

# **DRAFT PROTOCOL ON THE FACILITATION OF MOVEMENT OF PERSONS IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)**

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## **PREAMBLE**

**WE**, the Heads of State or Government of the Southern African Development Community (SADC):

**MINDFUL** of the Preamble to the Treaty Establishing SADC and especially the provisions with regard to our duty to promote the inter-dependence and integration of our national economies for the harmonious, balanced and equitable development of the Region, as well as the need to involve the people of the Region centrally in the process of development and integration;

**RECOGNIZING** that full popular participation in the process of building the Region into a Community is only possible where the citizens of the Community enjoy freedom of movement of persons, namely visa-free entry, residence and establishment in the territories of Member States;

**CONSCIOUS** of the necessity to adopt a flexible approach in order to accommodate disparities in the levels of economic development among Member States and the need to redress imbalances in large scale population movements within the Community;

**DETERMINED** to fulfil our objectives articulated in Article 5 of the Treaty;

**EAGER** to support, assist and promote the efforts of the Organization of African Unity which is encouraging free movement of persons in African Regional Economic Communities as a stepping stone towards free movement of persons in an eventual African Economic Community;

**PURSUANT** to Article 5.2(d) of the Treaty which requires SADC to develop policies aimed at 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;

**IN TERMS** of Article 10.3 of the Treaty which authorizes the Summit to adopt legal instruments for the implementation of the provisions of the Treaty;

**HEREBY AGREE** as follows:

**CHAPTER I**  
**INTERPRETATION**

**ARTICLE 1**

**Definitions**

In this Protocol, unless the context otherwise requires:

**"Citizen"** means a person who is regarded as a citizen under the laws of any Member State;

**"Committee of Ministers"** means the Committee of Ministers on the Facilitation of the Movement of Persons established under Article 39;

**"Community"** means the organization for economic integration established by Article 2 of the Treaty;

**"Council"** means the Council of Ministers of SADC established by Article 9 of the Treaty;

**"Establishment"** has the meaning ascribed to it under Article 20;

**"External border"** means any land or sea border or any airport or sea port of a Member State which is not an internal border;

**"Host State"** means the Member State of residence or establishment;

**"Internal border"** means any common land border between any two Member States, or any airport used for flights within the Region, or sea port used for trans-shipment connections exclusively within the Region;

**"Member State"** means a state which is a Member of SADC;

**"Region"** means the geographical area of all Member States;

**"Residence"** has the meaning ascribed to it under Article 16;

**"SADC"** means the Southern African Development Community established by Article 2 of the Treaty;

**"Summit"** means the Summit of Heads of State or Government of SADC established by Article 9 of the Treaty;

**"Third State"** means any State other than a Member State;

**"Travel document"** means a valid passport or other document used to identify a traveller which contains personal particulars and a clear photograph of the holder, issued by or on behalf of the government of a Member State of which the holder is a citizen and on which endorsements may be made by immigration authorities and shall include a laissez-passer or border pass approved by the Council.

**"Treaty"** means the Treaty Establishing SADC.

**"Tribunal"** means the Tribunal established under Article 9 of the Treaty.

## **CHAPTER II**

### **OBJECTIVES OF THE PROTOCOL**

#### **ARTICLE 2**

##### **Immediate Objective**

The immediate objective of this Protocol in relation to every citizen of a Member State is 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;
- b) residence in the territory of another Member State; and
- c) establishment of oneself and working in the territory of another Member State.

#### **ARTICLE 3**

##### **Ultimate Objective**

The ultimate objective of this Protocol is to develop policies aimed at the progressive elimination of obstacles to the movement of persons of the Region generally into and within the territories of Member States.

#### **ARTICLE 4**

##### **Implementation of Objectives**

The implementation of the objectives in Articles 2 and 3 of this Chapter shall be achieved over a period not exceeding three years and twenty years respectively from the date of entry into force of this Protocol.

## **CHAPTER III**

### **PRINCIPLES OF THE PROTOCOL**

#### **ARTICLE 5**

##### **Phases**

Entry, residence and establishment under this Protocol shall be regarded as phases in the process of building the Community and the implementation of the phases shall be concurrent.

#### **ARTICLE 6**

##### **Different Rates of Implementation**

Member States shall, subject to Article 4, take all steps possible to act together as a Community in implementing the different phases of this Protocol provided, however, that any Member State may progress at a rate which is faster than that achieved by any other Member State.

#### **ARTICLE 7**

##### **Harmonization of State Laws**

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

#### **ARTICLE 8**

##### **Temporary Suspension of Protocol**

Member States hereby agree that where an emergency occurs in a Member State, by reason of a breakdown of or serious threat to national security, public order or public health, such Member State may, by written notice to the Council, inform all the other Member States of its temporary suspension of the implementation of this Protocol for the duration of such emergency. The Member State concerned shall also furnish to the Chairman of the Council, not later than once every two months, enough information regarding the emergency to enable the Council to review the necessity of such temporary suspension.

#### **ARTICLE 9**

##### **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.

## **CHAPTER IV**

### **GENERAL UNDERTAKINGS**

#### **ARTICLE 10**

##### **Cooperation and Mutual Assistance**

1. Every Member State undertakes to cooperate with and assist the other Member States to facilitate the movement of persons in the Community as a vehicle for achieving economic integration.
2. Member States agree to increase cooperation and mutual assistance, to the extent that this is necessary to promote the objectives set out in Article 2, in the following fields, among others:
  - a) formulating policies on the movement of persons in the Region;
  - b) improving the mechanisms for enhancing cooperation in safeguarding national and regional security by exchanging information among relevant authorities especially on crime, security and intelligence;
  - c) training and educating competent authorities regionally and nationally on the new ethos of the movement of persons;
  - d) providing sufficient and adequately equipped border posts; and
  - e) preventing illegal movement of persons into and within the Region.

#### **ARTICLE 11**

##### **Travel Facilities**

1. 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.
2. Member States undertake to introduce:
  - a) machine readable passports as soon as possible; and
  - b) technologically sensitive passports and other related facilities as circumstances allow.

#### **ARTICLE 12**

##### **General**

In accordance with their constitutional requirements and in terms of this Protocol, Member States shall endeavor to promote legislative, judicial, administrative and other measures necessary for cooperation in the implementation and effective achievement of the objectives of this Protocol.

## **CHAPTER V**

### **SHORT-TERM MEASURES**

#### **ARTICLE 13**

##### **Harmonization of Current Immigration Practices**

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

- a) harmonization of 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) standardization of migration forms used by travelling citizens of Member States and issuance of simple and uniform migration forms for use by citizens of Third States who wish to enter or exit the territory of any Member States;
- c) establishment of a separate SADC DESK at each major border crossing post;
- d) by way of bilateral agreements, establishment of a 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 between the Member States concerned, 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) abolition of 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) cooperation with and assistance to the SADC Secretariat or any such designated body of SADC and other Member States in the provision of such training for senior immigration, customs, police and security officials as may be necessary to facilitate the movement of persons within SADC.

## **CHAPTER VI**

### **IMPLEMENTATION OF FIRST PHASE: VISA-FREE ENTRY**

#### **ARTICLE 14**

##### **Entry of Persons**

1. Member States agree to ensure that within a period of three years from the entry into force of this Protocol, a citizen of a Member State who wishes to enter the territory of another Member State as a visitor shall be admitted without the requirement of a visa.

2. Visa-free admission in terms of Paragraph I shall be on condition that:

a) the visit is for a period not exceeding three months at a time, but without prejudice to the visitors right to apply for the extension of such period if a longer stay is, to the satisfaction of the host State, deemed necessary;

b) the visitor possesses a travel document;

c) the visitor has or produces evidence of sufficient means of support for the duration of the visit;

d) the visitor is not a prohibited person under the laws of the host State; and

e) entry is sought through an official border post.

3. A Member State may enter into bilateral agreements with other Member States regarding the reciprocal handling of travellers without travel documents arriving at ports of entry, and regarding procedures where citizens of a Member State need to be admitted into the territory of another Member State in situations of personal emergency.

4. The termination of any bilateral agreements entered into in accordance with Paragraph 3 will remain the prerogative of Member States.

#### **ARTICLE 15**

##### **Exemption from Article 14**

1. A Member State may, by notice in writing and for good reason, request the Summit for an exemption from implementing Article 14.

2. An exemption obtained under this Article shall only allow the Member State to which it relates to impose on a citizen of another Member State the requirement of any entry visa on condition that:

a) any such citizen who requires a visa will be able to apply for one at the entry border post;

b) no fee shall be chargeable for such visa; and

c) each exemption shall be valid for a period not longer than twelve months.

3. A Member State may be granted by the Summit an extension of the exemption granted in terms of this Article for such further period as the Summit may determine.

4. All the conditions under Paragraph 2 of Article 14 shall apply to entry under this Article.

## **CHAPTER VII**

### **IMPLEMENTATION OF THE SECOND PHASE: RESIDENCE**

#### **ARTICLE 16**

##### **Meaning of Residence**

Residence shall mean permission or authority, in accordance with the legislative and administrative provisions of the Member State concerned to reside in its territory for any of the following purposes:

- a) recreation, business or medical treatment;
- b) taking up employment;
- c) education or other training; or
- d) other authorized pursuits.

#### **ARTICLE 17**

##### **Granting of Residence Permit**

Member States agree to ensure that within a period of three years from the entry into force of this Protocol:

- a) every Member State shall, in terms of its national laws, review and, where necessary, relax the criteria for granting residence permits to citizens of other Member States in its territory; and
- b) their laws and regulations governing the granting of residence permits are harmonized.

#### **ARTICLE 18**

##### **Residence Permits**

1. Permission to reside in the territory of another Member State shall be sought through an application for a residence permit.
2. An application for a residence permit shall be made by the applicant to the appropriate authorities of the relevant Member State in accordance with the laws of that Member State.
3. Each Member State whose authorities are handling an application for a residence permit shall ensure that the processing of such application is not delayed.
4. A residence permit issued pursuant to this Protocol shall be for an initial period not exceeding three years.

5. A residence permit may be renewed in accordance with the national laws of the Member State concerned.

## **ARTICLE 19**

### **Employment Permits**

Nothing in this Protocol shall be construed as preventing the issuance by any Member State of employment or work permits in terms of either a SADC employment and labour protocol or national labour laws.

## **CHAPTER VIII**

### **IMPLEMENTATION OF THE THIRD PHASE: ESTABLISHMENT**

#### **ARTICLE 20**

##### **Meaning of Establishment**

Establishment shall mean permission or authority for:

- a) access to economic activities as self-employed persons;
- b) establishing and managing a profession, trade or business;
- c) practicing one's profession, trade, business or calling and providing the services related thereto;
- d) subject to Article 22, participating in all human activities as citizens of the host State.

#### **ARTICLE 21**

##### **Granting of Establishment**

Each Member State shall, in terms of its national laws and within a period of five years from the entry into force of this Protocol, eliminate all obstacles to the granting of the freedom of establishment to citizens of other Member States resident in its territory.

## **CHAPTER IX**

### **GENERAL PRINCIPLES RELATING TO RESIDENCE AND ESTABLISHMENT IN ANOTHER MEMBER STATE**

#### **ARTICLE 22**

##### **Equal Treatment with Citizens**

A citizen of a Member State who acquires residence or establishment in the territory of another Member State shall, to the extent possible, enjoy those freedoms and privileges enjoyed by citizens of that other Member State as may be embodied in annexures to this Protocol which may be adopted by the Summit.

#### **ARTICLE 23**

##### **Protection of Existing Rights**

The provisions of this Protocol shall not operate to the prejudice of the enjoyment by any citizen of a Member State of the right of residence or establishment acquired in another Member State before the entry into force of this Protocol.

## **CHAPTER X**

### **REMOVAL AND PROTECTION OF RIGHTS OF AFFECTED PERSONS**

#### **ARTICLE 24**

##### **Reasons for Removal**

No person who is a citizen of a Member State, or any member of the immediate family of such person, who has been permitted residence or establishment in the territory of another Member State, may be removed from the host State except where:

- a) reasons of national security of the host State so dictate;
- b) an important essential condition of the issue or validity of such person's residence or establishment permit has ceased to exist or cannot be fulfilled or complied with any longer; or
- c) the person refuses to comply with a lawful order of an appropriate public health authority issued for the protection of public health in circumstances where the consequences of such refusal have been explained.

#### **ARTICLE 25**

##### **Protection Against Removal of Individuals**

1. An order for the removal of a citizen of a Member State or any member of the immediate family of such citizen from the territory of another Member State shall only be valid if the reasons thereof comply with this Protocol and the procedures for its implementation are fully in accordance with the laws and regulations of the host State.
2. The diplomatic or consular authorities of the Member State of which the affected person is a citizen shall be informed by the host State of the decision to repatriate or expel and the affected person shall be afforded an opportunity to consult with the said diplomatic or consular authorities.

#### **ARTICLE 26**

##### **Protection Against Mass Removal**

1. Persons who have acquired residence or establishment in the territory of a Member State and members of their immediate families may not be subjected to collective or group removal.
2. For the avoidance of doubt, each case of removal from the territory of a Member State shall be considered and determined on its own merits.

#### **ARTICLE 27**

##### **Principles Governing Removal**

Every Member State shall ensure that its laws, regulations or administrative mechanisms for the removal of non-citizens shall, in relation to citizens of another Member State, incorporate the following principles:

- a) the giving of adequate notice of removal;
- b) the affording to the affected persons of the opportunity to have recourse to the appropriate domestic courts or tribunals of the host State;
- c) the suspension of any order of removal upon the notice of an appeal;
- d) the giving of reasonable time to affected persons to enable them to settle their personal affairs including the management and disposal of their business or professional practices;
- e) the removal of any person may not affect the residence or establishment permit of any legally independent member of that person's family; or
- f) where removal results in the repatriation of the affected person, the costs or other expenses involved in the removal may be shared between member State ordering the removal and the receiving Member State as may be agreed.

## **CHAPTER XI**

### **IMPLEMENTATION OF THE FOURTH PHASE: CONTROLS ONLY AT EXTERNAL BORDERS**

#### **ARTICLE 28**

##### **Minimisation of Controls at Internal Borders**

1. Within a period of ten years, from the coming into force of this Chapter, all Member States shall take steps progressively to minimize controls on the movement of citizens of the Member States within the Community.
2. 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.
3. The minimisation of checks on citizens of the Member States shall not affect any rights or obligations of persons who are citizens of Third States.
4. Notwithstanding the provisions of this Article, each Member State shall be free throughout its 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.

#### **ARTICLE 29**

##### **Suspension of Article 28**

1. A Member State may, in the interests of its public order, public health or national security suspend for a period not exceeding three months the application of Article 28 in relation to its territory and require the carrying out of checks which are appropriate to the situation on citizens of other Member States crossing its internal borders.
2. A Member State which decides to act in terms of this Article shall, by written notice to the Council, inform all Member States of such suspension.
3. A Member State which wishes to suspend Article 28 for longer than three months shall furnish to the Council, not later than every two months, enough information regarding the reasons for such suspension to enable the Council to review the necessity thereof.

#### **ARTICLE 30**

##### **Transfer of Controls to External Borders**

1. Any person who wishes to cross an external border shall do so only at a border crossing post during the appropriate opening hours.
2. A Member State may admit into its territory a citizen of a Third State who wishes to enter the Region on a visit if the visitor:

- a) possesses a travel document;
- b) where so required, holds a valid entry visa;
- c) has proof of sufficient means for self-sustenance for the duration of the visit and for the return journey;
- d) declares a lawful purpose for the visit;
- e) has not been reported as a prohibited person in any of the Member States;
- f) is not considered by any Member State to be a threat to its national security, public order or international relations or of the Community; and
- g) otherwise complies with the immigration laws of the Member State.

## **ARTICLE 31**

### **Power to Make Rules for External Borders**

1. Member States shall, under this Protocol, make rules and regulations to provide the detailed arrangements governing cross-border movement at external borders which shall be uniformly applied by Member States.
2. Rules and regulations made under this Article shall cover all matters including:
  - a) the competent authorities and personnel;
  - b) verification of travel documents;
  - c) measures to prevent or counter threats to public order or national security; and
  - d) machinery and equipment or other forms of cooperation or exchange of information.

## **ARTICLE 32**

### **Treatment of Goods**

The treatment of goods accompanying a person who enters the Community from a Third State will be regulated under such agreement on trade facilitation as may be entered into between SADC and such Third States.

## **ARTICLE 33**

### **Complementary Measures**

In order to assist the enforcement of the provisions of this Chapter, Member States shall put in place such immigration, police or other security cooperation arrangements as may be necessary from time to time to monitor and ensure that only genuine travellers from Third States are admitted into the Region.

## **ARTICLE 34**

### **Entry into Force of Chapter XI**

Chapter XI shall come into force on a date to be determined by the Summit.

## **CHAPTER XII**

### **ASYLUM SEEKERS AND REFUGEES**

#### **ARTICLE 35**

##### **International Obligations**

Member States hereby reaffirm their commitment to their obligations under international agreements to which they are parties, and which relate to refugees.

#### **ARTICLE 36**

##### **Regional Cooperation on Issues Relating to Refugees**

1. Member States shall foster a common understanding towards, and strive to find durable solutions for, issues relating to refugees based on an interdisciplinary approach that takes into account, inter alia, humanitarian, economic, social, human rights and environmental aspects which constitute the root causes of refugee situations and other involuntary population movements.

2. Member States shall establish a Regional Committee on Refugees which will be charged with promoting:

a) a standing coordinating mechanism for the region to deal with issues relating to the prevention, early warning and conflict resolution of situations likely to produce refugees or other massive involuntary movement of persons;

b) the harmonization of policies, legislation, procedures and assistance pertaining to refugees;

c) without prejudice to the confidentiality and privilege of information on refugees, the establishment of a regional database containing information on refugee movements, with the sole aim of facilitating the determination of which Member State is responsible for assessing an asylum claim;

d) the building of an awareness within the general public and the media on human rights and the plight of asylum seekers and refugees; and

e) national and regional capacity building through Government, United Nations and Non-Governmental Organizations, including the training and mobilization of human resources to implement internationally accepted principles and standards relating to the treatment of asylum seekers and refugees.

3. In order that the regional committee on refugees may make reports to the competent organs of the Community, Member States undertake to provide the committee, in the appropriate form, with information and statistical data requested concerning:

a) the condition of refugees;

b) the implementation of relevant refugee conventions and regional arrangements; and

c) laws, regulations and rules which may, from time to time, be in force relating to refugees.

## **ARTICLE 37**

### **Cooperation with International Organizations**

Member States reaffirm their commitment to cooperate with the office of the United Nations High Commissioner for Refugees, the International Organization for Migration and other international organizations.

## **CHAPTER XIII**

### **INSTITUTIONAL STRUCTURE**

#### **ARTICLE 38**

##### **Institutions**

The institutions for the implementation of this Protocol shall, in addition to those established by Article 9 of the Treaty, be:

- a) the Committee of Ministers on the Facilitation of the Movement of Persons;
- b) the Regional Committee on Refugees established under Article 36; and
- c) any other committee established by Council.

#### **ARTICLE 39**

##### **Committee of Ministers on the Facilitation of the Movement of Persons**

1. Council shall establish a Committee of Ministers on the Facilitation of the Movement of Persons whose principal purposes shall be to monitor the implementation of the provisions of this Protocol, take appropriate action and make such recommendations to the Council as may be necessary.
2. The Committee of Ministers shall be composed of the Minister responsible for immigration in each Member State.
3. The Committee of Ministers shall establish such sub-committees as may be necessary.
4. The Committee of Ministers shall have the following main functions:

##### **a) Information**

To gather information on how the Protocol is working and how similar protocols in the world are being implemented and increase public awareness of this Protocol;

##### **b) Training**

To organize regional training programmes for persons inside and outside Government who are closely involved in the implementation of the Protocol and to assist similar efforts at the national level in each Member State;

##### **c) Research and Development**

To be the main vehicle for conducting world-wide research on the movement of persons and utilizing the results of such research to assist the development and the achievement of the objectives of this Protocol;

**d) Advice**

To render advice to Member States, whether on request or on its own initiative, on matters germane to the implementation of this Protocol; and

**e) Recommendations**

To monitor all aspects of the implementation of this Protocol and make recommendations to the Council.

## **CHAPTER XIV**

### **SETTLEMENT OF DISPUTES**

#### **ARTICLE 40**

##### **General Principles**

1. Any dispute which may arise regarding the interpretation of this Protocol shall ordinarily be resolved through negotiated agreement by the Council or, failing which, the Summit.
2. Any party to a dispute which cannot be resolved by agreement may refer such a dispute to the Tribunal whose decision on the matter shall be final and binding.
3. The powers and procedures of the Tribunal shall be those set out in an appropriate protocol of the Community.

## **CHAPTER XV**

### **GENERAL PROVISIONS**

#### **ARTICLE 41**

##### **Relationship with other African Regional Economic Communities**

1. Member States shall take all steps necessary to ensure the cooperation, coordination and harmonization of the activities of SADC and those of the regional economic communities envisaged by Article 28 of the Treaty Establishing the African Economic Community.
2. This Protocol shall be implemented in such a manner as to promote the eventual establishment of a protocol on the free movement of persons on the African continent.

#### **ARTICLE 42**

##### **Amendment of Protocol**

1. Any Member State may submit to the Secretariat of the Community written proposals for the amendment or review of this Protocol.
2. The Secretariat shall communicate any such proposal to the Committee of Ministers and to each Member State within thirty days of receiving the proposal.
3. After a period of at least three months has elapsed following the notification to Member States of a proposed amendment, the same shall be submitted, with any comments thereon by then received, to the Council for consideration.
4. Council shall make appropriate recommendations on any proposed amendment to the Summit and the amendment shall be adopted by a decision of three quarters of all the members of the Summit.

#### **ARTICLE 43**

##### **Annexures and Regulations**

1. Summit may, from time to time, adopt annexures for the purposes of Article 22.
2. Council may make regulations either as specifically authorized under any Article hereto or generally for the better carrying into effect of the provisions of this Protocol.

#### **ARTICLE 44**

##### **Signature**

This Protocol shall be signed by duly authorized representatives of Member States.

#### **ARTICLE 45**

## **Ratification**

This Protocol shall be ratified by the signatory States in accordance with their constitutional procedures.

## **ARTICLE 46**

### **Entry into Force**

1. This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by two thirds of the Member States.
2. Upon its entry into force, this Protocol shall form an integral part of the Treaty.

## **ARTICLE 47**

### **Accession**

This Protocol shall remain open for accession by any Member State subject to Article 8 of the Treaty.

## **ARTICLE 48**

### **Depositary**

The original texts of this Protocol and all instruments of its ratification or accession shall be deposited with the Executive Secretary of SADC who shall transmit certified true copies thereof to all Member States giving notice of the date of each instrument of ratification or accession.