

FRAMING A STUDY OF AFRICAN MIGRATION GOVERNANCE REFORM

—TOWARDS FREER MOVEMENT



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This paper introduces the Migration Governance Reform in Africa research program: MIGRA. This program is supported by the New South Institute and will consist of a series of papers, op-eds and policy briefs, work in other media, and a collection.



Victoria Falls Zambia/July 24 2015 women crossing the border between Zimbabwe and Zambia. Image: Shutterstock

1. What is the purpose of the research project?¹

The purpose of the project is to map viable pathways for improving the ease of movement and settlement by Africans (and potentially by visitors) across African borders and for improving the quality of management of such migration.

The African Union Protocol on the Free Movement of Persons sets out the reasons for free movement in this way:

...the free movement of persons, capital goods and services will promote integration, Pan-Africanism, enhance science, technology, education, research and foster tourism, facilitate inter-African trade and investment, increase remittances within Africa, promote mobility of labour, create employment, improve the standards of living of the people of Africa and facilitate the mobilization and utilization of the human and material resources of Africa in order to achieve self-reliance and development...²

There are at least two more very good reasons to facilitate travel within Africa. The formation of states during the partition and colonisation of Africa resulted in many pre-existing ethnic and economic communities being sliced through by arbitrary colonial borders. Many pre-colonial cultural and economic ties remain 140 years later and could be strengthened through facilitated mobility. Equally

important, cultural and perception gaps between African countries remain strong in the absence of greater travel within Africa; more business and leisure travel within the continent could improve cultural empathy arising from proximity and contact.

To expand on the opening statement of purpose, by 'viable' pathways, we mean pathways that are practical given the capabilities of state and supra-state institutions, and doable in the political and economic circumstances. By 'improving ease of movement', we mean introducing better processes, reducing the obstacles faced by Africans who seek to cross African borders (for example, passport and visa requirements), and improving the welcoming stance of the receiving state and other stakeholders. Ease of 'settlement' refers to the rights of the migrant to study, work, buy a home, and/or buy or start a business in the host state. By 'quality of management of migration', we mean the management systems for granting permission to cross borders, for recording cross-border movement, and for exchanging relevant accurate information about individuals who cross the border between the origin state and the destination state. By 'pathways', we mean the incremental, sporadic, or ambitious processes of reform that are undertaken by states domestically, bilaterally with other states, or multilaterally within a regional framework. (Extra-African visitors should also be able to cross internal African borders more easily once African systems of management and policies are improved and sufficiently well-coordinated.)

¹ This paper was prepared as a framing document for a research project on migration governance reform which will ultimately comprise around nine papers, mostly case studies, and ancillary publications. Comments were gratefully received from colleagues on the project: Victor Amadi, Michael Mutava, and Rafael Leite; and from members of the advisory committee of the project, in particular Stephen Gelb, Ivor Chipkin, and Ian Goldin. Any remaining errors are my own.

² African Union, Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment (Addis Ababa: AU, 2018), p.4.

Though completely open borders are a fine pan-African ideal and should always be kept in heart and mind as the ultimate objective, sovereign, accountable nation states understandably face difficulties on the path to complete openness, especially given inequality between and within states, and poverty in most of them.³ It is difficult to imagine completely open African borders—especially in respect of residence, employment, and business establishment—before African states have achieved greater prosperity, less poverty, and less inequality within and between states. But maybe this view betrays a lack of imagination. The obstacles to free movement are addressed in more detail later in this paper.

Our concern is to plot ways forward that are viable given existing constraints and obstacles, and to consider how certain apparent and real obstacles can be addressed. The constraints, the obstacles, and the modalities of reform are different from state to state, but some collective reforms may be beneficial to all, and continental initiatives can complement reforms at national, bilateral, or regional levels.

2. What are we trying to understand and why?

Many African countries and several regions have made considerable progress towards improving the ease of movement of Africans (and of intercontinental visitors) across African borders. We would like to describe and analyse where and how progress has been made, and to consider which strategies for reform seem to be the most effective.

In contrast, some African states and regions lag in reforming immigration policy and practice, and we would like to understand why this is so too. Progress towards freer movement is uneven across the continent, with some countries and regions advanced in some respects and behind the curve in others. Through a carefully chosen set of case studies, we intend to get a sense of what factors and strategies have supported reform and which have held it back.

3. What are the key basic concepts?

Before we plunge into the issues, we need to be certain that some key concepts are understood as they are intended.

a. Borders

Borders, for our purposes, are political phenomena which form barriers between countries. Though there can be borders within countries (such as provincial or municipal borders), those are not the focus of this study. National borders, though they are formally located at specific geographical places, are not necessarily enforced at those places. Border regulations can be enforced through the policing of undocumented migrants, through the enforcement of restrictions on employment, or through other forms of discrimination. This could include discrimination regarding access to social services, employment, or residence, for example. As Étienne Balibar put it, quoting Fichte, 'borders have become also *invisible borders*, situated everywhere and nowhere'.⁴ While a key focus is the crossing of actual geographical/legal borders, the nature, impact, and reform of 'invisible borders' will also form part of our study.

b. Categories of Migration and Mobility

When we refer to cross-border migration, we are conventionally referring to movement of individuals or larger groups to another jurisdiction for a considerable period of time. However, it is also appropriate to consider the circumstances of those who move for shorter periods. These different kinds of cross-border movement are captured by the terms 'migratory mobility' and 'non-migratory mobility' respectively.

For the purposes of understanding the dimensions of migration governance and processes of reform, it is important to unbundle concepts and instruments carefully. One important distinction is that between migration and mobility. Andrew Geddes et al. argue:

there are important instances of regional cooperation to promote mobility or free movement between participating states, which introduces a legal and political distinction between those who move between states within the regional grouping (labelled mobility) and those who move from outside this regional setting (labelled international migration).⁵

³ *The State of Migration in East and Horn of Africa Report*, published in 2023 by the East African Community, the Intergovernmental Authority on Development, and the International Organisation for Migration, also notes that inequality presents a challenge for freer movement policies.

⁴ Balibar, Étienne 2002. What is a border? In: *Politics and the Other Scene*. London; New York: Verso, 75–86.

⁵ Andrew Geddes, Marcia Vera Espinoza, Leila Hadj Abdou and Leiza Brumat, *The Dynamics of Regional Migration Governance*, Edward Elgar, 2019, p.2.

But the distinction between migration and mobility can be applied in other ways too. So, for the present we use the terms differently. Mobility, for our purposes, generally means the act of crossing borders. Migration can refer to the length of stay, over a certain period such as six months or a year, or the number of visits. We will try to use these terms consistently in this way.

Migration and mobility are measured in several different ways. First, we need to distinguish between stocks and flows of migrants. Stocks measure the total number of migrants at any time, while flows measure inward and outward travel over a certain period. Where possible, it would be ideal to distinguish between temporary visitors and longer-term migrants. Most common measures of migration measure

the number of foreign-born residents in a country, no matter how long ago they were born or moved to the country concerned. So, in some categorisations, the term 'migrant' is used more broadly than we prefer.

In contrast to stocks, flows of migrants or visitors are measured by home affairs departments at points of entry and exit. While it is usually possible to measure the number of visiting tourists, the data for overall flows are not necessarily easy to obtain.

There are several categories of migratory and non-migratory mobility, arising from the form and purpose of migration and the location of invisible borders. Drawing on a widely-used textbook on migration, Table 1 catalogues these categories of mobility.



Machipanda border post, between Mozambique and Zimbabwe. Image: Shutterstock

Table 1: Different migratory and non-migratory forms of cross-border human mobility

Non-migratory mobility (Does not involve change of habitual residence)	Migratory mobility (Involves change of residence across administrative border)
Commuting	Temporary/circular/permanent
Family visits	Labour/family/student/refugees/asylum-seekers
Tourism	Voluntary/involuntary
Business travel	Documented/undocumented
Nomadism	Legal/illegal

Adapted from De Haas, Castles and Miller, **The Age of Migration**, 6th edition, 2020, Figure 2.1.

Noting that migrants could fall into more than one of these categories simultaneously, we will not attempt the tedious exercise of defining the various forms of migratory mobility. We will assume for now that they are understood, until and unless we need to explain them in more detail.

c. Trends and data

We need to understand contemporary trends in migration in Africa, and between African and other regions, in order to set out the circumstances under which reforms need to happen. (The second paper in this series will detail recent and contemporary migration trends in Africa.) Yet there are several difficulties in trying to capture current trends. First, conventionally, and especially where statistical collection is sporadic or incomplete, migration is measured as stocks rather than flows. The answer to the question ‘how many migrants live in a country?’ is usually given as the number of residents born in a different country. This is the ‘stock’ of migrants according to the most conventional measure. As this data comes from national censuses which are meant to capture every individual in a country, temporary visitors could also be included in this stock measure. The census data is assembled at the United Nations Department of Economic and Social Affairs, which also compiles regular estimates. Measurement of stocks can be refined to count, say, those who have been in a country for

more than six or 12 months, but this refinement depends on data that is not easily accessed.

Other important sources for understanding migration include household surveys and labour force surveys, but not all countries in Africa conduct these regularly. These surveys can provide information about the activities of migrants in host countries, their economic circumstances, and other dimensions of their lives. Flow information would normally come from home affairs departments, which collect information at borders. Aside from the fact that it is often difficult to obtain such information from security-minded departments, they would have difficulties recording the movement of undocumented migrants across borders outside of the formal system. So, in many countries, good flow data is not easily accessible.

When the Africa Migration Report 2020 was published, it noted that 14 percent of African countries had not updated their census data on migrants since 2000.⁶ Many African countries collect migration data irregularly and poorly,⁷ and the porous borders between many African states cannot be monitored. While stocks and flows are both imperfectly measured, stock information is more reliable than flow information.⁸ A final point worth noting is that unscientific estimates of migration and migrants are frequently hugely exaggerated. A companion report by Michael Mutava on data and trends will be published shortly.

⁶ International Organisation for Migration and African Union, African Migration Report 2020, Addis Ababa, 2022, p.16.

⁷ International Organisation for Migration and African Union, African Migration Report 2020, Addis Ababa, 2022, p.20.

⁸ International Organisation for Migration and African Union, African Migration Report 2022, Addis Ababa, 2022, p.27 Text Box.

d. Motive factors

The factors that drive migration are as many and varied as the theories that have been developed to explain migration.⁹ There are economic, social, political, and environmental reasons for migration, and migrants are usually motivated by a combination of these factors, but also by internal dynamics based on feedback mechanisms arising from social links between migrants.

Two points need to be underlined. First, 'migration' is largely an intrinsic part of broader processes of development: it is mostly a 'normal' process, rather than a temporary reaction to development disequilibria or failure.¹⁰ Second, more migration takes place as the economic conditions of migrants improve, as they have a greater capacity for migration than when they are very poor. Most experts on migration agree that the relationship between economic development and migratory mobility is plotted as an inverse U-shaped curve: very poor people cannot migrate; improving circumstances allow for migration to even better prospects; and prosperous people in prosperous countries tend to remain where they are.¹¹

e. Governance

The term governance has many definitions. It migrated into English in the 15th century from the French term '*gouvernance*'. Often applied to countries or organisations, the term became widely used in discussions of 'corporate governance'—the accountability and behaviour norms in private companies for which codes and guidelines were developed and which have evolved over time. It is sometimes used as a synonym for government.

In the context of this study of migration governance, the use of the term 'governance' is intended to be broad. 'Migration governance' refers to the policies, laws, treaties, procedures, and norms which form the legal and administrative environment in which cross-border migration takes place, but it also encompasses the management and knowledge systems that enable and control the movement of people across borders. Governance can be influenced by conjunctural conflicts and political pressures.

The International Organisation for Migration defines migration governance as follows:

The combined frameworks of legal norms, laws and regulations, policies and traditions as well as organisational structures (subnational, national, regional and international) and the relevant processes that shape and regulate States' approaches with regard to migration in all its forms, addressing rights and responsibilities and promoting international cooperation.¹²

The main actors in migration governance, aside from migrants themselves, are states; supra-state institutions (such as the United Nations, the European Union, or the African Union) and their organs; political parties; and a range of non-governmental stakeholders such as travel organisations, human rights organisations, organisations representing the interests of migrants, churches, employers, labour unions, and labour brokers.

f. Intergovernmental vs Multilateral systems

In many regions, multilateral arrangements between states are enforced by the states themselves. The region itself is not institutionalised except in the form of a secretariat that manages some regional activities and processes. This form of arrangement is 'intergovernmental'. Regional treaties are domesticated and enforced domestically.

In contrast, in certain regions there are supranational institutions that make laws, enforce them, and maintain a system of rights and obligations. This is most highly developed in the case of the European Union (EU), where intergovernmental arrangements have been progressively transformed into sovereign multilateral institutions. The complexities and tensions of this system are well known, but it has resulted in a relatively powerful region that is bound together in many ways. Regions can and do have sovereign transnational institutions for some areas of governance and looser intergovernmental arrangements for others.

⁹ de Haas, Castles and Miller guide readers through 'Categories of Migration' in Chapter 2 of *The Age of Migration: International Population Movements in the Modern World*, 6th Edition, Bloomsbury Academic, London, 2020 pp.42-74.

¹⁰ de Haas, Castles and Miller, *The Age of Migration: International Population Movements in the Modern World*, 6th Edition, Bloomsbury Academic, London, 2020 p.71.

¹¹ H. de Haas et al., 'International Migration: Trends, Determinants and Policy Effects,' *Population and Development Review* 45, no. 4 (December 2019): 889–90.

¹² IOM. (2019). Glossary on Migration, International Organization for Migration, p.138, https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf.



Kampala, Uganda. Image: Shutterstock

g. Variable geometry

It is sometimes the case within a multilateral arrangement, whether it is an intergovernmental arrangement or a multilateral system, that a subset of members moves ahead of other members in advancing towards the ultimate objective of the arrangement. For example, three members of the seven-member East African Community allow their citizens to cross their mutual borders and access certain rights without having to bear a passport, let alone a visa, while other members of the same community still require passports and offer fewer rights.

Sometimes variable geometry is part of a multilateral agreement which allows for an agreement that is not necessarily binding on all parties; at other times, it is simply permissible within the broad arrangement, if the latter does not inhibit a progressive agreement between a subset of members. (By 'progressive', I mean advancing towards the objectives of the broader arrangement.) There may also be bilateral or plurilateral arrangements that stretch beyond regional boundaries. At least theoretically, there may also be arrangements where progressive agreements are not permitted, such as exclusive arrangements with third parties.

4. Modes of reforming migration and facilitating integration

Migration governance reform can entail unilateral, bilateral, plurilateral, or multilateral reform of non-migratory mobility and migratory mobility.

States can improve access by foreign nationals in any one or relevant combination of a range of initiatives relating to the use of passports and visas. Visa-openness solutions that have been adopted by some African countries include visa on arrival for Africans, visa-free regional blocs, regional bloc visas, multi-year visas (on a case-by-case basis), reciprocal agreements between African countries to relax visa and even passport requirements, opening visas unilaterally, simplifying visa processes and providing online application and delivery processes, and improving access to information online in different languages. The African Union and the African Development Bank produce an annual report which encourages visa reforms by cataloguing them and ranking African countries in various ways in a visa-openness index.¹³

¹³ <https://www.visaopenness.org/>.

Table 2: The Migration Policy Toolbox

Migration Policy Tool	Policy Area: Border Controls
Surveillance technology and control powers	Control the movement and migration status of citizens and foreigners; for example, information technology, fences, walls, radar, cameras, fingerprinting, border guards, and powers of immigration staff.
Travel visas/permits	Procedures including fees for entry and exit; could also include vaccination certificates, etc.
Identification documents	Regulations for identity documents, drivers' license requirements, etc.
Entry bans	Policies aimed at excluding specific categories of person defined in terms of race, religion, citizenship, previous locations, etc.
Carrier sanctions	Controls exercised over airlines, railways, etc. to exclude passengers on the basis of absence of visas, vaccination certificates, etc.
Employer sanctions	Controls over access exercised through employers over potential employees or, in universities, over students.
Other sanctions	Sanctions for fraud, overstaying, smuggling or human trafficking, etc.
Detention	Procedures and eligibility for detention of foreigners, often in preparation for deportation.
Migration Policy Tool	Policy area: Legal entry and stay
Recruitment/assisted migration programs	Policies to assist or incentivise certain categories of migrant.
Entry visas/stay permits	Procedures or eligibility (age, education, family, etc.); specific categories of visa/permit for students, investors or family; compulsory language tests or integration contracts for entry.
Work visas/permits	Procedures or eligibility criteria (job offer, qualification, age, etc.), to obtain a work visa or permit before or after arrival. Can include working holiday, <i>au pair</i> positions, etc.
Quotas/targets	Policies to establish a number or proportion of persons that are eligible to migrate for particular migration categories.
Points-based systems	Points formula to give access to a work visa or other permit.
Regularisation/amnesty	Specification of those migrants who are eligible for residence status without legal rights to it. Regularising the irregular.
Refugee status determination policies	Policies which determine whether asylum-seekers are eligible for refugee status.
Refugee settlement programs	Programs to resettle refugees beyond their country of origin or first asylum—normally to more distant countries.
Free mobility/rights agreements	Bilateral or multilateral agreements in which governments grant reciprocal free rights to entrance and/or residence for citizens of each signatory country, but not necessarily the right to work or do business ('establishment').

Migration Policy Tool	Integration
Access to social benefits and socioeconomic rights	Policies and procedures which give immigrants access to existing state systems of social benefits and socioeconomic rights.
Access to justice and political rights	Procedures or eligibility criteria which give migrants access to existing state systems of justice and political rights.
Language, housing and cultural integration programs	Policies and procedures which give migrants access to language programs, housing or financial assistance, and religious and cultural integration specially established for migrants.
Access to permanent residency	Procedures and policies which give migrants access to permanent residency, including citizenship and language tests and ceremonies.
Access to citizenship	Procedures and policies which give migrants access to citizenship, including citizenship and language tests and ceremonies.
Diaspora engagement policies	Policies by origin countries to extend political civil and social rights to citizens living abroad and their descendants.
Policy area	Exit
Reintegration/return programs	Programs to support voluntary return of migrants to their origin countries.
Deportation/expulsion	Policies to enforce the physical removal of migrants from national territories, often in conjunction with detention policies.
Extradition, repatriation, and repatriation agreements	Extradition or repatriation of those who have committed a crime in another country and are sought to face trial there, subject to bilateral or multilateral agreements on such procedures.
Readmission agreements	Agreements between destination governments, governments of origin, and transit countries for the readmission of undocumented migrants and/or rejected asylum-seekers.
Exit visas/permits or exit bans	Measures that establish conditions for the exit of citizens subject to prior approval, often with rules which could include exit bans (more often in authoritarian states).

Adapted from De Haas, Castles and Miller, *The Age of Migration*, 6th edition, 2020, Appendix pp.271-274.

5. Integration and regions—comparative histories

In ancient times, before the emergence of organised sovereign states in the Weberian sense, there were no systems governing migration, though defence of territories might be organised by pre-state formations. Even as states emerged, control over migration was limited and sporadic. Some pre-state and state forms of organisation had systems for integrating migrants, and in some systems, rulers were able to provide certificates of safe conduct. As states became more sophisticated and, in one way or another, more accountable to their citizens, protective barriers emerged, and worldwide passports came into use after the First World War.

In recent times, there has been a counter-trend for states integrated within a region to cooperate and facilitate the movement of people across borders. The EU has the most advanced and sophisticated form of freedom of migration, whereby EU citizens are allowed to visit, study, live, and work in any other member state and documented visitors entering one EU state can pass freely into most others. Other regions have made significant progress towards freer movement, notably South America, discussed below. Asia, in contrast, relies largely on bilateral and other sub-regional arrangements to manage significant flows of skilled and unskilled migrants within the broader Asia region. In Africa, as we will see below, the recent trend towards regional cooperation on the movement of people began with a treaty in West Africa in 1979.

a. European Union integration and migration

In many respects, the EU is regarded as an exemplar of regional integration and good governance. From the establishment of the European Economic Community in 1957, the free movement of workers was permitted between member states, but this was a limited by national rules. In 1968, this was extended to residential and other rights, but the new rules were not implemented immediately and remained subject to national regulations. The Schengen Agreement of 1985 allowed for the abolition of internal border controls and for cooperation on matters of visa policy between (initially five) signatory states.

The biggest step towards a common European approach towards the movement of people came with the adoption of the Single European Act in 1986. In addition to the free movement of goods, services and capital within the 'internal market', the act allowed the free movement of people and granted them rights to establishment and residence if they were citizens of EU member states. The right to free movement of EU citizens within the EU was later enshrined in Article 45 of the European Charter of Human Rights: 'Every Citizen of the Union has the right to move and reside freely within the territory of member states'. Diego Acosta and Andrew Geddes argue that this 'is indeed the clearest example in the world of a "desecuritized" process for regional migrants.'¹⁴

But because of opposition from some members, the EU did not require member states to give up sovereignty on issues relating to the migration of third-country nationals and asylum-seekers. Instead, members merely agreed to cooperate to combat drug trafficking, international crime and terrorism, and the control of illegal migration.

Until the Treaty of Amsterdam came into force in 1999, the EU lacked the ability to adopt legally binding measures in justice and home affairs. So, agreements in this sphere, including those concerning migration, could at best be intergovernmental agreements.¹⁵ Migration policies that regulated the entry of migrants from non-EU countries (so-called 'third-country nationals') began with the 1992 Treaty of Maastricht, though that treaty was preceded by the Schengen Agreement of 1985.

Maastricht integrated migration and asylum policies as 'matters of common interest', but, other than in the realm of visa policy, such integration depended on intergovernmental accords. Intergovernmental coordination—rather than regulation mandated and enforced by the EU—predominated in the mode of cooperation before 1999. Intergovernmental measures 'lacked direct effect in national law, taking the form of non-legally binding resolutions and recommendations.'¹⁷

¹⁴ Diego Acosta Arcarazo and Andrew Geddes 'Transnational Diffusion or Different Models? Regional Approaches to Migration Governance in the European Union and Mercosur' *European Journal of Migration and Law* 16 (2014) pp.33-34.

Anja Wiesbrock, 'The Evolution of EU Migration Policies: Toward a Balances, Comprehensive and Common Approach?' Chapter 8 in Douglas J. Besharov & Mark H. Lopez (eds) *Adjusting to a World in Motion: Trends in Global Migration and Migration Policy*, Oxford, 2016 p.162.

¹⁵ Ibid p.160, p.162.

¹⁶ Ibid p.162.

¹⁷ Ibid p.163.

The Treaty of Amsterdam required the Council of the EU to adopt measures regarding asylum and immigration. Immigration, asylum, border control, and judicial cooperation on civil matters were now all governed by the Community method of decision-making, with some limitations.¹⁸ Since the Treaty of Lisbon entered into force in 2009, more decisions on these matters have been centralised to the Council, the European Parliament, and the European Court of Justice.

Despite this, national immigration laws and labour laws remain the main regulatory venues for the admission and stay of non-EU nationals. An EU directive on long-term residence enforces the right for non-EU nationals to acquire long-term residence status after five years' residence, but with limited obligatory rights.¹⁹

To accommodate labour migration by 'third-country nationals', the EU in 2011 established a single application procedure for single permits for third-country nationals to reside and work in an EU member state, and a common set of rights. Under the 'Blue Card' arrangement, highly skilled third-country nationals with a work contract, and their families, can work and live in EU countries for up to four years. Anja Wiesbrock believes that the uncertainties that surround this kind of arrangement weaken the ability of the EU to attract highly skilled labour from third countries, relative to competing markets.²⁰

In the EU, 'illegal migration' describes people who enter member states fraudulently or through criminal networks, and those who overstay their legal permission. If immigrants are found to be illegal, they may be instructed to return to their country of origin, failing which they could be returned involuntarily. The EU Returns Directive of 2008 was widely criticised, including by South America, which led to a structured dialogue on migration between the EU and Latin American and Caribbean (LAC) states in the EU-LAC process. In practice, the Returns Directive is the lowest-common-denominator procedure, rather than a uniform one. Another modality is to return illegal migrants through bilateral readmission agreements. There are also sanctions against employers who

employ illegal migrants.²¹ However, it has been argued that 'the enlargement of the EU to include 13 additional countries since 2004 transformed the citizens of those states from potential irregular migrants to EU citizens with residence rights.' This, effectively, led to a large-scale regularisation of undocumented migrants by member states.²²

Minimum standards for asylum and refugee protection were adopted in the Dublin III Regulation of 2013. Dublin III assigns responsibility for examining an asylum application to the member state where a link with the asylum-seeker was first established. There are also minimum standards for the treatment of asylum-seekers, though member states interpret them differently.²³ European regulations distinguish between refugees, who qualify in terms of Article 1A of the Geneva Convention, and persons eligible for subsidiary protection, who there are 'substantial grounds' for believing would face serious risk of suffering if returned home.²⁴

The EU's external borders are the responsibility of the European Border and Coast Guard Agency, a joint agency. FRONTEX, as it is commonly known, contributes to the training of border guards, helps coordinate national border-guard services where needed, and supports member states when requested. In practice, though, the primary responsibility for controlling the external borders of EU countries generally remains under national control.²⁵

So, while the EU system is very sophisticated regarding the mobility rights of citizens of member states, it remains restrictive and somewhat fragmented in its approach to third-country nationals.

In the broad sweep of things, we may note a 27-year time lag between the Treaty of Rome, which established the Common Market among the first six member states in 1957, and the Single European Act of 1986 for full internal mobility of people. This provides a perspective on the challenge posed to a regional grouping of states by the opening of internal borders for people, in comparison with the relatively easier task of opening internal borders for trade.

¹⁸ Ibid p.163.

¹⁹ Ibid p.167.

²⁰ Ibid p.169.

²¹ Ibid pp.172-173.

²² Diego Acosta Arcarazo and Andrew Geddes 'Transnational Diffusion or Different Models? Regional Approaches to Migration Governance in the European Union and Mercosur' *European Journal of Migration and Law* 16 (2014) p.34.

²³ Anja Wiesbrock, 'The Evolution of EU Migration Policies: Toward a Balanced, Comprehensive and Common Approach?' Chapter 8 in Douglas J. Besharov & Mark H. Lopez (eds) *Adjusting to a World in Motion: Trends in Global Migration and Migration Policy*, Oxford, 2016 p.76.

²⁴ Ibid p.180.

²⁵ Ibid p.174.

b. South America integration and migration

Like Africa, South America is relatively understudied as regards migration, governance and regional integration issues. In Latin America, there is a paucity of such studies in the English-language literature. But South America is one of the most interesting cases when it comes to regional policies on migration integration. It shows, among other things, how unexpected shifts in policy can take root and flourish in the right combination of circumstances. 'In the last two decades,' as Leiza Brumat notes, 'South America has created a regime for human mobility that is regarded as the most developed one after the EU.'²⁶ These policies developed over time, in a series of phases, in overlapping jurisdictions. The course of their development was not predictable, nor necessarily logical, but they have resulted in a relatively progressive—if not entirely coherent—outcome.

The first generation of policies for mobility of persons in South America began in the 1970s with the creation of the Andean Community, known as CAN according to its Spanish initials. Core members are Bolivia, Colombia, Ecuador, and Peru. The Andean Community comprises some of the poorer countries of South America, clustered around the Andean Mountain Range. Its migration policies centred on labour mobility for skilled workers and granted limited rights, but they fell into disuse, partly due to the debt crisis of the 1980s. In the 1990s, CAN developed new policies, including a regional migration card, and the reforms deepened in 2001, granting more rights to migrants and moving towards an Andean identity and Andean passport.

In parallel, a group of countries centred around some of the richer countries of South America clustered into Mercosur. The Southern Common Market, commonly known by its Spanish

abbreviation Mercosur (Portuguese: Mercosul), is a South American trade bloc established by the 1991 Treaty of Asunción and the 1994 Protocol of Ouro Preto. Its full members are Argentina, Paraguay, Brazil, and Uruguay; Venezuela was suspended in 2016. Bolivia is in transition to full membership. Other associate members are Chile, Colombia, Ecuador, Guyana, Peru, and Suriname.

While ambitions for free movement were initially high in Mercosur, they were soon downgraded to focus on facilitating labour migration and providing skilled employees with certain transportable rights. An agreement on visa-free travel was only implemented by a smaller subset of countries which adopted it voluntarily.²⁷ But there were considerable advances in the technical areas of migration such as border management, documentation to enter and leave states, and the simplification of bureaucratic procedures for human mobility.²⁸

In Latin America, until the ending of military rule in several key countries in the 1990s, the predominant attitude towards migrants—while it facilitated, in particular, the freer movement of skilled workers—can be characterised as protectionist.²⁹ Brumat describes the policies as 'neoliberal', focusing narrowly on economic benefit.³⁰ Two key shifts coincided with the re-emergence of democratic rule that promoted a new approach to regional migrancy.

First, Mercosur was re-launched in the early 2000s following a profound economic and political crisis. This rethinking of regionalism put into question prevalent neoliberal orientations and paved the way for the emergence of new modes of market governance and the incorporation of new items onto the regional agenda. The new agenda included free movement of labour, conceptualised as a socio-political issue rather than in purely economic terms.³¹

²⁶ Leiza Brumat, 'Four Generations of Regional Policies for the (Free) Movement of Persons in South America', Chapter 7 in G. Rayp et al (eds), *Regional Integration and Migration Governance in the Global South*, United Nations University Series on regionalism 20, Springer, p.153.

²⁷ Ibid p.161.

²⁸ Ibid p.168.

²⁹ Diego Acosta Arcarazo and Andrew Geddes 'Transnational Diffusion or Different Models? Regional Approaches to Migration Governance in the European Union and Mercosur' *European Journal of Migration and Law* 16 (2014) 19-44.

³⁰ Leiza Brumat, 'Four Generations of Regional Policies for the (Free) Movement of Persons in South America', Chapter 7 in G. Rayp et al (eds), *Regional Integration and Migration Governance in the Global South*, United Nations University Series on regionalism 20, Springer, p.159.

³¹ Diego Acosta Arcarazo and Andrew Geddes 'Transnational Diffusion or Different Models? Regional Approaches to Migration Governance in the European Union and Mercosur' *European Journal of Migration and Law* 16 (2014) 19-44; N. Phillips, 'Regionalist Governance in the New Political Economy of Development: "Relaunching" the Mercosur', 22 *Third World Quarterly* (2001) 565-583.

Second, there was an increase in migration both towards North America and within Latin America. A decreasing proportion of migrants within Latin America were of European origin. Latin American- and Caribbean-born migrants rose from half a percent of the total population of Latin America and the Caribbean to nearly 2 percent between 1960 and 2017.³² Rising prosperity and generous social policies encouraged migration from poorer Andean and Caribbean countries to the richer Southern Cone countries of South America.³³

The number of Latin American migrants in the region has further increased due to a recent exodus of Venezuelans—a total of 7.1 million emigrants between 2015 and 2022, the vast majority of whom have remained within Latin America.³⁴ Even before that, a large proportion of the Latin American migrants both within Latin America and beyond were irregular. Instead of adopting a securitised approach like that in Latin America under military rule, or the ‘fortress Europe’ approach of the EU towards non-citizens, the new democratic leaders of the region rejected the criminalisation of irregular migrants. The Venezuelan exodus had the effect of broadening tolerant attitudes towards migrants, from its original adopters in left-leaning political parties to right-leaning politicians too.³⁵

The 2002 Mercosur Residence Agreement, which came into force in 2009:

has as its main objective to deal with the situation of intra-regional migrants in an irregular situation and has transformed the migration regime for South Americans. It provides that any

national of a Mercosur or associate member state (essentially all South America) may reside and work for a period of two years in another member state if they have an identification document and a clean criminal record.³⁶

The agreement includes the rights to work, to equal working conditions, to family reunion, and to access to education. After two years, if the migrant can show that he or she has sufficient economic resources to sustain him- or herself, the rights can be converted into permanent rights (in contrast to the EU approach, where proof of sustainability is required for migration in the first place).

However, Acosta and Geddes note that domestic law prevails regarding the acquisition of permanent rights. This is because the Mercosur Residence Agreement is essentially an intergovernmental agreement and lacks supranational institutional oversight or enforcement.³⁷ Instead, there is a Migration Forum, which prepares decisions and agreements to be submitted to interior ministers and ratified domestically, and there is a South American Conference on Migration, administered by the International Organisation for Migration, which attempts to build consensus on regional migration policies without political force. Analysts believe that the consensus-building environment of the South American Conference on Migration has been critical not only in facilitating agreement on the Mercosur Residence Agreement, but also in influencing national policy environments, facilitating liberal migration laws in Argentina and Uruguay and the adoption of liberal migration provisions in Ecuador’s 2008 constitution.³⁸

³⁴ Vanessa Buchschlüter, ‘Venezuela crisis: 7.1m leave country since 2015’ BBC News Website drawing on UNDESEA data, <https://www.bbc.co.uk/news/world-latin-america-63279800>, accessed 14/11/22.

³⁵ Correspondence with Rafael Leite as well as Ana Margheritis, ‘Migration governance evolution amidst a nested crisis: the case of South America’ *International Migrations*, 2022, DOI:10.1111/imig.13109.

³⁶ Diego Acosta Arcarazo and Andrew Geddes ‘Transnational Diffusion or Different Models? Regional Approaches to Migration Governance in the European Union and Mercosur’ *European Journal of Migration and Law* 16 (2014) p. 31.

³⁷ Diego Acosta Arcarazo and Andrew Geddes ‘Transnational Diffusion or Different Models? Regional Approaches to Migration Governance in the European Union and Mercosur’ *European Journal of Migration and Law* 16 (2014) p. 32.

³⁸ *Ibid.*

c. ASEAN integration and migration

It would be difficult to review migration governance for the whole of the Asian continent. There are several approaches to cooperation and migration governance in Asia, some of which overlap; the continent has many large and small countries, and a huge number of migrants. In 2017, 80 million international migrants lived in Asia, an increase of 30 million from 2000.³⁹ There are three main regional organisations: the Association of Southeast Asian Nations (ASEAN), the South Asian Association for Regional Cooperation (SAARC), and the Gulf Cooperation Council (GCC). All are relatively loose associations in comparison with the EU and even Mercosur. ASEAN is both a very large exporter of migrants and a very large recipient, and it is therefore a useful subject for comparison.

ASEAN was established in 1967 in Bangkok. The founding members who signed the ASEAN Declaration were Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Brunei, Vietnam, Laos, Myanmar, and Cambodia joined in the 1980s and 1990s. The 'ASEAN way' requires strict consensus among members and the principle of 'non-interference in the internal affairs of members' states'.⁴⁰ Beyond collective decisions, ASEAN member countries may form sub-groups to cooperate on issues which not all members want to participate in, and the region may also form agreements with external partners.

Beyond formal ASEAN processes, there are also three affiliated forums: one for non-state actors, one for academics and public intellectuals, and a 'people's track' for accredited non-governmental organisations. The purpose of these parallel tracks is to engage with common issues in support of ASEAN processes.⁴¹

The movement of people is an important element of ASEAN relationships. The major sending countries in the region are the Philippines, Indonesia, and Myanmar, and the major receiving countries are Singapore, Malaysia, and Thailand.⁴² In 2013, 12.8 million ASEAN citizens were migrants, or 6 percent of the international stock of migrants, of whom 3.9 million (30 percent of the total) move or have moved within ASEAN. The ASEAN Economic Community was established to facilitate the free flow of goods, services, and investments, but also the free mobility of businesspersons and skilled labour. It was agreed, as a first step, that migrants in eight professional categories could move freely within the region from 2015. The freer circulation of migrants at lower skill levels is not part of the agreement and seems unlikely in the near future. Some experts argue that demographic and social conditions are still too greatly varied to allow such freedom.⁴³ This could be interpreted as meaning that wealth inequalities between ASEAN countries are great, in some cases compounded by bad politics and weak governance, and politicians in the richer countries wish to avoid admitting large numbers of low-skilled migrants, seeking a better life, from their poorer neighbours.

Guntur Sugiyarto and Dovelyn R. Agunias argue that the mobility of people between states is seen differently by ASEAN leaders than by leaders in Europe and other regions. ASEAN wants a freer flow, but not free flow, within the region. Less than 1.5 percent of the ASEAN labour force would be affected by full implementation of existing provisions to free up the movements of people with key skills. In contrast, the 87 percent of migrants in intra-ASEAN migration flows who are low-skilled or unskilled are not covered by such provisions.⁴⁴

³⁹ Richa Shivakoti, 'Asian Migration Governance' Chapter 8 in G. Rayp et al (eds), *Regional Integration and Migration Governance in the Global South*, United Nations University Series on regionalism 20, Springer, p. 177.

⁴⁰ Richa Shivakoti, 'Multi-layered migration governance in Asia: Lessons from Nepal and the Philippines' PhD Thesis, Lee Kuan Yew School of Public Policy, National University of Singapore, 2017, p.109.

⁴¹ Ibid p.110.

⁴² Ibid, p.110 reconciled with, Demetrios G. Papademetriou, Guntur Sugiyarto, Dovelyn Rannveig Mendoza and Brian Salant, 'Achieving skill mobility in the ASEAN Economic Community: Challenges, opportunities and policy implications' Asian Development Bank, 2015 p.4.

⁴³ Ibid p.110.

⁴⁴ Guntur Sugiyarto and Dovelyn R. Agunias (2014) A 'Freer' Flow of Skilled labour within ASEAN: Aspirations, opportunities and Challenges in 2015 and Beyond', IOM and MPI Issue in Brief 11.

The predominant character of migration flows in ASEAN is migration by relatively low-skilled workers from Indonesia or the Philippines who are permitted to work temporarily in Malaysia or Singapore under bilateral agreements and memoranda of understanding.⁴⁵ These agreements tend to be weighted in favour of the interests of the receiving country.⁴⁶ While the rights of migrant workers within the region are recognised in the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, the declaration officially applies to regular migrants only. There is a rather limited principle in the declaration stating that 'receiving and sending states shall, for humanitarian reasons, closely cooperate to resolve the cases of migrant workers who, through no fault of their own, have subsequently become undocumented.'

Overall, it is evident that the only multilateral intergovernmental commitment towards the freer movement of labour within the ASEAN region is the provision for a few categories of skilled professionals. Lower-skilled migrants, who form the vast majority of migrant workers in the region, are only covered by bilateral agreements or memoranda of understanding and by a limited declaration of rights.

d. A reflection

An obvious conclusion that could be drawn from these three brief histories of migration integration is that each history is very different and the circumstances that gave rise to the outcomes are very different too. These different circumstances provoked different responses, and, as a result, the path towards freer movement of persons looks quite different in each region. The relevant circumstances can be structural, as is the degree of inequality between countries, or conjunctural, as is the unpredictable coincidence of circumstances that has led to increasingly wide acceptance of liberal reforms in Latin America.

The wide variation of trajectories might also, or alternatively, suggest something beyond different historical circumstances. Perhaps it shows that that states have different relations to their populations

and use different technologies to control them: porous border management might be a model of managing unemployment, for example, or it might suggest that the state is not particularly interested in its population outside a small elite. In other words, different approaches to migration, with different outcomes, might say something about the character of different states, as well as about their different historical contexts.⁴⁷

Historical analysis has suggested that there are various stages of economic integration, and regions may progress from one stage to another.⁴⁸ This view is sometimes linked to the history of the European Union, which is the most successful and complete modern example of economic union (if one excludes federal unions, such as the American states under the United States constitution in 1787 or German states under the Zollverein). However, we know from more recent histories that circumstances are different, and the paths and ultimate forms of economic integration can differ too. All these reservations about the inevitability of successive stages of progression can apply equally to the movement towards the freer movement of people within a region. Precedents provide useful knowledge, but historical paths are not binding on future processes. Indeed, a preoccupation with historical precedent might blind one to the opportunities that could arise out of a unique set of circumstances.

Nevertheless, a better understanding of comparative regional experiences is valuable in helping to understand and process knowledge collected in respect of a unique integration process or group of processes. In this research program, we intend to consider African experiences in relation to other global experiences, but we also plan to consider the implications of comparing African regional processes of reforming migration governance with other African experiences. Based on the historical specificities of African histories and African state forms, we can hypothesise that we will learn at least as much by comparing African migration reform processes with each other as we will from comparing them against experiences in other parts of the world.

⁴⁵ In 2013, according to the Commission of Filipinos Overseas, 10.24 million Filipinos were living abroad—4.7 million as permanent migrants, 4.21 million as temporary migrants, and 1.16 million as irregular migrants. There were 203,550 Filipinos in Singapore and 793,580 in Malaysia. Most were low-skilled, but increasing numbers were nurses, health workers, or IT professionals. Richa Shivakoti, 'Multi-layered migration governance in Asia: Lessons from Nepal and the Philippines' PhD Thesis, Lee Kuan Yew School of Public Policy, National University of Singapore, 2017, p.164 and p.168.

⁴⁶ Richa Shivakoti, 'Multi-layered migration governance in Asia: Lessons from Nepal and the Philippines' PhD Thesis, Lee Kuan Yew School of Public Policy, National University of Singapore, 2017, pp.102-104.

⁴⁷ Thanks to Ivor Chipkin for broadening my response to the question as to why there is such great variety in the way that states respond to cooperative migration governance.

6. **A periodisation of migration governance in Africa**

a. **Phase: 1 Precolonial**

In the period before colonialism, despite many natural and human obstacles to the movement of people, Africans moved far and wide across the continent:

Africans circulated across the continent on the backs of camels in the deserts of the Sahara, horses or mules in coastal Africa, on foot through forests or by canoe on the rivers and seas along the shores of the continent... Trans-Saharan trade routes that connected North and West Africa, which peaked in the 14th and 16th centuries and remained intact until the 20th century stood as an example of mobility across geographic, sociocultural, religious, climatic and political boundaries.⁴⁹

Some were involuntary migrants: long before the onset of the trans-Atlantic slave trade, the trans-Saharan slave trade brought slaves from West Africa to North Africa and regions beyond.⁵⁰

The abolition of the export of slaves, which took effect in the middle part of the 19th century, was followed by the export of agricultural products and other raw materials. Gareth Austin shows how, in West Africa, the emergence of export-oriented agriculture in coastal regions drew migrants from the West African interior. These were frequently circular migrants who migrated according to the agricultural season and then returned home, often in the Sahel region.⁵¹

In East Africa, too, migration systems emerged in response to export agriculture. Various forms of indentured and enslaved labour were widely used in coastal and island plantations on the Indian Ocean. Most of the unfree labourers were from

East Africa and Madagascar, with small numbers from the Horn of Africa, West Africa, and India.⁵²

In Southern Africa, movement in the pre- and early colonial eras was complex, including voluntary migration as well as slavery in the Cape. Lyndal Keeton and Stefan Schirmer posit that migration in Southern Africa 'after 1750 can be characterised as forced displacement, both of individuals and of whole communities, by violent, centralising polities', in part due to the intensification of colonialism after 1830.⁵³ This understates the capacity of pre-colonial formations to include outsiders, which varied from group to group, but the violence and centralisation deepened in varying ways throughout the 19th and 20th centuries.

The varied histories of different parts of Africa help to explain, to some extent, more recent developments in migration policy.

b. **Phase 2: Colonial**

During the colonial era, the people of colonial territories became imperial subjects and were generally free to move within their respective empires: Belgian, British, French, Portuguese, German, or Italian. There were many who were forced into mobility. When the moral climate turned against slavery, indenture and other forms of coerced labour that were not actually slavery expanded. Responding to shifts in morality, colonial administrations found innovative forms of coercive persuasion. Well into the 20th century, colonial administrations found ways to disguise forced labour to serve imperial interests, as Opolot Okia shows in his persuasive essay on the 'shifting discourses and practices' that supported forced labour during the colonial era in British East and West Africa. Similar patterns of migration continued to evolve and remained important through most of the 20th century.⁵⁴

⁴⁹ International Organisation for Migration and African Union, *African Migration Report 2022*, Addis Ababa, 2022, p.78.

⁵⁰ Mohamed Saleh and Sarah Wahlby, 'The Trans-Saharan Slave Trade in the 19th century', Chapter 3 in De Haas, Michiel and Ewout Frankema, *Migration in Africa: Shifting Patterns of Mobility from the 19th to the 21st Century*, Routledge, London and New York, 2022, p.56.

⁵¹ Gareth Austin, 'Migration in the contexts of slaving and states in 19th century West Africa', Chapter 2 in De Haas, Michiel and Ewout Frankema, *Migration in Africa: Shifting Patterns of Mobility from the 19th to the 21st Century*, Routledge, London and New York, 2022.

⁵² Karin Pallaver, Slaves, Poerters and Plantation Workers: Shifting Patterns of Migration in 19th and early 20th Century East Africa, Chapter 4 in De Haas, Michiel and Ewout Frankema, *Migration in Africa: Shifting Patterns of Mobility from the 19th to the 21st Century*, Routledge, London and New York, 2022.

⁵³ Lyndal Keeton and Stefan Schirmer, Migration and State Formation in Pre-Colonial South Africa: Why the 19th Century was Different' Chapter 6 in De Haas, Michiel and Ewout Frankema, *Migration in Africa: Shifting Patterns of Mobility from the 19th to the 21st Century*, Routledge, London and New York, 2022.

⁵⁴ Opolot Okia, 'Forced Labour and Migration in British East and West Africa: Shifting Discourses and Colonial Practices during the Colonial Era', Chapter 8 in De Haas, Michiel and Ewout Frankema, *Migration in Africa: Shifting Patterns of Mobility from the 19th to the 21st Century*, Routledge, London and New York, 2022.

c. Phase 3: Post-Colonial Nation State Formation

There is an inherent tension between the nation state and liberalism, nowhere more evident than in the impact of nation states on the movement of people. This tension produced a particular irony in the era of African independence: while the philosophy of Pan-Africanism inspired the liberationist ideology of independence leaders in Africa, the liberation movements were generally nationalist in form, and the outcome was new African nations, formed along the contours of colonial administrative systems. These new nations defined a new form of citizenship. As Ivor Chipkin has put it:

What matters... is the way that the figure of the citizen is transformed when located in the nation. He or she is necessarily endowed with qualities of population (a racial, cultural, or linguistic trait) that mark his or her membership in this or that political community.⁵⁵

As unrealistic expectations of African independence were disappointed and other hopes for improvement were dashed by the nature and timing of decolonisation, the rights of the new citizens began to be contrasted with the rights of others. Though governments in many newly independent states battled to improve the economy and living conditions, good jobs proved relatively scarce. In the context of disappointing economic performance, the manipulation by politicians of 'the nation state' and 'citizenship' gave rise to hostility towards non-nationals and sometimes towards nationals of minority ethnicities. Borders took on greater significance, with passports and visas required and enforced, and the terms 'irregular', 'illegal', and 'undocumented' became entrenched in the policy debate and the public discourse.⁵⁶

Decolonisation in Africa, ironically, marked a negative turn in the freedom to migrate and settle across African national borders. In the colonial

era, much intra-African migration consisted of low-skilled labourers migrating, under greater or lesser degrees of coercion, to work in extractive industries, often across territorial borders, though mostly within empires. In the post-colonial era, the establishment of the nation state and national borders meant that the freedom to migrate by low-skilled workers was suddenly curtailed. Even skilled Africans were less free to move between states and could not to work in or establish homes in other African states except with explicit permission.

However, trends were not always similar in all regions. In some parts of Africa, the roots of a more liberal, integrative policy of migration had already been planted and were beginning to flourish.

d. Phase 4: Towards integration

While the 1963 Charter of the Organisation of African Unity (OAU) embodied a general spirit of Pan-Africanism, as did the title of the organisation, and while it promoted cooperation in various forms, there was no programmatic commitment to integration.⁵⁷ In 1980, the Lagos Plan of Action proposed initial steps towards the economic integration of Africa; while some regional economic communities were making progress towards integration, little actually happened at the continental level.⁵⁸ It was only in 1991, after the liberation of most of Southern Africa, that the Abuja Treaty made a firm commitment to continental integration.

The African Economic Community Treaty, commonly known as the Abuja Treaty, came into force in 1994. Article 4(2)(i) of that treaty provides for the free movement of persons, rights of residence, and rights of establishment by Africans across the borders of AU member states.⁵⁹ The Constitutive Act of the African Union (AU) in 2001 carried over the mandate from the OAU, and in 2006 in Bangui, a Migration Policy Framework for Africa was endorsed by AU members – this framework also included the right to gainful employment across African borders.⁶⁰

⁵⁵ Chipkin, I. (2007). *Do South Africans Exist?: Nationalism, Democracy and the Identity of 'the People'*. Wits University Press.

⁵⁶ International Organisation for Migration and African Union, *African Migration Report 2022*, Addis Ababa, 2022, pp.77-78.

⁵⁷ https://au.int/sites/default/files/treaties/7759-file-oau_charter_1963.pdf accessed 03-11-22.

⁵⁸ United Nations. Economic and Social Council; United Nations. Economic Commission for Africa (1991-03). *Appraisal and review of the impact of the Lagos Plan of Action on the development and expansion of intra-African trade*. UN. ECA Conference of African Ministers of Trade Meeting (11th session : 1990, Apr. 15 - 19 : Addis Ababa, Ethiopia). Addis Ababa :. © UN. ECA,. <https://hdl.handle.net/10855/14129>

⁵⁹ https://au.int/sites/default/files/treaties/37636-treaty-0016__treaty_establishing_the_african_economic_community_e.pdf accessed 03-11-22.

⁶⁰ African Union, *Migration Policy Framework* (Bangui: AU, 2006).

7. Contemporary migration reform initiatives in Africa

a. Regional

Even before the Abuja Treaty, some integration had already happened in African regional economic communities, which were established at various times after decolonisation. Notably, in 1979, the Economic Community of West African States (ECOWAS) adopted a Protocol on the Free Movement of People and the Right of Residence and Establishment. ECOWAS was only four years old in 1979, having been established through the Treaty of Lagos in 1975. Its 15 founding member countries spanned what was, until then, a rigid Anglophone-Francophone divide in West Africa. Cross-border migration, especially within the former imperial boundaries, had continued in the post-colonial period, despite new rules about citizenship and crossing borders. So, to a significant extent, ECOWAS was recognising and legalising the de facto reality. The process of integration followed a progressive path, though not all the commitments are fully realised in practice.⁶¹

East Africa followed suit more recently. Article 76 of the 1999 East African Community Treaty provides for a common market 'to provide for free movement of labour, goods, services, capital and the right of establishment'. This is elaborated in Article 104 of the treaty, which includes a commitment to 'harmonising and maintaining common employment/labour policies, programs and legislation'.⁶² On the East African Community (EAC) website, a common market is defined as 'a merger/union of two or more territories to form one common territory in which there is free movement of persons, goods, labour, services

and capital, and the rights of establishment and residence'.⁶³ In Article 7 of the East African Common Market Protocol, this statement is expanded to clearly include all citizens of member states, and exceptions to this need to be notified.⁶⁴ In practice, domestic laws inhibit the full implementation of the treaty. By 2019, four East African countries were issuing a new microchip-embedded East African e-passport, similar to information-technology-enabled EU passports.

Other African regional economic communities followed along the path of reducing barriers to cross-border mobility but remain behind the African continental leaders, the EAC and ECOWAS. One unusual example is the Intergovernmental Authority on Development (IGAD). The Horn of Africa and the adjacent East Africa have had greatly elevated levels of migration in recent decades due to disruptive security, political, economic, and environmental factors. Instability in Sudan and South Sudan, Eritrea, Ethiopia, Somalia, and the Democratic Republic of the Congo has resulted in immigrants making up around 1.9 percent of the broader region's population and emigrants comprising 2.7 percent of the population of the Horn and East Africa. Several countries in the region host many refugees and asylum-seekers.⁶⁵

IGAD was first established as the Intergovernmental Authority on Drought and Development after the drought in the Horn of Africa in the early 1980s. It currently consists of seven member states: Djibouti, Ethiopia, Kenya, Somalia, South Sudan, Sudan, and Uganda. The total population of the region was 230 million in 2018, close to half of whom live in Ethiopia. Drought sparked its establishment, but international pressure and expected developmental aid were also key factors.⁶⁶

⁶¹ V.T. Amadi, 'Facilitating Interregional Trade through the Movement of People in the Southern African Development Community' (LLD Thesis, University of the Western Cape, 2019), 76.

⁶² <https://edit.wti.org/app.php/document/show/6152dafa-e2dd-423c-abc2-94cb4669c45a> accessed 03-11-22.

⁶³ EAC East African Community Website <https://www.eac.int> accessed 04-05-23.

⁶⁴ EAC East African Common Market Treaty 2010 <https://www.eac.int/common-market> accessed 04-05-23.

⁶⁵ International Organization for Migration (IOM), 2022, *A Region on the Move 2021: East and Horn of Africa*, IOM, Nairobi, pp. 3-5.

⁶⁶ B. Byiers, *The political economy of regional integration in Africa: The Intergovernmental Authority on Development (IGAD)* (Maastricht: European Centre for Development Policy Management, Maastricht, 2016), pp. 6-7.

While the 1996 agreement establishing IGAD included the ambition for the management of migration within the region, there was little progress until 2012, when IGAD heads of state adopted the Minimum Integration Plan and a Regional Migration Policy Framework which promoted capacity development for migration management and migration policy development in the member states. This was followed by the IGAD Migration Action Plan, adopted in 2015.⁶⁷ In February 2020, on schedule, member states, represented by their interior ministers and labour ministers, convened in Khartoum and endorsed the Protocol on Free Movement of Persons in the IGAD Region. The announcement of the protocol was followed by an expert meeting to consider the draft roadmap for its implementation.⁶⁸ On July 1 2020, IGAD announced the establishment of a Technical Working Group whose function would be to harmonise the production and utilisation of migration data by member states.⁶⁹ These significant developments in migration governance in a troubled region can be attributed, at least in part, to the combined regional leadership of Ethiopia and Kenya and to extensive support from the European Union.⁷⁰

The Southern African Development Community (SADC) is another African region that has taken significant strides towards improving free movement across borders. SADC took its contemporary form as a development community after the completion of the decolonisation of Southern Africa in the early 1990s. Most citizens of Southern African countries can travel to other countries within the region without visas, despite two unsuccessful regional pacts on the movement of people which saw the region divided between middle income and poorer countries.⁷¹ In some cases, colonial legacy bilateral agreements over labour migration still exist, while a few countries

within the region have moved further down the free movement road. Citizens of Namibia and Botswana, which share a long colonial-era border, can now enter the neighbouring country with no more than a valid national identity document. Namibian President Geingob said on the announcement, in 2022, 'Our two countries share not only a common border but also a common people and heritage'.⁷²

It should be noted, though, that in all of Africa's regional communities, even the most advanced, the rights to residence, to work, and to establishment (of a business) are subject to domestic legislation which varies between members states; and that, until recently, there were no supranational institutions to legislate or enforce rules for intraregional mobility.⁷³ The East African Court of Justice appears to be becoming increasingly forceful and is testing the boundaries between national regulations and multilateral treaties.⁷⁴

b. National initiatives

In recent years, there has been a considerable improvement in the facilitation of cross-border movement by individual countries in Africa. These reforms and the positive trends are captured in the annual Africa Visa Openness Report, published jointly by the AU and the African Development Bank.

Significant progress in African unilateral migration governance reform continued in 2022, in wake of COVID-19-related restrictions on the movement of people: between 2016 and 2022, 50 countries—almost all the continent—improved or maintained their African Visa Openness Index score. Of these countries, 10 improved their score over 2021. 48 countries now offer visa-free travel to the nationals of at least one other African country.⁷⁵

⁶⁷ C. Castillejo The influence of EU migration policy on regional free movement in the IGAD and ECOWAS regions Discussion Paper, Bonn: DIE/ German Development Institute 2019, p 10.

⁶⁸ IGAD, Protocol on Free Movement of Persons Endorsed at Ministerial Meeting, February 26, 2020 <https://igad.int/divisions/health-and-social-development/2016-05-24-03-16-37/2373-Protocol-on-free-movement-of-persons-endorse-at-ministerial-meeting> with attached communique, accessed 16/07/20.

⁶⁹ IGAD, 'IGAD Launched Consultations With Member States On The Harmonization Of Production And Utilization Of Migration Data,' 2020, <https://igad.int/divisions/health-and-social-development/2016-05-24-03-16-37/2452-igad-launched-consultations-with-memberstates-on-the-harmonization-of-production-and-utilization-of-migration-data> accessed 16/07/20.

⁷⁰ Alan Hirsch (2021): The African Union's Free Movement of Persons Protocol: Why has it faltered and how can its objectives be achieved?, *South African Journal of International Affairs*, DOI: 10.1080/10220461.2021.2007788.

⁷¹ J. Oucho and J. Crush, 'Contra Free Movement: South Africa and the SADC Migration Protocols,' *Africa Today* 48, no. 3 (2001): 149.

⁷² The Exchange, 'Southern Africa: Namibia and Botswana Remove a Barrier to Freedom of Movement, Abolish the Use of Passports' September 2022, accessed through allAfrica at <https://allafrica.com/stories/202209130005.html#:~:text=Nationals%20of%20Namibia%20and%20Botswana,and%20collaborate%20on%20economic%20growth> on January 3, 2022.

⁷³ For more detail see V.T. Amadi, 'Facilitating Interregional Trade through the Movement of People in the Southern African Development Community' (LLD Thesis, University of the Western Cape, 2019) and Alan Hirsch (2021): The African Union's Free Movement of Persons Protocol: Why has it faltered and how can its objectives be achieved? *South African Journal of International Affairs*, DOI: 10.1080/10220461.2021.2007788.

⁷⁴ Tomasz Milej, 'East African Court of Justice – what it is and what its powers are' *The Conversation Africa*, November 28 2022, accessed 04/01/23 <https://theconversation.com/east-african-court-of-justice-what-it-is-and-what-its-powers-are-195220>.

⁷⁵ African Union and African Development Bank, *African Visa Openness Report* 2022, p. 12.



Two passports on map. Image: Shutterstock

27 percent of all intra-African travel routes require no visa at all for citizens of African countries. This is up from 25 percent in 2021 and 20 percent in 2016. In 2022, 24 African countries—over 40 percent—offered e-Visas to Africans and other travellers, up from nine African countries—17 percent of the continent—in 2016.⁷⁶ Some of the greater liberalisation is due to arrangements within the regional economic communities of Africa, but many initiatives are driven by national leadership, seeking to maximise the benefits brought by the freer movement of people.

The African Visa Openness Index tracks visa requirements in each country, rewarding countries for visa-free access or visa-on-arrival arrangements. Of the top 20 achievers on this index, most are concentrated in West Africa, and almost all are lower-income or lower-middle-income countries or island states. 13 of 24 lower-income countries

score in the upper half of the index. Most island states are relatively open, while only three of 16 landlocked African states were in the top 20. The two lowest-ranked countries are upper-middle-income countries, and five of seven upper-middle-income countries in Africa have a low visa openness score.⁷⁷ This shows that, despite some notable exceptions, most of the richer continental African countries remain cautious regarding liberalising their barriers to the movement of people, as do a considerable proportion of landlocked states.

This should not detract from the overall picture, which is that African leaders—unlike leaders in many other parts of the world—are frequently supportive of improving the systems that facilitate the movement of people between African states, and that the overall trend in African immigration policy has become more liberal than it was in the early years of the post-colonial era.

⁷⁶ African Union and African Development Bank, *African Visa Openness Report 2022*, ... p. 8 & p. 12.

⁷⁷ African Union and African Development Bank, *African Visa Openness Report 2022*, ... p. 15.

c. Continental initiatives

In January 2018, 24 years after the commencement of the Abuja Treaty for an 'African Economic Community', the AU agreed to support a protocol to the treaty for the 'free movement of persons'.

The implementation of the Free Movement of Persons (FMP) Protocol is divided into three phases. Phase one requires that states enforce the right of entry of citizens of other member states of the AU for up to 90 days and requires countries to abolish visa requirements for such people. Phase one includes the right for people to move across African borders to seek employment, depending on the domestic laws of the host country.⁷⁸ Phase one could be implemented in phases, according to the FMP Roadmap, but it is expected to follow immediately on the coming into force of the protocol. Phase one does place obligations on member countries to improve their migration management systems, for example improving the quality and integrity of their civil registration systems.

Phase two, which would come into force when supported by an AU decision, entails the extension of the right of residence to Africans from other African countries. This includes rights for the AU member state national's spouse and children. The protocol allows for the progressive implementation of the rights of residence and appears to allow for differential policies in relation to other member states.⁷⁹

Phase three allows the right of establishment. This includes the right of citizens of other member states to set up a business, trade or profession, or to engage in economic activity as a self-employed person. Phase three will be implemented after a review by the AU Commission of the implementation of phases one and two, subject to the decision of the AU Council.⁸⁰

Taking into account concerns expressed during the negotiations, the FMP Protocol acknowledges the risk that the 'arrival and settlement of migrants in a given host country will exacerbate inequalities or will constitute challenges to peace and security' and it notes the need to 'ensure that effective measures are put in place to prevent [such] situations'.⁸¹ However, it is possible that this assurance has not sufficiently allayed fears, as seen in the slow adoption of the protocol.

Enthusiasm for the implementation of the FMP Protocol remains low—only four countries have ratified the protocol and there has been no progress on this tally since 2019. Further research is underway in various quarters, including within this research program, to establish why support for the FMP Protocol remains so low, but some explanations are offered in section 8 below.

While initiatives towards free movement of persons at national, regional, and continental level seek to roll back the impact of national borders and citizenship on free movement, their impact is limited and does not necessarily include low-skilled, work-seeking migrants, insofar as permission to work remains the prerogative of the nation state, even under the FMP Protocol. While migrant labour is still hugely important and relatively well-integrated into domestic labour markets in Africa, the movement of low-skilled migrants is frequently managed under specific, carefully constrained bilateral agreements.⁸²

The richer developing countries, especially those with high levels of domestic inequality, fear competition for resources. Hein de Haas and colleagues put it this way: 'For modern national states with their fixed borders, controlling population and defining migration has become even more important, partly because of the increased social, economic and political rights associated with modern citizenship.'⁸³

⁷⁸ AU, Implementation Roadmap for the Draft Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment, (Addis Ababa: AU, 2018) pp.6-7.

⁷⁹ AU, Implementation Roadmap for the Draft Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment, (Addis Ababa: AU, 2018) pp.8 and 14.

⁸⁰ AU, Implementation Roadmap for the Draft Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment, (Addis Ababa: AU, 2018) p.16.

⁸¹ AU, Implementation Roadmap for the Draft Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment, (Addis Ababa: AU, 2018) p.4.

⁸² International Organisation for Migration and African Union, African Migration Report 2022, Addis Ababa, 2022, p.155.

⁸³ Hein de Haas, Stephen Castles and Mark J. Miller, *The Age of Migration: International Population movements in the Modern World*, Bloomsbury Academic, p.23.

d. Bilateral, interregional, and sub-regional migration reform

Several arrangements for the movement of people between African states do not fall simply into any of the three categories above—regional, national or continental initiatives. These ‘in-between arrangements’ are important, and they point to the limitations of approaching migration governance reform in too formalistic a manner. These arrangements do not necessarily conflict with the provisions of regional or continental treaties, but some may be contrary to the spirit of those multilateral agreements. Some in-between arrangements may offer promising paths towards reforms for freer movement.

First-up are various, quite different forms of bilateral arrangement. One significant form, especially in Southern Africa, has been the ‘bilateral labour agreement’ (BLA). The International Labour Organisation has noted that:

In Southern Africa, while labour migration goes back to the nineteenth century, BLAs were formalized in the 1960s and 1970s in order to meet the formidable labour needs of the South African and Zimbabwean (Rhodesian at the time) mining and farming sectors.⁸⁴

In 1995, SADC adopted a Draft Protocol on the Free Movement of People, but the draft was resisted by South Africa, Namibia, and Botswana (the richest and most developed countries in the region) and it was never implemented.⁸⁵ David Lawrence Gordon explained that the South African government was resistant to calls for visa liberalisation within SADC; in the 1990s, it fought against the creation of visa-free zones, which would have allowed the freer cross-border movement of people.⁸⁶ As in the apartheid period, South Africa has continued to rely

on bilateral treaties with some of its neighbours and has avoided subjugating itself to a regional treaty.⁸⁷ Bilateral agreements were signed between South Africa and five SADC countries—Mozambique (in 1964), Malawi (1967), Lesotho (1973), Botswana (1973), and Swaziland (1975)⁸⁸—and these are still in force or have been replaced with memoranda of understanding. These agreements tend to focus on exclusion from rights and benefits and on control of the movements of migrant workers, though the South African Department of Employment and Labour has indicated a preference for more accommodating agreements.⁹⁰

In 2005, SADC’s 1995 draft protocol was superseded by a Protocol on the Facilitation of the Movement of People, which was signed by 13 states but only ratified by six: Botswana, Lesotho, Mozambique, Namibia, South Africa, and Eswatini. The Facilitation Protocol addressed ‘facilitation of movement’ rather than ‘free movement’. Unlike the earlier SADC Free Movement Protocol, the Facilitation Protocol makes visa-free travel and rights to residence and establishment subject to domestic legislation, and it encourages member states to develop bilateral agreements for the free movement of persons. It promotes the prevalence of sovereignty and indicates a preference for security management through bilateral agreements and national laws.⁹¹

South Africa also has special permit arrangements for certain citizens of Lesotho and Zimbabwe, but these are essentially unilateral arrangements and can be withdrawn at the whim of the South African government.⁹² In South Africa, the gaps between the constitution, policies, laws, and implementation are very large at present and favour the exclusion of migrants, because of low growth, high levels of inequality and unemployment, and the willingness of government to blame migrants for poor economic outcomes and poor services.

⁸⁴ International Organisation for Migration (2016) *Regional Guidelines for the Development of Bilateral Labour Agreements in the Southern African Development Community*, IOM Maputo, p.1.

⁸⁵ C.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): p.56.

⁸⁶ David Lawrence Gordon, ‘Immigration Policy in South Africa: Public Opinion, Xenophobia and the Search for Progress’, in Pragna Rugunanan and Nomkhosi Xulu-Gama, eds, *Migration in Southern Africa*, Springer, Cham, 2021, p.58.

⁸⁷ C.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): p.60.

⁸⁸ International Organization for Migration (IOM), 2021. *Bilateral Labour Migration Arrangements in Two Southern African Development Community Corridors*, IOM, Geneva p.7 and Carciotto, Sergio, ‘The Restrictiveness of Migration Policies in South Africa’, *African Journal of Governance and Development*, Volume 10 Issue 1, July 2021 p. 129.

⁸⁹ International Organization for Migration (IOM), 2021. *Bilateral Labour Migration Arrangements in Two Southern African Development Community Corridors*, IOM, Geneva p.8.

⁹⁰ International Organization for Migration (IOM), 2021. *Bilateral Labour Migration Arrangements in Two Southern African Development Community Corridors*, IOM, Geneva p.12.

⁹¹ V.T. Amadi, ‘Facilitating Interregional Trade through the Movement of People in the Southern African Development Community’ (LLD Thesis, University of the Western Cape, 2019), p.142.

⁹² International Organization for Migration (IOM), 2021. *Bilateral Labour Migration Arrangements in Two Southern African Development Community Corridors*, IOM, Geneva p.14.

A second and far more progressive example of a bilateral arrangement is the recent agreement between Namibia and Botswana on visa-free travel, which allows the citizens of each country to visit the other carrying only their official identity documents—passports are not required for visits.⁹³ As noted earlier, this reflects the recognition of close communal and economic relationships which span the countries' shared borders. A similar arrangement has existed between Namibia and Angola since 1996 but is limited to residents living near to their mutual border.⁹⁴ These are examples of countries within SADC who have moved ahead of their SADC partners on a bilateral basis but who have done so in a way that is allowed by the AU Free Movement of Persons Protocol and that promotes, rather than retards, the spirit of the protocol.

Another example of such an arrangement was the agreement between Rwanda, Kenya, and Uganda to allow citizens of all three countries to visit each other's country using national identity documents, without requiring passports.⁹⁵ This arrangement is not in contradiction with the East Africa Community Treaty, and, like the Botswana–Namibia arrangement, serves to lead the region forward rather than detract from the integration project. Both agreements could be labelled 'sub-regional agreements', as they are agreements by countries within a regional economic community to take the integration process further for a subset of member countries.

Lusophone countries have a preferential migration system that began as an arrangement between Portugal and Brazil but was later extended to other former Portuguese colonies, including those in Africa.⁹⁶ Migration policy can entail a wide variety of overlapping systems.

A recent arrangement poses an interesting challenge. After a presidential bilateral meeting between South Africa and Kenya, the two countries agreed to allow for visa-free travel between them. According to a news report, the agreement has already been implemented.⁹⁸ This development is positive in that it opens

another route for visa-free travel between two African countries, but the arrangement does pose a conundrum: does this strengthen or undermine multilateral initiatives towards the free movement of persons? This is an agreement that cuts across the boundaries of regional economic communities which, as communities, are not involved in the agreement. On balance, its effect would seem to be positive, as no countries are negatively affected by the agreement.

e. Paths towards continental free movement

What this and similar arrangements raise, implicitly, is the possibility of a wide range of arrangements between and within regional economic communities regarding the movement of people across borders. Some of these arrangements barely contribute to integration—some bilateral labour migration agreements (such as similar ones in ASEAN and the Gulf states) are designed to retard integration rather than promote it. They withhold rights, forbid a transition to settled status, and exclude access to social benefits and some social services. Others are designed to reduce frictions and encourage engagement, such as the border arrangements between Namibia and some of its neighbours and the arrangement between Kenya, Rwanda and Uganda which dispenses with passport requirements. The bilateral arrangement between Kenya and South Africa to allow visa-free visiting rights (which was preceded by Kenya's unilateral visa liberalisation towards South Africa) may be outside of formal multilateral processes and might even be seen to be preferential, but on balance it might be favourable for the long-term objective of generally freer movement of Africans in Africa.

The implementation of the African Free Movement of Persons Protocol in its complete form is widely supported, and those whose commitment levels are low have not objected to the principle or the objective of free movement—their objections, where articulated, have generally been based on the notion that Africa is not ready for the full implementation of the FMP Protocol.

⁹³ The Exchange, 'Southern Africa: Namibia and Botswana Remove a Barrier to Freedom of Movement, Abolish the Use of Passports' September 2022, accessed through allAfrica at <https://allafrica.com/stories/202209130005.html#:~:text=Nationals%20of%20Namibia%20and%20Botswana,and%20collaborate%20on%20economic%20growth> on January 3, 2022.

⁹⁴ International Organization for Migration (IOM), 2021. *Bilateral Labour Migration Arrangements in Two Southern African Development Community Corridors*, IOM, Geneva p.9.

⁹⁵ Stevenson Mugisha, allAfrica 'East Africa: Three EAC Countries to Use ID's As Travel Documents' (2013) accessed at allAfrica on 04/01/23 <https://allafrica.com/stories/201308050063.html>.

⁹⁶ Maria I. Baganha, 'The Lusophone Migratory System: Patterns and Trends', July 2009, *International Migration* 47(3) pp.5 - 20 DOI: 10.1111/j.1468-2435.2009.00522.x.

⁹⁷ Al Jazeera, November 10, 2022, 'Kenya, South Africa to begin mutual visa-free system in January' accessed 04/01/23 <https://www.aljazeera.com/news/2022/11/10/kenyans-to-enter-south-africa-visa-free-from-january>.

⁹⁸ News24, January 2, 2023, 'Kenyans can now visit SA without a visa for three months' <https://www.news24.com/news24/africa/news/kenyans-can-now-visit-sa-without-a-visa-for-three-months-20230103> accessed 03/01/23.

If we think of the implementation of the AU Free Movement of Persons Protocol as the culmination of a series of efforts by countries and regions, and if we accept that the implementation of the FMP Protocol will be slower than initially desired, we need carefully to review the various incremental steps taken towards freer movement of people across the continent. This poses the question: of these incremental measures, which support the achievement of the free movement objective and which of them seem to retard it?

If regional economic communities were to reach the point where all members conformed to high standards of intraregional mobility, would the next step possibly be to establish a suitable relationship between it and another regional economic community that has reached a similar level of intraregional mobility? Is that perhaps a path towards a continental system? These are some of the questions to be explored by the research program for which this is the initial paper.



Etosha National Park, Namibia. Image: Shutterstock

8. What are the obstacles to free movement?

To develop workable strategies towards freer movement, it is necessary to analyse and attempt to understand the reasons why policymakers and national leaders may be reluctant to pursue freer movement agendas.

Before exploring the issues, it is important to note that the bark of migration policy is generally worse than its bite. Governments frequently talk tougher on migration policy than they are prepared to implement, as actual implementation of very tough policies would be damaging and contrary to the interests or views of key supporters. Another point worth noting is that toughness

on immigration policy is not the prerogative of the right wing of politics only. There is left-wing protectionism too, as we saw, for example, in some British trade unions and left-wing politicians in their implicit or explicit support for Brexit.⁹⁹

Table 3 represents, in simplified terms, the complex relationship between politics and migration policy. The result of this complexity is that there are significant gaps between four levels of policy: '1) official policy discourses; 2) actual migration policies on paper; 3) the implementation of policies on the ground; and 4) policy (migration) outcomes.'¹⁰⁰ This identification of the nature of gaps in immigration policy will help to shape the structure of our enquiry, especially at the case-study level.

		Left	Right
Restrictive immigration policies	Dimension	Economic tradition	Sociocultural tradition
	Ideology	Market protectionism	Value conservatism
	Actors	Labour unions	Cultural conservatives
Liberal immigration policies	Dimension	Sociocultural tradition	Economic tradition
	Ideology	International solidarity	Market liberalism
	Actors	Liberal and ethnic groups	Employer lobbies

There is reluctance from some states to move too deeply into African regional projects for free movement, and at a continental level there is even greater reluctance to move rapidly ahead in multilateral reform of migration law. There are various reasons for this, and we have tried to divide them into proximate obstacles—the obstacles that are articulated and discussed widely in the public sphere—and underlying obstacles. The latter could be structural but could also be a result of geography or of deficiencies of knowledge or skills. To ignore the underlying obstacles and focus on the surface issues would be misguided, but it would be equally wrong to regard the underlying obstacles as immutable. The purpose of this exercise of unpacking obstacles is both to prepare for a program of research and to consider elements of an agenda for action.

Some countries in Africa are reluctant to give up sovereignty to multilateral organisations. They prefer that multilateral arrangements rest on intergovernmental agreements. This is frequently true for the richer or more powerful countries which feel that they have more sovereign power to lose. Global examples of this are the United Kingdom's Brexit and the reluctance of the United States to join 123 countries in recognising the jurisdiction of the International Court of Justice. African examples include, for example, the reluctance of some of the richer Southern African countries to support and ratify the 1995 SADC Draft Protocol on the Free Movement of People, which entailed some giving up of sovereignty, and their preference for the 2005 Protocol on the Facilitation of the Movement of People, which relies on intergovernmental relationships and, frequently,

⁹⁹ De Haas, Castles and Miller, *The Age of Migration*, 6th edition, 2020, p. 252-254.

¹⁰⁰ De Haas, Castles and Miller, *The Age of Migration*, 6th edition, 2020, p. 252.

on bilateral treaties.¹⁰¹ The predicted pattern is revealed in Africa in the fact that most of the richer African countries have neither signed nor endorsed the AU Free Movement of Persons Protocol.

The reluctance of countries to give up sovereignty depends to a significant extent on the level of trust between them and the other members of the multilateral arrangement. There can be a lack of trust in the ability of other members of the arrangement to implement the agreement appropriately. There may also be fear of an uncontrolled influx of people; fear that safety and security will be compromised because of weak systems for the exchange of information; or fear that an influx of migrants will lead to competition between foreigners and locals for employment, other economic opportunities, housing, and social services.¹⁰²

Some of the key underlying factors that contribute to low levels of trust include the number of members or potential members in an agreement, levels of inequality, unemployment and poverty, proximity/distance, language, cultural familiarity, the nature of domestic politics, governance weaknesses (including corrupted systems and lack of common standards in data management and exchange), interdepartmental coordination and power relations, misunderstandings of rules (often exploited by security agencies in interdepartmental jockeying), corruption, and incapacity to implement new systems or standards correctly.

Trust is easier to build among a relatively small group of countries. The EAC, for example, now has only seven members; for a long time the number was five. An earlier incarnation of the EAC had only three members. The EAC has advanced further than the other African regions in several respects, and within the EAC, the trilateral agreement between Rwanda, Kenya, and Uganda on passport-free travel shows the level of trust that can grow among a small number of neighbouring countries. The Southern African Customs Union, with four members, is another example. In contrast, a 55-member continental protocol is a hugely ambitious project for coordinated integration in any field, and especially in respect of population movement. It is far larger in every way than any existing regional migration arrangement of its kind.

If countries are in proximity, trade with each other, share borders and/or languages with each other, and/or depend on the same infrastructure, the level of familiarity between them will be relatively high. If they are far apart, do not share a great deal culturally (possibly having language and religious differences), and do not depend on each other economically (for example), then the level of familiarity will be much lower. There will have been fewer opportunities for interaction and exchange, and the foundational conditions for trust will be relatively low.

Another group of underlying issues is inequality within and between countries, as well as poverty and unemployment. Where there is a high level of inequality, unemployment, or poverty within a country, the perception of migrants as a threat to disadvantaged locals can become a significant obstacle. This concern may be heightened in receiving countries if there is a considerable disparity of overall levels of prosperity between the countries concerned, or if the receiving countries offer considerable social services. Populist politicians may exploit the fear of competition and encourage even more alarmist attitudes among the people and in competing political parties.

Where safety and security issues such as crime and terrorism are significant in a country, other countries may have real concerns about opening their borders. If a country has weak administrative systems for population registration, identification documentation, or the recording of crime, and where systems for the exchange of such information between countries is deficient, there may be some foundation to concerns that open borders present security risks. However, such concerns are frequently exaggerated, and there is a risk that security concerns and security ministries may dominate decision-making and unnecessarily inhibit possibilities for freer movement. Predominance of security concerns and state security apparatuses is termed 'securitisation' and constitutes a major risk for migration reform.¹⁰³

Poor governance and poor systems for population registration, identification, passports, crime records, and intelligence can be a concern: it raises the level of uncertainty regarding the outcome of the reform of migration controls between countries.

¹⁰¹ C.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): p.60.

¹⁰² A recent global comparative study supports the view that socioeconomic inequality between countries in a region inhibits openness towards freer movement of people; see Sonja Nita, Antoin Pecoud, Philippe de Lombaerde. Paul de Guchteneire, Kate Neyts and Joshua Gartland (Eds) *Migration, free movement and regional integration*, UNESCO – UNU-CRIS, Brugge, 2017, pp.428-429.

¹⁰³ De Haas, Castles and Miller, *The Age of Migration*, 6th edition, 2020, pp.232-236.

Lack of capacity may also make it difficult for countries to implement policies that effectively support the relatively complex arrangements entailed in migration reforms. Where there are also perceptions that systems are susceptible to corruption, these uncertainties are multiplied.

The nature of domestic politics may also affect the willingness of countries to enter more open migration arrangements. Where there is keen political competition and populist xenophobic parties are very influential, it may be more difficult for governments to enter more liberal migration arrangements. But circumstances sometimes allow for unexpected policy outcomes—liberal migration reforms in South America were led by left-wing parties, while some right-wing parties were much less enthusiastic. The crisis and decline of Venezuela in 2015 and the sudden emigration of huge numbers of Venezuelans, many of whom supported conservative politics, resulted in right-wing politicians in other South American countries, such as Brazil, offering less opposition to more liberal migration arrangements than they otherwise would have.¹⁰⁴

Finally, migration reform is obstructed by lack of knowledge, misunderstanding, and coordination challenges. It is argued, for example, that the lack of support for the AU Free Movement of Persons Protocol is partly a result of a lack of understanding or of misunderstandings about the protocol, compounded by the fact that an accompanying ‘roadmap’ also issued by the AU, has excessively ambitious targets and is open to various interpretations. Under such circumstances, it is relatively easy for security issues to predominate over other policy objectives and for security departments to edge out other departments of government, at the expense of economic and humanitarian concerns.¹⁰⁵

9. How do we generate more practical strategic knowledge about migration governance reform in Africa?

The approach adopted in this research program is to study the recent history of selected African countries and regions through the lens of historical and comparative political economy in order better to understand the dynamics of migration reform. Where it is useful to do so, the analytical discussion will also draw on experiences of countries and regions other than those studied in depth. The normative frame for the analysis

is the presumption that—where implemented in a systematic, considerate, and strategic way, conscious of the potential for backlash—freer movement of Africans in Africa is a good thing (for reasons discussed earlier in this paper).

By ‘historical’, we mean that we will review the recent history of migration reform in various cases through primary and secondary sources and through selective interviews with key players, experts, and stakeholders in migration processes. ‘Political economy’ means that we try to understand processes of policy formulation and implementation in the context of a range of interested parties who believe they have something to lose or to gain through the successes or failures of policy processes. But we are aware that perceived and actual interests may not always be aligned in a coherent way, and we intend to give the world of ideas and ideology as much weight as we need to arrive at a credible and useful explanation of processes.

By ‘comparative’, we mean that we believe that we can understand historical processes by comparing experiences in different places and at different times and that we can derive knowledge from understanding the contextual reasons for particular outcomes. In this paper, we have compared Africa with the EU, ASEAN, and South America, and we have compared African regions and countries with each other. We believe that there is a lot of practical knowledge to be derived from all such comparisons, but we expect that, over the course of this research program, most of the new knowledge will be generated by intra-African comparison.

We believe that this approach—looking at contemporary migration governance reform in Africa through a historical and comparative political economy lens—has not been widely adopted and that it will make a significant contribution to knowledge on a key African developmental issue.

By foregrounding ‘practical strategic knowledge’, we signal that the work we are doing is also intended to empower progressive policymakers and policy implementers to drive forward the agenda of African integration regarding the free movement of people. In addition to academic papers, we will produce op-ed articles and policy briefs which we hope will be valuable to policymakers and implementers.

¹⁰⁴ Margheritis, Ana, (2022) ‘Migration governance evolution amidst a nested crisis: the case of South America’ *International Migrations*, DOI:10.1111/imig.13109.

¹⁰⁵ Alan Hirsch (2021): The African Union’s Free Movement of Persons Protocol: Why has it faltered and how can its objectives be achieved?, *South African Journal of International Affairs*, DOI: 10.1080/10220461.2021.2007788.

Methodological
Appendix:
Good data and
information

All good research is based on good data. This data takes several forms. Demographic data is critical for the study of migration. For this study, we will mine and process demographic data that is as up-to-date as possible and that is endorsed by the relevant internationally recognised agencies. We will attempt to process and present demographic data in such a way that it will add to the stock of knowledge and support the overall project. However, the approach of the study is largely to rely on qualitative rather than quantitative modes of analysis.

A second key source will be primary information such as reports, policies, resolutions, treaties, and laws, published by international organisations, multilateral organisations, governments, news media, and other relevant institutions. We will also draw on opinion and perception surveys to try to establish the attitudes of various populations toward migrants and migration policies, and we will interpret them with care. For further primary knowledge, we will also interview a limited number of selected individuals who are policymakers, policy implementers, and experts.

Secondary data will be derived from books, journals, dissertations, and other media produced by reputable experts.

1. Country cases

Ideally, we would like to study every country in Africa, but this is currently not a practical option. We have decided to limit our study to four countries. We selected them in the following way.

First, we wanted to include countries in the regions of Africa which are most advanced with respect to integration, including migration. All experts would agree that the most advanced regions are ECOWAS, the EAC, and SADC. As the study is based in Southern Africa, we felt that this was the region where we could review two countries.

Within the region of focus, we preferred to study one richer country that is traditionally a migration destination and one poorer country that is traditionally a source of migrants. We chose South Africa and Mozambique as they have a long history of interaction over migration and fit typically into the two categories. In the case of the EAC and ECOWAS, we were keen to consider countries that are faced with the challenges of in-migration and out-migration, but particularly the former, and that have historically managed such processes in interesting ways. It turned out that we also chose the dominant economy in each region: Kenya and Nigeria respectively.

The underlying consideration that persuaded us to select three regional giants among our four country cases was the notion that the challenge of migration governance reform is greater in regional magnets, which are often forced to address the tension between nation statehood and liberal migration reform. We also took into account that decisions made by the regional powerhouses can have significant, even determinative, consequences for the broader regional structures in which they wield influence. We decided that studying Kenya and Nigeria, alongside South Africa, would provide rich material for comparison.

2. Regional and continental cases

In selecting regional cases, we had similar motivations to those we considered in selecting countries. ECOWAS, SADC, and the EAC are, by a considerable distance, the most integrated regions in Africa, and they can offer potential pathways for progress in other parts of Africa. Another consideration was that the cumulative membership of these three regions is 36 countries, or nearly two-thirds of all African countries. All three regions have well established processes and secretariats, which will allow for in-depth research through all the types of sources mentioned above.

The fourth regional study is of the African continental union, the AU. Several major African processes, including the Agenda 2063 process, include free movement of persons at the continental level as one of their core commitments. While it has not yet been very successful at garnering commitment, there is little doubt that a continent-wide regime for the free movement of people will remain the ultimate objective of African leaders. A study of initiatives towards migration governance reform and the freer movement of people in Africa would be incomplete without a study of continent-wide initiatives and an assessment of how the continental objective of free movement might one day be achieved.

3. How do we frame our enquiry at the country level?

We attempt here to set out a framework for the country studies which is intended to guide our enquiries and interviews and, possibly, to suggest an approach for the completed reports. In all our research, the main focus will be the treatment of the citizens of other African countries in regard to migration and mobility, but the studies may include references to African national or regional migration policies towards citizens of countries in other parts of the world. The order of discussion below does not necessarily match

the order of presentation of material in the report that will come out of these investigations.

a. Patterns of migration

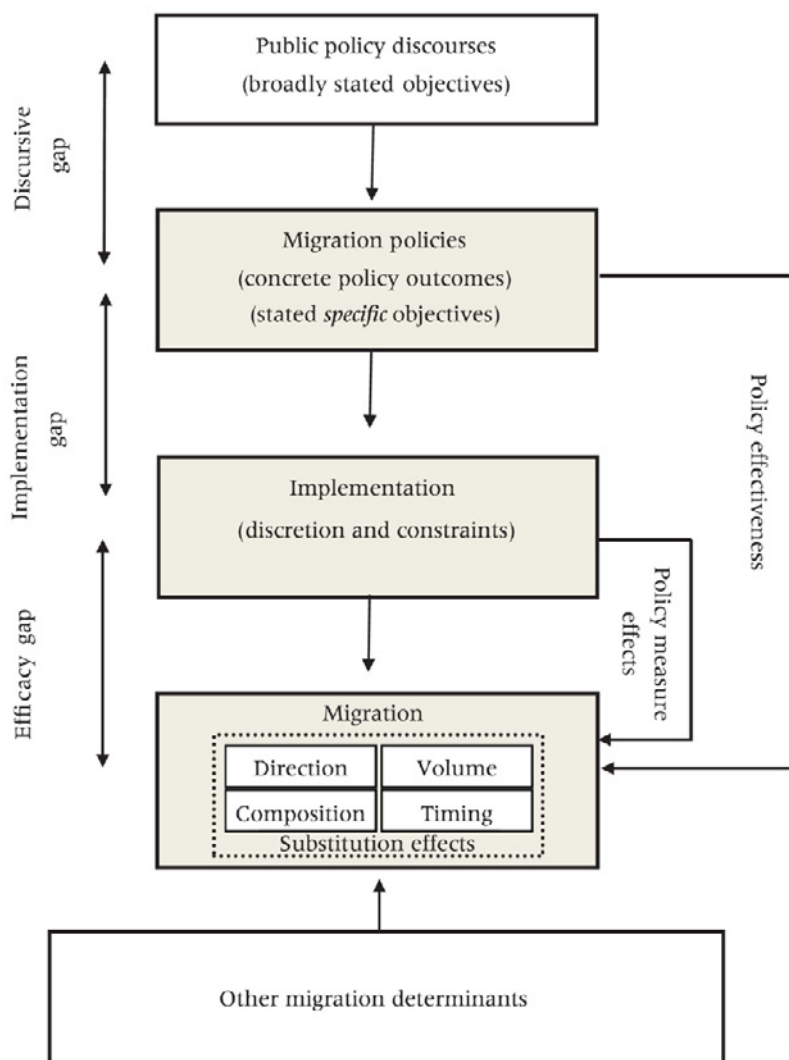
Each country study will include a presentation and brief discussion of a core set of migration trends, including stock and flows of migrants and the characterisation of migrants in terms of origin, gender, age, educational levels, economic activity, and other characteristics where possible and pertinent.

b. History of migration policy and implementation

For each country, we will explore the modern

history of migration policy and its implementation, with some historical background where pertinent. This will be a somewhat analytical history, attempting to contextualise where possible, and will be based on primary and secondary sources including interviews.

Figure 1 presents schematically some of the complexity of policy processes. In examining policy and implementation, we will be aware of the discursive gap between rhetoric and policy, the implementation gap between policies and implementation, and the efficacy gap between implemented policies and migration outcomes. Consciousness of these three gaps will inform our approach to understanding rhetoric, policies, and outcomes.



Hein de Haas et al, 'International Migration: Trends, Determinants, and Policy Effects' *Population and Development Review* 45(4): 885-922 (December 2019), Figure 6, p. 902.

c. Current status and trends

In concluding the analysis of policy implementation and outcomes, we will assess the current situation and contemporary trends.

d. Mobility, residence, business establishment, work permission, and employment policy

Understanding policies towards migrants, especially longer-term migrants, entails an understanding of a range of policies and practices only some of which would formally fall under the concept of migration policy. Rights to establish a business and to obtain employment are critical issues for migrants but are not necessarily covered in migration law or regulations. In our country studies, we will endeavour to cover all the main concerns of potential migrants, from mobility laws to rules for residence, business establishment, permission to work, and employment policies.

e. Forms of engagement

During our country studies, we would like to gain an understanding of the broad forms of engagement and interaction with other African countries and with regional and continental initiatives regarding the movement of people. We aim to describe and analyse recent historical developments and contemporary trends, including bilateral arrangements and various forms of multilateral arrangements on the continent and beyond. What forms of engagement does the country have in regional consultative processes on migration?

f. Perceptions/attitudes of citizens/residents

Where possible, we wish to analyse the attitudes of citizens and other residents of the country towards non-citizens, visitors, and migrants, in order to understand the political climate and the relationship between these attitudes, the political climate, migration, and migration policy. This would draw on existing survey and secondary materials.

g. Polity & Politics

Finally, to understand the determinants of migration policy and implementation, we need to understand both the polity—the form of political and civil administration—and the politics—how interests and ideologies in politics influence policies and processes. This is a complex arena and the depth of political analysis will be limited by the time and resources available, but a sense of key underlying domestic issues, such as economic inequality and quality of governance, will be necessary ingredients of a sufficiently complete study.

4. How do we frame the enquiry at regional level?

Eva Dick and Benjamin Schraven, following their study of IGAD, set out suggestions for framing an analytical study of regional migration governance.¹⁰⁶ Their framework is presented in Table 4 below. It is very useful and will contribute towards the development of a checklist and towards interview questions, but their questions are focused almost exclusively on the regional institution as such. As we have discussed earlier, many significant developments regarding regional migration policy and practice take place at the sub-regional level, sometimes described as 'variable geometry'. We consider these sub-regional arrangements to be important either in supporting or in hampering regional migration integration, and we will therefore consider a wider range of migration arrangements at the regional level in our enquiries and our analytical work.

¹⁰⁶ Eva Dick and Benjamin Schraven, *Regional Migration Governance in Africa and Beyond: A Framework of Analysis*, DIE Discussion Paper 9/2018, Bonn.

Table 4: Analytical framework of regional migration governance

Criteria	Key questions (sub-criteria)
Foundational factors and aims	<ul style="list-style-type: none"> • What were key motivations and topics at the formation stage of the regional organisation? • To what degree did migration and displacement form part of the regional organisation's 'raison d'être'? • If migration played a role at the beginning, to what extent was this reflected in respective policy initiatives? • If not, how, and why did that change up to present?
Institutional structures and processes, actors	<ul style="list-style-type: none"> • How formalised, legalised, and centralised are the regional organisation's decision-making structures in the field of migration? • How formalised and centralised are the operational structures and processes of the organisation's migration governance architecture? • How are the organisation's migration-related activities financed? • Who are the dominant (internal and external) actors influencing the organisation, and what are their goals and their specific impacts on the organisation's migration agenda? • How advanced is the organisation's data management?
Normative approach	<ul style="list-style-type: none"> • What are the dominant migration narratives used by the regional organisation and what is its ultimate aim? • Has the organisation established a protocol on free movement? If so, what degree of free movement does it entail? • Has the organisation pronounced norms on countering human trafficking and other kinds of human and labour rights violations? • Does the organisation propose measures to promote development aspects of migration? • Does the organisation address diverse forms of migration (internal and international, forced and voluntary), as well as their overlaps? • Are different migration approaches and narratives covered in more formal or informal formats of regional cooperation?
Transfer into policies and practices	<ul style="list-style-type: none"> • To what degree do the regional organisation's policy frameworks (and migration narratives) manifest in its implemented projects and programs? What gaps or inconsistencies can be observed and why? • To what degree are relevant policy fields (for example, labour market, trade, or education) harmonised at a regional level? • To what extent are regional policy frameworks reflected in national migration policies of the member states? • To what degree do regional norms influence subnational migration-related practices (such as in administration, development planning, police, and the private sector)? • How flexibly can the organisation respond to changing migration dynamics, such as sudden mass influxes?
Source:	Eva Dick and Benjamin Schraven, Regional Migration Governance in Africa and Beyond: A Framework of Analysis, DIE Discussion Paper 9/2018, Bonn.

We set out our main areas of enquiry as those below. Again, the order of the points below does not necessarily represent the order in which a report would be structured.

a. Regional dynamics

We will attempt to identify the main political economy characteristics of the region that could influence migration patterns and policies.

b. History of regional migration patterns

We will review the recent history of regional migration patterns with some relevant historical background as a basis for understanding regional migration dynamics, using historical and contemporary data.

c. History of regional integration including initiatives regarding movement of people

We will review the recent history and trends in initiatives concerning regional integration in general and initiatives regarding the mobility and migration of people. We need to investigate the status, trends, and significant initiatives regarding policies for the movement of people at the regional and sub-regional levels. What forms of regional consultative processes have emerged in the regions and how effective are they?

d. Mobility, work permission, residence and business establishment

This part will consider the extent to which regional agreements or arrangements affect the rights of citizens of the region to move to, work or live in, or establish a business in other countries within the same regional community, and how migrants from other parts of Africa and the world are treated for similar issues.

e. Systems of governance and management of migration regional

Are there any empowered multilateral institutions for the region which oversee migration policy and practice, or is the region dependent on intergovernmental arrangements alone? Are there regional systems for migration management and how are they governed? Are there sub-regional arrangements and how do they affect regional governance and systems in positive or negative ways?

f. Perceptions of citizens

We need to investigate whether there is material on the perceptions of citizens of the region towards migration within the region and in other parts of Africa, and then use such material appropriately to understand the politics and processes regarding migration policy within the region.

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He was born in Cape Town and educated at UCT, Wits and Columbia.

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