

Economic Community of West African States, African Regional Bodies

Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol on free movement of persons, the right of residence and establishment

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Economic Community of West African States

Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol on free movement of persons, the right of residence and establishment

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The High Contracting Parties,

MINDFUL of Article 5 of the ECOWAS Treaty establishing the Authority of Heads of State and Government and defining its composition and functions,

MINDFUL of the ECOWAS Treaty, particularly its Article 27,

MINDFUL of the Protocol on free movement of persons, the right of residence and establishment, signed in Dakar on 29 May, 1979,

MINDFUL of Decision A/DEC.8/5/82 amending paragraph 1 of Article 27 of the ECOWAS Treaty,

CONSIDERING that the deadline for the implementation of phase 1 of the Protocol on the free movement of persons, the right of residence and establishment, which effectively entered into force on June 5, 1980, expired on 4 June, 1985,

CONVINCED of the need to proceed to the second phase of this Protocol, which relates to the right of residence, at the present stage of the evolution of ECOWAS activities,

HAVING STUDIED the Resolution of the Council of Ministers on the subject, on the recommendation of the competent technical Commission, at its fifteenth meeting held in Lomé from 6 to 17 May 1985,

HEREBY AGREE AS FOLLOWS

Chapter I Definitions

Article 1

1. In this Protocol, the following expressions shall have the meaning assigned to them hereunder,

"Treaty" means the Treaty of the Economic Community of West African States.

"Community" means the Economic Community of West African States as defined in Article 1 of the Treaty.

"Member State or Member States" means a Member State or Member States of the Economic Community of West African States.

"Host Member State" means the Member State or country of residence of the migrant worker.

"Member State of origin" means the Member State or country of origin of the migrant worker or the country of which he is a national.

"Authority" means the Authority of Heads of State and Government established by Article 5 of the Treaty.

"Executive Secretary and Executive Secretariat" means the Executive Secretary and the Executive Secretariat of the Community as defined in Article 8 of the Treaty.

"Community citizen or Community citizens" means any person or persons fulfilling the conditions stipulated in the Protocol A/P.3/5/82 relating to the definition of Community citizen.

"Right of Residence" means the right of a citizen who is a national of one Member State to reside in a Member State other than his State of origin and which issues him with a residence card or permit that may or may not allow him to hold employment.

"Residence card" or "Residence Permit" means the document issued by the competent authorities of a Member State granting right of residence in the territory of the Member State.

"Resident" means any citizen, who is a national of one Member State, who is accorded the right of residence.

"Migrant worker" or "migrant" means any citizen who is a national of one Member State, who has travelled from his country of origin to the territory of another Member State of which he is not a national and who seeks to hold or proposes to hold or is holding or has held employment.

"Competent Administrations or relevant Departments" means national Administrations of Member States responsible for immigration and emigration matters.

"Competent authority of place of residence" means the competent local authority responsible for problems concerning the residence of foreigners in the territory of the host Member State.

"Fundamental rights" means the right granted to any migrant worker by this Protocol and the Conventions of the International Labour Organisation (ILO) on the protection of the rights of migrant worker.

"Border area workers" means migrant workers who, while in employment in one 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.

"Seasonal workers" means migrant workers in employment or practising a business on their own account in one Member State of which they are not nationals, the activity being by its nature dependent on seasonal conditions and capable of being practised only during a part of the year.

"Itinerant workers" means migrant workers who, normally residing in one Member State, may have to travel to another Member State for a short period for the requirements of their activities.

2. In this Protocol, the term "migrant workers" excludes:
- (a) persons on official posting who are employed by international organisations and persons employed by a State outside the territory of that State, whose entry into the country and conditions of service are governed by general international law or by specific International Agreements or Conventions.
 - (b) persons on official posting who are employed by a State outside the territory of that 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.
 - (c) persons whose working relations with an employer have not been established in the host Member State.
 - (d) persons whose main income does not come from the host Member State.
 - (e) persons who become residents in their capacity of investor in a country other than their State of origin or who, since their arrival in that country, have been carrying out an economic activity as an employer.

Chapter II

Right of residence

Article 2

For the purpose of implementing the second phase (right of residence) of the Protocol on free movement of persons, the right of residence and establishment, each of the Member States shall grant to citizens of the Community who are nationals of other Member States, the right of residence in its territory for the purpose of seeking and carrying out income earning employment.

Article 3

With the exception of restrictions justifiable by reasons of public order, public security and public health, the right of residence shall include the right:

- (1). to apply for jobs effectively offered;
- (2). to travel for this purpose, freely, in the territory of Member States;
- (3). to reside in one of the Member States in order to take up employment in accordance with the legislative and administrative provisions governing employment of national workers.
- (4). 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 4

The provisions of Article 3 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 States so permit.

Chapter III

Residence Card valid as visiting and Residence Permit

Article 5

Citizens of the Community who are nationals of Member States admitted without visa into the territory of one Member State and desiring to reside in the territory of that Member State, shall be obliged to obtain an ECOWAS RESIDENCE CARD or a RESIDENCE PERMIT.

Article 6

The applicant for the RESIDENCE CARD or RESIDENCE PERMIT in the territory of any Member State, shall deposit with the Department of Immigration of the host Member State, an application for a Residence Card or Residence Permit in accordance with the rules and regulations existing in each Member State.

Article 7

1. The application shall be addressed to the competent Ministry of the Host Member State.
2. The applicant shall be issued with a receipt certifying that his application and the necessary documents have been submitted.

Article 8

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 9

1. 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 Card or Residence Permit in Member States shall be harmonised with a view to establishing an ECOWAS RESIDENCE CARD.

Chapter IV

Special provisions concerning border area seasonal or itinerant workers

Article 10

1. 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 State, with the exception of rights relating to residence or resulting therefrom.

Border area workers shall enjoy the right to choose their employment freely within the limits of any restrictions imposed by the host Member State on access of migrant workers to limited categories of jobs, posts or activities, when the interests of the State so dictate.

Article 11

Seasonal workers, as 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 State.

Article 12

Itinerant 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 V

Protection against collective and arbitrary expulsion

Article 13

1. Migrant workers and 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 VI

Protection against individual expulsion and respect of fundamental rights of the migrant worker

Article 14

1. Migrant workers and members of their families whose status comply with the residence requirements may only be expelled from the host Member State;
 - (a) for reasons of national security, public order or morality;
 - (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 authorisation of residence or work permit is not fulfilled.
 - (d) in accordance with the laws and regulations applicable in the host Member State.
2. Any form of expulsion may only be based on a well-founded legal or administrative decision taken in accordance with the law.
3. The immigrants, the Government of his country of origin and the Executive Secretariat should receive written notice of the decision for information purposes.
4. When an expulsion order is made out by a legal or an administrative authority, the immigrant concerned may appeal, or may have recourse to an appeal in accordance with the rules and regulations of the host Member State. The recourse to an appeal shall constitute a suspension of the expulsion order, unless it is not explicitly justified by reasons of national security or public order.

If such a decision has already been executed and is subsequently annulled, the person concerned is entitled to claim damages in accordance with the law.
5. In case of expulsion, the immigrant concerned shall be granted a reasonable period of time to allow him collect any salaries or other allowances due to him from his employer, settle any contractual commitments, and when required — for reasons of personal security — to obtain authorisation to go to a country other than his country of origin. The situation of the family of the immigrant concerned shall also be taken into consideration.
6. The expulsion or departure from the host Member State shall conversely affect the entitlements obtained through legislation by the migrant worker or a member of his family.
7. In case of expulsion, the authorities of the host Member State shall bear the expenses resulting therefrom and shall not pressurise those affected in any way to accept a simplified procedure, such as "voluntary departure" if such affected persons have not expressly requested it.

Article 15

1. Consular or diplomatic authorities of the Member State of origin or of the country representing the interest of the country of origin shall be advised of any decision to expel a migrant worker or member of his family legally present in the host Member State, at least forty-eight (48) hours before the expulsion takes effect.
2. The migrant worker and members of his family may appeal for the protection and assistance of consular and diplomatic authorities of their countries of origin and may receive advisory services from them to defend his right, if the rights conferred on him by this Protocol or by legislation in the host Member State are infringed upon.

3. The migrant worker as well as members of his family are legal personalities.
4. In case of dispute on the rights mentioned in paragraph 3 of this Article, the worker may put forth his claims to a competent body, either personally, or through his representatives.

Article 16

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 may be carried out without ensuring that all the fundamental rights of the migrant worker have been respected.

Chapter VII Transfer of savings

Article 17

1. Each Member State shall allow the transfer of all or part of the earnings or savings of the migrant worker which he may wish to transfer, according to modalities fixed by legislation. This Provision shall also apply to the transfer of funds due to migrant workers as maintenance. The transfer or amounts due to the migrant worker as maintenance 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 migrant workers when they finally leave the host Member State.

Chapter VIII Cooperation between competent administrations of Member State

Article 18

The competent Administrations of Member States shall cooperate closely with one another and with the Executive Secretariat on matters relating to the movement of persons within the Community and particularly as far as migrant labour is concerned in order to:

1. identify the types of migratory movement within the Community as well as the reasons for such movement,
2. identify the types of employment sought and the qualification of the employment-seekers as well as the cost of labour in Member States through exchange of information between the Executive Secretariat and each Member State;
3. consider trade union organisations in each Member State and their attitude to immigrant job-seekers;
4. monitor the problems of migrant labour, as well as the types of industry of activity which attract such labour and to inform the Executive Secretariat on the subject;
5. endeavour to harmonise the employment and labour policies in Member States, on the basis of this exchange of information on migrant labour.

Article 19

While they shall be free to determine the criteria authorising the admission, stay, employment of migrant workers and members of their family, the host Member States shall hold consultations and act in collaboration with the other Member States concerned in order to promote healthy, fair and humane conditions to ensure legal migration of workers and their families.

In this case, not only labour requirements and resources, but also social, economic, cultural, political and other consequences both for migrant workers and for the Community and the Member States concerned shall be duly taken into consideration.

Article 20

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

These organs shall be responsible for;

1. formulating the policies on this movement,
2. the exchange of information, consulting and cooperation with the competent authorities of other Member States concerned by this movement;
3. the supply of information, particularly to employers and their organisations as well as to workers and workers' organisations, on policies, laws and regulations relating to migration for the purposes of employment and on working and living conditions of migrant workers and members of their families in the host Member States;
4. informing and assisting migrant workers as well as members of their families on the authorisations, 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 should also be informed on customs, fiscal and monetary laws and regulations as well as laws and regulations on other relevant issues;
5. 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 and to migrant workers.

Article 21

1. At the national level of each Member State only the following bodies shall be authorised to carry out operations for the purposes of recruitment or placement of workers in another State;
 - (a) official departments or bodies of the Member State of origin or the host Member State, if agreements have been concluded between the Member States concerned;
 - (b) any body set up by a bilateral or multilateral agreement.
2. Through national legislation and bilateral or multilateral agreement, the following may be authorised to carry out the recruitment exercise, subject to the approval and supervision of the authorities of the Member State concerned:
 - (a) the employer or a person in his employ acting on his behalf;
 - (b) private agencies

Article 22

1. Member States shall cooperate to prevent and stop illegal or clandestine movement and employment of migrant workers whose status is irregular.
2. For this purpose, each Member State shall, within the limits of its jurisdiction, take:
 - (a) appropriate measures against the dissemination of misleading information on emigration and immigration.
 - (b) measures intended to detect and stop the illegal or clandestine movement of migrant workers and members of their families and to impose effective sanctions on persons or bodies who organise or help to organise such movements or participate in them;
 - (c) measures intended to impose effective sanctions on persons, groups or bodies which resort to violence, threats or intimidation against illegal migrant workers or members of their families.
3. Host Member States shall take adequate measures likely to effectively stop the employment of illegal aliens in their territory, by imposing sanctions on the persons or bodies which employ such workers. These measures shall not adversely affect the right of migrant workers vis-a-vis their employers and the rights resulting from their employment.

Article 23

1. No matter the conditions of their authorisation of residence, migrant workers who comply with rules and regulations governing residence, shall enjoy equal treatment with nationals of the host Member State in the following matters:
 - (a) security of employment;
 - (b) possibility of participating in social and cultural activities;
 - (c) possibilities or re-employment in case of loss of job for economic reasons, in this case, they shall be given priority over other workers 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 centres for their children;
 - (f) benefit of an access to social cultural and health facilities.
2. Migrant workers who comply with the rules and regulations governing residence shall enjoy equal treatment with nationals of the host Member State in the holding of employment or the practice of their profession.

Chapter IX General and miscellaneous provisions

Article 24

1. No provisions of this Protocol may be interpreted to adversely affect more favourable rights or liberties guaranteed to migrant workers or members of their 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 rights or liberties recognised in this Protocol or to any restriction of such rights or liberties beyond those stipulated in the Protocol.

Article 25

1. Rights guaranteed in this Protocol may not be withdrawn.
2. Any form of pressure exerted on migrant workers 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 26

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 recognised by this Protocol have been infringed upon, shall enjoy the right of recourse, 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 State, shall rule on the rights of the person who is making an appeal.

Article 27

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 28

Any dispute between Member States arising from the interpretation or application of this Protocol shall be settled in accordance with the provisions of the procedure for the settlement of disputes stipulated in Article 56 of the Treaty.

Article 29

1. Any Member State may submit proposals for the amendment or review of this Protocol.
2. All proposals shall be sent to the Executive Secretariat which shall communicate such proposals to Member States within thirty (30) days of receiving them. Amendments or modifications shall be considered by the Authority on the expiration of the thirty days' notice granted to Member States.

Chapter X Deposit and entry into force

Article 30

1. This Protocol shall enter into force provisionally upon signature by the Heads of State and Government and definitely upon ratification by at least seven (7) signatory States in accordance with the constitutional procedures of each Member State.

2. This Protocol and all instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies of this Protocol to all Member States and notify them of the dates of deposits of the instruments of ratification and shall register this Protocol with the Organisation of African Unity, the United Nations and all other Organisations.
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 Economic Community of West African States have signed this Protocol.

Done at Abuja this 1st day of July 1986

In single original in the English and French Languages, both texts being equally authentic.