



POLICY BRIEF ON FREEDOM OF MOVEMENT AND VISAS



1. Introduction

Travel within Africa for Africans is often fraught with difficulties and beset with hurdles. Poor interstate infrastructure and the high cost of air travel are just a few of the challenges faced by African travellers. However, the single most challenging aspect for Africans is obtaining the necessary permission to enter a country: the visa. Visa requirements for most Africans travelling within the continent is, perhaps, the single most restrictive barrier to travel across Africa. Countries give foreigners permission to enter their territory prior to or at the point of entry, in order to control and monitor who enters, and once they have entered, to limit their activities. States also use visas to reciprocate other states' position towards their own citizens. More than half of African countries require travellers who are African to obtain a visa before entry.

Freedom of movement of people refers to the ability to enter a foreign country without a visa, the right to live and work in that country, and the right to establish and to set up a business there without discrimination.¹ There are benefits to freedom of movement of people, and it can be a potential aid to development as various studies have shown. Irrespective of the African Union's encouraging position on freedom of movement of people across the continent, and its commitment evidenced by its launch of the AU passport, many African countries persist in subjecting foreigners who are African, to severe restrictions to entry into their territories. It is not uncommon for Europeans and Americans to be granted visas upon entry and African colleagues travelling with them to be denied entry.² Africans face many challenges in not only entry, but also with the possibility of residence and working in other African countries.

Regional organisations such as COMESA and the EAC have in place treaties that move us closer towards seamless borders as a way to enhance economic development. According to these legal documents on visas and free movement, citizens of the countries in COMESA should be able to move freely between the 19 countries and also live and work without undue restraint.

Just as removing barriers to the free movement of goods enhances trade and economic integration, removing barriers to the free movement of people enhances deeper levels of socio-economic cohesion and integration amongst nations and regions.³

To achieve the vision for Africa and the underlying foundation of the AU, that of a federation of states and “a peaceful, prosperous and integrated Africa”,⁴ a key factor that must be met is that of freedom of movement of people. The integration process was started in earnest sub-regionally first in West Africa by the Economic Organisation of West Africa (ECOWAS) in 1979⁵, followed by, *inter alia*, the Common Market for Eastern and Southern Africa (COMESA)⁶ then the Southern Africa Development Community (SADC),⁷ and then the East African Community (EAC) in 2009.⁸ More recently, the issue of free movement of Africans is one that has gained currency across the

¹ See; Mandla Lionel Isaacs (26 August 2016) Free movement in Africa is desirable, but how to realize it?, Africa Development Bank Blog, <https://www.afdb.org/en/blogs/integrating-africa/post/free-movement-in-africa-is-desirable-but-how-to-realize-it-16033/> (last accessed 20 January 2017)

² Omanga (2015) Restrictive visa requirements make a big mockery of Africa's stated bid for unity, Daily Nation, <http://www.nation.co.ke/oped/Opinion/Restrictive-visa-rules-make-a-big-mockery-of-Africa/440808-3005234-vk5rqbz/index.html> (Visited 14 November 2016)

³ CCPAU (2013) Continental Report: Freedom of Movement of People Study

⁴ African Union Commission, Agenda 2063, The African We Want

⁵ Protocol Relating to the Free Movement of Persons, Residence and Establishment (1979)

⁶ Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence (1998) and Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements (1984)

⁷ Protocol on the Facilitation of Movement of Persons (2005)

⁸ The East African Community Common Market (Free Movement of Persons) Regulations (2009)

continent, particularly at the governmental level. In addition to pronouncements at the African Union Summits, countries like Benin, Ghana, Kenya, Mauritius, Nigeria, Rwanda and Seychelles have recently removed or eased visa restrictions for Africans. In June 2015, during the AU summit in Johannesburg, the Assembly of Heads of State and Government agreed to hasten integration and mobility in Africa, through various strategies including the creation of an African visa free environment, the creation of an African passport and to the reconciliation of opportunities offered by different RECs to all Africans. It is anticipated that a Free Movement Protocol will be adopted at the January 2018 Summit to enable visa free travel across Africa.

Within COMESA, there are two treaties relevant to free movement. One on reduction of visa restrictions, which was adopted in 1984 and has been implemented very slowly.⁹ One on freedom of movement which as of 11th June 2016, had been signed by only 4 countries out of 19 member states, Burundi, Kenya, Rwanda and Zimbabwe,¹⁰ with only Burundi having ratified it. COMESA has also adopted a Model Law on Immigration to assist their Member States to harmonise their national immigration laws so as to ease implementation of the protocols. The malaise in the realisation of the Protocols is compounded by the fact that Member States of COMESA also belong to other Regional Economic Communities (RECs) with differing standards and levels of integration. Regional arrangements and national laws and practices, continue to hamper human movement, which is recognised as a bedrock for Africa's development.

2. Kenya and Visas

Kenya had different kinds of visa requirements on those wishing to enter its territory, and placed specific requirements and obligations for obtaining such visas:

- *Visa before travel*
Nationals of certain countries were compelled to obtain a Kenyan visa before leaving their countries of residence.
- *Visa on Arrival*
Nationals of certain countries are able to obtain visas when they arrived at any border post on the payment of a fee, unless otherwise exempted.
- *Referred Visa*
Nationals of 3 African Countries, Eritrea, Libya and Somalia, are required to obtain “referred visas” in order to enter Kenya. This means that visa applications would need to be sent to and processed in Nairobi, and approved by the Director of Immigration Services.
- *e-Visa*
Since the introduction of the e-visa services, nationals of 148 countries can apply for and obtain their visas for Kenya online with the payment of a fee. The service offers single entry, transit and service visas, which are approved within two (2) days and formally stamped in one's passport on arrival at the border post.

⁹ CCPAU (2013) Continental Report: Freedom of Movement of People Study

¹⁰ COMESA (2016) Rwanda approves ratification of the Protocol on Free Movement

<http://www.comesa.int/rwanda-approves-ratification-of-the-protocol-on-free-movement/> (visited 14 November 2016)

Kenya allows the nationals of 18 out of 55 African countries to enter its territory without a visa.¹¹ Of these, 6/6 are from the East African Community (EAC) and 11/19 are from the COMESA region.¹² Nationals from 8 COMESA Countries require a visa to enter Kenya, of which, nationals of 2 countries have to obtain a referred visa.¹³ This places Kenya at 80% on the COMESA visa index.¹⁴ By contrast, Kenyan citizens require visas for 7 COMESA Countries.¹⁵ Notably, with the exception of Sudan, the countries that deny Kenyans free entry are also the ones that Kenya requires visas from. The COMESA Free Movement Protocol¹⁶ provides for bilateral agreements between states to further ease visa restrictions and Kenya should exploit this opportunity towards the realisation of its commitments.

Kenya has made progress towards meeting its continental obligations regarding freedom of movement to and within its territory for African citizens, especially its commitment to COMESA. Kenya has introduced new policies that ease entry into the country for foreigners. It has repealed some of its laws to ease restrictions on free movement of persons, for example the Immigration Act (Cap 172), Alien Restriction Act (Cap 173) and Visa Regulations, replacing them with the following: Kenya Citizenship and Immigration Act No. 12 of 2011 and Kenya Citizens and Foreign Nationals Management Act No. 31 of 2011. Kenya also waived visa fees for all children aged below 16 years who are accompanying their parents and introduced the e-visa. Kenya is one of only 9 countries in Africa that offers e-Visas.¹⁷ This innovative measure introduced in 2015, reduces the cost and time for travellers seeking to come to Kenya. Most recently, in August 2017, Kenya eased visa restrictions for nationals from Cameroon, Mali and Senegal, such that they no longer require referred visas and can obtain them online or from an authorised Kenyan diplomatic mission.

'The level of openness or otherwise of the visa regimes in the AU member states is a direct indicator of the pace and substance of achieving the free movement of people as envisaged by the AEC Treaty.'
PACIN/CCPAU Free Movement Report

Kenya still requires visas for the majority of African visitors viz for the nationals of 37 of the 55 African Union Member States, 8 of whom are in COMESA.¹⁸ Kenya has also still has not ratified the COMESA Free Movement Protocol. This casts a shadow on other progress Kenya has made towards enhancing free movement of people. As do the age and salary restrictions on work permits to foreign nationals that were initiated in 2016, and a cap on the high end of the income scale introduced that will see foreign medical, accounting, engineering, legal and real-estate professionals banned from working in Kenya completely.

¹¹ See, Kenya's eVisa website <http://evisa.go.ke/eligibility.html>

¹² Botswana, Burundi, Ethiopia, The Gambia, Ghana, Lesotho, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe. In COMESA are Burundi, Ethiopia, Malawi, Mauritius, Rwanda, Seychelles, Swaziland, Uganda, Zambia and Zimbabwe.

¹³ Comoros, DRC, Djibouti, Egypt, Madagascar and Sudan. Eritreans and Libyans require a referred visa meaning that only the Director of Immigration can issue the visa from Nairobi. They cannot obtain the visa online or directly from a Kenya diplomatic office.

¹⁴ You can find the full document and analysis on our website here: <http://www.visafree.ccpau.org>

¹⁵ Comoros, DRC, Djibouti, Egypt, Eritrea, Libya and Madagascar.

¹⁶ Protocol Relating to the Gradual Relaxation of and Eventual Elimination of Visa Requirements Within the Common Market for East and Southern Africa, adopted December 1984 (Visa Protocol).

¹⁷ The 9 countries are: Côte d'Ivoire, Gabon, Kenya, Nigeria, Rwanda, São Tomé and Príncipe, Sierra Leone, Zambia and Zimbabwe. ADB (2016) Africa Visa Openness Report, http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Africa_Visa_Openness_Report_2016.pdf (visited 14 November 2016) p. 1

¹⁸ Algeria, Angola, Benin, Burkina Faso, Cape Verde, Central African Republic, Chad, Comoros, Congo (Brazzaville), Cote d'Ivoire, Democratic Republic of Congo, Djibouti, Egypt, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Liberia, Madagascar, Mauritania, Morocco, Mozambique, Niger, Nigeria, Saharawi Arab Democratic Republic, Sao Tome and Principe, South Sudan, Sudan, Togo, and Tunisia.

With much progress already accredited to her, Kenya still can learn best practice examples from the Seychelles and Rwanda. The Seychelles, without any diplomatic presence in COMESA states does not require visas for all Africans. It is currently the most open country in Africa. Indeed, Kenya can also learn from Rwanda's more open visa policy. Rwanda offers all Africans visas on arrival.¹⁹ It has been noted that Rwanda's visa openness is helping it become a middle-income country by 2020.²⁰ Growth in trade, tourism and investment has been attributed to its open visa policy that has helped its GDP and tourism revenues increase significantly.

3. Policy Considerations and Recommendations

With globalisation creating interdependency, countries' economies now rely on access and freedom of movement of goods, services and people. Kenya must continue to ensure that it has policies that enable such access, and that they are implemented. Kenya as a member of the AU, COMESA and the EAC, has had to review its immigration policies in the past years according to its obligations to these sub-regional bodies. It has also reviewed its policies for countries that it has strong ties with that may not be members of any of the abovementioned bodies.

Thus, it is recommended that Kenya:

1. Implements the provisions of the COMESA Visa Protocol which it has ratified to ensure a more visa-free policy that will enable Africans to enter the country easily;
2. Ratifies the COMESA free movement protocol which it has already signed;
3. Aligns its immigration laws with the COMESA model law to ensure uniformity in law and practice across the COMESA Region;
4. Dialogues honestly and openly with various national and multilateral stakeholders regarding its security concerns, and implement only necessary measures drawing from best practice examples;
5. Learns from best practice examples and share solutions to existing challenges with other countries in the region like Seychelles and Rwanda;
6. Removes any barriers to African and COMESA visitors' movement into and within the country;
7. Creates an enabling environment by embracing a more relaxed foreign residence and work policy and documentation regime, so as to attract foreign investment that will bolster her economy.

4. Conclusion

Having started the journey towards freedom of movement as required by the AU, COMESA and the EAC, Kenya must now increase its efforts to ensure freedom of movement for Africans. She has the opportunity within COMESA to be the standard bearer, with the benefits of freedom of movement that will ensue, she has the potential to become an economic power house within the region and such an opportunity should not be bypassed.

¹⁹ ADB (2016) Africa Visa Openness Report, http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Africa_Visa_Openness_Report_2016.pdf (visited 14 November 2016) p. 22

²⁰ ADB Report, p. 22

About the Pan African Citizens Network (PACIN)

PACIN (formerly CCPAU) has established itself as a critical Pan-Africanist initiative which facilitates a deeper engagement of African civil society organisations and citizens with regional and continental policies and programmes. PACIN's mandate is to ensure that the continent has its people at its centre and not governments, and that decision-making is driven by, and accountable and accessible to African citizens. PACIN is a network of national, regional and continental African civil society organisations and citizens. We utilise invited and claimed spaces to foster substantive and procedural changes within regional and continental mechanisms, and to amplify African citizen voices. Our theory of change recognises citizen-led accountability as the bedrock of democratic governance and development on the continent. Citizens are the legitimate rights holders and need to be more involved in claiming the promise of a "peaceful, prosperous and integrated Africa". PACIN undertook research on freedom of movement of Africans across Africa in 2013. The report which is available on request, was carried out at two levels, at the sub-regional level (with some country analysis) and at the continental level.



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