CASE STUDY

Innovating for Temporary Movement of Natural Persons in Africa

Leveraging the CFTA

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Innovating for Temporary Movement of Natural Persons in Africa: Leveraging the CFTA

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List of acronyms

ABTC	APEC Business Travel Card
Abuja Treaty	Treaty Establishing the African Economic Community
AEC	African Economic Community
AIDA	Accelerated Industrial Development of Africa
AGOA	Africa Growth and Opportunity Act
AMU	Arab Maghreb Union
APEC	Asia Pacific Economic Community
AU	African Union
BIAT	Decision on Boosting Intra-African Trade and Fast Tracking the CFTA
BLA	Bilateral Labour Agreement
CEN-SAD	Community of Sahel-Saharan States
CFTA	Continental Free Trade Area
COMESA	Common Market for Eastern and Southern Africa
CU	Customs Union
EAC	East African Community
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
ENT	Economic Needs Test
FTA	Free Trade Area
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
IGAD	Intergovernmental Authority for Development
ILO	International Labour Organization
IOM	International Organization for Migration
LDC	Least Developed Country
MIP	Minimum Integration Programme
MFN	Most Favoured Nation
NAFTA	North American Free Trade Agreement
OAU	Organisation for African Unity
PIDA	Programme of Industrial Development in Africa
REC	Regional Economic Community
SADC	Southern African Development Community
TFTA	COMESA-EAC-SADC Tripartite Free Trade Area
TISA	Trade in Services Agreement
TPP	Trans-Pacific Partnership
TTC-MBP	Tripartite Technical Committee on Movement of Business Persons
UN DESA	United Nations Department of Economic and Social Affairs
UNHCR	United Nations High Commission for Refugees
WTO	World Trade Organization

Leveraging the CFTA to innovate for temporary movement of natural persons in Africa

1 Introduction

Regional economic integration has been part of the development agenda of Africa for a long time. For the purposes of this discussion, it is helpful to provide a background summary of its long and complicated history. Since 1963 with the adoption of the Organisation for African Unity (OAU) Charter and later the Lagos Plan of Action for the Economic Development of Africa: 1980-2000 Members of the OAU have been encouraged to integrate their economies into sub-regional markets corresponding to the five geographical regions of the continent (North, South, East, West and Central) and eventually establishing a single African Economic Community (AEC). In 1994, with the entry into force of the Treaty Establishing the African Economic Community (Abuja Treaty) of the OAU it was envisaged that the AEC would be gradually established in six linear stages[1] over a transition period of thirty-four years starting with the establishment of Free Trade Areas (FTAs) and Custom Unions (CUs) at Regional Economic Community (REC) level followed by a continent-wide FTA, CU, Common Market and eventually a Monetary Union[2].

In order to give effect to these objectives, the Protocol on Relations between the African Economic Community and Regional Economic Communities (1998) was signed between the AEC (the Secretary-General of the OAU signed on behalf of the AEC) and the different RECs to coordinate the implementation of the different integration stages of the Abuja Treaty. In 2007, the Protocol was replaced with a similar instrument after the transformation of the OAU into the African Union (AU) in 2002. The aim of the Protocol, as mandated by the Abuja Treaty and the Constitutive Act of the African Union, is to promote the coordination and harmonisation of policies, programmes and activities of the different RECs and to provide an institutional framework to facilitate the implementation of the Abuja Treaty. However, the increasing formation of new RECs with

[1] The six incremental stages include: 1) strengthening of existing regional economic communities and the establishment of new regional economic communities in regions where they do not exist; 2) stabilising and gradual removal of tariff and non-tariff barriers, strengthening of sectoral integration at regional and continental levels, coordination and harmonisation of the activities of existing and future regional economic communities; 3) establishing FTAs and thereafter CUs at regional level; 4) establishing a CU at continental level; 5) establishing an African Common Market through the adoption of common policies, harmonisation of monetary, fiscal and financial policies, and implementation of the principle of free movement of persons; and 6) consolidation of African Common Market through the free movement of people, goods, capital and services as well as the rights of residence and establishment, integration of all economic sectors, establishment of an African Central Bank, single African Currency, and a Pan-African Parliament.

[2] Out of all AU Members, only Djibouti, Eritrea, Madagascar, Somalia and South Sudan have not ratified the Treaty Establishing the AEC.

conflicting and overlapping memberships made the AU inefficient and ineffective in the implementation of its integration objectives. In light of these challenges, AU Members decided in 2006 to undertake a rationalisation process to only recognise eight RECs (ECOWAS[3], SADC[4], IGAD[5], COMESA[6], ECCAS[7], AMU[8], EAC[9] and CEN-SAD[10]) as building blocks for the gradual achievement of its objectives.

Unfortunately, due to a lack of rationalisation, coordination and harmonisation of inter-regional integration plans, the different RECs adopted distinctive integration approaches over the years. Consequently, the various RECs are at different stages and levels of integration and the objectives of the Abuja Treaty have not materialised. One may argue the RECs themselves and the trajectories they have taken turned from being 'building blocks' for the creation of an integrated African market into stumbling blocks, and thus obstacles in the path of its formation.

Three observations regarding the current state of economic integration in Africa; the AEC and its relationship with the AU; and, the nature of trade in the 21st century are worth making at this stage. First, the step-by-step integration process envisaged in the Abuja Treaty is founded on the integration processes of existing and future RECs and the conclusion of agreements to coordinate and harmonise the policies, programmes and activities between and among them. The original purpose of the RECs was to support the formation of an integrated continent-wide economic market, but this has not happened. These RECs have taken on a life of their own and will not be dismantled. They have their own legal personalities and are not members of the AEC. Thus, the RECs are not legally bound by the policies and decisions of the AEC. Second, the AEC forms an integral part of the AU and does not dispose of its own legal personality to focus exclusively on

[3] The Economic Community of West African States consists of Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo

[4] Southern African Development Community consists of Angola, Botswana, Democratic Republic of the Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe

[5] Intergovernmental Authority for Development consists of Djibouti, Ethiopia, Kenya, Somalia, Sudan and Uganda

[6] Common Market for Eastern and Southern Africa consists of Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.

[7] Economic Community of Central African States consists of Gabon, Cameroon, the Central African Republic (CAR), Chad, Congo Brazzaville and Equatorial Guinea, Burundi, Rwanda, the Democratic Republic of Congo (DRC) and Sao Tome and Principe.

[8] Arab Maghreb Union consists of Algeria, Libya, Mauritania, Morocco and Tunisia

[9] East African Community consists of Burundi, Kenya, Rwanda, Tanzania and Uganda. South Sudan joined in 2016.

[10] The Community of Sahel-Saharan States consists of Benin, Burkina Faso, Central African Republic, Chad, Côte d'Ivoire, Djibouti, Egypt, Eritrea, The Gambia, Ghana, Guinea Bissau, Liberia, Libya, Mali, Morocco, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Togo, and Tunisia.

trade and trade-related issues at the continent level. As a result, the AU Commission tends to take over the AEC's interests and adopt policies and programmes on AEC-related issues (Kolbeck, 2014). The obvious problem with this lack of distinct identity or secretariat is that it leads to fragmentation and incoherence of the trade agenda. Third, the Abuja Treaty was developed before the establishment of the World Trade Organization (WTO) and the world has undergone phenomenal changes in digital technologies, fragmentation of production and global trade in general since the early 1990s. These developments combined with other trade and economic development challenges make the economic integration framework of the Abuja Treaty unfit for the challenges facing trade in the 21st century. Even the WTO framework is confronted by the challenges facing trade in today's modern economic reality.

Moreover, the existing legal framework of the AU is not equipped to effectively and coherently govern the complex relationships between all the organisations mandated with economic integration on the continent. Against this background, it becomes abundantly clear that a new and different approach to economic integration was required for the continent. In 2015, AU Members adopted Agenda 2063 as a long-term vision and plan for the continent's accelerated development and technological progress. While acknowledging past successes and challenges, it seeks to achieve inclusive growth and sustainable development, integration, good governance, peace and security, common identity and shared values, people-centred development, and an united continent. Similarly, in June 2015, Members of the AU launched negotiations for the establishment of a Continental Free Trade Area (CFTA) to integrate all the economies in Africa in line with the objectives of the Abuja Treaty. The objective is to conclude an agreement covering a comprehensive agenda that could cater for the needs of trade in the 21st century. The focus of this paper is on one aspect of this integration agenda, namely the temporary movement of persons.

The paper starts by putting the issue of migration in proper context followed by a review of the ongoing negotiations on movement of business persons as part of the negotiations for the establishment of the COMESA-EAC-SADC Tripartite Free Trade Area (TFTA). The TFTA has been positioned, at least at its outset, as a key stepping stone towards the CFTA. The paper also examines the treatment of temporary movement of persons in a selection of RECs in Africa and abroad. Finally, lessons are drawn from these processes and experiences in order to highlight opportunities and possible challenges for the CFTA negotiations on movement of persons.

2 Migration in Africa

The International Organization for Migration (IOM) (2011) defines in Table 1 a migrant as "any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is" and includes "refugees, displaced persons, economic migrants[11], and persons moving for other purposes, including family reunification". The more narrowly defined term "labour migration" refers to the "movement of persons from one State to another, or within their own country of residence, for the purpose of employment" and should be distinguished from the term "immigration" which refers to "a process by which non-nationals move into a country for the purpose of settlement". International labour migration (excluding internal migration) is associated with "orderly" or "regular" migration[12] which "occurs through recognised, authorised channels". Some States take an active role in regulating international labour migration and seek opportunities for their nationals abroad. This includes initiatives to facilitate migration by the "fostering or encouraging of regular migration by making travel easier and more convenient. This may take the form of a streamlined visa application process, or efficient and well-staffed passenger inspection procedures" (IOM, 2011). Some States also explore the benefits of "circular" migration. Circular migration refers to the "fluid movement of people between countries, including temporary or long-term movement which may be beneficial to all involved, if occurring voluntarily and linked to the labour needs of countries of origin and destination".

In a trade context, the General Agreement on Trade in Services (GATS) of the WTO provides for trade in services internationally, including through the temporary movement of persons from the territory of one Member to the territory of another Member for the purpose of supplying a service. The definition includes persons who are service suppliers such as self-employed professionals or

[11] IOM defines an economic migrant as "A person leaving his/her habitual place of residence to settle outside of his/her country of origin in order to improve his/her quality of life. It may equally be applied to persons leaving their country of origin for the purpose of employment. This term is often loosely used to distinguish migrants from refugees fleeing persecution and is also similarly used to refer to persons attempting to enter a country without legal permission and/or by using asylum procedures without bona fide cause".

[12] The opposite refers to irregular migration where movement "takes place outside the regulatory norms of the sending, transit and receiving countries." An irregular migrant is a person "who, owing to unauthorized entry, breach of a condition of entry, or the expiry of his or her visa, lacks legal status in a transit or host country. The definition covers, inter alia, those persons who have entered a transit or host country lawfully but have stayed for a longer period than authorized or subsequently taken up unauthorized employment". Irregular migration is broader than the term "illegal migration" which usually refers to cases of smuggling of migrants and trafficking in persons.

those who work for a service supplier. A Member may accord market access through this mode of services trade in its schedule of specific commitments annexed to the GATS or in terms of a preferential trade agreement concluded in line with the terms of GATS Article V. However, the GATS definition on temporary movement of persons excludes those seeking access to the employment market of the host Member, nor does it affect measures on residence, citizenship or employment on a permanent basis.

International trade agreements with deeper economic integration objectives beyond the scope of GATS typically regulate, to various degrees, international labour migration by offering certain groups of migrants a pre-defined level of access into the territory of another State; allowing them to take up opportunities; and, to establish themselves or a business in another State. International labour migration is also regulated at a bilateral level through the conclusion of Bilateral Labour Agreements (BLA) and other agreements.[13]

Table 1: Common Terms on Migration

Term	Definition	Implied right to work?
National / Citizen	A person, who, either by birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil and political rights and protection.	Yes
Freedom of Movement	A human right comprising three basic elements: freedom of movement within the territory of a country; the right to leave any country; and, the right to return to his/her own country. Freedom of movement is also referred to in the context of freedom of movement arrangements between States at the regional level.	No

[13] The International Labour Organization considers four core labour standards relating to freedom of association, forced labour, discrimination and child labour in its Declaration on Fundamental Principles and Rights at Work 1998 as deserving universal application. In general, countries are reluctant to incorporate labour provisions in Preferential Trade Agreements and International Investment Agreements. The US and EU, amongst others, makes reference to worker rights in their Generalised Systems of Preference Schemes, namely the Africa Growth and Opportunity Act (AGOA) and the GSP+, respectively. Also in ECOWAS, COMESA and SADC, for example, the revised Treaty of ECOWAS provides for the harmonisation of labour and social security legislation, the COMESA Investment Agreement provides for the development of common minimum labour standards relating to investment and SADC Members adopted a Protocol on Employment and Labour in 2014 providing guidelines for the harmonisation of labour policies and legislation, setting minimum labour standards, and, a legal and policy framework for labour migration within SADC. Consumer preferences reflected in private standards, consumer schemes and corporate social responsibility statements are non-state actor initiatives to influence the adoption of higher labour standards. However, a detailed consideration of labour provisions contained in PTAs falls outside the scope of this study.

Term	Definition	Implied right to work?
Residence	The act or fact of living in a given place for some time; the place where one actually lives as distinguished from a domicile. Residence usually just means bodily presence as an inhabitant in a given place, while domicile usually requires bodily presence and an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile.	Yes, but not in all cases[14]
Permanent Residence	The right, granted by the authorities of a host State to a non-national, to live and work therein on a permanent (unlimited or indefinite) basis.	Yes
Visa	An endorsement by the competent authorities of a State in a passport or a certificate of identity of a non-national who wishes to enter, leave, or transit the territory of the State that indicates that the authority, at the time of issuance, believes the holder to fall within a category of non-nationals who can enter, leave or transit the State under the State's laws.	No
Work Permit	A legal document issued by a competent authority of a State giving authorization for employment of migrant workers in the host country during the period of validity of the permit.	Yes
Visitor	In the migration context, the term is used in some national legislation to designate a non-national authorized to stay temporarily on the territory of a State without participating in a professional activity.	No
Migrant	The United Nations defines migrant as an individual who has resided in a foreign country for more than one year irrespective of the causes, voluntary or involuntary, and the means, regular or irregular, used to migrate. Under such a definition, those travelling for shorter periods as tourists and businesspersons would not be considered migrants.	No
Labour Migration	Movement of persons from one State to another, or within their own country of residence, for the purpose of employment. Labour migration is addressed by most States in their migration laws. In addition, some States take an active role in regulating outward labour migration and seeking opportunities for their nationals abroad (Bilateral Labour Agreements).	Yes
Migrant Worker	A person who is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.	Yes
Temporary Migrant Worker	Skilled, semi-skilled or untrained workers who remain in the destination country for definite periods as determined in a work contract with an individual worker or a service contract concluded with an enterprise. Also called contract migrant workers.	Yes

[14] For example, an individual may be accorded the right of residency through the employment of their spouse in that country, but they themselves may not be entitled to work.

Term	Definition	Implied right to work?
Self-employed Migrant Worker	A migrant worker who is engaged in a remunerated worker activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and [to] any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.	Yes
Intra-corporate Transferee	An employee of a firm who is temporarily transferred to a foreign affiliate of that firm (branch, subsidiary, office, joint venture, etc.).	Yes

Source: IOM, Glossary on Migration, Second edition, 2011, and author.

Freedom of movement is another commonly used term and refers to a basic human right comprising three elements namely; the right of a person to move and reside within the borders of each State; the right to leave any country; and the right to return to his or her own country.[15] However, this definition does not include the right to work. In Africa, the African Union and the RECs recognised as building blocks of the AU provide for the freedom of movement across borders in their founding legal instruments. Freedom of movement however has a broader meaning in Africa and often encompasses temporary migrant workers, self-employed migrant workers, intra-corporate transferees and establishment. However, freedom of movement in the African context does not take automatic legal effect upon the entry into force of the founding legal instrument of a REC. The enforcement these rights are subject to the conclusion of further instruments requiring incorporation into domestic law.

The 2015 IOM World Migration Report (IOM, 2015) estimates there are 232 million international migrants and 740 million internal migrants in the world. About half of all international migrants live in ten high-income countries, namely United Kingdom, United States, Russia, Saudi Arabia, United Arab Emirates, France, Spain, Germany, Canada and Australia. Of the 230 million international migrants, the ILO estimates that 150 million are migrant workers of which 6.3 percent are in Africa. In 2013, it estimated there were about 0.8 million migrant workers in North Africa and 7.9 million in Sub-Saharan Africa representing 1.1 percent and 2.2 percent of the total workforce on the continent, respectively. In Africa, like elsewhere in the world, migration has been markedly urban as migrants move to cities and urban areas. For example, in 1970 there were only four cities in Sub-

[15]Article 13 of the Universal Declaration of Human Rights, 1948 and Article 12 of the International Covenant on Civil and Political Rights

Saharan Africa with a population of over a million (Johannesburg, Cape Town, Lagos and Kinshasa), by 2010 there were 33 (IOM, 2015).

International migration data shows that every country in Africa is affected by migratory movements. According to the World Migration Report (IOM, 2015), about 34 million (or 14 percent) of all international migrants originate from Africa. The majority of international migrants originating from Africa (18 million or 52 percent) live in other African States. The rest live outside the continent.

South Africa is the top destination in Africa for international migrants. In 2015, a total of 3.14 million people living in South Africa were born in other countries. Other top recipient countries for international migrants in Africa include Côte d'Ivoire (2.18 million), Nigeria (1.2 million), Kenya (1.08 million) and Ethiopia (1.07 million). According to the UN High Commission for Refugees (UNHCR), a number of countries in Africa hosted large numbers of refugees (including people in refugee-like situations and asylum-seekers with pending applications). Countries with the largest populations of refugees are located in East Africa and include Ethiopia, Kenya, Uganda and Chad. South Africa is host to the largest number of refugees and asylum-seekers on the continent and the fifth largest in the world. In some cases, like South Africa, these persons are integrated and allowed to work in the host country and in others they are isolated and kept in camps.

Using UNHCR and UN Department of Economic and Social Affairs (DESA) data, we can sketch a picture of migration stocks and flows in accordance with the 5 geographical regions of the continent. The data, depicted in the 5 tables below, should be interpreted with caution however because it defines an international migrant as someone who has been living for one year or longer in a country other than the one in which he or she was born. This means that many foreign workers and international students are counted as migrants. In addition, the UN considers refugees and, in some cases, their descendants to be international migrants. However, UN data on refugees is provided in brackets in the tables and this too tells a story. It would be over simplistic to subtract the number of refugees from the total number of migrants in a country because many asylum-seekers claiming refugee status are using asylum procedures without a *bona fide* cause. In any case, all the conflict ridden, weak and failed states in Africa are well known and the migrant outflows from these States speak for themselves. On the other hand, tourists, foreign-aid workers, temporary workers employed abroad for less than a year and overseas military personnel typically are not counted as migrants. Nonetheless, the data gives a clear indication of the scope and scale of

migration on the continent and can only support efforts for enhanced transparency and legal certainty in the facilitation of movement of persons in the CFTA negotiations.

In North Africa, Table 2 shows large migration outflows but a lack of corresponding migration inflows originating from these states in the region. It suggests that migrants from North African States prefer destinations outside their region or the continent. Equally, large migration inflows occur into Egypt and Libya but a small number of migrants originate from other African States. It suggests the bulk of migration inflows to these States originate elsewhere; perhaps from States in the Middle East. In 2015, international migrants constituted 12 percent of the total population of Libya. In the cases where migrants move to other African States, it occurs mostly to neighbouring countries. Unlike other North African States, Mauritania appears to be an exception to the North African case with most migratory outflows occurring to West African States and not out of the continent.

Table 2: Migration stocks and flows in the North African region and the top source countries in Africa for inward migration

Country	Int'l migrants as % of total population	Total outward migrants	Total inward migrants*	Top 4 African origin countries for inward migration and total number of migrants per origin country			
				1	2	3	4
Algeria	1	1 763 771	242 391 (100 036)	**Western. Sahara**	**Somalia**	**Libya**	**Sudan**
				90 939	20 810	4 182	2 873
Egypt	1	3 268 970	491 643 (256 363)	**Sudan**	**Somalia**	**Libya**	**Eritrea**
				31 589	22 709	5 591	2 368
Libya	12	141 623	771 146 (36 852)	**Somalia**	**Egypt**	**Sudan**	**Comoros**
				104 539	21 004	14 428	4 295
Mauritania	3	119 334	138 162 (77 258)	**Mali**	**Senegal**	**Guinea**	**Algeria**
				56 557	38 574	3 105	1 634
Tunisia	1	651 044	56 710 (978)	**Algeria**	**Libya**	**Egypt**	**Mali**
				10 443	9 147	1 140	999
Western Sahara	1	91 034	5 179 (-)	**Senegal**	**Guinea Bissau**	**Guinea**	**Mauritania**
				1 745	1 007	954	542

Source: UNDESA (2015). Trends in International Migrant Stock: Migrants by Destination and Origin (United Nations database, POP/DB/MIG/Stock/Rev.2015); *Figures in brackets reflect UNHCR mid-2015 data on refugees, people in refugee-like situations and asylum-seekers (pending cases) in the host country.

Table 3 shows large migration movements within the West African region. All countries in West Africa with the exception of the island State, Cape Verde, (due to its Portuguese linguistic heritage) show large inward and outward migration flows. These movements could be attributed to regional integration efforts. In particular, Gambia hosts a large international migrant community constituting 10 percent of its total population. Nigeria and Côte d'Ivoire attract large numbers of

migrants from their neighbouring countries. Large migratory flows occur in both directions between Côte d'Ivoire and Burkina Faso. International migrants constitute 10 and 4 percent of the total populations of Côte d'Ivoire and Burkina Faso, respectively. Burkina Faso historically sent large numbers of seasonal workers to Côte d'Ivoire and maintained established networks and a support system for migrants over the years.

Table 3: Migration stocks and flows in the West African region and the top source countries in Africa for inward migration

Country	Int'l migrants as % of total population	Total outward migrants	Total inward migrants*	Top 4 African origin countries for inward migration and total number of migrants per origin country			
				1	2	3	4
Benin	2	615 852	245 399 (572)	**Niger**	**Togo**	**Nigeria**	**Côte d'Ivoire**
				75 775	48 118	44 603	13 742
Burkina Faso	4	1 453 378	704 676 (34 207)	**Côte d'Ivoire**	**Mali**	**Ghana**	**Togo**
				540 779	43 815	32 217	15 393
Cape Verde	3	165 732	14 924 (-)	**Guinea Bissau**	**Sao Tome & Principe**	**Senegal**	**Nigeria**
				5 015	1 712	1 478	670
Côte d'Ivoire	10	850 105	2 175 399 (2 639)	**Burkina Faso**	**Mali**	**Guinea**	**Liberia**
				1 294 323	356 019	94 980	82 428
Gambia	10	89 639	192 540 (11 775)	**Senegal**	**Guinea**	**Guinea Bissau**	**Mali**
				118 452	40 369	12 328	9 251
Ghana	1	801 710	399 471 (21 331)	**Togo**	**Nigeria**	**Burkina Faso**	**Côte d'Ivoire**
				87 494	67 629	57 733	30 359
Guinea	2	426 941	228 413 (8 997)	**Mali**	**Liberia**	**Senegal**	**Sierra Leone**
				61 197	32 706	26 640	15 098
Guinea-Bissau	1	101 828	22 333 (8 807)	**Senegal**	**Guinea**	**Gambia**	**Liberia**
				11 087	4 938	1 495	898
Liberia	3	276 630	113 779 (38 922)	**Côte d'Ivoire**	**Guinea**	**Sierra Leone**	**Ghana**
				40 985	37 380	11 413	7 468
Mali	2	1 005 607	363 145 (15 356)	**Gabon**	**Congo**	**Burkina Faso**	**Côte d'Ivoire**
				33 255	29 972	23 922	20 144
Niger	1	356 793	189 255 (82 186)	**Mali**	**Nigeria**	**Burkina Faso**	**Benin**
				84 640	19 436	19 323	17 908
Nigeria	1	1 093 644	1 199 115 (2 188)	**Benin**	**Ghana**	**Mali**	**Togo**
				351 985	222 377	160 967	147 698
Senegal	2	586 870	263 242 (17 260)	**Mauritania**	**Guinea**	**Mali**	**Guinea Bissau**
				51 490	49 780	32 930	28 501
Sierra Leone	1	145 003	91 213 (1 387)	**Guinea**	**Liberia**	**Gambia**	**Nigeria**
				68 467	6 536	4 828	1 949
Togo	4	446 982	276 844 (22 564)	**Benin**	**Niger**	**Ghana**	**Nigeria**
				71 438	65 529	46 794	31 974

Source: UNDESA (2015). Trends in International Migrant Stock: Migrants by Destination and Origin (United Nations database, POP/DB/MIG/Stock/Rev.2015); *Figures in brackets reflect UNHCR mid-2015 data on refugees, people in refugee-like situations and asylum-seekers (pending cases) in the host country.

In Central Africa, Table 4 indicated similar levels of migration. The DRC stands out as the country from which the most outward migration occurs. This can be attributed both to the sheer size of DRC's population (being Africa's second largest) as well as to the longstanding internal conflict. Most outward migrants from DRC live in neighbouring East African countries. Apart from the DRC, most migrant flows between Central Africa countries happen between three neighbouring countries namely Central Africa Republic, Cameroon and Chad. However, it seems the immediate geographic region is not the choice of destination for outward migrants, especially for those from Congo and Gabon. The vast majority of outward migration from Equatorial Guinea flows to Gabon. International migrants make up 16 percent of the total population of Gabon.

Table 4: Migration stocks and flows in the Central African region and the top source countries in Africa for inward migration

Country	Int'l migrants as % of total population	Total outward migrants	Total inward migrants*	Top 4 African origin countries for inward migration and total number of migrants per origin country			
				1	2	3	4
Cameroon	2	328 604	381 984 (310 128)	**CAR**	**Nigeria**	**Chad**	**Niger**
				201 957	81 676	54 160	8 071
Central African Republic (CAR)	2	440 745	81 598 (8 300)	**Sudan**	**DRC**	**Chad**	**Mali**
				19 546	17 219	10 029	301
Chad	4	208 137	516 968 (423 523)	**Sudan**	**CAR**	**Cameroon**	**Niger**
				363 465	93 259	36 938	3 115
Congo	9	220 501	392 996 (64 740)	**DRC**	**Angola**	**Mali**	**CAR**
				170 368	41 238	33 918	32 696
Democratic Republic of Congo (DRC)	1	1 403 757	545 694 (161 395)	**Angola**	**Rwanda**	**CAR**	**Burundi**
				185 205	97 168	73 094	39 062
Equatorial Guinea	1	81 029	10 825 (-)	**Sao Tome & Principe**	**Cameroon**	**Nigeria**	**Gabon**
				1 493	798	359	256
Gabon	16	63 209	268 384 (2 894)	**Equatorial Guinea**	**Mali**	**Benin**	**Cameroon**
				56 283	35 709	33 794	32 792
Sao Tome & Principe	1	35 833	2 394 (-)	**Cape Verde**	**Angola**	**Gabon**	**Equatorial Guinea**
				1 363	358	237	146

Source: UNDESA (2015). Trends in International Migrant Stock: Migrants by Destination and Origin (United Nations database, POP/DB/MIG/Stock/Rev.2015); *Figures in brackets reflect UNHCR mid-2015 data on refugees, people in refugee-like situations and asylum-seekers (pending cases) in the host country.

In East Africa, we can see from Table 5 that in 2015, 5.3 million people born in four East African countries (Sudan, Somalia, Ethiopia and Uganda) were living in other countries. Migration occurs within roughly two groups of countries in the region. Most migration happens between the countries located in the Horn of Africa (Eritrea, Ethiopia, Somalia and Djibouti) and adjacent

neighbouring countries (Sudan, South-Sudan and Kenya). These flows can be largely attributed to political instability and conflicts in the region. However, international migrants constitute 13 percent of the total population of Djibouti. They originate mainly from Somalia and Ethiopia. The other group of East African countries showing large migration flows consists of those forming part of the EAC. These migratory movements can be attributed to regional economic integration efforts.

Table 5: Migration stocks and flows in the East African region and the top source countries in Africa for inward migration

Country	Int'l migrants as a % of total population	Total outward migrants	Total inward migrants*	Top 4 African origin countries for inward migration and total number of migrants per origin country			
				1	2	3	4
Burundi	3	284 187	286 810 (56 859)	**DRC**	**Rwanda**	**Tanzania**	**Kenya**
				167 768	64 363	28 008	1 032
Comoros	2	116 516	12 555 (-)	**Madagascar**	**Tanzania**	**Kenya**	**-**
				9 651	145	76	-
Djibouti	13	15 927	112 351 (17 373)	**Somalia**	**Ethiopia**	**-**	**-**
				93 042	12 323	-	-
Eritrea	0	499 916	15 941 (2 945)	**Somalia**	**DRC**	**Uganda**	**South-Sudan**
				2 457	1 688	1 524	1 490
Ethiopia	1	753 492	1 072 949 (705 338)	**Somalia**	**South-Sudan**	**Eritrea**	**Sudan**
				442 910	375 202	156 030	24 539
Kenya	2	455 889	1 084 357 (592 613)	**Somalia**	**Uganda**	**South-Sudan**	**Tanzania**
				488 470	333 789	92 355	39 935
Rwanda	4	315 866	441 525 (132 969)	**DRC**	**Uganda**	**Burundi**	**Tanzania**
				230 622	92 195	64 501	42 776
Seychelles	13	11 772	12 791 (-)	**Madagascar**	**Mauritius**	**Kenya**	**South Africa**
				804	554	411	256
Somalia	0	1 998 764	25 291 (12 902)	**Ethiopia**	**Eritrea**	**-**	**-**
				2 079	34	-	-
South-Sudan	7	634 613	824 122 (266 519)	**Sudan**	**Uganda**	**DRC**	**Ethiopia**
				552 391	140 607	82 755	12 786
Sudan	1	1 890 861	503 477 (367 637)	**Eritrea**	**South-Sudan**	**Chad**	**Ethiopia**
				159 748	135 558	74 514	60 734
Tanzania	0	294 531	261 222 (160 164)	**Burundi**	**DRC**	**Kenya**	**Congo**
				87 099	58 250	27 247	25 017
Uganda	2	736 017	749 471 (466 465)	**DRC**	**Sudan**	**Rwanda**	**Burundi**
				303 580	164 136	76 861	45 345

Source: UNDESA (2015). Trends in International Migrant Stock: Migrants by Destination and Origin (United Nations database, POP/DB/MIG/Stock/Rev.2015); *Figures in brackets reflect UNHCR mid-2015 data on refugees, people in refugee-like situations and asylum-seekers (pending cases) in the host country.

Table 6 shows that in the Southern African region, South Africa is the favourite destination country receiving the most migrants from the region. South Africa's large and diversified economy is a major pull factor for people in search of better economic opportunities in the region. For decades, many countries in the region have been important sources of migrant mine workers for South Africa's mining sector. Outward migration from South Africa, Madagascar and Mauritius occur mainly to countries outside the continent.

Table 6: Migration stocks and flows in the South African region and the top source countries in Africa for inward migration

Country	Int'l migrants as a % of total population	Total outward migrants	Total inward migrants*	Top 4 African origin countries for inward migration and total number of migrants per origin country			
				1	2	3	4
Angola	0	1 763 771	106 845 (45 658)	**DRC**	**Cape Verde**	**Sao Tome &Principe**	**South Africa**
				43 192	10 459	9 123	7 144
Botswana	7	58 346	160 644 (2 412)	**South Africa**	**Zimbabwe**	**Zambia**	**Malawi**
				37 265	31 625	12 833	4 596
Lesotho	0	363 763	6 572 (45)	**South Africa**	**Uganda**	**Botswana**	**Ghana**
				2 610	137	108	89
Malawi	1	302 515	215 158 (15 356)	**Mozambique**	**Zambia**	**Zimbabwe**	**Tanzania**
				54 183	42 362	36 753	9 507
Madagascar	0	169 984	32 075 (19)	**Comoros**	**-**	**-**	**-**
				10 953	-	-	-
Mauritius	2	168 255	28 585 (-)	**Madagascar**	**South Africa**	**Seychelles**	**-**
				2 277	622	124	-
Mozambique	1	713 867	222 928 (18 809)	**Malawi**	**Zimbabwe**	**South Africa**	**Lesotho**
				77 488	25 429	8 897	7 840
Namibia	4	145 852	93 888 (2 759)	**Angola**	**Zimbabwe**	**South Africa**	**DRC**
				33 980	13 247	7 775	2 918
South Africa	6	841 120	3 142 511 (912 592)	**Zimbabwe**	**Mozambique**	**Lesotho**	**Namibia**
				475 406	449 710	350 611	133 282
Swaziland	2	95 671	31 579 (860)	**South Africa**	**Mozambique**	**Lesotho**	**Burundi**
				12 511	10 393	221	219
Zambia	1	238 121	127 915 (28 343)	**Zimbabwe**	**Angola**	**DRC**	**Malawi**
				19 503	17 464	13 409	11 258
Zimbabwe	3	856 345	398 866 (6 208)	**Malawi**	**Mozambique**	**Zambia**	**South Africa**
				102 849	94 382	30 662	18 610

Source: UNDESA (2015). Trends in International Migrant Stock: Migrants by Destination and Origin (United Nations database, POP/DB/MIG/Stock/Rev.2015); *Figures in brackets reflect UNHCR mid-2015 data on refugees, people in refugee-like situations and asylum-seekers (pending cases) in the host country.

3 Situating movement of persons in the TFTA and CFTA

From its outset in 2008, Members of the COMESA, EAC and SADC positioned the TFTA as a building block for the establishment of the CFTA. In early 2012, Members of the AU encouraged other RECs, in particular ECOWAS, ECCAS, CEN-SAD and AMU to 'draw inspiration from the tripartite arrangement' and to 'create a second pole of integration so as to speed up the establishment of the African Economic Community' (AU, 2012a). Even though the West and Central African equivalent of the TFTA never materialised, it is important to review the TFTA experience to date in order to draw lessons from it for the CFTA negotiations going forward.

In pursuit of the objectives of the AU to accelerate economic integration on the continent, the Members of COMESA, EAC and SADC resolved at their first Tripartite Summit in October 2008, "that the three RECs should immediately start working towards a merger into a single REC with the objective of fast tracking the attainment of the African Economic Community" (TFTA, 2008). The Tripartite Summit also directed the Tripartite Task Force of the three Secretariats to undertake a study and develop a roadmap, a legal and institutional framework to underpin the FTA and measures to facilitate the movement of business persons across the RECs.

Almost three years after the first Tripartite Summit, the negotiations for the establishment of the TFTA were launched in 2011 (TFTA, 2011a). The intention was to negotiate in two phases a comprehensive trade agreement catering for the needs of trade in the 21st century. The first phase was for the negotiation of trade in goods and the movement of business persons on separate tracks. The second phase of the negotiations covers the built-in agenda in services and trade-related areas.

In May 2011, the Tripartite Task Force released a progress report assessing the implementation of the decisions of the first Tripartite Summit. By that time, the Tripartite Task Force had developed and submitted for Members' consideration a Roadmap, Negotiating Principles, Declaration Launching the Negotiations and a revised Draft Agreement with Annexes covering all areas of the negotiations.[16] On movement of business persons, the progress report suggested that the "Tripartite will build upon the progress made in the individual RECs in facilitating the movement of

[16] This includes on tariff liberalisation, nontariff barriers, rules of origin, customs co-operation and related matters, transit trade and transit facilities, trade remedies, competition policy and law, technical standards, sanitary and phyto-sanitary measures, movement of business persons, intellectual property rights, trade development, trade in services, and a dispute settlement mechanism.

business persons. Proposals for facilitating free movement of business persons have been made and will be negotiated through a separate track as a component of the Draft FTA Agreement" (TFTA, 2011b). It is perhaps a bit misleading to suggest Member States can build on the progress already made in the RECs on the movement of business persons because none of the legal instruments regulating movement of persons in the three RECs recognise the term 'business person'. The TFTA negotiations introduced a completely new concept to the economic integration lexicon of the region. The first reference to the term 'business person' appeared in the Final Communique of the COMESA-EAC-SADC Tripartite Summit of Heads of State and Government (TFTA, 2008). However, reference was also made to 'business persons' in an earlier preparatory document developed by the Tripartite Task Force of the three Secretariats for the first Tripartite Summit (Cronje, 2014). As discussed in the context of the North American Free Trade Agreement (NAFTA) below, it would appear that the term has been borrowed from that Agreement and transferred to the region. As a result, this has limited the scope of the TFTA negotiations to the regulation of movement of certain groups of persons engaged in specific economic activities.

In June 2015, 16[17] of the 26 Members signed an incomplete TFTA Agreement covering trade in goods but without any provisions on rules of origin, import duties and trade remedies. As outlined in the Sharm El Sheikh Declaration Launching the COMESA-EAC-SADC Tripartite Free Trade Area negotiations on these outstanding negotiating issues have been combined with the commencement of phase two of the negotiations covering trade in services, cooperation in trade and development, competition policy, intellectual property rights and cross border investments. In this regard, the Declaration states 'all negotiations, including outstanding work be carried out in accordance with principles, processes and institutional structures as approved by Summit' in 2011 (TFTA, 2015). Importantly, the Members were also unable to conclude negotiations on the movement of business persons. However, nowhere in the signed TFTA Agreement is the movement of business persons mentioned as a negotiating issue or an outstanding negotiating issue. In other words, movement of business persons does not form part of the stated scope and coverage of the Agreement as provided in Article 3 and is not covered by the principles governing the Agreement in Article 6; including the single undertaking principle. The Declaration merely states that 'work on negotiations on Movement of Business Persons continues on a separate track' as provided for in

[17] Angola, Burundi, Comoros, Democratic Republic of Congo (DRC), Djibouti, Egypt, Kenya, Malawi, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Tanzania, Uganda and Zimbabwe. Zambia became the 17th signatory State in 2016.

the negotiating mandate from the outset (TFTA, 2015). This in itself suggests, perhaps, that this issue was never considered a negotiating priority.

During the same time in 2015 the Members of the AU launched negotiations for the establishment of the CFTA to integrate Africa's markets in line with the objectives of the Abuja Treaty. This launch came against an earlier Decision on Boosting Intra-African Trade and Fast Tracking the Continental Free Trade Area (BIAT) in 2012. BIAT (AU, 2012b) envisaged the establishment of the CFTA by 2017 "with the option to review the target date according to progress made".

The Objectives and Guiding Principles for Negotiating the Continental FTA provides for the conclusion of a comprehensive trade agreement covering "trade in goods, trade in services, investment, intellectual property rights and competition policy" in two phases. The first phase covers negotiations on trade in goods and trade in services with two separate legal instruments for trade in goods and services to be negotiated in two separate tracks. The second phase will cover negotiations on 'investment, intellectual property rights and competition policy' (CFTA, 2015). Interestingly, unlike in the Abuja Treaty and TFTA negotiations, the free movement of persons is not explicitly mentioned as a negotiating issue in the CFTA. However, this does not mean movement of persons has been excluded from the CFTA agenda, as this subject is often addressed, at least in part, under the umbrella of trade in services and/or investment. Furthermore, Agenda 2063 clearly states that the free movement of people, capital, services and goods are key elements for full economic integration on the continent.

Of note, the timeline laid out for the CFTA under BIAT was predicated on the following milestones:

- Finalisation of the COMESA-EAC-SADC TFTA initiative by 2014;
- Completion of FTAs by non-Tripartite RECs through parallel arrangements similar to the TFTA between 2012-2014;
- Consolidation of the TFTA and other FTAs into a CFTA between 2015-2016.

None of these milestones which were to anchor the CFTA were reached. With the REC and TFTA processes stalling and recognising the urgency for removing obstacles to trade in a fast-changing world, the AU Members decided to press ahead with the establishment of the CFTA. However, with a view towards avoiding the same fate for the CFTA as the TFTA (and various other regional integration processes), lessons must be learned from the TFTA negotiating results or non-results. It would appear that a novel approach for consolidating existing RECs has become necessary.

According to Erasmus (2015), the answer lies in designing the “CFTA as a framework agreement with a built-in consolidation agenda and function”.

4 Understanding the TFTA outcome to-date

In September 2013, two years after the launch of the TFTA negotiations a Tripartite Technical Committee on Movement of Business Persons (TTC-MBP) was established to commence the negotiations on movement of business persons. Since then, the TTC-MBP had five meetings. At the last meeting in August 2015 Members decided to refer the draft Agreement on Movement of Business Persons to the Tripartite Committee of Senior Officials for consideration after the Tripartite Business Councils expressed serious concerns over the business value of the Agreement. They were concerned that the Agreement will not facilitate movement of business persons and that the proposed commitments are unclear, inconsistent and in some cases more restrictive than the existing regimes faced by business persons.

From the start, Members disagreed on the type of legal instrument to be negotiated for movement of business persons. Some Members felt the negotiations should be based on the draft TFTA Agreement and Annex on Movement of Business Persons in accordance with a decision of the fourth meeting of the Tripartite Committee of Senior Officials which endorsed the draft TFTA Agreement as the starting point for the negotiations. Other Members argued the negotiations on movement of business persons should not form part of the text based negotiations of the TFTA. In their view, the outcome of the negotiations on movement of business persons cannot form part of the single undertaking applicable to the trade in goods part of the TFTA negotiations but should be a standalone Agreement covering the movement of business persons. In light of these divergent views, the matter on the type of instrument to be negotiated for movement of business persons was referred to the Tripartite Committee of Senior Officials for guidance. Eventually, the latter position prevailed and Members decided to negotiate a standalone Agreement on Movement of Business Persons separated from the TFTA Agreement. This decision had a number of implications for the TFTA negotiations.

First, the Tripartite Agreement on Movement of Business Persons will have its own institutional framework overseeing monitoring and implementation, dispute settlement and provisions on its membership, entry into force and amendment. It means not all Members signing the TFTA Agreement will be obliged to sign the Tripartite Agreement on Movement of Business Persons and

vice versa. This will lead to fragmentation of the trade agenda – precisely the opposite of the TFTA's raison-d'etre. And second, this decision altered the focus of the negotiations on movement of business persons significantly. Initially, the focus was on providing unrestricted market access (in form of absence of numerical quotas and labour market tests) for certain categories of persons engaged in trade in goods, services and investment activities including business visitors, traders and investors, intra-corporate transferees and professionals. Subsequently, the focus shifted away from securing market access to the relaxation and facilitation of visa requirements and visa applications for the reduced categories of business persons including business visitors, traders and investors. In the end, the draft Agreement failed to adequately deal with any of the focus areas. The relaxation of visa requirements and facilitation of visa applications are important because too often these requirements and procedures are prohibitively costly, time-consuming and burdensome. However, measures securing the free movement of persons to facilitate trade, investment and business development in the TFTA region is also essential and underlies the entire rationale for including it in the first phase of the negotiations in the first place.

Most disagreements among Members on substantive negotiating issues related to the definition of a business person; the different categories of business persons that should be covered by the Agreement; whether or not Members should be allowed to maintain visa requirements for the designated categories; duration of temporary stay; the negotiating principles; and dispute settlement mechanism.

Initially, a business person was defined as "any person residing in a Member State who is engaged in trade in goods, the provision of services, or the conduct of investment activities" in any of the defined categories. A caveat was later added to limit the definition of business persons (under the rule of origin) to citizens and residents "of a Tripartite Member State and who, in accordance with the law of that State" is engaged in the qualifying activities. This allows for diverse interpretations of the aforementioned qualifying economic activities.

The different categories of business persons and their definitions changed over the course of the negotiations. In line with their own regional regime, the EAC proposed the inclusion of various categories including business visitors, contractual service suppliers, independent or self-employed service suppliers, traders and investors, professionals and intra-corporate transferees. The Seychelles proposed slightly different categories namely business visitors, intra-corporate transferees, contractual service suppliers and independent professionals. South Africa and Egypt on

the other hand proposed categories limited to business visitors, traders and investors. The latter, more restrictive proposal was adopted. As such, two important categories of business persons namely, intra-corporate transferees and professionals, were excluded from the negotiations and latest version of the draft Agreement of August 2015. As a result, self-employed persons or persons employed by foreign-based firms seeking to engage in a business activity at a professional level for a firm or individual in another Member State will no longer be covered by the Tripartite Agreement on Movement of Business Persons. This category is of particular interest for micro, small and medium size enterprises seeking access to foreign partners and clients. They often do not have the resources to establish a commercial presence in another country. Offering them access to a market could act as a catalyst for such enterprises to test the demand for their products and services before a commercial presence is established in another State. Equally, the temporary transfer of employees of foreign firms to assist with the establishment of a commercial presence in a host State will not be permitted under the Tripartite Agreement on Movement of Business Persons. Allowing foreign firms to transfer employees at certain levels of seniority or expertise to assist with the establishment of a business is of particular importance to foreign investors. As presently constructed, this too will not be permitted under the Tripartite Agreement on Movement of Business Persons. There is scope however that this issue could be rectified in Phase II of the TFTA negotiations in the context of trade in services.

Nonetheless, it seems the Members have now reached agreement regarding the definition of a business person and the different categories to be included in the Tripartite Agreement on Movement of Business Persons. However, there is still disagreement over the draft Agreement's provisions on 'guiding principles' and 'dispute settlement' for which South Africa and EAC submitted counter proposals, respectively. Both matters have been referred to the Tripartite Committee of Senior Officials for consideration. At the Second Tripartite Summit in 2011, the Members adopted a set of negotiating principles for the purpose of guiding and underpinning the negotiation of the TFTA agreement. These negotiating principles were developed with the negotiations on trade in goods in mind. They obviously had to be rationalised to suit the peculiarities of any particular negotiating issue at hand, including movement of business persons. The fact that Members are unable to agree to a set of overarching principles suggest a lack of shared vision regarding a desired outcome from the start. It creates the impression that the guiding principles are now inserted into the text of the Agreement as an afterthought. Of particular concern

is the omission of a Most-Favoured-Nation (MFN) provision that was included in an earlier draft and it is not clear from the TTC-MBP's Reports what or which Member/s sought its removal.

The MFN treatment provision was adopted as one of the negotiating principles for the TFTA negotiations and means 'that advantages that any Tripartite country offers to third parties outside the Tripartite FTA would be offered to other Tripartite countries. The purpose is to ensure that TFTA partners trade amongst each other on terms as good as or better than that offered to non-TFTA partners. These advantages would be extended on reciprocity' (TFTA, 2012). The omission of such an extra-TFTA MFN treatment obligation with non-TFTA partners allows Members to preserve preferences negotiated in the past with third parties. In the absence of an intra-TFTA MFN treatment obligation, Members will be allowed to apply national immigration regulations on a country-by-country basis, thereby discriminating between Member States. The omission of an intra-TFTA MFN treatment provision can be justified by the fact the RECs may want to maintain their regional character and deepen integration further than in the TFTA.

The draft dispute settlement provision provides for the resolution of disputes among Member States only. It raises concerns because possible disputes arising from the interpretation and application of the Agreement will typically relate to the processing of applications and issuing of visas by national immigration authorities. In other words, disputes will arise from administrative actions taken by government officials. When temporary entry is refused an affected business person should first and foremost have access to an administrative remedy to take an administrative decision on review or appeal. In order to safeguard administrative justice, it is critical that strong provisions to enhance transparency and accountability of administrative actions are included in the agreement to ensure that all applicants are treated fairly, impartially and promptly (Cronje, 2016).

Other tricky negotiating issues relate to matters resulting from the change in focus away from market access to the establishment of transparent procedures for the application of immigration formalities. First, the latest draft provides that a business person who complies with the national immigration legislation of a Member must be granted temporary entry and stay for a duration of up to 90 days. This does not abolish visa requirements and neither does it attempt to partially liberalise visa regimes by requiring Members to issue visas on arrival, it merely provides for a period of temporary entry and stay between 1 and 90 days and for possible extension of stay for an equal period of time. However, the current draft provides that business persons transiting through the territory of a Member must be issued with a transit visa. This suggests a level of automation or

reduced discretion in the issuance of transit visas. Provided a person meets the requirements to qualify as a business person, such a person would be entitled to transit the territory of a Member within a stated period of time as determined by an immigration authority.

Second, some Members initially proposed a scheme allowing for multiple entry visas over a period of up to 3 years into any other participating Member State to the scheme. This proposal was highly contested because it would have allowed Members to issue visas for territories other than their own. Many Members were for security reasons and lack of confidence in the processes of other Members not prepared to surrender control over the issuing of visas for persons entering their territories. This a typical example of negative externalities that cannot be addressed in a framework in which only receiving Members undertake obligations. This matter can only be addressed through regulatory cooperation whereby sending Members are obliged to undertake some obligations with a view to correcting such externalities. As a result, the draft now only provides that Members must issue multiple entry visas to business persons valid for periods of up to 3 years.

The third issue relates to the identification of a business person. The initial proposal by the COMESA Business Council to the third TTC-MBP meeting was to develop a Tripartite Business Card, similar to the Asia-Pacific Economic Community (APEC) Business Travel Card (ABTC), which gives business persons faster and easier access to the economies of the Asia-Pacific region. The ABTC is issued by a competent authority of which the business person is a citizen and identifies the card holder's passport details; the list of participating countries the card holder can enter without having to apply for a visa; it provides access to fast entry and exit lanes at airports; and, is valid for five years. An interested person can submit an application together with the required supporting documents and application fee to the relevant authority in his or her country. The application is checked for completeness and shared with each of the 21 participating countries for consideration. Each participating country independently conducts an evaluation against their own national immigration requirements and issue visa and entry permits independently from the other participating countries. Eventually, everything is compiled into a single ABCT that is issued by the applicant's relevant authority. Inevitably, the processing time of applications varies between countries but applicants can apply for an interim ABTC allowing them to nominate five priority countries for pre-clearance assessment. However, the development of an arrangement that is similar to the ABCT for the TFTA region has not yet been accepted.

Article 1 of the draft Tripartite Agreement on Movement of Business Persons provides, a business person is someone who is "engaged in trade in goods, services or the conduct of investment activities and shall be limited to business visitors, traders and investors". The particular provision then goes on to provide vague descriptions of each category[18]. The draft Agreement does not stipulate what documentation or evidence a person must present in order to satisfy the requirements and qualify as a business person. Proof of citizenship or residence in a Member State should probably be the first requirement that comes to mind. Seeing that persons will not be afforded access to the labour markets of others, business visitors and investors will need to demonstrate their source of remuneration remains outside the territory of the Member State granting them temporary entry and stay. A letter from the employer should suffice. However, additional difficulties might arise with the identification of traders. A trader is defined as "a business person whose business is buying and selling goods subject to the relevant national legislation of a Tripartite Member State". This category of business persons will probably need to demonstrate that their principal place of business and dominant place of accrual of profits is outside the territory of a Member granting temporary access (Cronje, 2016). In the absence of clear provisions, each country would be required to determine their own requirements. The main inefficiency with this proposed situation is that a business person will have to apply to each participating Member individually.

The final set of issues relate to administrative procedures. Each Member must review visa application formalities and documentation requirements with a view to reduce the time and cost of compliance. All relevant information (including a description of procedures for review and appeal, forms and documents required and enquiry point contact information) must then be made available through the internet and all applications for entry and stay from another Member State must be processed within 7 working days; which may be extended for a reasonable period of time. And all fees and charges levied on applications must be limited to the approximate cost of rendering the service and may not represent a tax for fiscal purposes.

[18] Article 1 of the draft Tripartite Agreement on Movement of Business Persons defines: '"Business visitor" means a business person who wishes to enter into the Territory of another Tripartite Member State for the purposes of negotiating a commercial contract on behalf of an enterprise, attending a business related conference or business meeting or undertaking market research, without engaging in direct sales to the general public and without receiving remuneration from a source within the latter Tripartite Member State; "Investor" means a business person of a Tripartite Member State who has made or seeks to make an investment in another Tripartite Member State in accordance with its investment law; "Trader" means a business person whose business is buying and selling goods subject to the relevant national legislation of a Tripartite Member State'.

There are a few concerns relating to these draft provisions. First, there are no set timeframes within which the reviews for visa application formalities and documentation regimes must be completed and no benchmarks or best practices in terms of which the reviews must be conducted and their outcomes measured. Second, as part of the negotiating process, Members developed a matrix for sharing applied visa regimes in a uniform matter. This was needed to increase transparency and comparability of existing visa measures. Unfortunately, not all Members submitted the required information in time and it could therefore not be effectively used as basis from which to build a new and improve visa regime for the TFTA region. Third, the draft provisions do not set out the conditions under which Members can extend processing time limits. Fourth, the draft also does not contain a formula for determining costs. One could argue that if visas were not required from fellow TFTA citizens and residents, there would not have been any costs to recover. Instead of setting clear parameters within which fees and charges may be levied, cost structures will have to be challenged through the dispute settlement mechanism.

Some of these provisions fly in the face of the AU's Agenda 2063 which were adopted by the Heads of State and Government in June 2015 and sets clear parameters and implications for individual Members' immigration policies, namely the establishment of an African passport and the abolishment of visa requirements for all African citizens from all African countries by 2018 (AU, 2015). This disconnect is perhaps just another indication that the outcomes of the TFTA negotiations to-date have been overtaken by more recent events at the continental level and calls the continued suitability of the TFTA as building block for the CFTA into question.

One year after the signing of the incomplete TFTA Agreement, none of the 17 signatories have ratified the agreement. Negotiations on fundamental trade in goods negotiating issues (tariffs, trade remedies and rules of origin) remain stuck and negotiations on other issues such as trade in services, competition and intellectual property have yet to commence, and may never do so. In sum, the TFTA has yet to evolve as expected. With the CFTA's shared aims, and possibility of learning from the TFTA experience, it may make more sense to negotiate politically and technically challenging issues such as movement of persons under the more comprehensive CFTA arrangement that will include all AU Members. Avoiding duplication of efforts and legal commitments by negotiating outstanding issues under the AU's CFTA banner will enhance its objective of boosting intra-Africa trade.

5 Learning from experience

5.1 TFTA 'the better way'

Given the TFTA experience on movement of business persons, what path is the AU expected to follow on movement of persons? Does it have a clearer vision than the TFTA on what it wishes to achieve? What decisions have been taken by the AU to set the trajectory in this regard and are they likely to support or undermine the movement of persons in the context of a trade arrangement; the CFTA? The Agenda 2063, Abuja Treaty and BIAT together with other recent AU initiatives such as the Action Plan for Accelerated Industrial Development of Africa (AIDA), the Programme of Industrial Development in Africa (PIDA) and the Minimum Integration Programme (MIP) provide the context within which the CFTA negotiations is set and form the basis for a new pathway for continent-wide economic integration. The BIAT Action Plan (AU, 2012b) identifies the promotion of "free movement of people as an important ingredient of cross-border trade". It highlights the importance of free movement of persons, rights of residence and establishment as one of the founding principles of the Abuja Treaty. And it recognises that "restrictive laws on free movement only help to perpetuate illegal flows of migratory workers, a source of tension in the receiving countries and sometimes between those countries and the countries of origin". Against this background the Action Plan recommends the removal of restrictions on travel and right of establishment; the adoption of sub-regional citizenship and eventually a common African citizenship; compliance with existing REC obligations on free movement of people; and, abolishment of visa requirements for Africans traveling within the continent. In line with these recommendations the BIAT proposed the following programmes to increase intra-regional mobility of labour:

- Implementing existing policies and protocols on free movement of people and labour migration;
- Encouraging and facilitating policies that increase the freedom of movement for business people;
- Harmonising rules on cross border establishments;
- Establishing agreements on mutual recognition of qualification (AU, 2012b).

Fast-forward to June 2015, the AU Members decided to launch negotiations for the establishment of the CFTA and took a range of decisions relating to the issue of migration. In particular, they decided to:

- Develop continent-wide visa-free and visa-on-arrival regimes, based on the principle of reciprocity;
- Offer all Africans whatever best treatment applies within a REC by 2018;
- Accelerate the implementation of an African Passport that is issued by individual Members;
- Establish mechanisms to ensure compatibility, comparability, acceptance, and recognition of tertiary qualifications;
- Adopt mechanisms to empower women and youth in education; and
- Strengthen efforts to combat human trafficking and smuggling of migrants.

Another important decision of the Assembly was to consider the development of a Protocol on Free Movement of Persons (AU, 2015). In July 2016 Members decided the proposed Protocol on Free Movement of Persons should be developed in line with the provisions of the Abuja Treaty and 1981 African Charter on Human and Peoples Rights by January 2018 and 'should come into effect immediately in Member States upon its adoption' (AU, 2016). In other words, the proposed Protocol should ensure the free movement of entry, stay and exit for African travellers throughout the continent (via the issuance of the recently launched African Passport), the authority to reside anywhere on the continent, and to undertake income generating activities in any Member State. These are contentious political issues. It is not realistic to expect full implementation across the board by all Members from the date of adoption. Issues regarding movement of persons and visa and work regimes as well as the mutual recognition of academic and professional qualifications fall squarely on the trade agenda (as expressed in BIAT and Agenda 2063) and should therefore be treated as trade-related matters as part of a comprehensive trade integration deal and not as a separate matter, like in the case of the TFTA. At the same time however, it must accommodate country specific sensitivities by offering built-in flexibilities for individual Members to decide their own level of ambition and tempo of implementation in a legally binding manner. If not, one can expect a very watered down Protocol on Movement of Persons with low levels of ambition, few obligations and little prospect of entry into force.

Modern trade agreements cover a comprehensive list of trade-related issues, including the movement of persons or at least a subgroup of persons. They are typically negotiated in one go to avoid fragmentation and uncoordinated outcomes. Important external developments such as the variable geometric approach taken in the WTO Agreement of Trade Facilitation, the new understanding about the scope of a comprehensive trade agreement such as the Trans-Pacific Partnership Agreement (TPP), and how trade in services negotiations are best conducted on a

sectoral basis as in the Trade in Services Agreement (TISA) negotiations, must be taken on board. The wisdom of the adopted piecemeal approach to the CFTA negotiations should therefore be questioned.

The CFTA negotiations kicked off in February 2016, with the first meeting of the Trade Negotiating Forum of the CFTA considering the adoption of its Rules of Procedure followed by a second meeting in May 2016 to adopt definitions of the Principles Guiding the Negotiations and also to discuss possible Approaches and Modalities for the CFTA Negotiations. These negotiating principles will apply to negotiations on both goods and services. The African Union Commission has also undertaken preparatory work on various negotiating modalities but it will be up to the Members to decide on a particular approach. According to Erasmus (2016) there are indications that the CFTA negotiators are fully aware of the weaknesses in the TFTA negotiations and are willing to avoid a repeat of the pitfalls that have paralysed the TFTA negotiations by adopting different modalities and interpretations of negotiating principles for the CFTA negotiations. To do so, it is crucial to agree on the meaning of each principle because it, together with the negotiating modalities, must inform the development of a negotiating text, which in turn must reflect the objectives set out by the Members at the start of the negotiations. Herein lays the rub. It will be extremely difficult, irrespective of the scope of the agreement, to secure negotiating outcomes among such a large and diversified group of countries. As such, the negotiating principles and modalities must be designed in such a manner to keep powerful players likes South Africa, Nigeria, Egypt and Kenya in check. Seeking complete agreement by all Members on every negotiating issue will cause deadlock. The negotiating approach, guided by the negotiating principles, must therefore be flexible enough to accommodate the sensitivities of individual Members and prevent powerful players from undermining the CFTA's objectives. According to Erasmus (2016), there are indications that other negotiating issues, apart from trade in goods and services, might also be tackled from the outset in the CFTA negotiations. Further reflections on how to manage such stakeholder interests and the broader political economy considerations of the CFTA will prove essential if a TFTA-type outcome is to be avoided.[19]

In July 2016 the AU established a group of five individuals (supported by the AU Commission, UN Economic Commission for Africa and UN Conference on Trade and Development) to champion the

[19] See for example, the work on Political Economy of Regional Integration (PERIA) by ECDPM (http://ecdpm.org/dossiers/political-economy-regional-integration-africa-peria/)

fast tracking of the CFTA. They are mandated to formulate recommendations; 'prepare and circulate to Member States draft negotiating texts on trade in goods and services to be used for national consultations with a view to solicit inputs from governments and to guide the work of the CFTA Negotiating Forum in order to fast track the negotiation of the CFTA'; and, to 'present feasible options on how to eliminate non-trade barriers among African countries to foster intra-African trade' (AU, 2016b) The AU Commission must report back to the AU Assembly on the implementation of this decision in January 2017. This is an encouraging development provided the negotiating texts incorporate the negotiating principles and modalities and reflect CFTA objectives. However, the movement of persons carve out from the CFTA negotiations will need to be reconsidered. Restrictions on the movement of persons present non-trade barriers that cannot be effectively dealt with in a standalone AU Protocol on Movement of Persons. If it is tackled in conjunction with other trade-related issues, it can potentially open opportunities for countries to adopt a more ambitious approach to the movement of persons.

5.2 Treatment of temporary movement of persons in other regimes in Africa and abroad

The following section reviews other regimes for temporary movement in Africa and elsewhere, with a view to informing options for the CFTA process.

5.2.1 Southern African Development Community (SADC)

In 2005, SADC Members adopted a Protocol on the Facilitation of Movement of Persons. It aims to develop policies to eliminate obstacles to the movement of persons. In particular it aims to facilitate visa-free entry for SADC citizens for up to 90 days, to take residence in any other Member State, and to establish oneself and work in the territory of another Member State. Unfortunately the Protocol has not yet entered into force. To date only four Member States (South Africa, Botswana, Mozambique and Swaziland) have ratified the Protocol, of which two-thirds must ratify for it come into force.

The Protocol provides for a phased approach to its implementation. Entry, residence, establishment and border controls are each regarded as a phase in the implementation of the Protocol. Establishment is defined as the authority to exercise an economic activity and profession either as an employee or as a self-employed person or the authority of a citizen to establish and manage a trade, profession, business or calling. In other words, the term establishment refers the authority to participate in economic activities in another Member State. This provides a direct link to the trade agenda. The SADC Protocol on Trade in Services makes provision for negotiated opportunities to

allow businesses and individuals to establish a foreign presence and to offer their services in another Member State. These negotiations are still ongoing but are limited to persons supplying services. The main implementation challenges, apart from the insufficient number of ratifications for its entry into force, with the Protocol on the Facilitation of Movement of Persons relates to the development of enabling conditions such as compatible immigration policies, laws, systems and accurate population registers. No progress is currently being made in this regard.

Equally, the SADC Protocol on Education and Training calls for the elimination of immigration formalities to facilitate the freer movement of students and academic staff. It also provides for the gradual harmonisation, equivalence and standardisation of education and training systems in the region. To this effect, the Members have adopted a Regional Qualifications Framework in terms of the Protocol to standardise quality and levels of qualifications in order to facilitate regional recognition of equivalence and accreditation of academic qualifications. The mutual recognition of professional qualifications remains a challenge, but the Protocol on Trade in Services makes provision for the conclusion of agreements among Members for the mutual recognition of academic and professional qualifications. This will need to be addressed through negotiated market access commitments and implemented in collaboration with relevant intergovernmental and professional bodies. Negotiations for the conclusion of mutual recognition agreements will, according the Protocol on Trade in Services, commence within two years after the entry into force of the Protocol. The Protocol has not yet entered into force.

The SADC Protocol on the Development of Tourism calls for the abolishment of visas for SADC nationals and a tourism UNIVISA for visitors from outside the region. The UNIVISA system was piloted in the form of the Kavango-Zambezi (KAZA) visa between Zambia and Zimbabwe in November 2014. Valid for 60 days, the US Dollar 50 visa gives visitors access to the two countries and Botswana through the Kazungula border post. During the second phase of the project, the KAZA visa is expected to be extended to all other Members part of the Kavango-Zambezi Transfrontier Conservation Area (KAZA-TFCA) including Namibia and Angola. The aim is to eventually extend this arrangement to all SADC Members and thereby implementing the UNIVISA (Cronje, 2016). However, concerns regarding security and income sharing have seemingly stalled the UNIVISA process.

Finally, to complete the circle of legal instruments relating to labour migration, SADC Members adopted a Protocol on Employment and Labour in 2014. The Protocol is supported by earlier

initiatives such as the Declaration on Productivity (1999), Charter of Fundamental Social Rights in SADC (2003) and the SADC Code on Social Security (2007). The Protocol, not yet in force, aims to ensure persons feel secure to work in any SADC country knowing they are guaranteed freedom of association, minimum working conditions, equal treatment and portability of social security benefits.

The adoption of a phased approach for the implementation of obligations under the SADC Protocol on the Facilitation of Movement of Persons is something the CFTA process might consider taking on board. Unlike the SADC Protocol it needs to allow individual Members flexibility to determine their own tempo for the implementation of obligations in a legally binding manner. The regional qualification framework developed under the SADC Protocol on Education and Training adopts international best practice for the standardisation of quality and levels of qualifications and could be considered at the CFTA level.

5.2.2 East African Community (EAC)

The EAC Common Market Protocol that entered into force in 2010 guarantees the free movement of goods, services, capital, labour, persons and the right to establishment and residence. It guarantees every citizen with a valid travel document the right to enter, transit, stay or exit the territory of a Member State for purposes of visiting, medical treatment, study, or any other legitimate reason other than as workers or self-employed persons. These categories of citizens must be issued permits free of charge at the point of entry for up to six months. EAC citizens staying in another Member State are not allowed to engage in economic activities except students on internships or industrial training. All workers and self-employed persons must apply for a work permit once they have gained entry into the territory of a Member State. Work permits must be issued free of charge for an initial period of two years.

The Protocol guarantees all workers[20] the right to take up employment in any other Member State and to be accompanied by their dependants. However, Members limited the definition of workers to certain categories of employment as negotiated and contained in the Schedule for the Free Movement of Workers in Annex II of the Common Market Protocol. It is therefore not an unqualified right and not all workers arriving at a port of entry with a valid travel document and contract of employment are allowed entry into the territory of another Member State in order to

[20] A worker is defined as someone who performs services for and under the direction of another person in return for remuneration.

apply for a work permit and to take up employment. There is also a further complication. Even if a worker with a particular occupational title is guaranteed access into the labour market of another Member, it does not guarantee recognition of that person's experience, qualifications and professional licenses in order to practice his or her profession. As a result, major challenges arise with the development of enabling conditions to ensure the mutual recognition of academic and professional qualifications. To this effect, Members are required to harmonise curricula, education standards, certification and accreditation of education and training institutions but it is a painstakingly slow process. To date, only a handful of professions have concluded mutual recognition agreements, including those for engineering, accounting, veterinary and architecture professions. They are also obliged to harmonise their labour laws and policies to ensure all workers are employed under that same conditions of employment, remuneration and social security benefits in any particular host State.

Apart from the right to take up employment in another Member State, the Protocol (via Annex III on Establishment) also gives a national of one Member State the right to establish in another State and engage in income generating activities as a self-employed person or to set up and manage an undertaking. It means such a person may not operate under a contract of employment or supervision. Again, in order to give effect to the right to establishment, Members must recognise the relevant experience obtained, requirements met, licenses and certificates granted to a professional or company in another Member State.

In other words, the Common Market Protocol regulates the free movement of labour through the Annexes on Movement of Workers, Right of Establishment and Residence. These Annexes liberalise all economic sectors for workers to take up employment in any designated occupation and to work as self-employed persons or to establish an undertaking. In reality, movement of labour is more liberalised on paper than in practice.

However, the definition and approach adopted for the scheduling of commitments on the liberalisation of trade in the services created confusion for those responsible for the implementation of the Common Market Protocol. In terms of the Common Market Protocol, trade in services is defined and commitments are scheduled according to the definition and scheduling approach of the WTO's GATS. Unfortunately, this approach is not suitable for the establishment of an integrated common market. This scheduling approach has created unnecessary confusion regarding the legal relationship between the rights of workers and self-employed persons on the

one hand and the rights of workers and self-employed persons providing services in a particular services sector on the other. It creates an unnecessary and confusing link because the supply of a service through the presence of legal or natural persons is technically already covered by the aforementioned Annexes on Movement of Workers, Right of Establishment and Residence. The more appropriate approach would have been to limit the scheduling of commitments on the liberalisation of trade in services in the identified sectors (business & professional services; communication; distribution; education; financial; tourism & travel-related; and transport) to the cross-border supply of these services. However, such a position would then require Members to make special provision for persons employed by establishments without a local presence and self-employed persons not intending to establish in another jurisdiction to move across borders to supply their services on a temporary basis and then to return to their base. In light of these challenges, EAC Members decided in September 2014 to consider specific amendments to the Common Market Protocol provisions on trade in services and to revise the schedule of commitments relating to the movement of natural persons supplying services – a process that remains on-going.

In order to sufficiently cater for the aforementioned scenarios, Members decided to consider the incorporation of two categories of service suppliers (contractual service suppliers and independent service suppliers) into the Schedules of Commitments for the Liberalisation of Services (found in Annex V). A further three categories of service suppliers (business visitors, graduate trainees and intra-corporate transferees) are also being considered. Other possible amendments include the introduction of a market access provision which would allow Members to impose numerical quotas and labour market tests as limitations on the movement of persons. Members also decided to use this opportunity to revise other technical matters and discrepancies in the Protocol and Schedules of Commitments. Nonetheless, the wisdom to make these changes relating to the movement of persons supplying services (workers and self-employed) in the Annex dealing with trade in services is questionable. It will only further obfuscate an already complicated matter. The parts in the Common Market Protocol dealing with the regulation of labour (Annexes on Movement of Workers, Right of Residence and Establishment) are more suitable instruments within which the necessary changes could be undertaken in a rational and practical manner. National consultations in the Member States on these matters are still ongoing, with draft schedules reportedly having been prepared as of end-August 2016 by Kenya, Tanzania and Rwanda.

Lessons for the CFTA process could be gleaned from the EAC's approach to attaining free movement of persons and labour through the adoption of various protocols without clarifying their boundaries and nature of their relationship with each other. Consequently, countries that do not carefully consider cross-referencing their commitments between the various legal instruments run the risk of losing consistency and coherence in their legal obligations; making the agreement overly complex and ineffective. In addition, mutual recognition of qualifications based on harmonisation as opposed to recognition of equivalence has proven to be difficult and time consuming. The CFTA process can also learn from the EAC's experience in developing a common passport.

5.2.3 Common Market for Eastern and Southern Africa (COMESA)

The removal of 'obstacles to the free movement of persons, labour and services, right of establishment for investors and right of residence' within COMESA is a specific objective under the COMESA Treaty (Article 4(6)(e)). In order to give effect to this objective, Article 164 of the Treaty obliges Members to conclude a Protocol on Free Movement of Persons, Labour, Services, Right of Establishment and Right of Residence (not in force). The Protocol was concluded in 1998 and provides for the issuing of visas upon arrival at ports of entry. Members may bilaterally conclude reciprocal agreements that grant each other's citizens one year multiple entry visas. Within two years from the entry into force of the Protocol, citizens of all Member State must be allowed visa free entry for up to 90 days. Ultimately, all visa restrictions must be removed within six years but members are allowed, on the grounds of public security or sudden influx of persons, to temporarily suspend commitments. The free movement of labour is supposed to be implemented within a period of six years from the entry into force of the Protocol; allowing persons to accept offers of employment and stay in any Member State. The same phased approach applies to the removal of restrictions on establishment. In this regard, Members must, in accordance with the provisions of the Treaty, issue directives for the mutual recognition of certain qualifications, coordinate the regulation of certain establishments and firms, and provide for the treatment of companies and firms. Members must agree on a programme to remove restrictions on persons for the supply of services in the territory of another Member. From the date of entry into force of the Protocol, Members are not allowed to introduce new restrictions on the freedom to provide a service in another Member State on a temporary basis. Once it enters into force, the Protocol sets clear timeframes for the progressive removal of restrictions affecting the free movement of persons in the COMESA region. Pending the entry into force of the Protocol, the Treaty provides that the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements of 1984 will

remain in force. Some Members grant visas on arrival to citizens from other Member States, but compliance with this Protocol remains uneven. In light of this poor implementation record, the COMESA Business Council has been requesting Members to develop and adopt a common Business Visa (similar to the ABCT) to facilitate the movement of business persons within the region. The proposal is still under consideration.

In 2009, Members adopted Regulations on Trade in Services in accordance with Article 164 of the Treaty. Article 10 of the Treaty provides all regulations are binding on all Members. The Regulations entered into force upon its adoption by the COMESA Council. The Regulations make provision for the negotiation of liberalisation commitments on trade in services; starting with four priority sectors namely transport, communication, financial and tourism services[21]. It allows Least Developed Country (LDC) Members to accept longer periods for the implementation of commitments; to undertake fewer commitments; to give special consideration for the liberalisation of services that are of export interest to them; and, to provide support programmes to LDC Members. However, nothing prohibits two or more Members from undertaking faster timeframes for the implementation of their commitments.

The Regulations on Trade in Services contains an Annex on Temporary Movement of Natural Persons, allowing Members to negotiate specific commitments relating to the temporary movement of persons supplying services. The Annex identifies four categories of persons (independent professions, contractual service suppliers, intra-corporate transferees (subdivided into the categories of managers and specialists) and business visitors (subdivided into services sellers and persons responsible for setting up a commercial presence) in which Members can negotiate and undertake market access commitments. It provides detailed definitions for each category and sub-category and sets out the requirements and conditions that must be met to qualify for market access under each category. This approach will increase transparency and legal certainty on the identification of each category of service supplier. In general, market access limitations such as quantitative restrictions and economic needs tests may be maintained but must be eliminated on contractual service suppliers by 2015 and removed or substantially reduced on independent professionals and intra-corporate transferees by an undeclared date. As yet, Members

[21] Negotiations covering the four priority sectors were complete in 2015 and the second round of negotiations covering Business services, Energy services and Construction and Related Engineering services are set to commence.

have not started negotiations for specific commitments on the temporary movement of persons supplying a service.

Similar to SADC, the COMESA Protocol on Free Movement of Persons, Labour, Services, Right of Establishment and Right of Residence also provides for a phased-in approach to the implementation of obligations affecting movement of persons but it includes the incremental removal of restrictions on establishment of companies. A unique feature of the COMESA Protocol worth considering taking on board in the CFTA process is the inclusion of a safeguard mechanism allowing individual Members to temporarily suspend commitments on the grounds of public security or sudden influx of persons. It will require strong mechanisms for collective decision-making to prevent unilateral action by Member States.

5.2.4 Economic Community of West African States (ECOWAS)

The current overarching policy framework for migration initiatives in ECOWAS consists of the Treaty and related Protocols as well as the Common Approach to Migration (2008). The ECOWAS Treaty (1975) and Revised Treaty (1993) provides for the right of entry, residence (to undertake income-generating employment activities) and establishment (to undertake income-generating activities and to establish an enterprise). Various instruments regulating trade in services and the temporary movement of persons supplying services cover the categories seasonal workers, migrant workers, occupational travellers and frontier workers.

In order to give effect to the Treaty, a Protocol relating to the Free Movement of Persons, the Right of Residence and Establishment was adopted in 1979 and provides for the right of entry and abolition of visa in 1979 (phase I of the protocol), right of residency in 1986 (supplementary protocol: phase II), right of establishment in 1990 (supplementary protocol: phase III). However, despite their ratification by most Members, implementation remains uneven. In particular the right of establishment has not been realised. However, Members have fully implemented the facilitation of visa-free entry for periods of up to 90 days within the ECOWAS region. Officially, Members do not charge fees, but there are reports that unofficial fees are levied at land border ports. The Common Approach to Migration serves as the policy framework for matters relating to migration, mobility, employment and higher education within ECOWAS.

In 2009, Members adopted the ECOWAS Regional Labour and Employment Policy and Action Plan to strengthen cooperation in the field of labour and social security and to harmonise and coordinate their policies and programmes. Since then, a study on the harmonisation of labour laws

in the region was commissioned and the General Convention on Social Security (1993) was revised in 2012 to reflect more recent developments in the field of social security such as pension fund schemes.

The Protocol on Education and Training (2003) and General Convention on the Recognition and Equivalence of Degrees, Diplomas, Certificates and Other Qualifications (2003) are the two key instruments for the mutual recognition of qualifications in the region. Recently, emphasis is also being placed on the development of education centres of excellence and on e-learning initiatives. The main challenges relating to recognition and equivalence of qualifications are linked to linguistic barriers and the existence of different education systems between French and English speaking Member States.

The abolishing of visa requirements for travel within the ECOWAS region has been a major accomplishment and should be taken on board in the CFTA process.

5.2.5 Economic Community of Central African States (ECCAS)

The Treaty Establishing the Economic Community of Central African States (ECCAS) provides for the removal of obstacles to the free movement of persons, goods, services and capital and the right of establishment. It also provides for the harmonisation of national policies such as education, tourism, human resources, culture, science and technology and other activities that may affect the movement of persons. Members also agreed to harmonise laws and regulations on social affairs including labour, social security systems and civil status laws.

The Protocol on Freedom of Movement and Right of Establishment (1983), attached to the Treaty, applies to the free movement and establishment of citizens and legal entities in another Member State. According to the Protocol's phased implementation approach, the right to freedom of movement became effective four years after entry into force of the Treaty and the right of establishment 12 years after entry into force. Although the Protocol has not entered into force, it illustrates how legal obligations (depending on the nature of the commitment) can be phased in over extended periods of time.

Citizens are allowed to move freely upon presentation of a national identify document, passport and international health carnet. The Protocol applies to four categories of citizens namely, tourists, persons travelling for business, persons staying in another Member State to exercise remunerated activities (workers), and those who establish in another Member State to carry on an unsalaried

profession. All categories of persons enjoy the same rights and freedoms of nationals in the host state except political rights.

Tourists are allowed to stay in another Member State for a period not exceeding three months provided they can prove that they can support themselves. Persons travelling for business purposes must provide a specific certificate issued by the National Chamber of Commerce in each Member. The free movement of workers may be limited on the grounds of public order, safety and health. It allows workers to access an offer of employment, work under the same conditions and laws applying to host country workers, and remain in the territory of the host country to search for other work or to establish. Further decisions regarding the amendment of certain categories of nationals was taken in 1990 and revised in 2002 to include students, trainees, researchers and teaching staff.

In practice, the implementation of the Treaty, Protocol and subsequent decisions remains elusive. The freedoms and rights granted to citizens under the Treaty are far from reality and it is questionable whether the political will exist to implement the agreed commitments. Nonetheless, the Protocol contains innovative provisions not found in similar legal frameworks of the RECs such as incorporating the position of tourists under the general framework regulating the movement of persons and could be taken on board in the CFTA process.

5.2.6 North American Free Trade Agreement (NAFTA)

The North American Free Trade Agreement (NAFTA) is a comprehensive trade agreement covering trade in goods and services, investment, government procurement, intellectual property technical barriers to trade and related matters. It establishes migration provisions for certain types of business persons in chapter 16 of the Agreement. This chapter titled “Temporary Entry for Business Persons” contains commitments from each Member State allowing temporary migration of business workers. It is important to note that it is limited to temporary movement only. Article 1601 of the Agreement provides it only “reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories”.

A business person is defined as a citizen who is engaged in trade in goods, the provision of services or the conduct of investment activities in one of the following categories namely: business visitors, trade and investors, intra-corporate transferees and professionals. These groups are not limited to

the supply of services and may include persons that are engaged in agricultural or manufacturing activities.

Business persons that are engaged in certain activities (such as research and design, growth, manufacture and production, marketing, sales, distribution, after-sales services and general services) are allowed entry into another Member State provided the activity is international in scope and the person can show he or she is not seeking to enter the labour market of another Member State. A person can satisfy these requirements by demonstrating that his or her principle place of business and remuneration remains outside the territory of that Member State.

Traders seeking to carry on substantial trade in goods or services between two Member States can be granted temporary entry. Investors seeking to establish, develop, administer, provide advice or key technical services relating to the operation of an investment to which the business of that person has committed or is in the process of committing a substantial amount of capital in a supervisory, executive of essential skills capacity can also gain temporary entry into another Member State.

Temporary entry may be granted to intra-corporate transferees who seek to render employment to that enterprise, an affiliate or subsidiary in a managerial, executive or specialised knowledge capacity in another Member State; provided he or she has been in employment continuously for more than one year.

Temporary entry may also be granted to persons seeking to engage in business activities at a professional level in any of the 63 professions listed in an annex to the Chapter and provided they meet the minimum education requirements.

The Agreement contains a number of provisions to ensure transparency, administrative justice and accountability in its implementation. For example, in order to increase transparency, each Member State must publish explanatory material regarding the requirements for temporary entry in a single consolidated document and in such a manner that would enable business persons to understand and become acquainted with them. Member States must limit any application fees for temporary entry to the approximate cost of delivering the service. If a business person is refused entry, that person is entitled to written reasons. The Agreement limits Members to only institute dispute settlement proceedings regarding a refusal to grant temporary entry if it involves a pattern of practice and the business person has exhausted all administrative remedies.

The inclusion of provisions on the movement of business persons as part of a comprehensive trade agreement is an important element that should be taken on board in the CFTA process. It provides comprehensive definitions for each qualifying category of business person in order to facilitate their identification and smooth processing at the border.

5.2.7 Trans-Pacific Partnership (TPP)

The Trans-Pacific Partnership Agreement of 2015 is a modern-day version of a comprehensive trade agreement consisting of 30 chapters covering a wide range of trade-related issues from state-owned enterprises, electronic commerce and regulatory coherence to investment, cross-border trade in services and temporary entry for business persons. A business person is defined as someone who is engaged in trade in goods, supply of services or the conduct of investment activities. Similar to the NAFTA provisions on movement of business persons, the TPP only applies to the temporary entry of business persons into the territory of another Member State. It does not cover persons seeking access to the employment market nor does it apply to measures regarding citizenship, residence or employment on a permanent basis.

Each Member State scheduled, in separate annexes, the commitments it makes with regard to the temporary entry of each different category of business persons, including the conditions and limitations for entry and temporary stay (including the length of stay). Members adopted the same broad categories of business persons (business visitors, intra-corporate transferees, investors, professional and technicians) but with different sub-categories, definitions and conditions of stay for each category of business persons. Not every Member made commitments in each category of business persons. In fact, the level of ambition ranges significantly between the different Members. In the case of market access commitments on professions, individual Members even made different commitments for each Member. It comes to show that Members to a trade agreement do not have to agree to a one size fits all approach to the scheduling of commitments. Each contracting party can shape its legal commitments to suit its unique circumstances provided the architecture of the agreement allows Members enough flexibility and do not force them to pour the commitments that they are willing to make into the same mould.

The movement of professionals is also regulated in the Chapter on Trade in Services. It obliges each Member to consult with relevant professional bodies in their territories in order to identify professional services of mutual interest to start a transnational dialogue on the mutual recognition of professional qualifications, licensing or registration. Three professions are highlighted for

cooperation on mutual recognition. In the case of engineering and architectural services, Member States recognise existing efforts in APEC to promote mutual recognition and encourage their national bodies to become authorised to operate APEC Engineer and APEC Architect Registers. Members are also allowed to implement temporary or project-specific licensing and registration regimes for engineers.

In recognition of the important role transnational legal services play in facilitating trade and investment, Members agreed to encourage their relevant bodies to consider whether or in what manner foreign lawyers can be allowed to practice foreign law on the basis of their right to practice law in their home country; to prepare and appear in commercial arbitration, arbitration, conciliation and mediation proceedings; to apply local ethical, conduct and disciplinary standards on foreign layers; and, provided foreign lawyers disclose to clients their status as foreign lawyers or to maintain professional indemnity insurance. Members are encouraged to consider the supply of transnational legal services on a fly-in fly-out basis, through the basis of web-based or telecommunications technology, or by establishing a commercial presence including cooperating with local firms.

The Agreement obliges all Members to publish online, if possible, information on current requirements for entry including explanatory material and relevant forms and documents in order for business persons to become acquainted with them. They must also specify the timeframe within which an application will be processed. All fees charged for the processing of applications must be reasonable and authorities must, on request of an applicant, endeavour to promptly provide information concerning the status of the application. The TPP contains the same dispute settlement provisions regarding the refusal of entry of a business person than the NAFTA. However, Members affirmed their commitments under a different initiative, APEC, and their support for efforts to enhance the ABTC programme. The ABTC is an undeniable success and it is significant that TPP Members decided to rather reaffirm their commitment to an existing programme that works than to develop a similar programme and to duplicate their efforts.

The TPP Agreement is a modern-day version of a comprehensive trade agreement covering a wide range of trade and trade-related issues including movement of persons. All Members adopted the same categories of persons for the scheduling of persons but allow individual Members to adopt flexibility in the scope and manner in which commitments are scheduled. Certain professional bodies are obliged to consult and start discussions with a view to achieve mutual recognition of

professional qualifications. The Agreement contains innovative provisions to improve transparency of regulatory requirements and facilitation of application procedures. The consideration of an initiative similar to the ABTC is worth taking on board in the CFTA process.

5.2.8 Bilateral Labour Agreements (BLAs)

Most temporary migration opportunities created in trade agreements are skewed in favour of highly skilled persons. However, many countries conclude labour agreements and social security agreements on a bilateral level to provide a means for especially low-skilled workers to access employment opportunities abroad on a temporary basis. Bilateral Labour Agreements (BLAs) formalise each contract party's commitment to ensure that migration takes place in accordance with agreed principles and procedures. BLAs are important mechanisms for inter-state cooperation to protect the rights of migrant workers, to match labour demand and supply, to better manage irregular migration, and to regulate recruitment. A variety of BLAs exist ranging from agreements on short-term (guest workers); seasonal workers agreements, and trainee agreements to cross-border worker agreements. Other considerations for the conclusion of BLAs include promotion of regional integration; protecting special post-colonial or political relationships; promoting cultural ties and exchanges; ensuring the temporariness of stays; and, reinforcing cooperation in managing irregular migration. The successful implementation of BLAs requires the participation of government agencies; migrant workers and employers; as well as private and nongovernmental organizations.

They are usually concluded between labour sending and labour receiving countries, but there are examples of BLAs concluded between labour receiving countries, such as the Philippine-Indonesia BLA. In particular, the Philippines have made significant advances in establishing migration systems and structures which many view as a model for migration management. For example, the BLAs concluded between the Philippines and other countries can by divided between labour recruitment agreements (focusing on the terms and conditions of employment of Filipino workers or specific groups of workers such as nurses and domestic workers) and labour, employment and manpower agreements (focusing on the exchange of information and cooperation between the state parties and the protection of the rights of Filipino workers in accordance with the laws of the receiving country). Although these agreements are effective in addressing issues and concerns affecting the employment of workers, they take a very long to negotiate and implement and many receiving countries are unwilling to negotiate them.

A number of international instruments provide a legal framework for the development of BLAs such as the UN fundamental human rights instruments; ILO Core Conventions on fundamental principles and rights at work; ILO Migration for Employment Convention (1949); ILO Migrant Worker Convention (1975); UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990); and, ILO Conventions on Private Employment Agencies (1997) and the Domestic Workers Convention (2011). The ILO (2015) has also identified a number of good practice provisions that are frequently included in agreements of this nature. In particular, BLAs between Spain and other countries are considered the most comprehensive and usually contain a majority of these best practice provisions. Some of the best practice provisions contained in BLAs include[22]:

- Transparency and publicity of the content of agreements;
- Respect for migrant rights based on international instruments;
- Equal treatment of migrant workers;
- Promotion of fair recruitment practices;
- Provisions addressing gender concerns and vulnerable workers;
- Wage protection measures such as minimum wage, overtime, allowable deductions, payment into a bank account etc.;
- Enforceable provisions relating to employment contracts and workplace protection;
- Skills development through in-service training;
- Concrete implementation, monitoring and evaluation procedures;
- Prohibition of confiscation of travel and identity documents;
- Social security and health care benefits for migrant workers on par with local workers; and
- Free transfer of savings and remittances.

The consideration of some of the best practice provisions typically contained in BLAs could be considered for inclusion in the CFTA process.

6 Options for the CFTA

The data on migration indicates that migratory flows are more or less concentrated to certain geographical regions. This can be attributed to migratory movements out of conflict situations, longstanding cultural ties, as well as the result of regional integration efforts. The data on migration flows has also shown that each and every Member of the AU is affected by migration. It is therefore in the best interest of all AU Members to adopt effective measures for the orderly regulation of

[22] See for example Winters, L. A. (2016). New Zealand's Recognised Seasonal Employer Scheme: An Object Lesson in Policy Making – But for Whom? Toronto, Geneva and Brighton: ILEAP, CUTS International Geneva and CARIS.

migration on the continent because migration will continue for as long as there are conflict and unequal levels of economic development on the continent. At the same time, movement of labour is a politically contentious issue for any country because at the heart of the problem lies public perceptions that foreigners will take their job opportunities; place a burden on social services, healthcare and education; and, that temporary stay will become permanent.

The Objectives and Guiding Principles for Negotiating the CFTA do not explicitly mention the movement of persons as a negotiating issue. However, the movement of persons cannot be excluded from the CFTA negotiations for two reasons. First, the WTO GATS Article V requirements for the establishment of preferential trade agreements for the liberalisation of trade in services would prohibit the exclusion of temporary movement of persons for the supply of services even though a lower threshold in terms of sectoral coverage and removal of discriminatory measures will apply when developing countries are the only parties to such agreement. In other words, the CFTA must at least cover the movement of a subset of persons, namely those moving to another Member for the supply of services on a temporary basis. The fact that there is no reference to the free movement of persons in the CFTA means, at this stage, that negotiations will likely be limited to the temporary movement of persons to supply services in other Member States. However, this does not in any way suggest that such an approach would be appropriate. In fact, technological advances and the fragmentation of production processes are increasingly blurring the lines between trade in goods and services. It would make little sense to differentiate between them; especially in the context of establishing a comprehensive agreement that can cater for the needs of trade in the 21st century. Moreover, even the trade agreements that limit movement of persons to the movement of business persons only, including NAFTA, TPP and TFTA, are not limited to persons that are supplying services but cover also those that are engaged in trade in goods and conducting investment activities.

Second, the AU Members have adopted a broad mandate for the regulation of movement of persons in the Abuja Treaty, BIAT and Agenda 2063. Unlike in the case of the TFTA which limited the scope of negotiations on movement of persons to business persons, the BIAT Action Plan identifies the movement of persons as an important ingredient for cross-border trade. It also recognises that restrictions on free movement of persons will contribute to irregular migration. It therefore calls for the removal of all restrictions on travel and establishment on the continent as well as for the mutual recognition of qualification and establishment of an African Passport;

probably along the lines of the ABTC initiative. Addressing all these matters will facilitate trade and integration on the continent. The movement of persons can therefore not be excluded from the CFTA negotiations but it would also be unfeasible to suggest that all Members will be able or willing to adopt and implement all of these objectives at the same time.

Table 7: Existence of provisions on movement of persons in legal instruments of RECs

REC	Visa-free Entry	Right of Residence	Right of Establishment	Harmonisation of Education and/or Recognition of Qualifications	Harmonisation of Labour laws and Policies and/or Social Security	Temporary Movement of Persons Supplying a Service
SADC	✓	✓	✓	✓	✓	✓
EAC	✓	✓	✓	✓	✓	✓
COMESA	✓	✓	✓	✓	✓	✓
ECOWAS	✓	✓	✓	✓	✓	✓
ECCAS	✓	✓	✓	✓	✓	×

Source: Author

Despite the varying degrees of implementation in practice, Table 7 above demonstrates that all the African RECs under review provide for the free movement of persons in line with the objectives of the Abuja Treaty (at least on paper). All of them have committed to the abolishment of visa requirements within the RECs and more recently they even committed to extend visa-free entry treatment to the citizens of all African States in terms of the AU's Agenda 2063. The individual RECs guarantee citizens the right of residence and establishment in any REC Member State. They all provide for the harmonisation of education policies, programmes and/or the recognition of qualifications. The RECs even provide for the harmonisation of employment conditions and social security issues. Unfortunately and in most cases, the commitments on paper are not being implemented in practice. Outside of the EAC, the legal instruments of the RECs that provide for the free movement of persons are standalone agreements unconnected with their market integration agendas. As a result, Members would typically ratify the trade agreements and implement their trade commitments but not those relating to the movement of persons; which are viewed by some as a lower priority (in large part due to their inherently political sensitivities). This is perhaps the

single biggest weakness in the legal framework of the RECs. If the RECs had implemented existing free movement commitments, they would now have been in a position to extend treatment to other RECs. A pragmatic approach is now required which would secure the commitment of all Members to implement each objective relating to the movement of persons under the auspices of a single overarching legal framework covering all trade and trade-related issues but at different set future dates in line with their own levels of development.

Table 8: Example of matrix of commitments on the application of CFTA Member State visa regimes

Country	Type of Visa Measure	Description of commitment	Addition Commitment
	Abolish	At entry into force of CFTA Agreement	
	Abolish	Within X years after entry into force of CFTA Agreement	
	Maintain	Issue on arrival ; Free / X fee	
	Maintain	Electronic application ; Free / X fee ; processing time X days ; written reasons for rejection of application and right to review	E.g. County A will abolish visas within X years
	Maintain	Paper application ; Free / X fee ; processing time X days ; written reasons for rejection of application and right to review	E.g. Country X will adopt electronic application procedures within X years
- Safeguard measure for Country A: commitments can be suspended in case of sudden influx of persons due to … ; in case of a state of emergency; etc. - Safeguard measure for Country Z: commitments can be suspended if GDP growth is below X% per annum; in case of sudden outbreak of disease; etc.			

Source: Author

For example, Table 8 illustrates how a pragmatic approach could be adopted with regard to the scheduling of commitments on visa requirements in the CFTA. Each Member can select the level of commitment it is willing to accept. In each case commitments will be recorded in a schedule that will be annexed to the CFTA Agreement and will be legally binding and enforceable. This will create legal certainty and transparency of visa regimes. A similar approach could be followed for the illustration and scheduling of work permit regimes for each category of persons.

Drawing on the reviews above, there are a number of areas where experiences – both positive and less so, can help inform a pragmatic CFTA approach.

The abolition of visa requirements for travel within the ECOWAS region has been a major accomplishment and lessons could be learned from their experience. Similarly, experiences in the implementation of a common EAC passport could provide valuable lessons for the CFTA process. The CFTA process could also consider the adoption of a system comparable to the APEC Business Travel Card.

SADC and COMESA adopted phased-in approaches for the implementation of obligations to attain free movement of persons. However unlike in the case of COMESA and SADC, the CFTA should allow individual Members flexibility to determine their own tempo for the implementation of obligations. A unique feature of the COMESA Protocol worth considering taking on board in the CFTA process is the inclusion of a safeguard mechanism allowing individual Members to temporarily suspend commitments on the grounds of public security or sudden influx of persons. In doing so, it creates the opportunity for Members to adopt a more ambitious approach. That said, a CFTA mechanism should prevent individual Members from taking unilateral action and provide clear derogation procedures on how situations will be managed collectively.

The NAFTA includes provisions on the movement of business persons as part of a comprehensive trade agreement including trade in goods, services, competition, intellectual property, investment, government procurement, labour and the environment. This all-inclusive approach to negotiating a single comprehensive trade agreement is an important element that should be taken on board in the CFTA process. It provides comprehensive definitions for each qualifying category of business person to facilitate their identification and smooth processing at the border. Similarly, in the TPP Agreement Members adopted the same categories of persons for the scheduling of persons but allowed individual Members flexibility to determine the scope and manner in which commitments are scheduled. It obliges certain professional bodies to start discussions with a view to achieve mutual recognition of professional qualifications. The Agreement contains innovative provisions to improve transparency and to streamline application procedures.

The EAC experience shows it is difficult and time consuming to achieve mutual recognition of qualifications based on harmonisation as opposed to recognition of equivalence. The regional qualification framework developed under the SADC Protocol on Education and Training adopts international best practice for the standardisation of quality and levels of qualifications and could be considered at the CFTA level.

Going forward, we offer some final considerations for the forthcoming CFTA negotiations

- Do not wait for the various RECs to implement their initiatives on the movement of persons before commencing with this important task at a continental level because it would halt the whole process. Ways and means should be found to allow Members that are willing to proceed with the implementation of commitments;
- Establish and maintain population registers, and create cooperation mechanisms for the exchange of information;
- Develop a matrix of applied migration regimes for transparency and information sharing in order to facilitate comparability and identification of best national practices before commencement of negotiations on movement of persons – otherwise removal of restrictions is unknown;
- Do not separate negotiating issues (trade in goods and services, movement of persons, intellectual property, investment, competition policy etc.) into silos or phases because it may lead to fragmentation of the trade agenda and uncoordinated outcomes that do not advance the objectives of a comprehensive trade agreement;
- Negotiating principles should be agreed and clarified before commencement of negotiations on each;
- Develop clear and concise definitions of different types of travellers;
- Consultation with intended beneficiaries should be actively pursued and they should be able to actively participate in the negotiations;
- Set clear timeframes for the phased implementation of commitments but allow Members, to choose their own tempo of implementation in a legally binding manner. This should be combined with a strong monitoring, reporting and evaluation mechanism;
- Special provisions should be adopted for LDC Members allowing them to adopt fewer commitments, implement over longer periods of time, and assisting them with implementation. Willing Members should also be allowed and encouraged to implement their commitments faster than agreed;
- Develop a safeguard mechanism allowing Members to activate the temporary suspension of obligations during a sudden influx of persons or to trigger quotas or ENTs for limited periods of time during weak economic circumstances that are linked to certain levels of GDP growth;
- Develop model laws for the amendment of national immigration legislation to ensure the effective implementation of the legal instrument; in particular the harmonisation of the different types of travellers permitted to move.

The CFTA presents a one-off opportunity for the countries of Africa to leverage continental economic integration in pursuit of their development agenda and to avoid repeating the economic integration mistakes of the past. There is unlikely to be another opportunity for regional economic integration on this scale and magnitude beyond the CFTA. Pragmatism, flexibility, alongside a healthy dose of ambition, and an understanding of the differing regional and national interests at play, will prove essential in helping Africa do the CFTA differently.

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