

The labour migration components of the “COMESA Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence”

The COMESA Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence was adopted in 2001, but only four countries have signed it (Burundi, Kenya, Rwanda and Zimbabwe), and only one country, Burundi, has ratified it. It was developed with the vision towards the operationalization of the COMESA Common Market and its objective is to remove all restrictions to the free movement of persons, labour, and services and provide for the right of establishment and right of residence.

According to article 9(1) of the Protocol, Member States agree to progressively remove, within six years after its ratification, all restrictions to the movement of labour within the Common Market. The removal of the restrictions are meant to entail the abolition of any discrimination based on the nationality between workers of the Member States as regards employment, remuneration and other conditions of work or employment. This implies that foreign workers from other COMESA Member States have to receive equal treatment with national workers in the Member State to which they have migrated.

Firstly, the notion of employment includes a business, calling, craft, art, employ, job, line, occupation, profession, pursuit, services, trade, vocation or work. This means that migrant workers involved in such diverse contexts as professional work, business enterprises, trade-related work or craft work are meant to benefit from the free movement of labour provision.

Secondly, it is not every migrant worker that has the permission to move freely to another COMESA Member State for purposes of employment. The definition of “labour” in article 1 of the Protocol is significant, as it restricts this to skilled labour of persons, whose specialized skills are needed in the Member State where the person concerned is or wants to be employed.

The Protocol describes the extent or implications of the freedom of movement of labour principles. These are said to include the following (Article 9(2)):

- To accept offers of employment actually made;
- To move freely within a Member State for this purpose; and
- To stay in a Member State for the purpose of such employment of nationals, in accordance with the provisions governing the employment of nationals of such Member State laid down by law, regulations or administrative action.

Thirdly, the Protocol also contains certain other limitations on and exceptions to the right to free movement of labour:

- Limitations can be imposed by the relevant Member State

on grounds of public policy, public security or public health; and

- Freedom of movement of labour does not apply to employment in the public service.

Finally, but importantly, the Protocol enjoins the COMESA Council of Ministers to adopt certain measures in the fields of social security and labour law within one year after the entry into force of the Protocol. According to article 9(4) of the Protocol, these measures:

- Are required to provide for the freedom of movement of labour;
- Need to be implemented progressively and in stages; and
- Cover the fields of social security, labour laws (including laws on collective bargaining), pensions and other working conditions

The implementation of the Protocol is in the following five stages:

- **Stage I:** Free movement of persons through the gradual removal of visa requirements and cooperation in the prevention and fight against crime. Being implemented effectively;
- **Stage II:** Free movement of labour by enhancing movement of skilled labour. Progressively implemented since 2004.
- **Stage III:** Free Movement of services – No information available
- **Stage IV:** Right of Establishment – No information available
- **Stage V:** Right of Residence- No information available.

