POLICY BRIEF

Freedom of movement
Unlocking Africa's development potential

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On paper, Africa has what is needed to advance greater freedom of movement on the continent. This includes having legal instruments and policies on continental migration governance in place. In addition, some regions, in West, East and Southern Africa, have developed innovative tools that could advance development and regional integration underpinned by migration. The challenge, however, is putting these into practice.

Key points

▶ Clearer messaging on the net benefits of migration is key for development.

▶ Regional policies that are consistent with the continental position and international norms are required.

▶ More intra-regional migration would stimulate growth of integrated societies and economies.

▶ West Africa's regional migration policy and practice are the most advanced in Africa.

▶ If properly implemented, the planned freedom of movement scheme for some countries in East, Southern and North Africa could be a good model for continental integration.

Advancing free movement of people and ensuring better management of migration are at the heart of Africa's continental and regional migration policy frameworks. The 1991 Treaty Establishing the African Economic Community (Abuja Treaty) was the first framework of the then Organization of African Unity (OAU) to include free movement of people and capital as key pillars. Similarly, all treaties of the eight regional economic communities (RECs)/ regional mechanisms (RMs)[1] include, in varying ways, provisions related to free movement of people and capital, as well as the right to residence and establishment. Thus, at least on paper, the AU and its RECs are committed to freedom of movement and improved migration governance.

Migration governance is particularly important for Africa because migration – mostly between neighbouring countries and within subregions – is part of everyday life across the continent. This is especially so in areas where borders separate people who share common societal and cultural backgrounds, and are thus oftentimes indistinguishable. It is also common where people in bordering areas traditionally conduct business and trade with each other.

Ensuring that labour migration is properly managed and governed is crucial for African migration governance and policy

For example, in East Africa, migration within the region is mostly motivated by cross-border family visits, nomadic pastoralism, work and trade. Likewise, in Southern Africa, people migrate for work, trade (including regular cross-border traders in both the regulated and unregulated sectors) and cultural reasons.[2] Similar dynamics exist in West Africa, where circular migration is commonplace. In addition to these categories of migrants, there are also people fleeing conflict and instability, and seeking refuge, in neighbouring countries and further afield.

Individual motives differ, but there are some common threads, such as seeking work and economic and trade opportunities, as well as desiring security and safety. Thus, voluntary migration is often seen – at least by those moving – as a positive step. Indeed, research shows that, while challenges do exist, migration tends to have a net positive benefit.[3]

Migration can accelerate development through reinforcing and diversifying the labour force. According to Crush and Williams, 'migration can facilitate the supply of qualified and skilled workforce, while strengthening the economic ties among neighbouring countries'.[4] However, this is best achieved where there are efforts towards developing integrated economies.

It goes without saying that policies on the continent – by individual African countries, through bilateral arrangements, and as developed by the RECs and the African Union (AU) – must respond efficiently to these particular dynamics. The emphasis then should be on migration governance policies that harness the benefits of migration while minimising the strain that

mass migration can cause in the short term. This entails shaping policies that address some emerging challenges, such as xenophobia, marginalisation and limited resources, with core socioeconomic and developmental benefits.

The existence of policies that speak to these dynamics is important. However, policies alone are insufficient if they are not met with coherent and consistent practices. For there to be coherent and consistent practices, there should be commitment (which includes political will) and effective implementation by all member states.

This policy brief focuses on the frameworks and policies developed by the AU and RECs to govern various aspects of migration, and assesses the extent of implementation. There have been significant moves towards effective migration governance on the continent, but a lot remains to be done to achieve full implementation.

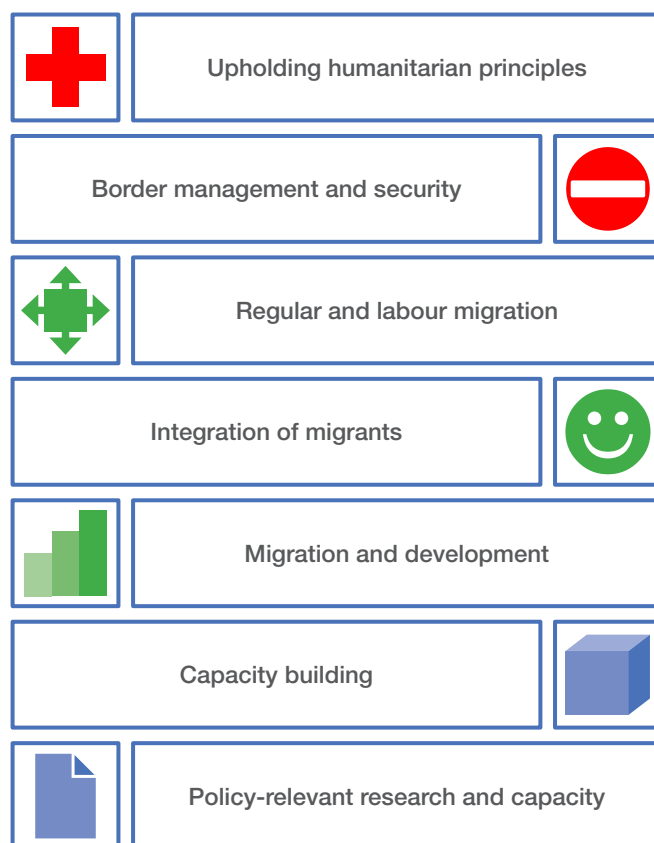## Migration governance at continental level

Africa is at the heart of global mixed migration trends.[5] This will likely continue into the foreseeable future. It is the only continent whose working population is expected to continue growing.[6] It also has the youngest median population and the highest unemployment rates. Further, while primary, secondary and tertiary industries across the continent require qualified and skilled labour, this is not always readily available in-country. Regional labour migration that aims to advance sustainable development in both sending and receiving countries could fill this gap. Thus, ensuring that labour migration is properly managed and governed is crucial for African migration governance and policy.

The AU, for its part, recognises this. The 1991 Abuja Treaty is an important starting point. In it, AU member states are encouraged to adopt employment policies that would pave the way for free movement of people within the planned African Economic Community (AEC), slated for 2028.[7] Most significant is the treaty's call to AU member states to establish the right of residence and establishment for any citizen of a member state. Most notably, the Abuja Treaty calls on member states to establish and strengthen labour exchanges between countries. Article 71 (e) specifically emphasises the need for member states to employ available skilled people from other member states where the employing country has skilled labour shortages. Doing so would help advance regional cooperation and integration.

In 2006, the AU introduced its position on migration. This is articulated in two policy documents, namely the Migration Policy Framework for Africa (MPFA)[8] and the African Common Position on Migration and Development ('the common position'). From the point of view of the AU, through better migration management and governance, the continent can advance economic development.

In the MPFA, the AU covers this by providing that member states and RECs should formulate policies that leverage migration for development. The common position identifies 11 migration-related policy issues and recommendations for action at national, regional and continental level, as well as between countries. Significantly, through these two policies, the AU's position on migration centres on advancing a comprehensive approach to migration management. The position considers the wide range of issues directly and indirectly related to migration. In addition, states are urged to ensure that national laws are harmonised and are consistent with international standards and norms.

Figure 1: Migration Policy Framework for Africa's seven priorities

Upholding humanitarian principles

Border management and security

Regular and labour migration

Integration of migrants

Migration and development

Capacity building

Policy-relevant research and capacity

Source: Author

If all countries abided by the MPFA and the common position, there would be more coherence in migration policy on free movement.

In addition, the Joint Labour Migration Programme (JLMP) is an initiative that deals with labour migration specifically. The JLMP[9] is an AU-led initiative supported by the International Labour Organization (ILO), the International Organization for Migration (IOM) and the United Nations Economic Commission for Africa (UNECA). The programme, adopted in January 2015 by AU heads of state and government at the 24th Session of the AU Assembly in Addis Ababa, Ethiopia, is intended to last for an initial four-year period. The primary goal of the JLMP is to strengthen the effective governance of labour migration and promote decent work with a view to enhanced regional integration and inclusive development on the continent. Support for the JLMP by AU member states signals a commitment to achieving an effective continental labour migration regime.

Furthermore, there are several other AU policy instruments that are linked to migration but are not specifically designed as migration governance tools. These include the 2004 AU Plan of Action on Employment Promotion and Poverty Alleviation, the 2012 AU Plan of Action on Boosting Intra-African Trade, and the Declaration on Migration adopted by the 25th AU Assembly in June 2015.

While important, bar the Abuja Treaty the above instruments are not binding. They serve as guiding documents on the ways in which African countries can leverage the link between migration and development. While noble in aim, the non-binding nature of these instruments means they are not consistently incorporated by countries and RECs. This in effect undermines efforts towards harmonised migration governance.

The role of the regions in governing migration

The instruments adopted by various RECs[10] reflect a commitment at regional level to effectively govern migration in a way that fosters development and regional integration. Of the eight RECs, four have adopted migration frameworks. These are the Economic Community of West African States (ECOWAS),[11] the Southern African Development Community (SADC),[12] the Common Market for Eastern and Southern Africa (COMESA)[13] and the Intergovernmental Authority on Development (IGAD).[14] The East African Community (EAC) deals with the issue of migration in its Common Market Protocol for Movement of Labour.[15] Three other RECs, namely the Economic Community of Central African States (ECCAS),[16] the Arab Maghreb Union (AMU)[17] and the Community of Sahel-Saharan States (CEN-SAD),[18] have provisions for free movement of people, among other regional integration priorities, in their respective founding treaties.

The various regional frameworks depart from the point that borders separate people who share common societal and cultural backgrounds in many African states, and thus migration is inevitable.

Figure 2: Countries that are part of at least one regional free movement regime
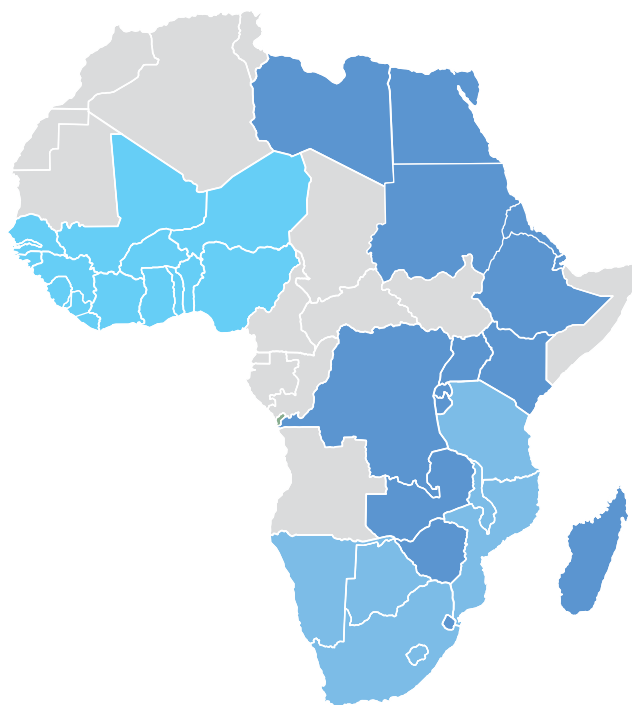
Source: Author

Consistent with the 1998 AU Protocol on Relations between the AEC and the RECs, which provides for cooperation between RECs, efforts have been made to further cement cross-regional integration. In 2005, COMESA, the EAC and SADC proposed stronger and deeper economic inter-regional integration. The resolution is supported by a harmonisation programme for trade arrangements, free movement of people, joint implementation of infrastructure programmes and institutional arrangements for cooperation.[19] The Tripartite Free Trade Area was launched in 2015. This encompasses

26 African countries spanning from Southern Africa, along the east African coast, up to Libya in North Africa. Policies related to cross-border migration to conduct business and labour are set to be part of Phase II of the negotiations. Until those are finalised and a workable arrangement is established, across these countries and regions, labour migration frameworks are ad hoc.

ECOWAS has demonstrated greater commitment to regional freedom of movement and is the best practice on the continent. It has an advanced and well-implemented migration regime that underscores the importance of development through labour migration and trade, while also addressing the needs of forcibly displaced people, including refugees and asylum seekers. ECOWAS has adopted a common passport that is used by citizens of its 15 member states.

ECOWAS' approach to regulating labour migration is exemplary and could guide other subregions. However, it is not without its challenges. Member states such as Nigeria have, in the past, backtracked on regional commitments to free movement. This has usually been when there is conflict and/or the country is suffering from economic decline.

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The bodies covering East Africa and the Horn are IGAD and the EAC. IGAD's position is articulated through guidelines and frameworks, rather than legally binding documents. Its migration policy framework is aimed at informing national policy on migration and specific regional concerns such as pastoralism, human security and internal displacement. However, this is yet to translate into national-level policy and practice. At present, only Kenya and Uganda have draft national migration policies. Ethiopia and South Sudan have indicated that they intend to draft their national migration policies in the future. Kenya and Ethiopia also have a bilateral agreement for visa-free tourist entry.

Meanwhile, in the absence of a regional protocol on the free movement of people, the EAC relies on policies for a common market that reflect regional commitment to freedom of movement and recognition of various categories of migrants. This has proved critical in advancing freedom of movement between countries such as Kenya, Rwanda and Uganda – not only for citizens of the country but also for tourists visiting the region, who benefit from the tripartite visa arrangement. However, on joint migration governance there remains some tensions between these three countries (Kenya, Uganda and Rwanda) and other countries in the EAC, such as Tanzania. The result is that some countries are excluded from regional arrangements that could benefit from them. In this regard, bilateral and/or trilateral arrangements, while progressive, potentially undermine uniformity of regional policy and fragment integration.

Across most of SADC's member states, citizens of SADC countries are allowed visa-free entry for up to 90 days. However, the region has a

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proliferation of bilateral agreements in lieu of reliance on regional instruments. This makes the implementation of a coherent regional policy difficult. Indeed, although SADC has a protocol dealing with labour migration, there is no established form of multilateral labour migration governance. Botswana, Namibia and South Africa, especially, have adopted positions that look at regional labour migration more through a security lens. This complicates efforts towards more inclusive regional migration. Further, securitising migration policy and governance makes it difficult for the multilateral agreement to demonstrate the advantages of regional migration, integration and development. Instead of harnessing the positive potential of migration, receiving countries invest in controlling the flow of migrants from other countries in the region. This securitised approach to migration governance is contrary to evidence that a regional migration framework would benefit all states in the region, and would actually reduce (rather than increase) illicit migration, for example. Most notably, a regional migration framework would also improve business and trade relations in Southern Africa.[20]

The AMU remains the least integrated region on the continent. With its return to the AU fold, one of Morocco's first tasks has been to take the lead in the development of a coherent migration strategy for the continent. King Mohammed VI of Morocco has lamented the AMU's lack of regional integration and suggested that all efforts towards greater integration have stalled.[21] Unsurprisingly, Morocco now seeks membership of ECOWAS.

Outside of regional frameworks, there are countries that have led by example on their pledges for freedom of movement by exempting most other African passport holders from requiring visas. These include Benin, Ghana, Nigeria, Rwanda, Senegal and the Seychelles.

Lessons for migration governance in Africa

While, a country-level assessment would offer insights into member states' commitment, given the aims of broader freedom of movement, regional integration and inter-regional development, a general assessment of the regional and continental policies is useful.

The various treaties, protocols and programmes at continental and regional level imply that there are efforts at establishing a continental migration governance framework that would be beneficial to individual countries, regions and the continent at large. However,

implementation is still lagging. Indeed, national interests and prerogatives often override and/or undermine these efforts. It is thus clear that, at least nominally, African countries are committed to a continental policy on migration. However, ratification and membership alone do not suffice.

In West Africa, states represent the best case as far as moving towards real freedom of movement. East Africa comes second, with progress being made in working towards the realisation of freedom of movement in the region. In these two regions, movement between member states is fairly fluid and intra-regional trade is recognisable. Meanwhile, in Southern Africa, there is still some resistance to actual free movement. Instead, several countries rely primarily on bilateral agreements to promote free movement between specific countries. This could change as and when Phase II of the tripartite arrangement between SADC, COMESA and the EAC begins.

Given the different dynamics in the various regions, catch-all recommendations may not be sufficiently tailored to specific needs. However, a few conclusions can be reached.

First, while there is broad recognition of the role of migration in regional integration and development, the net benefits are not fully understood. In this regard, clearer messaging on how migration (and proper migration governance, more specifically) is beneficial is needed. This can effectively be communicated by individual member states, but would gain better traction if it were to be endorsed and amplified by RECs and the AU.

Second, if regions are genuinely committed to continental development, they should engage with other RECs and the AU to align policies in a way that ensures consistency and harmonisation. This would require recognising that advancing intra-regional migration and trade is a key ingredient to creating integrated societies and economies.

Third, best practices already exist on the African continent and lessons can be drawn from these. The future of freedom of movement lies in innovative regional initiatives that have led to increased circular migration, trade and regional integration. West Africa is already leading the way, but the proposed tripartite arrangement that covers parts of Southern, East and North Africa could be the model of the future. Once it is rolled out, it should be monitored closely to draw best practices that can be replicated throughout the rest of the continent.

Notes

1   These are the Arab Maghreb Union (AMU/UMA), the Economic Community of West African States (ECOWAS), the East African Community (EAC), the Intergovernmental Authority on Development (IGAD), the Southern African Development Community (SADC), the Common Market for East and Southern Africa (COMESA), the Economic Community of Central African States (ECCAS) and the Community of Sahel-Saharan States (CEN-SAD).

2   J Crush and V Williams, *Regionalizing international migration: lessons for SADC*, Southern African Migration Project, Migration Policy Brief, 11, 2003.

3   R Hannes (ed.), *Regional migration governance in the African continent: current state of affairs and the way forward*, Stiftung Entwicklung und Frieden, 2016.

4   J Crush and V Williams, *Regionalizing international migration: lessons for SADC*, Southern African Migration Project, Migration Policy Brief, 11, 2003.

5   R Hannes (ed.), *Regional migration governance in the African continent: current state of affairs and the way forward*, Stiftung Entwicklung und Frieden, 2016.

6   J Schünemann et al., African futures: key trends to 2035, Institute for Security Studies (ISS), Policy Brief, 2017.

7   The treaty establishing the AEC (Abuja Treaty) was put forward at the then Organization of African Unity (OAU), now AU, 1980 Extraordinary Summit that adopted the Lagos Plan of Action. The Plan of Action establishes the means of working towards Africa's integration. The Plan of Action and the Final Act of Lagos were formally adopted in Abuja, Nigeria in 1991 at the 27th Ordinary Session of the Assembly of OAU Heads of State and Government Summit, when the heads of state signed the treaty establishing the AEC. The treaty entered into force in 1994 and, read together with the AU Charter, forms the basis of the functioning of the AU Secretariat.

8   AU, The Migration Policy Framework for Africa EX.CL/276 (IX), Adopted by the Executive Council at the Ninth Ordinary Session, Banjul, The Gambia, 25–29 June 2006, http://www.fasngo.org/assets/files/resources/EXCL276_IX__Strategic_Framework_for_Policy_Migration.pdf

9   AU, About the JLMP, http://au.int/en/jlmp/about

10 As summarised in TT Abebe, Migration policy frameworks in Africa, Institute for Security Studies (ISS), Africa Report 2, 2017.

11 ECOWAS' Protocol Relating to Free Movement of Persons, Residence and Establishment (1979).

12 SADC's Protocol on the Facilitation of Movement of Persons (2005).

13 COMESA's Protocol on the Free Movement of Persons, Labour, Services, Rights of Establishment and Resident (2001).

14 IGAD's Regional Migration Policy Framework (2012).

15 EAC's Common Market Protocol (2010).

16 ECCAS' Protocol on Free Movement and Rights of Establishment of Nationals of Member States (1983).

17 Treaty instituting the Arab Maghreb Union (with declaration). Concluded at Marrakesh on 17 February 1989

18 Treaty Establishing Community of Sahel-Saharan States (CEN-SAD) (1998).

19 Agreement Establishing a Tripartite Free Trade Area Among the COMESA, EAC and SADC (2015). See also, K Rubia, "Chapter 3: The Inter-Regional Mobility Aspects of the Proposed Tripartite Free Trade Area" in A Bösl et al, *Monitoring Regional Integration in Southern Africa: 2010 Yearbook*.

20 C Nshimbi and L Fioramonti, The will to integrate: South Africa's responses to regional migration from the SADC region, *African Development Review*, 26, 2014.

21 JR Abinader, "What Will It Take to Make the Arab Maghreb Union Work?", Moroccan American Center for Policy (Washington, DC), 2017 http://allafrica.com/stories/201707311208.html

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