

DO THE COMESA, EAC AND SADC MIGRATION REGIMES FALL WITHIN THE FRAMEWORK OF THE TRIPARTITE FREE TRADE AREA?

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ABSTRACT

Historically, Africa has experienced numerous voluntary and forced migratory movements. Factors driving migration include deteriorating political climates in some countries, characterised by armed conflict and insecurity, and poor economic conditions. Climate change is also expected to influence future migratory patterns in Africa. On arrival in their host states, most migrants seek economic opportunities to support themselves, and invariably end up competing with locals for scarce jobs. Migration regulation in Africa is fragmented, with different states seeking different pathways to deal with immigrants. Harmonisation of migration measures at regional level is important. One such opportunity to accomplish this lies within the Tripartite Free Trade Area (TFTA), the still to be implemented free trade agreement between SADC, the East African Community (EAC) and the Common Market for Eastern and Southern Africa (Comesa). The paper explores the regulation and potential harmonisation of migration regimes within SADC, the EAC and Comesa. It highlights migration as a crucial motivator and driver of regional cooperation and integration, and a contributor to socio-economic development in Africa. The three RECs forming the TFTA have multiple protocols aimed at regulating the movement of labour across borders, but these are not being implemented at national level. Hence at the core of this study is an analysis of the different legal frameworks and policies governing the movement of economic migrants within the TFTA. Complementing the analysis are case studies of selected countries that explain the extent of implementation of the various REC protocols adopted at country level to regulate migration, and the challenges facing national authorities in dealing with migration.

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ABBREVIATIONS AND ACRONYMS

CMP	Common Market Protocol
Comesa	Common Market for Eastern and Southern Africa
DHA	Department of Home Affairs
EAC	East African Community
GATS	General Agreement on Trade in Services
GDP	gross domestic product
IOM	International Organization for Migration
OECD	Organisation for Economic Co-operation and Development
OSBP	one-stop border post
REC	regional economic community
RMCE	Regional Multidisciplinary Centre of Excellence
SATUCC	Southern African Trade Union Coordination Council
TFTA	Tripartite Free Trade Area
TMP	talent mobility partnership
UNECA	UN Economic Commission for Africa

INTRODUCTION

Africa has experienced a long-standing and steady stream of migration across borders, caused by conflict and the search for better economic opportunities. The East African Community (EAC)¹ has had movement of people into the more stable member states of Kenya and Tanzania from Rwanda, Burundi and South Sudan. Migration patterns in the Common Market for Eastern and Southern Africa (Comesa)² have followed the same dynamic. SADC³ itself was borne out of migration among member states precipitated by the movement of refugees and combatants during the liberation struggles. Notable in the SADC migration history is the regular movement of labour from other countries in the region to South Africa following the discovery of gold deposits in the Witwatersrand and diamonds in Kimberley. South Africa has experienced inward migration from the continent owing to its strong economy. These migrants fall under the category of labour migration, defined as the temporary relocation to work in foreign markets.⁴ This intra-continental migration accounts for about 65% of movement of people in sub-Saharan Africa.⁵ The *World Migration Report 2015* found that there were 232 million international migrants, of whom 34 million were from Africa.⁶ In Africa there were 74 million internal migrants, 18 million of whom settled permanently in other African states, with 50% living in just 10 countries.⁷

Recent global debates on migration have brought to the fore the way in which the movement of people is regulated within the regional economic communities (RECs), and how member states have been implementing their protocols on the movement of economic migrants. All REC member states have made commitments under the WTO's General Agreement on Trade in Services (GATS), within which is embedded a trade and migration nexus.

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- 1 Comprising Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda.
 - 2 Comprising Burundi, Comoros, the DRC (Democratic Republic of Congo), Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.
 - 3 Comprising Angola, Botswana, the DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.
 - 4 Cronje JB, 'An assessment of labour mobility in SADC, COMESA and the EAC and prospects for the Tripartite Free Trade Area', tralac (Trade Law Centre for Southern Africa), 2013, <https://www.tralac.org/discussions/article/5339-an-assessment-of-labour-mobility-in-sadc-comesa-and-eac-and-prospects-for-the-tripartite-fta.html>, accessed 11 August 2016.
 - 5 UN, *International Migration Report 2015*, http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf, accessed 8 October 2016.
 - 6 *Ibid.*
 - 7 IOM (International Organization for Migration), 'Global Migration Trends: Fact Sheet', 2015, https://publications.iom.int/system/files/global_migration_trends_2015_factsheet.pdf accessed 20 October 2016.

Most of the protocols and instruments regulating the movement of people in the three RECs constituting the Tripartite Free Trade Area (TFTA) are not informed by the economic needs of the respective member states. The TFTA is an agreement among the EAC, SADC and COMESA which seeks to collapse these different economic communities into one single market that allows for easier movement of goods and services. This mega FTA is aimed at deepening market integration in the continent together with the movement of labour. Countries within SADC and COMESA have generally negotiated and drafted migration protocols that they do not ratify or implement in their domestic constituencies, except in the EAC. Where there has been ratification, member states use domestic statutes to limit the full effect of those protocols. This limitation is undertaken under the pretext of public policy or national security, and through the reservation of certain sectors for locals.

The paper explores the different legal regimes of the EAC, COMESA and the SADC. It analyses the level of implementation in each REC, with a case study from a member state representing each of the RECs. Finally, it offers recommendations on how the RECs could improve the implementation of their migration protocols by linking them with economic imperatives.

MIGRATION IN AFRICA

Historically, Africa has experienced important migratory movements, both voluntary and forced, which have contributed to its contemporary demographic landscape.⁸ Over the last decades, deteriorating political, socio-economic and environmental conditions, with resultant armed conflicts, insecurity, environmental degradation and poverty, have led to mass migration and forced displacement in Africa.⁹ Member states within the TFTA recognise migration as an important driver of regional cooperation and integration, as well as socio-economic development on the continent.¹⁰ The focus of this paper is on labour migration. Much of the opposition to migration – from both governments and their voting constituents – derives from perceived competition for opportunities (usually employment) between migrants and locals.

8 Mudungwe P, 'Migration and Development in the Southern Africa Development Region: The Case for a Coherent Approach', Research Brief, 2016/02, The Hague: ADPC (African Diaspora Policy Centre), 2014, p. 7.

9 AU, The Migration Policy Framework for Africa, African Union Executive Council, Ninth Ordinary session 25–29 June 2006, Banjul, Ex.CL/276 (ix), http://www.fasngo.org/assets/files/resources/EXCL276_IX_Strategic_Framework_for_Policy_Migration.pdf, accessed 29 April 2016.

10 World Bank Group, 'Migration and Remittances: Recent Developments and Outlook', Migration and Development Brief, 26, 2016, p. 30, <http://pubdocs.worldbank.org/en/661301460400427908/MigrationandDevelopmentBrief26.pdf>, accessed 22 July 2016.

On a continental level, migration regulation is addressed in the AU's [Migration Policy Framework for Africa](#).¹¹ The policy offers basic guidelines and references to assist member states and RECs in developing national and regional migration policies. It emphasises the need for regularising migration, and highlights the economic benefits of migration to both host and origin countries. Regular, transparent and comprehensive labour migration policies, legislation and structures at national and regional levels are identified as key drivers of a migration regime that can benefit host and origin states.¹² For example, origin states will benefit from remittances and skills and technology transfers of returning migrants, which promote economic development. Host states will benefit from labour migration fulfilling their labour market needs.¹³ The AU adopted the [African Common Position on Migration and Development](#) in 2006.¹⁴ This policy encourages member states to mainstream migration in development strategies and implementation, especially in the area of human resource development.

Regulation of economic migration within the RECs remains complex and convoluted. In spite of this, there is acknowledgement of the benefits of cross-border labour movements leading to better labour allocation within the larger labour markets.¹⁵ This is evidenced by the various protocols on the movement of people within the RECs, and the issue of migration being tabled during the TFTA negotiations.¹⁶ One of the main hurdles in conducting research on migration is the scarcity of hard statistical data, owing to countries' general reluctance to share such information, which they regard as sensitive. Member states of all the RECs studied appear to place undue emphasis on the intersection between security and migration. Most of these countries' borders are already porous, and people move freely across them. However, countries raise the security element to limit access to economic opportunities. This is because once migrants are regularised they have a right to fully participate in the economy. For instance, within SADC, the Organ on Security and Defence deals with migration. This securitisation of migration has hindered progress in liberalising the movement of people.

11 AU, *The Migration Policy Framework for Africa*, *op. cit.*; see also Klavert H, 'African Union Framework for Migration: Current Issues and Questions for the future' ECDPM Discussion Paper, 108, 2011, <http://ecdpm.org/wp-content/uploads/2013/11/DP-108-African-Union-Frameworks-Migration-Issues-Questions-Future-2011.pdf>, accessed 29 April 2016.

12 *Ibid.*

13 The Migration Policy Framework for Africa (*ibid.*) further recommends various strategies that governments and RECs can adopt in improving labour migration regulation in Africa.

14 AU, *African Common Position on Migration and Development*, AU Executive Council, Ninth Ordinary Session, 25–29 June 2006, Banjul, http://www.un.org/en/africa/osaa/pdf/au/cap_migrationanddev_2006.pdf, accessed 16 June 2016.

15 *Ibid.*

16 Comesa (Common Market for Eastern and Southern Africa), EAC (East African Community), SADC, *Draft Agreement Establishing the Tripartite Free Trade Agreement*, and 'Annex 12 on the Movement of Business Persons', 2010, https://www.tralac.org/wp-content/blogs.dir/12/files/2011/uploads/ripartite_FTA_Agreement_Revised_Dec_2010.pdf, (accessed on 31 October 2016)

BENEFITS OF MIGRATION

The complexity of migration stems from its perceived consequences. Those in favour of migration, usually migrants themselves or organisations dealing with migration, tend to focus on the gains. Host countries and communities emphasise the losses resulting from inward migration. However, the issue is more complex than these opposing viewpoints. The Organisation for Economic Co-operation and Development (OECD) cites three main benefits of migration, namely labour, economic and public purse benefits.¹⁷ Migration increases labour market flexibility, improves human capital development and skills, and contributes to the fiscus through tax revenue. On a broader level, migration improves trade and investment networks and technological diffusion, as migrants move across countries and establish a vast network of contacts. These benefits mostly accrue when migration is well regulated and informed by economic imperatives;¹⁸ and when this movement of skills and human capital is located within a trade and investment framework.¹⁹

According to the UN Economic Commission for Africa, the African diaspora contributes \$66 billion yearly to the continent

Most of the benefits outlined here relate to the host country. With regards to the origin country, benefits accrue through remittances and migrants returning home with more skills and networks. According to the UN Economic Commission for Africa (UNECA), the African diaspora²⁰ contributes \$66 billion yearly to the continent.²¹ These remittances are used to support a total of 120 million families across the continent.²² However, remittances cannot be substitutes for good governance, economic growth, and effective domestic resource mobilisation. Countries such as Zimbabwe have emphasised the development of policies seeking to capture more remittances in order to boost the economy, at the expense of instituting much-needed domestic governance and economic reforms.

CHALLENGES OF MIGRATION

Migration does have its own challenges. This is particularly so for the host state, although the origin state can incur costs depending on the level of integration of the migrants in the domestic economy. Understanding the negative effects of migration is important, as they influence how REC member states formulate their positions within the TFTA. For instance, South Africa has released a [White Paper on International Migration](#), which will

17 OECD (Organisation for Economic Co-operation and Development), 'Is Migration Good for the Economy?', Migration Policy Debates, 2014, p. 8, <https://www.oecd.org/migration/OECD%20Migration%20Policy%20Debates%20Numero%202.pdf>.

18 Personal interview, TRAPCA official, Arusha, 16 May 2016.

19 *Ibid.*

20 This includes the diaspora based outside the African continent.

21 UNECA (UN Economic Commission for Africa), 'Lowering remittance transfer costs: The role [of] government and central banks', April 2016, <http://www.uneca.org/cfm2016/pages/lowering-remittance-transfer-costs-role-government-and-central-banks>, accessed 23 August 2016.

22 UNECA, 'Diaspora remittances and other financial flows in Africa', July 2013, https://www.uneca.org/sites/default/files/uploaded-documents/AEC/2013/aec_sent_29_july_2013.pdf, accessed 30 May 2016.

be used to inform the country's policy on migration in the coming years.²³ At the crux of this white paper is an effort to link migration with the economic needs of the country. It is hoped that other TFTA member states will with time amend their domestic regimes, in the same way South Africa is doing, with a view to linking economic needs with migration.

Internal migration, as with immigration, can result in wage depression due to a glut in labour supply, or migrant workers being willing to work for low pay. This can encourage employers to neglect investing in local labour to improve their productivity, especially in a country such as South Africa, where there is a need for employers to train and employ local persons. Migration leads to population increase, putting a strain on public services. This is often the case when low-skilled migrants, who are vulnerable to job insecurity, are granted permanent residence permits. In the event of unemployment they are likely to fall back on social services in order to survive.²⁴ On a social level, migration can result in tension between migrants and the local community owing to difficulties in integration, which has been the case in South Africa. These difficulties are further exacerbated by cultural differences between locals and migrants, and locals' social perceptions of migrants.²⁵ This results in xenophobia in host communities, and a lack of trust between the two groups.²⁶

Understanding the negative effects of migration is important, as they influence how REC member states formulate their positions within the TFTA

MIGRATION POLICY WITHIN THE TFTA FRAMEWORK

The regulation of migration serves a two-fold purpose. Host countries wish to maximise the benefits of migration; and the risks of crime, xenophobia and terrorism can be mitigated. Member states have to realise the free movement of people through the removal of barriers to migration, such as stringent requirements on work and residence permits; mutual recognition of qualifications; and allowing right of establishment. Migration protocols among the TFTA RECs provide for all the basic requirements necessary for movement of persons in an integrated REC.²⁷ However, unlike the EAC, which has

23 South Africa, DHA (Department of Home Affairs), White Paper on International Migration for South Africa. Pretoria: Government Printer, 2017, <http://www.dha.gov.za/WhitePaperonInternationalMigration-20170602.pdf>.

24 Personal interview, DHA official, Pretoria, 22 September 2016.

25 *Ibid.*

26 Patel K, 'What caused the xenophobic attacks in South Africa?', *Al Jazeera Online*, 7 April 2016, <http://www.aljazeera.com/news/2016/04/report-blames-media-xenophobic-panic-africa-160406102827284.html>, accessed 14 May 2016. See also SAHO (South African History Online), 'Xenophobic violence in democratic South Africa', <http://www.sahistory.org.za/article/xenophobic-violence-democratic-south-africa>, accessed 14 May 2016.

27 For example, SADC has put in place the Draft Regional Labour Migration Policy Framework (SADC, 2014, http://www.ilo.org/wcmsp5/groups/public/---africa/---ro-addis_ababa/---ilo-pretoria/documents/meetingdocument/wcms_239816.pdf, (accessed 31 October 2016), which promotes the sound management of intraregional labour migration, (as well as a Protocol on Education and Training and Protocol on Employment and Labour aimed at guiding employment, labour and social security policies and which promotes policies that facilitate regional labour mobility. These instruments are yet to be ratified.

progressively ratified and implemented its protocol, SADC and Comesa member states have yet to do so.

Once finalised, the TFTA will be the largest free trade area on the continent, stretching from Cape Town to Cairo. The grouping will cover 26 African states, with a combined population of 632 million people and an area of 17.3 million km².²⁸ TFTA gross domestic product (GDP) is estimated at \$1.2 trillion, which translates to 60% of the continent's GDP. The TFTA is anchored on principles of market integration, infrastructure development and industrial development.²⁹

For the TFTA to fully realise its intended objectives of market integration and development, it will have to allow for easier movement of people. Markets are driven by human capital as providers and consumers of goods and services. Considering that the TFTA will be an amalgamation of already existing RECs, the expectation is that this should lead to deeper integration. However, an analysis of individual RECs and selected member states' implementation of regional protocols demonstrates the challenge in realising the free movement of people within the individual RECs. Nonetheless, if an economic approach such as the one member states adopt within the GATS³⁰ framework is embraced, regional migration policies would be streamlined with individual member states' economic needs in a way that would enhance implementation.

The TFTA is being negotiated in such a way that member states that already share common positions will move into deeper integration. There is an unwritten 'no roll-back' principle governing the current TFTA negotiations. As a result, the level of integration in terms of the movement of economic migrants will inform the depth of integration in this regard in the TFTA.

Insofar as migration is concerned, the TFTA's Annex 12 provides for the movement of business persons.³¹ Negotiations on the operational substance of the annex are still ongoing.

28 Andriamananjara S, 'Understanding the Importance of the Tripartite Free Trade Area', Brookings Institute, June 2015, <https://www.brookings.edu/blog/africa-in-focus/2015/06/17/understanding-the-importance-of-the-tripartite-free-trade-area/>, accessed 13 July 2016.

29 UNECA, 'Experts craft Continental Free Trade Area draft template', Communications Section, Addis Ababa, July 2016, <http://www.uneca.org/stories/experts-craft-continental-free-trade-area-draft-template>, accessed 1 September 2016.

30 The General Agreement on Trade in Services is one of the covered agreements within the WTO framework. It is the only agreement within the multilateral framework that makes provision for the movement of natural persons. Article 1.2(d) thereof provides for cross-border movement of persons.

31 See Rubia K, 'The inter regional mobility aspects of the proposed Tripartite Free Trade Area', in *Monitoring Regional Integration in Southern Africa Yearbook 2010*. Stellenbosch: tralac, 2011, p. 54.

MIGRATION IN THE EAC: A CASE OF DEEPER INTEGRATION

The EAC was established in 1967 by Tanzania, Kenya and Uganda. It disintegrated in 1977 owing to Tanzania's protestations against the excesses of Idi Amin of Uganda. The EAC was resuscitated in 1999 by the founding member states, with Rwanda and Burundi joining in 2007 and South Sudan in 2015. Governing the EAC is the constitutive [Protocol on the Establishment of the East African Community Common Market](#), which was signed by the East African heads of state on 20 November 2009. This constitutive instrument came into force on 1 July 2010. Of relevance here is Article 104 of the treaty, which allows free movement of goods, services, capital and labour among EAC member states.³² Migration was apparently a sticking point in the negotiation of the EAC common market.³³

Migration issues in East Africa today are complex and challenging. This is because the EAC is home to large, mobile populations of refugees, internally displaced persons, labour migrants and migrants in an irregular situation. The more economically advanced countries such as Kenya and Tanzania prefer a protectionist approach to migration, as compared with other less economically progressive countries such as Uganda. This has been worsened by the fear of migrants flooding into their economies and taking advantage of local employment and business opportunities. This impasse has been resolved through member states' willingness to compromise and to liberalise the movement of people in pursuit of regional integration efforts. The Common Market Protocol (CMP) adopts a GATS style in categorising movement of persons across the community by classifying them into natural persons, workers and the self-employed. The economic rationale behind this is to offer services either as a natural person or through commercial presence. Movement of people in this regard is therefore not for cultural or social reasons. This distinction is important, as an economic logic to the regulation of movement of persons helps to attract and retain migrants who add economic value to a member state.³⁴ Table 1 shows the migration flows and trends within the EAC for 2015.

The CMP also has an Annex on the Free Movement of Persons and Labour,³⁵ which sets out rights relating to, inter alia, visa-free entry, freedom of movement and stay, and full protection for citizens of EAC partner states in a partner territory.

32 Kanyangoga JB, 'Integrating Migration with Development in EAC: Policy Challenges and Recommendations', CUTS GRC (Geneva Resource Centre) Research Paper. Geneva: CUTS GRC, 2010, p. 4.

33 *Ibid.*

34 South Africa is moving towards a migration policy framework that seeks to attract the best skills. This point was emphasised by Minister of Finance Malusi Gigaba, when discussing the Green Paper on International Migration at a seminar at Wits (University of the Witwatersrand); see Wits, 'Green paper on international migration dialogue', Events, 9 September 2016, <https://www.wits.ac.za/display/events/?view=fulltext&month=9&day=05&year=2016&id=d.en.879429×tamp=1473404400&>, 20 October 2016.

35 EAC, Annex II on the Free Movement of Persons and Labour, November 2009, <https://www.lrct.go.tz/download/east-african-community/Annex%20on%20the%20Free%20Movement%20of%20Workers.pdf>, accessed 5 November 2016.

Country	Total inward migrants	Total outward migrants	Top three African origin countries for inward migrants		
Burundi	290 000	280 000	DRC (170 000)	Rwanda (60 000)	Tanzania (30 000)
Kenya	1 008 000	460 000	Somalia (490 000)	Uganda (330 000)	S Sudan (90 000)
Rwanda	440 000	320 000	DRC (230 000)	Uganda (90 000)	Burundi (60 000)
South Sudan	820 000	630 000	Sudan (550 000)	Uganda (140 000)	DRC (80 000)
Tanzania	260 000	290 000	Burundi (90 000)	DRC (60 000)	Kenya (30 000)
Uganda	750 000	740 000	DRC (300 000)	Sudan (160 000)	Rwanda (80 000)

Source: UN DESA (Department of Economic and Social Affairs), 'Trends in International Migrant Stock: Migrants by destination and origin', UN database, 2015, POP/DB/MIG/Stock/Rev.2015

The freedom of movement of workers, for example, is set out and elaborated upon in Annex II of the CMP. It specifies 15 regulations focused on processes regulating entry, stay and exit; procedure of acquiring as well as denying and cancellation of work permits; expulsion of a worker deportation where necessary; and equal treatment in employment.³⁶ The region also now enjoys harmonised procedures for issuing entry and work permits and this is done on a single immigration entry or departure card. EAC member states have initiated various one-stop border posts (OSBPs) to facilitate and reduce delays at their border-crossing points.³⁷ The CMP further provides for the mutual recognition of academics and professionals.³⁸ However, EAC member states have not yet harmonised the

36 Martin W, 'The East African Community Common Market Protocol and Labour Mobility in Uganda', Draft paper for a Friedrich Ebert Stiftung Sub-Regional Workshop on the East African Common Market Protocol and the Movement of Labour: Achievements and Challenges, 2012, http://www.fes-uganda.org/media/documents/East_African_Common_Market_Protocol_and_Free_Movement_of_Labour_in_Uganda__Martin_Wandera.pdf.

37 Nshimbi CC & L Fioramonti, *A Region without Borders? Policy Framework for Regional Labour Migration towards South Africa*, MiWORC (Migrating for Work Research Consortium) Report, 1. Johannesburg: African Centre for Migration and Society, Wits, 2013, p. 23.

38 EAC, Protocol on the Establishment of the EAC Common Market, 2010, http://www.eac.int/sites/default/files/docs/protocol_eac_common-market.pdf.

portability of social security and retirement benefits, as well as work permits, application forms, procedures and fees.³⁹

The East African passport was officially launched on 1 April 1999. Member states allow entry to EAC citizens who possess any one of the following travel documents: temporary permits and/or temporary movement permits, conventional travel documents, emergency travel documents, national passports, and EAC passports. Nationals of EAC member states are allowed multiple entries over a six-month period if they possess the EAC passport. Member states have committed to ensuring that citizens of the EAC enjoy the right of establishment and residence in the region, and have made provisions for the harmonisation of labour policies and legislation with respect to employment.⁴⁰ Additionally, member states have agreed to exchange information on employment availability, set up a centre for productivity and employment promotion for the region, and avail their training facilities to citizens of other participating member states.

Complementing regional agreements facilitating the movement of persons are bilateral agreements between states aimed at addressing situations that may be unique to the two member states. An example of such an agreement is the one between Kenya and Uganda, which allows for cross-border movement of persons from the two sister countries with the use of identity documents. This bilateral agreement has been easy to operationalise because, historically, there have been no major economic disparities between them. It is only recently that Kenya has experienced significant economic growth, which has led to a growing disparity between the two neighbours.

Regardless of the differences among EAC members, the promotion of labour migration enjoys a great deal of support among the member states for two main reasons. Firstly, migration of a skilled workforce within the region is perceived to ensure that East Africa develops economically through the remittances that the workers will send back home. Secondly, there is an understanding that a collective labour migration strategy will boost partner states' efforts to create employment, and thus contribute significantly to poverty reduction in the region.

The foregoing exposition of the EAC reflects a region that is progressively integrated when it comes to the movement of persons. This is indeed the case especially when one compares it with SADC and Comesa. However, when one analyses individual member states, there are nuances that indicate a subtle limitation to regional efforts towards free movement of labour in the region. Within the EAC grouping, Tanzania is one of those member states that exhibit a regulatory approach that seeks to limit the efficacy of some of the regional principles on migration. In particular, Tanzania's limitations seek to link the regional policies with its own peculiar economic development objectives and realities.

Member states have committed to ensuring that citizens of the EAC enjoy the right of establishment and residence in the region, and have made provisions for the harmonisation of labour policies and legislation with respect to employment

39 Personal interview, IOM official, Dar es Salaam, 17 May 2016.

40 Personal interview, EAC Secretariat official responsible for Labour and Migration, Arusha, 16 May 2016.

LEGITIMATE SAFEGUARDS: TANZANIA'S MEASURES LIMITING CROSS-BORDER MIGRATION WITHIN THE EAC

Tanzania's migration regulatory policy dates back to 1964 at the unification of the then Tanganyika and Zanzibar. In spite of the union, immigration and citizenship laws were not harmonised until 1995, with the coming into force of the [Immigration Act](#)⁴¹ and the [Tanzania Citizenship Act](#)⁴² and their subsequent regulations. Tanzania accommodates a large group of refugees coming from its less stable neighbour, Burundi. This is mainly because of the availability of economic opportunities that guarantee their livelihoods and political stability, which refugees hope will protect their rights.

As part of the liberalisation of movement of persons within the EAC framework, Tanzania has phased out work permit requirements for citizens of EAC member states. However, the country's WTO GATS commitments reveal an inclination towards labour market protectionism.⁴³ Tanzania has placed limitations on its services industry by reserving certain sectors for locals. Another way of limiting opportunities for foreigners in Tanzania, including those from EAC member states, is by having professional bodies dictate that certain professions belong only to locals. This is also done by subjecting those with foreign qualifications to stringent conversion requirements, for example, by mandating that a foreign-trained doctor should engage in a year's training before practising in Tanzania or stipulating that only persons with a law degree obtained in Tanzania can practise in the country. In addition to this, the professional bodies require Tanzanian citizenship as a prerequisite to membership.

Another area that limits the rights of EAC citizens operating in Tanzania relates to the right of establishment. Tanzania does not allow foreigners to own land within its territory, with Tanzanians themselves limited to 99-year leases. This has the effect of prohibiting an EAC citizen from owning land in the country. For instance, a Kenyan or Rwandan who might have wanted to purchase a farm and establish an agro-processing business has no right to do so in Tanzania.

Tanzania's limitations on labour mobility in order to reserve opportunities for its own citizens are reflective of the tension between regional migration policy and domestic migration policy. Running parallel to this tension is the issue of standards in human capital movement harmonisation. This is particularly the case in the EAC where one of the member states, Burundi, is French speaking whereas the other members use English as the official language. Although all EAC countries may enter into protocols guaranteeing citizens of these countries the right of movement in search of economic opportunities,

Tanzania's limitations on labour mobility in order to reserve opportunities for its own citizens are reflective of the tension between regional migration policy and domestic migration policy

41 Tanzania, Immigration Act No. 7 of 1995. Dar es Salaam: Government Printer, 1995, <http://tanzania.eregulations.org/media/Immigration%20Acts%201995.pdf>, accessed 31 October 2016.

42 Tanzania, Citizenship Act No. 6 of 1995. Dar es Salaam: Government Printer, 1995, https://tanzania.go.tz/egov_uploads/documents/Citizenship%20Act%201995.pdf, accessed 3 November 2016.

43 Personal interview, TRAPCA official, *op. cit.*

different standards in education and training can be a limiting factor in realising the right to free movement and establishment. It is important to highlight that the EAC is currently working on harmonising its education system in order to ease the movement of teachers within the region.⁴⁴ In conclusion, the EAC has made great strides in liberalising the movement of persons as compared with other RECs. What remains to be seen is how the EAC will facilitate the removal of barriers to migration specific to non-EAC citizens.

LABOUR MIGRATION IN COMESA: A CASE OF RELUCTANT INTEGRATION

Comesa is the largest regional grouping in Africa, with 19 member states. Theoretically, this regional block has made progress towards the movement of persons in the region by adopting the [Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence](#) at the Sixth Summit of the Comesa Authority in 2001. The protocol seeks to remove all restrictions on the free movement of goods, services, labour and the right of establishment within a stipulated implementation period. It is to be implemented gradually in a five-stage process. This is in addition to the rights of residence and establishment granted to citizens of respective member states.⁴⁵ Article 143 of the [Comesa Treaty](#)⁴⁶ mandates that Comesa work in several labour-related areas, which include harmonisation of labour laws, vocational training and employment conditions. However, 16 years on and despite providing for labour mobility in the text of its treaty, Comesa has not made much progress in terms of actual implementation of the protocol. Only Burundi, Kenya, Rwanda and Zimbabwe have signed the protocol. In 2016 there was some progress when Zambia and Zimbabwe established National Monitoring Committees to implement the protocol.⁴⁷ Progress is further hampered by the non-ratification of the protocol by member states, with member states using their domestic systems to regulate migration.⁴⁸

Furthermore, Comesa's migration regime is regulated by the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirement of 1984.⁴⁹ This protocol

44 Karuhanga J, 'EAC seeks "common borders" for education', *The New Times*, 6 October 2015, <http://www.newtimes.co.rw/section/article/2015-10-06/193224>, accessed 5 November 2016.

45 Comesa, Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence, Adopted by the Sixth Summit of the Comesa Authority held in Cairo, 2001, <http://zimbabwetradeforum.org.zw/wp-content/uploads/2012/07/COMESA-Protocol-on-Free-Movement-of-Persons.pdf>, accessed 23 October 2016.

46 See 'The Treaty Establishing the Common Market for Eastern and Southern Africa', December 1994, <http://www.comesa.int/wp-content/uploads/2016/06/COMESA-Treaty.pdf>, accessed 20 October 2016.

47 See Comesa, 'Zambia, Zimbabwe takes lead in moving the COMESA Free Movement Agenda forward', Lusaka, 2016, <http://www.comesa.int/zambia-zimbabwe-takes-lead-in-moving-the-comesa-free-movement-agenda-forward/>, accessed 1 November 2016.

48 Nshimbi CC & L Fioramonti, *op. cit.*, p. 35; Telephonic interview, official, Comesa Secretariat, EAC Secretariat, Arusha, 21 June 2016.

49 See Comesa, Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirement, Lusaka, 1984, <https://www3.nd.edu/~ggoertz/rei/reidevon.dtBase2/Files.noindex/pdf//comesa-policy-for-immigration-.pdf>, accessed 2 November 2016.

Comesa member states demonstrate uneven compliance with the organisation's protocol, despite free movement of persons being integral to Comesa's common market objectives of a region envisaging the right of residence in the long run

has a 90-day visa-free travel provision with the possibility of extension, depending on national rules of individual member states. In addition, the protocol aims to achieve the gradual relaxation of controls at borders for citizens of Comesa member states. However, full implementation and realisation of this protocol is dependent on significant levels of harmonising of national laws through the adoption of a Comesa model law on immigration.⁵⁰ Comesa member states demonstrate uneven compliance with the organisation's protocol, despite free movement of persons being integral to Comesa's common market objectives of a region envisaging the right of residence in the long run.

Regardless of the challenges Comesa is facing, the establishment of an OSBP has, to some extent, assisted in the facilitation of migration in the region.⁵¹ The OSBP has helped in reducing the time spent at the border by travellers, thereby facilitating their easy movement. Moreover, there are other migration initiatives that are being undertaken in the region such as the Intra-Africa Talent Mobility Partnership (TMP) programme, funded by the World Bank through the Regional Multidisciplinary Center of Excellence (RMCE).⁵² The TMP aims at increasing access of firms to the right quality professionals at the right time and right place.⁵³ This talent mobility initiative further aims to help elevate firm level productivity and thereby increase competitiveness of enterprises, which can boost economic growth and create jobs for inclusive development. Additionally, the TMP programme is helping countries implement Schengen-type mechanisms and common policies on mobility of professionals, business persons and investors, consistent with and grounded in already agreed common market frameworks of the respective RECs.⁵⁴ In Comesa this programme is being implemented in Kenya, Malawi, Mauritius, Mozambique, Rwanda, Seychelles, Uganda and Zambia.⁵⁵ Overall, the programme encourages and assists countries to link movement of persons with their economic needs in their implementation of the protocols.

During interviews for research on this paper, the issue of security was highlighted as one of the main drawbacks for the ratification of the migration protocols within SADC and Comesa relating to labour migration.⁵⁶ Member states seem to hold the view that easing labour mobility posed a security threat to them. On probing whether member states use this excuse to be protectionist in their labour markets, the Comesa Secretariat opined that the fear seemed to be real and not feigned. A setback to migration liberalisation efforts within Comesa is the delegation of migration negotiations to law enforcement and immigration officers. These officers tend to lean towards a security approach to

50 Comesa, *A Common Private Sector Position on the Gradual Elimination of Visa Requirements in the Comesa Region*, Comesa Business Council, Final Report. Lusaka: Comesa, 2012, p. 10.

51 Personal interview, official, Comesa Secretariat, Lusaka, 11 July 2016.

52 Pamacheche F, 'SAIIA-KAS migration conference: Mapping migration in Comesa', 8 September 2016, <http://www.saiia.org.za/speeches-presentations-other-events-materials/1097-2016-09-08-kas-migration-presentation-fudzai-pamacheche/file>, accessed 20 October 2016.

53 *Ibid.*

54 *Ibid.*

55 *Ibid.*

56 Personal interview, IOM official, Lusaka, 12 July 2016.

regulating and containing migration. The situation would have been different if the negotiation of labour migration policy were led by trade in services practitioners, as they would have been able to link economic migration with trade. Within Comesa there seems to be little appetite for labour migration, with countries cherry picking those categories of liberalisation that have economic benefits for themselves. One interviewee at the secretariat cited an example in which member states agreed to issue visas at the border.⁵⁷ The official indicated that only four countries were issuing port-of-entry visas because they could discern a link between such issuance and their tourism sectors. There is an apparent disconnect between what the secretariat identifies as challenges and member states' own view of the situation.

A model of labour migration liberalisation in Comesa: The case of Rwanda

When discussing Rwanda's migration regime, it is important to bear in mind that the country is a member of both Comesa and the EAC. The EAC's legal regime has had a positive effect on Rwanda when compared with that of Comesa,⁵⁸ although this is difficult to measure. Nonetheless, Rwanda is a great example of a country that realised the need at an early stage to liberalise the movement of natural persons; and much of its efforts to do so appear to be home grown. Regional efforts at the EAC and, to a lesser degree, Comesa, seem to play a complementary role.

Migration issues in Rwanda are handled by the Directorate of Migration and Immigration. The key domestic laws are the Immigration Law, Organic Law relating to Rwandan Nationality and the Presidential Order on acquiring Rwandan Nationality.⁵⁹ In support of its development goals, Rwanda has crafted a migration policy document that seeks to promote the Rwanda Economic Development and Poverty Reduction efforts.⁶⁰ It further aims to, inter alia, facilitate and encourage tourists to come to Rwanda, allow the entry of foreign skilled workers, allow and facilitate the entry of investors with substantial funds for investment purposes, and enable the Rwandan diaspora to contribute towards nation-building.⁶¹ Rwanda believes that skilled migrants will benefit its economic development by bringing in a highly skilled workforce; thereby contributing to government revenue through taxation, and facilitating skills and knowledge transfer to the local population.

In order to position Rwanda as a major tourist destination, and as a regional skills and investment hub, the government has simplified the procedures to obtain required documents within a reasonable timeframe, while making most of the services available online. Citizens of EAC and Comesa partner states are eligible to obtain visas on arrival free of charge. The work permit fee for EAC citizens has also been waived. As a result,

57 Personal interview, official Comesa Secretariat, Lusaka, 13 July 2016.

58 Personal interview, official, EAC Secretariat, Arusha, 16 May 2016.

59 Kanyangoga JB, *op. cit.* For a Repository of Rwanda Immigration Laws see Rwanda, Directorate of Immigration and Emigration, <https://www.migration.gov.rw/publications/laws/>, accessed 1 November 2016.

60 *Ibid.*

61 *Ibid.*

Rwanda's approach to migration achieves sound economic benefits, and should be emulated by other countries

an increasing number of skilled experts target Rwanda's emerging economy. According to the Third Integrated Household Living Conditions Survey ECIV,⁶² international migrants currently represent about 1% of Rwanda's population, most of who come from the neighbouring Democratic Republic of Congo (43%), Tanzania (31%), Burundi (14%), Uganda (11%) and other African countries (1%).⁶³

Rwanda's approach to migration achieves sound economic benefits, and should be emulated by other countries. Its economy has seen an increase in productivity and competitiveness owing to a skilled work force coming from the region. Migrants have been able to share and exchange their best practices and experiences with local citizens. The availability of skilled labour in the country and the relaxation of work permit requirements have enabled Rwanda to attract huge investments, especially in the service sector.

MIGRATION IN SADC

The SADC Treaty of 1992 establishes the facilitation and promotion of the free movement of persons within the common market as one of its main aims. SADC has negotiated and drafted two protocols in furtherance of this objective. The first is the Protocol on the Facilitation of Movement of Persons of 2005. This protocol falls under the Organ on Politics, Defence and Security, underpinning its security dimension. However, of the 13 member states that have signed the 2005 protocol, only four – Botswana, Mozambique, South Africa and Swaziland – have ratified it. Secondly, SADC negotiated the [Protocol on Employment and Labour](#) in 2014.⁶⁴ Unfortunately, this too has not been ratified by the required two-thirds of member states.⁶⁵ The Southern African Trade Union Coordination Council (SATUCC) has embarked on a regional campaign to try to promote the ratification and implementation of the 2014 protocol, which was officially launched in July 2014 in Harare.⁶⁶ To date the campaign has been launched at national level by SATUCC affiliates in Malawi, Zimbabwe and Mozambique.⁶⁷ The 2014 protocol is aimed at, inter alia, facilitating the movement of persons through ensuring that there is a visa-free regime. In addition, it guarantees the rights to residence and establishment in the

62 Rwanda Statistical Office, Third Integrated Household Living Conditions Survey EICV 4 October 2013 to October 2014, <http://www.statistics.gov.rw/datasource/integrated-household-living-conditions-survey-4-eicv-4>, accessed 31 October 2016.

63 IOM, 'Strengthening Labour Migration in Rwanda', 2014, <https://www.iom.int/sites/default/files/country/docs/rwanda/IOM-Rwanda-Strengthening-Labour-Migration-in-Rwanda.pdf>, accessed 11 September 2016.

64 SADC, Protocol on Employment and Labour, Gaborone, 2014, https://www.sadc.int/files/5714/6193/6406/Protocol_on_Employment_and_Labour_-_English_-_2014.pdf, accessed 6 September 2016.

65 SATUCC (Southern African Trade Union Co-ordination Council), 'Almost two years passed, no member state has ratified SADC Employment and Labour Protocol', Blog, 8 June 2016, <https://satucc.wordpress.com/2016/06/08/almost-two-years-passed-no-member-state-has-ratified-sadc-employment-labour-protocol>, accessed 5 November 2016.

66 *Ibid.*

67 *Ibid.*

territories of its member states.⁶⁸ Further, it makes allowance for visa-free entry for visitors into the territory of another member state for up to 90 days. For ease of implementation, the protocol obliges member states to harmonise laws and administrative practices, standardise immigration forms, and establish a separate SADC desk at each major point of entry.

Some of the administrative regulations aimed at facilitating the implementation of the 2014 protocol include the establishment of enough border-crossing points, with identical opening hours and issuance of uniform and simple border permits to citizens residing in the border areas of member states.⁶⁹ Complementing the 2014 protocol is the [SADC Charter of Fundamental Social Rights in SADC](#), which main objective is ‘to promote labour policies, practices and measures which facilitate labour mobility’.⁷⁰ The charter is mainly a guideline to inform member states when enacting domestic laws.

There are several challenges that have hindered the effective implementation and realisation of these goals, including the poor ratification of both the 2005 and 2014 protocols. These include a lack of funding and technical expertise. Some member states also view the protocol as an extra burden and a low priority, noting that they have other socio-economic challenges. The situation is further compounded by the existence of bilateral agreements between some countries, which allow their citizens to move freely between their borders.

The harmonisation of laws, which requires modifications in domestic laws as well as subordinating national political interests to long-term regional goals, is not regarded as a priority by some member states.⁷¹ The failure of SADC to implement the 2005 protocol can also be attributed to a lack of commitment and political will to embrace policies on the free movement of labour. Table 2 shows the migration trends in the SADC region as of 2015.

Although there is an international legal framework and guidance for the management of migration, what is lacking in the SADC region is a specific protocol that takes into account the regional migration and development context and spells out relevant region-specific migration management strategies.⁷² The SADC region’s national laws, regulations and practices inhibit the free movement of regional citizens across member states.⁷³ These include strict visa requirements and different requirements for registration of foreign business. Non-recognition of relevant educational qualifications obtained in other member states; strict entry requirements in certain sectors such as medical and legal

68 SADC, Treaty of the Southern African Development Community, 1992, http://www.sadc.int/files/91113/5292/9434/SADC_Treaty.pdf.

69 *Ibid.*

70 *Ibid.*

71 Mudungwe P, *op. cit.*, p. 34.

72 Mudungwe P, *op. cit.*, p. 9.

73 Makochekanwa A, *Increasing Temporary Movement of Natural Persons in the SADC Region: What Should Be Done?* Pretoria: TIPS (Trade & Industrial Policy Strategies), 2009, p. 23.

fields; application bureaucracies; and the cost of applying for permits are some of the impediments to realising the free movement of persons as outlined in the protocols.⁷⁴

TABLE 2 MIGRATION TRENDS IN SADC, 2015					
Country	Total inward migrants	Total outward migrants	Top three African origin countries for inward migrants		
Botswana	160 000	60 000	South Africa (40 000)	Zimbabwe (30 000)	Zambia (10 000)
Malawi	300 000	220 000	Mozambique (50 000)	Zambia (40 000)	Zimbabwe (40 000)
Mozambique	220 000	710 000	Malawi (80 000)	Zimbabwe (30 000)	South Africa (10 000)
Namibia	90 000	150 000	Angola (30 000)	Zimbabwe (10 000)	South Africa (10 000)
South Africa	3 140 000	840 000	Zimbabwe (480 000)	Mozambique (450 000)	Lesotho (350 000)
Zambia	130 000	240 000	Zimbabwe (20 000)	Angola (20 000)	DRC (10 000)
Zimbabwe	400 000	860 000	Malawi (100 000)	Mozambique (90 000)	Zambia (30 000)

Source: UN DESA, *op. cit.*

Clearly, the goal of completely free movement for SADC nationals, goods and services remains elusive. This is mainly owing to a lack of funding, technical expertise and harmonised national laws. This has adversely impacted on the general implementation of the protocols in place. A major reason why countries have been reluctant to ratify the 2005 protocol is because economic migration is seen as a national security issue. The SADC approach of perceiving migrants as ‘potentially dangerous’ and a ‘security threat’ is different to the AU approach. SADC has institutionalised the movement of persons within the powerful Organ on Politics, Security and Defence. The securitisation of migration within SADC, perhaps more than in any other REC under this study, can be linked to the history of the formation of this economic community. Interviews with SADC Secretariat personnel revealed that those demanding protocols on free movement of labour are mostly trade unions and other civil society organisations. Cooperation among SADC

74 *Ibid.*

members is limited to safeguarding national and regional security by exchanging crime and security intelligence, and ‘preventing the illegal movement of persons into and within the region’.⁷⁵ SADC nationals are only permitted 90-day visa-free working rights (Article 3(c)), and there is no overarching protection for migrants beyond a hosting country’s laws and regulations (Article 20). This leaves migrants vulnerable to host country laws that might be discriminatory and non-compliant with international norms, compounded by the fact that not all SADC members afford migrants social protection and rights. It also affords a very restrictive interpretation of admissible immigrants, which is detrimental to the much larger numbers of irregular and economic migrants within the SADC region.⁷⁶

The policy stance on the temporary movement of labour in SADC involves limited entry of foreign skilled people, and no entry of foreign unskilled people.⁷⁷ The rationale for this unbalanced stance stems from the fact that, with regard to skilled labour, regional member countries accept that there is a skills shortage in their countries, and face pressure from multinationals to allow them to bring in skilled people with their investment. For unskilled labour entry, each of the SADC countries faces high unemployment, which has been made worse in recent years by the structural adjustment of their economies. As a result, SADC states have been unwilling to potentially exacerbate unemployment levels by allowing the temporary entry of unskilled labour from other member countries.

Southern Africa’s borders are porous, with substantial informal cross-border movements that carry political and economic costs.⁷⁸ Brain drain, downward pressures on wages, and friction between migrants and locals in host countries are just some examples of a wide range of issues associated with informal and unmanaged migration processes across the region.⁷⁹ Current events – including the repeated attacks on migrants in South Africa – make it paramount to address regional migration with a clear regional framework. Regularisations are ad hoc measures, and by no means provide the type of sustainable legal framework needed to manage regional migration effectively, *let alone* guarantee the basic forms of protection for both local and migrant workers. The lack of a clear regional framework is also triggering continuous repatriations and ‘emergency measures’ such as forced deportations, which impose significant costs on the South African government, while showing no effectiveness at controlling undocumented migration flows. Most of

Clearly, the goal of completely free movement for SADC nationals, goods and services remains elusive. This is mainly owing to a lack of funding, technical expertise and harmonised national laws

75 SADC, Protocol on Facilitating the Movement of Persons, Gaborone, 2005, http://www.sadc.int/files/9513/5292/8363/Protocol_on_Facilitation_of_Movement_of_Persons2005.pdf, accessed 7 November 2016. See in particular articles 11(1)(b) and (e).

76 Dodson B & J Crush, ‘Migration Governance and Migrant Rights in the Southern African Development Community’, UNRISD, Research Paper, 2015, [http://www.unrisd.org/unrisd/website/document.nsf/\(httpPublications\)/0CDF578939EEC5ACC1257EE300393CF1?OpenDocument](http://www.unrisd.org/unrisd/website/document.nsf/(httpPublications)/0CDF578939EEC5ACC1257EE300393CF1?OpenDocument), accessed 10 October 2016.

77 Ndulo M *et al.*, *State of trade in Services and Trade Reform in Southern Africa*, NEPRU (Namibian Economic Policy Research Unit) Research Report, 31. Windhoek: NEPRU, 2005, p. 4.

78 Nshimbi CC & L Fioramonti, *op. cit.*, p. 25.

79 *Ibid.*

the undocumented migrants who are deported from South Africa return, once again, via informal routes.⁸⁰

The recently adopted Regional Labour Migration Policy Framework for SADC⁸¹ is a step in the right direction. If all member states do indeed implement it, the framework will ensure that national labour migration policies are harmonised throughout the entire region.

To highlight the protectionist attitude among SADC countries, people from one SADC country need permits to work in other SADC states. Immigration legislation in these countries protects national interests, while helping keep unwanted elements out of the country. A government spokesperson, for instance, once defended Namibia's *Immigration Control Act of 1993*⁸² 'as assisting, inter alia, to keep criminals out of the country or to expel them'.⁸³ Moreover, in Section 26.3(e), the act only allows non-Namibian nationals to obtain employment in the country on the condition that they do 'not and ... [are] ... not likely to pursue any employment, business, profession or occupation in which a sufficient number of persons are already engaged'.⁸⁴ Section 19.4 of *Botswana's Immigration Act of 2011* states, 'in determining an application for a resident permit, the Board shall have primary regard to the interests of Botswana'.⁸⁵ Whether originating from a SADC country or not, therefore, migrants need to obtain a work permit before they can work in a host country. Section 41.3(a)(ii) of *Zimbabwe's Immigration Act of 2001* requires such migrant workers to actually secure employment before arriving in the country. Section 27(a) of South Africa's *Immigration Act*⁸⁶ provides for a foreigner to be issued permanent residence upon receipt of an offer of permanent employment, among other conditions.

Moving beyond containment, control and exclusion: South Africa's envisaged immigration policy

South Africa is one of the countries in SADC that has adopted a protectionist stance towards the massive inflow of migrants it receives yearly. The country has become a major source, transit and destination country for mixed-migration flows, which need to be managed more robustly if the process is to have clear and tangible benefits for the country in terms of economic development, social cohesion and security. However, the country lacks a framework to deal with economic migrants. The *Immigration Act No. 13 of 2002*

80 Personal interview, IOM official, Lusaka, 21 July 2016.

81 SADC, *Regional Labour Migration Policy Framework for SADC*, Gaborone, 2014, http://www.ilo.org/wcmsp5/groups/public/---africa/---ro-addis_ababa/---ilo-pretoria/documents/meetingdocument/wcms_239816.pdf, accessed 23 August 2016.

82 See Namibia, *Immigration Control Act of 1993*, https://laws.parliament.na/cms_documents/immigration-control-afee03d0ea.pdf, accessed 20 October 2016.

83 *Ibid.*

84 *Ibid.*

85 Botswana *Immigration Act of 1966*, as amended, <http://www.bitc.co.bw/sites/default/files/Immigration%20Act%20of%202011.pdf>, accessed 15 September 2016.

86 South Africa, *Immigration Act of 2002*, https://www.gov.za/sites/default/files/a13-02_0.pdf, accessed 30 November 2016.

sets out conditions for temporary and permanent residence in the country. The act is the key document that governs South Africa's migration policy. Enforcement and publication of the act's final regulations in late 2005 marked the conclusion of a consultative and amendment process that lasted 10 years.⁸⁷ This may not have been the last of the act's amendment processes. In September 2010 then Department of Home Affairs (DHA) Minister Dr Nkosazana Dlamini-Zuma tabled the *Immigration Amendment Bill of 2011* in Parliament; and on 22 March 2011 she presented it to National Assembly, which approved it. The bill was then referred to cabinet for assent in June 2011. Dlamini-Zuma described the bill as aimed at facilitating the free movement of people and goods as well as the exchange of skills, both of which would be accomplished by streamlining the process of applying for temporary visas and permits by business people, investors, academics and scholars.⁸⁸

The Immigration Act No. 13 of 2002, as amended in 2004, provides for 13 types of temporary residence permits, including a visitor's permit, study permit, treaty permit, work permit, business permit, crew permit, medical treatment permit, relative's permit, retired person's permit, corporate permit, exchange permit, asylum transit permit, and cross-border and transit permit.

Notable to this study among the permit categories listed above are the permits for migrants including work permit, business permit and treaty permit. Spouses or children of South African citizens or permanent residents qualify for acquisition of permanent residence, as do individuals who have either invested in businesses in the country considered in the national interest or have certain amounts of capital.

In 2017 the Ministry of Home Affairs published the White Paper on International Migration for South Africa.⁸⁹ This seeks to provide South Africa with the vision and policy tools to better manage international migration now and in the future. It outlines what the government deems to be core principles that should inform its management of international migration. Firstly, South Africa's sovereign right to manage international migration in its national interests is emphasised. Secondly, the white paper asserts the need to orient the country's international migration policy towards Africa. Thirdly, nation building and social cohesion are identified as some of the outcomes of the country's policy on international migration. Fourthly, it identifies the need for South Africa's international migration policy to enable South Africans living abroad to contribute to national development priorities. What is made clear in the South African white paper is that efficient and secure management of international migration is the responsibility of individual countries. How this iteration fits within the regional integration framework is not quite clear.

87 Segatti A, 'Reforming South African immigration policy in the post-apartheid period (1990–2010)', in Segatti A & LB Landau (eds), *Contemporary Migration to South Africa: A Regional Development Issue*. Washington, DC: The World Bank, 2011, pp. 31–66.

88 See South Africa, Immigration Amendment Bill of 2011, https://juta.co.za/media/filestore/2016/03/B05_2016_1.pdf, accessed 10 November 2016.

89 South Africa, DHA, White Paper on International Migration for South Africa, *op. cit.*

According to Home Affairs policy makers, current national thinking and attitudes to international migration are bifurcated between those who call for stricter immigration controls, and those who call for wholesale relaxation

Type of temporary residence visa	Number	%
Relative Visa (Spouse)	28 608	24
Study Visa Section 13	22 074	18
Visitor Visa Section 11(1)	16 632	14
General Work Visa Section 19(2)	11 582	10
Visitor Visa Section 11(6)	11 221	9
Critical Skills Visa Section 19(1)	7 195	6
Visitor Visa Section 11(1)(b)(iv)	5 226	4
Relative Visa (Minor child) Section 18	4 668	4
Visitor Visa Section (11)(1)(b)(ii)	3 283	3
Visitor Visa Section 11(2)	2 217	2
Work Visa Section 19 (5)	1 971	2
Relative Visa (Major child) Section 18	1 878	2
Medical Treatment Visa Section 17	1 806	1
Business Visa Section 15	1 530	1
Retired Person Visa Section 20	1 346	1
Total top 15 types	121 237	100

Source: South Africa, DHA, White Paper on International Migration for South Africa. Pretoria: Government Printer, 2017

According to Home Affairs policy makers, current national thinking and attitudes to international migration are bifurcated between those who call for stricter immigration controls, and those who call for wholesale relaxation.⁹⁰ Instead, the DHA argues, the white paper should balance the primary imperatives of economic development, national security, and international and constitutional obligations.⁹¹ The white paper could be seen as capturing the complexity of international migration within a global context.

90 Telephonic interview, DHA official, Pretoria, 4 October 2016.

91 *Ibid.*

TABLE 4 THE STATUS OF MIGRATION IN EACH REC			
	COMESA	EAC	SADC
Relevant protocol	Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence (2001) Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirement (1984)	Protocol on the Establishment of the Common Market (2010)	Protocol on the Facilitation of Movement of Persons (2005) Protocol on Employment and Labour (2014) Protocol on Trade in Services (2012)
Implementation status	Not ratified	Ratified	Not ratified
Additional measures	OSBP TMP programme, which aims at increasing access of firms to the right quality of professionals at the right time and right place in the region.	OSBP to ease movement of people.	Charter of Fundamental Social Rights (2003), whose main objective is to promote labour policies, practices and measures that facilitate labour mobility. Regional Labour Migration Policy Framework (2014), which aims to ensure that national labour migration policies are harmonised throughout the entire region.
Effect of protocols on REC citizens	Free movement within the region. Free to take up job offers in the region. Free to pursue self-employment activities. Free to set up and manage business in any member state under conditions similar to citizens of the host state.	Possess EAC passports. Enjoy freedom of movement of workers. Enjoy right of establishment and residence. Enjoy harmonised procedures for issuing entry and work permits, and this is done on a single immigration entry. Enjoy mutual recognition of academics and professionals.	

Source: Authors

TRANSPOSING THE REC MIGRATION PROTOCOLS INTO THE TFTA: QUO VADIS?

The migration issue in all three RECs has been addressed in various ratifications, declarations and recommendations by the organisations to which they are party. In June 1991 the heads of state and government of all the three RECs including ECOWAS

adopted the Treaty Establishing the African Economic Community, known as the Abuja Treaty.⁹² The treaty urged member states to adopt employment policies that allow for the free movement of persons within the community. This entails strengthening and establishing labour exchanges aimed at facilitating the employment of the available skilled manpower of one member state in another member state where there are shortages of skilled manpower, as an essential component for the promotion of regional cooperation and integration in Africa.⁹³

In June 2011 at the Comesa–EAC–SADC Tripartite Summit, a declaration launching negotiations for the establishment of the TFTA was signed. It provides that the movement of businesspeople in the TFTA will be negotiated under a separate track parallel to negotiations on trade in goods. In September 2013 a Tripartite Technical Committee on Movement of Business Persons was established. There is also within the TFTA, a Draft Agreement on Movement of Business Persons, aimed at promoting and facilitating market access. Calls to create a TFTA under the current economic conditions should factor in labour migration and how it will be handled at the regional level before being phased into the larger TFTA.⁹⁴ The regulation of movement of business people is important, especially in light of small and medium enterprises and cross-border traders deriving a livelihood from owning small businesses in other foreign markets.

CONCLUSION

The challenges that inhibit the proper implementation of migration policies are similar in all three RECs. Thus the solutions required to address these unique African challenges that are related to labour migration are also very similar. Such solutions could be achieved in collaboration with UNESCO and the IOM, complemented by prioritising the employment of qualified personnel from the region before considering non-regional candidates. It is also necessary for the RECs to adopt some of the strategies that are contained in the Draft Regional Migration Framework for Africa.

There is a need for the various protocols regulating migration in SADC, the EAC and Comesa to be properly domesticated, given that this is one of the main challenges relating to implementation. In addition, there is need for a more in-depth audit of the potential economic gains emanating from labour migration. This economic impact assessment could inform the approach of member states in ratifying and drafting instruments that regulate economic migration. It is recommended that further studies be undertaken to unpack the security implications of migration. The TFTA should be adopted by the RECs, including in liberalising the movement of business people and highly skilled professionals. Nonetheless, care should be taken that the TFTA framework does not introduce yet another regulatory layer in the affected regions.

92 OAU (Organization of African Unity), Treaty Establishing the African Economic Community (AEC), Abuja, 12 May 1994.

93 *Ibid.*

94 Mudungwe P, *op. cit.*, p. 21.

Undoubtedly, migration promotes regional integration, but there are many barriers that need to be removed for Africa to harness the potential development dividends of migration. The main challenge is that of implementation. This has also made the evaluation of the effectiveness of the REC protocols on the movement of persons difficult. Noting the coming into being of the TFTA and its need to factor in labour migration in its discussions and frameworks, it becomes fundamentally important for RECs to address their pending challenges. This is to avoid a situation whereby the TFTA will inherit these problems, which may threaten its prospects. Strong institutional bodies or organs within the RECs are needed to facilitate and oversee the implementation of the already established labour migration policy frameworks.

It is important for SADC and Comesa to consider the approaches of other RECs globally that have been successful in addressing labour migration. ECOWAS is a good example, having made significant strides in this respect. But it remains to be seen how the many challenges identified will be dealt with, and how the TFTA will assimilate labour migration.

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