

DRAFT PROTOCOL ON THE FACILITATION OF MOVEMENT OF PERSONS

PREAMBLE

WE, the Heads of State or Government of:

The Republic of Angola
The Republic of Botswana
The Democratic Republic of Congo
The Kingdom of Lesotho
The Republic of Malawi
The Republic of Mauritius
The Republic of Mozambique
The Republic of Namibia
The Republic of South Africa
The Kingdom of Swaziland
The United Republic of Tanzania
The Republic of Zambia
The Republic of Zimbabwe

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;

RECOGNISING 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 African Union 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 mandates the Summit to adopt legal instruments for the implementation of the provisions of the Treaty;

HEREBY AGREE as follows:

ARTICLE 1 DEFINITIONS

1. In this Protocol terms and expressions defined in Article 1 of the Treaty shall bear the same meaning unless the context otherwise requires.

2. In this Protocol, unless the context otherwise requires:

“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;

“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 responsible for monitoring the implementation of this Protocol.

“Establishment”

Has the meaning ascribed to it under Article 18;

Family

Family shall have the meaning ascribed to it under the national law of each State Party;

“Host State”

Means the Member State of residence or establishment;

“Permit”

Has the meaning ascribed to it under Article 17;

“Residence”

Has the meaning ascribed to it under Article 16;

“State Party”

Means a Member State that has ratified or acceded to this Protocol;

“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 permit/border pass as approved by the Ministerial Committee of the Organ;

“Visa”

Means an authority granted to a citizen of a State Party to enter into a territory of another State Party;

ARTICLE 2 OVERALL OBJECTIVE

The overall 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 State Parties.

ARTICLE 3 SPECIFIC OBJECTIVES

The specific objectives of this Protocol in relation to every citizen of a State Party are to facilitate:

- (a) entry, for a lawful purpose and without a visa, into the territory of another State Party for a maximum period of ninety (90) days per year for bona fide visit and in accordance with the laws of the State Party concerned;
- (b) permanent and temporary residence in the territory of another State Party; and
- (c) establishment of oneself and working in the territory of another State Party.

ARTICLE 4 IMPLEMENTATION OF OBJECTIVES

The timeframe for the implementation of the objectives of this Protocol shall be determined by the Implementation Framework to be agreed upon by State Parties six months from the date of signature of this Protocol, by at least nine (9) Member States.

ARTICLE 5 PHASES

Entry, residence and establishment and controls at borders under this Protocol shall be regarded as phases in the process of building the Community and the implementation of the phases shall be consistent with the Implementation Framework referred to under Article 4.

ARTICLE 6 COMMON ACTION

State Parties shall, subject to Article 4, take all steps possible to act together as a Community in implementing this Protocol.

ARTICLE 7 HARMONISATION OF NATIONAL LAWS

Every State Party 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 by Member States.

ARTICLE 8 TEMPORARY SUSPENSION OF THE PROTOCOL

State Parties hereby agree that where an emergency occurs in a State Party, by reason of a breakdown of or serious threat to national security, public order or public health, such State Party shall communicate, by written notice, to the Chairperson of the Organ informing all the other State Parties of its temporary suspension of the implementation of this Protocol for the duration of such emergency. The State Party concerned shall also within a reasonable time furnish to the Chairperson of the Organ, enough information regarding the emergency to enable the Organ to review the necessity of such temporary suspension.

ARTICLE 9 POPULATION REGISTER

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

ARTICLE 10 GENERAL

In accordance with their constitutional requirements and in terms of this Protocol, State Parties shall promote legislative, judicial, administrative and other measures necessary for co-operation in the implementation and effective achievement of the objectives of this Protocol.

ARTICLE 11
CO-OPERATION AND MUTUAL ASSISTANCE

1. Every State Party undertakes to co-operate with and assist the other State Parties to facilitate the movement of persons in the Community as a vehicle for achieving economic integration.

2. State Parties agree to increase co-operation and mutual assistance, to the extent that this is necessary to promote the overall objective set out in Article 2, in the following fields, among others:

(a) formulating policies and awareness programmes on the implementation of this Protocol;

(b) improving the mechanisms for enhancing co-operation in safeguarding national and regional security by exchanging information among relevant authorities especially on crime, security and intelligence;

(c) training competent authorities and educating communities regionally and nationally on the Protocol;

(d) providing sufficient and adequately equipped ports of entry; and

(e) preventing illegal movement of persons into and within the Region.

ARTICLE 12
TRAVEL FACILITIES

1. State Parties agree to make travel documents readily available to their citizens and to co-operate in harmonising travel whether by air, land or water and to increase and improve travel facilities especially between their mutual borders.

2. State Parties undertake to introduce:

(a) machine readable passports as soon as possible; and

(b) technologically sensitive passports and other related facilities as circumstances allow.

ARTICLE 13
HARMONISATION OF CURRENT IMMIGRATION PRACTICES

State Parties hereby agree to take steps to achieve each of the following from the date of entry into force of this Protocol:

- (a) harmonisation of their laws and administrative practices so that citizens of State Parties are able to enter the territory of another State Party for a maximum period of ninety (90) days per year for bona fide visits;
- (b) standardisation of immigration forms used by travelling citizens of State Parties;
- (c) establishment of a separate SADC DESK at each major port of entry between State Parties;
- (d) by way of bilateral agreements, establishment of a sufficient number of border crossing points into the territory of another State Party 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 State Parties concerned, issuance of a uniform and simple border permit/border pass to citizens of State Parties who reside in the border areas of the territories of such State Parties;
- (f) abolition of visa requirements where they still exist, provided that where visas are regarded as necessary, they shall be issued gratis at the port of entry ; and
- (g) co-operation with the assistance of the SADC Secretariat or any such designated body of SADC and other State Parties 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.

ARTICLE 14

ENTRY OF PERSONS

1. State Parties agree to ensure that within a period to be stipulated in terms of Article 4 of this Protocol a citizen of a State Party who wishes to enter the territory of another State Party as a visitor shall be admitted without the requirement of a visa.
2. Visa-free admission in terms of Paragraph 1 shall be on condition that:
 - (a) the visit is for a maximum period of ninety (90) days per year but without prejudice to the visitor's right to apply for the extension of such period if a longer stay is deemed necessary subject to the laws of the State Party concerned;
 - (b) the visitor possesses a valid 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 intended host State; and

(e) entry is sought through an official port of entry.

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

4. The termination of any bilateral agreement entered into in accordance with Paragraph 3 will remain the prerogative of a State Party.

ARTICLE 15

EXEMPTION FROM ARTICLE 14

1. A State Party may, by notice in writing and for good reason, communicate to the Chairperson of the Organ for an exemption from implementing Article 14.

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

(a) any such citizen who requires a visa will be able to apply for such a visa 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 periods as the Summit may determine.

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

ARTICLE 16

MEANING OF RESIDENCE

Residence shall mean permission or authority to live in the territory of a State Party in accordance with the legislative and administrative provisions of that State Party.

ARTICLE 17

RESIDENCE PERMITS

1. Permission to reside in the territory of another State Party 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 State Party in accordance with the laws of that State Party.
3. Each State Party whose authorities are handling an application for a residence permit shall ensure that the processing of such application is not unduly delayed.
4. A residence permit issued pursuant to this Protocol shall be in accordance with the laws of the State Party concerned.
5. A residence permit may be renewed in accordance with the national laws of the State Party concerned.

ARTICLE 18

MEANING OF ESTABLISHMENT

Establishment shall mean permission or authority granted by a State Party in terms of its national laws, to a citizen of another State Party, for:

- (a) exercise of economic activity and profession either as an employee or a self-employed person;
- (b) establishing and managing a profession, trade, business or calling.

ARTICLE 19

GRANTING OF ESTABLISHMENT

Each State Party shall, in terms of its national laws, grant permission for the establishment to citizens of other State Parties.

ARTICLE 20

RIGHTS AND OBLIGATIONS FOR THE CITIZENS OF STATE PARTIES GRANTED RESIDENCE OR ESTABLISHMENT IN A HOST STATE

A citizen of a State Party who acquires residence or establishment in the territory of another State Party shall enjoy those rights and privileges as determined by the laws of a host State and shall also fulfil his or her obligations, accordingly.

ARTICLE 21

PROTECTION OF EXISTING RIGHTS

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

ARTICLE 22
REASONS FOR EXPULSION

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

- (a) reasons of national security, public order or public health 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;
- (c) a citizen of another State Party acts in conflict with the purposes for which such permit was issued or contravenes or fails to comply with any such conditions subject to which it was issued; or
- (d) 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 23
PROTECTION AGAINST EXPULSION OF INDIVIDUALS

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

ARTICLE 24
PROTECTION AGAINST INDISCRIMINATE EXPULSION

1. Any person who has acquired residence or establishment in the territory of a State Party shall not be subjected to collective or group indiscriminate expulsion.
2. For the avoidance of doubt, each case of expulsion from the territory of a State Party shall be considered and determined on its own merits.

ARTICLE 25
PRINCIPLES GOVERNING EXPULSION

Each State Party shall ensure that its laws, regulations or administrative mechanisms for the expulsion of non-citizens shall, in relation to citizens of another State Party, except where the provisions of Article 22(a) apply, incorporate the following principles:

- (a) the giving of adequate notice of expulsion;
- (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 expulsion 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 expulsion of any person may not affect the residence or establishment permit of any independent member of that person's family; or
- (f) where expulsion results in the repatriation of the affected person, the costs or other expenses involved in the expulsion may be shared between the State Party ordering the expulsion and the receiving State Party, as may be agreed.

ARTICLE 26
TREATMENT OF GOODS

The treatment of goods accompanying a person who enters the Community from a Third State shall be regulated by an agreement on trade facilitation which may be entered into between SADC and a Third State.

ARTICLE 27
COMPLEMENTARY MEASURES

In order to assist in the enforcement of the provisions of this Protocol, State Parties shall put in place such immigration, police or other security co-operation arrangements as may be deemed necessary.

ARTICLE 28
ASYLUM SEEKERS AND REFUGEES

1. State Parties hereby reaffirm their commitment to their obligations under international agreements to which they are parties, and which relate to refugees.
2. The management of refugees in the Region shall be regulated by a specific Memorandum of Understanding (MOU) between State Parties; and
3. State Parties reaffirm their commitment to co-operate with the Office of the United Nations High Commission for Refugees (UNHCR), the International Organization for Migration (IOM) and other International Organizations.

ARTICLE 29
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 responsible for Public Security ; and
- (b) any other committee established by the Ministerial Committee of the Organ.

ARTICLE 30
SETTLEMENT OF DISPUTES

1. Any dispute which may arise regarding the interpretation or application of this Protocol shall ordinarily be resolved through negotiated agreement by the Chairperson of the Organ or, failing which, by the Summit.
2. Any dispute which cannot be settled by agreement may be referred to the Tribunal, whose decision shall be final and binding.

ARTICLE 31
RELATIONSHIP WITH OTHER AFRICAN REGIONAL ECONOMIC COMMUNITIES

Member States shall take all steps necessary to ensure the co-operation, 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.

ARTICLE 32
AMENDMENT OF THE PROTOCOL

1. Any State Party may submit to the Executive Secretary 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 ninety (90) days has elapsed, following the notification to Member States of a proposed amendment, the amendment shall be submitted to the Council for consideration.
4. The Organ 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 33
REGULATIONS

The Committee of Ministers responsible for monitoring the implementation of this Protocol shall make regulations for approval by the Ministerial Committee of the Organ for the effective implementation of the provisions of this Protocol.

ARTICLE 34
SIGNATURE

This Protocol shall be signed by the duly authorized representatives of State Parties.

ARTICLE 35
RATIFICATION

This Protocol shall be ratified by any Member State in accordance with its constitutional procedures.

ARTICLE 36
ENTRY INTO FORCE

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by two-thirds of the Member States.

**ARTICLE 37
ACCESSION**

This Protocol shall remain open for accession by any Member State.

**ARTICLE 38
DEPOSITARY**

The original texts of this Protocol shall be deposited with the Executive Secretary who shall transmit certified copies to all the Member States.

The Executive Secretary shall register this Protocol with the Secretariat of the United Nations Organisation and the Commission of the African Union.

IN WITNESS WHEREOF, WE, the Heads of State or Government, or Our duly authorized Representatives, have signed this Protocol.

DONE at **GABORONE**, on this 18th day of August, 2005, in three (3) original texts, in the English, French and Portuguese languages, all texts being equally authentic.

REPUBLIC OF ANGOLA REPUBLIC OF BOTSWANA

DEMOCRATIC REPUBLIC OF CONGO KINGDOM OF LESOTHO

REPUBLIC OF MALAWI REPUBLIC OF MAURITIUS

REPUBLIC OF MOZAMBIQUE REPUBLIC OF NAMIBIA

REPUBLIC OF SOUTH AFRICA KINGDOM OF SWAZILAND

UNITED REPUBLIC OF TANZANIA REPUBLIC OF ZAMBIA

REPUBLIC OF ZIMBABWE