

**CONSOLIDATING THE AFRICAN CONTINENTAL FREE TRADE AREA**

*Portrait of a Common Market*

**Francis Mangeni and Seth Omondi Gor**

**(Editors)**



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# Acronyms

AAAM	African Association of Automotive Manufacturers
AAEC	African Alliance for Electronic Commerce
AB InBev	Anheuser-Busch InBev
ACAP	African Conformity Assessment Programme
ACI	Airports Council International
ACPMO	African Common Position on Migration and Development
ACSD	AFRIMETS Capabilities and Services Database
ACTReF	African Continental Technical Regulatory Framework
ADB	Asian Development Bank
ADF	African Development Fund
AEC	African Economic Community
AEC	ASEAN Economic Community
AERC	Africa Economic Research Council
AfBC	African Business Council
AFCAC	African Civil Aviation Commission
AfCFTA	African Continental Free Trade Area
AfCHPR	African Court on Human and People's Rights
AfDB	African Development Bank
AFRAA	African Airlines Association
AFRAC	African Accreditation Cooperation
AFRIMETS	Intra-Africa Metrology System
AFSEC	African Electrotechnical Standardization Commission
AfSEM	African Single Electricity Market

AGLI	African Great Lakes Initiative
AGOA	Africa Growth and Opportunity Act
AIDA	Accelerated Industrial Development of Africa
AIIB	Asian Infrastructure Investment Bank
AIM	ASEAN ICT Masterplan
ALLPI	Africa Leather and Leather Products Institute
AMRII	African Multidimensional Regional Integration Index
AMU	Arab Maghreb Union
AMV	Africa Mining Vision
APLAC	Asia-Pacific Laboratory Accreditation Cooperation
APM	Arnold Peter Møller
APRM	African Peer Review Mechanism
AQAC	African Quality Assurance Centres
AQP	Africa Quality Policy
ARII	African Regional Integration Index
ARSO	African Organisation for Standardisation
ASCM	Agreement on Subsidies and Countervailing Measure
ASEAN	Association of Southeast Asian Nations
ASQ	Air Service Quality
ASYCUDA	Automated System for Customs Data
AUC	African Union Commission
AUDA	African Union Development Agency
AVOI	African Visa Openness Index
AWPEC	ASEAN Work Programme on Electronic Commerce
BASA	Bilateral Air Service Agreement

BBC	British Broadcasting Corporation
BIAT	Boosting Intra-African Trade
BIPM	Bureau International des Poids et Mesures [International Bureau of Weights and Measures]
BIT	Bilateral Investment Treaty
BLA	Bilateral Labour Agreement
BMW	Bayerische Motoren Werke [Bavarian Engine Works]
CAADP Programme	Comprehensive African Agricultural Development Programme
CAB	Conformity Assessment Bodies
CAF	Corporación Andino de Fomento [Development Bank of Latin America and the Caribbean]
CAFTA	Central America Free Trade Agreement
CAGR	Compounded Annual Growth Rate
CAM	Common African Market
CAN	Comunidad Andina [Andean Community]
CAP	Common African Position
CCIA	COMESA Common Investment Area
CECPA	Comprehensive Economic Cooperation and Partnership Agreement
CEMAC	Communauté Économique et Monétaire de l'Afrique Centrale [Economic and Monetary Community of Central Africa]



CEMACMET	Economic and Monetary Community of Central Africa
Metrology Cooperation	
CEN-SAD	Community of Sahel–Saharan States
CEO	Chief Executive Officer
CET	Common External Tariff
CGE	Computable General Equilibrium
CGPM	Conférence Générale des Poids et Mesures [General Conference on Weights and Measures]
CIPM	Comité International des Poids et Mesures [International Committee for Weights and Measures]
CJEU	Court of Justice of the European Union
CMC	Calibration and Measurement Capabilities
CMP	Common Market Protocol
CMS	Common Market Scorecard
CO2	Carbon Dioxide
CO2e	Carbon Dioxide-equivalent
COMESA	Common Market for Eastern and Southern Africa
COVID-19	Coronavirus Disease 2019
CPP	Container Port Performance
CSR	Corporate Social Responsibility
CTG	Committee on Trade in Goods
CUEA	Catholic University of Eastern Africa
CUZ	Catholic University of Zimbabwe
DACBA	Drink African Coffee Build Africa
DC	District of Columbia
DDS	Digitally Deliverable Services

DFC	United States International Development Finance Corporation
DFID	Department for International Development
DIFAP	Digital Integration Framework Action Plan
DP	Dubai Ports
DPA	Data Protection Authority
DR	Dominican Republic
DRC	Democratic Republic of the Congo
DSB	Dispute Settlement Body
DSM	Digital Single Market
DSM	Dispute Settlement Mechanism
DTA	Domestic Trade Area
DTS	Digital Transformation Strategy
EA	European Accreditation
EABC	East African Business Council
EAC	East African Community
EACJ	East African Court of Justice
EAMET	East African Metrology Programme
EAPCC	East African Portland Cement Company
EC	European Commission
ECA	United Nations Economic Commission for Africa
ECCAS	Economic Community of Central African States
ECIPE	European Centre for International Political Economy
ECLAC	Economic Commission for Latin America and the Caribbean
ECOSOC	Economic and Social Council
ECOQUAL	ECOWAS Quality Policy

ECOWAS	Economic Community of West African States
ECOWIC	ECOWAS Common Investment Code
ECS	Extended Continental Shelf
ECX	Ethiopian Commodity Exchange
EEA	European Economic Area
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EGDI	E-Government Development Index
EPA	Economic Partnership Agreement
EPC	European Policy Centre
EPZ	Export Processing Zone
ETLS	Economic Trade Liberalization Scheme
ETTIM	Economic Development, Tourism, Trade, Industry, Mining
EU	European Union
EV	Electric Vehicle
FAL	Convention on Facilitation of International Maritime Traffic
FAO	Food and Agriculture Organization
FDI	Foreign Direct Investment
FMP	Free Movement of Persons
FTA	Free Trade Agreement
G2G	Government to Government
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product

GGDP	Green Gross Domestic Product
GHG	Greenhouse Gas
GI	Geographical Indication
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit [German Corporation for International Cooperation]
GMV	Gross Merchandise Value
GNP	Gross National Product
GSMA	Global System for Mobile Communications Association
GT	Gross Tonnage
GTI	Guided Trade Initiative
GTMI	GovTech Maturity Index
GVC	Global Value Chain
HA	Harmonized System
HCI	Human Capital Index
HE	His/Her Excellency
IAAC	Inter-American Accreditation Cooperation
IACO	InterAfrican Coffee Organisation
IAF	International Accreditation Forum
IATA	International Air Transport Association
IATF	Intra Africa Trade Fair
ICAI	Independent Commission for Aid Impact
ICBT	Informal Cross-Border Trade
ICC	International Chamber of Commerce
ICE	Internal Combustion Engine
ICO	International Coffee Organization

ICT	Information and Communication Technology
IDDA III	Third Industrial Development Decade for Africa
IEC	International Electrotechnical Commission
IFC	International Finance Corporation
IFGR	Initiatives for the Future of Great Rivers
IFPRI	International Food Policy Research Institute
IGAD	Intergovernmental Authority on Development
IGADD	Intergovernmental Authority on Drought and Development
IIA	International Investment Agreement
IIT	International Investment Treaty
ILAC	International Laboratory Accreditation Cooperation
ILO	International Labour Organization
IMF	International Monetary Fund
INetQI	International Network on Quality Infrastructure
IP	Industrial Park
IP	Intellectual Property
IPRs	Intellectual Property Rights
ISDS	Investor-State Dispute Settlement
ISO	International Standards Organization
ISP	Internet Service Provider
IT	Information Technology
ITC	International Trade Centre
ITU	International Telecommunication Union
IUU	Illegal, Unregulated and Unreported
IWOSS	Industries Without Smokestacks

IXP	Internet Exchange Point
JIS	Just-In-Sequence
JIT	Just-In-Time
JMA	Joint Management Area
JSI	Joint Statement Initiative
KAZA TFCA	Kavango Zambezi Transfrontier Conservation Area
KCDB	Key Comparison Database
kg	kilogram
KILM	Key Indicators of the Labour Market
KIP	Kenya Investment Policy
KPI	Key Performance Indicator
KQ	Kenya Airways
LAC	Latin America and the Caribbean
LDC	Least-Developed Country
MAGMET	Maghreb Metrology Network
Mercosur	Mercado Común del Sur [Southern Common Market]
MFN	Most-Favoured-Nation
MHT	Medium and High Technology
MLA	Multi-Lateral Arrangement
MoU	Memorandum of Understanding
MPFA	Migration Policy Framework for Africa
MRA	Mutual Recognition Agreement [or Mutual Recognition Arrangement]
MS	Member State
MSME	Micro, Small and Medium Enterprise

MT	Metric Tonne
MVA	Manufacturing Value-Added
NAB	National Accreditation Body
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NaTReF	National Technical Regulatory Framework
NCM	Non-Conforming Measure
ND	No Date
NEPAD	New Partnership for Africa's Development
NEWMET	North-East and Western Africa Metrology Programme
NMI	National Metrology Institute
NPA	National Planning Authority
NQP	National Quality Policy
NRI	Network Readiness Index
NSB	National Standards Body
NTB	Non-Tariff Barrier
NTFC	National Trade Facilitation Committee
NTM	Non-Tariff Measure
NTT	Nippon Telegraph and Telephone
NYBOT	New York Board of Trade
OAU	Organisation of African Unity
ODI	Overseas Development Institute
OECD	Organisation for Economic Co-operation and Development
OEM	Original Equipment Manufacturer
OMVS	Organisation pour la Mise en Valeur du fleuve Sénégal [Senegal River Basin Development Authority]

O-RET	Ocean-Renewable Energy Technologies
OSI	Online Service Index
PACCI	Pan-Africa Chambers of Commerce and Industry
PAIC	Pan African Investment Code
PAP	Pan-African Parliament
PAPSS	Pan-African Payment and Settlement System
PAQI	Pan-African Quality Infrastructure
PAU	Pan African University
PAVM	Partnerships for African Vaccine Manufacturing
PDC	Ports Development Company
PIDA	Programme for Infrastructure Development in Africa
PIN	Personal Identification Number
PIQAC	Programme d'Infrastructure de Qualité pour l'Afrique Centrale [Quality Infrastructure Programme for Central Africa]
PPP	Public-Private Partnership
PSRO	Product Specific Rules of Origin
PTB	Physical and Technical Barrier
PVC	Polyvinyl Chloride
Q&RI	Quality and Regulatory Infrastructure
QI	Quality Infrastructure
QIS	Quality Information System
QMV	Qualified Majority Voting
R&D	Research and Development
RDTII	Regional Digital Trade Regulatory Integration Index
REC	Regional Economic Community
RIA	Regional Integration Agreement



RKC	Revised Kyoto Convention
ROI	Return On Investment
ROO	Rules Of Origin
RORO	Roll-On/Roll-Off
RTA	Regional Trade Agreement
RVC	Regional Value Content
SAARC	South Asian Association for Regional Cooperation
SAATM	Single African Air Transport Market
SABMiller	South African Brewing-Miller
SACU	Southern African Customs Union
SADC	Southern African Development Community
SADCMET/MEL	SADC Cooperation in Legal Metrology
SC	Subcommittee
SCA	Specialty Coffee Association
SCTIFI	Sectoral Council on Trade, Industry, Finance, and Investment
SDG	Sustainable Development Goal
SDIA	Sustainable Digital Infrastructure Alliance
SEA	Single European Act
SEZ	Special Economic Zone
SG	Secretary General
SIDS	Small Island Developing States
SME	Small and Medium Enterprise
SMS	Short Message Service
SMS	Single Market Scoreboard
SOAMET	Secretariat for Metrology of the Economic Community of West African States

SOLVIT	Effective Problem Solving in the Internal Market
SPS	Sanitary and Phytosanitary
SPV	Special Purpose Vehicle
SQAAM Metrology	Standardization, Quality Assurance, Accreditation and Metrology
SQAMT	Standardization, Quality Assurance, Metrology and Testing
SRMO	Sub-Regional Metrology Organization
SSA	Sub-Saharan Africa
SSS	Short-Sea Shipping
STC/TTIM and Minerals	Specialized Technical Committee for Trade, Tourism, Industry and Minerals
STISA	Science, Technology and Innovation Strategy for Africa
STR	Simplified Trade Regime
TBT	Technical Barriers to Trade
TC	Technical Committee
TEU	Twenty-foot Equivalent Unit
TFA	Trade Facilitation Agreement
TFEU	Treaty on the Functioning of the European Union
TFWA	Trade Facilitation West Africa
TIA	Trade and Investment Agreement
TII	Telecommunications Infrastructure Index
TMA	TradeMark Africa
TMPA	Tanger Med Port Authority
TOAM	Trade Obstacle Alert Mechanism

TR	Technical Requirement
TRALAC	Trade Law Centre
TRAPCA	Trade Policy Centre in Africa
TRIM	Trade-Related Investment Measure
TSA	Tourism Satellite Account
UCDA	Uganda Coffee Development Authority
UDAO	Union Douaniere de l'Afrique Occidentale [West African Customs Union]
UEMOA	Union Economique et Monétaire Ouest Africaine [West African Economic and Monetary Union]
UMA	Union du Maghreb Arabe [Arab Maghreb Union]
UNCTAD	United Nations Conference on Trade and Development
UNDESA	United Nations Department of Economic and Social Affairs
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNIDO	United Nations Industrial Development Organization
UNU	United Nations University
US	United States
USA	United States of America
USTR	Office of the United States Trade Representative

VAT	Value-Added Tax
VICMED	Establishment of a Navigational Line between Lake Victoria and the Mediterranean Sea
VNOM	Value of Non-Originating Material
VW	Volkswagen
WB	World Bank
WCO	World Customs Organization
WDI	World Development Indicators
WEF	World Economic Forum
WFP	World Food Programme
WIPO	World Intellectual Property Organization
WSC	World Shipping Council
WTO	World Trade Organization
WTTC	World Travel and Tourism Council

## **Chapter 5**

# **THE MOVEMENT OF PEOPLE IN A COMMON AFRICAN MARKET**

**Alan Hirsch**

### **Abstract**

Common markets entail the free movement of labour, and in some cases the free movement of persons. As Africa and its regions head towards free trade agreements - and later common markets and perhaps a single one - the question of how to move forward on the movement of persons arises. This paper contextualizes Africa in global history and argues that pathways to reform differ widely in time and space. Africa and its regions cannot treat the history of migration reform as a textbook; rather, it is a compendium of ideas. Some of these ideas - derived from African experiences and from the rest of the globe - may help policymakers make their way towards an Africa without barriers for its people. African policymakers should engage each other, and experts across the continent, to achieve greater understanding of African achievements and setbacks, and to agree on viable pathways forward for the freedom of movement of Africans in Africa.

Key words: Free Movement Protocol; movement of labour; movement of persons; common market

Common markets are a way of increasing market opportunities and efficiencies for relatively small economies. Africa, with 55 countries - many of them quite small, especially in economic terms - could clearly benefit economically from a common market. A Common African Market would considerably deepen the integration of African societies with each other and facilitate social and cultural exchange. By deepening interdependence and mutual understanding, this would strengthen the countries of Africa and help stabilize the continent. Africa's people would benefit through concomitant

higher rates of investment and development. A key to success would be the freer movement of persons, especially Africans, across African borders. This chapter explores the opportunities and challenges for linking the freer movement of persons to the process of deeper economic integration in Africa.

## **A PERIODIZATION OF MIGRATION GOVERNANCE IN AFRICA**

### ***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. They moved to trade, but also to work, sometimes in coerced forms of labour.

“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 14<sup>th</sup> and 16<sup>th</sup> centuries and remained intact until the 20<sup>th</sup> century stood as an example of mobility across geographic, sociocultural, religious, climatic and political boundaries” (IOM 2020, p.78).

Some were involuntary migrants: the trans-Saharan slave trade brought slaves from West Africa to North Africa and regions beyond, from long before the onset of the trans-Atlantic slave trade (Saleh and Wahlby, in de Haas and Frankema, p.56).

The abolition of the export of slaves was followed by the export of agricultural products and other raw materials. In the case of West Africa, the emergence of export-oriented agriculture in coastal regions drew migrants from the West African interior (Austen, 2022). In East Africa, various forms of indentured and enslaved labour were widely used in coastal and island plantations in the Indian Ocean (Pallaver 2022). In Southern Africa, disruptions led to voluntary and forced migration, which was caused at least in part by encroaching colonialism (Keeton and Schirmer 2022).

## ***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, German, Italian or Portuguese), but not beyond.

There were many who were forced into mobility. When the moral climate opposed slavery, indenture and other forms of labour coercion that were not actually slavery expanded. Responding to shifts in morality, colonial administrations found innovative forms of coercive persuasion. Well into the 20<sup>th</sup> century, colonial administrations found ways to disguise forced labour to service imperial interests (Okia 2022). Similar patterns of migration continued to evolve, and remained important through most of the 20<sup>th</sup> century.

## ***Phase 3: Post-Colonial Nation State Formation***

There is a tension between the nation state and liberalism, especially in the impact of nation states on the movement of people. While the philosophy of Pan-Africanism inspired the liberationist ideology of independence leaders in Africa, the 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 aspirational expectations of African independence were disappointed, and other hopes for improvement were dashed by the nature and timing of decolonization, the rights of new citizens began to be contrasted with the rights of others. The manipulation by politicians of ‘the nation state’ and ‘citizenship’ gave rise to hostility towards non-nationals in the context of disappointing economic performance, and this sometimes expanded to include hostility to 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” (IOM 2020, pp.77-78). Even skilled Africans were less free to move between states, and could not work in or establish homes in other African states except with explicit permission.

## ***Phase 4: Towards integration***

While the 1963 Charter of the Organisation of African Unity embodied a general spirit of Pan-Africanism (especially in the title of the organization),

and promoted cooperation in various forms, there was no programmatic commitment to integration (AU/OAU 1963). It was only in 1991, after the liberation of most of Southern Africa, that the Abuja Treaty made a firm commitment to integration.

The African Economic Community Treaty, commonly known as the Abuja Treaty, officially came into force in 1994. The free movement of persons, rights of residence and rights of establishment by Africans across the borders of AU Member States are included in Article 4(2)(i) of that treaty (AU/OAU 1991). The Constitutive Act of the African Union 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 (AU 2006).

## **CONTEMPORARY MIGRATION REFORM INITIATIVES IN AFRICA**

### ***Regional***

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. Cross-border migration, especially within former imperial boundaries, had continued in the post-colonial period despite new rules about citizenship and crossing borders. The process of integration followed a progressive path, though not all commitments are fully realized in practice (Amadi 2019, p.76).

Article 76 of the 1999 East Africa 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 the commitment to “harmonising and maintaining common employment/labour policies, programmes and legislation” (EAC 1999). The Protocol for Establishment of the East African Community Common Market, which came into force in 2010, further advanced the EAC’s commitment to free movement, though rights of employment and establishment are still subject to domestic law.

Other African regional economic communities followed along the path of reducing barriers to cross-border mobility, but are still behind African continental leaders EAC and ECOWAS. One unusual example is IGAD. The



Horn of Africa and adjacent East Africa have had greatly elevated levels of migration in recent decades due to disruptive security, political, economic, and environmental factors.

In 2012, 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 its Member States. This was followed by the IGAD Migration Action Plan adopted in 2015 (Castellejo 2019, p.10), but progress on implementation remains opaque.

The SADC has improved the circumstances under which people move across borders. 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 (Oucho and Crush 2011, p.149).

In all regional communities, even the most advanced, the rights to residence, work and to establishment (of a business) are subject to domestic legislation that varies between members of regional economic communities. There are no supranational institutions in Africa that effectively enforce rules for the mobility of people (see Amadi 2019, and Hirsch 2021).

### ***National Initiatives***

In recent years, there has been considerable improvement in the facilitation of cross-border movement by individual countries in Africa. Unilateral migration governance reform continued in 2022, in the wake of COVID restrictions on the movement of people, mostly focused on visa liberalization or right of entry, rather than residence, employment or establishment rights. Between 2016 and 2022, 50 countries - almost all the continent - improved or maintained their African Visa Openness Index (AVOI) score. A total of 48 countries offered visa-free travel to the nationals of at least one other African country (AU/AfDB 2022, p.12).

In 2022, 27% of all intra-African travel routes required no visa at all for citizens of African countries. This is up from 25% in 2021 and 20% in 2016. Currently 24 African countries (over 40%) offer eVisas to Africans and other travellers, up from nine African countries (17% of the continent) in 2016 (AU/AfDB 2022, pp.8 & 12).

The top 20 countries in Africa as measured by the AVOI were largely concentrated in West Africa. Almost all of the top 20 are lower-income or lower-middle-income countries or island states. Over half (13 of 24) lower-income countries scored 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 performers in the openness index. The two lowest ranked were upper-middle-income countries, and five of seven upper-middle-income countries in Africa had a low visa openness score (AU/AfDB, 2022, p.15). Despite some exceptions, most of the richer continental African countries remain cautious regarding liberalizing their barriers to the movement of people, as do a considerable proportion of landlocked states.

### *Continental Initiatives*

In January 2018, the African Union agreed to support a protocol to the treaty for the ‘free movement of persons’ for citizens of African states. Phase one entails the implementation of the right of entry. 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 (AU 2018, pp.8 & 14). Phase three allows the right of establishment: setting up a business, trade or profession, or to engaging 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 (AU 2018, p.16).

Enthusiasm for the implementation of the Free Movement of Persons protocol remains low; only four countries have ratified the protocol, and there has been no progress on this tally since 2019.

While initiatives towards free movement of persons at the national, regional and continental level seek to soften the impact of national borders and citizenship on free movement, their impact is limited and does not necessarily include low-skilled, work-seeking migrants. Permission to work is the prerogative of the nation state, even under the African Union’s Free Movement of Persons 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, constrained bilateral agreements (IOM 2020, p.155).

## ***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, i.e. regional, national or continental initiatives. These arrangements do not necessarily conflict with the provisions of regional or continental treaties, but some may be seen to be contrary to the spirit of these multilateral agreements. Some in-between arrangements may offer promising paths towards freer movement reforms.

Firstly, there are various quite different forms of bilateral arrangement. One significant form has been the ‘bilateral labour agreement’. The ILO 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’ (IOM 2016, p.1).

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. (IOM 2021, p.14).

A second, more progressive example of a bilateral arrangement is the recent agreement between Botswana and Namibia to allow for visa-free travel of the citizens of each in the other country using only official identity documents; passports are not required for visits (allafrica.com, 2022). A similar arrangement has existed between Angola and Namibia since 1996, but is limited to residents living near to their mutual border (IOM 2021, p.9). These are examples of countries within a region moving ahead of their regional partners on a bilateral basis, but in a way that is allowed within the various protocols.

Another example of such an arrangement was the agreement between Kenya, Rwanda and Uganda to allow citizens of all three countries to visit each other’s country using national identity documents, and not requiring passports (Mugisha 2013). This arrangement does not contradict the East Africa Community Treaty, and, like the Botswana/Namibia arrangement, serves to lead the region forward rather than deflect 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.

In an example of an interregional bilateral arrangement, Kenya and South Africa recently agreed to allow for visa-free access between them (Al Jazeera 2022, News24 2023). While not advancing the agenda of the EAC or SADC, this arrangement might be seen to be progressive in the broader African context.

### ***Paths Towards Continental Free Movement***

What these and similar accords raise is the possibility of a wide range of arrangements between regional economic communities regarding the movement of people across borders. Some of these arrangements are negative for integration; some bilateral labour migration agreements (such as similar ones in ASEAN and the Gulf states) are often designed to impede integration rather than promote it. They frequently 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 where passports are not needed to cross borders. The bilateral arrangement between Kenya and South Africa to allow visa-free visiting rights (which was preceded by Kenya's unilateral visa liberalization towards South Africa) may be outside of formal multilateral processes, and might seem exceptional, but on balance it might be favourable for the long-term objective of generalized freer movement of Africans in Africa.

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

If we take the implementation of the AU FMP protocol as the culmination of a series of efforts by countries and regions, and if we accept that the implementation of the FMP protocol is likely to be slower than desired, we need to review carefully the various incremental steps taken towards freer

movement of people across the continent. This poses the question of these incremental measures: which are supportive of the intention of the FMP, and which of them seem to impede 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 make a suitable relationship between it and another REC that has reached a similar level of intraregional mobility? Is that perhaps a path towards a continental system?

Alternatively, or in parallel, as the international examples show, freeing up and facilitating the movement of skilled categories of persons is a step that can be taken by a relatively large number of cooperating countries at different levels of development at the same time.

Amanda Bisong (2022) has argued that a point of intersection between the initiative towards an African Continental Free Trade Agreement and the AU initiative towards the freer movement of persons on the continent could be in a broad commitment to facilitating the movement of skilled persons across African borders so that they can deliver the cross-border services entailed in the AfCFTA agreement.

However, this would be one sided without also considering the movement of low-skilled workers across African borders. In the case of temporary migrants of this kind, perhaps the focus should be on improving the rights and conditions for temporary migrants, conforming to a greater extent than currently with global standards (see e.g., IOM 2016).

## **Conclusion**

Globally there are many paths towards freer movement of labour and people in general. In a continent as huge, complex, and varied as Africa, there is a multiplicity of paths forward. These include unilateral decisions to lower barriers, bilateral agreements with other African states within or outside regions, sub-regional agreements (coalitions of the willing), and variations thereof.

While formal processes led and enforced by regional groupings are ideal, all movements forward should be recognized and welcomed, be they as limited as rewriting bilateral labour agreements to recognize rights of workers and

obligations of host states, or as ambitious as a continental protocol for free movement of persons. In Africa, unlike some other parts of the world, the movement is largely forward, and this should be recognized and celebrated.

While Member States have failed to show much enthusiasm for the AU FMP protocol so far, the project should continue after recalibration and restatement of the roadmap for implementation, considering issues of concern. Progress is likely to be made through encouraging intermediate steps towards freer movement rather than through the implementation of the AU FMP protocol in the manner envisaged in the roadmap that accompanied it in 2018 (see Hirsch 2021).

One possible option at a continental level could be to first move forward on freedom of movement of skilled people and service providers. This would help to enable the success of the AfCFTA and could, as it was in other parts of the world, be an early step towards broader liberalization of the movement of people at a multilateral level. Complementing that could be regional or Africa-wide initiatives to improve the rights and conditions attached in bilateral labour agreements for low skilled workers.

At the same time, regional economic communities could focus on completing the implementation of free movement mechanisms within regions, leading perhaps to arrangements between RECs.

Bringing African experts and senior officials around tables from across the entire continent to discuss issues of concern and the technicalities that seem to impede progress is a key mechanism for building understanding and mapping out pathways for progress.

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