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Review of existing schemes to facilitate the Cross Border Movement of Traders in the COMESA region

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Introduction

Cross border trade (CBT) plays a major role in supporting livelihoods in the COMESA region and Africa as a whole, contributing to the incomes of an estimated 40%+ of the continent's population. It is particularly important for women - for example, at Chirundu it was found that 73% of small-scale traders were women. Cross border trade is also a key driver in integrating regional markets and, given the dominance of agricultural and livestock products, supporting food security in many areas.

Cross-border traders' livelihoods have been severely affected by COVID19. One of the main measures taken by Government's in the region to stem the spread of the disease was curtailing of cross-border movements. The extent of the restrictions varied, but in some cases it was only truck drivers delivering essential items could move across borders. While traders have been encouraged to cooperate and consolidate their consignments into truck loads, many have remained excluded from trading. Research conducted in Uganda indicated that informal cross border trade declined precipitously from an estimated USD 44 million in the first quarter of 2020 to just USD 1 million by April 2020. Anecdotal evidence suggests that this pattern has been replicated across the region.

COMESA provides a regulatory framework for trader mobility

Article 164 of the COMESA Treaty sets out the scope of cooperation for the COMESA member states with regards to the free movement of persons, labour, services, and the right of establishment and residence. It states that member states agree to adopt measures at an individual, bilateral, or regional level to achieve the free movement of persons, labour and services. **The Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements** (1984) was one of the earliest efforts by COMESA to establish a regional framework for liberalising mobility among its members. The treaty provides for the gradual relaxation of visa requirements, including provisions for visas to be granted on arrival, entry without a visa for a period not exceeding 90 days. The actual implementation of the policies in this protocol relies on either unilateral member state action (for example, countries waiving visas for all other COMESA members) or bilateral policies such as reciprocal visa waivers between member states. Article 164 of the COMESA treaty sets out the intention to replace this Protocol with a new, more expansive **Protocol on the Free Movement of Persons, Labour, Services, the Right of Establishment and Residence.**

With regards to Visa free travel, there has been significant progress. Under the ambit of Article 164, Mauritius, Rwanda, and Seychelles have waived visas to all COMESA citizens, while Zambia has issued circular waiving visas and visa fees for all COMESA nationals on official business. Kenya, Madagascar, Malawi, Mauritius, Rwanda, Eswatini, Seychelles, Uganda, Zambia, and Zimbabwe offer ninety-day visa access and access to visa on arrival to at least half of the COMESA Member states on a bilateral, reciprocal, basis
The Protocol on free movement goes much beyond travel. It recognises that 'a genuine Common Market shall be achieved only when the citizens of the Member States can move freely within the Common Market" and calls on Member States to 'adopt measures that shall gradually, and on a step by step basis, remove restrictions to the free movement of persons, labour, services, right of establishment and residence. The **COMESA Model Law on Immigration** (the Model Law) operates provides a pathway for Member States to move towards the greater liberalization of immigration laws and provide a basis for harmonisation across the region.

Other regional African frameworks offer examples to draw on. Arguably the most important of these are the ID card travel schemes operating in the EAC and ECOWAS, and the arrangements for trader mobility within the CEPGL

Mobility schemes for traders at the bilateral and national level.

"Mobility schemes" is a term covering a broad array of programs and laws that allow for the easier movement of people and goods across international borders. These schemes can take many different forms, often depending on the groups which they are targeted at. Schemes can be aimed at small scale cross border traders trading in border areas, traders that travel beyond the border regions, individual businesspeople or service workers, or another group that crosses borders for some purpose such as schooling. Mobility schemes can be usefully categorised according to the travel document required of the different schemes, namely:

Passports are the primary travel document due to the entrenched formal system that underpins them and the security features they can be designed with. They provide certainty for holders and they alleviate fears of customs and immigration officials who can track entry/exit and link individuals to their travel documents with certainty (especially those with biometric features). Combining passports with mobility measures such as business visas, visas on arrival, and eventually, visa-free measures allow for greater facilitation of the movement of people.

An alternative to the passport is to use **the ID card** as a travel document, an example of which is operating in between Rwanda, Kenya, and Uganda. The use of an ID card for travel would fall under the COMESA free movement of people protocol (when it enters force) Article 2, which would facilitate the implementation of ID card travel, as it is not possible to obtain a visa with an ID card, and therefore ID card travel is only possible within the context of a free movement regime.

"Laissez-passer" is a travel document issued in lieu of a passport that is in operation in the Great Lakes. It is used extensively to facilitate mobility between Rwanda and the DRC. A major advantage is that the Laissez-passer can be issued from regional immigration offices, and therefore does not require travel to the capital. The scheme does not necessarily provide for visa-free travel (although this can be negotiated by the countries involved), as it is intended to replace the passport, not the visa. Therefore, its primary use will be to assist those that cannot afford a passport to take advantage of visa-free programs, rather than to operate as a visa itself. Laissez-passers only operate in countries where partnership agreements have been signed to recognize them.

The **'Jeton'** is a widely used travel document among traders from border communities who often do not have access to national passports. Jetons are relatively well established in the COMESA region, and the legal framework for the scheme has been incorporated into the official immigration law of countries such as Rwanda and Zambia. The Jeton is not exclusive to Africa, however, with Thailand and Cambodia running a program between themselves that operates under a bilateral memorandum of understanding, and the European Union creating an internal framework law that allows its member states the leeway to negotiate Jeton schemes with their non-EU neighbours, so long as the prescribed rules are adhered to. Given the variation of the countries that operate Jeton schemes, there is no single formula for a Jeton scheme, however, most share common features. The most important features are that they are low cost, easily accessible, allow travel within a defined distance of the border of the admitting country, and are only available to individuals that live within a defined area close to the border.

eJeton programs operate in a similar manner to standard Jetons but are backed by more complex infrastructure that provides the opportunity to create better data capture and security features. They would still be provided at the border, should be free or low cost, and available only to those living in border communities. The exact features of an eJeton would depend on the design of the system, and the hard and soft infrastructure implemented to underpin it. eJeton schemes are currently implemented at selected borders between Rwanda and DRC.

The table below provides an overview of the different categories of mobility schemes reviewed.

	Passport	ID Travel	Laissez-passer	eJeton	Jeton
Additional documentary requirement/ Agreement	Visa or visa free agreement	Mutual agreement on ID travel	Mutual agreement recognizing the document, which can include removing the visa requirement for travel	Recognition of border pass as a valid alternative travel document (no additional visa free required)	Recognition of border pass as a valid alternative travel document (no additional visa free required)
Who, in the context of CBT, does it primarily facilitate?	Available to all, used by larger traders, businesspeople	Available to all	Large and small traders traveling within the designated region	Small border community traders crossing the local border	Small border community traders crossing the local border
Requirement to obtain	Fee (Zambia - 100USD, DRC - 300USD, Rwanda 75USD, national ID, passport photo), sometimes birth certificate or other documents, application made at capital (or sometimes regional hub)	Fee (5USD in Rwanda), photograph, application form, other identity documents (such as a birth certificate)	Fee (5USD in Rwanda, 5 USD in DRC), proof of ID, passport photo	Proof of identity (national ID/Voters Card), proof of residence	Proof of identity (national ID/Voters Card), proof of residence
Validity	Several years	Several years	Depends on design	Depends on design	Usually a single day
Processing time	Days (Rwanda), weeks (Zambia), Months (DRC)	Days (Rwanda), weeks (Zambia)	Three working days (Rwanda)	3-30 minutes, depends on the design	3-5 minutes
Geographic Coverage	Universal	Universal	Universal	Border community	Border community
Security	Allows for advanced security features	Can be similar to passport	Can be similar to a passport (Rwanda) or have few security features (DRC)	Depends on design. If linked with biometrics, eJeton security features could be advanced	No security features

Small scale trade in Goods

Facilitating the mobility of small-scale traders would not be complete without a way to facilitate the movement of the goods that they carry. To help small scale traders gain access to benefits negotiated under the COMESA free trade agreement, COMESA Implemented a Simplified Trade Regime (STR) in 2010. The STR was designed to simplify the customs requirements and border procedures for small traders. The Simplified Customs document is now the only document required for the STR in COMESA. Previously, a Simplified Certificate of Origin was initially required but it has since been removed- this has significantly increased STR uptake.

In order to implement the STR, COMESA Member States must:

- Negotiate and agree on common lists of qualifying products.
- Apply these lists and other STR instruments through formal gazette publication.
- Ensure the availability of STR documentation and information at border crossings.
- Determine threshold values to be applied on consignments eligible for the STR.
- Determine the application of other taxation and processing fees on STR clearances.

Like COMESA, the EAC has launched an STR for selected commodities, allowing small scale traders to benefit from trade facilitation measures. The two STR's are extremely similar in their design and operation.

Within Southern Africa there is also an example of a **"de minimus"** scheme being adapted to facilitate small scale trade. De Minimis schemes are generally not necessarily trade mobility schemes for goods in their intention. They are used to clear small amounts of goods carried by people across the border, often in quantities that amount to no more than personal use. However, arrangements between South Africa and Mozambique allow small scale cross border traders, who register as informal traders, to carry up to R5000 per month worth of certain products for commercial use across the border into South Africa and be classified as informal traders – not requiring documentation for their goods. Traders of home-made articles of leather, wood, plastic or glass are able to take advantage of a separate scheme which allows them to bring up to 25kg of goods per month into South Africa without the payment of any duties and taxes, with this scheme operating separately from the standard R5000 threshold. For any product other than the home made products mentioned above, traders pay a flat fee of 20% when entering South Africa. There is no operating STR within SADC.

Zambia's cross border permit offers a "complete solution" mobility scheme

The Zambian Immigration and Deportation Act of 2010 provides the legislative basis for the Zambian cross-border permit. Section 30 allows for an immigration permit to be issued to a foreigner who is a citizen of a state in a regional grouping that Zambia is part of, or who resides is a country that shares a border with Zambia. The requirements state that an applicant must not be a prohibited immigrant (defined), must have a valid passport or travel document, and must be a member of an association of persons engaged in "cross border business." The cross-border permit is valid for an initial period of ninety days and may be reviewed for a further period, however said extension may not go beyond a total of 6 months from the date of first entry into Zambia. The permit allows for multiple entries and exits.

The cross-border permit acts similarly to a business or work visa, as it requires the applicant to hold a separate travel document (usually a passport) and provides the holder with a legal right to conduct business on Zambian territory. Beyond allowing the holder to generally conduct cross border business in Zambia, the permit also guarantees the holder permission to set up at the COMESA market in Lusaka. In this way, the permit provides an important access to market aspect that is missing from other facilitation schemes.

In terms of the situation on the ground, our research indicated that:

- The Jeton is widely used and popular, however, traders often face long queues when applying for one and at some borders they must pay bribes to obtain a Jeton quickly.
- Different borders have different rules for their Jetons, such as their cost, validity, and the distance they allow for travel.
- The operation of Laissez-passers differs depending on the border.
- National passports are seldom used by small scale traders due to their costs and the hassle of applying for one (which can often only be done at the capital).
- There is a lack of transparency with regards to the STR at most borders, with STR common lists not displayed and little information publicly available to traders. As a result, many traders do not know about the STR or what goods are covered under it.

Lessons from international experience

While the EU operates under a framework of almost complete freedom of movement for citizens of member states, which is beyond the remit of this assessment, the EU does operate a border pass scheme with its non-EU neighbours.

The EU border pass arrangements operate under a common regulatory framework that provides both the aims/objectives of the policy and the minimum requirements. However, the regulation does not set out a fully operational border pass policy in and of itself. The operational requirements and specific details of a particular border pass are set out in a bilateral treaty negotiated between an EU border state and its neighbouring non-EU partner state. While these bilateral treaties may not violate the general requirements set out by the EU regulation, there is considerable scope within the regulation for customization where it is deemed necessary. For example, states may vary the time that a pass is valid for (so long as it is not shorter than one year and not longer than 5 years). The form that the border pass takes can also vary, with some issued as a sperate card (the most common form) while others can take the form of a sticker in a valid passport.

The EU's experience with Border Passes has highlighted that (a) **Regional frameworks must be flexible enough to deal with the unique geographic realities that are present at the national level.** For example, during the negotiations between Russia and Poland it became clear that the general rules set out for member states under the EU's original rules, Poland could only offer to include citizens living up to 30km from the Polish border in the Local Border Traffic (LBT) scheme, however, this would create a relatively arbitrary border halfway through the city of Kaliningrad. Poland had to engage with the EU commission and negotiate a change to the EU treaty governing LBT agreements, a cumbersome and time-consuming process. (b) **Border crossing regimes that allow for tax exemptions creates space for the abuse of tax differentials that needs to be managed**. For example, to counter the abuse of excise tax differentials on petrol, cigarettes and alcohol that inadvertently resulted from the LBT agreement between Latvia, Belarus and Russia, Latvia enacted a Law on Excise Duties which changed the definition of "commercial activity" to include those travelling by motor vehicle across the border more often than once per seven days, requiring excise duties on goods transported in this manner. The new law only allowed for a duty-exempted quota of 40 cigarettes, one litre of strong alcoholic beverage, and 90 litres of motor fuel (roughly a standard fuel tank plus a 10-litre reserve can) once per week.

Thailand and Cambodia share important economic ties, and the borders between the two are extremely active. There is a strong pattern of migrant labourer's moving from Cambodia to Thailand. There is also an important small scale cross border trade component to the economic interaction between these nations.

The Agreement between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Border Crossing Between the Two Countries sets out the parameters for the border pass program and largely governs the cross-border relationship when it comes to migration. Like most other border pass programs, only those "permanently residing in the border area may apply for a border pass". However, the border pass has a relatively long validity - two-years from the date of issue – and allows for multiple entries and exits for a standard period of 7 days per visit.

The relatively long validity and multiple entry of the border pass has a number of direct benefits, including providing for greater certainty for traders and workers who use the pass, and saving time and decreasing congestion because workers do not need to queue each time they cross. Beyond that, it has enabled Thai authorities to address complaints of small traders about being charged "informal fees" by officials at the border, which ended up increasing the actual price of the border pass to several times the actual price under Thai law. They did so by, in 2018, changing how the border pass was issued. Instead of applying at the border, applicants would instead have to submit their application at the provincial office for a fee of $5 and wait 5 days for their two-year border pass to be issued. Although initially sceptical of the change and inconvenienced by having to apply at the provincial office, local traders welcomed the reduction in informal payments that they faced. The move away to issuance at the border is only sensible if the pass is of longer duration and allows for multiple entry.

Key findings from the field work

The perspective on the ground was provided by border visit to Kasumbalesa, Chirundu, Mwami - Mchinji, Tunduma - Nakonde, Goma - Gisenyi. Key findings included:

The jeton / border pass is issued at all of the 5 borders visited. It is a relatively cheap, easy, and effective way of facilitating trade within border communities. The scheme, in various guises, is used quite widely throughout the region. The arrangements for jeton/ border permit passes varies widely. For example, jetons issued to Rwandans in Rusizi have to be stamped by Congolese immigration officials while those issued at Rubavu/ Goma do not. And at Kasumbalesa, the DRC issues passes valid for 24 hours, while Zambian immigration issues a multiple entry, 30 day jeton – requiring a passport photo, in addition to ID card and proof of residence. While flexibility is needed to reflect local conditions, many of the differences are arbitrary rather than reflecting the specific needs of the traders.

Though low cost and relatively effective, there are several shortcomings of the Jeton scheme, some of which have become much more apparent and pressing during the epidemic.

- The paper-based system is open to abuse from informal fees and arbitrary decisions by border officials
- Security: The Jeton lacks any real security features. Information is not stored on any immigration system, and there is no way to prevent a Jeton issued to one trader being transferred illegally to another.
- Health: Because of the lack of security features, the current paper based jeton/ cross border permit schemes are not appropriate to adapt to the emerging "health passport" or "trusted travel" schemes that are being developed by e.g. Kenya to allow for movement of traders in the context of pandemics.

An effectively implemented electronic jeton/ cross border permit would provide significant advantages relative to the paper-based schemes, offering greater transparency and efficiency and – importantly – biometric features. Traders and border officials expect to greatly benefit from the introduction of the eJeton at Kasumbalesa. However, a note of caution was struck by traders at the Goma- Gisenyi border where the eJeton is being issued. Currently, Rwandans use the Jeton that is issued manually or issued by the machine. This depends upon the decision of the immigration officer and whether the machines are functioning. Small traders reported that often these machines are not operational and the experience of the e-Jeton at the Petite Barrière in Gisenyi is not an improvement. Despite being introduced to ease congestion, the use of machines can take up to an hour while the collection of a manually issued Jeton can take only a few minutes.

A further challenge of the border pass schemes is that they do not cater for the mobility of traders that operate beyond the border area and small-scale traders fall between being able to access a passport and qualifying for a Jeton. For such traders the Laissez-passer is able to reconcile the requirements for a link to formal systems and security features of the passport with traders need for a low cost and easy access to the document. Looking at Rwanda's experience with the scheme shows that it can be issued quickly and effectively and can essentially replace the passport for individuals who travel to countries that recognise its validity. However, there is much variation in member states implementation of Laissez-Passer schemes within COMESA.

With regards to movement of goods, the benefits and challenges of the Simplified Trade Regime are well known and well documented. Less well documented is a parallel approach to facilitating small traders via customs arrangements for personal allowances – though only in the case of South Africa and Mozambique could we find formal (and strictly limited) provisions to allow small traders to use such schemes. Fieldwork evidenced that personal allowances can be abused by traders through de bulking and to side step restrictions on trade for specific goods. Interviews also strongly suggested that both Customs and Traders conflate the STR with personal allowance schemes.

While COMESA provides for small scale traders in terms of mobility and the movement of goods, under the STR, there are no specific arrangements under the Services Protocol or rights of establishment addressing their particular needs. Zambia's cross border permit scheme offers a template for a complete solution to facilitating small scale trade – beyond border communities.

Recommendations

- In the medium to long terms, countries should aim to replace the paper Jeton with the eJeton, due to the latter's capacity to link with an electronic data storage system and provide strong biometric security features.

- The implementation of the eJeton needs to be accompanied by sufficient infrastructure to ensure its smooth operation, as well as education and awareness programs for traders and customs officials.

- While the eJeton comes online, countries should retain the paper Jeton. In order to create a more uniform regional policy, COMESA should consider issuing guidelines on the design and operation of a Jeton scheme

- The STR should be expanded throughout the COMESA region where possible and combined with policies for greater transparency and awareness programs to improve uptake where the scheme has already been implemented. Member states will have to consider potential abuse (such as avoidance of excise duties) within the mobility scheme for goods

- The COMESA Model Immigration Law should be amended to include a Laissez-passer provision, and a guideline should be issued to assist implementation, modelled on the existing Rwandan Laissez-

- An integrated approach to facilitating small scale trade, which incorporates mobility of traders, mobility of goods and freedom of temporary establishment can be promoted using guidelines for the COMESA

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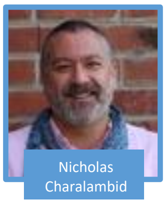
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Borders Visited