

INTRA-AFRICAN TALENT MOBILITY PARTNERSHIP PROGRAM (TMP)

WEST AFRICA

MEMORANDUM OF UNDERSTANDING BETWEEN
THE GOVERNMENTS OF THE REPUBLIC OF
BENIN, THE REPUBLIC OF COTE D'IVOIRE, THE
REPUBLIC OF GHANA AND THE REPUBLIC OF
SIERRA LEONE COUNTRIES IN THE ECOWAS
COMMUNITY PILOTING THE INTRA-AFRICAN
TALENT MOBILITY PARTNERSHIP (TMP)
PROGRAM FOR THE PURPOSE OF ACCELERATING
THE MOBILITY OF SKILLED PERSONS AND
PROFESSIONALS AMONG STATE PARTIES.

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PREAMBLE

Whereas the Governments of the Republic of Benin, the Republic of Cote d'Ivoire, the Republic of Ghana and the Republic of Sierra Leone, members of the ECOWAS Community - under the Talent Mobility Partnership (TMP West Africa) Program, jointly referred to as the 'State Parties', and separately referred to as 'the State Party'

Recalling that the mandate of the Economic Community of West African States (ECOWAS¹) Protocol on Free Movement of Persons² adopted in 1979 and its subsequent Protocols which lays the blueprint for the elimination of all restrictions in the entry, residence and establishment of citizens of State Parties;

Noting that there is overwhelming agreement among ECOWAS State Parties on movement of persons across borders with no restrictions but no specific framework agreement for the mobility of skilled persons and Professionals;

Desiring an effective mechanism to further liberalize and facilitate the movement of persons toward free flow of skills to accelerate integration of their economies through closer cooperation;

Motivated by their shared interest to promote and facilitate the mobility of skills within the region to boost productivity and overall economic development;

Recognizing the progress so far made by the Intra-African Talent Mobility Partnership Program (hereinafter referred to as the "TMP"), steered under the African Center for Economic Transformation (hereinafter referred to as "ACET"), where the TMP participating countries in regional meetings held in Mauritius and Cote d'Ivoire respectively in 2014, stressed the strong need to establish joint programs of cooperation towards accelerating the facilitation of movement of Skilled Persons and Professionals in specific sectors to help address skills gaps and skills mismatches in their respective economies within the provisions of this Memorandum of Understanding (hereinafter referred to as "MoU");

Hereby agree as follows:

1: Economic Community of West African States (ECOWAS):- Established on May 28 1975 via the treaty of Lagos, ECOWAS is a 15-member regional group with a mandate of promoting economic integration in all fields of activity of the constituting countries.

2: 1979 Protocol A/P.1/5/79 relating to Free Movement of Persons, Residence and Establishment (Establishes three-phased approach over 15 years to implementation of (I) right of entry and abolition of visas, (II) residence and (III) establishment (Article 2)

ARTICLE 1: DEFINITIONS

For the purposes of this MoU, the following definitions shall apply:

- 1.1 **"Skilled Person"** refers to a person who possesses knowledge and requisite professional skills and qualifications to practice his/her profession.
- 1.2 **"Professional"** refers to a person (i) licensed by the State and/or registered/ accredited by the appropriate body in the State to practice a profession and (ii) it includes Vocational/Trade specialists and experts who possess expertise and proprietary knowledge for the conduct of business or provision of service.
- 1.3 **"Intra-Corporate Transferee"** refers to a person who is an employee of a business operation established in the territory of a State Party, and who is transferred temporarily for the supply of service or to conduct a business operation either through a representative office, branch, subsidiary or affiliate.
- 1.4 **"Corporate Trainee"** refers to a person who is a recently graduated employee, or an intern/apprentice, or a sponsored trainee of a business entity established in the territory of a State Party and who requires further on-the-job training from qualified professionals or from a training institution in the territory of other State Parties, and possesses the relevant qualifications and pre-requisites for the training/apprenticeship program.
- 1.5 **"Receiving State Party"** refers to the State Party that issues the Work/ Residence Permit to a Skilled Person or Professional as defined in Articles 1.1 and 1.2 above of another State Party under this MoU.
- 1.6 **"Sending State Party"** refers to the State Party of which the prospective holder of a Work/Residence Permit issued under this MoU.
- 1.7 **"Dependant"** refers to either of the two (2) persons in a legally-recognized marriage as well as children under the age of majority of the prospective holder of the Work/Residence Permit issued under this MoU in accordance with national laws.
- 1.8 **"Certificate"** refers to an official document issued by a recognized provider to learners, trainees or participants after completion of a specific course or courses of study or a programme; and demonstration of particular knowledge, skills and competencies within a specified period of time and place.
- 1.9 **"Priority Sector"** refers to a specific area of intervention as determined by each State Party within its own development context.
- 1.10 **"Labour Market Information System"** (LMIS) refers to the set of institutional arrangements, procedures and mechanisms put in place to coordinate the collection, processing, analysis, storage, retrieval and dissemination of all kinds of information on the labour market.

ARTICLE 2: GENERAL PROVISIONS

- 2.1 Notwithstanding the provisions in existing relevant laws and regulations in force in State Parties, State Parties shall commit to review/modify such regulations to remove all barriers in the mobility of Skilled Persons and Professionals to give effect to this MoU.
- 2.2 This MoU does not create any new obligations but fits in those already arising out of the ECOWAS Treaty and complementary protocols which has the force of law in the legal corpus of each State Party. Consequently, it is legally binding in its application and each State Party has the right to require compliance from the other State Parties.
- 2.3 Nothing in this MoU shall prevent a State Party from applying measures to regulate the entry and residence of Skilled Persons and Professionals of other State Parties in its territory including those measures necessary to protect the integrity of its territory and to ensure security of its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to other State Parties under the terms of this MoU.
- 2.4 This MoU shall apply *mutatis mutandis* to measures adopted under the ECOWAS Protocol on Free Movement, Right of Residence and Right of Establishment³.

ARTICLE 3: PURPOSE

The purpose of this MoU is to give effect to the objectives of the TMP Program, for the acceleration of the mobility of skills across borders.

3: This Protocol spells out the various stages to be undertaken to accomplish complete freedom of movement and residence as envisaged by Article 27 of the Treaty of the Economic Community of West African States

ARTICLE 4: OBJECTIVES

The objectives of this MoU are as follows:

- 4.1 Facilitate the movement and employment of Skilled Persons and Professionals among the State Parties.
- 4.2 Establish streamlined and transparent procedures for applications for immigration formalities for the temporary and permanent residence and employment of persons to whom this MoU applies.
- 4.3 Eliminate explicit schemes that limit employment access to Skilled Persons and Professionals across the State Parties.
- 4.4 Adopt a common legislative and regulatory framework for granting Residence and Work Permits.
- 4.4 Protect the integrity of State Parties' borders as well as domestic labour force in the territories of State Parties.

ARTICLE 5: SCOPE

The State Parties hereby agree to the following:

- 5.1 This MoU shall apply to measures to facilitate ease of movement and the granting of Work/Residence Permit in Priority Sectors in the State Parties.
- 5.2 This MoU shall apply to categories of Persons mentioned in Article 1, notably
 - a) Skilled Persons
 - b) Professionals
 - c) Intra-corporate Transferees
 - d) Corporate Trainees
- 5.3 This MoU also applies to other categories specified in the Schedule of Commitments for the facilitation of the movement and employment of Skilled Persons and Professionals.

ARTICLE 6: SCHEDULE OF COMMITMENT

- 6.1** State Parties shall set out in ANNEX 1 to this MoU, a Schedule containing agreed Commitments for the facilitation of the movement, residence and establishment of Skilled Persons and Professionals in accordance with Article 1 of this MoU.
- 6.2** The Schedule shall specify the general conditions and scope of the commitments including but not limited to duration of stay, conditions for the issuance of permits, priority sectors requiring skills and talents and harmonized regulations and fees.
- 6.3** State Parties shall enter into discussions to review the Schedule of Commitments under this MoU with a view to achieving full mobility of skills and talents across countries to enhance economic growth and development among the State Parties.
- 6.4** Notwithstanding the provisions in Article 14 of this MOU, the Schedule of Commitments may be revised by State Parties at intervals of two (2) years after the coming into force of this MoU upon agreement by the State Parties. However, where a State Party desires an earlier revision, it shall serve written notice on the other State Parties indicating in the said notice the reasons for the early revision. Upon receipt of the notification, the State Parties shall meet to agree on the need for early revision. Any decision arrived at shall be effective if the same was arrived at unanimously.

ARTICLE 7: GRANT OF WORK/RESIDENCE PERMITS

- 7.1** In accordance with the provisions of this MoU and the Schedule of Commitments specified in Annex 1, each State Party may grant a Work/Residence Permit in accordance with the provisions defined in the ECOWAS Protocol;⁴ and also grant a Work Permit to Skilled Persons and Professionals for an initial period of two (2) years (or up to the duration of contract) for the purpose of establishing a business or undertaking employment in another State Party's territory, provided the Skilled Persons and Professionals:
- a) Follow the prescribed application procedures and formalities for the grant of Work/Residence Permit in the other State Party
 - b) Meet all eligibility requirements for the Work/Residence Permit in the Receiving State Party.
- 7.2** Notwithstanding the provisions of existing immigration regulations of State Parties a Work/Residence Permit shall allow a Skilled Person or Professional who requires a period longer than the statutory 90 days provided under the ECOWAS Protocol to pursue economic activity for gainful employment with an entity in another State Party.
- 7.3** A Skilled Person or Professional, or the employer of a Skilled Person or Professional shall apply for a Work/Residence Permit to carry out a gainful occupation or work in the Receiving State Party.
- 7.4** The Receiving State Party shall grant such Work/Residence Permit to a Skilled Person or Professional engaged in a priority sector as defined by each State Party.
- 7.5** The Work/Residence Permit shall be issued for an initial period of 2 years or the period specified in the employment contract, whichever one is lesser, and shall be renewed upon fulfilment of prescribed requirements.
- 7.6** The fee imposed in respect of the processing of the Work/Residence permit shall be in accordance with fees agreed under the Schedule of Commitments which is attached as Annex 1 to this MoU.
- 7.7** A State Party may deny Work/Residence Permit to a Skilled Person or Professional who does not comply with provisions under paragraphs 7.1 (a) and 7.1 (b) of this Article.

4: 1986 Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence). Requires States to grant to Community citizens who are nationals of other member states 'the right of residence in its territory for the purpose of seeking and carrying out income earning employment' (Article 2). Conditions entitlement to Residence (and thus seeking and carrying out of income earning employment) on possession of an ECOWAS Residence Card or Permit (Article 5) and harmonization by member states of rules pertaining to the issuance of such cards and permits (Article 9)

ARTICLE 8: PROCESSING OF WORK/RESIDENCE PERMIT APPLICATIONS

- 8.1** Where an application for Work/Residence Permit is submitted by an applicant, the Receiving State Party shall promptly process the request. An application for Work/Residence Permit shall be submitted with all relevant documents as specified in Annex I of this MoU
- 8.2** Each State Party shall upon receiving an application for Work/Residence Permit from a Skilled Person or Professional under Article 1 of this MoU acknowledge receipt and notify the applicant of the completeness of the application within two(2) working days.
- 8.3** In the case of an incomplete application, the Receiving State Party shall notify the applicant of all the additional information that is required to complete the application and provide the applicant with the opportunity to remedy the deficiencies.
- 8.4** An application for Work/Residence Permit under sub-section 8.1 shall be processed expeditiously and in any event within ten (10) working days of submission of appropriate documents.
- 8.5** **Dependants Permit:** The Dependants of a Work/Residence Permit holder may be allowed to reside in the Receiving State Party for a period granted to the permit holder. The Receiving State Party shall grant a Dependant Permit subject to the fulfilment of prescribed requirements.
- 8.6** **Refusal of Work/Residence Permit:** Notwithstanding the provisions of this MoU, a State Party may refuse Work/Residence Permit to an applicant on grounds of public health, public safety and public interest. In the case of refusal of application, State Parties shall notify the applicant in writing, providing reasons for the refusal, within seven (7) days of receipt of application. The refusal letter shall spell out options for appeal.
- 8.7** Each State Party reserves the right to prohibit persons it deems to be undesirable from entering or staying in its territory.

ARTICLE 9: RECOGNITION OF CERTIFICATES

- 9.1** By mutual agreement, State Parties commit to recognize the educational qualifications, certificates and licenses granted in other State Parties for the purposes of certification⁵ of skill for the fulfilment in whole or in part of the conditions for the grant of Work/Residence Permit if the license or certificate is issued by a competent authority for the supply of skills under Article 1 of this MoU.
- 9.2** A State Party shall not accord recognition in a manner which will constitute a means of discrimination against another State Party in the application of standards or criteria for licensing and certification. Where appropriate, recognition should be based on mutually agreed criteria.
- 9.3** State Parties shall encourage competent bodies, including professional associations in their territories to enter into cooperation agreements with other State Parties for the completion of Mutual Recognition Agreements, referred to as "MRAs" in major professional services such as Accounting, Engineering, Law, Architecture, etc.

ARTICLE 10: LABOUR MARKET INFORMATION SYSTEM (LMIS)

State Parties:

- 10.1** Shall undertake the development of robust national Labour Market Information Systems (LMIS) to include those indicators agreed upon as relevant to the implementation of the Talent Mobility Partnership (TMP) program
- 10.2** Shall make publicly available and readily accessible for sharing among State Parties all information on the agreed indicators for the TMP
- 10.3** Shall commit to maintain and update the national Labour Market Information System on a regular basis.

⁵: General convention a/c./1/03 on the recognition and equivalence of degrees, diplomas, certificates and other qualifications in ecowas member states, done at dakar, this 31st day of january 2003

ARTICLE 11: TRANSPARENCY

State Parties shall:

- 11.1 Make publicly available, information and explanatory material on relevant documents which pertains to the operationalization of this MoU.
- 11.2 Maintain or establish contact/focal points or other mechanisms to respond to enquiries from interested persons regarding the regulations affecting the movement, residence and establishment of Skilled Persons and Professionals.
- 11.3 Not later than six (6) months after the entry into force of this MoU, make publicly available on existing immigration websites or portals of other relevant agencies in the territory of State Parties the general requirements relating to the movement, residence and establishment of Skilled Persons and Professionals, including explanatory material on relevant forms, documents and fees on the movement, residence and establishment of Skilled Persons and Professionals in the territory of State Parties.
- 11.4 Ensure that upon modification or amendment to any immigration or labour laws and regulations pertaining to the movement residence and establishment of Skilled Persons and Professionals, the information published in accordance with sub-section 11.3 of this MoU is updated and amended as soon as possible, and in any event, within ninety (90) days of such amendments.

ARTICLE 12: ESTABLISHMENT OF INSTITUTIONAL MECHANISMS

- 12.1 State Parties shall establish a mechanism, the National Working Group (NWG), to enable the consultation and cooperation necessary to carry out the terms of this MoU.
- 12.2 The lead Ministry within State Parties, in collaboration with the NWG, shall be responsible for the implementation and monitoring of this MoU.
- 12.3 The NWG, with support from the Regional Working Group (RWG), shall coordinate and oversee the implementation of this MoU and recommend implementation arrangements, as well as any amendments it may consider appropriate.
- 12.4 The NWGs shall be composed of senior officials from all relevant agencies in State Parties, as well as stakeholders from the private sector.
- 12.5 A Committee comprising representatives of the Coordinating Ministries of the TMP programme shall be set up to oversee the effective implementation of this MoU.
- 12.6 The Committee shall meet bi-annually to review progress. The hosting of the meetings shall be rotated among State Parties.

ARTICLE 13: MONITORING AND EVALUATION

State Parties shall agree to carry out regular monitoring and periodic independent and joint monitoring and evaluation of the implementation of initiatives undertaken under this MoU, in order to capture and share the good practices and lessons, and to assess the impact and effectiveness of facilitated movement of skills in addressing skills gaps, as well as its contribution to general economic growth and development.

ARTICLE 14: AMENDMENTS

- 14.1 Any State Party may request in writing, a revision, modification or amendment of all or part of this MoU.
- 14.2 The provisions of this MoU may only be revised, modified or amended when mutually agreed upon in writing by all State Parties.
- 14.3 Any revision, modification or amendment agreed to in writing shall form an integral part of this MoU.
- 14.4 Such revision, modification or amendment shall come into force on such a date as may be determined by all State Parties.
- 14.5 Any revision, modification or amendment shall not prejudice the rights and obligations based on this MoU prior to, or up to the date of such revision, modification or amendment.

ARTICLE 15: SUSPENSION

Each State Party reserves the right, for reasons of national security, public health, public order and public safety, to order the temporary suspension of this MoU. All State Parties shall immediately be informed when any such measure is taken.

ARTICLE 16: WITHDRAWAL

- 16.1 Any of the State Parties may withdraw from implementation of this MoU upon written notice delivered to the other State Parties. At least one hundred and eighty (180) days prior to the intended date of termination. By such withdrawal, no State Party may nullify obligations already incurred for performance or failure to perform prior to the date of withdrawal.
- 16.2 Notwithstanding the withdrawal of a State Party, other State Parties may continue to carry out the obligations of this MoU.

ARTICLE 17: LIABILITY

Each State Party to this MoU shall be responsible for any third party liability that arises as a result of the action or omissions of their respective agents or officers in respect of the implementation of this MoU.

ARTICLE 18: DISPUTE SETTLEMENT

- 18.1** In the event of any disagreement, dispute, controversy or claim arising out of / or relating to the interpretation of any provision of this MoU, the State Parties shall use their best efforts to settle promptly such dispute through direct negotiation or diplomatic channels.
- 18.2** Where State Parties fail to reach amicable agreement as indicated in Article 19.1 above, the disagreement dispute, controversy or claim shall be referred to the ECOWAS Court of Justice.

ARTICLE 19: NON-EXCLUSIVITY

- 19.1** No provision of this MOU shall prevent State Parties from entering into similar arrangements with third parties in fields of activities relating to the same issue.

ARTICLE 20: DURATION

This MoU shall be of an indefinite period, unless otherwise determined by State Parties.

ARTICLE 21: ENTRY INTO FORCE

This MoU shall enter into force on the date of signature by all State Parties.

IN FAITH WHEREOF, the representatives being duly authorized by their respective Governments, have signed the TMP Memorandum of Understanding on the facilitation of the movement, residence and establishment of Skilled Persons and Professionals in eight (8) original copies, four (4) copies in English and four (4) copies in French, each of the texts being equally authentic, at the place and on the date indicated below:

Signed at

this day of 2016

For The Republic of Benin

The Minister of Foreign Affairs and Cooperation

For The Republic of Cote d'ivoire

The Minister of African Integration and Diaspora Affairs

For The Republic Of Ghana

The Minister of Foreign Affairs and Regional Intergration

Republic Of Sierra Leone

The Minister of State 1, Finance and Economic Development

ANNEX 1: SCHEDULE OF COMMITMENTS

I: RESIDENCE AND WORK PERMITS

- 1** The objective of this section is to facilitate the adoption of flexible national labour and immigration policies and procedures in the granting of permits and licenses to facilitate employment of Skilled Persons and Professionals from ECOWAS member states.

State Parties commit to:

- 1.1** Strengthen coordination between labour and migration institutions/agencies to enable speedy processing of Work/Residence Permits for Skilled Persons and Professionals from participating countries.

- 1.2** Eligible applicants include:

1.2.1 Skilled persons

1.2.2 Professionals

1.2.3 Inter-Corporate Transferees and

1.2.4 Corporate Trainees

- 1.3** Duration of Stay: Residence and Work Permits will be granted to Skilled Persons and Professionals for an initial period of up to two (2) years or the duration of the contract for the purpose of establishing a business or undertaking employment in another State Party's territory

- 1.4** Application processes: State Parties shall strengthen the delivery and monitoring mechanism of Work/Residence Permits and address process-related barriers.

Granted all necessary documentation has been provided, State Parties:

1.4.1 Shall process Work Permits within 10 (ten) working days of submission

1.4.2 Review application processes for improved workflow and eliminate manual processes.

1.4.3 Upgrade and equip Work Permit issuing authorities to use e-registration systems

1.4.4 Implement the ECOWAS-wide Biometric identity card

- 1.5** Priority Sectors: State Parties shall agree to give priority to certain sectorial areas of critical significance to national interest.

- 1.6** Fees: State Parties shall agree to charge a standard administrative fee equivalent to the processing of Residence and Work Permits.

- 2 Develop materials for sensitization of the public, employers, media and policy makers on:
 - 2.1 Conditions and requirements for issuing Residence and Work Permits/licenses.
 - 2.2 Economic pros and cons of Residence and Work Permit or visa fee waivers.
- 3 Integrate aspects of labour migration policies into the national development planning agenda and make it operational.
- 4 Build capacities of personnel involved in migration management by:
 - 4.1 Producing guidelines and toolkits on labour migration and disseminate to increase public interest.
 - 4.2 Establishing a forum for immigration/border/employment officials to meet periodically to exchange information on good practices for delivering Residence and Work Permits.

II: RECOGNITION OF CERTIFICATES/ QUALIFICATIONS

The objective of these commitments is to expedite development of an equivalency/ harmonization policy and regulatory framework, and provide a transparent mechanism to deal with documentary requirements and administrative processes, identify and designate national institutions responsible for skills recognition and equivalence of credentials in State Parties.

State Parties shall:

- 1 Identify sectors and skill sets for which Mutual Recognition Agreements (MRAs) are required.
- 2 Develop a framework for Mutual Recognition Agreements (MRAs) for academic qualifications, professional and skills training.
- 3 Mainstream MRAs into national laws to facilitate recognition and equivalence/ harmonization of academic qualifications, professional and skills training.
- 4 Create a framework for the implementation of exchange programs, continuing education programs including French/English language education. For example:
 - a) Implement ERASMUS Mundus type scholarship and exchange programs in participating countries where visiting scholars and lecturers can undertake a crash course (6 months – 1 year) in French/English before study or work begins.

- b) Encourage the development of joint degree programs across Anglophone and Francophone countries where students can start in one country and finish in another.
 - c) Encourage State Parties to make the French and English languages part of the basic curriculum in State Parties.
- 5 Institutionalize bilateral/multilateral agreements among African universities to focus on education and training for labour market needs.
 - 6 Advocate for professional bodies to develop bilateral/multilateral MRAs with their counterparts in other countries.
 - 7 Facilitate stakeholder dialogue among professionals, businesses and educational institutions.
 - 8 Strengthen the technical capacity of Universities for the implementation of Bachelor/Masters/Doctorate Programs.
 - 9 Establish equivalency/harmonization of contents/curriculum/syllabus and facilitate the implementation of joint programs for skills training.

III: LABOUR MARKET INFORMATION SYSTEM (LMIS)

The long-term objective is to develop robust national and ECOWAS-wide LMIS to support decision making and policy development where skills and labour are concerned.

State Parties shall:

- 1 Agree on a regional framework for the LMIS which includes:
 - 1.1.1 Institutional framework for the coordination of LMIS data management,
 - 1.1.2 Methodology including data (type, nature, scope, sources, indicators etc.),
 - 1.1.3 Physical infrastructure / architecture (software and hardware),
 - 1.1.4 Legal and Regulatory Frameworks.
- 2 Provide input into the harmonized framework across State Parties to identify and maintain up-to-date information on skill deficiencies and skills gaps.
- 3 Institutionalize a network and exchange technical expertise between statistics offices/labour departments in State Parties for cooperation and information sharing e.g. Sierra Leone and Ghana to join UEMOA Regional Observatory of Employment and Training as observers.
- 4 Integrate intra-regional labour migration data into national and regional LMIS as a way of promoting skills circulation among State Parties.
- 5 Integrate migration information into periodic labour force and household surveys, and into censuses.

IV: SOCIAL SECURITY

State Parties shall identify policy areas affecting coordination/portability of social security benefits and legal requirements necessary. In addition:

- 1 Work with social security institutions and other bodies to identify challenges and develop social security portability policy in the movement of Skilled Persons and Professionals.
- 2 Review the 2012 ECOWAS Convention for the extension of Social Security to migrant workers for adoption and implementation.
- 3 Establish a network between the pension funds of State Parties that addresses standardization and recognition of pension rules and benefits.