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Regional Migration Governance in the African Continent. Current state of affairs and the way forward



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• LIST OF ABBREVIATIONS

List of Abbreviations

ACPM	African Common Position on Migration and Development	IOM	International Organization for Migration
AEC	African Economic Community	JLMP	Joint Labour Migration Programme
AU	African Union	MOU	Memorandum of Understanding
AUC	AU Commission	OHCHR	Office of High Commissioner United Nations Human Rights
Co97	Migration for Employment Convention (Revised), 1949 (No. 97)	PSR	Protocol relating to the Status of Refugees, 1967
CEN-SAD	Community of Sahel-Saharan States	REC	Regional Economic Community
COMESA	Common Market for Eastern and Southern Africa	RMCE	Regional Multidisciplinary Centre of Excellence
EAC	East African Community	RQF	Regional Qualifications Framework
ECCAS	Economic Community of Central African States	SADC	Southern African Development Community
ECDPM	European Centre for Development Policy Management	SADCC	Southern African Development Co-ordinating Conference
ECOWAS	Economic Community of West African States	Sig	Signatory
EU	European Union	SP	State Party
FTA	Free Trade Area	TFTA	Tripartite Free Trade Area
GovInn	Centre for the Study of Governance Innovation	TMP	Talent Mobility Partnership Programme
ICCPR	International Covenant on Civil and Political Rights, 1966	UMA	Union du Maghreb Arabe
ICPRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (A/RES/45/158)	UN	United Nations
IGAD	Inter-Governmental Authority for Development	UNECA	United Nations Economic Commission for Africa
ILO	International Labour Organization	UNESCO	Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education in the African States
		RCRAQ	
		UNHCR	United Nations High Commissioner for Refugees

• 1. INTRODUCTION

1. Introduction

On the African continent, migration – especially within the subregions – has always been part of everyday life, with the causes for migration being different from region to region. In Southern Africa, for instance, people have in the 19th century migrated for work, trade, and cultural reasons. Large-scale migration towards South Africa became particularly significant after the discovery of diamonds and gold in the 1860s and 1880s, which contributed to the development of an organized regional labour migration system. Others migrated from conflict torn or minority ruled countries (e.g., Angola, Mozambique, Namibia, South Africa and Zimbabwe) to Tanzania and Zambia. Today, migration towards South Africa from the Southern African region and other parts of Africa remains mainly motivated by trade as well as opportunities to work.

In West Africa, migrants have historically included refugees, cross-border traders, professionals and clandestine workers. During the colonial era, Malians, Togolese and Burkinabe (then Upper Volta) were contracted or subjected to compulsory work in plantations, mines and road construction in Ghana, Côte d'Ivoire and Nigeria. These oil and gold economies historically attracted regional migrants while Benin, the Cape Verde, Ghana, Mali, and Togo supplied labour. Population pressures, poverty and post-independence conflicts have further spurred migration. Driven by nationalism, however, these states asserted their sovereignty and enacted migration laws, affecting entry, residence and recruitment of foreign nationals in domestic economies. Between the 1950s and 1970s Nigeria, Côte d'Ivoire, Ghana and Senegal occasionally expelled “illegal aliens”, “illegal migrants” or “non-law abiding” people including fishermen, farmers and traders (Afolayan, 1988).

In Eastern Africa, people have historically migrated for work and trade as well as for kinship visits and as livestock herdsman. The long history of migration also included forced and unforced movement of labour to plantations and mines in Uganda and the Democratic Republic of Congo (DRC), for example, during the colonial period. Most of the migrant labour then originated from Burundi, DRC (then Zaire) and

Rwanda to, largely, the cotton, coffee and sisal plantations in Kenya, Tanzania and Uganda. To date, forced migration to stable countries – particularly Kenya and Tanzania – continues from the conflicts in Burundi, Somalia and South Sudan, for example. Tanzania, for instance, had reportedly received over 500,000 refugees from Burundi, the DRC, Rwanda and Somalia by the end of 2002 (United Nations High Commissioner for Refugees (UNHCR), 2002). Because of the crisis that followed Burundi's president Pierre Nkurunziza's decision to run for a third term in office in 2015, over 250,000 refugees had fled Burundi by March 2016, with over 20,000 of them registering in the DRC, more than 70,000 in Rwanda, about 130,000 in Tanzania, 22,000 in Uganda and almost 2,000 in Zambia (UNHCR 2016).

From this short overview can be deduced that the motives for migration and the challenges facing the individual African regions and countries vary considerably. However, it is notable that the search for work, economic and trade opportunities, security and safety (in the case of refugees and asylum seekers) seem to be common phenomena contributing to migration across the continent and the regions. In addition to this, the differing needs and expectations of migrants, asylum seekers, refugees and citizens in host countries clearly show that a coordinated and coherent governance of migration is extremely crucial. Further, the tension between high and widespread unemployment and the lack of qualified and skilled labour to match market demand makes migration governance particularly crucial to avoid negative social repercussions and instabilities. Because – besides the many positive effects – migration can also strain social safety nets in receiving countries, as immigrants stretch the socio-economic and political infrastructure. At the same time, many sending countries may suffer from brain drain, whose economic impact can hardly be met by the prospect of remittances. As a consequence, policies by the African countries, Regional Economic Communities (RECs) and the African Union (AU) need to respond efficiently to the phenomenon and develop and implement respective policies and frameworks. Because interestingly, the vast majority of migration happens within regions.

Migration is a complex phenomenon, affecting the economies and political systems of both sending and receiving countries. It can propel development, as it reinforces and diversifies the labour force. However, only economically integrated countries can fully benefit from migration. Because only in an integrated regional economy, migration can facilitate the supply of qualified and skilled workforce, while strengthening the economic ties among neighbouring countries (Crush and Williams, 2003). Historically, these have been important preconditions for the establishment of common markets and free movement of people and capital, as in the case of Europe. Unfortunately, Africa is still dominated by a development model that provides commodities and raw materials for export to countries outside of Africa, while regional trade is minimal. According to UNCTAD (2015), trade among African countries is very low when compared to the continent's total trade, making up only about 11 percent over the past decade. To change this is one of the explicit goals of the African RECs.

Out of the multiple, partly overlapping RECs, the AU has identified eight out of these many communities as building blocks of the African Economic Community (AEC).¹ The 1998 AU Protocol on Relations between the AEC and the RECs provides for inter-REC cooperation, an avenue that the communities are already exploiting. For example, three Eastern and

Southern African RECs² signed a Tripartite Free Trade Area (TFTA) agreement in June 2015. Although the RECs are trying to harness the potential of migration while lowering the negative impacts this may have, labour migration issues are still absent from the agreement. Further, despite the reality of migration and associated challenges in Africa, some RECs, still lack clear legislation to govern regional migration (Nshimbi and Fioramonti, 2014).

Free movement of people is a founding principle of the AEC, and constitutes a fundamental right enshrined in international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR), as we will discuss later. Free movement of persons is also integral to Africa's vision and action plan as laid out in the Agenda 2063, the continental master plan for development in the 21st century. The implementation of international initiatives and continental rules and guidelines is, however, often slow, due to a lack of institutional and human capacities within the RECs and their member states. As migrants, asylum seekers and refugees, tend to be met with stringent immigration policies, practices and hostilities, questions arise regarding the alignment of domestic immigration policies with regional and continental immigration policies as well as the migration agendas of these institutions.

1.1 Objectives

In order to assess the current state of affairs and the way forward for regional migration governance in the African continent, the study's objectives are

- a) to provide an overview over the current migration policies of the AU as well as of selected RECs, in particular the EAC, the ECOWAS and the SADC;
- b) to develop a set of criteria and recommendations to further develop and improve these policies and their implementation;
- c) to advise external actors, in particular the German government and the European Union (EU), as to how best support such policies.

¹ The eight RECs include the Community of Sahel-Saharan States (CEN-SAD), Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), Intergovernmental Authority for Development (IGAD), Southern African Development Community (SADC), Union du Maghreb Arabe (UMA).

² The Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), and the Southern African Development Community (SADC).

1.2 Research questions

To meet the above mentioned objectives, the study focuses on the following questions:

- a) What are the most relevant migration governance policies and frameworks in Africa at the continental level and in the selected RECs, and what provisions do they include?
- b) What are the difficulties in developing and implementing regional protocols on population migration?
- c) How can the state of regional migration in Africa be projected into the future?
- d) To what extent do/can international actors (e.g. international non-governmental organizations, donor countries and other development partners) influence existing and potential legislation and policy agendas?

1.3 Methodology

This study provides an in-depth analysis of existing migration policies and practices at the African continental level, as well as in three key regions: the EAC, ECOWAS and SADC. We conducted a thorough review of relevant scientific publications and policy reports, as well as global, continental and regional legislation on migration. We also hosted an experts' workshop with experts and practitioners on African migration. The workshop, titled "Inclusion and Exclusion in Sub-Saharan Africa: Migrants' Challenges in Comparative Perspective", was held at the Centre for the Study of Governance Innovation (GovInn), University of Pretoria, from 23 to 27 May 2016, and included 20 academics and practitioners from civil society and government. The workshop provided an innovative way of bringing experts and practitioners together and concluded with a scenario exercise aimed at scoping future macro dynamics for regional migration in Africa.

Additionally, the discussions of the Potsdam Spring Dialogues under the title of "Pathways towards Coordinated African Migration Governance: The African Regional Organisations' Role" (Hannes 2016), hosted by the Development and Peace Foundation (sef:) together with the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH on 7-8 Ap-

ril 2016, have been incorporated in the study.

The study focuses on three regional communities (ECOWAS, EAC and SADC) because of the following reasons:

- a) EAC and SADC incorporate the vast majority of countries in East and Southern Africa (they include most members of the Common Market for Eastern and Southern Africa (COMESA)) and are pioneering a tripartite regional integration scheme, which could become a model for continental integration of the whole of Africa;
- b) ECOWAS plays a crucial role in West Africa and has a relatively advanced regional migration policy;
- c) Other regional organizations such as the Intergovernmental Authority on Development (IGAD) and the Union du Maghreb Arabe (UMA) have undergone significant security challenges, weakening their institutional development in terms of migration policies. Kenya and Uganda's overlapping membership in IGAD and EAC suffices in understanding migration policies in East Africa, especially since Kenya is the economic and political hub of the two regions.

1.4 Structure of the study

Following this introduction, Section 2.1 contextualizes the issue of migration within the broad literature on regionalism. The Sections 2.2 to 2.6 then discuss regional migration governance in Africa by focusing on legislations, policies and practices across the continent, with a particular focus on West, Eastern and Southern

Africa. Section 3 summarizes the implications of the regional experiences for migration management in Africa. We conclude this study with a presentation of potential scenarios and policy recommendations for migration governance in Africa in Sections 4 and 5.

**• 2. REGIONAL GOVERNANCE
OF MIGRATION IN AFRICA.
CURRENT STATE OF AFFAIRS**

2.1 The concepts of regionalism and regional economic integration

There are several different definitions, uses and analytical applications of the term regionalism (Sbragia, 2008). Regionalism is broader than the market-driven concept of regional economic integration (Lee, 2003). However, we use the term regionalism here interchangeably with regional economic integration and regionalisation to refer to the ideal of the integration of proximate states in a given geographical area.

Governing migration at the regional level presents a number of advantages. First of all, most cross-border movements occur within regions. The World Bank reports that intra-regional migration accounts for over 60 percent of all global migration. Nation states also tend to view regional agreements more favourably, because it creates a coordination framework (Whalley, 1998). In particular, regional agreements on migration are made easier by shared interests among the parties involved, the relative low number of governments involved and a good degree of similarity in terms of development objectives. Moreover, regional agreements provide a better option for migration governance than bilateral relations because of the lower transaction costs involved and the lower risk of incoherent duplication of legislation. In bilateral agreements, states are usually more concerned about the cost of dealing with immigration, losing perspective on the economic gains therein. To the contrary, regional frameworks provide a collaborative space for the integrated management of migration (not only immigration, but also emigration, trade and development), sharing of costs and building institutional capacity to seek win-win solutions.

Bilateral agreements juxtapose receiving countries (usually in a stronger economic position)

and sending countries. Instead, regional arrangements are more likely to dilute power imbalances and generate side-payments and other forms of cooperation among weaker countries capable of producing multilateral outcomes. As a consequence, regions have become important players in intergovernmental cooperation (Betts 2011).

From a regional economic integration standpoint, migration can facilitate the supply of qualified and skilled human resources for the development of a region, while strengthening the economic ties among neighbouring countries. African RECs such as ECOWAS, the EAC and SADC seek deeper economic integration in order to establish conditions conducive to the regional free movement of capital, labour, goods and services between member states. Theoretically, regional economic integration evolves through five stages: free trade, customs union, common market, economic union and political union (Balassa 1961). The establishment of a free trade area is generally seen as a precondition for integration, as it leads to a removal of trade barriers among contracting parties. The complete elimination of tariffs and quotas then leads to a customs union. A common market is achieved once all restrictions on mutual trade, the movement of capital, goods and services are lifted within the group. Finally, the economic and political unions are completed by a supranational system of institutional governance.

In theory, the AU and the RECs have adopted this approach, also supported by neoliberal strategies aimed at integrating African markets into global value chains. Yet, regional free movement remains contentious.

2.2 Continental migration legislation and policy initiatives

According to the latest surveys, there are over 230 million international migrants (UN General Assembly, 2014), of whom over 100 million are economically active (International Labour Organisation-ILO, 2010). The African continent sits at the centre of global migration trends, also in light of its demographic boom,

as the only continent whose working population is expected to grow over the next decades. At the same time, African economies experience high unemployment rates, with a stark imbalance between countries with job opportunities that are not filled and countries with large pools of untapped qualified and skilled

labour. This imbalance points to the need to take advantage of the opportunities arising from regional labour migration with a view to building sustainable development across the continent. In such a context, the governance of labour migration has emerged as the most crucial component of migration policy in Africa.

Realising the significance of labour migration, the Abuja Treaty encourages AU member states to adopt employment policies that will eventually allow free movement within the planned AEC to be completed by 2028.³ Further, the Treaty calls on AU members to establish the right of residence and establishment for any citizen of a member state (Abuja Treaty, 1994: Article 4, Paragraph 2(i)). In the shorter term, the AU plans to establish an African Common Market (ACM) by 2017, which is to promote policies that facilitate employment of available skills between a country with labour surplus and one in need to fill vacancies (Article 6; Article 71(e)), indirectly paving the way for a coherent regional migration policy on free movement.

The 1998 AU Protocol on Relations between the African Economic Community and the RECs provides for inter-REC cooperation. For instance, at their 2005 Summit, COMESA, the EAC and SADC proposed stronger and deeper economic integration, resulting in a tripartite free trade area for 26 African countries. Three years later, the tripartite leaders drew up a harmonization programme for trading arrangements, free movement of people, joint implementation of inter-regional infrastructure programmes and institutional arrangements for cooperation (COMESA-EAC-SADC Tripartite, 2012). The free trade area was launched in 2015, but cross-border migration and labour policies are scheduled for inclusion only in Phase II of the negotiations, which should be concluded by 2017. For the time being, labour migration regimes remain ad-hoc and haphazard.

The AU has a position on migration as articulated in two policy documents: the Migration Policy Framework for Africa (MPFA) and the African Common Position on Migration and Development (ACPMD), both introduced

in 2006. In the MPFA, the AU provides for member states and African RECs to formulate policies that exploit migration for development. The ACPMD proposes eleven priority migration-related policy issues and recommendations for national, continental and international action. There is also a host of policy instruments, commissions and declarations by the AU that affect and facilitate migration, but are not specifically crafted to govern it. Examples include the 2004 AU Plan of Action on Employment Promotion and Poverty Alleviation, the 2012 AU Plan of Action on Boosting Intra African Trade, the 9th Ordinary Session of the AU Labour and Social Affairs Commission of 2013, and the Declaration on Migration adopted by the 25th AU Assembly in June 2015. A consistent incorporation of such continental migration and related instruments in the migration legislation and policies of African RECs and respective member states is undermined by the fact that these instruments are not binding. They merely provide guidelines on how member states can harness the migration-development nexus for national or regional development.

It is important to mention two additional policy initiatives for governing labour migration at the continental level: a joint programme under the auspices of the AU and its international partner organisations, and a voluntary initiative of/between countries in West, and Eastern and Southern Africa.

First of all, the Joint Labour Migration Programme (JLMP) is a four-year AU-led initiative for regional integration and development in Africa, co-sponsored by the AU Commission (AUC), the ILO, the International Organization for Migration (IOM) and the United Nations Economic Commission for Africa (UNECA). It was endorsed by the Extraordinary Session of the AU Labour and Social Affairs Commission (LSAC) in Windhoek, Namibia, in April 2014 and adopted by AU Heads of State and Government at the 24th Session of the AU Assembly in Addis Ababa, Ethiopia, in January 2015. The JLMP mainly aims at strengthening the effective governance of labour migration and the pro-

³ The Treaty establishing the AEC or the Abuja Treaty hails from the then Organization of African Unity (OAU), now AU, Extraordinary Summit of 1980 that adopted the Lagos Plan of Action as the means of working towards Africa's integration. The Plan of Action and the Final Act of Lagos would later be concretized in Abuja, Nigeria, in 1991 at the 27th Ordinary Session of the Assembly of OAU Heads of State and Government Summit, when the Heads signed the Treaty establishing the AEC. Since coming into force in 1994, the AEC Treaty has, together with the AU Charter, provided the basis of operation for the AU Secretariat.

motion of decent work against the background of regional integration and inclusive development in Africa. The goals and objectives of this programme are consistent with Articles 6 and 71 of the Abuja Treaty and the various AU goals seeking continental free movement and the exchange of labour between member countries. Currently under implementation, the JLMP is supporting human mobility rules and is, according to the ILO (2016), mobilizing a broad-based coalition involving member states and interested development partners such as the EU.

Second of all, the intra-Africa Talent Mobility Partnership Programme (TMP) is a voluntary initiative between selected African countries in West, Eastern and Southern Africa. The Africa Centre for Economic Transformation (ACET) in Ghana leads the programme in West Africa, while the Regional Multidisciplinary Centre of Excellence (RMCE) in Mauritius coordinates the programme in Eastern and Southern Africa. The initiative seeks to establish Schengen-type mechanisms for the movement of skilled labour as well as the development of skills in the respective regions. The TMP also aims to promote the opening up of borders, the establishment of common legislations and policies for labour mobility between African countries and the acceleration of economic integration. The TMP is premised on the understanding that professional skills inevitably move from areas of surplus to areas of scarcity. Therefore, an efficient regional labour migration framework would balance out the shortages and surplus supply of talent between sending and receiving countries within RECs and across the continent. The TMP's interventions are expect-

ted to enable the private sector in the participating RECs to source skills that are essential to boosting competitiveness, economic growth and transformation (Brown, 2016). The TMP memorandum of understanding (MOU) prepared for participating countries addresses key issues aimed at tackling the challenges encountered by labour migrants including, among others things, regulations that hinder the granting of work permits, common standards on which qualifications for given professions can be evaluated, and the establishment of labour information systems.

The fact that all AU member states have signed into the JLMP can be interpreted as a commitment to achieving an effective continental labour migration regime for Africa's integration and development and to encouraging labour migration across national borders. State commitment to the free movement of labour is also seen in the voluntary participation in international projects that promote the transfer of skilled labour across borders such as the TMP. The involvement of the ILO, IOM and UNECA in and as co-sponsors of the JLPM and the World Bank's sponsorship of the TMP also speaks to international actors and development partners' influence in the development and implementation of legislation and policy programmes relating to migration. As the JLMP and TPM were just recently launched, however, their successes or failures will only be seen in the years to come. The next section briefly considers how respective member states of ECOWAS, the EAC and SADC fare in terms of consenting to and adopting some core international and universal human rights instruments.

2.3 The RECs and international human rights instruments

Not only regional policies, but also international treaties including conventions, protocols and declarations have an impact on human mobility in Africa. Such instruments promote the right of movement, as does the Universal Declaration of Human Rights. Conventions such as the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPRMW) protect migrants and the migrants' right to work in hosting countries. By providing for the recognition of qualifications internationally, conventions such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education encourage people who possess such skills and qualifications to move to countries or territories that have adopted the convention and where opportunities for employing the migrants' skills exist. A state party to a treaty is one that has expressed consent, through ratification, accession or succession where the treaty has been enforced; it can also be one that is about to become a party after formal reception by the UN Secretariat of the state's decision to be a party (Office of High Commissioner United Nations Human Rights (OHCHR), 2016). Further, A signatory to a

treaty is also a state that has given a preliminary endorsement of the international instrument and shown intent to examine the instrument domestically and consider ratifying it. There is also a distinction between declarations, which are “soft laws”, thus not legally binding, and conventions, which are legally binding under international law and thus constitute standards for monitoring implementation (including penalties and sanctions in case of violation).

Tables 1 to 3 show the state of ratification of member states in ECOWAS, EAC and SADC as to the main international documents pertaining to migration. In addition to the 1948 Universal Declaration of Human Rights, the 1966 ICCPR declares that any person lawfully within the territory of a state shall have the right to liberty of movement and freedom to choose his/her residence and shall also be free to leave any country, including his/her own (Articles 12.1. and 12.2). All countries in the RECs under examination (with the only exception of South Sudan, possibly due to this country's relatively new creation in 2011, which afforded limited time to analyse, ratify and integrate these instruments into national legislation) are state parties to the ICCPR. South Sudan has taken “no action” yet on this instrument, as it has not expressed consent.

Table 1 Ratification of migration-related international instruments by ECOWAS countries, July 2016

Country	ICPRMW ¹⁾	ICCPR ²⁾	ILO CO97 ³⁾	PSR ⁴⁾	UNESCO RCRAQ ⁵⁾	African Charter
	Date #	Date	Date	Date	Date	Date
Benin	Sig 15-09-2005	SP 12-03-1992	X	SP 06-07-1970	Ratified 26-08-1998	Ratified 20-01-1986
Burkina Faso	SP 26-11-2003	SP 04-01-1999	Ratified 09-06-1961	SP 18-06-1980	Ratified 11-07-1986	Ratified 06-07-1984
Cabo Verde	SP 16-09-1997	SP 06-08-1993	X	SP 09-07-1987	X	Ratified 02-06-1987
Côte d'Ivoire	X	SP 26-03-1992	X	SP 16-02-1970	Ratified 08-04-1997	Ratified 06-01-1992
Gambia	X	SP 22-03-1979	X	SP 29-09-1967	X	Ratified 08-06-1983
Ghana	SP 07-09-2000	SP 07-09-2000	X	SP 30-10-1968	X	Ratified 24-01-1989
Guinea	SP 07-09-2000	SP 24-01-1978	X	SP 16-05-1968	Ratified 17-08-1995	Ratified 16-02-1982
Guinea Bissau	Sig 12-09-2000	SP 01-11-2010	X	SP 11-02-1976	X	Ratified 04-12-1985

Liberia	Sig 22-09-2004	SP 22-09-2004	X	SP 27-02-1980	X	Ratified 04-08-1982
Mali	SP 05-06-2003	SP 16-07-1974	X	SP 02-02-1973	X	Ratified 21-12-1981
Niger	SP 18-03-2009	SP 07-03-1986	X	SP 02-02-1970	Ratified 29-05-1985	Ratified 15-07-1986
Nigeria	SP 27-07-2009	SP 29-07-1993	Ratified 17-10-1960	SP 02-05-1968	Ratified 02-11-1984	Ratified 22-06-1983
Senegal	SP 09-06-1999	SP 13-02-1978	X	SP 03-10-1967	Ratified 14-03-1986	Ratified 13-08-1982
Sierra Leone	Sig 15-09-2000	SP 23-08-1996	X	SP 22-05-1981	X	Ratified 21-09-1983
Togo	Sig 15-11-2001	SP 24-05-1994	X	SP 01-12-1969	Ratified 01-12-1982	Ratified 05-11-1982

Source: Compiled by the authors from various sources

Notes

SP State Party

Sig Signatory

X Non ratification/no action

1) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (A/RES/45/158)

2) International Covenant on Civil and Political Rights, 1966

3) Migration for Employment Convention (Revised), 1949 (No. 97)

4) Protocol relating to the Status of Refugees, 1967

5) Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education in the African States, 1981

Ratification/Accession/Signature/Deposit Date (DD-MM-YYYY)

A second category of international treaties concerning migrants includes those often crafted specifically to address international human mobility. As a UN agency that is principally committed to establishing standards for the protection of the rights of migrant workers, the ILO explicitly addresses migrant labour issues through a multilateral framework on labour migration as well as international conventions. The Migration for Employment Convention (Revised), 1949 (No. 97), or Co97, for example, is a binding international convention concerned with migration in general, and more specifically with the well-being of persons who voluntarily leave their countries in search of employment in other countries and with issues pertaining to migration, immigration, emigration and transit. The convention provides comprehensive definitions of the

rights of migrant workers, advocating for equal treatment, non-discrimination and equality of opportunity (ILO, 2012). It also calls on state parties to treat lawful migrant workers equally (with their own nationals) on work matters ranging from working conditions, to benefits and taxes, membership in trade unions, and collective bargaining. In this case, there has been a low level of ratification of this convention by respective African countries in ECOWAS, the EAC and SADC (Tables 1-3). The binding nature and obligations of the covenant possibly explains the reluctance by these countries to ratify it. Extension of tax benefits to (especially undocumented) migrants, guaranteeing them employment and equal treatment, etc. are contentious issues, especially in migrant receiving countries and their governments.

Table 2 Ratifications of migration-related international instruments by EAC countries, July 2016

Country	ICPRMW ¹⁾	ICCPR ²⁾	ILO C097 ³⁾	PSR ⁴⁾	UNESCO RCRAQ ⁵⁾	African Charter
	Date #	Date	Date	Date	Date	Date
Burundi	X	SP 09-05-1990	X	SP 15-03-1971	Ratified 21-01-1986	Ratified 28-07-1989
Kenya	X	SP 01-05-1972	Ratified 30-11-1965	SP 13-11-1981	X	Ratified 23-01-1992
Rwanda	SP 15-12-2008	SP 16-04-1975	X	SP 03-01-1980	Ratified 06-07-1987	Ratified 15-07-1983
Tanzania Zan-zibar[§]	X	SP 11-06-1976	Ratified 22-06-1964	SP 04-09-1968	X	Ratified 18-02-1984
United Republic of Tanzania[§]			X		X	
Uganda	SP 14-11-1995	SP 21-06-1975	X	SP 27-09-1976	X	Ratified 10-05-1986
South Sudan	X	X	X	X	X	X

Source: Compiled by the authors from various sources

Notes

SP State Party

Sig Signatory

X Non ratification/no action

1) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (A/RES/45/158)

2) International Covenant on Civil and Political Rights, 1966

3) Migration for Employment Convention (Revised), 1949 (No. 97)

4) Protocol relating to the Status of Refugees, 1967

5) Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education in the African States, 1981

Ratification/Accession/Signature/Deposit Date (DD-MM-YYYY)

§ Ratified before Tanzania's unification.

The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPRMW) (A/RES/45/158) seeks non-discrimination against migrant workers and upholds their human rights, including freedom of movement, association and speech in host countries. While it protects migrant workers, the ICPRMW also pushes for measures to end clandestine migration, especially because of human trafficking and misleading information that encourages irregular migration. As a core human rights instrument, the status of ratification of the ICPRMW by member states of African RECs, and the continent as a whole, makes for an interesting observation. While the ratification and accession rate is high for human rights instruments like the ICCPR, the ICPRMW, which is specifically designed for and speaks to issues of migrant workers and members of their families, enjoys a lower rate of ratification, especially in the EAC and SADC. Only ECOWAS member states show a higher level of commitment to this international instru-

ment: eight out of the 15 member states are state parties to the instruments, but only five out of the 15 are signatories and two of them have not taken action. By comparison, only two out of the six EAC states are state parties to the ICPRMW with other four having taken no action. In the SADC region, only four out of the 15 members are state parties to the ICPRMW and the other 11 have taken no action. The higher level of ratification of the ICPRMW by West African states is consistent with and explains the region's comparatively advanced labour migration governance regime, as will be discussed later.

Though poorly ratified by respective member states of ECOWAS, the EAC and SADC, the 1981 United Nations Educational, Scientific and Cultural Organization Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education in the African States (UNESCO RCRAQ) actually has implications for labour migration and programmes

such as the TMP (Table 1-3). Standardized qualifications within regions and across the continent promise quality and competence of

mobile skills although they potentially exclude those that are less qualified or lack training.

Table 3 Ratifications of migration-related international instruments by SADC countries as of July 2016

Country	ICPRMW ¹⁾	ICCPR ²⁾	ILO CO97 ³⁾	PSR ⁴⁾	UNESCO RCRAQ ⁵⁾	African Charter
	Date #	Date	Date	Date	Date	Date
Angola	X	SP 10-01-1992	X	SP 23-06-1981	X	Ratified 02-03-1990
Botswana	X	SP 08-09-2000	X	SP 06-01-1969	X	Ratified 17-07-1986
Democratic Republic of Congo	X	SP 01-11-1976	X	SP 13-01-1975	X	Ratified 20-07-1987
Lesotho	SP 16-09-2005	SP 09-09-1992	X	SP 14-05-1981	Ratified 13-09-1982	Ratified 10-02-1992
Madagascar	SP 13-05-2015	SP 21-06-1971	Ratified 14-06-2001	X	X	Ratified 09-03-1992
Malawi	X	SP 22-12-1993	Ratified 22-03-1965	SP 10-12-1987	X	Ratified 17-11-1989
Mauritius	X	SP 12-12-1973	Ratified 02-12-1969	X	X	Ratified 19-06-1992
Mozambique	SP 19-08-2013	SP 21-07-1993	X	SP 01-05-1989	X	Ratified 22-02-1989
Namibia	X	SP 28-11-1994	X	SP 17-02-1995	X	Ratified 30-07-1992
Seychelles	SP 15-12-1994	SP 05-05-1992	X	SP 23-04-1980	Accessions 27-08-1998	Ratified 13-04-1992
South Africa	X	SP 10-12-1998	X	SP 12-01-1996	X	Ratified 09-07-1996
Swaziland	X	SP 26-03-2004	X	SP 28-01-1969	Ratified 19-11-1998	Ratified 15-09-1995
Tanzania. Zanzibar [§]	X	SP 11-06-1976	Ratified 22-06-1964	SP 04-09-1968	X	Ratified 18-02-1984
United Republic of Tanzania [§]	X		X		Ratified 12-07-1983	
Zambia	X	SP 10-04-1984	Ratified 02-12-1964	SP 24-09-1969	Ratified 25-04-1983	Ratified 10-01-1984
Zimbabwe	X	SP 13-05-1991	X	SP 25-08-1981	X	Ratified 30-05-1986

Source: Compiled by the authors from various sources

Notes

SP State Party

Sig Signatory

X Non ratification/no action

1) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (A/RES/45/158)

2) International Covenant on Civil and Political Rights, 1966

3) Migration for Employment Convention (Revised), 1949 (No. 97)

4) Protocol relating to the Status of Refugees, 1967

5) Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education in the African States, 1981

Ratification/Accession/Signature/Deposit Date (DD-MM-YYYY)

§ Ratified before Tanzania's unification

Besides the ICCPR, only two other of the international instruments presented in Table 1-3 have high levels of ratification by members of ECOWAS, the EAC and SADC, namely the 1967 Protocol Relating to the Status of Refugees (PSR) and the 1981 African Charter on Human and Peoples' Rights, enforced in 1986. As leader and coordinator of action aimed at protecting refugees and asylum seekers and resolving their problems, the UN High Commissioner for Refugees (UNHCR) is the international custodian of the PSR. UNHCR's commitment to ensuring that people exercise the right to safe refuge and seek asylum in another state stems from the aim to safeguard refugee rights and wellbeing. The UNHCR's work is relevant to national and regional migration policy because it helps integrate or resettle refugees in third countries, while ensuring that the option for the involuntary migrants to voluntarily return home remains open. All ECOWAS member states are parties to the PSR (Table 1), while only one out of the six EAC member states (Table 2) and two out of the 15 SADC states (Table 3) have taken no action on the instrument.

On the African continent, the 1981 African Charter on Human and Peoples' Rights provides individuals with freedom of movement and residence within the borders of a state and the right to leave any country, including their own, and to return there. All the respective member states of ECOWAS, the EAC and SADC have ratified the Africa Charter, again with the only exception of South Sudan in the EAC. As Millard (2008) points out, international treaties such as the African Charter only have an impact when all states ratify them, and – importantly – when national legislations are effectively redesigned to comply with the treaties. These covenants do not have power on their own: they must be incorporated into and enforced via national laws. The next subsections delve into the three selected RECs to explore the kinds of migration legislations that exist there and to find out whether RECs and respective member states espouse continental aspirations for effective migration governance regimes as enshrined in international and continental instruments and programmes.

2.4 Migration legislation and policy initiatives in ECOWAS

ECOWAS was established by the Treaty of Lagos in 1975, with the aim to free the movement of goods, capital, people and establish residence for citizens among its 15 member states.⁴ Since inception, ECOWAS encouraged members to mutually exempt regional citizens from visitors' visa and residence permit requirements and allow them to work or engage in commercial activities in host member states.

The 1979 Protocol on Free Movement of Persons, Residence and Establishment provides the legislative framework for the free movement of persons in ECOWAS.⁵ The Protocol's three-phased implementation schedule included: the right of entry and abolition of

visas (Phase I from 1980 to 1985); the right of residence (Phase II from 1985 to 1990); and the right of establishment (Phase III from 1990 to 1995). Phase I (ratified in 1980) gave citizens of member states of ECOWAS the 90-day visa-free right of entry, provided they possessed valid travel documents and international health certificates. Phase II (enforced in 1986) gave the regional citizens the freedom to reside and work in other member states. In 1992 ECOWAS revised the 1975 Treaty and abolished all obstacles to the free movement of people, capital, goods and services, reiterating Article 27 of the original Treaty to establish regional citizens' right of entry, residence and establishment.

4 The 15 ECOWAS States include Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

5 Four supplementary protocols accompany this protocol: 1985 Supplementary Protocol A/SP1/7/85 on the Code of Conduct for the implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment; 1986 Supplementary Protocol A/SP1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment; 1989 Supplementary Protocol A/SP1/6/89 amending and complementing the provisions of Article 7 of the Protocol on Free Movement, Right of Residence and Establishment; 1990 Supplementary Protocol A/SP2/5/90 on the implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment. The supplementary protocols augment, define, clarify and detail some sections of the Protocol such as Article 7 and aspects relating to the phased implementation of the protocol.

Other regional migration instruments such as the 2008 ECOWAS Common Approach on Migration expedite the implementation of the free movement protocol. The Common Approach is ECOWAS's benchmark policy paper on regional migration and emphasizes the link between migration and development. It also adds refugee issues to ECOWAS's internal free movement policy framework and promotes intra-regional mobility and regular migration to third countries; further topics are irregular migration, migrants' rights, women migrants and trafficking (ECDPM, 2010). The Common Approach also establishes a regional fund for financing cross-border cooperation and the launch of a regional territorial strategy for developing new growth and development areas. Further, it outlines the harmonization of development and migration-related policies and the strengthening of dialogue between ECOWAS, transit and host countries. In adopting this policy, member states have demonstrated their commitment to a comprehensive regional approach to migration and management.

Despite the hurdles in implementing Phases II and, especially, Phase III of the free movement protocol (because of economic decline and human displacements caused by wars in the 1980s and 1990s), ECOWAS has abolished the 90-day visa entry requirement for regional citizens. ECOWAS is yet to ratify Phase III on the “Right of Establishment” (ECOWAS, 1990 as cited in Nita, 2013), to give regional citizens the right to settle, establish enterprises and enjoy the same conditions as nationals in host member states. Still, the standardized regional Travel Certificate and a uniform passport (to eventually replace national passports), which ECOWAS adopted in 1985 and 2000 respectively, simplify cross-border movement creating a clear legal framework and lowering costs, ultimately increasing regional migration (Adepoju, 2007). ECOWAS citizens can now travel across the region with any of the following documents: the ECOWAS Travel Certificate, the ECOWAS common passport or the various national identity cards. Additionally, motor vehicle insurance policyholders can drive freely intra-regionally thanks to the ECOWAS Brown Card. ECOWAS's Regional Labour

and Employment Policy and Plan of Action of 2009 supports regional labour market flexibility and human capital development (Africa and Europe in Partnership, 2012). Though implementation of this policy remains limited, regional ministers have committed to promoting the rights of migrant workers, cooperate in labour migration, and geographic and occupational mobility.

The ECOWAS's Protocol on Free Movement was enforced when West Africa was experiencing a relative economic decline vis-à-vis Nigeria (Adepoju, 2011). As a consequence, Nigeria's oil-fuelled boom had attracted skilled and unskilled labour from Cameroon, Chad, Ghana and Mali. After the boom, Nigeria revoked Articles 4 and 27 of the Free Movement Protocol and expelled over one million of those migrants (Adepoju, 2009).

The deportation of these largely undocumented migrants from Nigeria followed a precedent set by Ghana, which expelled about 500,000 Nigerians due to economic tensions. Nigeria and Ghana do not represent isolated cases of expelling migrants. Countries like Côte d'Ivoire and Senegal, too, have occasionally expelled thousands of people. The implementation of the Free Movement Protocol in the ECOWAS region has thus not been without bumps and setbacks (Adeniran 2014). Overall, the application of the protocol remains weak despite the rights it grants to regional citizens (Deacon et al., 2011). Despite inconsistencies, the protocol has accelerated labour migration and is the most comprehensive and well-implemented free movement policy framework in Africa (Mengelkoch, 2001).

Despite occasional deportations and threats to deport regional citizens by some member states, ECOWAS states generally seem to consent to and adopt some core international and universal human rights instruments on migration. Can the same be said of the EAC and the SADC? The next sub-section explores the migration legislations in the EAC and the extent to which it espouses continental aspirations regarding migration governance according to international and continental instruments.

2.5 Migration legislation and policy initiatives in the EAC

The three founding states of the East African Community (Kenya, Tanzania and Uganda) were ruled by Great Britain and formed British East Africa in 1895. Cooperation among them continued into the post-independence era, amidst conflicts in Somalia, Sudan, Uganda, Rwanda and Burundi, and famine in Ethiopia. By 1948 the three states had established an East African High Commission and ran joint tax, education and agriculture services under a Central Legislative Assembly. Migration in the region today is still fuelled by forced displacement from conflicts such as in Burundi, Somalia and South Sudan.

EAC membership has increased to six, after the revival of this organization in 2000. The latest addition was South Sudan in April 2016.⁶ The EAC is now headed for a monetary union, with new measures including the common East African passport and flag, freely exchangeable currencies and a double taxation accord.

Generally, citizens of EAC member countries are expected to present valid travel documents when entering another member state. Any of these five travel documents is acceptable: temporary permit, conventional travel document, emergency travel document, national passport or the EAC passport. Regional citizens bearing the EAC passport enjoy multiple entries over a six-month period. Member states of the EAC agree to ensure the right of establishment and residence for regional citizens and have provided for the harmonization of labour and employment legislation. Additionally, member states agree to exchange information on employment availability, erect an East African centre for productivity and employment promotion and provide training facilities to citizens of member states (IOM, 2007).

The Protocol on the Establishment of the EAC Common Market (hereafter Common Market Protocol), enforced on 1 July 2010, provides five regional “freedoms” of movement, including goods, persons, labour, services and capital, and two specific migration rights: establishment and residence (Common Market

Protocol, 2010: Article 2. 4; see also, EAC Treaty: Articles 76 and 104). The Common Market Protocol categorizes cross-border movers into persons, labour and the self-employed. Specific regulations apply to each category (see, e.g., Articles 10 and 13 and Annexes to the Common Market Protocol). Annexes to the Common Market Protocol provide for, among other things, visa-free entry, freedom of movement and stay, and full protection of regional citizens in a partner state's territory (Common Market Protocol, 2010: Articles 7, 10, 13 and 14). Annex II, for example, regulates regional freedoms of movement for workers and members of their families.

After ratifying the Common Market Protocol, Kenya and Rwanda abolished requirements for work permits for citizens of member states. Also, Kenya, Rwanda and Uganda have been allowing their respective citizens to travel across borders by using only their respective national identity cards (Oucho, 2013). These three countries also issue a single tourist visa, creating a sub-region for international travelling. A single immigration entry or departure card eases the procedures for issuing entry and work permits in the EAC. EAC is, however, yet to formulate a regional Protocol on the Free Movement of Persons, Labour, Services and Right of Establishment and Residence as per provision of the EAC Treaty (EAC Treaty: Article 104. 2).

For a relatively “new”⁷ regional bloc, the progress the EAC has made towards realising the freedom of movement is noteworthy. The achievements made so far including the five cited travel documents, the single tourist visa between Kenya, Rwanda and Uganda, as well as the freedom of establishment for citizens in any of these three countries largely derive from the Common Market Protocol and, therefore, represent significant progress in free mobility. The progress has also been made despite the apparent lack of commitment shown by the EAC countries to international instruments, especially the ICPRMW, as shown in Table 2. The commitment to international migration-

6 The six members of the EAC are Burundi, Kenya, Uganda, Rwanda, South Sudan and Tanzania.

7 Following revival in 2000.

related instruments in this region is however less pronounced than that of ECOWAS. Unlike the latter, however, the EAC has experienced no mass deportations of regional citizens from a member state. The only exception was the deportation exercise of hundreds of Ugandans and Rwandese from Tanzania in 2013 (The Africa Report, 2013). The deportations, however, stem from intra-EAC tensions in which Tanzania accused Kenya, Uganda and Rwanda (alias, the “Coalition of the willing”, see, e.g.

Nshimbi, 2016) of holding meetings and running projects without Tanzania and Burundi, showing some of the political risks of pursuing bilateral or trilateral agreements within the regional framework. The next sub-section now turns to an exploration of migration legislations in the SADC region and the extent to which international and continental migration-related legislations are espoused in the this region, where deportations have been rather frequent.

2.6 Migration legislation and policy initiatives in SADC

The Southern African Development Community (SADC), which now comprises 15 member states, started out with nine members in 1980 as the Southern African Development Co-ordinating Conference (SADCC)⁸ to strengthen economic cooperation in support of the front-line countries opposing apartheid in South Africa.⁹ Towards the end of the struggle in South Africa, SADCC became SADC in 1992.

The SADC Treaty provides for the elimination of obstacles to regional movement of labour and people in general (SADC Treaty, 1992: 6). The 2005 Draft Protocol on the Facilitation of Movement of Persons in SADC (hereafter Facilitation Protocol) implements the provisions of the SADC Treaty for regional movement of persons and commits to supporting the efforts of the AU on free movement in the envisaged AEC (Facilitation Protocol, 2005: 1).

Overall, the Facilitation Protocol progressively eliminates obstacles to intra-regional movement, allowing regional citizens visa-free entry for lawful purposes and visits of up to three months, maximum (Facilitation Protocol, 2005: 3). However, only six SADC States – Botswana, Lesotho, Mozambique, South Africa, Swaziland and Zambia – have ratified the Facilitation Protocol as of June 2016. The process around this protocol stalled from the time it was drafted in 2005, except for Zambia's ratification in March 2013. Initially focusing on free movement, the pro-

ocol saw the immediate opposition of South Africa, Botswana and Namibia, the region's most developed countries, which demanded a different name centred on the politically more palatable concept of “facilitation”. To date, the protocol remains unenforced because the required minimum ratifications (two-thirds) have not yet be achieved. Moreover, it grants regional citizens the same right that many other non-regional passport holders already have when visiting many SADC member states. For instance, North American and European citizens can already travel to South Africa, Botswana and Namibia without a visa for a maximum of three months. The Protocol also places significant emphasis on exchanging personal information for security purposes (Article 11), with a view to creating an anti-crime and intelligence regional framework, possibly emphasizing regional governance more for security reasons than the developmental needs requiring human mobility.

As the Facilitation Protocol remains unenforced, national immigration laws and bilateral agreements regulate labour migration in Southern Africa. The national immigration laws are, however, mostly informed by security concerns. As commented by Namibian government spokesperson, the country's Immigration Control Act 1993 was drafted “to keep criminals out of the country or to expel them” (Hough, 1996, p. 53). In Section 26.3(e), the Act only allows non-Namibian

8 The founding Members included Angola, Botswana, Mozambique, Tanzania, Zambia, Lesotho, Malawi and Swaziland. Current SADC Member States are: Angola, Botswana, the Democratic Republic of Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

9 FLS members included Angola, Botswana, Mozambique, Tanzania and Zambia.

nationals to work in the country on condition that such foreigners do “not and... [are]...not likely to pursue any employment, business, profession or occupation in which a sufficient number of persons are already engaged” (as cited in Mengelkoch, 2001, p. 29). In Botswana, Section 23(7) of the Immigration Act, 2010 (No.3 of 2011) states that “in determining an application for a resident permit, the Board shall have primary regard to the interests of Botswana”. Foreigners from within SADC are therefore expected to obtain a work permit before seeking employment in the country. In Zimbabwe, too, Immigration (Amendment) Act 1999 (No. 8 of 2000), Section 41.3(a)(ii) requires regional citizens to secure employment before arriving in the country.

Despite these national migration legislations, member states endorsed the SADC Regional Labour Migration Action Plan 2013 – 2015, the first proper regional initiative on labour migration. Through the Action Plan, SADC members have committed to harmonizing labour data collection systems, immigration policies and legislation and address regional migrants' health vulnerabilities. Moreover, the 34th Summit of the SADC Heads of State and Government in 2014 signed two documents that are significant to regional migration: the Draft SADC Labour Migration Policy Framework, which promotes sound management of intra-regional labour migration (2014: Article 3.1), and the SADC Protocol on Employment and Labour, crafted to strategically guide employment, labour and social security policies and promote policies that facilitate regional labour mobility. These instruments are yet to be ratified and the experience of the Facilita-

tion Protocol suggests that their ratification may very well be delayed.

Apart from national laws SADC members engage with each other in bilateral agreements. Thus, South Africa and respectively, Botswana, Lesotho, Mozambique, Swaziland and Zimbabwe have MOU that facilitate labour movement between them. Bilateral agreements between South Africa and, respectively, Botswana, Lesotho and Swaziland include labour and regulations for the repatriation of former migrant workers. For example, the MOU on Cooperation in the Field of Labour between South Africa and Lesotho covers dispute resolution, social dialogue and social security measures, compensation regarding occupational diseases and injuries to citizens of both countries working in either.

It is these MOUs that are mostly used by the South African mining and agriculture sectors to employ regional workforce. A focus group we organized with leading figures in the mining sector in Southern Africa confirmed that South African firms take advantage of these bilateral frameworks to recruit migrants to work locally and redeploy some workers to mining operations in neighbouring countries.¹⁰ Focus group participants also noted that the MOUs actually facilitate recruitment in South African mines despite workers' ignorance of the legal contents therein, and, consequently, their rights. By providing a viable route for quick recruitment of the workforce with fewer responsibilities, these bilateral mechanisms decrease the pressure by private sector operators for transparent regional frameworks, thus dampening prospects for a timely ratification of the Facilitation Protocol.

10 Focus group discussion with: Mr Vama Jele, President, Swaziland Migrant and Mineworkers Association; Mr Rantso Mantsi, President, Ex-Miners Association of the Mountain Kingdom of Lesotho; and Mr Moises Uamusse, President, Association for Mozambican Miners (AMIMO), Protea Hotel Hatfield; 17 January 2013.

**• 3. REGIONAL MIGRATION
GOVERNANCE IN AFRICA.
AN ASSESSMENT**

3. Regional Migration Governance in Africa. An Assessment

Our analysis has shown that the respective member states of the ECOWAS, the EAC and SADC are committed, at least nominally, to a regional policy on migration having ratified the African Charter. Variations with regard to ratification of international instruments apply, however. ECOWAS states have achieved a higher ratification rate of the ICPRMW, which specifically caters to migrants and their families. The high ratification rate of the ICPRMW by most ECOWAS states is consistent with the observation that the region represents the best case among the three African regions as far as effecting the freedom of movement is concerned. Although the EAC has a lower ratification rate of international instruments, the region has made significant progress in working towards the realisation of the freedom of movement. On the basis of a common market protocol, the region has also established a regional passport, offering a variety of choice for regional citizens intending to cross borders. To the contrary, SADC has actively resisted free movement, diluting a protocol initially aiming at free movement and eventually delaying the ratification process, paving the way for the proliferation of bilateral agreements.

Against this backdrop, a general assessment of the complex regional and continental web of policies is in order. Continentally, the AU as well as a number of regional and state-led initiatives suggest a governance effort at establishing some type of migration regime, with member states joining international and continental legislation on human mobility. This legislative process is, however, failing at the implementation stage, when the rights and responsibilities enshrined in these documents conflict with national interests and prerogatives. At the same time, it is noteworthy that some states in various regions have agreed to explore voluntary mechanisms for mobility and the transfer of skilled labour, as indicated by the intra-Africa TMP in which selected countries of West, Eastern and Southern Africa have embarked on a Schengen-type of mechanism, in which skilled labour can move freely and skills can be transferred across regions. Like the Schengen agreement within the EU, the TMP will help countries assessing the pros and cons of open borders (at a scale they are

comfortable with) potentially leading to innovation in common legislation and policies for intra-African labour mobility. Yet, the scheme remains voluntary in nature.

Overall, ECOWAS emerges as a best practice in Africa. Its advanced and better-implemented migration regime accommodates development, refugee and asylum seekers' needs. Its legislation and commitment to labour migration as an essential component of a continental regional integration process can provide good pointers for the EAC and SADC. Despite ECOWAS boasting the most comprehensive and well-implemented regional migration protocol in Africa, members like Nigeria have backtracked on regional commitments to free movement during conflict or economic downturns. Despite progress, the three RECs face obstacles in achieving a functional and efficient longer-term labour migration framework. The EAC too is yet to formulate a regional protocol on the free movement of people, although current policies for a common market show a regional commitment to freedoms of movement and establishment for various categories of migrants, including the self-employed, workers and members of their families. The tensions between Tanzania and the so-called “coalition of the willing” (Kenya, Uganda and Rwanda) show the potential disruptions that bilateral (in this case, trilateral) agreements may have on the uniformity of regional policy, while also poking non-participating member states to up their game. Both Kenya and Tanzania, alone in the region, have also ratified the Migration for Employment Convention (Revised), possibly creating a good starting point for better regional coordination.

Bilateral agreements can be ways to open the door to regional policy or alternatives to it. In the EAC, bilateralism is likely to be the first option. In the case of SADC, instead, we see a proliferation of bilateral agreements as an alternative to a coherent regional policy. At the moment, despite the existing protocol, SADC lacks any form of multilateral labour migration governance. Our analysis indicates that Namibia, Botswana and particularly South Africa have decided to approach regional labour migration from a security lens rather than from a

development perspective. This has complicated relations across the region, limiting the capacity of a multilateral agreement to show the various advantages of a legislative framework for regional migration. The positive potential has been replaced by a zero-sum game, whereby receiving countries would rather be in control of the flows, even in the face of a clear inability to patrol national borders. In this context, bilateral agreements have proven a more comfortable option, albeit largely inefficient. The private sector, a key beneficiary of labour migration from the region, has used bilateral channels to satisfy its needs for a regional inflow of labour, thus also limiting the pressure of interest groups for a more transparent regi-

onal policy. By and large, the bilateral system dominating in SADC is nothing more than a set of agreements with South Africa at the centre, through which the other countries respond with their own bilateral strategies (as is the case of Namibia and Botswana) or simply sit at the receiving end. There is plenty of evidence that a clear regional migration framework would benefit all states in the region, reducing illicit migration and creating a better environment for business and policy (Nshimbi and Fioramonti, 2014). Yet, “securitization” seems to have derailed the capacity of regional governance to lower transaction costs and produce win-win outcomes.

• 4. FUTURE SCENARIOS OF REGIONAL MIGRATION IN AFRICA

4. Future Scenarios of Regional Migration in Africa

Against this backdrop, what scenarios may we be able to anticipate with respect to migration in Africa and what policies would be most effective? In order to provide these answers, we have run a scenario planning workshop with 20 experts gathered in Pretoria in May 2016. We therefore conclude the study by showing the results of this exercise and the relative policy recommendations.

What will African migration look like in 2030? What forces are at play, which are the most influential and in which ways do they play out to shape the future of migration? We believe the future of migration in the continent will be shaped by the degree of political and economic inclusivity. In the next decade or so, we may be faced with a combination of increasingly inclusive or exclusive political systems, and there is evidence of both at the moment in the continent. At the same time, economic growth – which has been picking up momentum in the past few years – may lead to an exclusive or inclusive development trajectory. By combining these two structural forces, we identify four potential scenarios. The first presents a progressive case, in which inclusive political governance and equitable development create a fertile terrain for free movement across the regions and the continent. The second and third scenarios outline intermediate cases, in which the degree of inclusivity is mixed, leading to a localization of migration and tensions at the borders. Finally the fourth scenario is one of complete exclusivity, leading to instabilities across the regions, as well as across the continent.

Scenario 1: Afromobility

The first scenario presents a best-case in which the value of mobility shapes regional migration governance. Inclusive political systems and equitable development create the perfect conditions for voluntary migration inspired by professional ambitions, which can happen in a clearly regulated framework, guaranteeing personal and social security to migrants. In such a scenario, the RECs would more openly embrace free movement

policies, creating a system of governance *à la* Schengen. This type of scenario is, however, only possible if countries embrace not only inclusive political institutions with democratic accountability, but also if market forces contribute to equitable development, thus creating synergies and complementarities across the continent. Legal systems, too, need to be inclusive, for which there will be a strong need for cooperation across countries and with international partners.

Scenario 2: Unable to leave home

The second scenario projects a regional system characterised by equitable development, but where the political system is not inclusive. This scenario is typical for many developmental states in Africa, often controlled by one single political party. In this scenario, limited accountability across the region results in low public participation with occasional elections being held as a validation for incumbent leaders. Regionally, countries cooperate economically but are divided on issues of political governance, thus fragmenting the progress of regional integration. In this scenario, Africa looks like East Asia in the second-half of the century: strong economic growth and job opportunities, but limited political rights and freedoms. Further, unemployment would be rather low thanks to strong government-business relations and a rather *dirigiste* approach to economic policy. Economic migrants would be very few, but minorities may feel discriminated against and become political refugees. In a continent dominated by nationalism and developmental states, regional migration would be hampered and refugees might need to embark on long journeys before finding hospitable countries. A few more progressive nations may find themselves squeezed in-between larger economies dominated by strong leaders, thus suffering economically and politically, too. At the same time, given the high education level typical of many developmental states, migrants will be highly skilled and suitable for different types of employment. Because of strict border control, however, informal cross-national trading would be rather limited.

Scenario 3: Migrants at home

This is the opposite of Scenario 2, with Africa dominated by politically inclusive yet economically segregated countries. Inequality rises with the growth of the economy, but resources are increasingly controlled by a market system that concentrates wealth in a few hands. In this scenario, Africa looks like an expansion of South Africa, the world's most unequal country. Because of high political inclusivity, regional citizens will suffer limited discrimination although many of them will be very poor, thus leading to a rise in economic migration. At the same time, though, given that economic differences will be more pronounced at the national level, with few exceptions, migration will mostly take place between rural and urban areas inside each country. Regionally, we would be witnessing a web of “national economic apartheid”, fuelling migration at a short distance. Urban areas would grow massively, mostly because of the forced urbanization of

the poor, with the emergence of gigantic slums and townships.

Scenario 4: Always moving, never home

In this worst case scenario, the convergence of both exclusionary politics and unequal development generates a vicious cycle of weak governance and regional fragmentation. In some cases, this will lead to the complete collapse of state institutions and widespread instability at the regional level. Against this backdrop, regional migration will increase dramatically. The Horn of Africa and the Great Lakes are an example of this kind of scenario, where political and economic instabilities result in protracted homelessness for millions of people. Free movement will be achieved *de facto* rather than *de jure*. Regional governance will be mostly in the hands of external players, including international donors and humanitarian agencies.

**• 5. THE WAY FORWARD.
RECOMMENDATIONS FOR
REGIONAL MIGRATION
GOVERNANCE IN AFRICA**

5. The Way Forward.

Recommendations for Regional Migration Governance in Africa

As evidenced in the selection of scenarios described above, Africa is on the cusp of change, in which all development paths are equally possible. In many regards, there are already examples of the four scenarios on the continent. Domestic migration is dominant in very unequal countries like South Africa and Namibia. Homelessness is a traditional trait of Somalis, Sudanese and Congolese. Developmental states with authoritarian tendencies can be found in Uganda and Rwanda, while pockets of free movement exist in the better integrated economies of West Africa. Governance choices will ultimately decide which scenario is more likely and, most possible, which degrees of variations regional migration will eventually present. Based on our review of current policies and future possible trajectories, here we list a series of policy recommendations to shape migration governance towards a more favourable outcome:

1. **Integrated economies:** Africa's economic system is still dominated by an approach to development that favours exports of raw materials and commodities to the rest of the world, rather than intra-regional trade. This impedes regional migration in so far as labour migrants are seldom seen as a resource by receiving countries and regional integration is scarcely viewed as essential to ensure long-term development. External actors are partly responsible for this, given that the preferred markets for African commodities are in Europe, East Asia and North America. A different approach is needed, supporting countries to invest in regional development even at the expense of global trade. In order to compensate for the loss of extra-continental trade and investment, international donor agencies should create “buffer schemes” to support countries that invest in regional trade.
2. **Regional innovations:** Initiatives like the TMP should be encouraged both nationally and internationally. Private sector actors should make full use of it and international donors and governments should support them in all possible ways. The value of these initiatives is that they break “taboos” about free movement, showing governments that open borders are not synonymous with chaos: instead, they seem to be the most efficient approach to migration governance. Not only do they lower costs, but they also create an area of transparency and reliability that favours lawful and productive mobility. A focus on regional innovations may eventually pave the way for bolder experimentation, like the introduction of an African passport.
3. **Circular migration:** African countries are culturally and socially integrated, with the same languages being spoken across the borders of many nations. Unfortunately, they are segregated by rigid and inefficient border control policies. A progressive policy of free movement among countries with comparable levels of development and strong cultural and social ties may very well result in circular migration, whereby economic migrants and traders need not reside in the receiving country to work and do business. As is the case in many transfrontier communities across Europe, circular migration systems would help to create economic opportunities and sustainable development in regions across borders, thus responding to the economic marginalization of many peripheral areas across the continent.
4. **Awareness campaigns:** Many people around the world, not only in Africa, are afraid of migration. The recent refugee crisis in Europe and the tensions it has created have further convinced many observers from Africa, especially among the classes with high and middle incomes, that migration is a threat. We need progressive governments, businesses and civil society forces to show that migration produces many positive outcomes, which are essential for sustainable development. We also need a new social discourse on migration, which highlights it as a natural phenomenon that must be governed responsibly, but cannot be simply rejected.

5. **Structural redistribution:** African economies have become profoundly unequal, thus triggering forms of economic migration that would not be necessary if the continent had more equitable economies. Progressive governments, advocacy coalitions and international donors should support governance innovations that may reduce unwanted migration while creating better social security systems for all citizens, thus limiting the fear of job losses that is often associated with the inflow of migrants. Interesting innovations in this regard include the proposal for a Basic Income Grant for Southern Africa, using part of the resources derived from the exploitation of mineral wealth.¹¹ Other innovations include the introduction of local currencies that can facilitate cross border trading even in the absence of a clear policy for monetary integration.

To conclude, migration can make or break the future of the African continent. Often addressed as a security concern, human migration in fact holds much potential to help Africa leapfrog to a system of integrated societies, where people rather than natural resources become the cornerstone of sustainable development. For this to happen, the current governance approach has to be fundamentally reinvented. Regional policy must rely on innovative processes and evidence rather than erratic sentiments and nationalistic considerations. For too long, the continent's regional integration has been sidelined by its relations with former and neocolonial powers interested in exploiting its natural wealth. Africa will only be able to break these chains of dependency through an innovative strategy for a people-centred regional integration.

11 More info available here: <http://www.spil.org.za/index.php/about-sadc-big/>.

**• 6. ANNEX.
AFRICA MIGRATION
WORKSHOP**

6. Annex. Africa Migration Workshop

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