



**DRAFT PROTOCOL ON FREE
MOVEMENT OF PERSONS IN
THE IGAD REGION**

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PREAMBLE

RECALLING the provisions of Article 7 of the Agreement Establishing IGAD requiring the Member States to harmonize their policies with regard to trade, customs, transport, communications, agriculture, and natural resources, and promotion of free movement of goods, services, and people and the establishment of residence;

RECALLING the recommendations of the IGAD Migration Policy Framework urging the IGAD Member States to adopt and implement appropriate protocols intended to progressively achieve the free movement of persons, the right of residence and the right of establishment including access to legal employment in the countries of destination without adversely affecting the employment of nationals

CONVINCED THAT it is in the best interests of the Member States and the citizens of the IGAD region to adopt an effective mechanism that facilitates and promotes the free movement of persons and labour,

THE IGAD MEMBER STATES AGREE AS FOLLOWS:

PART A

- FREE MOVEMENT OF PERSONS AND LABOUR

Article 1

Free Movement of Persons

1. The Member States hereby guarantee the free movement of persons who are citizens of the other Member States, within their territories.
2. In accordance with paragraph 1, each Member State shall ensure non discrimination of the citizens of the other Member States based on their nationalities by ensuring:
 - a. the entry of citizens of the other Member States into the territory of the Member State without a visa;
 - b. free movement of persons who are citizens of the other Member States within the territory of the Member State;
 - c. that the citizens of the other Member States are allowed to stay in the territory of the Member State; and
 - d. that the citizens of the other Member States are allowed to exit the territory of the Member State without restrictions.
3. The Member States shall, in accordance with their national laws, guarantee the protection of the citizens of the other Member States while in their territories.
4. The free movement of persons shall not exempt from prosecution or extradition, a national of a Member State who commits a crime in another Member State.
5. The free movement of persons shall be subject to limitations imposed by the host Member State on grounds of public policy, public security or public health.
6. A Member State imposing a limitation under paragraph 5, shall notify the other Member States accordingly.
7. The Member States shall effect reciprocal opening of border posts and keep the posts opened and manned for twenty four hours.
8. The movement of refugees within the Community shall be governed by the relevant international conventions.
9. The implementation of this Article shall be in accordance with Regulations to be adopted by IGAD Member States upon conclusion of this Protocol.

Article 2

Travel Documents

1. A citizen of a Member State who wishes to travel to another Member State shall use an International Travel Passport as a common standard travel document.

Article 3
Free Movement of Workers

1. The Member States hereby guarantee the free movement of workers, who are citizens of the other Member States, within their territories.
2. For the purposes of paragraph 1, the Member States shall ensure non-discrimination of the workers of the other Member States, based on their nationalities, in relation to employment, remuneration and other conditions of work and employment.
3. For the purpose of this Article, the free movement of workers shall entitle a worker to:
 - a. apply for employment and accept offers of employment actually made;
 - b. move freely within the territories of the Member States for the purpose of employment;
 - c. conclude contracts and take up employment in accordance with the contracts, national laws and administrative actions, without any discrimination;
 - d. stay in the territory of a Member State for the purpose of employment in accordance with the national laws and administrative procedures governing the employment of workers of that Member State;
 - e. enjoy the freedom of association and collective bargaining for better working conditions in accordance with the national laws of the host Member State; and
 - f. enjoy the rights and benefits of social security as accorded to the workers of the host Member State.
4. For the purposes of the implementation of subparagraph (f) of paragraph 3, the IGAD Member States shall issue directives and make regulations on social security benefits.
5. A worker shall have the right to be accompanied by a spouse and a child, and:
 - a. a spouse who accompanies the worker shall be entitled to be employed as a worker or to engage in any economic activity;
 - b. as a self employed person in the territory of that Member State;
 - c. a child who accompanies the worker shall be entitled to be employed as a worker or to engage in any economic activity as a self employed person in the territory of that Member State subject to the age limits under the national laws of that Member State.
6. The Member States shall facilitate the admission of a dependant of a worker in accordance with the national laws of the Member States.
7. The office responsible for employment in a Member State shall facilitate a citizen of another Member State who seeks employment in the territory of that Member State to receive the same assistance as would be accorded to a citizen of that Member State who seeks employment.
8. The national laws and administrative procedures of a Member State shall not apply where the principal aim or effect is to deny citizens of other Member States the employment that has been offered.
9. The provisions of this Article shall not apply to employment in the public service unless the national laws and regulations of a host Member State so permit.

10. The free movement of workers shall be subject to limitations imposed by the host Member State on grounds of public policy, public security or public health.
11. A Member State imposing a limitation under paragraph 10, shall notify the other Member States accordingly.
12. IGAD Member States shall make Regulations for the proper implementation of this Article.

Article 4
Harmonization and Mutual Recognition of Academic and Professional Qualifications

1. For the purpose of ensuring the free movement of labour, the Member States undertake to:
 - a. mutually recognize the academic and professional qualifications granted, experience obtained, requirements met, licences or certifications granted, in other Member States; and
 - b. harmonize their curricula, examinations, standards, certification and accreditation of educational and training institutions.
2. The implementation of this Article shall be in accordance with Agreements made to be concluded by the Member States in pursuit thereof.

Article 5
Harmonization of Labour Policies, Laws and Programmes

1. The Member States undertake to harmonize their labour policies, national laws and programmes to facilitate the free movement of labour within the Community.
2. The Member States undertake to review and harmonize their national social security policies, laws and systems to provide for social security for self employed persons who are citizens of other Member States.
3. The implementation of this Article shall be in accordance with directives and regulations issued by the Council.

PART B

RIGHTS OF ESTABLISHMENT AND RESIDENCE

Article 6

Right of Establishment

1. The Member States hereby guarantee the right of establishment of nationals of the other Member States within their territories.
2. For the purposes of paragraph 1, the Member States shall ensure non-discrimination of the nationals of the other Member States, based on their nationalities.
3. For the purposes of paragraph 1, the right of establishment shall entitle:
 - a. a national of a Member State to:
 - i. take up and pursue economic activities as a self employed person; and
 - ii. set up and manage economic undertakings, in the territory of another Member State;
 - b. a self employed person who is in the territory of another Member State to join a social security scheme of that Member State in accordance with the national laws of that Member State.
4. The rights applicable to a spouse, child and dependant of a worker under Article 3 of this Protocol shall apply to the spouse, child and dependant of a self employed person.
5. The Member States shall ensure that all restrictions on the right of establishment based on the nationality of companies, firms and self employed persons of the Member States are removed, and shall not introduce any new restrictions on the right of establishment in their territories, save as otherwise provided in this Protocol.
6. Companies and firms established in accordance with the national laws of a Member State and having their registered office, central administration or principal place of business and which undertake substantial economic activities in the Member State shall, for purposes of establishment, be accorded non discriminatory treatment in other Member States.
7. For the purposes of undertaking any economic activity in accordance with the provisions of this Article, the Member States shall mutually recognize the relevant experience obtained, requirements met, licenses and certificates granted to a company or firm in the other Member States.
8. The right of establishment shall be subject to limitations imposed by the host Member State on grounds of public policy, public security or public health.
9. A Member State imposing a limitation under paragraph 8, shall notify the other Member States accordingly.
10. The provisions of this Protocol shall not prejudice the application of national laws and administrative procedures and practices providing for special treatment for third parties accorded by individual Member States on grounds of public policy, public security or public health.

11. For the purposes of this Article, the Member States shall:
 - a. remove the administrative procedures and practices, resulting from national laws or from agreements previously concluded between the Member States, that form an obstacle to the right of establishment;
 - b. progressively remove any administrative procedures and practices resulting from national laws that restrict the right of establishment, in respect of the conditions for:
 - i. setting up agencies, branches or subsidiaries of companies or firms in their territories; and
 - ii. the entry of personnel of the companies or firms registered in another Member State into managerial or supervisory positions in agencies, branches or subsidiaries in that Member State;
 - c. ensure that workers who are citizens of a Member State employed in the territory of another Member State are allowed to remain in that territory for the purpose of taking up economic activities as self employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that Member State at the time when they intended to take up such economic activities;
 - d. coordinate safeguard measures, which in the interest of the Community, are required for the protection of the companies and firms to ensure that the safeguard measures are similar throughout the Community; and
 - e. satisfy themselves that the conditions of the right of establishment are not distorted by prohibited subsidies or aid granted by a Member State to companies or firms owned by the nationals of the Member State.
12. The implementation of this Article shall be in accordance with Regulations as may be made by IGAD Member States.

Article 7

Right of Residence

1. The Member States hereby guarantee the right of residence to the citizens of the other Member States who have been admitted in their territories in accordance with Articles 3 and 6 of this Protocol.
2. The right of residence guaranteed under paragraph 1, shall apply to the spouse, child and a dependant of a worker or self employed person entitled to rights provided in Articles 3 and 6 of this Protocol.
3. The Member States shall issue residence permits to citizens of other Member States who qualify in accordance with the provisions of this Article.
4. The right of residence shall be subject to limitations imposed by the host Member State on grounds of public policy, public security or public health.
5. A Member State imposing a limitation under paragraph 4, shall notify the other Member States accordingly.
6. The provisions of this Article shall not affect any provisions of national laws, administrative procedures and practices of a Member State which would be more favorable to citizens of the other Member States.
7. The Member States hereby agree that matters relating to permanent residence shall be governed by the national policies and laws of the Member States.
8. The implementation of this Article shall be in accordance with Regulations as may be made by IGAD Member States.

PART C

MOVEMENT OF VEHICLES FOR THE TRANSPORTATION OF PERSONS

Article 8

1. In order to facilitate the movement of persons transported in private or commercial vehicles the following shall apply:
 - a. Private Vehicles**
2. 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 licence
 - ii. Matriculation Certificate (Ownership Card) or Log Book.
 - iii. Insurance Policy recognized by Member States
 - iv. International customs documents recognized within the Community.
- a. Commercial Vehicles**
3. 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 fifteen (15) days upon presentation of the documents listed hereunder to the competent authority of that Member State :
 - i. Valid driving licence
 - ii. Matriculation Certificate (Ownership Card) or Log Book.
 - iii. Insurance Policy recognized by Member States
 - iv. International customs documents recognized within the Community.
4. During the period of fifteen (15) days the commercial motor vehicle shall however not engage in any commercial activities within the territory of the Member State entered.

PART D

Article 9

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

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

Article 10

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.

Article 11

REASONS FOR EXPULSION

1. No person who is a citizen of a Member State, or any member of the family of such person, who has been permitted residence or establishment in the territory of another Member State, 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 Member State 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 12

PROTECTION AGAINST EXPULSION OF INDIVIDUALS

1. An order for the expulsion of a citizen of a Member State or any member of the family of such citizen from the territory of another Member State 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 Member State 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 13
PROTECTION AGAINST INDISCRIMINATE EXPULSION

1. Any person who has acquired residence or establishment in the territory of a Member State 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 Member State shall be considered and determined on its own merits.

Article 14
PRINCIPLES GOVERNING EXPULSION

1. Each Member State shall ensure that its laws, regulations or administrative mechanisms for the expulsion of non-citizens shall, in relation to citizens of another Member State, 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 Member State ordering the expulsion and the receiving Member State, as may be agreed.

PART E
FINAL PROVISIONS

Article 15
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 16
IMPLEMENTATION INSTITUTIONS

The institutions for the implementation of this Protocol shall, in addition to those established by Article 8 of the Agreement Establishing IGAD be:

- a. the Committee of Ministers responsible for Migration ; and
- b. any other committee established by the Council of Minister of the Organ.

Article 17
SETTLEMENT OF DISPUTES

1. Any dispute which may arise regarding the interpretation or application of this Protocol shall ordinarily be resolved through the mechanism established under Article 18A of the Agreement Establishing IGAD.

Article 18
AMENDMENT OF THE PROTOCOL

1. Any Member State 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 Council of Ministers 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 19
REGULATIONS

The Council of Ministers responsible for monitoring the implementation of this Protocol shall make Regulations for the effective implementation of the provisions of this Protocol.

**Article 20
SIGNATURE**

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

**Article 21
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 22
DEPOSITARY**

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