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Movement of Persons and African integration: Trade Facilitation and the African Free Movement of Persons Protocol

Africa's trade facilitation agenda and the free movement of persons may be distinctly different topics, yet they both play an important role in fulfilling the objectives of the African Union's Agenda 2063 and in the realisation and success of the African Continental Free Trade Agreement (AfCFTA).

The WTO describes trade facilitation as the '*simplification, modernisation and harmonisation of export and import processes*' while the AfCFTA defines it as '*the simplification and harmonisation of international trade procedures, including activities, practices, and formalities involved in collecting, presenting, communicating, and processing data required for the movement of goods in international trade*'.

While trade facilitation has always been an important issue and focus area of the WTO, provisions often tended to be vague or lacked specificity. This changed when in February 2017 the Trade Facilitation Agreement (TFA) entered into force; 36 African countries (of 42 African WTO Members) have also ratified the agreement. Provisions of the TFA included the movement, release and clearance of goods, cooperation between customs authorities, and technical assistance and capacity building.

Trade facilitation initiatives in Africa pre-date the WTO's TFA, and the related provisions introduced through the AfCFTA, where various Annexes of the Trade in Goods Protocol address trade facilitation and related customs cooperation and transit disciplines. These include Annex 3 (*Customs cooperation and mutual administrative assistance*), Annex 4 (*Trade facilitation*), and Annex 8 (*Transit*). Many of the provisions are closely modelled on provisions contained in the WTO TFA, and in fact the AfCFTA recognises and often mirrors the TFA, for

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example through the notification requirements where this can be done either through the AfCFTA (sub-committee on trade facilitation) or through the TFA.

Prior to the AfCFTA, regional communities already included provisions on the subject, for example COMESA in its trade facilitation provisions (Article 70), or SADC with disciplines on harmonizing customs laws and procedures in the region.

Measures to ease and simplify the movement of goods across African borders are expected to be particularly impactful, more so than tariff liberalisation measures on their own, or in combination with addressing non-tariff barriers.

From a cross-border trade perspective, many of the most costly border crossings globally continue to be situated on the African continent, notwithstanding many initiatives to ease trade, for example through the increasing number of one-stop border posts. Implementing trade facilitation commitments are therefore crucial building blocks in support of trade in goods, services, attracting FDI, as well as facilitating the movement of persons.

While cross-border trade in goods depends to a large extent on issues such as market demand, product competitiveness, logistics and the ease of doing business across the borders in the form of trade facilitation measures, the latter also relies on the ease of cross-border travel of persons. Person movements, especially of business persons, is often an important issue to facilitate business and cross-border trade transactions. The right to establishment and residence can further help drive business activity on the continent.

While the movement of persons has long been on the African agenda, particularly within regional economic communities, it gathered momentum on a continental level in 2017 with a number of negotiating rounds conducted to agree on a continental protocol. The AU adopted the *Protocol on the Free Movement of Persons, Right of Residence and Right of Establishment (FMP)*[1] in January 2018, and was signed by a significant number of countries shortly after in March 2018 at the 10th Extra-Ordinary Summit of the AU held in Kigali (alongside the signing of the AfCFTA).

The FMP does not form part of the AfCFTA *per se* but is rooted in Aspiration 2 of the AU's Agenda 2063, namely for Africa to be an integrated and united continent, and was of course signed at the same time as the trade protocol. It aims to advance African trade, promote socio-economic development, and enhance

[1] https://www.tralac.org/documents/resources/african-union/1965-protocol-to-the-abuja-treaty-free-movement-of-persons-right-of-residence-and-establishment-adopted-29-january-2018.html

political integration. It contains provisions on three key streams, and adopts a phased implementation approach: “progressive realisation”.

These involve, as part of Phase 1, the right of entry for 90 days by AU Member States’ citizens while doing away with the need for a visa for such purposes, and under Phase 2 the right of residence including for AU nationals’ spouse and children. Phase 3 covers the right of establishment, covering activities such as setting up a business and conducting trade or professional activities, including self-employment activities. An implementation roadmap is also annexed to the FMP.

Despite 32 countries having signed the FMP (30 at the March 2018 signing ceremony, and two adding their signature later), only four countries have ratified the agreement, falling short of the required 15 ratifications for the FMP to enter into force (amongst those countries that ratified it). They are Rwanda, Mali, Sao Tome and Principe, and Niger. The last ratification was completed in July 2019, and there have been none over the past three years despite 45 countries having committed to African economic integration by ratifying the AfCFTA, including 17 countries that have ratified since 2000 (all but one African country has signed the AfCFTA). This raises questions about countries’ real commitment to the FMP.

The FMP in Article 28 (Role of Regional Economic Communities) considers RECs important building blocks through which free movement of persons can be realised. For example, RECs are seen as focal points for promoting and evaluating the FMP, reporting progress on free movement initiatives, and harmonising policies and procedures on free movement. In fact, RECs are not only key implementers but have engaged in their own initiatives around free movement of persons for many years. ECOWAS set itself a 15-year target in 1979 of implementing free movement and right of residence and establishment on a regional basis; thus far, free movement (90 days) has been implemented and progress made in other areas.

EAC has made progress, for example on free movement for short visits not exceeding 30 days, and (limited) right of residence. SADC adopted but never implemented a draft protocol on free movement in 1995, but ten years later a Protocol on facilitation of the movement of people was signed by most Member States, and ratified by six (SACU + Mozambique). This Protocol contained different ambitions, with a greater focus on sovereignty, while disciplines on the free movement of persons, right of establishment and residence were brought closer to the responsibility of domestic legislation, with implementation through bilateral arrangements among countries.

What is evident is that there is often a significant mismatch between RECs’ regional initiatives and individual countries’ general openness on a continental ranking to visa-free movement of persons, along with the

observed pattern of signatures (and ratifications) of the FMP. For example, ECOWAS achieves a high ranking in terms of intra-regional visa-free travel on a reciprocal basis and many Member States rank highly on the continental index (African Visa Openness Index, as compiled by the African Development Bank). Furthermore, 11 ECOWAS Member States have signed the FMP, 2 have ratified (Mali and Niger), while four have not signed (Nigeria).

In the EAC, average visa-free reciprocity also ranks fairly highly, although visa openness on a continental ranking by EAC Member States is generally fairly low, indicative of a greater willingness to open for the movement of persons on a regional basis, rather than more generally. Five EAC Members have signed the FMP, of which two have ratified it, while one (Burundi) has not signed. Seychelles, part of COMESA and the joint highest ranked country in terms of intra-continental visa openness, has not signed the FMP. In SADC, regional reciprocal visa openness is fairly high, although individual Members' rankings on the continental scale are often of a much lower order relative to others. Half of SADC Members signed the FMP, while those that have not, are generally also ranked lowly with respect to continental visa openness. Most of the SACU countries and island States have not signed the FMP.

Free movement of persons remains a largely unfulfilled objective on the continental integration agenda, notwithstanding the progress made particularly within some RECs. The low ratification levels of the FMP and lack of recent progress – notwithstanding developments on the AfCFTA – may be indicative of ongoing concerns with aspects of the FMP.

This might involve the implementation schedule (roadmap), concerns around the more advanced phases (right of establishment and residence), inadequate law enforcement, perceptions around a loss of sovereignty on this often sensitive subject, insufficient information exchange systems and population identification systems, and so on. Addressing these (possible) deficiencies and concerns will be important considerations to encourage countries to phase in enhancements in aid of the movement of persons, are supportive of African economic integration, and in raising prospects for the overall success of the AfCFTA.

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