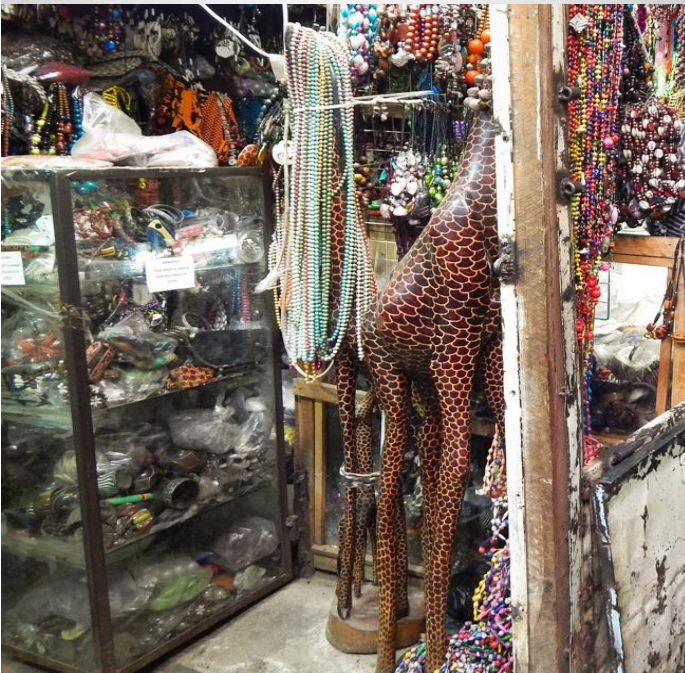




**VISA FREE**  
C I T I Z E N S



**POPULAR VERSION OF THE  
COMESA FREE MOVEMENT  
TREATIES**



What is COMESA?

The Common Market for Eastern and Southern Africa is a Free Trade Area (FTA)<sup>1</sup> to which the following countries belong:



The main purpose of COMESA is to be a larger, and therefore more robust market, and economic and trading collective, which mutually resolves trade obstacles and actively facilitates policies and practices to enhance trade. Since the FTA was established in 2000, trade within COMESA has grown tenfold. The customs union<sup>2</sup> was launched in 2008.

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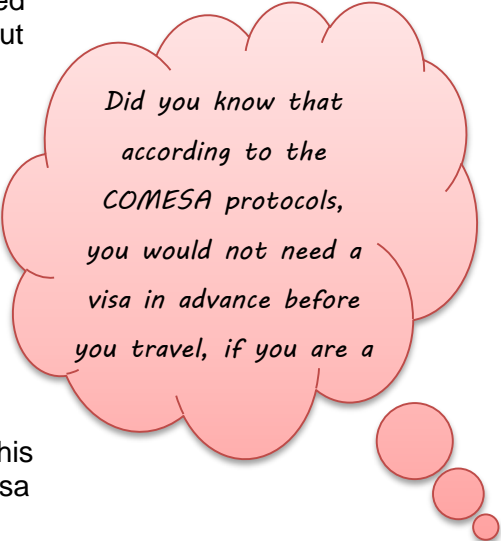
<sup>1</sup> An area formed by a number of different countries in order to increase trade by reducing the obstacles like exorbitant taxes and restrictive quotas. Goods originating from these countries will not be taxed when entering other countries that are also members.

<sup>2</sup> The next step after a Free Trade Area where the countries in the region have common harmonised levies on goods coming into it.

Why free movement?

Freedom of movement is a human right but also a practical and essential component of other rights, and a necessity for socio-economic development. If free movement was restricted people would not be able to travel for the enjoyment of other rights like education, employment or healthcare.

In Kenya, the right is guaranteed for everyone to leave Kenya, but only citizens have a right to enter Kenya.<sup>3</sup> Other nationals need permission to enter and stay in Kenya. This permission is usually given in the form of a visa. Kenya currently requires visas for 8 COMESA countries<sup>4</sup> and is ranked at 80% in COMESA's visa openness index.<sup>5</sup>



*Did you know that according to the COMESA protocols, you would not need a visa in advance before you travel, if you are a*

COMESA has 2 Protocols on this issue, one on the removal of visa

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<sup>3</sup> Article 39, Constitution of Kenya 2010

<sup>4</sup> Comoros, DRC, Djibouti, Egypt, Madagascar and Sudan. Eritreans and Libyans require a referred visa meaning that only the Director of Immigration can issue the visa from Nairobi. They cannot obtain the visa online or directly from a Kenya diplomatic office.

<sup>5</sup> You can find the full document and analysis on our website here: <http://www.visafree.ccpau.org>

requirements<sup>6</sup> and a 2<sup>nd</sup> one on free movement.<sup>7</sup> The countries of the region are yet to fully implement them despite their having been adopted 33 and 19 years ago, respectively. The African Union is also developing a free movement protocol expected to be ready for use by January 2018. COMESA is considered to be a building block for the unification of the Continent.<sup>8</sup>

COMESA countries know that:

1. free movement is an essential part of a common, cross-border market;<sup>9</sup>
2. for economic and social development to happen in their countries, they must rely on and use their collective human and natural resources;
3. from as far back as 1984,<sup>10</sup> it is necessary to facilitate movement of their nationals by relaxing visa requirements as a 1<sup>st</sup> step to eliminating them altogether;
4. unity and solidarity between their nationals is necessary for economic growth and social development;
5. their nationals should be free to move within the common market in order to live, take up

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<sup>6</sup> Protocol Relating to the Gradual Relaxation of and Eventual Elimination of Visa Requirements Within the Common Market for East and Southern Africa, adopted December 1984 (Visa Protocol).

<sup>7</sup> Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence, adopted in June 1998 (Free Movement Protocol).

<sup>8</sup> See the Treaty Establishing the African Economic Community (the Abuja Treaty), Adopted in June 1991, entered into force in May 1994.

<sup>9</sup> The 3<sup>rd</sup> stage in Regional Integration where there is a customs union, free movement and harmonised policies. The goal of COMESA as indicated in the title is to be a common market for the member countries and to eventually establish a monetary union.

<sup>10</sup> Visa Protocol.

- employment, provide services, and start businesses and self-employment activities;<sup>11</sup>
6. they must work together as the most effective way of achieving a common market, share information and take all necessary steps, from changing their laws, policies and practices, to creating the necessary infrastructure to allow free movement to happen. They must also prevent and police criminality through the sharing of information and legal arrangements for the return of fugitives.

Today, 16 out of 19 COMESA countries have fully implemented the FTA, yet only 2 countries<sup>12</sup> have committed themselves to the Free Movement Protocol. So how would goods move and trade without people?



### *According to the Law*

The protocols remove the requirement of visas for citizens of COMESA countries travelling to other COMESA countries and allows them to stay in the host country for up to 90 days for each visit. However, the traveller would still need to follow the laws and policies of the Country they are visiting which regulate entry, stay and exit, and may also need to get any permits required by the host country, especially if they intend to stay for more than 90 days.

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<sup>11</sup> Free Movement Protocol.

<sup>12</sup> Burundi and Rwanda. Kenya and Zimbabwe have signed it but not ratified.

The laws and policies must not be unfair and discriminatory, and should not provide different treatment because of one's gender, nationality or religion, and should not go against the rights in the Protocol.<sup>13</sup>

The Country where a person comes from, is required by the free movement protocol to provide its citizens with valid travel documents which they would use to get access to the country they are travelling to.

*Denying entry or expelling people and suspending the treaty*

The Visa Protocol allows member states to deny entry or expel a COMESA citizen if the host country thinks they are a threat to the national security, public interest or public health of the country. The expelling country must however, safeguard of the person's property and interests.



The Visa Protocol also allows a country to suspend the application of the Protocol on grounds of national security but it must inform the COMESA Secretary General who will inform other countries. The Free Movement allows the same but includes influx of refugees as grounds for suspending free movement provisions. It also calls on governments to work with NGOs and INGOs to support refugees.

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<sup>13</sup> Free Movement Protocol

## Free movement of labour and services

According to the Free Movement Protocol, there should be no discrimination between or restrictions on the citizens of COMESA countries, wherever they may choose to work in any of the COMESA countries. This means that a person from Kenya should be able to move to Lusaka and find employment on the same terms and conditions, and remuneration as a Zambian, and vice versa. However, the offer of a job must have already been made by the prospective employer.

This, however does not extend to employment in the public service. It is also limited to skilled (and not casual) labour, where the person is offering skills which cannot be easily found in the host country.

2004

COMESA Countries were supposed to have removed restrictions on providing services

January

S	M	T	W	T	F	S
28	29	30	31	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31
1	2	3	4	5	6	7

February

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	1	2	3	4	5	6
7	8	9	10	11	12	13

March

S	M	T	W
29	1	2	3
7	8	9	10
14	15	16	17
21	22	23	24
28	29	30	31
4	5	6	7

If the Free Movement Protocol was being adhered to, COMESA Countries would not be able to impose any new restrictions on services, and service providers would be subject to the same conditions as citizens of the country where the services were being provided. Priority is to be given to services which foster the production and trade of goods.

### *What is the right of establishment?*

This is a legal term that covers one's ability to move to another COMESA country and set up a business or be self-employed. The Protocol indicates that the COMESA Council of Ministers would set out how this would work between COMESA countries including the recognition of qualifications, regulating the establishments and categorising the companies.

### *What is the right of residence?*

This is also a legal term referring to a person's right to live and remain in one of the COMESA countries other than his/her/their own. The Protocol allows for conditions to be attached to this, meaning that they may require a person to already be employed and/or established before allowing residency.

### *What does EAC say on free movement?*

The East African Community is a smaller unit consisting of 6 countries,<sup>14</sup> 4 of which are in COMESA.

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<sup>14</sup> Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda. Burundi, Kenya, Rwanda and Uganda are also members of COMESA.

### ***Glossary of terms used***

“Common Market” The 3rd stage in Regional Integration where there is a customs union, free movement and harmonised policies. The goal of COMESA as indicated in the title is to be a common market for the member countries and to eventually establish a monetary union

“Council” comprises of the ministers of trade/commerce or other ministers chosen by Member States to represent them in COMESA. They can make additional rules to ensure the implementation of the Protocols.

“Customs Union” The next step after a Free Trade Area where the countries in the region have common harmonised levies on goods coming into it

“Free Movement Protocol” means the Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence, adopted in June 1998.

“Free Trade Area” An area formed by a number of different countries in order to increase trade by reducing the obstacles like exorbitant taxes and restrictive quotas. Goods originating from these countries will not be taxed when entering other countries that are also members.

“Protocol” or “treaty” is an agreement and/or document that has been formally adopted by different countries and sets out the things that have been agreed upon. Once adopted, each country has to formally accept the treaty through a national process referred to as ratification, in order to be bound by the agreed-on provisions. Different countries have different processes of ratification based on each of their national constitution and laws, some require their national Parliaments to do

the process while in other countries it can be done by the Executive (President and/or his Ministers)

“Regional Integration” – the process through which different countries become more united for various purposes like enhancing economic development or the pursuit of peace and security. The stages of regional integration include:

- A free trade area
- A customs union
- A common market
- An economic or monetary Union (e.g. the European Union with a common currency)
- A political union.<sup>15</sup>

“Right of Establishment” This is a legal term that covers one’s ability to move to another COMESA country and set up a business or be self-employed.

“Right of Residence” This is also a legal term referring to a person’s right to live and remain in one of the COMESA countries other than his/her/their own.

“Secretary General” is the head of the Secretariat of COMESA

“Travel Document” means a passport or any other recognised travel document, establishing the identity of the holder and issued by or on behalf of the member state of which a person is a citizen and shall include a Laissez Passer issued by the Common Market to for a staff member, including a certificate issued to a

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<sup>15</sup> See

Common Market expert on mission establishing the identity of the holder

“Visa Protocol” means the Protocol Relating to the Gradual Relaxation of and Eventual Elimination of Visa Requirements Within the Common Market for East and Southern Africa, adopted December 1984