities;

**“right of entry”** means the right of a national of a Member State to enter and move freely in another Member State;

**“right of establishment”** means the right of a national to take up and pursue the economic activities specified in Article 15 (2), in the territory of another Member State;

**"right of residence"** means the right of a national of one Member State to reside and seek employment in another Member State other than their Member State of origin;

**"spouse"** means a husband or wife as defined by the laws of the host Member State;

**"territory"** means the land, airspace and waters belonging to or under the jurisdiction of a Member State;

"travel document" means a passport which complies with the International Civil Aviation Organisation standard for travel documents, or any other document identifying a person issued by or on behalf of a Member State or the Commission which is recognized by the host Member State;

**"Treaty"** means the Treaty Establishing the African Economic Community adopted in Abuja, Nigeria on 3rd June, 1991 and entered into force on 12th May, 1994;

**"Union"** means the African Union established by the Constitutive Act of the African Union;

**"vehicle"** means any means in or by which a person travels, is carried or conveyed into the territory of a Member State;

**"Visa"** means the authority granted to a national of a Member State to enter into the territory of the host Member State.

## PART II- OBJECTIVES AND PRINCIPLES OF THE PROTOCOL

### **Article 2 OBJECTIVE**



The objective of this Protocol is to facilitate the implementation of the Treaty Establishing the African Economic Community by providing for the progressive implementation of free movement of persons, right of residence and right of establishment in Africa.

### **Article 3 PRINCIPLES**

1. The free movement of persons, right of residence and right of establishment in Member States shall be guided by the principles guiding the African Union provided in article 4 of the Constitutive Act.
2. In addition to the principles in paragraph 1, the implementation of this Protocol shall be guided by:
  - (a) non-discrimination;
  - (b) respect for laws and policies on the protection of national security, public order, public health, the environment, and any other factors that would be detrimental to the host State; and
  - (c) transparency.

### **Article 4 NON- DISCRIMINATION**

1. Member States shall not discriminate against nationals of another Member State entering, residing or established in their territory, on the basis of their nationality, race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status as provided by Article 2 of the African Charter on Human and Peoples Rights.

3. It shall not be discrimination for a Member State, as a result of reciprocity or deeper integration, to give more favourable treatment to nationals of another Member State or region, in addition to the rights provided for in this Protocol.
4. A citizen of another Member State entering, residing or established in a Member State in accordance with this Protocol, shall enjoy the protection of the law of the host Member State, in accordance with the relevant national policies and laws, of the host Member State.

**Article 5**  
**PROGRESSIVE REALIZATION**

1. The free movement of persons, right of residence and right of establishment shall be achieved progressively through the following phases:
  - (a) phase one, during which Member States shall implement the right of entry and abolition of visa requirements;
  - (b) phase two, during which Member States shall implement the right of residence;
  - (c) phase three, during which Member States shall implement the right of establishment.
2. The above phases shall be implemented in accordance with the Implementation Plan annexed to this Protocol.
3. Nothing in this Protocol shall:
  - (a) affect more favourable provisions for the realisation of the free movement of persons, right of residence and right of establishment contained in national legislation, regional or continental instruments; or
  - (b) prevent the accelerated implementation of any

phase of free movement of persons, right of residence and right of establishment by a regional economic community, sub-region or Member State before the time set by this Protocol or the Assembly for the implementation of that phase.

### PART III- FREE MOVEMENT OF PERSONS

#### **Article 6 RIGHT OF ENTRY**

1. In accordance with this Protocol, nationals of a Member State shall have the right to enter, stay, move freely and exit the territory of another Member State in accordance with procedures of the host Member State.
2. Member States shall implement the right of entry by permitting nationals of Member States to enter into their territory without the requirement of a visa.
3. The right to enter the territory of a Member State shall be enjoyed in accordance with article 7.
4. A Member State permitting a national of another Member State to enter into their territory shall permit that national to move freely or stay for a maximum period of ninety (90) days or such further period determined by Member States or through bilateral or regional arrangements.
5. A national of a Member State who wishes to stay in the host Member State beyond the period provided in paragraph 4 shall seek an extension of stay in accordance with the procedures established by the host Member State.

#### **Article 7 ENTRY IN MEMBER STATE**

1. Entry into the territory of a Member State shall be permitted for a person:

- (a) entering the Member State through a designated point or official port of entry;
  - (b) with a recognized and valid travel document as defined in Article 1; and
  - (c) who is not prohibited from entering the Member State by the laws of that Member State for the protection of national security, public order or public health in the host Member State.
2. A host Member State may impose other conditions, which are not inconsistent with this Protocol, according to which a national of a Member State may be refused entry into the territory of the host Member State.

#### **Article 8**

#### **DESIGNATED OR OFFICIAL POINTS OF ENTRY AND EXIT**

1. Member States shall designate and share with other Member States information relating to their official entry and exit points or ports.
2. Member States shall in line with national or regional procedures keep the designated official entry and exit points open to facilitate the free movement of persons, subject to reciprocity and the protection measures a Member State may take.

#### **Article 9**

#### **TRAVEL DOCUMENTS**

1. Member States shall issue to their nationals valid travel documents to facilitate free movement.

2. Member States shall mutually recognise and exchange specimens of the valid travel documents issued by the Member State.
3. Member States shall cooperate in the process of identification and issuance of travel documents.

#### **Article 10 AFRICAN PASSPORT**

1. Member States shall adopt the African Passport and shall work closely with the Commission to facilitate the processes towards the issuance of the African Passport to their citizens.
2. The Commission shall provide technical support to Member States to enable them to produce and issue the African Passport to their citizens.
3. The African Passport shall be based on international, continental and national policy provisions and on a continental design and specifications.

#### **Article 11 USE OF VEHICLES**

1. Member States shall permit nationals of another Member State using vehicles to enter into their territory and move freely for a maximum period of 90 (ninety) days, upon presentation of the following valid documents to the competent authorities in the host Member State:
  - (a) a driver's license;
  - (b) evidence of ownership or registration of the vehicle;
  - (c) certificate of road worthiness;

- (d) certificate of axle load limit;
  - (e) an insurance policy in respect of the vehicle by the host Member State.
2. The use of vehicles by persons in the territory of a host Member State shall be subject to the laws of the host Member State.
  3. Member States shall establish and contribute to a continental database on registration of vehicles to facilitate the use of vehicles in the free movement of persons.

**Article 12**  
**FREE MOVEMENT OF RESIDENTS OF BORDER**  
**COMMUNITIES**

1. Member States shall through bilateral or regional agreements establish measures, to identify and facilitate the free movement of residents of border communities without compromising the security or public health of host Member States.
2. Member States shall endeavour to amicably resolve any legal, administrative, security, cultural or technical impediment likely to hamper the free movement of border communities.

**Article 13**  
**FREE MOVEMENT OF STUDENTS AND RESEARCHERS**

1. Member States shall permit nationals of another Member State who are holders of registration or pre-registration documents, to take up education or research in their territory in accordance with the policies and laws of the host Member State.
2. A host Member State shall in accordance with national or regional policies issue student permits or passes to nationals of other Member States who are admitted to pursue studies in the host Member State.

3. Member States shall develop, promote and implement programmes to facilitate exchange of students and researchers among Member States.

**Article 14**  
**FREE MOVEMENT OF WORKERS**

1. Nationals of a Member State shall have the right to seek and accept employment without discrimination in any other Member State in accordance with the laws of the host Member State.
2. A national of a Member State accepting and taking up employment in another Member State may be accompanied by a spouse and dependants.

**Article 15**  
**PERMITS OR PASSES**

1. A host Member State shall issue residence permits, work permits, or other appropriate permits or passes to nationals of other Member State seeking and taking up residence or work in the host Member State.
2. Permits and passes shall be issued in accordance with the immigration procedures applicable to persons seeking or taking up residence or work in the host Member State.
3. The procedures referred to in paragraph 2 shall include the right of a national of another Member State to appeal against a decision denying them a permit or pass.

PART IV - RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT

**Article 16**  
**RIGHT OF RESIDENCE**

1. Nationals of a Member State shall have the right of residence in the territory of any Member State in accordance with the laws of the host Member State.
2. A national of a Member State taking up residence in another Member State may be accompanied by a spouse and dependants.
3. Member States shall gradually implement favourable policies and laws on residence for nationals of other Member States.

**Article 17**  
**RIGHT OF ESTABLISHMENT**

1. Nationals of a Member State shall have the right of establishment within the territory of another Member State in accordance with the laws of the host Member State.
2. The right of establishment shall include the right to set up in the territory of the host Member State:
  - (a) a business, trade, profession, vocation or calling; or
  - (b) an economic activity as a self-employed person.

PART V - GENERAL PROVISIONS

**Article 18**  
**MUTUAL RECOGNITION OF QUALIFICATIONS**

1. Member States shall individually or through bilateral, multilateral or regional arrangements, mutually recognize academic, professional and technical qualifications of their nationals to promote the movement of persons among the Member States.
2. Member States shall establish a continental qualifications framework to encourage and promote the free movement of persons.



**Article 19**  
**PORTABILITY OF SOCIAL SECURITY BENEFITS**

Member States shall, through bilateral, regional or continental arrangements, facilitate the portability of social security benefits to nationals of another Member State residing or established in that Member State.

**Article 20**  
**MASS EXPULSION**

1. The mass expulsion of non-nationals shall be prohibited.
2. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

**Article 21**  
**EXPULSION, DEPORTATION AND REPATRIATION**

1. A national of a Member State lawfully admitted into the territory of a host Member State may only be expelled, deported or repatriated from the host Member State by virtue of a decision taken in accordance with the law in force in the host Member State.
2. A host Member State shall notify the national of a Member State and the Government of that national of the decision to expel, deport or repatriate that citizen from the territory of the host Member State.
3. The Expenses relating to:
  - (a) the expulsion or deportation shall be borne by the Member State expelling or deporting a person;
  - (b) repatriation shall be borne by the person being repatriated or by the state of origin.

4. Where entry into a territory of a Member State is refused, the person responsible for transportation, shall at the request of competent border authorities re-route the persons denied entry back to the point of embarkment, or where this is not possible, , to the Member State that issued the citizen's travel documents or any other place where the admission of the citizen will be accepted.

### **Article 22**

#### **PROTECTION OF PROPERTY ACQUIRED IN HOST MEMBER STATE**

1. A national of a Member State residing or established in the territory of another Member State, may acquire property in the host Member State in accordance with the laws, policies and procedures of the host Member State.
2. Property lawfully acquired by a national of a Member State in the host Member State, shall not be nationalised, expropriated, confiscated or acquired by the host Member State except in accordance with the law and after fair compensation being paid to that national.
3. Property lawfully acquired by a national of a Member State shall be protected by the host Member State in the event of a dispute between the Member State where the national originates and the host Member State.
4. A host Member State shall not deprive a national of another Member State who is expelled, deported or repatriated by the host Member State, of the property lawfully acquired by that national in the host Member State except in accordance with the laws of the host Member State.

### **Article 23**

#### **REMITTANCES**

Member States shall through, bilateral, regional, continental or international agreements facilitate the transfer of earnings and savings of nationals of other Member States working, residing or established in their territory.

**Article 24**  
**PROCEDURES FOR MOVEMENT OF SPECIFIC GROUPS**

1. A Member State may in addition to the measures provided for by international, regional and continental instruments, establish specific procedures for the movement of specific vulnerable groups including refugees, victims of human trafficking, asylum seekers and pastoralists.
2. Procedures established by a Member State under this article shall be consistent with the obligations of that Member State under the international, regional and continental instruments relating to the protection of each group of persons referred to in paragraph 1.

**PART VI – IMPLEMENTATION**

**Article 25**  
**COOPERATION BY MEMBER STATES**

1. Member States shall in accordance with the African Union Convention on Cross-Border Cooperation coordinate their border management systems in order to facilitate the free and orderly movement of persons.
2. Member States shall record document, and upon request make available all forms of disaggregated migration data at the ports or points of entry or exit from their territory.
3. Member States shall through bilateral or regional arrangements-cooperate with each other by exchanging information related to the free movement of persons and the implementation of this Protocol.

**Article 26**  
**COORDINATION AND HARMONISATION**

1. In accordance with article 88 of the Treaty, Member States shall harmonise and coordinate the laws, policies, systems and activities of the regional economic communities of which they are members which relate to free movement of persons with the laws, policies, systems and activities of the Union in accordance with the Implementation Plan annexed to this Protocol.
2. Member States shall harmonise their national policies, laws and systems with this Protocol in accordance with the Implementation Plan annexed to this Protocol.

**Article 27**  
**ROLE OF MEMBER STATES**

1. Member States shall be responsible for implementing this Protocol.
2. Member States shall adopt necessary legislative and administrative measures to implement and give effect to this Protocol.
3. Member States shall review all laws, policies, agreements and immigration procedures and other procedures to ensure compliance with this Protocol.

**ARTICLE 28**  
**ROLE OF REGIONAL ECONOMIC COMMUNITIES**

1. Regional economic communities shall be the focal points for promoting, monitoring and evaluating implementation of this Protocol and reporting the progress towards free movement of persons in their respective regions.

2. Each regional economic community shall submit periodic reports to the Commission on the status and progress of implementation of this Protocol within their respective region.
3. Regional economic communities shall harmonise their Protocols, policies and procedures on free movement of persons with this Protocol.

**Article 29**  
**ROLE OF THE COMMISSION**

1. The Commission shall monitor and evaluate the implementation of this Protocol by the Member States and shall through the relevant Specialised Technical Committees submit periodic reports to the Executive Council on the status of implementation.
2. The Commission shall in collaboration with Member States develop and apply a continental monitoring and coordinating mechanism for assessing the status of implementing this Protocol.
3. The monitoring and coordinating mechanism shall include the collection and analysis of data nationally and regionally in order to assess the state of the free movement of persons.

**Article 30**  
**REMEDIES**

1. Member States shall provide appropriate administrative and judicial remedies in their national laws for persons affected by decisions of a Member State relating to the implementation of this Protocol.

2. A person who is denied the enjoyment of the right of entry, residence, establishment or other related right provided in this Protocol, having exhausted all legal remedies in the host Member State, may refer the matter to the African Commission on Human and Peoples Rights.

## PART VII- FINAL PROVISIONS

### **Article 31 SETTLEMENT OF DISPUTES**

1. Any dispute regarding the interpretation or the application of the provisions of this Protocol shall be amicably settled through direct engagement by the parties to the dispute.
2. If the parties concerned fail to settle a dispute, either party may, within a period of twelve (12) months, refer the matter to the African Court of Justice and Human Rights.
3. The African Court of Justice and Human Rights shall be seized with matters of interpretation arising from the application or implementation of this Protocol.

### **(Article 32**

### **SIGNATURE, RATIFICATION AND ACCESSION**

1. This Protocol shall be open for signature, ratification or accession by the Member States of the Union in accordance with their respective constitutional procedures.
2. The instruments of ratification shall be deposited with the Chairperson of the Commission.)

### **(Article 33**

### **ENTRY INTO FORCE**

1. This Protocol shall enter into force on the date of adoption by the Assembly.

OR

This Protocol shall enter into force thirty (30) days after the date of the receipt by the Chairperson of the Commission of the fifteenth (15th) instrument of ratification.

2. The Chairperson of the Commission shall inform all Members States of the Union of the entry into force of this Protocol.)

#### **Article 34 AMENDMENT AND REVISION**

1. This Protocol may be amended or revised by the Assembly by consensus or failing which, by a two-thirds majority of the Member States of the Union.
2. Any Member State may submit proposals for the amendment or revision of this Protocol to the Chairperson of the Commission.
3. The Chairperson of the Commission shall within thirty (30) days after receipt of a proposal, transmit the proposal to all Member States.
4. The Assembly shall, upon the advice of the Executive Council, examine the proposals for amendment or revision within one year from the transmission of the proposals to Member States.
5. (The amendment or revision shall come into force thirty (30) days after adoption by the Assembly.)

OR

(The amendment or revision shall come into force thirty (30) days after the submission of the fifteenth (15th) instrument of ratification.)

#### **Article 35 DEPOSITORY**

This Protocol shall be deposited with the President of the Commission, who shall transmit a certified copy of the Protocol to each Member State.

ADOPTED BY THE ..... EXTRA/ORDINARY SESSION OF THE  
ASSEMBLY, HELD IN .....

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