

ORGANIZATION OF
AFRICAN UNITY

ORGANIZAÇÃO DA
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ORGANISATION DE
L'UNITE AFRICAINE

منظمة الوحدة الافريقية

Addis Ababa - Ethiopia - Box 3243 Tel. 517700 Telcx 21046 Fax (2511) 513036

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AFRICAN ECONOMIC COMMUNITY

PROTOCOL

ON

FREE MOVEMENT OF PERSONS,
RIGHTS OF RESIDENCE
AND
RIGHT OF ESTABLISHMENT

**PROTOCOL ON THE FREE MOVEMENT OF PERSONS,
RIGHTS OF RESIDENCE AND ESTABLISHMENT WITHIN
THE AFRICAN ECONOMIC COMMUNITY**

PREAMBLE

THE HIGH CONTRACTING PARTIES

CONVINCED of the need to give practical expression to the Pan-Africanist vision that an African from any African Member State should not be considered an alien in another African Member State;

CONSIDERING Sub-paragraph 2 of Article 43 of the Treaty Establishing the African Economic Community, whereby Member States have agreed to conclude a Protocol on the Free Movement of Persons, Rights of Residence and Right of Establishment;

CONSIDERING that the implementation by all Member States of the provisions on free movement of persons, goods, services and capital, as complemented by the right of residence and the right of establishment, and contained in the Treaty Establishing the African Economic Community and this Protocol, shall collectively constitute the cornerstone for building the African Economic Community, and for facilitating the harmonious development of all economic, social and cultural activities within the Community, for the well-being of its peoples;

RECALLING that in Article 5 of the Treaty Establishing the African Economic Community, Member States undertake to create favourable conditions for the development of the Community and the attainment of its objectives; and that by virtue of Article 4 of the Treaty Establishing the African Economic Community, one of the said objectives is specified as the gradual removal, among Member States, of obstacles to the free movement of persons, goods, services and capital and the rights of residence and establishment;

MINDFUL also that, to achieve progressively, as required, the free movement of persons, and to ensure the enjoyment of the right of residence and the right of establishment by their citizens within the Community, Member States are enjoined by sub-paragraph 1 of Article 43 of the Treaty Establishing the African Economic Community to adopt individually, at bilateral or regional levels, the necessary measures;

CONSIDERING that Member States, as enjoined by Article 5 of the Treaty Establishing the African Economic Community to refrain from any unilateral action that may hinder the attainment of the objectives of the Community, should ensure strict respect for the principle of the observance of the legal system of the Community (as contained in Article 3 of the Treaty), of which the legal systems of Member States and the Court of Justice as constituted under Article 18 of the said Treaty are integral parts; due regard being however had for the right of Member States to lay down certain defined exceptions and safeguards;

CONSIDERING also that one of the principles affirmed and adhered to by Member States in Article 3 of the Treaty Establishing the African Economic Community is the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and People's Rights

HEREBY AGREES AS FOLLOWS:

PART I

CHAPTER I: DEFINITIONS

ARTICLE I

In this Protocol:

- (a) "Treaty" means the Treaty Establishing the African Economic Community;
- (b) "Assembly" means the Assembly of Heads of State and Government of the OAU as provided for in Articles 7 and 8 of the Treaty;
- (c) "Council" means the Council of Ministers of the OAU as provided for in Articles 7 and 11 of the Treaty;
- (d) "Community" means the African Economic Community;
- (e) "Court of Justice" means the Court of Justice of the Community constituted under Articles 7 and 18 of the Treaty;

- (f) **"Member State"** means a Member State of the African Economic Community;
- (g) **"Third State"** means any State other than a Member State;
- (h) **"Host Member State"** means the Member State in which a migrant resides;
- (i) **"Member State of Origin"** means the Member State of origin of a migrant;
- (j) **"Secretariat"** means the General Secretariat of the OAU as provided for in Articles 7 and 21 of this Treaty;
- (k) **"Secretary-General"** means the Secretary-General of the OAU as provided for in Article 23 of this Treaty;
- (l) **"Person"** means a natural or legal person;
- (m) **"Community citizen"** means a citizen of any Member State;
- (n) **"A Valid Travel Document"** means a passport or any other valid travel document establishing the identity of the holder, issued by or on behalf of the Member State of which he is a citizen and on which endorsement by immigration and emigration authorities may be made, or a similar document issued by the Secretariat of the Community.

A valid travel document shall also include a laissez-passer issued by the Community to its officials establishing the identity of the holder;
- (o) **"Right of Residence"** means the right granted to a citizen of a Member State to reside in a Member State other than his State of origin and which issues him with a residence permit that enables him to hold employment or otherwise;
- (p) **"Residence Permit"** means a document issued by the competent authorities of a Member State granting the right of residence in the territory of the said Member State;
- (q) **"Resident"** means any citizen of a Member State to whom is granted the right of residence;
- (r) **"Migrant"** means any citizen of a Member State who has travelled from his country of origin to the territory of another Member State of which he is not a citizen and who seeks to hold, proposes to hold, is holding or has held employment.

The term "migrant" or "migrant worker" excludes:

- (i) persons on official posting who are employed by international organizations and persons employed by another Member State whose entry into the host Member State and conditions of service are governed by general international law or by specific International Agreements or Conventions;
 - (ii) persons on official posting who are employed by another State for the implementation of Cooperation Programmes for development agreed on with the host country, the entry into the country and conditions of service of such persons being established by specific International Agreements or Conventions;
 - (iii) persons whose working relations with an employer in the host Member State have not been established;
 - (iv) persons whose main income does not derive from the host Member State;
 - (v) persons who in their capacity as investors, become residents in a country other than their state of origin or who, since their arrival in that country, have been carrying out economic activity as an employer.
- (s) "Illegal immigrant" means any immigrant citizen of the Community who does not fulfil the conditions stipulated in this Protocol or any other protocol of the Community relating to the free movement of persons, the right of residence and the right of establishment;
- (t) "Competent Administrations" means the national administration of Member States responsible for matters relating to the free movement of persons, services and capital, or Community administrations responsible for issuing Community travel documents;
- (u) "Fundamental Rights" includes the fundamental human rights of an individual recognized by the International Declaration of Human Rights adopted on 10 December 1948 by the United Nations General Assembly; those contained in the African Charter on Human and People's Rights which came into force on 21 October 1986; and the rights granted to a migrant worker by this Protocol and the Conventions of the International Labour Organization on the protection of the rights of the migrant;

- (v) **"Border area workers"** means migrant workers who, while in employment in a Member State, maintain their normal residence in a neighbouring Member State, which is their country of origin and to which they return each day or at least once a week;
- (w) **"Seasonal workers"** means migrant workers in employment or practicing a business on their own account in a Member State of which they are not citizens, the activity being by its nature dependent on Seasonal conditions and capable of being practiced only during a part of the year;
- (x) **"Itinerant workers"** means migrant workers normally residing in a Member State, who may be required by their activities to travel to another Member State for a short period;
- (y) **"Right of Establishment"** means the right granted to a citizen of a Member State to establish himself in another Member State other than his State of Origin, and to have access to economic activities, including unsalaried liberal or craft work to carry out these activities; as well as to establish and manage enterprises, and in particular companies, under conditions defined by the legislation of the host Member State for its own nationals and the right to provide services for a fee and practice his profession;
- (z) **"Companies"** means any company, including cooperative societies or any other legal entity governed by public or company law, with the exception of companies or societies which have no profit motive.

CHAPTER II: GENERAL PROVISIONS ON FREE MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND ESTABLISHMENT

ARTICLE 2

1. Citizens of the Community shall have the right to freely enter, reside and establish themselves in the territory of Member States, and to leave at any time as provided in this Protocol.

2. The respective rights of entry, residence and establishment referred to in paragraph 1 above shall be progressively established in phases in the course of a maximum transitional period of fifteen (15) years from the definitive entry into force of this Protocol by the abolition of all obstacles to and restrictions on the free movement of persons, goods and services; on the right of residence; and on the right of establishment within the Community.

CHAPTER III: IMPLEMENTATION OF PHASES

ARTICLE 3

The rights of entry, residence and establishment which shall be established, in the course of the said transitional period shall be implemented concurrently as follows:

1. (a) With a view to first focusing on the strengthening of the regional economic communities, there shall be established with immediate effect in every Member State of each regional economic community, the principle that a citizen of a Member State of any regional economic community has the right to enter another Member State of the same regional economic community without the requirement of a visa. There shall also be established in each regional economic community, within a period of five (5) years, the principle that a citizen of a Member State of any regional economic community on entering another Member State of the same regional economic community has the right to stay for a minimum period of ninety (90) days with the requirement of obtaining permission to stay beyond the ninety (90) days as well as the right to reside there and establish himself;
- (b) With particular regard to the principle of free movement, Member States of the various regional economic communities shall agree on a minimum period of ninety (90) days, without the requirement of permission to stay, on the expiration of which the citizens of the Member States concerned will be required to obtain permission for an extension of stay from the appropriate authority;
- (c) Agreements between Member States on the free movement of persons, the right of residence and the right of establishment shall apply, only to the extent of their compatibility with this Protocol;

- (d) The preceding sub-paragraph notwithstanding, agreements between Member States providing for a maximum period of more than ninety (90) days without the requirement of permission to stay shall not be affected;
- (e) In the implementation of the provisions of this Protocol, nothing shall prevent any Member State from unilaterally increasing such maximum period;
- (f) Any Member State in the period immediately after the coming into force of this Protocol, which refrains for good reason as provided for in this Protocol from implementing the said minimum period of ninety (90) days, shall nonetheless implement a maximum period of shorter duration. Such a Member State shall ensure that it subsequently implements the standard minimum period of ninety (90) days without the requirement of permission to stay within a period not exceeding five (5) years as specified in paragraph (a) above.
- (g) With particular regard to the right of residence and the right of establishment, each Member State shall ensure that within the said period not exceeding five (5) years, it shall commence, with respect to citizens of other Member States of the regional economic community to which it belongs, the application of the right of residence and the right of establishment.

With regard to the right of residence, Member States shall inter alia commence the elimination of administrative procedures and practices which derive either from national legislation or from previous agreements between Member States, the maintenance of which would hamper the free movement of migrant workers or would entail for them conditions different from those applicable to its own nationals as regards employment, remuneration and other working conditions.

With regard to the right of establishment Member States shall inter alia commence the repeal or amendment of existing legislation which among other things reserve certain sectors of the economy and categories of enterprise to nationals, which accord financial and non-financial incentives and differential tax treatment to nationals.

2. Within a period not exceeding five (5) years, Member States within each regional economic community shall ensure the coordination and harmonization of their respective policies in the context of the progressive application of the right of entry, the right of residence and the right of establishment.

3. With particular respect to the right of entry and the right of establishment, Member States in each regional economic community shall, in order to facilitate the implementation of the said rights, collaborate on the harmonization of tariff and non-tariff barriers, to be followed by a time-table for the complete removal of tariff and non-tariff barriers within each regional economic community.

- (a) Within the said period of five (5) years, Member States within each regional economic community, shall complete the final phase of consolidating, coordinating and harmonizing vis-a-vis each other, their respective national policies on the rights of entry, residence and establishment, with a view in particular to achieving the coordination and harmonization of the social and commercial laws within each regional economic community.
- (b) With particular regard to the right of residence and the right of establishment, Member States of each regional community, with a view to facilitating the implementation of these rights, shall completely remove all forms of discrimination existing between their own citizens and the citizens of Member States of the same regional economic community to which they belong.
- (c) To facilitate in particular the smooth implementation of the rights of entry and establishment, Member States of each regional economic community shall establish a Free Trade Area within each regional economic community, by observing the time table for the removal of Tariffs and Non-Tariff barriers to intra-community trade and the establishment of a customs union by means of the adoption of a common external tariff.

4. To facilitate in particular the implementation of the rights of entry and of establishment the regional economic communities shall commence working towards the progressive establishment of a Continental Customs Union by means of the eventual adoption of a common external tariff enforceable by all regional economic communities.

5. Within a period not exceeding fifteen (15) years, from the coming into force of this Protocol and with a view to contributing to the actual establishment of an African Common Market during this period, there shall be effected the uniform implementation of the principle of free movement of persons, right of residence and right of establishment in all Member States of the African Economic Community. This shall be complemented by the introduction of common immigration laws and policies and a common Community Travel Document, Passport.

- 6.** Within a period not exceeding five (5) years from the entry into force of this Protocol, a citizen of a Member State of the community shall have the right of entry into another Member State and the right to stay for a maximum period of ninety (90) days without the requirement of a visa. Such a person may apply for an extension of the visit if he wishes to stay beyond ninety (90) days.
- 7.** With specific regard to the free movement of persons, Member States of the Community shall within a period not exceeding ten (10) years from the entry into force of this Protocol totally remove in phases any requirement of a minimum period of stay after entry into their territory by the citizen of another Member State.
- 8.** With specific regard to the rights of residence and establishment, each Member State of the Community shall completely phase out within fifteen (15) years of the entry into force of this Protocol, all remaining discriminatory treatment of the citizens of other Member States of the Community.
- 9.** Member States shall also establish, within a period not exceeding five (5) years from the entry into force of the Protocol, common immigration laws and policies on persons originating from Third States.
- 10.** The monitoring and advisory responsibilities with regard to the implementation of this Protocol shall be undertaken by appropriate technical Committees provided for under the Treaty.

ARTICLE 4

- 1.** The period of transition from one stage to of this Protocol to the other shall be five (5) years. Thus the right of entry shall be fully implemented within five (5) years, the right of residence within ten (10) years and the right of establishment, within fifteen (15) years, respectively of the entry into force of the Protocol. The Assembly on the recommendation of the Council, shall confirm that the objectives of a particular stage have been attained and approve the expediting of the implementation of the next stage.
- 2.** Notwithstanding the provisions of the preceding paragraph, the cumulative transitional period shall not exceed fifteen (15) years from the definitive entry into force of this Protocol.

CHAPTER IV: FREE MOVEMENT OF PERSONS

ARTICLE 5

1. For the purpose of this Protocol, the categories of persons to whom the provisions on Free Movement of persons contained in it apply shall include:
2. A citizen of the Community, who shall enter another Member State free of visa requirements. Such citizens shall, however be required to obtain permission for an extension of stay from the appropriate authority if after such entry that citizen has cause to stay longer than ninety (90) days.
3.
 - (a) Any citizen of the Community who wishes to enter the territory of any other Member State shall be required to possess valid travel documents and an international health certificate if applicable;
 - (b) Each Member State shall ensure that its nationals who travel to the territory of another Member State possess valid travel documents recognized within the Community;
 - (c) Each Member State shall deposit with the Secretary-General a specimen of the travel documents mentioned in sub-paragraph (a) of this Article with a view to communicating them to all Member States.
4. A citizen of the Community, visiting any Member State, shall enter the territory of that Member State through the official entry point.

ARTICLE 6

Notwithstanding the provisions of Article 5 above, Member States shall reserve the right to refuse admission into their territory to any Community citizen who comes within the category of inadmissible immigrants under the provisions of this Protocol.

ARTICLE 7

In order to facilitate the movement of persons transported in private or commercial vehicles, the following provisions shall apply:

1. Private Vehicles

A private vehicle registered in the territory of a Member State may enter the territory of another Member State and remain there for a period not exceeding ninety (90) days upon presentation of the documents listed hereunder to the competent authority of that Member State:

- (i) Valid driving license;
- (ii) Matriculation Certificate (Ownership Card) or Log Book;
- (iii) Insurance Policy recognized by Member States;
- (iv) International customs carnet recognized within the Community.

2. Commercial Vehicles

A commercial vehicle registered in the territory of a Member State and carrying passengers may enter the territory of another Member State and remain there for a period not exceeding twenty-one (21) days upon presentation of the documents listed hereunder to the competent authority of that Member State:

- (i) Valid driving license;
- (ii) Matriculation Certificate (Ownership Card) or Log Book;
- (iii) Insurance Policy recognized by Member State;
- (iv) International Customs Carnet recognized within the Community.

During the said twenty-one (21) days the said commercial motor vehicle shall however not engage in any commercial activities within the territory of the Member State entered, but can carry goods and persons on its return journey.

PART II

CHAPTER V: RIGHT OF RESIDENCE

ARTICLE 8

Each Member State shall grant to citizens of other Member States, the right of residence in its territory for the purpose of seeking and carrying out income earning employment.

ARTICLE 9

The right of residence shall include the right:

- (a) to apply for jobs effectively offered;
- (b) to travel for this purpose, freely, in the territory of Member States;
- (c) to reside in any Member State in order to take up employment in accordance with the legislative and administrative provisions governing employment of national workers;
- (d) to live in the territory of a Member State according to the conditions defined by the legislative and administrative provisions of the host Member State, after having held employment there.

ARTICLE 10

The provisions of Article 10 above shall not be applicable to employment in the civil service of Member States, unless the relevant national laws and regulations of the host Member State so permit.

CHAPTER VI: RESIDENCE CARD VALID AS VISITING OR RESIDENCE PERMIT

ARTICLE 11

Citizens of any Member State admitted without visa into the territory of another Member State and desiring to reside in the territory of that Member State, shall obtain an African Economic Community Residence Card or a Residence Permit.

ARTICLE 12

The applicant for the residence card or residence permit in the territory of any Member State, shall deposit with the immigration authorities in the host Member State, an application for a residence card or residence permit in accordance with the a format approved by the Community.

ARTICLE 13

The processing of an application for a residence card or residence permit may not delay the immediate execution of employment contracts concluded by applicants.

ARTICLE 14

Within a period of one (1) year from the date of entry into force of this Protocol, the rules and regulations relating to the conditions for the issuance of Residence Cards or Residence Permits in Member States shall be harmonized with a view to establishing an African Economic Community Residence Card.

**CHAPTER VII: SPECIAL PROVISIONS CONCERNING BORDER AREA
SEASONAL OR ITINERANT WORKERS**

ARTICLE 15

Border area workers, defined in Article 1 of this Protocol, shall enjoy all rights to which they are entitled through their presence and their work in the territory of the host Member States, with the exception of rights relating to residence or resulting therefrom.

Border area workers shall enjoy the right to choose their employment and cross state borders freely within the limits of any restrictions imposed by the host Member State in the interests of its security. However, such restrictions should as much as possible, not hamper the maintenance of family ties across borders or the traditional occupations of border residents.

ARTICLE 16

Seasonal workers, as defined in Article 1 of this Protocol, shall enjoy all rights to which they are entitled through their presence in the territory of the host Member State, with the exception of rights relating to residence or to employment or resulting therefrom.

**CHAPTER VIII: COMPLEMENTARY MEASURES TO FACILITATE
IMPLEMENTATION OF RIGHT OF RESIDENCE**

ARTICLE 17

With a view to preventing the loss to migrant workers of the social security, pension and gratuity rights they have acquired in different Member States, Member States shall establish an inter-governmental mechanism for regulation of such an exercise.

Such mechanism shall be responsible for the totalization of pension, gratuity and insurance periods completed under the legislation of different Member States; and for the establishment of close cooperation between the social security institutions of Member States.

ARTICLE 18

- (a) In order to make adequate provision for maintaining a balance between labour supply and demand, Member States shall establish systematic and permanent cooperation among their respective national administrations, based on a standard classification of skills and jobs.
- (b) Member States shall establish an inter-African employment bureau to act as an intra-continental labour clearing house, capable of meeting effectively the needs of various economic sectors throughout the Community.

PART III

CHAPTER IX: RIGHT OF ESTABLISHMENT

ARTICLE 19

1. The right of establishment shall include the right of access to unsalaried liberal or craft work and to practice such work, the practice of professions and provision of services, as well as the establishment and management of enterprises under the conditions defined by the various legislation and investment codes of the Member States of the Community.
2. Salaried workers who are nationals of one Member State and employed in the territory of another Member State may, when they have ceased full time salaried activity, establish themselves in such territory or practice an unsalaried activity if they comply with the conditions they had to comply with at the time of their entry into that State.
3. Citizens of Member States who are established in the territory of another Member State shall enjoy the same rights and freedom as the nationals of such state except for political rights.

PART IV

CHAPTER X: GENERAL PRINCIPLES APPLICABLE TO RIGHT OF RESIDENCE AND RIGHT OF ESTABLISHMENT

ARTICLE 20

1. No matter the conditions of their authorization of residence, migrant workers who comply with rules and regulations governing residence, and persons with the right of establishment who comply with the rules and regulations governing such establishment, shall enjoy equal treatment with nationals of the host Member State in the following matters:

- (a) security of employment and establishment or practice;
- (b) possibility of participating in social and cultural activities;
- (c) possibilities of re-employment or re-establishment in case of loss of job or livelihood for economic reasons. In this case, they shall be given priority over other migrants and persons with right of establishment, newly admitted to the host country;
- (d) training and advanced professional training;
- (e) access to institutions of general and professional education as well as to professional training centers for their children;
- (f) benefit of access to social services, cultural and health facilities, including educational and recreational services;
- (g) immigrant workers from other community states in any sector of the economy shall enjoy the same standard of treatment and terms of employment enjoyed by workers who are nationals of the host state, working in the same sector of the economy;
- (h) where the law of the host state requires particular workers to belong to a trade union, immigrant workers from other member states shall be admitted to the said union and employment of non-union labor in such circumstances should be prohibited by the law of the host state.

2. Migrant workers who comply with the rules and regulations governing residence and persons with the right of establishment who comply with the rules and regulations governing such establishment, shall enjoy equal treatment with nationals of the host Member State in the holding of employment or the practice of their profession or the running of their enterprises, and in their day-to-day existence in the host state.

PART V

CHAPTER XI: EXCEPTIONS AND SAFEGUARD CLAUSES

ARTICLE 21

1. Notwithstanding the provisions of Article 2(i) above on free movement and on the right of residence, any Member State, having made its intention known to the Secretariat of the Community, which shall inform Member States thereof, may after seventy-two (72) hours of notice, impose restrictions on free movement and on the right of residence for thirty (30) days for the following reasons:

- (a) public order;
- (b) public security.

Such restrictions may be renewed if the conditions that necessitated their imposition persist.

2. Notwithstanding the provisions of Article 2(i) above on the right of establishment, any Member State, having made its intention known to the Secretariat of the Community which shall inform Member States thereof, may after a notice of ninety (90) days impose restrictions on the right of establishment for the following reasons:

- (a) the protection of industries: the period of restriction shall not exceed five (5) years in this case;
- (b) the protection of strategic industries;
- (c) balance of payments difficulties: this shall be permitted for only one (1) year by the competent organ of the Community provided the Member State concerned has taken all appropriate and reasonable steps to overcome such difficulties.

3. The Council shall keep under regular view the operation of the application of the above-mentioned exceptions and safeguards to free movement, the right of residence and the right of establishment; and shall take appropriate action. It shall submit, each year, to the Assembly, a report on the aforementioned matters.

PART VI

CHAPTER XII: TRANSFER OF SAVINGS

ARTICLE 22

1. Each Member State shall allow the transfer of all or part of the earnings or savings of migrant workers or persons with the right of establishment which they may wish to transfer, according to modalities fixed by legislation. This Article shall also apply to the transfer of funds due to such Community citizens as maintenance support. The transfer of amounts due to the migrant worker or the person with the right of establishment may under no circumstances be hampered or impeded.
2. Within the framework of bilateral agreements or by any other means, each Member State shall allow the transfer of amounts which remain outstanding to Community citizens with the right to residence and the right to establishment when they finally leave the host Member State.

PART VII

CHAPTER XIII: CITIZENS ALREADY IN RESIDENCE AND ESTABLISHMENT

ARTICLE 23

The provision of this Protocol shall not operate to the prejudice of citizens of the Community who are already in residence and establishment in a Member State, provided they comply with the laws in general and in particular the immigration laws of that Member State.

**CHAPTER XIV: PROTECTION AGAINST COLLECTIVE AND ARBITRARY
EXPULSION**

ARTICLE 24

1. Persons with the right of free movement, migrant workers, their families and persons with the right of establishment together with members of their families may not be affected by collective or en masse expulsion orders.
2. Each case of expulsion shall be considered and judged on an individual basis.

**CHAPTER XV: PROTECTION AGAINST INDIVIDUAL EXPULSION AND
RESPECT OF FUNDAMENTAL RIGHTS OF THE MIGRANT
WORKER AND PERSONS WITH THE RIGHT OF
ESTABLISHMENT**

ARTICLE 25

1. Persons with the right of free movement, migrant workers and persons with the right of establishment, together with members of their families, whose status comply with the residence or establishment requirements may only be expelled from the host Member State.
 - (a) for reasons of national security;
 - (b) if, having been duly informed of the consequences, they refuse to comply with the orders given to them by a public medical authority for the purpose of protecting public health;
 - (c) if an essential condition for the issuance or the validity of their authorization of residence or work permit is not fulfilled.
2. Any form of expulsion may only be based on a well-founded legal or administrative decision taken in accordance with pre-existing law.
3. Persons with the right of free movement, the migrant worker or the persons with the right of establishment, the Government of his state of origin in the Secretariat shall receive written notice of the decision for information purposes.
4.
 - (a) When an expulsion order is made out by a legal or administrative authority, the person with the right of free movement, the migrant worker with the right of residence or the person with the right of establishment, shall have a right of recourse of appeal against the order to the appropriate domestic tribunal or court of the host state. The recourse to an appeal shall constitute a suspension of the expulsion order.
 - (b) If such a decision has already been executed and is subsequently annulled, the person concerned is entitled to re-enter the host state to resume his residence and occupation as the case may be and to appropriate damages for unlawful expulsion.

5.
 - (a) In case of expulsion, the security of the Community citizen with the freedom of movement, the right of residence or the right of establishment shall be guaranteed and his property protected and returned to him without prejudice to his obligations to third parties;
 - (b) the Community citizen with the right of residence, shall be granted a reasonable period of time to allow him to collect any salaries or other allowances due to him from his employer and settle any contractual commitment;
 - (c) the Community citizen with the right of establishment shall be granted a reasonable period of time to allow him to collect any payments or debts owed him, settle any contractual commitment, and make appropriate arrangements for the continued management or disposal of his business or professional practice;
 - (d) the Community citizen with the right of residence or establishment shall, in case of expulsion, be granted a reasonable period of time, when required, to obtain authorization to go to a country other than his state of origin, for reasons of personal security. The situation of the family of the Community citizen concerned shall also be taken into consideration.
6. The expulsion or departure from the host Member State shall not affect the right of residence or establishment of a member of his family.
7. The expenses incurred in the expulsion of a Community citizen shall be borne by the Member State which expels him.
8. The host Member State concerned shall not pressurize those affected in any way to accept a simplified procedure, such as "voluntary departure", if such affected persons have not expressly requested it.

ARTICLE 26

1. Consular or diplomatic authorities of the State of Origin or the country representing the interest of the State of Origin shall be advised of any decision to expel a Community citizen with the right of free movement, the right of residence or the right of establishment, or member of his family in the host Member State, at least forty-eight (48) hours before the expulsion takes effect.

2. The Community citizen mentioned in sub-paragraph 1 of this Article and members of his family may appeal for the protection and assistance of the consular and diplomatic authorities of their states of origin and may receive advisory services from them to defend his rights, if the rights conferred on him by this Protocol or by legislation in the host Member State are infringed upon.
3. The Community citizen mentioned in sub-paragraph 1 of this Article as well as members of his family are legal personalities.
4. In case of a dispute regarding his rights, the migrant worker may put forth his claims to a competent body, either personally, or through his representatives, and shall have all the rights to legal relief to which a national is entitled.

ARTICLE 27

1. Any expulsion decided upon for the reasons mentioned above shall, in accordance with the applicable laws, conform with the procedures stipulated under the provisions of this Protocol.
2. No expulsion order by a Member State may be carried out without ensuring that all the fundamental rights of the Community citizen, who has the freedom of movement right of residence and right of establishment, have been respected.

PART VIII

CHAPTER XVI: SETTLEMENT OF DISPUTES - DIRECT AGREEMENT AND BY RESOURCE TO COURT OF JUSTICE

ARTICLE 28

Any dispute that may arise among Member States regarding the interpretation or application of this Protocol shall be amicably settled by direct agreement. In the event of failure to settle such a dispute, the matter may be referred to the Court of Justice of the Community by a party to the dispute and the decision of the Court shall be final.

**CHAPTER XVI: SETTLEMENT OF DISPUTES BY
RECOURSE TO NATIONAL BODIES**

ARTICLE 29

In accordance with their constitutional procedures and with the provisions of this Protocol, Member States shall:

- (a) guarantee that any person whose rights and liberties, as recognized by this Protocol, have been infringed upon, shall enjoy the right of recourse to the domestic tribunals of the host state even when this infringement has been committed by persons exercising their official functions;
- (b) guarantee that the competent judicial, administrative or legislative authority, or any other competent authority, according to the laws of the Member States, shall rule on the rights of the person who is making an appeal.

ARTICLE 30

1. Pursuant to Articles 25(4), 26(3), 26(4) and 29 of this Protocol, a Community citizen with the right to free movement, right of residence or of establishment under this Protocol whose right is infringed, shall have recourse in the first instance to the courts of the host state.
2. Such Community citizen mentioned in paragraph 1 of this Article, after having exhausted all domestic procedures in the host state, shall have the right to take his case to his home state which shall deal with the matter in the manner provided in Article 28.

PART IX

CHAPTER XVII: COOPERATION BETWEEN MEMBER STATES

ARTICLE 31

1. Member States shall hold consultations and act in collaboration with the other Member States concerned in order to promote healthy, fair and humane conditions for community citizens in their territories.
2. In this case, not only labour requirements and resources, but also social, economic, cultural, political and other consequences both for Community citizens with the right of free movement, residence and establishment, and for the Community and the Member States concerned shall be duly taken into consideration.

ARTICLE 32

Member States shall set up appropriate public organs to deal with the problems relating to the movement of Community citizens mentioned above and their families.

These organs shall be responsible for:

- (a) formulating the policies on this movement;
- (b) the exchange of information, consulting and cooperation with the competent authorities of other Member States and with the Secretariat;
- (c) the supply of information, particularly to employers and their organizations as well as to workers and workers' organizations, on policies, laws and regulations relating to migration for the purposes of employment and on working and living conditions of migrant workers and persons with the right of establishment, together with members of their families in the host Member States;

- (d) informing and assisting migrant workers, and persons with the right of residence, together with members of their families, on the authorizations, formalities and arrangements relating to their departure, travel, arrival, stay, employment, exit and return to their State of Origin, and the working and living conditions in the host Member State. They shall also be informed on customs, fiscal and monetary laws and regulations as well as laws and regulations on other relevant issues;
- (e) recommending for adoption, laws, regulations and any other measures necessary to facilitate the application of the provisions of this Protocol, and settling questions relating to movement within the Community.

ARTICLE 33

In order to ensure that this Protocol is effectively implemented in the territories of all Member States, each Member State undertakes to enact a law incorporating this Protocol into its domestic legal system, as soon as the Protocol comes into force.

ARTICLE 34

To further enhance the effective implementation of the Protocol, Member States agree to undertake the following measures, as soon as the Protocol enters into force:

- (a) Extensive education of border officials to inculcate in them, the objectives of free movement, the need to facilitate free movement and give assistance to travellers, rather than subjecting community citizens to harassment, intimidation and extortion as is sometimes the case.
- (b) Monitoring the activities of these border officials constantly to ensure that they comply with the requirements of the protocols and that those found obstructing its implementation are removed from border duties and disciplined.
- (c) Reduction of the number of types of functionaries engaged in border duties, and the number of posts in a single border area. This will minimize travellers being stopped and searched at frequent intervals by functionaries of many varieties and uniforms.

ARTICLE 35

In order to ensure widespread awareness of the existence of the Protocol and adequate knowledge of its aims, objectives and contents, amongst the relevant public functionaries and the general public alike, each Member State agrees to undertake the following measures as soon as the Protocol comes into force:

- (i) Enlightenment of all government functionaries in the Ministries of Foreign Affairs, Internal Affairs (particularly, Immigration) Department of Customs, Planning, Economic, Finance, Trade and Industry Ministries, about the contents, aims and objectives of all Regional Integration Agreements and Protocols affecting their States. This should also be done with regard to the Treaty establishing the AEC and its related Protocols.
- (ii) Printing of numerous copies of these Treaties, Conventions, Protocols, Aides memories, etc. and their issuance free of charge to the officials at the relevant Ministries, Departments and border posts.
- (iii) Officials at border posts will receive continuous and updated information about their duties, and the contents and objectives of the Treaties and Protocols.
- (iv) State sponsored seminars and workshops will be held at regular intervals for all functionaries with any responsibilities under the Treaties and Protocols to which the general public should also be invited.
- (v) Massive public enlightenment campaign programmes, explaining the contents and objectives of these treaties and Protocols. Such educational programmes should utilize, Radio, Television, Newspaper, pamphlets, etc. and the messages should be translated into local languages. For the purpose of the campaign, the assistance of the mass media, Writers Associations, Advertisers Associations, Union of Journalists, Trade Unions and other Non-governmental Organizations should be enlisted. The public enlightenment should clearly indicate, not only the peoples rights to travel and to reside and establish in other Community states, but also their duties in these regards which include (a) obtaining valid travel and health documents before travelling, (b) satisfying the laid down requirements of residence and establishment, (c) respecting the laws of the host country, and generally conducting themselves in a responsible manner.

ARTICLE 36

1. Member States agree to cooperate, with a view to developing, planning and utilizing their human resources, and to harmonize their employment and income policies.
2. Member States undertake to adopt employment policies that shall allow the free movement of persons within the community by strengthening and establishing labor exchanges aimed at facilitating the employment of available skilled manpower of one Member State in other Member States where there are shortages of skilled manpower.

PART X**CHAPTER XVIII: GENERAL AND MISCELLANEOUS PROVISIONS****ARTICLE 37**

1. No provision of this Protocol may be interpreted to adversely affect more favourable rights of liberties guaranteed to Community citizens with the rights of free movement, or residence or of establishment or members of their respective families by:
 - (a) Law, legislation or practice in a Member State; or
 - (b) any international agreement in force vis-a-vis the Member State concerned.
2. No provision of this Protocol may be interpreted as implying the right of any Member State to undertake an activity or action designed to remove the right of liberties recognized in this Protocol or to any restriction of such rights or liberties beyond those stipulated in this Protocol.
3. Citizens of third States are not covered by the provisions of this Protocol.

ARTICLE 38

1. Rights guaranteed in this Protocol may not be withdrawn.

2. Any form of pressure exerted on Community citizens with such rights or members of their families, to force them to give up any of these rights or to refrain from exercising them shall be prohibited.

3. Any clause of an agreement or contract designed to force the migrant worker to give up any of these rights or refrain from exercising them shall be null and void according to the provisions of this Protocol.

ARTICLE 39

In accordance with their constitutional procedures and the provisions of this Protocol, Member States shall take all necessary legislative and other measures for the implementation of the provisions of this Protocol.

ARTICLE 40

1. Any Member State may submit proposals for the amendment or review of this Protocol.

2. Any such proposals shall be submitted to the Secretariat which shall communicate them to other Member States not later than thirty (30) days after the receipt of such proposals. Amendments or modifications shall be considered by the Council of Ministers on the expiration of the thirty (30) days notice granted to Member States:

3. The Council of Ministers shall make appropriate recommendations on such proposed amendments or reviews to the Assembly.

4. The Assembly shall decide whether to accept, reject or modify the said proposals by a majority of two-thirds of the Member States participating at the session.

CHAPTER VIII: DEPOSIT AND ENTRY INTO FORCE

ARTICLE 41

1. This Protocol shall enter into force upon ratification by signatory States constituting at least two-thirds of the number of Member States of the Community in accordance with their respective constitutional procedures.

2. This Protocol and all instruments of ratification shall be deposited with the Secretariat which shall transmit certified true copies of this Protocol to all Member States and notify them of the dates of deposit of the instruments of ratification and shall register this Protocol with the United Nations.
3. This Protocol shall be annexed to and shall form an integral part of the Treaty.

**IN FAITH WHEREOF WE THE HEADS OF STATE AND GOVERNMENT OF THE
AFRICAN ECONOMIC COMMUNITY HAVE SIGNED THIS PROTOCOL**

**DONE AT THIS ..TH DAY OF
..... 19 IN SINGLE ORIGINAL IN THE ENGLISH,
FRENCH, ARABIC AND PORTUGUESE LANGUAGES, EACH TEXT BEING
EQUALLY AUTHENTIC.**

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African economic community Protocol on free movement of persons, rights of residence and right of establishment

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